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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

Mar 18 10 09 AM '96

In the Matter of Fact-Finding Between

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

and

CITY OF AURORA

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**FINDINGS AND
RECOMMENDATIONS**

CASE NOS.: 95-MED-10-0888 ✓
95-MED-10-0889
95-MED-10-0890

March 15 , 1996

Charles Z. Adamson, Fact-Finder

Appearances

For the Ohio Patrolmen's Benevolent Association:

Kevin Powers, Esq.
Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., LPA
Ninth Floor, The Halle Building
1228 Euclid Avenue
Cleveland, Ohio 44115

For the City of Aurora:

David M. Benjamin, Esq.
170 South Chillicothe Road
P. O. Box 511
Aurora, Ohio 44202

The undersigned was appointed Fact-Finder in this dispute by the State Employee Relations Board (SERB) on December 1, 1995 pursuant to section 4117-9-05 of the Administrative Code. The bargaining units involved herein consist of all sergeants in Aurora's Police Department and a separate unit of all patrolmen and dispatchers in the Police Department.

I.

HEARING

A hearing was held on February 29, 1996, in Aurora, Ohio. Both parties attended the hearing and elaborated upon their positions regarding the remaining issues at impasse through their representatives as listed on the preceding page.

II.

MEDIATION

After a short period of mediation the case proceeded to hearing. The issues remaining at impasse are the following:

1. Overtime pay
2. Injury leave
3. Wages

III.

CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(e) and Ohio Administrative Code Rule (4117-9-05(J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements 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.

IV.

ISSUES AND RECOMMENDATIONS

A. OVERTIME PAY

1. The Union's Position.

The Union proposes that Article 33, Section 5 of both collective bargaining agreements, the sergeants agreement and the patrolmen's and dispatchers' agreement, be amended to read as follows:

Section 5. The bargaining unit member may select overtime pay or compensatory time at the time and one-half rate, but no overtime as described in this section, including compensatory time, can be paid or used unless it has been approved and verified by the Department Head.

All employees, sergeants, patrolmen and dispatchers accrue overtime after having worked 40 hours in a calendar week. If dispatchers elect compensatory time off they receive 1 ½ hours of compensatory time for every hour of overtime worked. However, if sergeants and patrol officers choose to receive compensatory time instead of overtime pay at the time and a half rate, they receive straight time compensatory time off for the first 11 hours of overtime in a 28 day pay period. Once a patrolmen and sergeant has worked in excess of 171 hours during the 28 day period, if compensatory time is elected, the officer receives 1 1/2 hours of compensatory time off for each hour of overtime work performed.

According to the Union, the practice of paying for compensatory time with straight time hours during the initial 11 hours after 160 hours was chosen by the local police

chief. The Union emphasizes that this was an option available to public employers engaged in fire protection or law enforcement activities under the provision of the Fair Labor Standards Amendments of 1974 (29 USCS, Section 207(k)). Being an option and not being mandated, it is within the discretion of the police chief whether the sergeants and patrolmen's first 11 hours of compensatory time is given at the straight time or the time and a half rate.

The Union notes that the practice followed by the Aurora Police Chief was the least favorable option allowed to any employer by law. Also, employees taking compensatory time after 170 hours are worked in a month must receive 1 1/2 hours for each hour of compensatory time earned. The Union argues that ordinarily the issue of a police chief giving affected employees straight compensatory time hours for the first 11 hours of compensatory time would be a grievable matter. However, it recognizes that since the practice had been in existence for a long period of time it would have to be corrected by amendment to a contract as a result of collective bargaining negotiations rather than through the grievance procedure.

2. The Employer's Position.

The Employer takes the position that there should be no change in respect to the contractual language for compensatory time. It indicates that Police Department employees have the option of either being paid overtime at the 1 1/2 time rate or being paid compensatory time when they work beyond their normally scheduled full time hours.

It states that there is no dispute as to the first 11 hours compensatory time for dispatchers; whenever a dispatcher elects compensatory time off the dispatcher receives 1 1/2 hours of compensatory time off for every hour of overtime worked starting with the first hour of dispatcher compensatory time taken. The Employer acknowledges that the practice is different in respect to sergeants and patrol officers. When a sergeant or patrol officer elects to receive compensatory time off he receives a straight hour of compensatory time for the first 11 hours of overtime in any given 28 day period. Beyond 171 hours in the 28 day period the officers receive 1 1/2 hours of compensatory time for each hour of overtime worked.

