

IN THE MATTER OF FACT-FINDING  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD  
**SERB CASE No: 2015-MED-09-0859**

Ohio Patrolmen's Benevolent Association (Police Officers)  
Union  
and  
City of Englewood  
Employer

**Fact-Finder's Recommendations**  
Betty R. Widgeon

**PRESENTED TO:**

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**INTRODUCTION**

This Fact-Finding arises pursuant to Ohio Revised Code Section 41117.14 between the Ohio Patrolmen's Benevolent Association "OPBA or the Union" and the City of Englewood, Ohio "the City." The report of Betty R. Widgeon who was appointed as Fact-Finder is issued below. **Her recommendations begin on page 6.**

The Fact Finder initiated pre-hearing communication with counsel for the parties on January 21, 2016. She received prehearing statements via electronic transmission on January 28, 2016. In compliance with Ohio Public Employee Bargaining Statute Rule 4117-9-05, the Fact Finder discussed with the representatives whether any further attempt at mediation would assist the parties. Both sides declined further mediation, and the Fact Finding hearing was held on Friday, January 29, 2016 at the administrative offices for the City of Englewood, located at 333 W. National Rd, Englewood, Ohio 45322.

At the hearing, counsel for the parties summarized their positions and presented supporting testimony and exhibits. At the conclusion of the presentations, it was agreed that the Fact-Finder would issue her report on or before February 22, 2016. This report is submitted on February 19, 2016 via email attachment, as stipulated to by the parties. The Fact-Finder expressly incorporates by reference and recommends all of the Agreements, tentative and otherwise, previously entered into between the parties.

### **Background**

The City of Englewood is a planned community in the northern portion of Montgomery County in southwest Ohio. It is located along the 1-70 corridor approximately 5 miles from Dayton International Airport. It has a diverse population of approximately 13,600. The OPBA is a labor Union serving over seven thousand members employed in law enforcement in the state of Ohio. The collective bargaining unit here consists of 16 full-time patrol officers. The prior collective bargaining agreement was for the term January 1, 2013 through December 31, 2015. The parties have agreed by tentative agreement that the duration of this successor agreement shall be January 1, 2016 through December 31, 2018.

## **Parties Viewpoints on the Outstanding Issues**

### **I. Wage Rates**

#### *The OPBA's Position*

The OPBA proposes a general wage increase to the current wage scale of 2.5% effective January 1, 2016, 2.5%, effective January 1, 2017, and 2.5% effective January 1, 2018. It asserts that this proposal is realistic, supported, and balanced. The OPBA submits that the relevant external comparables support its position that 2.5% represents the “going rate” for city police officers in Montgomery County. This percentage increase is also supported by the bargaining history of the parties. The Union notes that the City has not raised an inability to pay argument. It asserts that the City has the ability to finance and administer the proposal of the OPBA, and that the proposed increase will not harm the normal standard of public service within the City.

#### *The City's Position*

The City's proposes a wage increase of 2% effective each year of the contract. It asserts that comparable data and bargaining history of the parties demonstrates that employees are the fourth highest from the top pay among similarly situated police departments. It notes that salary increases among comparable jurisdictions have ranged from 1% to 2.25%, with the majority being 2%.

### **II. Longevity Pay**

#### *The OPBA's Position*

Under the current language of the collective bargaining agreement, employees are paid a one-time lump sum longevity bonus of \$1,000.00 on their twentieth anniversary date of employment. The OPBA submits that this provision is out-of-step with those jurisdictions offering longevity pay. Its proposal seeks parity with relevant jurisdictions earning longevity pay

by establishing a payment scale that increases with an employee's years of service. The Union proposes that longevity compensation shall be paid annually at the time of the first pay in December for completed years of continuous service as a full-time employee of the Englewood Police Department. Under its proposal, the years of continuous service of an eligible bargaining unit member would be determined by computing the time actually spent in full-time employment in the Englewood Police Department and would be computed as of November 30 of each year.

A chart of the Union proposal follows below:

| YEARS OF CONTINUOUS SERVICE COMPLETED | ANNUAL PAYMENT |
|---------------------------------------|----------------|
| 6 through 9                           | \$400.00       |
| 10 through 14                         | \$600.00       |
| 15 through 19                         | \$800.00       |
| 20 through 24                         | \$1,000.00     |
| 25 years and greater                  | \$1,200.00     |

*The City's Position*

The City proposes that the status quo remain. It reasons that the one-time longevity supplement was never intended to become a yearly benefit, or a guaranteed salary increase. It points out that the Union's proposal could result in an annual expenditure of \$50,000, as opposed to a one-time expense of \$16,000.

