

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2007 SEP -6 A 11: 54

September 4, 2007

In the Matter of the Conciliation Between

THE CITY OF BRECKSVILLE)

)

Case No.: 06-MED-07-1122 and
04-MED-07-1123

)

)

)

OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

)

)

APPEARANCES

For the City:

Gary C. Johnson, Esq.
Jerry Hruby

Attorney
Mayor

For the Union:

Mark J. Volcheck, Esq.
Pat Coleman

Attorney
Bargaining Committee

Conciliator:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the conciliation proceeding between the City of Brecksville (the "City") and the Ohio Patrolmen's Benevolent Association (the "Union"). The Union represents two bargaining units. One unit consists of approximately twenty-three (23) regular full-time Patrol Officers below the rank of Sergeant. The other unit consists of approximately five (5) full-time Sergeants. The terms of the parties' expired collective bargaining agreements covered the period from January 1, 2004 through December 31, 2006.

The parties engaged in a full evidentiary fact-finding hearing before Fact-Finder Harry Graham on February 28, 2007. Mr. Graham issued his recommendations on March 28, 2007. The Union accepted the Fact-finder's Report, but the City did not. The parties continued to negotiate, but were unable to reach a resolution of all issues.

Virginia Wallace-Curry was appointed conciliator in this matter on May 14, 2007, by the State Employment Relations Board. A conciliation hearing was held on July 27, 2007. The parties were given full opportunity to present their respective positions on the issues. The conciliation proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

The unresolved issues that were presented at conciliation were:

1. Article 18 - Overtime Pay
2. Article 22 - Sick Leave
3. Article 25 - Disability
4. Article 30- Compensation
5. Article 31 - Longevity
6. Article 32 - Miscellaneous
7. Article 35 - Insurance
8. Article 43 - Training
9. Article 47 - Duration

In deciding between the positions of the parties on the unresolved issues, consideration was given to the following criteria listed in Rule 4117-9-06(H) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interests 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedure in the public service or in private employment.

UNRESOLVED ISSUES

1. **ARTICLE 18 - Overtime Pay (Compensatory Time)**

The Union proposes the Fact-Finder's recommendations on this Article, which comports with the Union's proposals for Sections 6 and 7 of Article 18. These changes identify the practice of the department for approving when compensatory time may be used. It recognizes the right of the Department to deny use when such use would cause shift staffing to drop below three, thus necessitating overtime.

The City proposes to modify Section 7 to provide that compensatory time will not be

approved if there is insufficient staffing. Insufficient staffing is when the number of officers on a shift, including patrolmen and sergeants is less than three employees. The Fact-Finder's report purports to have non-bargaining unit employees, the Lieutenants and the Captains, make up part of three employees on a shift. However, these are executive officers that do not go out on patrol. The City also proposes that the Employer be given the right to require greater manpower than three when circumstances require an increased number of employees working.

AWARD

The Union's proposal to accept the Fact-Finder's recommendations on Section 5 (which is unchanged from the current contract language) and on Sections 6 and 7 is awarded. The language added to Sections 6 and 7 only codifies the current practice of the City to require a minimum of three employees per shift, including Lieutenants and Captains. The Mayor admitted that, although rare, Lieutenants and Captains have served as patrol officers on a shift. The City did not provide sufficient evidence to show that this practice should not be codified and is not workable. In addition, the City's proposal regarding requiring more than three employees on a shift "when circumstances require" is overly broad, and no support was given as to why this language is necessary. Therefore, Section 5 is to remain the same as current contract language and Sections 6 and 7 of Article 18 are to be modified as follows.

