

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

Jan 14 10 40 AM '98

In the Matter of Fact-Finding	*	
Between	*	<u>FINDINGS</u>
	*	<u>AND</u>
OHIO PATROLMEN'S	*	<u>RECOMMENDATIONS</u>
BENEVOLENT ASSOCIATION	*	
	*	Case No. 97-MED-10-1085
and	*	January 12, 1998
	*	
CITY OF EAST CLEVELAND,	*	Anna DuVal Smith
OHIO	*	Fact-Finder

Appearances

For the Ohio Patrolmen's Benevolent Association:

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I. BACKGROUND AND SUBMISSION

The Ohio Patrolmen's Benevolent Association (OPBA) represents approximately thirty-three (33) police patrolmen employed by the City of East Cleveland, Ohio. Its contract with the City expired on December 31, 1997, but was extended by mutual agreement, granting the Conciliator, if any, the authority to award retroactivity. The parties met twice during the month of December but were unable to reach an agreement on all issues. They therefore proceeded to fact-finding under §4117.14(C) O.R.C. The undersigned was appointed Fact-Finder pursuant to 4119-9-05(E) of the Ohio Administrative Code on December 12, 1997. Pre-hearing statements were timely filed. The Fact-Finder met with the parties on December 19, 1997, at East Cleveland City Hall, East Cleveland, Ohio, in an attempt to mediate the dispute. Determining such an effort would prove futile, the Fact-Finder convened an oral hearing at 9:30 a.m. for the purpose of making findings of fact and recommendations on all open issues in order to resolve the dispute. Present for the OPBA in addition to counsel were Nicholas Codrea, Jr. (OPBA Research Staff), Det. James H. Ruth, and Ptl. Vanderbilt Crutchfield. Chief Mitchell Guyton also testified for the OPBA and Sgt. Joseph M. Lucarelli was present as an observer. Present for the City in addition to counsel and Chief Guyton were Lt. Cmdr. David Dearden and Finance Director Gail Goodwin Smith. Scott H. Schooler, Esq., representing City Council, was also present as an observer. Five issues were presented: Compensation, Overtime Pay, On-Call Pay, Detective Pay, and Health Care. The parties were afforded a complete opportunity to examine witnesses, who were sworn, to present written evidence, and to argue their respective positions. The oral hearing concluded at

3:30 p.m., whereupon the record was closed, with the Fact-Finder directed to issue her report and recommendations on January 12, 1998.

In rendering this Report and Recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (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) 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.

II. INTRODUCTION

Inasmuch as the positions of the parties on the outstanding issues are best understood in the context of the present and historical financial condition of the City, that history bears some review here. The population of the City was about 33,000 in 1990. Sixty percent of the residents are on some form of government assistance and 45 percent live below the poverty line. In recent years, the top ten employers have been reducing their workforce, and new development has been in minimum-wage jobs. Half of the City's revenues come from income taxes, for which the rate is two percent with no credit. Foreclosures and tax delinquencies associated with the City's poor population have adversely affected property tax base and collections.

In 1988, the Auditor of the State of Ohio declared fiscal emergency conditions existed in the City. The City was accordingly placed under the oversight of a fiscal commission and financial supervisor. Plans were developed, financial and other controls established, notes were issued and accumulated unpaid obligations satisfied. However, declining revenues caused the City to order layoffs in 1994 for every department except the Fire Department, and take other measures such as asking residents to subsidize trash collection and adding \$6 per month per household water bill.

In this bleak picture there have been some glimmers of light. Grants, either 100% or with a 10% loan attached, have provided resources for some capital projects, such as street resurfacing. A recent school levy passed and, more notably for the current round of labor negotiations, the City made the final payment of \$487,000 to retire its debt consolidation loan in 1997. It expects to request that the fiscal emergency end in June of 1998.

III. POSITIONS OF THE PARTIES

The Position of the Union

Wages. OPBA does not contest the financial condition of the City, but points out that it is within sight of the end of its fiscal emergency. This comeback, which OPBA terms an "economic miracle," was achieved on the backs of City employees who suffered real wage losses though working harder over the years. The Union submits evidence to show that while the 1997 CPI-Urban is 129.87 percent of what it was in 1990, East Cleveland police wages in 1997 are only 123.61 percent of 1990's. East Cleveland patrol officers now earn only 67-72 percent of what is paid to their counterparts in eight other eastern Cuyahoga

County cities.¹ General wage increases across the state averaged 3.73 percent in 1997, compared to East Cleveland's 3 percent. Thus, while East Cleveland has never been a wage leader, its position relative to others has been eroding. The effects of this, contends the Union, are seen in very high turnover and the need of officers to work second jobs.

