

STATE EMPLOYMENT
RELATIONS BOARD

Feb 13 1 15 PM '97

In the Matter of Conciliation *

Between *

Fraternal Order of Police-
Ohio Labor Council *

and *

The City of Warrensville Heights,
OH. *

SERB Case Numbers:

96-MED-05-0508, 0509,
0510

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

Rich Grochowski
Staff Representative
Fraternal Order of Police-Ohio Labor Council
807 Falls Ave.
Cuyahoga Falls, OH. 44221

For City of Warrensville Heights, OH.

John T. Meredith
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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 argument and
evidence. The record in this case was closed at the
conclusion of the hearing on January 23, 1997.

Background: There are three bargaining units involved in this
proceeding. These constitute police sergeants, police

lieutenants and police dispatchers all of whom work in the Police Department of Warrensville Heights, OH. Prior to the hearing in this case there occurred a Factfinding proceeding. The report of Factfinder Charles Adamson was rejected by the City.

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

1. Bargaining Unit Work
2. Association Representation
3. Grievance Procedure
4. Premium Pays
5. Compensation
6. Uniform Allowance
7. Insurance
8. Duration

Issue 1, Bargaining Unit Work

Position of the Union: The Union proposes that bargaining unit work be performed by members of the bargaining unit and that non-bargaining unit members not displace members of the bargaining unit. (Found at Tab 2 of Union presentation). This proposal is made in response to the action of the Employer to hire part-time patrol officers (Un. Ex. 8) and the employment of civilians as clerks in the Police Department. The Union is fearful that civilian personnel and part-time employees may come to displace full-time, career law enforcement personnel in the City.

Position of the City: Factfinder Adamson came to consider this issue as part of his report. He made a detailed

recommendation and incorporated specific language implementing it. (Factfinder report, p.5). The Union accepted the report of the Factfinder. His recommendation on this issue is acceptable to the City. Hence, it should be awarded by the Arbitrator it asserts.

Discussion: Acceptance by the Union of the Factfinder's report is an unreliable guide for action in this matter. That report was rejected by the City as Factfinder Adamson's wage increase recommendation was unacceptable to it. The Union accepted the report as it found the recommendation on wages to be satisfactory. Other aspects of the report, eg. bargaining unit work, were unpalatable to the Union. The report of the Factfinder sanctions the employment of civilians to work in the Police Department "even if such work historically has been performed by bargaining unit members." That is an open-ended invitation to the Employer to erode the bargaining unit composed of career law-enforcement personnel. To find such language in an agreement is unusual. Preservation of bargaining unit work is an essential part of the activity of the Union. Were the proposal of the City to be awarded it would be able to substantially alter the character of work performed by members of these bargaining units. Absent agreement, the City should not expect such a dramatic alteration in the terms and conditions of employees

duties to be awarded by a neutral. The position of the Union on this issue is awarded.

Issue 2. Association Representation

Position of the Union: The Agreement presently provides for one Union delegate to receive time off to attend seminars and one union convention per year. Up to two work days per year are allotted to this function. The Union proposes to expand eligibility for this benefit to a delegate and alternate and to increase the amount of time from 16 to 60 hours per year. It also allows carry-over of unexpended time in its proposal. Adoption of this proposal would put the police and fire fighters in Warrensville Heights in an equal position on this matter. Further, either deliberately or inadvertently, the Factfinder's recommendation reduced the time off for union business. As noted below, that recommendation is embraced by the City. It is regressive. Hence, its position on this issue should be awarded the Union asserts.

Position of the City: The City adopts the recommendation of the Factfinder.

Discussion: There is an obvious chasm between the positions of the parties on this issue. The proposal of the Factfinder, adopted by the City, is very unpalatable. It is regressive. It reduces a benefit for no apparent reason. On the other hand, the proposal of the Union contemplates a vast expansion

of time available for Union business. It is wildly excessive. Were the Arbitrator free to award something other than the position of one or the other of the parties that would be done. Straight-jacketed as is the neutral by the procedure required by law, the marginally less unacceptable position of the Employer than that of the Union is awarded on this issue.

