
In the Matter of Factfinding

Between

SERB Case No. 2016-MED-10-1290

Local Association of Public
Service Workers

Before: Harry Graham

and

The City of Middleburg Heights, OH.

APPEARANCES: For Local Association of Public Service Workers:

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Fairview Park, OH. 44126

For The City of Middleburg Heights:

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this matter was closed at the conclusion of the day in Middleburg Heights on April 28, 2017.

ISSUES: The following issues are in dispute between the parties:

1 Article 21, Injury Leaves

2 Article 26, Vacation

3 Article 28, Insurances

4 Article 29, Wages

5 Article 33, Overtime

6 Article 36, Uniforms

7 Article 39, Commercial Drivers License

8 Article 52, No Fault Attendance Policy

ISSUE 1, ARTICLE 21, INJURY LEAVES

POSITION OF THE UNION: The Union seeks continuation of the current language unchanged. In its view there are no difficulties the City can point to that justify modification of the terms of Article 21.

POSITION OF THE EMPLOYER: The City has an extensive proposal on Injury Leaves. It would have the eligibility period for qualification for wage continuation payments expand from three to five consecutive work days. It desires that an employee be certified by a medical provider as being unable to work for two tours of duty prior to granting of injury leave. It also seeks a waiver from the employee of payment from the Ohio Bureau of Workers' Compensation while the employee is in receipt of wage continuation payment from the City. The Employer proposes an expansion of the return-to-work policy to enable it to require an employee to return to duty in order to continue to receive wage continuation or Workers' Compensation payments. This proposal is limited to employees who seek full pay from the Employer stemming from an on-the-job injury. As viewed by the City, its proposal enhances its control of costs associated with injury leave.

DISCUSSION: The Employer has not demonstrated a problem exists with the manner in which injury leave is being utilized or administered. It was not shown that it has substantial expenditures for injury leave payments. No change is recommended.

ISSUE 2, ARTICLE 26, VACATION

POSITION OF THE UNION: The Union is proposing that for purposes of vacation credit the length of service of an employee be defined as service time for OPERS purposes. This addition would credit employees for any OPERS time they have accrued outside of Middleburg Heights. It would have the potential of adding some (unknown for purposes of this proceeding) amount of vacation credit to City employees.

POSITION OF THE EMPLOYER: The City is opposed to the proposal of the Union. Its adoption would add some amount of vacation liability to the obligation of the City. It could also jeopardize its ability to hire experienced personnel from other public jurisdictions.

DISCUSSION: Comparison data is not on the record to support the proposal of the Union. It was not shown that nearby jurisdictions, e.g. Strongsville, provide the benefit sought by the Union in this proposal. It is not recommended to the parties.

ISSUE 3, ARTICLE 28, INSURANCES

POSITION OF THE UNION: To now employees of Middleburgh Heights have not made payments towards health insurance. As seen below the City is proposing that payments be made by employees towards the health insurance premiums. It is also proposing that deductibles for single and family plan coverage increase over the life of the Agreement. The Union is well aware of the increase in health insurance costs experienced by the nation and the City over many years. It is mindful of a need to address the situation

faced by the City and its employees with respect to health insurance costs. That said, the Union regards the proposal of the City on this issue to be excessive.

Members of this bargaining unit earn less than other employees of the City e.g. the police and firefighters. Consequently, any increase in health insurance costs bears more heavily upon them than on others in City service. In fact, given the compensation of these employees should the proposal of the City be included in the Agreement employees will experience a loss of income. Such a circumstance will result from the imposition of premium payments the same as those seen elsewhere in City service and the institution of deductibles. That should not occur the Union contends. Mindful of the reality of increasing health insurance costs the Union proposes there be a three percent (3.0%) payment by employees towards the premium cost of health insurance in 2017, a four percent (4.0%) payment in 2018 and a five percent (5.0%) payment in 2019. Additionally, it proposes no change in deductibles, currently at \$100 per single coverage and \$200 for a family. Were the proposal of the City to be implemented members of this bargaining unit would experience serious financial hardship unknown to their counterparts in the police and fire departments. Further, should health care costs for employees be instituted they should be at the current COBRA level, not the level as it is determined to be in future years. As it is the case that the proposal of the City contemplates substantial reduction of income no changes in health insurance other than those it proposes should be recommended the Union contends.

POSITION OF THE EMPLOYER: The City indicates that history in Middleburg Heights bears upon this issue. Traditionally there has been pattern bargaining in the City. That is, the terms secured by one group have been extended to other groups of City

employees. Thus, in SERB Case No. 2016-MED-07-0701 Factfinder Margaret Nancy Johnson was involved in a dispute between the City and Local 2018 of the Firefighters. In her Report Factfinder Johnson recommended that health insurance premium cost sharing be instituted at the rate of 5.0% in 2017, 7.5% in 2018 and 10% in 2019. Under her report, employees would pay those amounts. She also recommended that deductibles be \$150 single-\$400 family in 2017, \$200 single-\$450 family in 2018 and \$250 single-\$500 family in 2019. Her report was accepted by the parties. Given the history of pattern bargaining in the City her recommendations should be adopted by this group as well the City urges.