The OPBA argues that the unfavorable wage position of East Cleveland police is even worse when working conditions and productivity are taken into account. FBI crime statistics for 1994 as reported by *Police Beat* show East Cleveland leading the county in violent crimes per officer (11.1 compared to next-highest 4.4 for the City of Cleveland). In 1997, *Cleveland Magazine* reported East Cleveland with the highest total crime of 59 reporting northeast Ohio suburbs. East Cleveland's jail is the worst in Ohio and, despite grants for equipment and ammunition, cars, shotguns and firearm qualifying time is worse than in departments with whom East Cleveland police interact.

Neutral after neutral has recognized that East Cleveland employees are hardworking and underpaid; moreover, that there is a limit to how long this situation can continue. The OPBA maintains that limit has been reached. The time has come for the real pay increase the police deserve. The OPBA therefore seeks eight percent pay raises in each year of the three-year contract.

Detective Pay. In addition to the general wage increase of eight percent per year, the OPBA seeks an increase in detective pay from 45¢ per hour to 90¢. It argues this increase is reasonable and just, because of the extremely high per capita rate of homicides

¹Highland Heights, Beachwood, Euclid, Lyndhurst, Mayfield Heights, Pepper Pike, South Euclid and University Heights. Average of wages, longevity, shift and other compensation is \$36,084 at hire date, \$46,124 at 25 years.

in the City, long hours worked by detectives, on-call status for long periods of time, lack of a clothing allowance, and the greater scrutiny they are subject to compared to patrol officers.

Overtime. The current contract establishes overtime after 86 hours in any 14 day work period (Article 21.1). The Union proposes to reduce this to 80 hours, asserting that the City consistently overworks its officers and that the decrease is justified in light of the entire economic package.

On-Call Pay. The City operates the Police Department at its current staffing levels by having detectives and accident investigators on call when off duty. The current contract compensates them with compensatory time for being in an on-call status on their off days. The Union seeks a new provision to extend this compensation for on-call status to days when they are regularly scheduled to work:

Any Officer that is in on-call status for any part of a four (4) hour period on a day he is regularly scheduled to work shall receive one (1) hour of compensatory time to be paid at straight time.

The Union says being in an on-call status, fit for duty, is disruptive to their personal lives, they are subject to discipline if they fail to return to duty within an hour of being called, and the City can avoid this cost simply by not assigning officers to on-call status.

Health Care. Finally, the OPBA opposes any increase in employee health insurance contributions or deductibles, saying these give-backs are completely unjustified given the underpaid status of the officers.

Position of the City

Wages. The City submits that although it had a modest operating budget carryforward of a half-million dollars at the end of FY 1996, and expects to increase this to about \$804,000 in FY 1997, it has no reserves for emergencies. It needs to use this opportunity to build some surplus. The City agrees a modest wage increase for its employees is in order, but even the two percent per year provided for in its financial plan, when projected to the year 2002, places the City back in a serious financial position with growing deficits and a cash reserve of less than two percent of expenditures. The City recognizes the police are underpaid relative to those in other communities, as are all City employees, but if the OPBA and IAFF (which is seeking four percent per year) get what they are demanding, the City will face a deficit by the end of 1998. Indeed, without a new source of revenue, the City faces bankruptcy in the near future. The City thus argues that it lacks the ability and legal authority to pay the increases demanded by the OPBA.

The City further argues that six percent has been the traditional award for its three-year agreements. Its offer is consistent with the past, but includes for the first time a wage increase in the first year. It also points out that the patrol officers' contract has historically provided the pattern for the City's law enforcement package, but that they received an additional 1-1/2 percent in the last contract. The Fact-Finder thus needs to be aware that her recommendations have cost implications beyond that of the immediate bargaining unit. The City submits figures to show that an eight percent per year increase for three years costs \$362,623 over the City's proposal for the OPBA alone, adding another \$260,613 when the FOP contract is taken into account.