The Employer asserts that the program was instituted pursuant to the statute referred to above and it has become a practice which the Union has never challenged in the grievance procedure. According to the Employer the Union has never suggested that any problems have arisen with the compensatory time program. Consequently, the Employer takes the position that no change is warranted. Finally, the Employer points out that every police officer has the option to take the overtime pay rather than taking compensatory time at straight time for the first 11 hours of compensatory time.

3. Findings and Recommendations.

Evidence indicates that for some period of time there has been a disparity in the compensatory time policy administered by the Employer in respect to the sergeants and patrolmen as compared to the dispatchers. If a dispatcher elects to take compensatory

time after accruing 160 hours of work time during a 28 day period, the dispatcher is compensated by the employer with 1 1/2 hours of compensatory time for each hour of compensatory time taken. The dispatcher does not have to wait until the first 11 hours, from 160 to 171 hours, is taken as compensatory time before the dispatcher receives compensatory time at the time and half rate. The patrolmen and sergeants don't receive compensatory time at the 1 1/2 time rate until after the 171st hour in a one month period. This is not a fair and equitable compensatory time system for the Police Department. The patrolmen and sergeants should have the option of selecting overtime pay or compensatory time without being penalized if they elect compensatory time rather than overtime pay during the first 11 hours. Accordingly, I recommend that the Union's position in respect to overtime pay be adopted and that Article 33, Section 5 of both collective bargaining agreements be amended to read as follows:

The bargaining unit member may select overtime or compensatory time at the time and one half rate, but no overtime as described in this section, including compensatory time, can be paid or used unless it has been approved and verified by the department head.

B. INJURY LEAVE

1. The Union's Position.

Currently under the terms of the collective bargaining agreements for both units employees who are injured or become ill in performance of their duties receive sick leave

pay for this absence up to the limit of the employee's accumulated sick leave. After sick or injured employees receive state compensation benefits for lost time (Temporary Total Disability) they must surrender these payments to the city. Thereafter, the payments are credited by the city to the employees sick leave account which has been diminished by the receipt of sick leave pay.

The Union proposes the following Article 26 provisions entitled "Service Related Injury Leave" to be substituted for the current Article 26 injury leave in both applicable contracts.

Section 1 - Injury Leave. In the event of a service connected occupational illness or injury (or reoccurrence) bargaining unit employees who are compelled to be absent from duty upon the recommendation of a certified physician and certified by Workers Compensation, shall receive injury leave at full pay for the period of disability, provided that such absence does not exceed 1 year from the occurrence of such disability to total a 1 year period.

Section 2 - Submission of Worker's Compensation Wage Payments. The bargaining unit employee agrees that they may be required at the city's option to turn over to the employer any weekly compensation check which represents wages paid from any fund that the employer contributes to, in exchange for receiving his regular paycheck, in accordance with the present practice. An employee injured during that course of employment must report said injury by the end of their shift or as soon as they realize they have sustained an injury.

Section 3 - Lump Sum Payments. Any lump sum payment received by the bargaining unit employee for a permanent injury or illness remains the property of the employee.

Section 4 - Reinstatement. Any bargaining unit employee on injury leave shall be entitled to reinstatement upon approval of a certified physician at the rate of pay of the position to which the employee is reinstated at the time of such reinstatement.

Section 5 - Accrual of Seniority. Bargaining unit employees shall continue to accumulate seniority while on injury leave.

Section 6 - Charge Against Sick Leave. Any time the employee is required to be absent from duty, due to the work-incurred injury, shall not be charged against his accumulated sick leave time.

Section 7 - Disallowance by Worker's Compensation. In the event the injury or disability is disallowed by the Bureau of Worker's Compensation or the Industrial Commission of Ohio, the employee shall be charged with all time lost from work against his accumulated sick leave time or vacation time. If the employee does not have accumulated sick leave time or vacation time to cover either all or part of the time off up to and including the date the claim is disallowed, then any monies paid to the employee by the employer under this Article shall be repaid by the employee to the employer.

Section 8 - Injury on Shift. Whenever an employee is required to stop working because of a service connected injury or disability, he shall be paid for the remaining hours of that workday and such time shall not be charged to leave of any kind.

Section 9 - Light Duty. If an employee on injury leave resulting from either on-duty or off-duty activities is capable of performing light duties, the city or the employee may request to return from injury leave and perform such light duties.

The Union submits that the current contract language could result in problems as to injury leave. First, an employee who is seriously injured might not have enough sick leave accumulated to sustain the employee and his family until the State of Ohio paid worker's compensation benefits. Second, the current language also doesn't provide that employees on injury leave should be returned to their former position once they are physically able to return.

