

STATE EMPLOYMENT
RELATIONS BOARD

FEB 18 1 13 PM '97

In the Matter of Factfinding
Between
Ohio Patrolmen's Benevolent
Association
and
The City of Warrensville Heights, OH.

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* SERB Case No.
* 96-MED-09-0752
* Before: Harry Graham
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Appearances: For Ohio Patrolmen's Benevolent Association:

S. Randall Weltman
Climaco, Climaco, Seminatore, Lefkowitz and
Garofoli Co.
The Halle Building, Ninth Floor
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For City of Warrensville Heights, OH.:

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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 dispute was closed at the
conclusion of oral argument.

Issues: The parties agree upon the issues in dispute between
them. Those issues are:

1. Dues deduction, Fair Share Fee
2. Management Rights
3. Employee Rights, drug testing and polygraph use
4. Discipline
5. Grievance Procedure
6. Premium Pay
7. Vacation
8. Sick Leave
9. Injury Leave
10. Compensation
11. Longevity Pay
12. Uniform Allowance
13. Insurance
14. Layoff
15. Scheduling
16. Duration

Issue 1. Dues Deduction, Fair Share

Position of the Union: The Union seeks inclusion of language in the Agreement calling for the "Fair Share Fee." The Ohio Patrolmen's Benevolent Association has recently supplanted another labor organization as representative of members of this bargaining unit. The Fair Share Fee was in the contract between the City and the former union. The OPBA asserts it should enjoy the same status.

Position of the City: The City view is the reciprocal of the Union view on this issue. As the OPBA is newly certified as bargaining agent the City claims that it should not be awarded the Fair Share Fee.

Discussion: Little expostulation is needed on this issue. The Fair Share Fee was in the prior labor agreement covering members of this bargaining unit. It is in other labor agreements covering different groups of City employees. The

City has advanced absolutely no cogent reason why it should be absent from this agreement. Inclusion of the Fair Share Fee is recommended to the parties.

Issue 2, Management Rights

Position of the Union: The Union seeks modification of the management rights language in the Agreement providing that all work rules be "reasonable."

Position of the Employer: The City is opposed to the position of the Union. In its opinion adoption of the "reasonable" standard will serve only to generate grievances.

Discussion: Language in the present agreement is unremarkable. It is the standard type of language on this issue seen in thousands of labor agreements in the United States. No change is recommended in existing contract language.

Issue 3, Employee rights, Drug Testing and Polygraph Use

Position of the Union: The Union proposes that use of the polygraph in internal investigations be prohibited. It also proposes that the City be prohibited from administering a drug test. In its opinion, both sorts of tests are invasive. They are unneeded in Warrensville Heights. The City has not shown an inability to conduct internal investigations without recourse to such tests. As that is the case, the Union urges the City be prohibited from using them in the Agreement.

Position of the City: The City proposes that it have authority to administer drug tests based upon "reasonable suspicion." It also proposes that it have a limited right to use the polygraph.

Discussion: Authority to administer drug tests and use the polygraph is absent from the present agreement. The City has not shown its operations to be hampered in any way. When either party is proposing an expansion of its authority or addition of a new benefit it bears the burden of demonstrating to the neutral the need for adoption of its proposal. In this instance, the City has failed to do so. It has not pointed to a single instance where its operations were adversely affected by absence of authority to employ drug testing or the polygraph. It is recommended that no language be included in the forthcoming agreement on this issue.

Issue 4. Discipline

Position of the Union: The Union proposes adoption of the "just cause" standard for all discipline. This would include verbal and written reprimands. Employees would be able to protest such discipline in the grievance procedure. Under the proposal of the Union verbal and written reprimands would not be eligible to be heard in arbitration. The terminal step would be the Safety Director.

Position of the City: The City is opposed to the proposal of the Union. In its view, it is unnecessary. As that is the case, the City is proposing to retain current contract language on this issue.

Discussion: A difficulty with the City position with respect to discipline is that it seems to assert authority to discipline without "just cause." The "just cause" standard has been universally accepted. It protects against arbitrary discipline. The proposal of the Union is unremarkable. As verbal and written reprimands are by their nature minor forms of discipline it is recommended that the just cause standard be applicable to all discipline but that verbal and written reprimands not be subject to the final step of the grievance procedure. Appeal of such discipline should stop at the third step of the grievance procedure.

