

Received after business hours
processed next business day
5/22/17

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May18, 2017

In the Matter of:)
)
)
The Ohio Patrolmen’s Benevolent)
Association (OPBA))
)
)
vs.)
)
The City of Aurora)
)
)

SERB Case No.
16-MED-10-1100

APPEARANCES

For the OPBA:

George Gerken, Attorney for the Union
Mack Croy, Sergeant Aurora Police Department
Pat Domos, Sergeant Aurora Police Department
Dan Kalk, Sergeant Aurora Police Department
Steve Sabulsky, Sergeant Aurora Police Department

For the City of Aurora:

William Blackie, Attorney for the City of Aurora
Karen Aldridge, Chief of Staff, City of Aurora
Brian Byard, Police Chief, City of Aurora
Timothy Clymer, Finance Director, City of Aurora
Dean DePiero, Law Director, City of Aurora

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the City of Aurora (Employer/City) and the full-time Sergeants in the Aurora Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union). The parties held a number of negotiating sessions in an attempt to find mutually acceptable language for inclusion into a successor agreement for their contract that expired on December 31, 2016. In spite of their efforts, the parties were unable to reach a final agreement on a new contract. However, the only issue at impasse is the amount of the rank differential for the term on the new agreement.

Since the parties were unable to reach an agreement on this issue, they scheduled a Fact-Finding Hearing. The Hearing commenced at 10:00 A.M. on Monday May 1, 2016 at the Aurora City building. The hearing ended at approximately 12:30 P.M. Prior to the hearing, the Fact Finder attempted to mediate a settlement; but that effort was unsuccessful.

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:

Similar to all negotiations over wages, the parties discussed the City's finances. While there is some difference of opinion over the City's overall financial health and outlook for the future, the parties agree that the City's budgetary position is robust and that the City could afford to fund the Union's wage demand. The question then devolved into a discussion of whether the City should meet the Union's demand. The Union membership is adamant that they should receive an extra two percent on the rank differential. The City rejects the Union's position and countered with current contract language. At this point, some explanation of the parties' positions is necessary.

The sergeant's wage is based on the patrolmen's wage. That is, the parties agreed in 2012 that the sergeants would be paid twelve percent (12.0%) more than the patrolmen. Therefore, the City and the patrolmen negotiate and agree on a percentage increase in the patrolmen's wages, and the sergeant's wage automatically goes up by the same amount. That is, the sergeant's pay is automatically adjusted to maintain a twelve percent (12.0%) rank differential between the highest base rate for a patrolman and the lowest base rate for the sergeants. In this negotiation, the sergeants demanded that the differential be adjusted up by an extra two percent (2.0%), i.e., the rank differential would increase to fourteen percent (14.0%).

The City rejected this demand for two reasons. First, the City contends that the sergeants are well paid. During the mediation phase of the Fact Finding, the City pointed out that only Hudson and Twinsburg paid a higher wage than Aurora. However, the City testified that the Aurora police personnel also receive a Safety Forces stipend that is part of the compensation package for all Aurora police personnel. Moreover, the patrolmen

and the City also agreed that the patrolmen will also receive a firearms proficiency bonus upon the signing of their agreement. That bonus will also be incorporated into the sergeants' contract. The result is that the City contends the data show that the Aurora sergeants are among the best paid (may be the best paid) sergeants in the Northeast Ohio region of the State. The City also stated that it had a very good health plan and that the employee contributions to this plan were less than the contributions paid by almost all other jurisdictions in the State. Therefore, the City contends that the sergeants are well paid by any reasonable measure.

The Union agreed that the City's position on this issue is factually correct. However, the Union contends that the two and one-half percent (2.5%) base rate increase negotiated by the patrolmen is substandard. The sergeants believe, given their wages are set by the rank differential, that the only way to increase their pay is to increase the differential. The Sergeants argue, based on the City's financial condition and all of the data in the record, that they should be paid the extra two percent (2.0%) on the rank differential that they demand.

Issue: Article 29 – Wages

Union Position: The Union demands that the rank differential between the patrolmen's top pay rate and the lowest sergeant's pay rate be increased from twelve percent (12.0%) to fourteen percent (14.0%).