The Union proposes as a substitute for the current contract language, Article 26, referred to above, which is contained in the current contract for sergeants and patrol officers in the City of Ravenna. In essence it provides that in the event of a service related illness or injury employees who must be absent from duty upon the recommendation of a physician and the certification by the worker's compensation should receive injury leave at full pay for a period of disability not to exceed 1 year from the date of the occurrence of said disability. The other significant change that the Union proposes provides that any bargaining unit employee on injury leave shall be entitled to reinstatement upon obtaining approval of a physician.

The Union submits that new Article 26 would protect employees during the lag time period between the time that sick leave pay ran out and before they received the worker's compensation check for either work related illness or a service connected injury. As an example the Union indicates that an employee could be off three or four weeks with pneumonia, exhaust all accrued sick leave, return to duty and within a short period of time be shot in the line of duty. With the sick leave being exhausted the employee would not receive any compensation while recovering from a gun shot wound until Worker's Compensation sent him a payment.

2. The Employer's Position.

The Employer takes the position that there should be no change in the current provisions for injury leave in both contracts. The Employer points out that in the contract

negotiations prior to reaching agreement for the last collective bargaining contracts the Union indicated that there was a time delay arising because of the lag in processing payments of worker's compensation claims for injury. The Union, according to the Employer, also indicated that a problem existed among probationary employees in the patrolmen and dispatchers unit since probationary employees might not have sufficient sick leave to utilize while waiting to receive worker's compensation.

According to the Employer the probationary employee problem was dealt with by new Section 3 of Article 26 of the patrolmen and dispatcher's contract which provides for probationers to receive an advance of up to 15 sick leave days and 10 vacation days to be utilized when the employee is injured and is awaiting the initial payment of worker's compensation benefits.

The Employer gives several reasons why the new provision should not be granted to the Union. First, the Employer made a change in respect to the patrolmen and dispatcher's contract during negotiations for the contract expiring December 31, 1995. Nevertheless, without allowing sufficient time to determine whether it is adequately meeting the problem the Union is now seeking a more extensive benefit. Second, the granting of this benefit could result in a more casual approach to sick leave by veteran employees. An employee would be less concerned with maintaining a sizeable sick leave balance when he or she knew of entitlement to up to one years service related injury or sick leave benefits from the Employer.

In addition the Employer pointed out that there is currently a leave of absence policy (Article 25) in both collective bargaining agreements which was discussed by the parties during the current negotiations in respect to reinstatement after injury or service related sick leave.

An additional objection was raised by the Employer to new Article 26, if the city was obligated to pay up to 1 year's injury leave the it would be in the position of collecting injury leave pay from an employee if the worker's compensation claim was ultimately denied.

In respect to Section 9 of proposed Article 26, Light Duty, the Employer takes the position that this provision has no applicability to the employment situation in the police department. The city has no category of light duty. Either an employee is on a regular work schedule or is off duty and not working. The light duty provision would also be a significant cost to the city because it would also eliminate incentive to accrue sick leave and would be one more case where there would be the possibility of abuse of the sick leave policy.

3. Findings and Recommendations

There can be no dispute that law enforcement is a dangerous occupation subject to injuries and illnesses not ordinarily faced by the rest of the citizenry. As a result a member of the Employer's police department is more likely to be subject to on the job injury or illness than someone engaged in an ordinary job outside of the law enforcement

profession. The current contracts sick leave policy is not adequate in cases of service related injury leave. Consequently, the members of the Police Department should be afforded broader salary protection than employees engaged in less dangerous or hazardous occupations. Accordingly I am recommending that the members of the bargaining units shall receive injury leave at full pay for a period of disability up to 180 days from the occurrence of such disability.

In respect to the reinstatement issue the current collective bargaining agreements are silent in respect to reinstating employees upon their return from injury or illness. This is a deficiency in the contracts that should be corrected. As a result I am recommending that bargaining unit employees on injury leave shall be entitled to reinstatement upon the approval of a licensed physician.

In respect to Section 9 of proposed Article 26, Light Duty, the Employer argues that this provision has no relevance to the employment in the police department since light duty does not exist; an employee can be either on duty or off full time duty, but cannot be considered to be in the category of light duty. Accordingly, I believe this provision is irrelevant to the employment situation in Aurora and should not be included in proposed Article 26.

The following is my recommendation as to injury leave:

Section 1 - Injury Leave. In the event of a service connected occupational illness or injury (or reoccurrence) bargaining unit employees who are compelled to be

absent from duty upon the recommendation of a licensed physician and certified by Workers Compensation, shall receive injury leave at full pay for the period of disability, provided that such absence does not exceed 180 days from the occurrence of such disability to total a 180 day period.