CONTRACT LANGUAGE – ARTICLE 18

Section 6. Compensatory time off will be with approval of the Chief in increments of not less than one hour, **subject to Section 7.**

Section 7. Compensatory time accumulation and use will be consistent with regulations contained in the Fair Labor Standards Act **except that use may be denied if use would cause shift staffing to drop below three (including in such count Captains, Lieutenants, Sergeants and Patrolmen.**

2. ARTICLE 22 – Sick Leave

The City proposes to reduce the annual buyout at one hundred percent (100%) of any sick leave accrued over one hundred twenty (120) days to seventy-five percent (75%) and allow sick leave to accrue to an unlimited amount with one-third (1/3) three hundred (300) days being paid on retirement, effective January 1, 2008. The practice of paying employees one hundred percent (100%) of their sick leave over one hundred twenty (120) days each year is abnormal and the cost has now increased to approximately one hundred eight thousand dollars (\$180,000) per year. This benefit will change for everyone in the City. It is totally inconsistent with the retirement buyout rate and encourages employees not to accumulate sick leave past one hundred twenty (120) days.

The Union proposes the Fact-Finder's recommendation which is to leave the sick leave language unchanged.

AWARD

The Union's proposal to maintain the current language, as recommended by the Fact-Finder, is awarded. As the Fact-Finder noted, just because this benefit is unique to the City does not require it to be altered in the manner proposed by the City. This benefit is extended to all City employees, and the Union sought and secured the codification of this benefit in the Agreement. The total cost of the benefit is \$180,000 with the Police Department, including non-bargaining unit personnel, being \$65,000. If the City finds it is excessive, it may choose to reduce the benefit for non-represented personnel. As is, the City has not proposed any consideration or benefit to the bargaining unit for altering this long-standing benefit. This City's

proposal to alter the benefit is rejected. There is to be no change to the contract language of Article 22.

3. ARTICLE 25 –Disability

The City proposes to maintain current contract language. The Fact-Finder’s recommendation accepted the Union’s proposal to eliminate the six day waiting period before disability pay is effective and the City’s original proposal to have a limit of disability leave to 90 days. However, few of the municipalities contiguous to the City have no waiting period for disability. Elimination of a waiting period would take away the City’s discretion and leave room for abuse of the leave. The City now has concluded that because there has been no problem with the existing provision, it is not necessary to modify current contract language.

The Union proposes following the Fact-Finder’s recommendation to eliminate the waiting period and place a 90 day limit on the duration of disability leave.

AWARD

The City’s position is recommended on this issue. Just looking at the comparable jurisdictions submitted by the Union, only 3¹ of the 12 cities cited have no waiting periods for any kind of on-the-job injury. The remaining nine jurisdictions have no waiting period for injuries sustained as a result of performing hazardous duties only. For non-hazardous duty injuries, either no injury leave pay is allowed² or the employee must use accumulated sick leave for 3, 5, 7 or 10 days.³ The current contract language of the parties’ Agreement on disability leave states: “Police personnel injured in the line of duty, due to the unique dangers inherent in their work, may be eligible for immediate disability leave.” Otherwise, employees may utilize

1 Mayfield Village, Lyndhurst and Beachwood.

2 Pepper Pike, Richmond, South Euclid, Shaker Heights, Mayfield Heights

accumulated sick leave for the first five days of absence due to an injury on the job. Although not as clear as the language cited in the other police contracts, it is essentially the same. For non-hazardous injuries, employees must use 5 days of accumulated sick leave and for injuries due to unique dangers of the work, immediate disability leave may be granted. This type of benefit is more common than immediate coverage of all on-the-job injuries, whether sustained while doing hazardous work or clerical work. Because the parties' language is not out of line with those in comparable jurisdictions, and the Union showed no compelling reason to change it, the current contract language should be maintained.

4. ARTICLE 30 – Compensation & ARTICLE 47 – Duration

The City seeks a two (2) year contract because the City's future costs and revenue are uncertain. The State of Ohio is reducing inheritance taxes, personal property taxes and other taxes without offsetting the loss in revenue to the cities. As a result, the City's income in these areas will probably be reduced, thereby requiring the City to cover increased costs with only its payroll tax. It is more prudent to have a two year contract until the future revenues can be more accurately determined.

