

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
June 12, 2017

In the Matter of:)	
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The Ohio Patrolmen's Benevolent Association (OPBA))	
)	
)	SERB Case No.
)	16-MED-09-1016
vs.)	
)	
The City of Fairlawn)	
)	
)	

APPEARANCES

For the OPBA:

Mark Volcheck, Attorney for the Union
Kim Evans, Bargaining Team Member
Cherie McGregor, Bargaining Team Member

For the City of Fairlawn:

Paul Jackson, Attorney for the City of Fairlawn
Bryan Nace, Law Director City of Fairlawn
David Mason, Police Lieutenant, City of Fairlawn
Beth Nichols, Dispatch Coordinator, City of Fairlawn

Fact Finder: Dennis M. Byrne

Background:

This fact-finding involves the City of Fairlawn (Employer/City) and its full-time Communications Operators (Dispatchers) represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union). The parties held a number of negotiating sessions in an attempt to find mutually agreeable language for a successor agreement for their contract that expired on December 31, 2016. In spite of their efforts, they were unable to reach a final agreement; and five (5) issues were listed in the Union's Prehearing Statement as open issues for fact finding. Those issues are: 1) Article 18: Overtime Pay; 2) Article 20: Vacations; 3) Article 28: Wages; 4) Article 30: Insurances; and 5) Article New: Use of the City's trash compactor. The City's Prehearing Statement listed two articles as open issues for fact finding. Those issues are: Article 28: Wages, and Article 30: Insurances. However, the City believed that the Union would present a demand on Article 18: Overtime Pay, and the City's Position Statement also discussed that issue.

At the time of the hearing, a preliminary discussion showed that the Union's suggested language on the Insurance issue mirrored the City's language. Therefore, the parties had no dispute on this issue. Also, the City did not present any language on the Vacation Article; and since the Union demand was for the status quo, there was no dispute over the vacation language. Finally, the City stated that it had no problem with the Union members using the City's trash compactor; therefore, that issue was not in dispute. The result is that only Article 18: Overtime Pay, and Article 28: Wages remain on the table.

Because the parties were unable to reach an agreement on the issues, they scheduled a Fact-Finding Hearing. The Hearing commenced at 10:00 A.M. on Monday May 22, 2016, at the Fairlawn City Building. The hearing ended at approximately 11:30 A. M. Prior to the hearing, the Fact Finder attempted to mediate a settlement, but that effort was unsuccessful, and the parties presented evidence in support of their positions on the two open articles.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (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, and 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 stipulations 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.

Introduction:

The Union and the City both agree that the City can afford to meet the Union's demands. Therefore, the examination and discussion of the City's finances that usually is needed when discussing a wage demand is not necessary in this case. The question is whether the union membership needs an equity adjustment to their wages in order to make their wage rate competitive with a) other dispatchers in the area (external parity), and b) other city employees (internal parity).

This is an ongoing debate between the parties. During the last round of negotiations, the parties could not agree on the wage increase for the dispatchers and availed themselves of the dispute resolution procedures of ORC 4117. The Fact Finder in that case, Joseph Gardner, recommended that the dispatchers receive a greater base rate increase than the City offered. He reasoned that the evidence proved that the Fairlawn dispatchers were underpaid when compared to other comparably situated dispatchers. He also seemed to agree with the Union's contention that a dispatcher's top wage rate should not be less than the top wage rate of a laborer (Union Exhibit under Tab 2 of the Fact-Finding Submission and Tab F in the Employer's Fact-Finding Submission).

This presented a problem for the City because the City uses a pattern bargaining model in its negotiations with its unionized employees. Fact Finder Gardner discussed that bargaining model in his report and found that ORC 4117 requires that each Union be afforded the opportunity to prove that a pattern agreement should not be applied to its membership. In his report, the Fact Finder made clear that he believed that the Union proved that the Fairlawn dispatchers should be paid more than the pattern wage settlement. Consequently, he recommended a larger percentage increase for the dispatchers than the pattern settlement agreed to by all other unionized employees in the City.