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

Discussion: The language in question reads:

Article 29

Section 1. Beginning on January 1, 2011 the Sergeant's rate of pay shall be \$34.18 per hour or \$71,094.40 per year (hourly rate x 2080 hours).

Section 2: Beginning January 1, 2012 the Sergeant's rate of pay shall be Twelve percent (12/0%) above the highest paid patrol officer.

2014 – \$37.25
2015 - \$38.09
2016 - \$39.04*

* Starting in 2012 the sergeants' pay rate is automatically twelve percent (12.0%) higher than the patrolmen's top rate.

For the term of their contract the parties i.e., the patrolmen and the City, have agreed on a two and one-half percent (2.5%) base rate increase per year. Consequently, the sergeants will also receive a two and one-half percent (2.5%) wage increase per year of their proposed agreement. In addition, the patrolmen and the City also agreed on a \$900.00 firearms qualification bonus, and the sergeants will also receive that bonus. The bonus amounts to approximately a one percent (1.0%) raise in each year of the contract for the sergeants.

During the mediation phase of the fact finding, the City offered to allow the sergeants to decide how they want the firearms qualification bonus to be paid. That is, the City offered to 1) increase the rank differential by one percent (1.0%), and pay no firearms qualification bonus; or 2) pay the bonus and keep the rank differential at twelve percent (12.0%). Having the bonus paid as part of the base wage has significant benefits to the sergeants. Therefore, the Fact Finder believes that this was a concession on the

part of the City. The Fact finder is recommending that the sergeants receive no fire arms qualification bonus and that the rank differential be increased by one percent (1.0%).

The Fact Finder has examined all of the information presented by the parties and finds that the evidence supports a finding that the Aurora Police Sergeants are among the best paid or perhaps even the best paid sergeants in the area. Moreover, the two and one-half percent (2.5%) raises negotiated by the patrolmen that will be folded into the sergeant's base rate are consistent with raises negotiated by other police units in Northeast Ohio and throughout the State.

Finding of Fact: The Union did not meet its burden of proof with respect to its demand that the rank differential be increased by two percent (2.0%). That is, the Aurora Police Sergeants are among the best paid police sergeants in Northeast Ohio, and there is nothing in the record that proves that there is a need to increase their wages by more than the two and one-half percent (2.5%) negotiated by the patrolmen.

Suggested Language: The wage rates listed in Article 29 be adjusted by a factor of thirteen percent in each year of the prospective contract.¹

Note: The Fact Finder's recommendation is for an extra one percent (1.0%) on the rank differential and no firearms qualification bonus.

The mediation phase of the hearing led the parties to examine their relationship. It is clear that the sergeants are unhappy with their position in the Department. The Fact Finder was unable to determine the exact source of their discontent. However, a suggestion was made that the Police Chief meet with the sergeants to discuss any issues that the sergeants and/or the Chief would like to raise. When this proposal was given to

¹ The formula is (patrolman's rate X 1.025 = new patrolman's rate x 1.13 = new sergeant rate.)

the City's negotiating team, the Chief agreed to meet with the sergeants once a month to discuss any issue that either of the parties wished to raise.

Consequently, the Fact Finder is recommending the parties add a letter of understanding to their contract that states that the Chief will schedule a monthly meeting with the sergeants to discuss issues of mutual concern. The parties should also agree that the monthly meeting schedule may be amended if necessary. That is, meeting once a month for three years may not be necessary. After some initial meetings, the parties may agree to schedule a meeting when and if there is a need for formal discussion between the sergeants and the Chief.

Finding of Fact: The parties agreed to schedule a meeting between the Chief and the Sergeants monthly (as needed). When and if the parties agree that there is no more need for a scheduled (monthly) meeting, the letter of understanding shall become null and void, and shall be removed from the labor agreement.

Suggested Language: The parties append a letter of understanding to the contract memorializing their agreement.

Signed this 18th day of May 2017, at Munroe Falls, Ohio.

Dennis Byrne

Dennis M. Byrne, Fact Finder