Further, it has become the norm that employees make payments of the sort envisaged by the City. This is indicated by data gathered by the Ohio State Employment Relations Board.

The record in Middleburg Heights shows a steady increase in health insurance expenditures by the City.¹ Under these circumstances its proposal is reasonable and should be recommended the City urges.

DISCUSSION: There is a history in Middleburg Heights of pattern bargaining. That is, terms accepted by one group have been extended to all. Given this history it should not be expected that these employees would experience different health care costs or coverage's than their counterparts in City service. Accordingly, the Report of Factfinder Johnson that health insurance premium cost sharing be instituted at the rate of 5.0% in 2017, 7.5% in 2018 and 10% in 2019 is recommended. Recommended as well are the deductibles recommended by Factfinder Johnson: \$150 single-\$400 family in 2017, \$200 single-\$450 family in 2018 and \$250 single-\$500 family in 2019.

¹ Employer Exhibit 5-3.

ISSUE 4, ARTICLE 29, WAGES

POSITION OF THE UNION: The Union is proposing there be a three percent (3.0%) wage increase in 2017, 2018 and 2019. Its proposal contemplates that the 2017 increase be made retroactive to January 1, 2017. There is no question that the City is doing well economically. The City can afford the wage increase proposed by the Union without difficulty.

The Union acknowledges that its members have historically received the same wage increases as other City employees. That said, when that occurs the income gap between this group and other City employees widens due to the inexorable workings of arithmetic. That factor justifies the greater wage increase proposed for this group the Union contends.

Additionally, the Union points out that members of this Bargaining Unit earn less than similarly situated service workers in the area. Data submitted by both the Union and the Employer demonstrates that these employees earn less than their counterparts in Strongsville, North Royalton, Brooklyn and Mayfield Heights.

Included in this Bargaining Unit is one Animal Control Officer. As portrayed by the Union she has excellent credentials in her field, a portrayal with which the City does not disagree. There is not an extensive comparison group of such classifications but among those the Union can discover the Middleburg Heights Animal Control Officer is about mid-range with respect to compensation. Given her credentials that is insufficient according to the Union. It proposes there be an additional .50 per hour above that which may be made to other members of the Bargaining Unit.

People who do cement finishing work require specialized skills. As that is the case the Union proposes there be created a new cement finishing job classification with a pay rate .50 above that for the Equipment Operator.

POSITION OF THE EMPLOYER: The City proposes there be a 2.0% wage increase in 2017, 2.33% in 2018 and 2.66% in 2019. These amounts were recommended by Factfinder Johnson in her Report involving the IAFF. They were accepted by the Union and the City. Given the history of pattern bargaining in Middleburg Heights they set the standard and those increases should be extended to members of this Bargaining Unit as well the City urges.

As is well known to the parties comparison data is used to advance their proposals in proceedings such as this. At Tab 3 of its exhibit binder the City has submitted copious comparison data in support of its proposal. Those data show that this group is equal to or above their counterparts elsewhere in the western suburbs of Cleveland. Given the recommendation of the Factfinder, its acceptance by the City and the Firefighters and the supportive comparison data the City should not be expected to exceed the 2.0%, 2.33% and 2.66% established pattern.

DISCUSSION: As noted above there is a history of pattern bargaining in the City. That history is long and well-entrenched. I am loath to disturb it. Factfinder Johnson wrote a cogent report that was accepted by the Firefighters and the City. That report sets the stage for this bargaining unit. I recommend there be made a 2.0% wage increase retroactive to January 1, 2017. There should be made a 2.33% wage increase January 1, 2018 and a 2.66% wage increase January 1, 2019. Furthermore, as members of this bargaining unit are paid less than others in the region they should receive a pay equity

increase to remedy that iniquity. That should take the form of a one-time lump sum payment as follows: \$475 in 2017, \$500 in 2018 and \$525 in 2019.

The proposals of the Union regarding the Animal Control Officer and establishment of the Cement Finisher classification are not recommended.

ISSUE 5, ARTICLE 33, OVERTIME

POSITION OF THE UNION: The Agreement presently provides that overtime pay will be made to employees who work in excess of eight (8) hours per day. That proviso has been in the Contract for many years and has not posed difficulties according to the Union. The City is proposing that the overtime language be modified to call for overtime pay to occur after a forty (40) hour week. The Union conceives of a situation in which an employee might be called in and later in the week work less than a normal work day. Such a scenario would relieve the City of the obligation to pay overtime. Thus, no change should occur in the terms of Article 33 the Union urges.

POSITION OF THE EMPLOYER: As noted above, the City is proposing to make overtime payments after time worked in excess of forty (40) hours in a workweek. That is in accord with the Fair Labor Standards Act. Under the present Agreement an employee is eligible for overtime pay after eight hours in a work day. That is inappropriate according to the City.

