

I. PROCEDURAL BACKGROUND

This matter came on for hearing on August 26, 1996, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on February 14, 1996. The hearing between the City of North Royalton ("City" or "Employer"), and the Ohio Patrolmen's Benevolent Association ("Union" or "OPBA") which represents approximately seven (7) full-time dispatchers took place in the North Royalton City Hall located at 13834 Ridge Road.

The sole issue at impasse consists of a wage reopener for the year 1996. Despite concerted efforts to negotiate a settlement, the parties remained unable to resolve the impasse as of the date of hearing. The parties mutually agreed to extend the time for this report and recommendation to issue to September 26, 1996.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). This fact-finding criteria is enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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.

III. BACKGROUND AND CONTENTIONS OF THE PARTIES

ARTICLE XX - SALARY SCHEDULE (SECTION 20.1).

The members of the bargaining unit are paid pursuant to a three step salary schedule. Only two of the seven current employees have service dates which place them at the top step of \$11.36 per hour, one employee is paid at the Step 2 rate of \$10.87 per hour, and the remaining members of the bargaining unit were all hired within the last year and receive the Step 1 rate of \$10.38 per hour.

The parties stipulated that all City employees except for the dispatchers and firefighters, including all non-bargaining unit employees, received wage increases of 4.25 percent for 1996. This includes 4.25 percent wage increases collectively bargained between the City and Ohio Council 8, AFSCME Local 3410 for a city-wide unit representing

inspectors, clerks, laborers, custodians and equipment operators, and other employees under one agreement, and correction officers in another agreement; together with separate agreements for patrolmen and sergeants represented by the Fraternal Order of Police, Lodge No. 15 for similar percentage increases of 4.25 percent. (Joint Exhibit 3).

POSITION OF THE CITY

The City's wage proposal is that the police dispatchers receive a 1996 wage increase effective with the first full pay period in January 1996, in an amount between 3.25 percent and 4.25 percent as determined to be appropriate by the fact-finder. While the City had placed a reasonable and good faith offer of 4.25 percent on the bargaining table (City Exhibit 1), the Union's rejection of such an offer should permit the fact-finder to award "something less than" the City's pre-hearing final offer of 4.25 percent.

The City does not claim an inability to pay for a wage increase, but it does have financial constraints and a limited ability to pay. Christine May, finance director for the City for more than eight years, testified concerning the budget as of January 8, 1996, and the permanent appropriation ordinance for current expenses and other expenditures for the fiscal year ending December 31, 1996. (City Exhibits 2 and 3). May also assisted the mayor in preparation of the budget for 1996. (City Exhibit 4).

According to May, the 1996 appropriation ordinance took into account a maximum of 4 percent in wage increases for City employees. Further, the approximately

\$19,000 general fund balance was allocated to much needed street repairs. The police dispatchers are paid from the general fund. While the key source of revenue is the 1 percent income tax which will generate approximately \$5.3 million for 1996, according to May, the City has experienced the loss of two operating levies (1992 and 1993) which brought in \$800,000. Moreover, there was a change in the tax evaluation methodology applied to MCI. The reevaluation resulted in a reduction from a 100 percent tax when MCI was classified as a public utility, to its current 31 percent tax to be shared between the City and the local schools. This decision alone resulted in a \$260,000 loss of revenue to the City, and \$1.2 million to the local schools.

May noted that five to six funds are utilized to transfer monies, except for pensions and capital improvements, to the employees' health benefit fund. The City is self-insured, and it costs \$4,000 - \$5,800 per year per employee. Further evidence of the City's fiscal constraints was presented by bar graphs and charts indicating the general fund balance in July 1996 was \$384,088, approximately \$400,000 below the same month in 1995. The police facility operating fund unencumbered balance is at a significant \$66,236 deficit, due primarily to the reduction of revenue from the loss of Cuyahoga County prisoners formerly housed at the jail. In addition, the need for aggressive street repair and maintenance has driven the unencumbered balance of monies in this fund from the usual year end value of approximately \$400,000, to an anticipated balance based on current use of approximately

\$200,000. Other sources of revenue such as estate tax and recyclables have dropped on a year-to-date basis to \$80,000 and \$0, respectively.