Issue 3. Grievance Procedure

Position of the Union: There is presently a system of advisory arbitration of grievances in the Agreement. The Union proposes it be altered to a conventional grievance arbitration procedure. The decision of the arbitrator would be binding on the parties. Under the proposal of the Union a list of possible arbitrators would be secured from the Federal Mediation and Conciliation Service and the normal striking procedure would occur to select a neutral.

In support of this proposal the Union points out that among all police departments in Ohio, 97% have grievance arbitration, in all City police departments in Ohio, 96% have grievance arbitration and in Cuyahoga County, 95% of City police departments have binding arbitration of grievances. No reason exists for Warrensville Heights to depart from the normal, well-accepted practice in the opinion of the Union.

Position of the City: The City is "philosophically opposed" to binding grievance arbitration. There have been few

disputes. It does not see the need for this item in the Agreement.

Discussion: The philosophical objection of the City is irrelevant. Henry Ford, Tom Girdler and Walter Kohler were opposed as well. Yet, their firms came to include it in their Agreements and they have survived. The data presented on this issue by the Union are overwhelming. They indicate beyond susceptibility of doubt that grievance arbitration is commonplace in police departments in Ohio. Those departments are continuing to function. There is no conceivable reason to embrace the position of the City. The position of the Union is awarded in its entirety.

Issue 4. Premium Pays

Position of the Union: This issue has several parts to it. The Union urges inclusion of a new section in the Agreement calling for overtime to be paid no later than the pay period in which it was earned. The City has delayed payment for substantial periods in the past as the Union relates the history. On occasion, partial payment, rather than full payment of overtime has been made. The Factfinder addressed this language and made a recommendation that was ambiguous from the Union viewpoint.

The second element of the Union proposal is concerned with premium pay to officers in the Accident Investigation

Unit, the Motorcycle Unit, the K-9 Officer, DARE Officers, Shift Commanders and Assistant Shift Commanders. The Union proposes they receive annual payments of \$600.00, payable in monthly increments of \$50.00. Presently, the payment is made only to members of the Motorcycle Unit, the Accident Investigation Union and the K-9 officer. It is \$480.00 per year. The Union also urges that officers who qualify with the firearm be paid qualification pay of \$1,000.00 per year.

In support of this proposal the Union points out that Fire Fighters can become eligible for up to \$3,340.00 annually in various pay supplements. Further, proficiency pay is becoming accepted in the region. The range of such payments is quite large: eg. Rocky River pays 8 hours pay. Euclid pays \$3640.00 per year. Other communities fall within these limits.

The Union points out that Jailer/Dispatchers who have been certified as jailers receive \$600.00 per year in recognition of their certification. Those Jailer/Dispatchers trained as 911 operators should also receive \$600.00 in recognition of their proficiency the Union urges.

Position of the City: The City rejects all proposals of the Union in this issue. It embraces the proposal of the Factfinder which calls for the City to make "every reasonable effort to pay overtime by the last pay period following the

month in which the overtime is worked." In the opinion of the City that language provides sufficient force to require it to make overtime payment in timely fashion.

Discussion: The difficulty confronting the Conciliator on this issue is that these issues are presented together. That is, conceptually they are one. The proposal of the Union for \$1000.00 proficiency pay is above that being seen in the area. Only Euclid would be above Warrensville Heights. To go from zero (\$0.00) to the top rank on a new benefit should not be expected. The Union is correct to point out that the phraseology suggested by the Factfinder is weak. Given the two positions from which the neutral must select it is less bad than the proposal of the Union. The position of the Employer is awarded on this issue.

Issue 5. Compensation

Position of the Union: The Union proposes there be a twelve percent (12%) rank differential between the first class patrol officer and a sergeant. There should also be a twelve percent (12%) wage differential between the sergeant and a lieutenant. The differentials between a sergeant and detective sergeant and a sergeant and a juvenile sergeant would remain the same under its proposal. For jailer/dispatchers, the Union proposes wage increases as follows:

1/1/97, 3.5%
8/17/97, 3.5%
8/17/98, 3.5%

In support of its proposal the Union points out that the wage differential between ranks is low in Warrensville Heights compared to the average in Cuyahoga County. The difference is substantial, over two percent (2.0%) for the Sergeant and police officer. Examination of the differential between Lieutenants and Sergeants shows it 3.55% below the County average.