This discussion is germane because the City is once again claiming that it has signed a pattern agreement with all of its other unionized employees, and believes that the dispatchers should receive that same percentage increase. On the other hand, the Union is claiming that the evidence proves that its membership deserves an equity adjustment and a greater percentage increase than the percentage increase negotiated by

other unionized personnel throughout the City. In some ways, the current fact-finding is a continuation of a dispute that has existed for years. That is, do the Fairlawn dispatchers deserve an above average raise when compared to other City workers and other dispatchers in the area, or are they reasonably compensated when compared to other City workers and other dispatchers in the area?

The second area of disagreement is over the Union's demand that all full-time dispatchers should have the right of first refusal to any overtime in the dispatch operation. This demand is a response to the City's statement that it may hire some part-time dispatchers. The City claims that the Union's demand is untimely because it currently does not employ, has not advertised, etc., for part time dispatchers. The City argues that in the event that it does hire part-time dispatchers, current contract language requires that the parties meet and discuss all issues related to the use of the part-time employees. The Union contends that the City has already decided to hire part-time employees.

The underlying reason for the Union's demand is that the State of Ohio has mandated that beginning on January 1, 2018, all dispatch operations have at least two dispatchers on duty at all times. The State has determined that emergency medical calls are becoming more prevalent and that these calls often require a dispatcher to make some determination about the exact nature of the problem in order to ensure that the proper medical personnel and equipment are dispatched to the scene. This process can take time. Therefore, in the event that a second call is received while the single dispatcher is busy with a medical emergency, the second call may not be handled in a timely manner. This may lead to a situation where police/fire personnel may not respond promptly to an

emergency situation. Consequently, the State has mandated that at least two dispatchers must be present at all times.

The City has examined its manning and scheduling requirements and determined that at least two (2) shifts per week need to be covered. These are both on the third shift. The City has determined that the best way to cover these shifts is by hiring one or two part-time dispatchers. The Union is aware of the City's position on this issue and is trying to put language into the contract that protects its membership's right to work all available overtime.

The Union agrees that the City does not currently have any part time personnel on staff and that there are currently no advertisements, etc., for new dispatchers. However, the Union believes that given all of the facts of the matter that its demand is reasonable because the Union is convinced that there will be part-time dispatchers on staff by the end of the year.

With the above paragraphs as background, the Fact Finder can now discuss the two issues presented by the parties.

Issue: Article 18: Overtime Pay

Union Position: The Union demands that the following language be added to Section 18 (5) of the parties' contract. "No part-time Communications Specialist shall fill an overtime opportunity of a full-time Communications Specialist unless all full-time Communications Specialists have been offered and have rejected such opportunity."

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The current language of 18 (5) is:

If part-time Communications Specialist(s) are hired, representatives of the Employer at the Union's will, upon request of either party, meet and discuss the impact on Section 18 (4).

Section 18 (4) sets out the parties' agreement on Overtime Distribution, i.e., who fills any overtime slots.

Discussion: This is an issue of first impression. The City currently does not employ part-time dispatchers. However, because of the State mandate that there must be two dispatchers on duty at all times, the City will probably be forced to hire part-time employees in the near future. The City argued that the current language of Article 18 (5) covers this situation, and that language should be followed when new employees are hired.

The Union disagrees with the City's position. Based on its analysis of the situation, the Union made a demand that all overtime be offered to full-time employees before any part-time employee can work any overtime assignment. The Union contends that it is protecting its membership's right to work overtime.

The City contends that the Union's demand is a) premature, and b) unnecessary. The City's position that the Union's demand is premature is based on the fact that the parties never negotiated over the impact that part-time employees would have on the bargaining unit membership. The City argues that the parties should, at least, discuss an issue before it is listed as an issue at impasse for fact finding.

The Union stated that the City informed the dispatchers that there was a plan to hire part-time employees after the parties had agreed to hold a fact-finding hearing. Therefore, the Union believes that its demand is timely. The Fact Finder agrees with the

Union's position on this issue. That is, the parties submit what they consider to be open issues in their fact-finding submissions. It is unusual that a demand is included in a fact-finding submission when it has not been discussed at the bargaining table, but it is not prohibited. In this case, the facts of the situation support the Union's position.

The City's second reason for rejecting the demand is that it believes that the demand is unnecessary. The Employer's position requires some discussion. The Communications Coordinator, Beth Nichols, testified about the facts surrounding the issue. Currently, the Communications Coordinator can work any overtime shift any time she decides to work. That is, she has the right of first refusal on all overtime. If the coordinator does not take the shift, Article 18 (4) Overtime Distribution outlines the parties' agreement on how the overtime shifts are filled.

