

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In The Matter of Fact Finding Between

Ohio Patrolmen's Benevolent Association	}	
Employee Organization	}	Case No. (s): 2016-MED-09-1041
	}	2016-MED-09-1042
	}	2016-MED-09-1043
AND	}	
	}	
City of Nelsonville	}	Fact Finding Report
Ohio Public Employer	}	
	}	Michael King, Fact Finder
	}	

This matter was heard on April 26, 2017, in the City of Nelsonville, Ohio.

APPEARANCES:

For The Union:

Mark J. Volcheck, Esq.
Ohio Patrolmen's Benevolent Association
92 Northwood Blvd., Suite B-2
Columbus, Ohio 43235

For The Employer:

Garry E. Hunter, Esq.
211 Lake Hope Drive
Nelsonville, Ohio 45764

I. Introduction and Background

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on March 13, 2017. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations on a reopener provision in the Collective Bargaining Agreement (CBA).

The three (3) bargaining units at issue represent a total of approximately eleven (11) police officers. The units are as follows: 1] Sergeants, two (2) members; 2] Senior Police Patrolmen and Police Patrolmen, six (6) members; and 3] Part-time Patrolmen, three (3) members. All three (3) units are represented by the Ohio Police Patrolmen's Benevolent Association. (For ease of reference, these three bargaining units will sometimes be spoken of as a single bargaining unit.)

The public employer, Nelsonville, Ohio, is a municipality with a population of approximately five thousand three hundred (5,300) residents, located in Athens County.

The current collective bargaining agreement has a duration of January 1, 2015 through December 31, 2017. That agreement includes provisions for a reopener on health insurance, and a reopener on wages. The parties resolved insurance issues, and only the issue of wages remains at impasse.

Upon commencement of the current collective bargaining agreement bargaining unit members received a general wage increase of three and one-half percent (3.5%). There was no wage increase for the second year of the agreement (2016), but the CBA included a wage reopener for the final year (2017).

The parties timely submitted pre-hearing statements pursuant SERB Rules. Those statements were reviewed prior to the hearing, and discussed fully at the hearing. Each party was presented a full opportunity to present documents, exhibits and testimony as deemed appropriate.

II. **Fact-Finder's Report**

In reviewing the issue at impasse, and arriving at a recommendation, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 1] Past collectively bargained agreements, if any, between the parties;
- 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 standard 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 in private employment.

The fact-finding hearing in this matter occurred on April 28, 2017, and the record was closed immediately thereafter.

III. Unresolved Issue

Wages

Employer Position:

Nelsonville's representatives argue that the City is in "dire financial straits" and is dangerously close to fiscal emergency status. The poor financial condition has existed since at least 2011. Nelsonville has managed to limp along financially only by tapping into General Fund reserves.

A balanced-budget ordinance enacted by Nelsonville City Council now places those reserves largely off limits. That ordinance, enacted April 25, 2016, provides as follows:

Effective January 1, 2017, Nelsonville City Council mandates that General Fund, Water Fund, and Sewer Fund appropriations shall include the auditor's anticipated receipts, but exclude the carryover balance. The carryover balance may be considered by the auditor throughout the year as anticipated receipts in the General Fund, Water Fund, and Sewer Fund to pay expenses that exceed actual moneys received, however, at the end of the year, the expenditures of the City in the General Fund, Water Fund, and Sewer Fund cannot exceed the General Fund, Water Fund, and Sewer Fund appropriations made based upon the auditor's actual receipts.

Nelsonville City Council mandates that carryover monies be appropriated only for capital improvement and emergency situations.

According to Nelsonville officials, these facts all add up to an *inability to pay* the requested wage increase to members of this bargaining unit.

Anticipated tax revenues may deteriorate because of current economic conditions in the City. The Employer argues that until recently, its one and three-fourths percent (1.75%) local income tax rate was the highest in the region. (Last year the City of Athens increased its rate to one and eighty-five one-hundredths percent (1.85%.) The City has lost one of its largest employers and a second significant employer has greatly downsized.

