

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
DONALD G. RUSSELL, FACT-FINDER

STATE EMPLOYMENT
RELATIONS BOARD

2016 SEP 15 P 1:54

In the Matter of the Fact-finding between

The City of Cleveland Heights,

Employer,

-and-

Ohio Patrolmen's Benevolent Association,

Employee Organization.



SERB Case Numbers:

2016-MED-04-0439

2016-MED-04-0440

2016-MED-04-0441

Fact-finding Report

The fact-finder received notice of his selection when he received the Employer's Notice of Selection of Fact-finder, dated July 5, 2016. The parties agreed through the fact-finder that the fact-finding hearing would be held on August 18, 2016, at Cleveland Heights City Hall. Both parties presented position statements prior to the hearing. The hearing began at 10:00 a.m. and ended at 4:30 p.m. Sandy Conley, Account Manager, Clemens, Nelson and Associates, Inc represented the City. S. Randall Weltman, Attorney for the OPBA, represented the union. Witnesses testified under oath administered by the fact-finder. The parties introduced a substantial amount of evidence. The parties agreed to an extension of time and set the time for the fact-finder to complete and serve the report to September 15, 2016.

The parties provided a copy of the current collective bargaining agreement in the front part of the employer's three-ring binder of exhibits. The contract is effective from April 1, 2015, through March 31, 2018. It is a three-year agreement. The salary increase in the first year was .05 %, and the contract provides for a reopener on 2nd and 3rd years. It is the reopener that is the subject of the current negotiations. The employer's position statement presented the issue before the fact-finder precisely and well. It said:

"Consistent with the language agreed to by the parties, the sole issue before the fact-finder is wages. More specifically, wage increases, if any, for 2016 (commencing April 1, 2016, or after) and 2017."

By their current contract.¹ and their presentations it is clear that the parties agree their contract years, for example 2016, begin on April 1 and end the following March 31, and any increases should start then even if retroactive. If the parties had not carefully guided the fact-finder on this point, the fact-finder might very easily have taken some pressure off the city's cash flow problems by recommending a raise starting on the date of acceptance of the fact-finding report. However, the fact-finder will follow the desires and agreements of the parties. Any increase here will begin on April 1, 2016, retroactively, and on April 1 of any following year.

The Parties

The City of Cleveland Heights has a population of slightly more than 46,000 people. In the demographics provided to the fact-finder, that is the other Cleveland suburbs, Cleveland Heights population is 5th in size, barely behind the 2nd and 3rd place cities and with substantially more population than the cities that are 6th through 10th. Like every other governmental unit in the U.S, the State of Ohio, and Cuyahoga County, Cleveland Heights has had to struggle financially with the results of the 2007-2008 financial crisis. As the City wrote in its pamphlet to encourage support for the .25 % tax increase sought in November of 2015:

"Since 2010, the State of Ohio has cut nearly \$7 million² in funding from our budget." The Council explained it cut everywhere in its budget to try to balance the budget. Cuts included 12 firefighters, 8 police officer positions, 10 public works positions, and reduced housing inspection and enforcement services. The local income tax increase passed raising the local income tax from 2% to 2.25 %, and was to replace the revenue sources which had ended, primarily the state cuts and the ending of the estate tax. In short, the City says that the income tax increase will merely replace the lost funding sources, if that, and won't make increasing expenditures possible. More specifics about the revenue sources and expenditures will be discussed later in this report.

That is the bad news, The good news is that city revenues in Ohio come mostly from the local income tax. This means that the fact that the population in Cleveland Heights experiences low unemployment and better than average incomes is reason for some optimism about the city's ability to climb out of the financial hole it was, or is, in. Things are getting better, but how much better is the core of the disagreement between the City and the OPBA. More about the City's ability to tap revenue from the local income tax will be discussed later in this report.

¹ There are actually two agreements that are essentially identical. More about that later. When the fact-finder discusses the "contract," it should be understood he means both agreements. Each contains the reopener provision at APPENDIX B, COMPENSATION.

² \$6,659,596.

The Ohio Patrolmen's Benevolent Association represents police officers employed by the City of Cleveland Heights.³ According to the parties, there are two bargaining units. The first unit is comprised of approximately fifty-five (55) Classified Police Officers (POs) and approximately thirty-seven (37) Unclassified Service Basic Patrol Officers (BPOs). Both types are law enforcement certified, but BPOs are assigned to beats to perform different duties. The second bargaining unit is comprised of about fifteen (15) Classified Sergeants, Lieutenants, and Captains. These ranking positions supervise the POs and BPOs. Ohio law requires that they be in a separate bargaining unit.

There are six bargaining units in the City. The NPWU Public Works bargaining unit has agreed to 0% for 2016 and 2017. The NPWU Joint Fire Dispatchers has agreed to 0% for 2016 and 2017, with a 1.25% increase in 2018 tied to a City increase in the payment of the health care premium from 10% to 12%. The IAFF bargaining unit is currently involved in negotiations on a wage reopener in the current agreement similar to this situation. The IAFF contract has a "me too" clause in it guaranteeing the firemen the same as the police get in these negotiations. The fact-finder is not a fan of "me too" agreements. But, if an employer and union agree to such a clause it must be okay since it was agreed to at arms length. The police dispatch, FOP-OLC, unit received a flat \$1500 in 2014, 0% in 2015, and is currently negotiating for the current year and beyond. The City argues that the "pattern bargaining" favors the 0% position and that the City must hold the line on all six units because a raise to one would mean an equal raise for all would have to be agreed upon.

