

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case #: 2017-MED-10-1274
	:	2017-MED-10-1275
Between:	:	2017-MED-10-1276
	:	
	:	
Circleville, Ohio	:	
Employer	:	Date of Hearing: February 28, 2018
	:	Date of Report: March 16, 2018
And:	:	
	:	
Ohio Patrolmen’s Benevolent Association	:	
Union	:	Felicia Bernardini, Fact Finder

Fact Finder Report and Recommendation

Appearances:

For City of Circleville, Employer

Benjamin S. Albrecht, Esq., Fishel Hass Kim Albrecht Downey, LLP, Fact Finding Spokesperson

For Ohio Patrolmen’s Benevolent Association, Union

Joseph M. Hegedus, Esq., Fact Finding Spokesperson

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced cases and duly appointed by the State Employment Relations Board (SERB) on January 9, 2018 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The cases concern a fact finding proceeding between the City of Circleville, Ohio (hereafter referred to as the “Employer” or the

“City”) and the Ohio Patrolmen’s Benevolent Association (hereafter referred to as the “Union” or “Unit” or “OPBA”).

On the day set aside for the parties to meet with the fact finder, a good portion of the time was spent in mediation. Through this cooperative process tentative agreements were reached on all but one contract article. The remaining open issue is Article 28 – Wage Rates.

Positions, Discussion and Recommendation

Below, the position of each party is briefly summarized. Position summaries are followed by a brief analysis and discussion, which is followed by the fact finder’s recommendation.

In analyzing the positions of the parties and making a recommendation the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). The interests 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;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Article: XXVIII – Wage Rates

Employer Position

The Employer proposes wage increases during the term of the three-year agreement as follows:

- 2% retroactive to January 1, 2018
- 2% January 1, 2019

- 2% January 1, 2020

The Employer opposes an increase in the shift differential as proposed by the Union.

The City's financial health, as analyzed by the State Auditor in 2016, gives Circleville a generally positive outlook with some volatility. After a significant dip in 2015 the City's unrestricted net assets rebounded somewhat to just under \$3M in 2016 and the General Fund unassigned fund balance rebounded to approximately \$90,000 in 2016. The General Fund balance has been declining over the past years and is a financial factor that the State Auditor has flagged as 'cautionary.' Property tax revenue has been trending down over the past several years, whereas Income tax revenue has been trending up over the same period of time. Revenues were less than expenses in both 2014 and 2016 leading to a 'critical' designation of this financial factor by the State Auditor. The general financial health of the City is such that it must be conservative in its budgeting and not overextend itself with wage increases.

The OPBA bargaining units have had wage increases over the past six years (two 3-year contracts) from 2012-2017 totaling 17.75%. Meanwhile SERB data show that over the same six years the cumulative average wage increase has been only 8.44%. Over the same six years the CPIW has had a cumulative increase of only 7.67%. This data strongly suggests that the OPBA bargaining unit has fared very well in comparison with general inflation and public sector wage increases in Ohio.

In identifying comparable municipalities in Ohio it is insufficient to focus on neighboring counties, which includes Franklin county and therefore the City of Columbus and Columbus' affluent suburban communities. To make a true apples-to-apples wage comparison the Employer looks to a group of similarly sized municipalities across central and southern Ohio. Circleville's 2016 population was 13,314 and its 2016 income tax collection was just over \$6.8M. Based on these figures, the Employer has selected the following list of cities to serve as comparables: Bellefontaine, Bucyrus, Cambridge, Celina, Dover, Greenville, Ironton, Marietta, Mount Vernon, Urbana, Washington C.H., and Wilmington. The average 2016 population for these cities is 12,774 and the average 2016 income tax collections for these cities is slightly above \$7.5M. Based on these figures, Circleville is at 104% of the average in population and it is at 91% of the average in income tax collection, thereby making this set of municipalities quite comparable to Circleville. Using this group of cities and these key demographic and financial benchmarks, reasonable wage comparisons can be made for the jobs of Police Officers, Dispatchers, and Supervisors.