Nelsonville residents are unlikely to approve any new taxes in the foreseeable future. More than seventy (70%) percent of residents are low or moderate income, including large numbers of elderly residents on fixed incomes. Moreover, Nelsonville already has outstanding tax levies. At least one tax levy will be on the ballot for renewal in each of the next three (3) years. Adding a second levy in any of those three years would increase voter anger, and probably doom the renewal levies.

Nelsonville officials say they are managing dwindling resources as best they can. The City is near minimum staffing levels. And it reduced the rate of increase in health insurance costs by switching carriers last year.

Union Position:

The Union seeks a general wage increase of three (3%) percent effective January 1, 2017. Here's what that would look like:

SERGEANT

YEAR	STEP 1	STEP 2	STEP 3
2015	\$17.78	\$18.24	\$18.71
2016	\$17.78	\$18.24	\$18.71
2017	\$18.31	\$18.79	\$19.27

SENIOR PATROLMAN

YEAR	STEP 1	STEP 2	STEP 3
2015	\$17.22	\$17.66	\$18.13
2016	\$17.22	\$17.66	\$18.13
2017	\$17.74	\$18.19	\$18.67

PATROLMAN

YEAR	STEP 1	STEP 2	STEP 3
2015	\$17.06	\$17.50	\$17.97
2016	\$17.06	\$17.50	\$17.97
2017	\$17.57	\$18.03	\$18.51

PART-TIME PATROLMAN

YEAR	STEP 1	STEP 2	STEP 3
2015	\$14.96	\$15.33	\$15.70
2016	\$14.96	\$15.33	\$15.70
2017	\$15.41	\$15.79	\$16.17

The Union argues that a meaningful wage increase is appropriate because members of this bargaining unit are poorly paid. As evidence of this low-pay status, the Union points to reports of several previous fact finders. Those fact finders recommended various general wage increases.

Even with previous wage increases the positive impact on bargaining unit members is overstated. Union counsel explains it this way:

For the 2012-2014 agreement, the officers agreed to increases of 3.25% for 2012, 1.0% for 2013, and 2.0% for 2014 for an average increase for that predecessor agreement of 2.08% per year. However, such amount over-states the increase, as the pension pick-up for the officers was diminished over the term of the agreement. The employer went from paying 5% of each employee's total pay to the pension system to the employer paying 2% of each employee's total pay to the pension system. Such three percent (3%) difference was, of course, made up by additional withholdings from the employee's pay. Such reduction essentially wipes-out the 1.0% wage increase in 2013 and the 2.0% wage increase in 2014 in terms of cash at the end of the day.

The Union calculates that if it used the top senior patrol officer's pay rate as a benchmark, the requested three percent (3%) raise would only amount to an increase of fifty-four cents (\$0.54) per hour for each police officer. It argues that the City of Nelsonville could easily pay this small amount of money to the small group of police officers.

Further, the Union states that members of this bargaining unit earn lower wages than police officers in the comparable cities of Athens, Logan and Belpre. It submitted this comparison:

Logan Patrolman	\$20.01/hr.	\$41,620.80
<i>Nelsonville Sr. Ptl.</i>	\$18.13/hr.	\$37,710.40
Difference	\$1.88/hr	\$ 3,910.40 (-10.4%)

Athens Patrolman	\$29.65/hr.	\$61,672.00
<i>Nelsonville Sr. Ptl.</i>	\$18.13/hr.	\$37,710.40
Difference	\$11.52/hr.	\$23,961.60 (-63.5%)

Belpre Patrolman	\$20.31/hr.	\$42,244.80
<i>Nelsonville Sr. Ptl.</i>	\$18.13/hr.	\$37,710.40
Difference	\$2.18/hr.	\$4,533.40 (-12%)

Logan Lt. (no Sgt.)	\$23.32/hr.	\$48,505.60
<i>Nelsonville Sgt.</i>	\$18.71/hr.	\$38,916.80
Difference	\$4.61/hr.	\$9,588.80 (-25%)

Athens Lt. (no Sgt.)	\$35.58/hr.	\$74,006.40
<i>Nelsonville Sgt.</i>	\$18.71/hr.	\$38,916.80
Difference	\$16.87/hr.	\$35,089.60 (-90%)

Belpre Sgt.	\$21.90/hr.	\$45,552.60
<i>Nelsonville Sgt.</i>	\$18.71/hr.	\$38,916.80
Difference	\$3.19/hr.	\$6,636.80 (-17%)

Finding And Recommendation

I find that members of this bargaining unit are not similarly situated to police officers in Athens, Ohio. Athens has approximately four (4) times the population of Nelson, and it enjoys a superior economic base. Therefore, it is not useful to compare wages of police officers in Athens, Ohio, to wages for police officers in Nelsonville, Ohio.