**III. Shift Differential**

*The OPBA's Position*

The Union proposes a new Section to the Article. Its proposal is for a shift differential of \$0.50 per hour to be paid to employees for all time worked between the hours of 3pm to 7am. Additionally, the OPBA proposes that for all time worked between the hours of 11pm on Friday to 11pm on Sunday, employees be paid an additional \$0.50 per hour. These amounts would not

be compounded, such that an employee's shift differential pay for any hour would not exceed \$0.50.

The Union states that this proposal is a means to compensate officers for the hardship associated with those work times. It notes that all such shifts diminish an officer's family time. Officers on such shifts are working or sleeping when they could be attending to family duties and/or typical family recreation. Additionally, data from numerous studies have shown, and the community has come to generally acknowledge, findings that continuous work during those hours more readily leads to sleep deprivation and other serious health conditions. The Union asserts that the proposed wage is comparable to other jurisdictions that offer such benefit.

#### *The City's Position*

The City underscores that employees are currently entitled to bid their shifts based upon seniority. It argues that the additional pay is not justified by comparables or industry practices. The City views this proposal as just another proposal by the Union for more compensation without a demonstration of a genuine need.

#### **IV. Sick Leave**

##### *The OPBA's Position*

The OPBA proposes an addition to the Sick Leave Article in Section 1 to allow bargaining unit employees the use of sick leave to care for an employee's spouse, child, step-child, or parent in case of illness, injury, childbirth, or exposure to a contagious disease where the employee's presence is reasonably necessary for the health and/or welfare of the affected family member. Additionally, the OPBA proposes that all bargaining unit employees be permitted the use of sick leave for medical, dental, or optical examination or treatment of an employee's spouse, child, step-child, or parent where the employee's presence is reasonably

necessary. For such examinations or treatments, the OPBA would acknowledge that leave shall be limited to the actual hours necessary for such medical, dental or optical examination or treatment, including reasonable travel time. The Union reasons that, with the realities of each household having two working parents, such proposal addresses the responsibilities, commitments, and stressors of family life.

### *The City's Position*

The City submits that those rights already exist under current contract language and practice, such as the recognized "demand day" and other employee options, such as FMLA leave. The City argues that the proposed language is "superfluous and not required."

## **FACT FINDER RECOMMENDATIONS**

### Criteria for the Fact-Finder

As required by Rule 4117-9-05 the Fact-Finder considered the criteria set forth below in making her recommendations:

1. Past collectively bargained agreements, if any.
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
4. The lawful authority of the public employer.
5. Any stipulation of the parties.
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Neither side contends that the City's ability to pay is at issue. Englewood enjoys good financial health: its tax base includes a good mix of health, government, education, entertainment, retail, commercial, and industrial segments and, since 2011 it has had no outstanding loans or long-term debt. It has a 1.75% local income tax. The City's financial report,

issued December 31, 2014, was designed both to provide its citizens, taxpayers, investors, and creditors with a general overview of the city's finances, but also to “to show the city's accountability for the money it receives.” The report notes that Englewood’s diversity in tax base has enabled it to remain fiscally strong despite cuts in state funding. The report further highlight that the City is privileged to have a history of excellence in safety, security and public service and an image as a “progressive and inviting community.”

Having considered the parties’ respective positions and considering them in conjunction with the factors imposed by Rule 4117-9-05, the Fact Finder makes the following recommendations:

#### Wage Rates

The record reflects that both sides acknowledge that the Englewood Police Officers were woefully behind the overwhelming majority of their counterparts for several years, and with the increases over the recent years, they have climbed from near the bottom of the neighboring and comparable jurisdictions to approximately 4<sup>th</sup> out of 16. The parties rightfully take pride in the progress they have achieved, and neither side desires an abatement in the gains they have been able to achieve through their joint efforts. Given the history surrounding wages and comparing Englewood with the comparable jurisdictions, the Fact Finder is persuaded that a 2.5% wage raise during each of the 3 years of the new contract is fair and urges the parties to agree to this modest increase. Therefore, **the Fact Finder recommends a 2.5% increase in wages.**