DISCUSSION: The practice of overtime pay after eight hours in a day has been in the Agreement for many years. It is not unusual. The City has not demonstrated hardship. No change in Article 33, Section 33.01 is recommended.

ISSUE 6, ARTICLE 36, UNIFORMS

POSITION OF THE UNION: The Union points out that the uniform allowance has not increased since 2009. Obviously the cost of clothing has increased over the past eight years. Thus, an increase in the uniform allowance is justified. The Union proposes there be an increase from \$450.00 per year to \$650.00 per year. Given the lapse of time since the payment for uniforms was last changed such an increase is warranted the Union urges.

In addition, there are four Mechanics who must use their personal tools as part of their jobs. The Union indicates that these people have used between \$10,000 and \$20,000 of their own funds to purchase tools used on behalf of the City. In recent years one Mechanic has spent between \$700 and \$1300 (rounded) per year on tools used for City business. Those are significant amounts. As with the uniform allowance, the amounts furnished for the tool allowance have not increased since 2009. Given the long time since the last increase its proposals should be recommended according to the Union. Comparison data supports its proposal unreservedly. Included in Union Exhibit 9 is a comparison of Middleburg Heights tool allowance, \$225 per year, with nearby communities. Those communities make a tool allowance of from \$700 per year, North Olmsted, to over \$800 per year, Parma. These data support its proposal as well in the view of the Union.

There is in this bargaining unit one Animal Control Officer. Like her colleagues she is a uniformed employee. Her uniform differs from that worn by her co-workers. In the routine of her tasks she has contact with live and dead animals. She loads animal body parts, e.g. deer, into trucks. She routinely is exposed to animal blood and

pathogens that might be attendant therein. The Animal Control Officer has estimated the cost of necessary clothing and gear for her to properly perform her job to be \$2320. As that is the case the Union is proposing her clothing allowance be increased by \$550.00 per year.

POSITION OF THE EMPLOYER: The City indicates it has purchased some items for both Mechanics and the Animal Control Officer. It sees no need to increase payments towards the tool allowance for either classification.

DISCUSSION: The uniform allowance has not increased for many years. During that period the cost of clothing has certainly increased. It is recommended that the City provide the \$650 per year uniform allowance. Additionally, data show that the City makes a very low payment for tools compared to other communities in the western suburbs of Cleveland. It is recommended that the tool allowance paid to Mechanics increase to \$425 in 2017.

No other changes are recommended.

ISSUE 7, ARTICLE 39, COMMERCIAL DRIVER'S LICENSE

POSITION OF THE UNION: The Agreement presently calls for payment to employees who hold a Class A or Class B Commercial Driver's License (CDL) in the amount of \$350.00 and \$250.00 per year respectively. The Union proposes such pay be increased to \$550.00 per year and \$450.00 per year. The payments for the CDL have not been increased since 2009, a lapse of 8 years. An increase after such a length of time is justified according to the Union.

POSITION OF THE EMPLOYER: The City is proposing to modify the language of Article 39 dealing with the CDL. In Section 39.01 it would substitute the word “training” for the word “testing” in the first sentence. It would add the following sentences:

Employees hired by the City shall obtain their commercial driver’s license within six months of being employed by the City. Failure to obtain a commercial driver’s license within six months of employment shall be grounds for termination.

At Section 39.02 the City proposes that if an employee is unable to renew their CDL it may place the employee in another position at its discretion. The City points out that possession of the CDL is required for positions in this Bargaining Unit. It is not reasonable to expect that the City will hire and retain in its employ people who do not have a basic requirement of their job: a CDL.

DISCUSSION: The City is correct to indicate it should not be expected to hire or retain employees who do not possess a CDL when a CDL is required for their position. The proposal of the Employer regarding additional language in Section 39.01 requiring an employee to secure a CDL within six months of hire or face termination is reasonable. It is recommended to the parties. No other changes are recommended.

ISSUE 8 ARTICLE 52, NO-FAULT ATTENDANCE POLICY

POSITION OF THE UNION: The City is proposing installation of a no-fault attendance policy in a new Article 52. The Union is opposed to such a policy. In its view no-fault attendance policies replace human judgment with a mechanistic approach that can lead to unfair and perverse results in application. No such policy should be in the Agreement the Union urges.

POSITION OF THE EMPLOYER: As noted above, the City is urging that a no-fault attendance policy be instituted. In its materials it alluded to a situation involving abuse of

sick leave by members of the bargaining unit. As viewed by the City a no-fault attendance policy would assist it in dealing with such abuse. Hence, it should be recommended according to the City.

DISCUSSION: If the City is experiencing a problem with abuse of sick leave, which is not documented, it has a means to deal with it: discipline. A new contract article should not be expected in these circumstances. Inclusion of the proposed Article 52 is not recommended.

All tentative agreements are incorporated into this award by reference and recommended to the parties.

Electronically signed and dated this 30th day of May, 2017 at Solon, OH.

Harry Graham
Factfinder
May 30, 2017