Nichols stated that she usually works shifts that no full-time employee is willing to work. She further stated that this situation often occurred when the vacancy was on the third shift. Nichols stated that the shifts that would most probably need to be filled are shifts that the full-time employees have historically been unwilling to work. The City believes that it would have to go through the procedures listed in Article 18 (4) for no reason before it could fill the opening with part-time employees. The City argues that this is a waste of both time and money.

The City put a book of comparable jurisdictions' contracts into the record as evidence on this issue. That book contained ten contracts. An examination of those contracts shows that at least eight of the comparable jurisdictions allow the use of part-time employees. Of those eight jurisdictions, a number have the language similar to the

language proposed by the Union, and some do not, i.e., the Union's suggested language is not consistently included in the contracts of comparable jurisdictions.

The Fact Finder, based on all of the evidence in the record, believes that the parties foresaw the possibility that part-time employees might be hired because they inserted language into their agreement that covered that eventuality. The current language of Article 18 (5) requires the parties to meet and discuss the issue(s) surrounding the use of part-time dispatchers in the event that the City does hire them. If (when) the City hires part-time employees, the language of Article 18 (4) (5) will govern how the parties deal with the situation. The Fact Finder understands the Union's position on this issue. However, the Union as the moving party must prove that there is a need for its suggested language. The Fact Finder does not find that Union met its burden in this case.

Finding of Fact: The Union did not prove that there was a need to change the language of Article 18 (5). If the parties do not come to an acceptable compromise on the amount of overtime that part-time employees can work after they thoroughly discuss the issue, then the next round of negotiations is the place to contest the issue.

Suggested Language: Current Contract Language.

Issue: Article 28: Wages

City Position: The City is offering 2.25% for 2017, 2.5% in 2018, and 2.5% in 2019.

Union Position: The Union is demanding 3.0% for each year of the prospective contract. In addition, the Union demands a \$.50 adjustment for the dispatchers on the second step

of the salary scale, and \$1.00 adjustment for dispatchers on the third and fourth step of the salary scale.

Discussion: Both parties referenced the Fact-Finding Report that they accepted to settle their negotiations for their just expired contract. That report awarded the Dispatchers 3.5% in the first two contract years and a wage reopener in the third year. The Union also demanded an equity adjustment, but the Fact Finder did not recommend acceptance of that demand.

The City follows a pattern bargaining model. In this case, the City has agreed with all of its other bargaining units for the same settlement that it is offering the dispatchers. The City made a number of arguments in support of its position. The City argued that the previous agreement closed the gap between its dispatch staff and other similarly situated dispatchers, and that its offer would keep the dispatchers at or above the market wage rate. The City also stated that wages were only one component of the total compensation package and that its employees have a very good medical insurance plan and that the cost was much lower than the amount paid by other surrounding communities' dispatchers. Therefore, the City contends that its total economic package must be considered when a Neutral makes a recommendation on wages.

The question is what does the comparables data show? The Union in its Fact-Finding submission (TAB 4) lists the jurisdictions that it considers comparable to Fairlawn for a 10-year veteran Dispatcher. The Union stated that these data show that the Dispatchers are paid less than the communications staff in comparable jurisdictions. The Fact Finder notes that the difference between the Fairlawn Dispatchers and other dispatchers is approximately \$1,500.00 on average (Union Exhibits under TAB 4 and

TAB 6 of its Fact-Finding Hearing Submission). However, it is also true that the Fairlawn dispatch staff does not receive a uniform allowance because their uniforms are supplied by the City. If the average uniform allowance amount (\$525.00) is added to the Fairlawn compensation, the difference between the Fairlawn communications staff and other similarly situated employees drops to less than \$1,000.00.

The City's contention that its employees pay less for health insurance than other public sector employees must also be considered. For example, Hudson pays its dispatchers total compensation of approximately \$62,000.00. However, all of Hudson's employees pay an uncapped 15.0% of their health insurance premium. Therefore, given the fact that the Fairlawn dispatchers currently pay 3.5% of the premium which will rise to 4.5% over the life of the prospective contract must be factored into any analysis of the difference in compensation between a Fairlawn dispatcher and a Hudson dispatcher.