On cross-examination, the finance director noted that of the \$156,600 appropriated to account for the four percent wage increase, 66.8 percent of the appropriation has been spent through July 31, 1996. May maintained that the City simply cannot afford an eleven percent wage increase, even if the Union's wage proposal were calculated to be \$2,600 per employee, or a total cost of \$22,932 after incorporating a 26 percent roll-up cost figure.

Mayor Barna testified that the City has a history of treating all employees the same. All employees received a 4.25 percent wage increase with the exception of larger, but much needed increases in rank differential for captains and chief. He stated the budget was carefully reviewed, and after he cut out of the budget expenditures for new vehicles and employees, the City Council cut further, and much shifting of funds between departments took place. He described the budget as very tight due to significant problems in the revenue stream.

In sum, the City reasons that when these fiscal restraints are considered together with the appropriate comparables located in the southwest portion of Cuyahoga County and applicable Medina jurisdictions, that the bargaining unit is neither the highest nor the lowest paid unit as a result of its proposal. This is simply not the east side of Cuyahoga County which, for some reason, pays dispatchers more. If the east side of Cuyahoga is

included, then Medina and Brunswick must likewise be included in any calculation. The City, in addition to wages, provides its employees with a quality facility and good benefits.

POSITION OF UNION

The Union argues that when all comparable cities are reviewed, the dispatchers are significantly underpaid when compared with the standing of dispatchers state-wide, and the City's patrolmen. For example, SERB's benchmark report dated July 12, 1996, demonstrates that for dispatchers in the City the top wage is \$23,608, whereas the state-wide average is \$25,296.94. (Union Exhibit 1) The bargaining unit employees are, therefore, paid approximately seven percent below the state-wide average.

When the City's police officers are compared to the statewide average for the same position, the patrolmen are paid eight percent above the state-wide average of \$34,900 as contained in the state-wide benchmark report. According to the Union, when the top wage rate for patrolmen in the City is compared to the 1995 average wage for patrolmen with ten years seniority in twenty-eight Cuyahoga County jurisdictions, the City pays its patrolmen 95.84 percent of the county average; when compared with twenty-six Cuyahoga County dispatch units with ten years seniority, the City's bargaining unit of dispatchers is compensated at 88.74 percent of the average. (Union Exhibits 2; Union Table 1a). When the Medina County jurisdictions of Medina, Brunswick and Wadsworth are included, the

patrolmen in the City remain far better paid than dispatchers as a percentage of the comparable averages. (Union Exhibit 3)

The Union further emphasized the compensation paid semi-skilled and custodial employees under the city-wide AFSCME unit as compared to the dispatch unit wages. (Joint Exhibit 3). The City countered that the custodian who is paid at \$13.54 per hour also performs plumbing, heating, ventilation and air conditioning work. The City was quick to note that correction officers top out at \$11.01 per hour. (Joint Exhibit 3).

Jacci Boardman testified that as a dispatcher she is responsible for police service calls; calls for the animal warden; extensive clerical and bookkeeping work for the jail; and prisoner visitation procedures. From January 1, 1996, to the date of the fact-finding hearing, a total of 601 prisoner care incidents were recorded, including bookings, hospital trips, and any other prisoner activity. Moreover, while the facility is designed for two dispatchers to work around the clock, often only one dispatcher is on duty. She also noted that Parma and Brunswick do not maintain a full-service jail facility as does the City. In sum, Boardman remarked that the bargaining unit employees are not paid equally relative to the patrolmen, and even using the City's comparables the unit is underpaid relative to patrolmen.