As to wages for the two year contract, the City agrees to the 3.5% increase and retroactivity, along with the extra step. The three and one-half percent (3.5%) is a significant raise, especially when the average settlements are lower and the CPI has been less than three percent (3%) for several years.

The Union proposes the recommendation of the Fact-Finder, which is that wages be

increased across the board by 3.5%, effective January 1, 2007; 3.5% effective January 1, 2008 and 3.5%, effective January 1, 2009 for the Patrol Officers. The Fact-Finder also recommends adding a step prior to the top step to take effect January 1, 2008. He recommends that employees hired prior to said date be grandfathered under the old scale.

For Sergeants, the Union also proposes that Fact-Finder's recommendation to maintain the existing language that Sergeants be paid twelve percent (12%) greater than the base pay of the Patrolman Grade 1.

AWARD

The parties are in agreement as to the wage increase for Patrol Officers; the adding of a step prior to the top step for Patrol Officers; and maintaining the spread between Patrol's and Sergeant's wages. The only contention is the length of the Agreement. The City argues that a two year agreement is necessary so that it can better determine its future costs. However, at this late date, a two year agreement is just not practicable. It is nearly the end of the first year of the contract. To save resources, it would be more prudent to have the agreement last for three years. The City has historically negotiated three year contracts, and the City's finances are not so unstable that a three year contract would place the City in jeopardy. Therefore, the Union's proposal is awarded.

The contract shall be for three years, January 1, 2007 to December 31, 2009. Wages shall be increased by 3.5% for each year of the contract, retroactive to January 1, 2007. There shall be one additional step prior to the top added to the Patrol pay scale, effective January 1, 2008. Employees hired prior to that date will be grandfathered under the old pay scale.

CONTRACT LANGUAGE – ARTICLE 30

Patrol

For patrol officers hired prior to January 1, 2008:

Section 1. Effective January 1, 2007, the annual salary paid for full-time patrolman shall be as follows:

Patrolman Grade III	\$48,320.00/year
Patrolman Grade II	\$55,923.00/year
Patrolman Grade I	\$63,631.00/year

Section 2. Effective January 1, 2008, the annual salary paid for full-time patrolman shall be as follows:

Patrolman Grade III	\$50,011.00/year
Patrolman Grade II	\$57,880.00/year
Patrolman Grade I	\$65,858.00/year

Section 3. Effective January 1, 2009, the annual salary paid for full-time patrolman shall be as follows:

Patrolman Grade III	\$51,761.00/year
Patrolman Grade II	\$59,906.00/year
Patrolman Grade I	\$68,163.00/year

For patrol officers hired on or after January 1, 2008:

Section 1. Effective January 1, 2008, the annual salary paid for full-time patrolman shall be as follows:

Patrolman Grade IV	\$50,011.00/year
Patrolman Grade III	\$55,300.00/year
Patrolman Grade II	\$60,600.00/year
Patrolman Grade I	\$65,858.00/year

Section 2. Effective January 1, 2009, the annual salary paid for full-time patrolman shall be as follows:

Patrolman Grade IV	\$51,761.00/year
Patrolman Grade III	\$57,228.00/year
Patrolman Grade II	\$62,695.00/year
Patrolman Grade I	\$68,163.00/year

Sergeants

Section 1. Effective January 1, 2007, the annual salary paid for full-time Sergeants shall be twelve percent (12%) greater than the base of a Patrolman Grade I, to wit:

\$71,267.00/year

Section 2. Effective January 1, 2008, the annual salary paid for full-time Sergeants shall be twelve percent (12%) greater than the base of a Patrolman Grade I, to wit:

\$73,761.00/year

Section 3. Effective January 1, 2009, the annual salary paid for full-time Sergeants shall be twelve percent (12%) greater than the base of a Patrolman Grade I, to wit:

\$76,343.00/year

CONTRACT LANGUAGE- ARTICLE 47/45

Section 1. This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein shall become effective January 1, 2007 and shall remain in full force and effect until December 31, 2009. If either party desires to make any changes in the Agreement for a period subsequent to December 31, 2009, notice of such a desire shall be given prior to October 1, 2009.