Issue 5. Grievance Procedure

Position of the Union: The grievance procedure in the present agreement terminates in advisory arbitration. The Union seeks its replacement with binding arbitration. As the Union relates the history of advisory arbitration it has been dismal. Upon receipt of an award from an advisory arbitrator it has been disregarded by the City. Litigation often follows in the Court of Common Pleas. All of this costs money and time.

The Union points out that close to 100% of police departments in Ohio have binding arbitration in their agreements. (Data from SERB). There is nothing in Warrensville Heights to warrant an exception from the general pattern found throughout the State. As that is the case, the Union urges adoption of its proposal on this issue.

Position of the City: The City desires to retain the present system of advisory arbitration found in the Agreement. It asserts the system has functioned well.

Discussion: The position of the City is so unusual as to be unworthy of serious consideration. As pointed out by the Union, data from SERB indicate binding arbitration of grievances has been universally accepted in Ohio police departments. Further, the principle has been universally accepted in collective bargaining agreements throughout the United States. Data from the Bureau of Labor Statistics show that almost 100% of labor agreements in the United States provide for binding arbitration of grievances. The City cannot credibly assert that somehow its personnel decisions are always correct and always perceived as such by employees. It is recommended that the parties incorporate binding arbitration of grievances in the agreement. Panels of arbitrators should be secured from the Federal Mediation and Conciliation Service. The fee and expenses of the arbitrator

should be divided equally by the parties.

Issue 6. Premium Pay

Position of the Union: The Union has a multi-faceted proposal on this issue. It proposes that overtime would be due whenever officers double back. It also proposes an increase in court pay to four (4) hours for all assignments. Presently, for appearances in the Bedford Municipal Court officers receive 3.5 hours pay. For appearances in the Court of Common Pleas officers receive 4.0 hours pay. The Union argues this difference is inappropriate.

The Union points out that there is a historic problem with the payment of overtime pay to officers. On occasion the City has delayed payment for a period of time. It has also made partial payments. The Union is of the view that this situation has worked a hardship on officers.

Position of the City: The City proposes that the language resolving an Unfair Labor Practice on the issue of overtime payment be incorporated into the Agreement to resolve the issue of when overtime pay must be made. On all other aspects of this issue the City proposes no change in existing contract language. In its view, no change is warranted.

Discussion: No particularly good reason was advanced by the Union in support of its proposal for 4.0 hours court pay for all court appearances. At the hearing the City indicated that

appearances at municipal court are often very short. This was not contradicted by the Union. It does not appear that an increase in court pay is supportable.

Double backs are an endemic problem in law enforcement. They are an occupational fact of life in the industry. If an officer is subject to a double back he or she experiences disruption to family life. There may also be disruption of the biological clock. Premium payments for double backs are often seen in the industry. The following language is recommended to deal with double backs:

At any time when the starting times of shifts worked by an officer are less than twenty-four (24) hours apart, officers will receive one and one-half (1.5) times his or her starting rate for the second shift worked. A shift worked immediately following a report-back will not be considered a double back for purposes of this Section.

The Factfinder has examined numerous collective bargaining agreements from the public and private sectors on the question of when earned overtime is to be paid. Uniformly, they are silent. The Factfinder interprets this to indicate the practice is to pay overtime when earned. No reason was advanced by the City why payment should not be made promptly. It is recommended that the City pay overtime in the pay period following the pay period in which it is earned. The following language is recommended to deal with this situation:

The City will pay overtime pay in the pay period

following the pay period in which it was earned.

Issue 7. Vacations

Position of the Union: The Union proposes a faster rate of vacation accrual. It points out that employees covered by the agreement between the City and the Teamsters accrue vacation time more rapidly than employees of this bargaining unit. In the opinion of the Union, its rate of vacation accrual is substandard.

The Union also proposes that those bargaining unit members eligible for 12 weeks of vacation be permitted to take three weeks of them in cash.

Position of the City: The City proposes no change in the present system of vacation accrual and payment.

Discussion: It was not shown by the Union that the present formula for accruing vacation was substandard. Nor was any persuasive rationale presented for permitting cash payment for up to three weeks vacation advanced by the Union. No change is recommended on this issue.

