

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

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COLUMBUS, OHIO
SEP 26 1996

In the Matter of Conciliation	*	
Between	*	
	*	<u>AWARD</u>
OHIO PATROLMEN'S	*	
BENEVOLENT ASSOCIATION	*	Case No. 95-MED-10-0962
	*	
and	*	September 26, 1996
	*	Anna DuVal Smith
CITY OF BROOK PARK, OHIO	*	Conciliator

Appearances

For the Ohio Patrolmen's Benevolent Association:

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For the City of Brook Park:

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I. BACKGROUND AND SUBMISSION

The Ohio Patrolmen's Benevolent Association represents all dispatcher/clerks of the Brook Park Police Department, presently numbering nine. Its contract with the City expired December 31, 1995 but was indefinitely extended on November 24, 1995 by mutual agreement while negotiations progressed. Wages and other economic issues were agreed to be retroactive to January 1, 1996. Negotiations failed to produce an agreement, so the parties proceeded to fact-finding under §4117.14(C) O.R.C. A fact-finding report with recommendations on seven issues was issued July 23, 1996. Following rejection by both parties, conciliation was ordered pursuant to §4117.14(D) on August 8 with appointment of the undersigned as Conciliator on August 14 to resolve the dispute by awarding the final offer of one party or the other on the outstanding issues. The parties mutually agreed to waive exchange of pre-hearing statements until the day of the hearing and a hearing was scheduled for September 5 in Brook Park City Hall. Meeting with the advocates on that date, the Conciliator determined mediation efforts would prove fruitless, so convened a hearing at 9:30 a.m. Present for the Union in addition to Counsel were Mary Lou Dunn and Allyson Thomas, both dispatcher/clerks. Present for the City were Commissioner of Human Resources Eileen McNamara and Chief of Police Thomas Dease. Seven issues were presented: Duty Hours, Holidays, Compensation, Clothing Allowance, Compensatory Time, Minimum Staffing, and Citizen Complaints. The parties were afforded a complete opportunity to present oral and written evidence and to argue their respective positions. The hearing concluded at 10:45 a.m., whereupon the record was closed. In rendering this Award, the Conciliator has given full consideration to all reliable information relevant to

the issues and to all criteria specified in §4117.14(G)(7) and Rule 4117-9-06 (H) 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

II. POSITIONS OF THE PARTIES

Staffing and Time Off Issues

The Union takes the position that the nature of the job and the traditional understaffing of the department places these dispatcher/clerks under an unusual amount of job stress. It is a 24-hour, 365-day operation during which they must handle three 9-1-1 and both emergency and nonemergency lines. On weekends they also take service department calls. Because of understaffing they frequently work eight hours straight without a lunch break, and even if they do take a break they must be available to return to their post. While on duty, they must routinely deal with frightened or otherwise emotional citizens in emergency situations. As the link between the community and safety officers, they play a critical role in the safety of both (Union Ex. 5). For these reasons, the Union seeks increases in time off, a reduction in job duties, and a provision for minimum staffing.

The City has an entirely different view of the underlying issues. First, it argues that a common issue running through all the Union's proposals is that granting any of them would disrupt the City's relationship with its other bargaining units because it would break patterns established throughout the City. It asks the Conciliator to honor long-established parity with other employees. Beyond this argument, the City contends that compensatory time in lieu of overtime pay is fiscally irresponsible as it shifts obligations to the future where the City's fiscal position is uncertain. The City believes in paying its obligations as they occur. An additional reason for opposing the compensatory and other time-off proposals is that time off increases labor costs through overtime or additional employees. Finally, the City opposes the Union's staffing demands as representing incursions into absolute management rights.

Article VIII -- Duty Hours

The issue here is compensation for dispatcher/clerks who regularly rotate shifts with eight hours or less between them. The Union's final offer is that they receive sixteen hours per year in compensatory time, or pay at time and one-half as a bonus. The City's final offer, which was the recommendation of the Fact-Finder, is that they receive sixteen hours per year at time and one-half as a bonus, but no compensatory time for the reasons given above.

Article XI -- Holidays

The Union seeks eight personal hours per year. It also wants double time pay for employees working overtime on a holiday and for those working a holiday which is also their birthday. It says the additional time is warranted because of the stress of the job and points

out that Brook Park is near the bottom of comparison communities in number of holidays/personal days (Union Ex. 1). It further argues that providing four more hours a year will not be burdensome to the City. Regarding the double-time pay requests, the Union says understaffing creates hardships for the unit and offers several examples. One dispatcher once worked twelve hours on Christmas Day, another had to work every holiday in a year, and three dispatchers occasionally must work on a holiday-birthday.