5. ARTICLE 31 – Longevity

The Union proposes adopting the Fact-Finder's recommendation to increase longevity pay from \$125.00 to \$150.00, effective January 1, 2009, and the current \$10.42 payment referenced in Section 1 increased to \$12.00 the same date.

The City proposes maintaining the current contract language. The Fact-Finder awarded a twenty percent (20%) increase in longevity for no valid reason. The comparables clearly show this award to be excessive and not supportable.

AWARD

The Union's position, adopting the Fact-Finder's recommendation, is awarded. Although

the City's longevity pay is not out of line, the longevity payment has not been increased since 1998 when it was increased by \$5.00. The increase in longevity pay does not go into effect until 2009, the last year of the Agreement. Many other jurisdictions have other types of compensation, such as firearms proficiency, fitness pay or specialist premium, in addition to longevity. The City does not have these other types of compensation. The Fact-Finder's recommendation for an increase in longevity pay is not outrageous or excessive.

CONTRACT LANGUAGE – ARTICLE 31

Section 1. Effective January 1, 2007 – December 31, 2008, each employee shall be entitled to longevity pay as hereinafter provided. Each employee shall become eligible for longevity pay upon completion of at least 24 months continuous service on January 1 of any year. Upon establishing eligibility, each Employee shall receive, in addition to all other compensation, a longevity payment with each installment of regular pay, paid after January 1 of each year. The longevity payment shall be based on an annual rate of **One Hundred Twenty Five Dollars (\$125.00)** for each twelve (12) months of continuous service completed on January 1 of each year. Employees who have in excess of 24 months of continuous service at the time they become eligible for longevity payments shall receive, during the first year of said payments, longevity payments based on an annual rate of **Ten dollars and Forty-Two cents (\$10.42)** for each full month of continuous service completed at the time eligibility is established. On each January 1 thereafter, said Employees shall be entitled to an annual increase in longevity payments at **One Hundred and Twenty Five dollars (\$125.00)** annual rate provided herein. The maximum number of years of service credited to longevity shall be limited to thirty (30) years of service.

Section 2. Effective January 1, 2009, each employee shall be entitled to longevity pay as hereinafter provided. Each employee shall become eligible for longevity pay upon completion of at least 24 months continuous service on January 1 of any year. Upon establishing eligibility, each Employee shall receive, in addition to all other compensation, a longevity payment with each installment of regular pay, paid after January 1 of each year. The longevity payment shall be based on an annual rate of **One Hundred Fifty Dollars (\$150.00)** for each twelve (12) months of continuous service completed on January 1 of each year. Employees who have in excess of 24 months of continuous service at the time they become eligible for longevity payments shall receive, during the first year of said payments, longevity payments based on an annual rate of **Twelve Dollars (\$12.00)** for each full month of continuous service completed at the time eligibility is established. On each January 1 thereafter, said Employees shall be entitled to an annual increase in longevity payments at **One Hundred and Fifty Dollars (\$150.00)** annual rate provided herein. The maximum number of years of service credited to longevity shall be limited to thirty (30) years of service.

6. ARTICLE 32 – Miscellaneous

The Union proposes adopting the Fact-Finder's report which allows employees to use the Community Center upon payment of the same annual or per use fee as is made by the citizens of Brecksville. This would be for the use of the employee only, not the employee's family, if they are not citizens. The use of the recreation center promotes wellness and is a cost cutting measure for the City in lower health care costs. The current exercise room is inadequate. It is equipped with an old treadmill and free weights only. The Community Center has a larger range of fitness equipment such as running track, swimming pool, and weight machines.

The City argues that this is a non-mandatory subject of bargaining. It is at best a permissive subject and the City does not wish to bargain on this issue. The Community Center is for the use of taxpayers only and was not created in scope and size for all City employees.