Issue 8. Sick Leave

Position of the Union: The Union proposes to allow officers to accumulate up to 360 days of sick leave. In its opinion, there is no basis to limit sick leave when the pay out is capped as is the case in Warrensville Heights. The Union also proposes to extend the cash out provision to employees with

10 or more years of service who retires or otherwise separates from employment. The Agreement between the City and the Fire Department does not limit the benefit to employees who retire and the Union sees no reason why cash out should be restricted to retirees.

Position of the City: The City points out that the parties have reached agreement on some changes in the sick leave article. It proposes no other changes occur.

Discussion: The data indicate that police in Warrensville Heights have less available to them for sick leave benefit than do their counterparts in the Fire Department. There exists no tenable reason for this disparity. It is recommended that the cap on sick leave accumulation in Warrensville Heights be removed. It is also recommended that officers who separate from the department in a fashion other than retirement, eg. quit, be permitted to cash out sick leave. The language found in the Agreement between the City and the IAFF on this point is recommended to the parties.

Issue 9. Injury Leave

Position of the Union: The Union proposes to double the amount of injury leave available to 360 days. It asserts that amount is in line with what is seen in nearby communities.

Position of the City: The city urges no change in the number of injury leave days provided to police.

Discussion: Examination of Union Exhibit 4 dealing with injury leave does not provide support for the position of the Union. Some nearby jurisdictions provide more injury leave than does Warrensville Heights; some provide less. The amount found in the current Agreement is not out of line with what is seen in other communities. No change is recommended.

Issue 10. Compensation

Position of the Union: The Union proposes a "substantial" wage increase for police. It points out that Fire Fighters in Warrensville Heights receive more pay than police officers. The difference exceeds \$1,000.00 per year. No reason exists for such a differential according to the Union.

Comparison of total compensation, including longevity pay, among Southeast Cuyahoga County jurisdictions (Union Ex. 5) shows that with the exception of Seven Hills and Garfield Heights all exceed compensation paid to police in Warrensville Heights. In some cases the margins are significant. In 1995 all communities in the group urged by the Union as being comparable provided a larger wage increase to police than did Warrensville Heights. This exacerbated the already unfavorable standing of Warrensville Heights police vis-a-vis the counterparts in the area. In 1996 the lowest wage increase being shown in the region is three percent (3.0%). Given Warrensville Heights unfavorable standing the

City should provide greater than that the Union urges.

If attention is directed to cities contiguous to Warrensville Heights the comparison is even less favorable to the City. All pay more than does Warrensville Heights. The difference is substantial and widening as all contiguous communities made a greater wage increase in 1995 than did Warrensville Heights. (Union Ex. 5). There is simply no justifiable reason for the gap in compensation between Warrensville Heights and nearby communities the Union insists.

According to the Union the City has an ability to pay. The unencumbered balance in the General Fund has fluctuated widely. (Union Exhibits 9-12). It has been as low as \$314,641 on January 1, 1997 and as high as \$850,495 on January 1, 1995. No matter what the figure, the City has the resources to provide a wage increase to police the Union insists.

The Union points out that not only do police in Warrensville Heights receive less compensation than those in nearby communities, they work harder. Reference is had to the 1995 Uniform Crime Reports compiled by the Federal Bureau of Investigation. (FBI). Data for Warrensville Heights indicate a crime index greater than that of nearby communities. As police do more and are paid less than their nearby counterparts, the Union insists a "substantial" wage increase

is justified.

Position of the City: The City proposes there be no (0.00%) wage increase in the first year of the Agreement. It proposes a 1.5% increase in each succeeding year of the Contract. In support of this proposal the City raises the spectre of "inability to pay." It points out that measures of income (City Exhibits C 1 and 2) show low income compared to nearby communities. In recent years City income tax revenues have fluctuated. The peak was achieved in 1992 at \$7,167,000. Then, jobs were lost in the City as MorFlow closed and British Petroleum, Suburban and Brentwood Hospitals reduced employment. Income tax revenues then fell to \$6,595,000 in 1994. They have since rebounded to an estimated \$7,600,000 in 1997. The City is only now getting back to the fiscal condition it experienced in 1992. Hence, no wage increase is justified in the first year of the Agreement it asserts.

In 1997 the City has committed itself to certain capital expenditures. It spending \$200,000 for computer equipment. It is also spending funds for capital projects for the Mill Creek Culvert, a Vac All truck, for roads and for grant matching funds. It has a lease-purchase agreement for a Fire Pumper. These various commitments require a pause in wage increases according to the City.