John Babroski, a dispatcher for the City, testified that many trainees for the position he holds have failed to make the grade. Babroski, who has worked in the capacity of dispatcher for the City since 1981, stated the duties of dispatcher are much more involved

than they used to be, and there has been significant growth in the City in the last ten to fifteen years.

IV. FINDINGS OF FACT AND FINAL RECOMMENDATION

The fact-finder has carefully reviewed the material provided by the parties, in particular, the financial data for the City and wage information for the jurisdictions cited by each party. Several observations are warranted.

First, while the City has not argued a total inability to pay, it was undisputed at hearing that its ability to finance across-the-board percentage increases of the dimension sought by the Union is significantly impinged by its present fiscal constraints. While it is true that in the aggregate the total cost of the Union proposal is not enormous by any means, the City presented credible, substantive evidence by means of budgetary documentation and testimony to indicate that its sources of revenue have been seriously impeded by the loss of operating levies, and, in particular, the reevaluation of MCI which resulted in a change in its tax status, and a corresponding precipitous drop in revenue to the City.

Second, the parties stipulated to the fact that all City employees, both bargaining unit and non-bargaining unit employees, received the same 4.25 percent increase. The fact-finder recognizes the desire to maintain uniformity among employees, but as demonstrated by the rank differential increases for the police captain(s) and chief of police, each entity within the City must also be examined on its own merits. The fact that other

bargaining units, represented by separate unions, agreed to the percentage increase which the City has offered as the top figure in the range of its wage proposal, is certainly evidence of "other factors . . . normally or traditionally taken into consideration" in fact-finding, one of the statutory criteria. Ohio Rev. Code §4117.14(G)(7)(f).

The issue of comparability is at the heart of the difference between the parties respective positions. To the extent the Union argues that several positions within the AFSCME city-wide unit lend support to the substantial eleven percent increase it seeks, there is scant evidence that the positions highlighted do the same or comparable work. Indeed, the City adroitly emphasized, in particular, that the custodian position performed skilled plumbing and HVAC work. There is simply no evidence from which the fact-finder may reasonably conclude that other employees in the City are performing comparable work giving due consideration to the job classifications involved.

The crux of the Union's argument appears to be that its members should be paid the same or better as a percentage of comparable dispatch units in the region, as the City's own patrolmen are compensated vis-a-vis other comparable patrol units. Stated another way, if the City's patrolmen receive 90 percent of the average patrolmen wage for comparable jurisdictions, the bargaining unit of dispatchers are entitled to receive no less than a similar percentage of the comparable dispatch units.

Several assumptions are at work with this premise, including the assumption that the positions of the bargaining unit members require the same level of compensation in

terms of a percentage of the average of comparable jurisdictions, as the City has bargained to conclusion with other units performing different work. Part of this assumption is the concept that all employees within the City require the identical relative wage as every other employee to attract and maintain quality personnel. Further, inherent to the argument that relative wages of otherwise non-comparable bargaining units can be viewed in isolation is the conflicting assumption that in all other respects each internal bargaining unit has comparable terms and conditions of employment.

This concept, on its face, enjoys a certain aura of equity which makes it attractive in the abstract, but difficult to apply. For each job classification, particularly those as different in duties and responsibilities as dispatch and patrol, this proposed variation on the traditional concept of comparability would require the contractual provisions of the internal bargaining unit targeted for comparison (in this case, the patrol officers), and the available, qualified work force in the appropriate geographical region, to be reasonably equivalent to the bargaining unit in fact-finding, in order that any evidentiary weight may be attributed to the concept that the bargaining unit be paid at the same percentage level as the target unit employees relative to the average of the target unit's comparable jurisdictions.

Rather than a manageable tool for comparison which complies with the statutory criteria, in its present formulation the notion set forth by the Union takes on the appearance of a modified, nonbargained for "me too" provision, without benefit of appropriate criteria to determine the relative equivalency of all other terms and conditions of

employment between the units in question. It is also unlikely that the internal target unit would be any other unit than the one with the highest pay as a percentage of its comparable bargaining units, regardless of the nature of its work. The fact-finder submits the Union's approach of utilizing non-comparable bargaining unit wage averages in this manner appears to stand outside the scope of the common measurements approved by the statutory criteria.