The union argues that Cleveland Heights prides itself on being the "Home of the Arts." The City benefits from being in northeastern Ohio's major cultural, educational, and medical facilities. Due to the high educational and salary levels of the City's population, the union believes the City finished 2015 strong with the passage of the tax increase and a substantial cash balance at year's end. Things are going to get better.

The union argues that the City's estimates of revenue levels are conservative. The fact-finder agrees. The union thinks the City's inability or refusal to make 2017 projections is a means to disguise its optimism,

While the City warns there may be revenue losses due to the property tax appeal of a large property tax payer. The union points out that property taxes are not a major source of revenue for the city, but rather the municipal income taxes coming from residents who enjoy high salaries, low unemployment, and population growth paints a good picture for the City's future revenues.

³ The FOP represent police dispatchers, but it is not clear whether they are police officers or civilians. It is irrelevant since they are another bargaining unit and not a part of this one.

There are four vacant BPO positions which save the City about \$224,326. There was no testimony that these would be filled, but these vacancies have already helped the 2016 cash flow picture. Cleveland Heights patrol officers fare rather well at the entry level making \$59,284, 2nd of 8 jurisdictions considered, At the maximum salary, Cleveland Heights is \$67,415, 7th of the 8 jurisdictions with only the poor city of East Cleveland making less. The picture is the same for the hourly rate paid with beginners at Cleveland Heights making \$28.50, 2nd of 8 jurisdictions while the officers at the top, maximum, make \$32.41, 6th of 8 jurisdictions. Total compensation includes such things as longevity pay, uniform allowance, and firearm proficiency pay. Cleveland Heights patrolmen are 6th of 8 jurisdictions on total compensation. Given the comparative good situation on tax base it appears the Cleveland Heights officers could fairly expect to do a little catching up or at least hold their relative position. Two years on no increase could lead to difficult negotiations in 2018 when the members of the bargaining unit insist they make up for four years with only 1 ½ % increase, an average of .375% average increase per year for four years.

Both parties know the 4% opener the union had was out of reach, out of the question. The 3% current position is probably out of reach, and given state average increases is also out of the question. The finances are soft enough that it is not reasonable to expect that the City would agree to 3%. By the same token, it is not reasonable to think the employees in these two units would agree to two years of 0%. The question becomes what can we squeeze out of this budget that the City can pay and the employees will accept.

Mary Schultz, CPA and CFE, was an excellent expert witness who testified and presented facts that the fact-finder suspected but now knows are very likely true based upon her expertise. Cleveland Heights outlook is brighter than the City presented it to be. The general fund balance as of January 1, 2010, was \$3,232,000, and is estimated to be \$2,292,000 at the end of 2016, not all that much less considering what has happened between. She noted that during 2015 General Fund expenditures there was a \$2,100,000 transfer to the new Budget Stabilization Fund, ostensibly for the 27th pay which is not going to happen during this contract term. She notes that this fund "acts as a reserve."

Adding the \$2,100,000 in the stabilization fund to the \$2,292,000 estimated balance leaves a good reserve for surprises.

She noted that the City residents approved the .25% increase in the income tax. She says the income tax is expected to generate \$2,900,000 per year, a little less than the fact-finder's math shows, and says it should be fully realized by calendar year 2017.

"As shown above, the General Fund balance was recovering prior to the new Income Tax, to the extent that the City was able to place \$2,100,000 into a reserve fund. The 12-31-15 carryover balance represents a 10.3% carryover

reserve. The Government Finance Officers Association recommends that a reasonable carryover reserve balance should be 2 months of expenditures, which equates to 16%. This is merely a guideline and often the desired target.”⁴

Careful spending, cuts, and budgeting had already brought the City back and the addition of the income tax increase helps make the future look better. The City’s estimated property tax revenues were \$362,000 lower than the County Budget Commission certification. The income tax collection through May 31st is \$446,000 higher than the first five months of 2015. That’s \$89,000 per month higher. At the same time, expenditures were 1.5% under budget, savings of \$600,000 so far this year. She notes that spending does not occur equally in each month. Still, also noting that an estimate of \$200,000 is to be transferred from the Local TV Programming Fund this year. “The higher Income Tax and under-budget expenditures are positive signs that the 12-31-16 balance will exceed the projection,” she adds. All in all, it can be said that the City’s managers have done an excellent job of bringing the City back to a sounder financial footing. The fact-finder thinks they should have patted themselves on the back instead of presenting such a bleak picture as they did.

Mary Schultz noted that the total paid for Police Officers in the City of Cleveland Heights in 2015 was \$7,539,517. This is about 17% of the expenditures of \$43,974,618. She calculated that a 1% increase would cost \$75,395 (1% of police department wages paid in 2015) + \$14,702 (OP&F contribution) + \$1,093 (Medicare) + \$1,508 (Workers Comp) = \$92,698 total cost for 1%.