Examination of compensation for police in Warrensville

Heights shows they have a good longevity plan. It is misleading to compare them to other communities on the basis of wages only. When including longevity the comparison is more favorable to Warrensville Heights officers. As that is the case, the City urges its proposal be adopted in its entirety.

Discussion: There is no doubt that police in Warrensville Heights are paid less than their counterparts in the southeast part of Cuyahoga County. No justification exists for this discrepancy. Should the City use electricity it pays the going rate. It did not get a reduction in the price of the Vac All by claiming an "inability to pay." If the City wishes to purchase goods and services it pays the going rate. It is not doing so in this instance. The City is paying police less than the going rate.

Data provided by the City show its income tax revenues expected to increase in 1996 and 1997. Against that background its proposal for a wage freeze, followed by a miniscule wage increase in the second and third year of the Agreement is insupportable. This is particularly the case when it is realized that Warrensville Heights police receive substandard pay. On the one hand, City revenues are rising, on the other, it proposes no wage increase for police officers in this bargaining unit. The City should not expect

this or any other neutral to sanction such a situation.

Examination of general wage increases made in the southeast section of Cuyahoga County for 1995 shows Warrensville Heights police received the smallest wage increase in the area. This exacerbated their already poor situation. Adoption of the City proposal would increase the adverse disparity between Warrensville Heights officers and others in the area. The City must make an effort to compensate its police fairly. To this end it is recommended there occur a four percent (4.0%) wage increase in each year of the Agreement. This figure is slightly above the going rate of wage increase. It is justified to make a start to remedy the poor pay of police relative to others in the region.

Issue 11. Longevity

Position of the Union: The Union proposes to include longevity pay in the base rate for purposes of computing overtime pay. This is required by the Fair Labor Standards Act according to it. It also proposes to adopt the longevity pay plan of the Fire Fighters which is more lucrative than is the plan found in the Police Department.

Position of the City: The City proposes no change in longevity pay.

Discussion: Longevity pay is an integral part of the pay of

police officers. Why should it be excluded from the wage base when computing overtime? The point made by the Union that the Fair Labor Standards Act requires inclusion of longevity pay when determining overtime pay was not refuted by the City. As that is the case the position of the Union on this part of the issue is recommended.

Examination of the data comparing Warrensville Heights police to their counterparts in the area with respect to longevity pay does not show it to be substandard. No change in the existing scheme of longevity pay is recommended.

Issue 12. Uniform Allowance

Position of the Union: The Union proposes to increase the clothing allowance to \$500.00 per year and \$600.00 for maintenance. That is the amount received by the Fire Fighters. No reason exists to treat police differently according to the Union

The Union further proposes that people who have been involuntarily terminated not be required to make payment back to the City for clothing.

Finally, the Union proposes that body armour be replaced by the City according to the manufacturer's recommended date. In the opinion of the Union this is a safety issue. Out-of-date body armour will afford less protection than that which is still up to the specification of the manufacturer.

Position of the City: The City proposes that body armour be used beyond the replacement date specified by the manufacturer. This is a cost item for the City.

The City has also proposed no change in the Agreement requiring reimbursement if an officer leaves City employ within two years of hire.

Discussion: It is difficult to believe the City is seriously proposing that body armour be used after its expiration date. We are, after all, dealing with people who are exposed to substantial hazards in the course of their daily tasks. They have reasonable expectations that the City will take steps to protect them as they go about their duties. To require officers to wear body armour beyond the date when reliable protection is furnished as certified by the manufacturer is unreasonable. The position of the Union on this issue is recommended.

It is clear the police receive well less than the Fire Fighters in uniform allowance and maintenance allowance. The proposal of the Union is excessive. It is recommended that \$500.00 be provided for uniform allowance and uniform maintenance.

No change is recommended in the obligation of employees who separate from the department to make reimbursement to the City for uniform.

Issue 13. Insurance

Position of the Union: Presently the City provides \$14,000 life insurance coverage. This is too low according to the Union. It proposes a "substantial" increase in coverage.

The Union also points out that other groups of City employees have dental and other health related insurance benefits that members of this bargaining unit do not have. No reason exists for the discrepancy according to the Union.