The top wage achievable by Circleville's Police Officers is 98% of the average top wage rate for the comparison group. Dispatchers in Circleville are earning at 96% of the average top wage rate for the comparison group; Sergeants are earning 94% of the average top wage rate for the comparison group. The comparison group shrinks considerably when comparing Lieutenant wage rates across this group of municipalities, but even at that, the Circleville Lieutenants are earning above the average top wage rate for Lieutenants. The data reveal that although Circleville is not the highest paying city of its size in Ohio, it is well situated, essentially at or above, the ninety-fifth percentile. There is no reasonable basis to argue that these bargaining units are underpaid in comparison to other similarly-sized municipalities. The Employer's proposal to raise wages at a flat 2% in each year of the three-year contract is consistent with anticipated inflation rate and is an appropriate cost-of-living adjustment given the City's current finances and its existing competitive wage rates.

Union Position

The Union is seeking wage increases as follows during the three year term of the contract.

- 4% retroactive to January 1, 2018
- 4% January 1, 2019
- 4% January 1, 2020

In addition, the Union proposes an increase in the shift differential to \$0.50/hr.

When it comes to identifying comparables for the Circleville Police Units, the City is somewhat disadvantaged for being so close geographically to the City of Columbus. In the State Employment Relations Board's database, Circleville is included in the Columbus region. An analysis of the average top annual wage for Police Officers in this designated region is \$68,778, whereas Circleville's top annual wage for a Police Officer is \$51,459. Circleville is a full 33.7% below the average. The same such comparison can be made for Sergeant pay and Dispatcher pay with Circleville being below average by 42.5% and 18.7% respectively for these positions. It is no surprise that Circleville's pay compares unfavorably with Columbus and Columbus's affluent suburban municipalities which drive these regional averages up. Even though the Columbus Metropolitan area is not an accurate comparison for Circleville when it comes to pay, it is only 28 miles away and is not an unreasonable commute for a Police Officer, Police Supervisor, or Dispatcher seeking to take his or her experience to a new employer for increased pay.

To identify a better set of comparable municipalities OPBA has taken the Columbus Metropolitan area out of its data. Using a selection of smaller cities within a 25-35 mile radius of Circleville the wage comparison data is less dramatic, but remains disadvantageous for Circleville. Using the cities of Chillicothe, Lancaster, London, Washington C.H. and Logan as the comparison pool, Circleville Police Officers are 7.1% below average for the top wage, Sergeants are 13.5% below average for the top wage, and Dispatchers are 9.24% below average for the top wage. Expanding the geographic circle to include all small cities in the SERB Columbus Region (simply without the Columbus Metropolitan area) the comparison holds and the Circleville Police Officer top wage is 7.45% below average.

Using an approach to comparables akin to that used by the Employer, but without the bias of a select group, OPBA has also analyzed data for all Ohio cities with a population between 12,000 and 15,000. Circleville's population is just over 13.3K. The results of the analysis reveal that the Circleville Police Officer's top wage rate is 27.4% below the average top wage rate for all of these similarly sized cities.

The upshot of this wage data is that in order to stem the tide of turnover in these bargaining units, the City of Circleville must provide a more competitive salary. The Union's proposal to increase wages by 4% in each of the three years of the contract is an effort to move the wages up somewhat by providing increases that do not merely cover general inflation.

In addition, OPBA proposes to increase the shift differential for second and third shifts. The current contract language provides for a differential of \$0.25/hr for both shifts. This rate is below average in comparison to the shift differentials provided in similarly sized Ohio municipalities. The average second shift differential is \$0.35/hr and the average third shift differential is approximately \$0.40/hr. OPBA has proposed the City of Circleville raise its shift differential for both second and third shifts to \$0.50.