The data submitted by both parties prove that the Fairlawn Dispatchers are not the best paid Dispatchers in the area. However, it is also true that their total compensation when compared to other similarly situated employees' total compensation is not substandard. Therefore, according to the external comparability standard, the Union did not prove that its membership needed any equity adjustment.

The question before the Fact Finder devolves into a consideration of internal comparability. The City contends that internal comparability should not be a major consideration in the Neutral's recommendation. On the other hand, the Union argues that internal comparability is an important factor in any negotiation over wages. The wage data submitted by both parties show that the top base wage rate of the Fairlawn Laborers is significantly higher than top base wage rate of the Dispatchers. The Union stressed

that the Laborers' bargaining unit members were not comparable in either training or job duties to the communications staff. Parenthetically, this is the same argument made in the last negotiation, and it was discussed in the Fact-Finding Report issued in that case. The City stated that the laborers are not simply laborers or janitors, because some of the employees represented by IBT Local 436 perform highly skilled labor (e.g., HVAC maintenance, etc.) rather than just mowing lawns and/or providing day to day janitorial services. Therefore, the City contends that the IBT contract should have little impact on the current negotiations. The Union contends that job titles and descriptions show job content and that a janitor and/or a laborer are essentially a janitor and a laborer. The Fact Finder notes that while the Employer testified that the laborer job title covered individuals who were far more skilled than the average laborer; there was no evidence put into the record in support of that contention.

The data show that the Fairlawn Communications Staff has the lowest base wage of any unionized employees in the City. Without any other information on job duties, etc., the Fact Finder must accept that data at face value (Union TAB 6). That is, the Employer pays laborers a wage that is significantly higher than the wage paid to the communications staff.

The job of a communications operator is extremely challenging. The State recognized that fact when it decided that two operators had to be present at all times to handle 911 calls. While Fairlawn's dispatchers are paid a similar amount to dispatchers in other Northeast Ohio cities; they are not paid nearly as well as any other group of employees within Fairlawn. Consequently, the Fact Finder agrees with the Union's position that the dispatch staff are (have been) treated differently with respect to wages

when compared to all other City employees. The data show that the dispatchers' wages are significantly lower than the wages paid to any other City bargaining unit.

The previous Fact Finder also believed that the dispatchers deserved some extra remuneration because of comparability considerations. He recommended a greater percentage increase than the pattern. However, the extra percentage was not great enough to close the gap between the laborer's wage rate and the dispatcher's wage rate in any meaningful way. In order to raise the communications staff's base wage to a level that is commensurate with other City employees, Fairlawn would have to raise their base rate by thousands of dollars. This would be true even if the laborer's base rate was frozen for a number of negotiating cycles.

There are a number of questions that need to be answered in this matter. First, why is the laborer's wage rate so high? Are there other cities that pay their laborers (usually unskilled employees or at least employees that are not as highly skilled as dispatchers) a base wage of close to \$60,000.00? What is the reason for the disparity in wages? In other words, the data prove that there is an inequity in the base wages of different job classifications, but there was no explanation proffered to explain why the disparity exists.

The questions listed in the paragraph above were not addressed in the fact-finding. Therefore, the current Fact Finder must make recommendations based on the record. The Fact Finder believes that the 16% disparity in wage rates between the communications operators' wage rate and the laborers' wage rate needs some explanation. That is, the City must a) prove there is a valid reason for the disparity, or b) make some effort to close the gap between the dispatchers' wages and other City

employees' wages. However, during the hearing, the City did not make any attempt to address the issue. Rather, the City focused on the information provided by the external comparables.

Internal comparability is a recognized and important factor in setting wage scales, and the City's current wage scale implies that the dispatch staff are the least skilled and/or least valuable employees of Fairlawn. This is obviously not true and the City reinforced that fact when it stated that it valued the skill and dedication of the communications staff.

Finding of Fact: The base wage rate of the Dispatchers is unusually low for employees of the City of Fairlawn, although the Dispatchers are paid a comparable wage when compared to other dispatchers in the surrounding area. In this instance, the City's pattern bargaining position is undermined by the unexplained inequity of base wage rates between various City bargaining units.

Suggested Language: The base wage rate of the Dispatch Operators shall be increased by 3.25% per year of the prospective contract.