Turning to the evidence of comparable dispatch units, the fact-finder concludes that comparison of the bargaining unit to every dispatch unit in the State of Ohio is not particularly useful. Many of those jurisdictions represent a broad range of locations with marked differences in population and/or geographic location. It further was shown that the top wage comparison of the bargaining unit to all Cuyahoga County dispatchers with 10 years seniority places the employees at 89.09 percent of the average wage.

It may very well be that the Union seeks to raise the position of its members within the broader group of Cuyahoga dispatchers. There is no dispute that the bargaining unit is less well paid than many other dispatcher units, and its members perform their job assignments properly. However, the fact-finder determines that the more appropriate comparison is with the contiguous Cuyahoga and Medina jurisdictions listed in City Exhibit 7 and Union Exhibit 3, Table II. The fact-finder reviewed Union Exhibit 3 pertaining to dispatchers, and Union Table 1a, together with City Exhibits 6 and 7. When the 1995 base wages from Table 1a, Cuyahoga County Dispatchers with 10 years Seniority, are used to arrive at the annual base wage for those jurisdictions listed on City Exhibit 7, the average

wage in those comparable southwest Cuyahoga County and Medina jurisdictions for 1995 was \$24,871, and members of the bargaining unit were compensated at 95 percent of that figure. Utilizing the City's maximum offer of a 4.25 percent increase in the base, the employees will receive 96.2 percent of the average base for those same comparable jurisdictions listed on City Exhibit 7 for 1996.¹

In conclusion, the fact-finder finds a retroactive 4.25 percent increase for 1996 to be fair and reasonable, supported by evidence of the statutory criteria, and does not appear to cause the bargaining unit to lose ground in its current position relative to the comparable contiguous Cuyahoga and Medina County jurisdictions. The parties are reminded that the issue of wages will soon be revisited inasmuch as this report and recommendation concerns a wage reopener for 1996 only.

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1. It should be emphasized that the fact-finder calculated the bargaining unit's top annual wage for 1995 at \$23,629, rather than \$23,608 used by the Union, based upon a top hourly rate of \$11.36. Further, despite difficulty discerning various figures used on the Union charts due to the size of the numbers and overlay of shading, the fact-finder determined that the 1995 top wage in Garfield Heights was \$23,254 based upon the SERB benchmark reports, Union Exhibit 1 and City Exhibit 6, rather than the higher \$25,334 figure as used in Union Table I and 1a. The obvious consequence of this change is a slight downward adjustment in the average wage for the comparables listed by the Union, and a corresponding increase in the percentage those wages currently paid to the members of the bargaining unit represent when compared to the average annual wage of the referenced jurisdictions.

FINAL RECOMMENDATION

After consideration of the statutory criteria and findings of fact set forth above, it is the fact-finder's final recommendation that Article XX, Section 20.1 of the collective bargaining agreement be modified to provide that effective with the first full pay period in January 1996, all employees within the unit shall receive an across-the-board increase of 4.25 percent.



JONATHAN I. KLEIN, FACT-FINDER

Dated: September 26, 1996

CERTIFICATE OF SERVICE

Originals of the foregoing Fact-Finding Report and Recommendation were served upon Jon R. Heineman, Business Agent, Ohio Patrolmen's Benevolent Association, 10 Beech Street, Berea, Ohio 44017; and James A. Budzik, Esq., Johnson, Balazs & Angelo, 3600 Terminal Tower, Tower City Center, Cleveland, Ohio 44113, each by express mail; and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, by regular United States mail, sufficient postage prepaid, this 26th day of September, 1996.


JONATHAN I. KLEIN, FACT-FINDER