Position of the City: The City proposes some sort of premium payment to be made by employees. It is opposed to any expansion of benefits.

Discussion: Dental insurance is widespread in Ohio. The latest SERB Report (1996) indicates that 84% of respondents provide such coverage. There is an obvious practice in the State for such benefits to be provided employees. Other employees of the City have it. Why it should not be provided to members of this bargaining unit is not obvious. It is recommended that the same insurance benefits as are provided to dispatchers be provided to members of this bargaining unit.

Reference to the SERB data indicate that the Statewide average for life insurance is coverage of approximately \$25,000. That is recommended to the parties. Need for an increase is great when consideration is given to the hazards

attendant on police work. No other changes are recommended in insurance.

Issue 14. Layoff

Position of the Union: The Union seeks language in the Agreement that would prohibit the City from assigning bargaining unit work to civilians. There are police officers once in the employ of the City who have retired. The Union is concerned that they will return to City employ as civilians, perhaps to work as dispatchers. The Union views this situation as having the potential for eroding the bargaining unit.

Position of the City: The City has proposed language to permit performance of some work that is arguably administrative in nature by non-bargaining unit employees. In essence, it desires to codify what it represents to the Factfinder as being current practice.

Discussion: Neither party on this issue made a showing of need for change. No change is recommended in current contract language on this issue.

Issue 15. Scheduling

Position of the Union: There have historically been a great number of schedule changes on short notice in Warrensville Heights. Union Exhibit 7 shows this to be the case. Fifty-one percent (51%) of officers had their schedules changed at

least once in the past year. Officers have experienced short notice of change of schedules often. This is disruptive to domestic life. The Union seeks some sort of notice requirement.

The Union also proposes that the City be required to keep a minimum of six (6) people on the road at all times. This is a safety issue according to the Union.

Position of the City: As might be expected, the opposes all aspects of the Union proposal.

Discussion: Examination of the data presented in Union Exhibit 7 concerning change of schedule for officers indicates that schedule changes occur routinely. Such schedule changes are often on short notice. In order to deal with this situation it is recommended that schedules be posted four weeks in advance. It is also recommended that if schedules are changed within eight (8) hours of an officer's previously scheduled start time that he/she be compensated at time and one-half (1.5T) for the affected shift.

No minimum staffing requirement is recommended.

Issue 16, Duration

Position of the Union: The Union proposes any wage increase be retroactive to August 18, 1996. In order to deal with the problem of the Agreement expiring at an odd time it proposes the forthcoming Agreement end on December 31, 1998.

Position of the City: The City did not enunciate a position on this issue.

Discussion: Agreements in Warrensville Heights have been expiring in August since the start of time. Whatever difficulties this has posed have not been insurmountable for the parties: No change is recommended.

Summary of Award

Issue 1. Dues deduction, Fair Share Fee: Fair Share Fee is recommended.

Issue 2. Management Rights: No change is recommended.

Issue 3. Employee Rights: No language is recommended.

Issue 4. Discipline: Adopt "just cause" standard.

Issue 5. Grievance Procedure: Adopt binding arbitration.

Issue 6. Premium Pay: No change in court pay. Adopt suggested language on double backs and overtime payment.

Issue 7. Vacation: No change recommended.

Issue 8. Sick Leave: Remove cap on accumulation

Issue 9. Injury Leave: No change recommended.

Issue 10. Wage Increase: Three four percent (4.0%) wage increases recommended.

Issue 11. Longevity Pay: No change is recommended.

Issue 12. Uniform Allowance: Replace body armour per schedule established by manufacturer. Increase uniform allowance to \$500.00 per year each for uniform purchase and maintenance.

Issue 13. Insurance: Provide same insurance package to this bargaining unit as is provided to dispatchers. Increase life insurance coverage to \$25,000.

Issue 14. Layoff: No change recommended.

Issue 15. Schedules: Post schedules four weeks in advance. Pay one and one-half time (1.5T) if schedules are changed within eight hours of scheduled start time. No minimum manning recommended.

Issue 16. Duration: No change in calendar for Agreement expiration is recommended.

Note: The text is an integral part of this award.

Signed and dated this 14th day of February, 1997 at

Solon, OH.

Harry Graham
Harry Graham
Factfinder

Solon, OH.

Harry Graham
Harry Graham
Factfinder