Discussion and Recommendation

In this particular fact finding proceeding, financial data for Circleville was limited to the Auditor of State's 2016 Report on Circleville's Financial Health Indicators. The upshot of the report is that 12 of the 17 financial health indicators are graded as having a positive outlook, four are graded as having a cautionary outlook, and only one is considered to have a critical outlook. Overall, the City of Circleville's financial status is encouraging; however the available data show some instability over the recent short term rather than a steady positive trend. With this financial backdrop

the Employer did not make a traditional ‘inability to pay’ argument; rather the Employer maintained that the City’s finances call for careful management of expenditures and that fiscal responsibility dictates that the Employer not enhance wages and benefits at this time. Furthermore the Employer opines that the wage comparison data plainly show that there is no compelling reason to raise wages beyond a basic cost-of-living-adjustment. The Union’s wage comparison data suggest just the opposite. For the Union, the critical factor for comparison is the local labor market, and in the local labor market Circleville is significantly underpaid. As a consequence the Union argues there has been notable and costly turnover in these bargaining units. Raising wages into a more competitive position with the surrounding municipalities would work to the City’s advantage over the long-term by reducing turnover.

Comparables are challenging to select. In fact finding it is a perineal challenge to arrive at a reasonable set of comparables for any governmental jurisdiction. In this particular case the parties’ respective sets of comparable municipalities only share one municipality in common – Washington Court House. Washington C. H. is only 27 miles away from Circleville, it has a population of 13.5K compared to Circleville’s 13.3K, and its income tax revenue collection in 2016 was \$7.2M compared to Circleville’s \$6.8M. The Washington C.H. top wage for Police Officers is just under \$1000 below the Circleville top wage. As for Sergeants, the Washington C.H. top wage is approximately \$3500 higher than the Circleville top wage, and Dispatchers in Washington C.H. are paid approximately \$2500 more than the Circleville Dispatchers at the top wage rate. Reliable inferences about the labor market cannot be made with only one acceptable point of comparison. The Employer is correct that population and tax revenue are two important points of comparison when selecting a set of comparable jurisdictions. Whereas, the Union is correct in focusing on the local labor market as a critical factor when selecting a set of comparable jurisdictions, for it is within the particular local labor market that a City such as Circleville must compete for its skilled workforce.

As is often the case when the parties do not agree on an acceptable set of comparable jurisdictions for comparison purposes, the fact finder must create a set by combining all, or portions of, the data provided by the parties. In this case, taking in the cities used by the Union, with the exception of Logan which is significantly smaller and pays less, therefore not likely a talent drain for Circleville; and taking in the cities from the Employer’s list that are closer comparisons in population and income tax revenue, thus excluding cities smaller than 12K in population or over 14.5K in population, a comingled set of comparables emerges that accounts for local labor market as well as similarity in financial resources. The set of comparable municipalities considered by the fact finder

is: Chillicothe, Lancaster, London, Washington C.H., Bellefontaine, Bucyrus, Dover, Greenville, Marietta, and Wilmington. Calculating the average top wage rates for this set of comparable municipalities, Circleville's top wage rate for Police Officers is 9% below average. The Sergeants' top wage rate is 15% below average, and the Dispatcher's top wage rate is 11% below average. Circleville, may never be able to compete with Chillicothe and Lancaster because these cities are considerably larger, nevertheless they are in Circleville's labor market and may continue to be a talent drain for the City unless wages are adjusted upward enough to neutralize wages as a determining factor in turnover.

Market adjustments to existing wage scales can be costly and should be undertaken with ample cost/benefit analysis data, and preferably by mutual agreement of the parties. Fact finding is not the ideal arena for such initiatives. In the instant case, with limited data and tools available the fact finder is inclined to recommend a modest wage increase that is somewhat higher than the CPI trend and the SERB wage settlement averages as a means of moving the wage scale up just slightly. In addition the available evidence shows that the shift differential is currently significantly lower than in other jurisdictions and is therefore in need of an increase to achieve parity.

Recommendation

The statutory criteria require that the fact finder consider comparable public jurisdictions, and the Employer's ability to pay and administer the recommended provisions. In light of these criteria the fact finder recommends the following wage settlement:

- Retroactive to January 1, 2018 all wages will increase by 2.75%.
- January 1, 2019 all wages will increase by 3%.
- January 1, 2020 all wages will increase by 3%.

The shift differential shall increase to \$0.40/hr. retroactive to January 1, 2018.