The traditional standard of comparison supports the position of the Union without reservation it claims. Thus, according to data from the State Employment Relations Board the County-wide average for a Police Sergeant is \$44,398 for the top level sergeant in Cuyahoga County. The analogous figure for Warrensville Heights is \$41,987. (Union Exhibit 8). For the top level lieutenant in Warrensville Heights the pay is \$45,009 according to SERB. The county-wide average is \$49,461. Dispatchers in Warrensville Heights earn about \$3.5 thousand below others in the County at the entry level. They are above average at the top but there is only one person there.

With respect to its proposed wage differential for sergeants and lieutenants the Union is standing on the recommendation of the Factfinder. He recommended three 3.0%

wage increases for the dispatchers. The Union proposal is only slightly above the recommendation of the Factfinder.

According to the Union the City can afford its proposal. In September 1995 Factfinder Nels Nelson determined that the City accounts and estimates of revenue understated its resources. Then, as now, the City proposed a wage freeze. It was rejected by the Factfinder. That should be the case now as well according to the Union. In fact, the City is doing well financially. According to the Cleveland Plain Dealer of July 17, 1996 the City is experiencing a "boomlet." (Union Ex. 6). New construction and jobs are coming. The City cannot make a credible argument concerning its "inability to pay" in the Union's view. To the contrary, it has an ability to pay. For those reasons, the Union urges an award in its favor on this issue.

Position of the City: The City proposes a wage freeze (0.0% increase) for the contract year August 18, 1996 - August 17, 1997. For the next two years of the agreement it proposes a 2.5% wage increase in each year. The City rejects the wage differential concept proposed by the Factfinder. In its opinion it would divide the Department.

The position of the City is based on a claim of inability to pay. This is due in part to the demographic profile of the City. It is among the lower income communities in Ohio when

ranked by gross income per capita. Within Cuyahoga County it is towards the bottom when communities are ranked by per capita income. Similarly, when examining revenue per capita for cities within the County Warrensville Heights is towards the bottom. Consequently, it is also towards the bottom when ranked by expenditures per capita as well.

In recent years the year-ending balance in the general fund has been declining. This decline has been steady and persistent. It is indicative of a community experiencing financial stress. As that is so, the City urges its wage freeze and salary increase proposal on the arbitrator.

In the decade of the 1990's income tax revenues for the City peaked in 1992. Only now are they regaining their former level. At the same time, expenditures have increased. This is particularly the case with respect to salaries and benefits. The City has made a serious effort to compensate police fairly. Now, as improvements are being seen in the municipal coffers is not the time to burden the City with a substantial wage increase it asserts.

Notwithstanding the assertion of the Union, the City claims it does not compare poorly with other municipalities in the area. In particular, the City points to nearby cities as appropriate standards. The data are set forth below

Table 1

Police Lieutenant Salaries, Top Level

Bedford	\$45,769
Garfield Heights	\$43,933
Maple Heights	\$45,597
WARRENSVILLE HEIGHTS	\$45,009

Table 2

Police Sergeants, Top Level

Bedford	\$41,608
Garfield Heights	\$39,720
Maple Heights	\$41,452
WARRENSVILLE HEIGHTS	\$41,987

The data do not support the position of the Union the City asserts. To the contrary, the City compares well with nearby communities. As that is the case, the offer it has before the Arbitrator is more appropriate it claims.

To the salaries itemized above must be added the longevity payments made by the City. The method for computing longevity pay is based on a percentage of salary. This can generate over \$3,000 per year for a patrol officer with more than 30 years of service. Hence, compensation is competitive with other jurisdictions in the City's view. It urges its position on this issue be awarded by the arbitrator.

Discussion: The proposal of the City is very, very meagre. To reiterate, it proposes a wage freeze for the first year of the Agreement and two, 2.5% wage increases. The total is 5.0% over three years. This is well below the going rate of wage increases being seen in the state as is shown by City Ex. E

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2.

The Union proposal is well above the going rate. As was observed elsewhere in this report the parties are demanding the Arbitrator chose between two extreme positions, neither of which is best. Rather, the selection is the least worst of those on the table. In determining which offer best meets that standard particular weight has been given to the proposal of the City for no (0.00%) wage increase in the first year of the Agreement. Of all Cuyahogha County communities itemized on City Exhibit E 1 only South Euclid indicates it is making no wage increase for 1997. (As no wage increases are shown for South Euclid for 3 years the neutral believes this is most probably an error in the data). All other Cuyahoga County cities, even those known to be in fiscal difficulty such as Cleveland and East Cleveland are providing wage increases for 1997. The position of the City is not comparable to developments being seen in area cities. It is fatally deficient by not including within it provision for a wage increase in the first year of the Agreement. Such provision is made in all agreements but one according to the data.

