

FACT-FINDING REPORT

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OHIO STATE EMPLOYMENT RELATIONS BOARD (SERB)

Case No.: 99-MED-07-0637

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (OPBA)
FULL-TIME DISPATCHERS**

-AND-

CITY OF NORTHWOOD

Advocates: Marilyn Widman, Union
Eugene P. Nevada, Employer

Donald R. Burkholder, Ph.D., Fact-Finder

Hearing Date: Thursday, November 18, 1999

Mailed: Thursday, December 9, 1999

STATEMENT OF FACTS:

The Northwood Dispatchers unit and the City began the process of negotiations toward a first contract this past June. The bargaining unit of six members received SERB certification on July 15, 1999; their primary duties consist of radio and telecommunications, with secondary duties that are administrative and clerical. The Dispatchers are "civilian" employees in the sense that they are not sworn law enforcement officers. However, they are regarded by SERB as a strike-prohibited safety unit. The OPBA asserts that it did not receive any Employer counter-proposals until yesterday, November 19th. The Employer states the delay was valid inasmuch as the OPBA brought patrol officers to each negotiating session; the patrol officers' first contract is also being negotiated, and the employer asserted that their presence at negotiations for the Dispatch unit prevented counter-proposals because the Employer did not want any counter proposals to be used against it. Agreement was reached on the following articles prior to the day of the hearing.

Art. 3, Representation

Art. 8, Grievance Procedure

Art. 21, Trade Days Off

Art. 22, Unpaid Leaves of Absence

Art. 23, Other Employment While on Leave

Art. 25, Military Leave

Art. 33, Travel Allowance

Art. 34, Building Security

The unresolved issues are as follows:

Art. 4, Time Off for Union Business

Art. 9, Corrective Action

Art. 17, Hours of Work

Art. 18, Overtime

Art. 19, Sick Leave

Art. 20, Funeral Leave

Art. 26, Injury Leave

Art. 27, Uniforms

Art. 28, Holidays

Art. 29, Vacations

Art. 34, Meal Allowance

Art. 35, Compensation

Art. 36, Educational Allowance

Art. 37, Shift Bidding

Art. 40, Duration

The Hearing, conducted under SERB auspices [ORC 4117.14 (C)], was convened at approximately 10:15 a.m. In addition to the Advocates, as noted on the title page, those present were Arlene J. Kahl, Dispatcher and President of the unit; Charles Carter, Northwood City Administrator; and Patricia Bacon of the City's Human Resources Department.

The Fact-Finder suggested mediation at the beginning of the hearing. The Union was willing to attempt mediation. The Employer asserted that the differences in position were sufficiently great that the Fact-Finding should proceed, in view of the bargaining history, apparent stalemate, and the most constructive use of time. The Fact-Finder described the process, and stated that his objectives were to

determine the matters at issue as presented in the hearing, understand their history and development, review the comparables, propose language based upon overall equity after reviewing such considerations, and generally assist the parties in moving toward their initial bargaining agreement, under the guidance of Ohio legislation governing collective bargaining in the public sector. The Hearing began with Ms. Widman presenting the OPBA position on the issues, interspersed with testimony, and Mr. Nevada presenting the City position. The process was carried out in a relatively informal manner, with the OPBA asserting that the Dispatcher's current pay and working conditions were in drastic need of improvement, and the Employer expressing concern about the Union using the procedure to gain parity with the Patrol Officer unit, and perhaps to provide a wedge for improvement in the the OPBA's initial Northwood patrol officer agreement. The Employer advocate stressed the comparables, in some cases asserting the lack of comparables for dispatchers, and the City's financial condition.

Fact-Finder Recommendations

In cases where the language of a party is adopted/recommended with modification, the **modification is noted in bold type, such as this.**

Art. 4, Time Off for Union Business - Union

Provision of sufficient time for representation activity is especially crucial for a new bargaining unit. The Employer indicated that it could live with the University position "x x x only if the City has the ability to minimize the economic impact of unnecessary overtime", a factor which has been recognized in the relevant portions to follow

Art. 9, Corrective Action - Employer

The provisions of the Employer proposal are adequate to safeguard the rights of the employees. This language is the same wording found in the Patrol Officer agreement. The arbitrator is not persuaded of the necessity for the "Garrity warning" provision.