The City's final offer is to maintain current contract language of four hours of personal time and time and one-half for all holidays worked. It points out that all other units have four hours of personal leave and none of the City's other 24-hour, 365-day units get double time for holidays worked. In its view, double time is inappropriate as those working the holiday already receive the 1-1/2 rate plus a day off on another date.

New Article -- Compensatory Time

The Union seeks the option of compensatory time in lieu of overtime compensation, but proposes that the accumulation be capped at 80 hours, with the excess paid at year end. It says this system is commensurate with what the police have and has worked well for them. It is a key issue for the bargaining unit which needs it to deal with family matters and emergencies. The Union claims that if awarded, it will have no economic impact on the City even if the bank is held to retirement.

The City opposes the practice of granting compensation time. This benefit was eliminated in the recently concluded contract with the firefighters and the issue is on the table in the police negotiations. No other Brook Park employees have it and only five of 20 Cuyahoga County suburbs do (City Ex. H). Moreover, says the City, it is inappropriate

where, as here, employees work an average week of 36.9 hours when holidays and vacations are factored in.

New Article -- Minimum Staffing

The Union proposes that there be a minimum staffing requirement of two dispatcher/clerks per shift. It says this is important because it relates to breaks and lunches, overall stress levels and safety. In support, the Union submits the NFPA standard of one operator for 600 or more calls per year (Union Ex. 6), claiming Brook Park's dispatchers handle three or four times that many. The requested minimum staffing has been promised, but never put in writing. The Union says the promise should be fulfilled before a tragedy happens.

The City vigorously asserts its right to determine effective manning of the department. It claims there is generally good staffing during peak hours and that the Union's evidence is merely anecdotal. The City agrees the Union's idea of a supervisor is a good one, but rests on its rights as established in §4117.08(C) O.R.C. and Article III §1 of the Collective Bargaining Agreement.

New Article -- Citizen Reports

The Union wants to end the practice of dispatcher/clerks taking citizen reports at the station. It says the issue here is one of expertise. Dispatchers are not police officers. Angry citizens add to the stress level. It also submits that police officers are generally available within a reasonable time to take citizen reports, so there is no need for dispatchers to perform these duties.

The City is opposed, arguing that taking complaints is a function of the job and asserting that assignment of duties is at the core of management rights.

Economic Issues

Article XII -- Compensation

The Union's final offer is 7 percent (retroactive to January 1, 1996), 4 percent in 1997, and 4 percent in 1998. It argues that Brook Park's wage position remains unfavorable compared to other communities. While admitting that much progress was made in the last contract, the dispatchers deserve a higher increase than other employees received because traditionally they have lagged far behind neighboring cities. The Union submits comparative wage/longevity data to demonstrate that the City's offer keeps this unit near the bottom of selected suburban cities in the Cleveland metropolitan area while the Union's offer, which is close to the Fact-Finder's recommendation, moves it towards the middle (Union Ex. 2).

A side issue further justifying the Union's position is the City's residency requirement for employees hired after 1989. Demographic data for the City show dispatchers in the bottom 20 percent of household income, and the cost of housing high enough to make Brook Park dispatchers life-time renters (Union Ex. 3). This is a cause of turnover and poor ability to attract good people. Barring effective political action to change the requirement, the remedy is money.

Finally, the Union argues the City is financially sound and the dispatchers are not a large part of the budget. The cost of its proposal is modest, says the Union, being approximately \$15,000 for the nine dispatchers.

The City proposes 4%-3%-3%, which is what the firefighters won in their recent negotiations. To grant the Union's request would break parity within the City and be disruptive to bargaining. The dispatchers were awarded a higher pay increase than other employees in the last round of negotiations because they were underpaid relative to dispatchers elsewhere. This is no longer the case. In terms of both starting and top salaries, Brook Park is above both the mean and median of other Cuyahoga County and neighboring cities (City Ex. D-G), claims the City in a challenge to the Union's choice of comparable communities. It also points out that dispatcher salaries compare favorably to average per capita income in the City (Union Ex. 3). Although the City does not make an inability-to-pay argument, it says demographics (Union Ex. 3) reveal a mature, shrinking community. This, plus recently announced layoffs by a major employer (City Ex. C) calls for moderation in the City's labor costs.