AWARD

The position of the City is awarded. Employees will not be permitted use of the Community Center. Because this issue is arguably not a mandatory subject of bargaining and because the Brecksville, Ohio Code of Ordinances § 136.07 (b) permits annual membership to the Community Center for residents only, the Conciliator is reluctant to force the City to allow its non-resident police officers to join. However, it must be noted that it is very disingenuous of the City to complain about rising health care costs and the need to have officers fit for duty yet not allow the police officers to join as individuals and at a fee. The City has nothing to lose and much to gain if the officers choose to participate.

7. ARTICLE 35 – Insurance

The Union proposes adopting the Fact-Finder’s recommendations on health care. The changes proposed for the new plan, Option 1, has a \$100/\$200 deductible; a 90% coinsurance pay; higher out of pocket limits; a 90% pay for inpatient and outpatient services. The Fact-Finder recommended that the maximum employee contribution to health care premiums be \$60; \$70; and \$80, respectively for the three years of the contract, an increased from the current \$50. The recommended maximum payments for the City are \$350; \$400; and \$435 for single coverage and \$1,100; \$1200; and \$1250 for family coverage, over the three years of the Agreement.

The City agrees to the changes proposed in Option 1. The City proposes a different premium sharing plan, because it asserts that the Fact-Finder misunderstood the amount of the premiums the City and the employees currently pay. The City’s current health care premium for family coverage is \$825.00. Employees currently pay nothing toward their health care. The \$825.00 premium is well below the point at which employees would begin to pay a portion of their premiums. Raising the amount for which the employees would be responsible will never happen under this Agreement. The City proposes that employees pay any monthly increases over \$825 for family coverage and \$370 for single coverage, not to exceed \$50 per month. The cost of insurance is prohibitive. The Employer is experiencing rapid increases in premiums and needs some relief.

AWARD

The Union’s position is awarded. The City’s proposal would significantly increase the cost of health care for the employees. The changes made to the plan coverage under both the Union’s and the City’s proposal (Option 1) adds \$200 in deductibles; raises the out of pocket

limits from \$200 to \$500; and reduces coverage from 100% to 90% for inpatient and outpatient services. The City's proposal would have the employees potentially paying \$50 per month on top of these added costs if premiums sky-rocket, as the City asserts.

Although the City maintains that the current premiums are only \$825.00, it provided no documentation of this or projection on the costs for the future. If the City is indeed paying only \$825.00 per month for family coverage, its costs are well below the average for most jurisdictions. The costs generally run much higher, typically over \$1,000, according to the information submitted by the Union. The Fact-Finder's recommendation anticipates a rise in health care costs well above what the City is currently experiencing. If indeed the costs run that high, the employee will contribute to paying those costs. If premium costs stay the same, the City is no worse off than now, and it will experience a reduction in costs for the amounts that employees will be assuming in deductibles and co-pays.

CONTRACT LANGUAGE – ARTICLE 35

Section 1. Effective upon Execution of this agreement, the Employer shall provide the individual and family health care coverages and benefits per the terms herein and as identified as health care plan Option 1 in Exhibit A.

The Employer shall assume the following costs for each Employee's single or family coverage, which ever is applicable. For the costs of providing single coverage, the Employer shall pay the first \$350.00 per month in 2007, the first \$400.00 per month in 2008 and first \$435.00 per month in 2009. For the costs of providing family coverage, the Employer shall pay the first \$1,100.00 per month in 2007, the first \$1,200.00 per month in 2008 and the first \$1,250.00 per month in 2009.

Any costs in excess of these amounts associated with the provision of health insurance specified herein shall be the responsibility of the employee subject to the terms herein, for whom the single or family health insurance coverage is provided. In no event shall the costs to be paid by the employee under this section exceed \$60.00 pr month in 2007, \$70.00 per month in 2008 and \$80.00 per month in 2009. These employee costs shall be made by appropriate payroll deduction. Costs in excess of such employee monthly maximum amounts shall be paid by the Employer.