The City contends that it needs to divert more resources to other priorities. In absolute terms, East Cleveland Patrolmen pay has consistently been superior to other City employees and even the Mayor's. In this round of bargaining, the City is attempting to refocus in order to concentrate on increasing managerial accountability. Collective bargaining should not subordinate the City's mission to bargaining unit demands to maintain wage superiority.

Detective Pay. The City estimates that increasing the detective differential by 45¢ will cost an additional \$35,166 over three years, including overtime and impact on the FOP unit. By contrast with other OPBA demands, it concedes this is modest and can possibly be justified by the absence of a clothing allowance for these officers.

Overtime. The City rejects the OPBA's proposal to radically change the overtime definition by reducing its threshold from 86 to 80 hours, saying this will add \$77,960 to the cost of the Contract if two-percent raises are awarded, \$87,717 if eight-percent raises are awarded.

On-Call Pay. The City vigorously opposes the Union's request to extend on-call status compensatory time to days when an officer is regularly scheduled to work, estimating its cost over the life of the Contract to be \$182,516-\$206,200, depending on the general wage increase awarded, figures the City finds frightening.

Health Care. While the City agrees that a modest wage increase is in order, it points out that it has provided a very attractive self-funded health insurance package. Healthcare services are provided free at any of five Meridia hospitals, or on an 80/20 cost sharing basis through the Emerald Health Network. Employee monthly contributions are, in the City's

view, modest. It asks that employees increase their contribution, as is the trend elsewhere, in line with whatever wage increase they receive. If the Fact Finder recommends a modest wage increase, she should also recommend a modest increase in their contribution to hospitalization.

IV. FINDINGS AND RECOMMENDATIONS

The evidence establishes that the police have suffered a loss in buying power over the years as their wage increases have not kept up with inflation. The amount of the loss depends on which consumer price index is used, but is on the order of 5-6 percent.² The evidence also establishes that the East Cleveland police earn about thirty percent less than their counterparts in cities the Union offers as comparables and have to do more with fewer resources. The City's offer of two percent per year, while more generous than it has previously brought to factfinding because it contains a first-year increase, is not enough to redress the situation in either respect. To restore lost buying power, wage increases must not only recapture what was lost, but also keep pace with the current rate of inflation. To maintain relative wage position, increases must match the counterparts'. The City offer does neither. The Union's demand, however, is simply unreasonable under the circumstances. Rome was not rebuilt in a day, and neither will East Cleveland. Paying off the consolidation loan and soon being released from financial oversight does not mean the City is flush. The financial situation of the City in the past ten years has left it with many needs to be addressed, not just the police department's. Not only would the OPBA's

²Using an 11-month average for 1997 (latest reported month is November), the figure for the CPI-U is 5.8%, for CPI-W, 4.9%

demands short resources for other pressing needs, but it would put it back in financial crisis in short order. Moderation is called for on both sides. Just as the City asked its employees to share in the sacrifice of getting its financial house in order, it must now share the results of that sacrifice, doing what it can to prevent further erosion of buying power and begin to restore what was lost.

The Union has a number of ways to do that on the table. In my opinion, it is more important to get the base rate up for all than to spend limited resources on an expensive change in the calculation of overtime or on a change that affects a minority of the bargaining unit. Hiring additional officers will address the underlying problems to which these proposals appear to be targeted anyway. On the other hand, the proposed improvement in the detective differential is relatively modest in cost and justified by the workload and lack of clothing allowance. I therefore recommend a general wage increase of three percent in each year of the Agreement and an increase in detective pay by 45¢ per hour. This package is affordable and just. It makes up some of the lost buying power, is comparable to general wage increases in many other cities and costs only about \$41,000 more a year for both the OPBA and FOP than the City's offer (before overtime and benefits). The financial situation of the City precludes a faster rate of recovering what was lost in real wages unless the OPBA is willing to increase its contribution to health insurance. As to the City's proposal on that, I recommend no change with this wage package.

V. SUMMARY

<u>Issue</u>	<u>Recommendation</u>
Wages	3%-3%-3%
Detective Pay	Increase by \$.45 per hour.
Overtime	Current language
On-Call Pay (days regularly scheduled)	No provision
Health Care	Current language

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact-Finder

Cuyahoga County, Ohio
January 12, 1998