Section 2 - Submission of Worker's Compensation Wage Payments. The bargaining unit employee agrees that they may be required at the city's option to turn over to the Employer any weekly compensation check which represents wages paid from any fund that the Employer contributes to, in exchange for receiving his regular paycheck, in accordance with the present practice. Employees injured during that course of employment must report said injury by the end of their shift or as soon as they realize they have sustained an injury.

Section 3 - Lump Sum Payments. Any lump sum payment received by the bargaining unit employee for a permanent injury or illness remains the property of the employee.

Section 4 - Reinstatement. Any bargaining unit employee on injury leave shall be entitled to reinstatement upon approval of a licensed physician at the rate of pay of the position to which the employee is reinstated at the time of such reinstatement.

Section 5 - Accrual of Seniority. Bargaining unit employees shall continue to accumulate seniority while on injury leave.

Section 6 - Charge Against Sick Leave. Any time the employee is required to be absent from duty, due to the work-incurred injury, shall not be charged against his accumulated sick leave time.

Section 7 - Disallowance by Worker's Compensation. In the event the injury or disability is disallowed by the Bureau of Worker's Compensation or the Industrial Commission of Ohio, the employee shall be charged with all time lost from work against the employee's accumulated sick leave time or vacation time. If the employee does not have accumulated sick leave time or vacation time to cover either all or part of the time off up to and including the date the claim is disallowed, then any monies paid to the employee by the Employer under this Article shall be repaid by the employee to the Employer.

Section 8 - Injury on Shift. Whenever an employee is required to stop working because of a service connected injury or disability, the employee shall be paid for

the remaining hours of that workday and such time shall not be charged to leave of any kind.

C. WAGES

1. The Union's Position

The Union proposes that there be an equity adjustment of \$.50 per hour added to each pay grade for patrolmen and sergeants effective January 1, 1996. It also proposes that there be an equity adjustment of \$1.00 an hour for dispatchers effective January 1, 1996. Finally, the Union proposes a general wage increase of 4% effective January 1, 1996, January 1, 1997 and January 1, 1998.

The Union argues that while the Employer has recognized that its employees are paid less than many surrounding communities, it has been reluctant in effecting more equitable compensation levels; as a result the police department employee wages still lag behind the local labor market. Furthermore, it asserts that the Employer has recently given increases to many city administrators far in excess of what the Union seeks. In addition, it claims that increases sought by the Union are merely adequate to prevent the Aurora police from loosing further ground to municipal police departments as a whole.

The Union notes a September, 1995 speech, delivered by the Employer's mayor and reported in the local newspaper, where 6% to 7% growth was predicted each year in the residential, commercial and industrial areas of the city in the foreseeable future. The mayor indicated that the city was in a solid financial position having paid off

\$3,000,000.00 of unfunded debt during the previous 4 years and was now living within its income. In addition 20 new companies have begun operations in Aurora within the last 4 years. The Union also notes a report categorizing 1993 income tax returns filed by residents of the State of Ohio according to school district. It reflects that the Aurora City Schools District has the highest federally adjusted income tax per person in Portage County with the average amount being \$54,797.00, ranking Aurora 17th within the State of Ohio. For Ohio income tax purposes there is a median Ohio adjusted gross income of \$34,595.00 ranking Aurora 24th in the state.

The Union compares Aurora patrolmen with 10 years seniority and dispatchers with 10 years seniority with the same classifications in jurisdictions contiguous to or near Aurora. The complete compensation package including wages, uniform shift differential, longevity and other factors were considered for the cities of Hudson, Solon, Bainbridge, Twinsburg, Kent, Streetsboro and Ravenna. Aurora was below the average compensation for patrolmen and dispatchers in the comparison area.

The Union acknowledges that both the dispatchers and the patrolmen received substantial increases during the years 1993, 1994 and 1995. However, dispatchers remain 9% below the comparison area average and the Aurora patrolmen remain at 86.88% of the average patrolmen 1995 compensation in the area.

The Union asserts that if the patrolmen and dispatchers only receive the proposed 2.7% annual increase from the Employer the gap between Aurora and the comparable

communities for the patrolmen and dispatchers wage packages will be further widened. It notes that Aurora is a growing, affluent community and the increase sought by the Union will bring their employees up to the average in the area and not above the average. It claims that the percentage increases are not significantly above what is given in the rest of Ohio. Consequently, according to the Union the equity adjustment will allow the police and dispatchers to reach the average and the 4% increase will keep them there. According to SERB the average wage increase for police departments in the northeast region of Ohio in 1996 is 3.8%; it is 3.44% in 1997.