Art. 17, Hours of Work - Employer

The OPBA's request to limit management control over scheduling, aside from the Employer assertion that scheduling is not a mandatory subject of bargaining, plus the determination of, or limitations on, who is assigned to a specific shift is 1], overly restrictive in so small a unit, and 2] not appropriate given the overall circumstances.

Art. 18, Overtime - Employer

Sick leave is not included in overtime in the Police Patrol agreement. The amount of compensatory time sought by the OPBA ---240 hours --- would create an administrative nightmare, considering the size of the unit, and would be an unreasonable administrative and economic burden on the City.

Art. 19, Sick Leave - Employer

Fifteen of nineteen comparable cities have no incentive plan. The parties agreed during bargaining on language in 19.3 providing that "A male employee may request the Employer for the use of **five (5)** days sick leave x x x" [not ten days]. The size of the unit and the lack of convincing evidence otherwise justifies the Employer proposed language for 19.9. The Employer-proposed language is similar to

language on sick leave in the Patrol Officer contract, with the significant exception that Dispatchers are not certified law enforcement officers and therefore are covered by the Public Employees Retirement System (PERS) rather than the Police and Firefighters Disability Pension Fund (PFDPF),

Art. 20, Funeral Leave - Employer

The Union position would create substantial overtime, and would give Dispatchers greater rights than other City employees, including Patrol Officers.

Art. 26, Injury Leave - Employer [as modified/ ta'd in 26.1, eliminating
reference to vacation]

The problematic legal, administrative, and ethical implications of the OPBA proposal are overwhelming in their complexity.

Art. 27, Uniforms - Union

The OPBA proposal approximates present practice but is more specific in the listing of required items. The specificity should help to minimize misunderstandings.

Art. 28, Holidays - Union [modified]

The Union position is recommended inasmuch as no convincing justification was offered for denial of a benefit which is relatively common in one form or another in collective bargaining agreements both public and private. It is also provided in the Police Patrol agreement, but with **two personal leave days [not five]**, and two personal leave days are seen as equitable in this provision.

Art. 29, Vacation - Employer

The OPBA proposal on vacation days is not supported by comparables. The Employer proposal contains language similar to the existing Police Patrol and AFSCME agreements, and is equitable.

Art. 34, Meal Allowance - Employer

The Employer position a) provides parity with the Police agreement provision for meal allowance, b) is one dollar less than the AFSCME contract provision, and c) is therefore adequate and relatively equitable.

Art. 35, Compensation - Employer

The Union step proposal is not justified by the comparables. The Employer's Art. 35 c, adjustment to base, deals with and recognizes the extent of the equity factor asserted by the Union. The adjustment should be effective January 1, 2000.

Art. 36, Educational Allowance - Employer

The OPBA offered no comparables. The relevant provisions of the Police Patrol agreement are mirrored in the Employer proposal, and is reasonable and equitable.

Art. 37, Shift Bidding - Employer

The Employer position, i.e., no shift bidding provision, is recommended in view of the small size of the unit and the administrative complexity which would be necessary.

Art. 40, Duration - Employer

A recommended beginning date for the agreement of January 1, 2000, would minimize political problems in local government, and is consistent with the manner in which the Patrol Officer contract appears to have been initiated.

Conclusion/Comments

The Fact-Finder appreciates the professional, businesslike, and courteous contributions of the Employer and OPBA advocates, whose representation of the parties' respective interests was superb. The detailed and thorough contributions of Arlene Kahl, Charles Carter, and Patricia Bacon were especially helpful.

This Fact-Finding report is being transmitted to the parties' respective advocates by fax machine, and mailed in the overnight U. S. Postal Service Express mail to the parties and to SERB, today, Thursday, December 9, 1999. The parties requested that they receive this report by Friday, December 10th.

Donald R. Burkholder

 Donald R, Burkholder, Fact-Finder

December 9, 1999

 Date