The City costed the union 3% proposal. The City said the 3% would cost \$121,596 for 2016 (8 months) and \$182,394 + \$187,866 + 24% roll up = total increase \$609,903 for 3% over two years for 93 bargaining unit positions.

The City used 93 positions, a \$31.43 average hourly rate, and 193,440 annual hours (2,080 per position). That is 52 weeks at 40 hours per week, not a figure the fact-finder is comfortable with. No overtime?! The fact-finder is more comfortable with Mrs. Schultz’s method which takes an overall one budget year figure which has to include all the usual variables and have better predictability to it.

She concluded with saying, “With the increase Income Tax, the General Fund will continue to recover over the next few years. There is a built-in 15% budget increase for Police Dept. wages for 2016 which is more than sufficient to cover wage and benefit increases for members of the OPBA without affecting the year-end General Fund carryover balance, the Budget Stabilization Fund or any other City department.”

⁴ Page 3 of union exhibit 6.

While Cleveland Heights agreed to a 1% increase in 2015, Shaker Heights settled at 2% on 1-1-15%, University Heights agreed to 2% on 7-1-15 and another 2% on 7-1-16; Lyndhurst settled for 1% on 1-1-2015, 2.75% on 1-1-2016, and 2.75 on 1-1-2017; Berea settled for 2% on 1-1-2016, 2% on 1-1-2017, and 2% on 1-1-2018; South Euclid settled for 2% on 1-1-2015, 2% on 1-1-2016, and 2% on 1-1-2017; Lakewood settled for 2% on 1-1-2016; Cuyahoga Falls does not show a settlement recently; Elyrea likewise does not show a recent settlement; Euclid settled for 1.5% on 1-1-2015, 1.75% on 1-1-2016, and 2% on 1-1-2017. These are FOP and OPBA units. Figures were furnished to the fact-finder at his request for police settlements in Cuyahoga County by the SERB researchers.

After looking at these settlements in the comparable cities, the fact-finder finds that with Cleveland Heights relatively better situation, the City should pay the POs, BPOs, and Sergeants, Lieutenants, and Captains an increase of 2%. This 2% would cost \$185,396 in the 2016 salary year (4-1-16 to 3-31-17) using Schultz's costing (which is very close to the costing by the City). Of course, 2017 would cost this much plus the same amount, or a little more, for the second year.

SERB reports that average settlements for 2015 were 2.02 for all units statewide and 2.22 for police. There are no 2016 averages yet, but it is a good bet that with a slightly better economy, less unemployment, and in Cleveland Heights case, improved tax revenues, a 2% increase for these policemen can be handled.

The fact-finder wishes to thank the parties for their excellent presentations. The fact-finder is comfortable with this recommendation in that it is in the area of settlements and within the City's ability to pay it.

Summary

The statute requires a summary of the recommendation. Here is the summary:

Recommendation: This is a reopener of both contracts for both units, (1) the POs and the BPOs and (2) the Sergeants, Lieutenants, and Captains. At issue in each contract is the reopener on wages, APPENDIX B, COMPENSATION. The parties should keep the contract language the same as their current contracts except for the following changes to Appendix B.

Recommendation: After the first one sentence paragraph starting with "Effective April 12, 2015," and second one sentence paragraph should be added stating, "Effective April 1, 2016, employees will receive a 2.0 % wage increase.

Recommendation: After the above new paragraph, another one sentence paragraph should be added stating, "Effective April 1, 2017, employees will receive a 2.0 % wage increase.

Recommendation: The next paragraph, in the PO and BPO contract, starting with the word "Position" shall be modified to show the 2.0 % increase. As follows:

"Position

1st Officer	\$68,763
2 nd Officer	\$65,715
3 rd Officer	\$60,469
1 st BPO	\$53,603
2 nd BPO	\$50,256
3 rd BPO	\$46,695

Recommendation: The same thing shall be done on the Sergeants, Lieutenants, and Captains contract. The parties said the contracts were the same except for the salaries. The parties will have to increase any amounts in the Sergeants, Lieutenants, and Captains contract by 2% since the contract was not furnished to the fact-finder.

Recommendation: The next paragraph regarding working on holidays remains as is in the current agreements.

Recommendation: The final paragraph starting with "Either the Union or the City may reopen ..." should be deleted since there will be no more reopeners on these contracts.

The parties should notify the fact-finder if they find any math or typing errors in this report so that it may be corrected.

The SERB asks fact-finders to put the recommendations down on a data summary sheet which is attached hereto and to put the recommendations in contract language form Obviously, it should not be necessary in this case of a single issue reopener to copy the entire contract which, of course, remains the same except for APPENDIX B, COMPENSATION, which will need to be revised.

The fact-finder will not engage in the tedious task of changing the individual amounts, except the dollar amounts behind the six positions should be increased by 2%.

Respectfully submitted this 15th day of September, 2016,

By: Donald G. Russell
Donald G. Russell, Fact-finder