#### Longevity Pay

The Fact Finder was not persuaded by the Union’s argument that longevity pay should be increased or should be modified in order to have a fair and comparable wage and benefit package for the Englewood police officers. She notes that a majority of the comparable jurisdictions have

nothing like the longevity structure proposed by the OPBA. In fact, a significant percentage of the Montgomery county comparables do not have longevity at all. The Fact Finder notes that the current provision has been a part of the parties contract for approximately the last four contract negotiation series. During that time, the parties have had ample opportunity to modify this provision, but they have declined to make any changes whatsoever to this provision. Being unconvinced by the evidence presented at the hearing, **the Fact Finder recommends the status quo.**

#### Shift Differential

Both sides acknowledge that, while requiring the same type of work by the employees, working late afternoon and night shifts is generally acknowledged to take a heavier toll on employees and their families, both physically and emotionally. Management voiced no overall objection to the Union's position and its studies on sleep deprivation and other negative impacts that have been associated with long-term evening and night shift employment as opposed to day shift work. Moreover, Union used the City's data on police officer first, second, and third choices for work shifts to buttress its position. That data revealed that only 3 of the unit's 16 police officers did not request dayshift as their first choice, and 1 of the 3 who requested a shift other than the day shift was the most senior employee, whose seniority guaranteed that he would receive his first choice.

The overarching concerns the Fact Finder heard the City voice in opposition to the Union's proposal were that, (1) the accounting changes that would be required to manage shift differential wages would be burdensome and (2) even if the data presented by the Union is correct, \$0.50 per hour shift pay increase would do nothing to alleviate the concerns raised. Certainly, the Fact Finder recognizes that such a change would not remedy the increased

physical taxing on the body, and also, this change would most likely require the City to utilize some updated technology software. However, as both sides acknowledge, the general rationale behind shift differential pay is generally accepted, and the Fact Finder believes that, given the parties' history of working together for the good of the entire community, taking such a course of action would be in keeping with the City's image of a progressive jurisdiction which recognizes and supports its employees as its greatest source of strength and pride.

Moreover, it was not lost on the Fact Finder the fact that the City has shown in many ways the value it places on its human resources. From all appearances, the parties' health care plan, which was not involved in the discussions here, is among the best of the surrounding jurisdictions, and the Fact Finder commends the efforts of both sides. Given the improvements with technology applications, the Fact Finder is persuaded that the overall benefits of adopting a shift differential pay scale would far outweigh attendant burdens. **Therefore, the Fact Finder recommends a shift differential of \$0.50 per hour for hours worked between 3:00pm and 7:00am Monday-Sunday.**

#### Sick Leave

The proofs presented did not persuade the Fact Finder that there was a reasonable basis for the parties to modify their current agreed-to provisions. The Union failed to show by a preponderance of the evidence that remaining with status quo would be unfair or prove a particular burden to the employee relative to the benefits enjoyed by their comparable counterparts. Additionally, the City's submission, that the current sick leave, vacation/annual leave, demand provision, and FMLA availability sufficiently meet the identified concerns at this time, is persuasive. Therefore, **the Fact Finder recommends status quo with respect to the proposed modifications of the Sick Leave policy.**

Furthermore, as noted above, the Fact-Finder expressly incorporates by reference and recommends all of the Agreements, tentative and otherwise, previously entered into between the parties.

Respectfully submitted and issued this 19<sup>th</sup> day of February 2016.

  
Betty R. Widgeon

### Certificate of Service

I, Betty R. Widgeon hereby certify that a true copy of the foregoing Fact Finder's Report was served by electronic mail via email attachment at 12:00 noon EST upon **Mark J. Volcheck**, Esq., 92 Northwoods Blvd., Suite B-2, Columbus, Ohio 43235, [markvolcheck@sbcgloal.net](mailto:markvolcheck@sbcgloal.net), Representative for the Union, and **Dwight A. Washington**, Hollingsworth & Washington, 6494 Centerville Business Parkway. Dayton, OH 45459 [dWASHINGTON@jhallc.com](mailto:dWASHINGTON@jhallc.com), Representative for the Employer, and upon the Ohio State Employment Relations Board (via **Donald Collins**, General Counsel, Bureau of Mediation—State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213) also via electronic attachment, this 19<sup>th</sup> day of February 2016.

  
Betty R. Widgeon, Fact Finder