I find that members of this bargaining unit are similarly situated to police officers in Logan, Ohio and Belpre, Ohio. Those communities are similar in size and demographics. I also find that wages for members of this bargaining unit are overall lower than wages for their peer police officers in Logan and Belpre. Without a general wage increase, the gap will widen.

Police officers in Nelsonville are primarily paid from the City's General Fund. The City's General Fund spending regularly exceeds receipts, with the difference being covered by the Fund's surplus. This problem is illustrated by results for calendar years 2015, and 2016. In 2015, Nelsonville began the year with a General Fund balance of \$847,862.01. Net revenue was \$1,717,317.75, compared with net expenses of \$2,083,245.51. The yearend fund balance was \$481,934.25. In calendar year 2016, the spending pattern continued with a greater deterioration in fund reserves. That year began with a General Fund balance of \$463,132.99. Net revenue was \$1,778,998.49, while net expenses totaled \$2,004,591.61. The ending balance was \$237,539.87, a huge drop in just two calendar years.

Those numbers demonstrate that Nelsonville has at best, a limited ability to pay a general wage increase. Neither side presents any evidence of a probable improvement in either tax revenues or economic activity for Nelsonville.

Based on all evidence presented, I find that Nelsonville is unable to pay the three percent (3%) general wage increase sought by the Union.

That does not mean that Nelsonville is unable to pay some wage increase. Whether any increase is appropriate is an issue reviewed while being cognizant of statutory requirements including the obligation to consider:

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 standard of public service;

In the prior fact finding the Employer acknowledged that its police officers "continue to lag behind those in neighboring cities of comparable size." (*See*, Report of Fact Finder Betty Widgeon, May 17, 2016.) In the current fact finding, the Employer didn't directly address that issue. Instead, it merely noted that no full-time office has left employment of Nelsonville since 2014.

Again, the statute requires that consideration of this issue be made while remaining cognizant of the:

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. (Emphasis added.)

Nelsonville has three unions: police, fire and service workers. All three unions had collective bargaining agreements that included reopeners for 2016 and 2017 for insurance and wages. At around the time of the fact-finding hearing in this matter, Nelsonville settled with the other two unions with each receiving a general wage increase of twenty-five cents (\$0.25) an hour. Neither of the other two unions went to fact finding.

Nelsonville officials say the same offer of a twenty-five cents (\$0.25) an hour general wage increase was available to the police bargaining units had those units not chosen fact finding. Through the negotiation process Nelsonville implied that it did have the ability to pay a general wage increase of twenty-five cents (\$0.25) an hour. That ability to pay didn't disappear because the police exercised their statutory right to fact finding. (This is true even though the City does incur expenses related to fact finding.)

I find that the City of Nelsonville has the ability to pay a general wage increase of twenty-five cents (\$0.25) per hour retroactive to January 1, 2017. I find that it is in the interest and welfare of the public to assure that the gap does not significantly widen between wages for Nelsonville's police officers and those in comparable cities. If that wage gap balloons the normal standard of public safety service in Nelsonville may be threatened.

For the reasons stated above, I recommend that members of these bargaining units receive a general wage increase of twenty-five cents (\$0.25) an hour, with said wage increase to be retroactive to January 1, 2017.

I further recommend that as a matter of form only, the contract language regarding a reopener should be stricken.

Michael King
Appointed Fact Finder

Date: May 19, 2017
Beachwood, Ohio

Certificate of Service

I certify that I caused a copy of the of the foregoing Fact Finding Report to be served on Mark J. Volcheck, Esq., representative for the bargaining unit, and Gary Hunter, Esq., representative for the Public Employer, by forwarding same electronically on May 19, 2017.

s/

Michael L. King