2. The Employer's Position

The Employer proposes that annual 2.7% cost of living increases be granted for each year of the 3 years of 1996, 1997 and 1998; the 2.7% annual increase conforms to the current increase in cost of living. Aurora maintains that its current wage level for sergeants, patrol officers and dispatchers compares favorably with those of neighboring communities as a result of its efforts to increase compensation for these employees during the past several negotiations.

The Employer maintains that its proposed increases are given at a time when the national and local rate of inflation has been approximately 2.7% or less for a considerable period of time. Further, collective bargaining history between the parties indicates that the Employer has embarked on a consistent policy of raising the level of compensation for the police department employees.

The Employer also asserts that its compensation levels are comparable to neighboring communities where employees are represented by Unions notwithstanding the fact that its ability to pay is substantially less than these communities.

It emphasizes that an analysis must be made not only of the income tax rate in all of the communities but also the amount of revenue collected. Only Streetsboro in addition to Aurora has a 1% income tax. Kent and Solon have 2% income taxes, Ravenna has a 1.75% income and Twinsburg has a 1.5% income tax.

Reports of income tax collected reveals that while Aurora collected \$2,450,000.00, Solon collected \$21,000,000.00, Twinsburg \$9,000,000.00, Kent almost \$8,000,000.00 and Ravenna almost \$5,000,000.00. Aurora's smaller revenue collection is attributed to the unfavorable mix of property use in Aurora where there is significantly more residential use and substantially less commercial and industrial use as compared to other surrounding communities. Furthermore, currently Aurora anticipates spending 111% of its anticipated income tax revenues for protective services while other communities, with the exception of Streetsboro, are projected to spend substantially less.

A study of Aurora, Ravenna, Kent, Streetsboro and Twinsburg, but not Solon, reveals that the average amount of tax valued property committed to residential or agricultural use is 55% in those communities while Aurora devotes 70% of its land to residential or agricultural use. In addition, the Employer asserts that Aurora doesn't have any readily available additional sources of revenue. It points out that during the last 5

years the voters have twice rejected an increase in income tax percentage and in November, 1995 the Aurora voters rejected a levy for the police forces. The Employer reiterates that the revenue position of Aurora is not equal to the other contiguous or surrounding communities, income stream is the main issue - that is money available each year from the revenue taken in by the city.

3. Findings and Recommendations

During the last year of the two collective bargaining agreements which expired December 31, 1995 senior patrol officers received \$35,019.89 per year (\$16.84 per hour) and entry level patrol officers were compensated at the rate of \$28,929.47 per year (\$13.91 per hour). The top rated dispatchers receive an annual compensation of \$25,773.93 per year (\$12.39 per hour) and entry level dispatchers receive \$23,669.63 per year (\$11.40 per hour). The recently expired sergeants' collective bargaining agreement provided for no progression based on seniority; during the last contractual year ending December 31, 1995 a sergeant's rate of pay was \$38,500.80 per year (\$18.51 per hour).

In making a recommendation as to wages the undersigned is required to weigh the proposal of each party in light of the statutory criteria set forth in Section III above. It is well settled, and the parties recognize by their submissions, that comparisons with other similarly situated employers and employees in surrounding and contiguous communities are of prime importance. Also, of some significance are the statistics for northeast Ohio

that reflect the percentage wage increase for police department employees in 1996 as 3.81% and 3.44% in 1997.

An examination of the statistics provided by the Employer derived from surveys from the 5 comparable communities, 2 communities from Cuyahoga County and 3 communities from Portage County reveals the following:

Sergeants 1996 - Salary increases in the comparison communities range from 3.5% to 4.5%. The average increase is 4%. The 1995 starting salary in Aurora is \$2,778.00 above the community starting average and \$429.00 below the top average.

Patrol Officers 1996 - Salaries increased in the comparison communities between 3% and 4.5%. The average increase was 3.75%. The 1995 starting salary in Aurora is \$779.00 above the community average with the top salary \$457.00 below the community average.

Dispatchers 1996 - Salary increases in the comparison communities range from 1.85% to 4.5%. The average increase is 3.48% for top salaries and 3.82% for starting salaries. The 1995 salary for dispatchers in Aurora is \$1,710.00 above the community average. The top salary in Aurora is the second lowest of the studied communities.

Its is incumbent upon the Employer to continue its program of bringing its police department wages in line with those of contiguous and nearby communities. A city should pay the going rate for labor as it does for other non-personnel items in its budget. There are no unusual local circumstances to warrant the conclusion that Aurora cannot pay the going rate for its police department. Its continued growth in recent years