Relevant contract language shall read in part as follows:

2018-2020 Agreement: Police Communications Officers/Jailers, Parking Enforcement Officer, and Police Patrol Officers

Article XXVIII – WAGE RATES

28.01 – Current Language

28.02 – Current Language + updated wage charts with the following increases:

Effective January 1, 2018 (2.75%)

Effective January 1, 2019 (3%)

Effective January 1, 2020 (3%)

28.03 – Current Language

28.04 – Current Language

28.05 – Effective January 1, 2018, employees who are assigned to work second or third shift shall be paid a shift differential of \$0.40 per hour for all hours worked on those shifts.

28.06 – K-9 assignments shall be subject to the following provisions.

1. The K-9 Officer will generally be on call, for the purposes of K-9 handling only, twenty-four (24) hours a day, seven (7) days per week. The only exception to the above will be when the canine is marked out of service with the communication center due to the fact that the K-9 Officer is on approved time-off.
2. Notwithstanding the provisions of Article 21 of the collective bargaining agreement, the K-9 Officer will receive compensation with a minimum guarantee of three (3) hours pay at the applicable overtime rate when called in for K-9 related duties outside of the officer's normal shift.
3. The K-9 Officer will be assigned to a fixed shift designated by the Chief of Police. However, in order to maximize the utilization of the canine unit in conjunction with departmental need, the shift may be changed upon reasonable notice or in cases of emergency.
4. The City of Circleville agrees that if the City decides for any reason to terminate the K-9 program the K-9 Officer may purchase the canine for one (1) dollar (\$1.00).
5. If the K-9 Officer voluntarily leaves the Circleville Police Department, or resigns from the position of K-9 Officer within five (5) years of accepting the K-9 Officer position the Officer will reimburse the City for the cost of the Officer's initial training on a pro-rata basis. (Initial cost of \$14,000)
6. The parties agree that the K-9 Officer will be scheduled to work an eight (8) hour work day. Each pay period, the K-9 Officer shall receive a lump sum payment equal to ten (10) hours of his base rate of pay (10 x base hourly rate of pay). For purposes of this section, the base hourly rate of pay for the K-9 Officer shall be his shift hourly rate. The lump sum payment/additional compensation will be considered compensation for care and grooming of the canine for the entire pay period.
7. It is also agreed that the K-9 Officer will be afforded sixteen (16) hours of training each month in lieu of patrol duties. Additional training may be approved as needed. Training outside the department will be at a training facility or course approved by the Chief of Police.
8. The K-9 Officer Position, unless otherwise approved by the Chief of Police, will not be subject to the shift bidding provision of Article 38 (or any memorandum of understanding concerning shift bidding) of the collective bargaining agreement between the parties.

9. The City agrees to pay all veterinary, dental, health or wellness, and any other reasonable expenses approved by the Chief of Police as necessary to maintain the canine fit for duty.
10. In the event of death or inability of the canine to perform, replacement of the canine and continuation of the K-9 program remains the sole discretion of the Chief of Police.

2018-2020 Agreement: Sergeants, Lieutenants, and Communications Supervisors

Article XXVIII – WAGE RATES

28.01 – Current Language

28.02 – Updated wage charts with the following increases:

Effective January 1, 2018 (2.75%)

Effective January 1, 2019 (3%)

Effective January 1, 2020 (3%)

28.03 – Effective January 1, 2018, employees who are assigned to work second or third shift shall be paid a shift differential of \$0.40 per hour for all hours worked on those shifts.

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 16th day of March 2018.



Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finding Report was sent by e-mail on March 16, 2017 to:

State Employment Relations Board
Mary E. Laurent
65 E. State Street
Columbus, Ohio 43215
med@serb.state.oh.us

Joseph M. Hegedus, Esq.
Ohio Patrolmen's Benevolent Association B-2
92 North Woods Boulevard, Suite
Columbus, Ohio 43235
jmhege@opba.com

City of Circleville
c/o Benjamin S. Albrecht, Esq.
Fishel Hass Kim Albrecht Downey, LLP
7775 Walton Parkway Suite 200
New Albany, Ohio 43054
balbrecht@fishelhass.com



Felicia Bernardini