The terms of this section shall apply to all City employees who qualify for such benefits for the duration of this agreement.

Sections 2 through 4 maintain current contract language.

Section 5. The Employer reserves the right to change insurers in any and all matters of insurance covered by this Agreement. The benefits and coverages provided by this article shall not change for the duration of the agreement.

Exhibit A – Option 1

Insurer	Medical Mutual	
Plant Network	SuperMedPlus	
Network	<u>Network</u>	<u>Non-Network</u>
Deductible		
Individual	\$100	
Family	\$200	
Co-Insurance	90%	90% of UCR
Out-of-Pocket Limit		
Individual	\$250	\$500
Family	\$500	\$1,000
Individual Lifetime Max	\$2.5 Million	
Preventative Care	\$10 copay	90% of UCR
Office Visit	\$10 copay	90% of UCR
Inpatient Services	90%	90% of UCR
Outpatient Services	90%	90% of UCR
Urgent Care	\$10 copay	90% of UCR
Emergency Room Services	\$50 copay	
Prescription Drug Benefit		
Retail	80% with OOP at \$200/\$400	
Mail Order	80% with OOP at \$200/\$400	

8. ARTICLE 45/43 – Training

The City proposes that a clause be added to Article 45/43 stating that an overnight stay is required to receive payment for meals. The City argues that the Fact-Finder erred in rejecting the City’s position. He erroneously believed that the present contract provides for a lunch payment if

an employee is out on training, even if the employee stays in Cuyahoga County and is back at the Department at 4:00 p.m. This was not the intention of the language. The City proposes adding the clause to clarify its policy.

The Union argues that the City's proposal conflicts with the practice of the department and with Article 23, Section 1, Expense Allowance. The City's proposal was rejected by the Fact-Finder and the Union urges its rejection by the Conciliator. The Union's proposal is that employees who are required to be outside the City of Brecksville for the majority of their shift for any official duty, including training, shall be reimbursed up to \$15.00 for lunch and \$20.00 for dinner. This language should be included under Article 23, Expense Allowance, and Article 45, Training/Schooling. The Union's proposal comports with the practice of the Department in permitting reimbursement of meals in such circumstances and constitutes a reasonable reimbursement rate.

AWARD

The City's position is awarded. Article 45/43, Section 2 of the Agreement states: "All costs associated with such training (fees, tuition, supplies, and *room and board*) shall be paid for by the Employer." (Emphasis added.) The words "room and board" are separated from the other expenses by an "and" and are to be considered as one expense item. Therefore, board (i.e., meals) will be paid only when a room is required. The practice of the Police Chief paying for meals when employees engaged in practice shooting at the rifle range was not required by the Agreement. The position of the Union to require that lunch and dinner meals be paid by the City, even if the training is only one day without an overnight stay, goes beyond the practice of the Chief to pay for lunches at the firing range. Because the Conciliator must choose between the

two proposals, the City's proposal is chosen because it more accurately reflects the current contract language and intent. The Union's position would be adding a new benefit not previously contemplated by the parties.

CONTRACT LANGUAGE – Article 45/43, Section 2

All costs associated with such training (fees, tuition, supplies, and room and board) shall be paid for by the Employer. **No meals will be paid without an overnight stay.**

Submitted by: 
Virginia Wallace-Curry, Conciliator

September 4, 2007
Cuyahoga County, OH


CERTIFICATE OF SERVICE

This is to certify that a true copy of the Conciliation Award for the City of Brecksville, Ohio and the Ohio Patrolmen's Benevolent Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, September 4, 2007. The Conciliation Award was served upon:

Mark J. Volcheck, Esq.
Ohio Patrolmen's Benevolent Association
P.O. Box 338003
10147 Royalton Rd. Ste. J
North Royalton, OH 44133

Gary C. Johnson, Esq.
Johnson & Colaluca, LLC
1001 Lakeside Ave.
1700 North Point Tower
Cleveland, OH 44114

Mr. Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213


Virginia Wallace-Curry, Conciliator