Article XIV -- Clothing Allowance

The Union's final offer, which was also the Fact-Finder's recommendation, is an increase to \$600 annually, \$300 through City purchase orders and \$300 for clothing maintenance, the latter of which to be payable in equal installments on July 1 and December 1 each year, as is the practice with the police officers. The Union claims this is warranted because there is no built-in annual increase so the last contract's allowance was constant over the three-year period. The dispatchers are also due this increase for equity reasons. Police now get \$600 and are seeking an increase, while the firefighters' benefit is \$750. \$600 is not excessive, argues the Union, when one looks at the price of uniforms and what dispatchers elsewhere receive (Union Ex. 4).

The City wishes to maintain the current benefit of \$400, which it says is generous, placing Brook Park at sixth of eighteen in Cuyahoga County suburbs and second of neighboring cities (City Ex. H). Raising the clothing allowance would change the rank order and break parity with the other units, which have not received an increase. The City also believes an allowance as large as police and fire is unwarranted because dispatchers' uniforms do not suffer the same wear and tear, being worn only inside the station.

III. OPINION OF THE CONCILIATOR

The job of dispatcher is inherently stressful because lives and property are at stake and the public with whom dispatchers must deal are frequently distraught. To the extent that workflow is beyond the employee's control and unevenly paced, and that dispatchers work alone, this would add more stress. However, the solution is not additional time off because this only aggravates the problem, causing either more hours of single coverage or more overtime, increasing the stress on the on-duty employee. The Union's proposals for more time off must be rejected for another reason as well. This neutral subscribes to the appellate view of conciliation under which a fact-finder's recommendation will not be disturbed unless clear error is found or new evidence leads to a different result. In other words, conciliation is not just another role of the dice. In this case on these issues, I find no such grounds for overturning the Fact-Finder's recommendations, which rested on findings of internal and (to some extent) external parity and past agreements and practice.

A more effective solution to the problem of stress is to provide enough staff to control overtime and allow for breaks. However, there is some dispute over whether staffing is presently adequate which cannot be resolved on the evidence provided. The

Union gave some examples, but nothing to refute the City's claim that there is generally good coverage during peak periods and that the examples were merely anecdotes rather than indicative of a pattern. In addition, it would appear that the City recognizes that providing a supervisor will address at least some of the Union's concerns. Thus, although as with the time off issues I am unable to overturn the Fact-Finder's recommendations on staffing and job duties, I nevertheless urge the City to investigate what the Union says is a potentially serious problem and make such adjustments as warranted by its findings. In sum, I award the City's final offers, which are also the Fact-Finder's recommendations, on duty hours, holidays, compensatory time, minimum staffing and citizen complaints.

Turning now to the economic issues, the Fact-Finder rested his recommendation on his finding that Brook Park dispatcher wages are not comparable to those in surrounding communities. The data submitted to this neutral do not show that to be the case. The eleven cities chosen by the Union as comparable to Brook Park include six suburbs noncontiguous to Brook Park to the east of Cleveland, four of which have higher starting salaries (Bedford, Lyndhurst, Shaker Heights, and Maple Heights). The Union's list also excludes a number of more nearly surrounding suburbs such as Olmsted Falls and Strongsville, both of which have lower starting salaries than Brook Park's. No justification for including the higher paying eastern suburbs was provided, such as similar size or economy. When eastern suburbs are excluded, Brook Park's position relative to its true neighbors is much more favorable, ranking second in a list of six after applying the City's proposed increase to the starting wage, and fourth of the six for a ten-year employee. Without knowing what Olmsted Falls and Strongsville's longevity payments are, it is difficult

to say what their position would be, but both their starting and top salaries are lower than what the City proposes for its own dispatchers. Thus, even though the City does not include longevity in its calculations, and uses top salary (which can represent many different lengths of service), its contention that Brook Park's dispatcher wages are now on a par with the neighboring communities is substantially correct. In light of this, there is no reason to treat the dispatchers any differently than other City employees. The City's final offer of 4%-3%-3%, retroactive to January 1, 1996 is awarded.

I have no such difficulty with the Fact-Finder's analysis of the uniform allowance. Although the Union again reaches to the eastern suburbs, the Fact-Finder was persuaded by internal comparisons. I therefore endorse and order the Union's final offer, which is the Fact-Finder's recommendation.

IV. AWARD

<u>Issue</u>	<u>Position Awarded</u>
Duty Hours	Employer
Holidays	Employer
Compensatory Time	Employer
Minimum Staffing	Employer
Citizen Reports	Employer
Compensation	Employer
Clothing Allowance	Union

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Conciliator

Cuyahoga County, Ohio
September 26, 1996
SERB336