The Factfinder concluded that tax revenues were expected to increase in 1996 and 1997. Data before the Arbitrator confirm that finding. The Factfinder also found it was not

"equitable" for the employees to provide a year of fiscal relief to the City by foregoing a wage increase. The Arbitrator agrees with that conclusion.

Scrutiny of the Factfinding report at page 25 indicates that a factor influencing the recommendation was the fact that the City gave a wage increase to the Fire Fighters in April, 1996. They did not go through the dispute resolution procedure prescribed by Ohio statute. If the City had the means to provide one group of employees with a wage increase it cannot do less for other groups.

The data provided by the Union support its proposition that wage differentials in Warrensville Heights are below those found elsewhere in the County. The officers involved in this proceeding compare satisfactorily with those in nearby communities. That does not serve to determine the outcome of this issue due to the extraordinarily substandard proposal made by the City. The position of the Union with respect to rank differentials for Sergeants and Lieutenants is awarded. So too is the proposal of the Union for jailer/dispatcher wage increases.

Issue 6. Uniform Allowance

Position of the Union: The Union proposes an increase in the uniform allowance of \$75.00 for the term of the Agreement. It also proposes an increase in the uniform maintenance

allowance of \$175.00 effective January 1, 1997. It also proposes that any unspent clothing allowance be carried over to the next year during which it must be used. Finally, the Union proposes that a \$200.00 clothing allowance payment be made on a one-time basis to people who are promoted.

With respect to dispatchers, the Union proposes they receive a \$80.00 increase in uniform allowance and \$70.00 in maintenance allowance. It is of the view the cost of that proposal is so small as to be insignificant.

Position of the City: The City proposes a one-time \$25.00 increase in the uniform allowance and no change in the maintenance allowance. This was recommended by the Factfinder.

Discussion: The recommendation of the Factfinder on this issue is so small as to be unworthy of consideration. A \$25.00 increase in uniform allowance and no change in maintenance allowance for the next three years is unrealistic. So too is the notion that people who are promoted and who must purchase new uniforms as a result should do so without recompense. The Fire Fighters enjoy the benefit being sought by the FOP. No reason exists why these officers should not enjoy it as well. All other aspects of the Union proposal are awarded including the increase in allowances for dispatchers.

Issue 7. Insurance

Position of the Union: The Union proposes an increase in the life-time maximum benefit from \$250,000 to \$1,000,000. It also proposes extension of the prescription benefit and vision care plan to sergeants and lieutenants. In support of this proposal the Union points out that costs of health insurance have declined for the City by approximately \$10.00 per month per employee.

Position of the City: The City proposes to increase the life-time maximum benefit to \$1,000,000 from \$250,000. No other changes are proposed.

Discussion: Neither party made an extensive presentation on this issue. Significant to the neutral is the data from the Union indicating the City has experienced cost reductions in its health insurance premiums in recent years. It is also uncontested that the City maintains a multiplicity of insurance plans. This is different from the situation prevailing with most employers who provide one plan for all employees. Extension of the prescription drug program to sergeants and lieutenants provides the potential for per-capita savings as more people will be enrolled.

Of particular value on this issue is the 1996 SERB Report on the Cost of Health Insurance in Ohio's Public Sector. Appendix A indicates that 91% of responding jurisdictions

provide prescription drug coverage. Forty-five percent of responding jurisdictions provide vision coverage. Given the extraordinarily high proportion of jurisdictions providing prescription drug coverage and the fact that almost half of respondents provide vision care, the proposal of the Union on this issue is awarded.

Duration: Both parties agree the Agreement should run from August 17, 1996 through August 17, 1999 with the exceptions noted above. That term of the agreement is awarded by the Arbitrator.

Summary of Award

Issue 1. Bargaining Unit Work: The position of the Union is awarded.

Issue 2. Association Representation: The position of the Employer is awarded.

Issue 3. Grievance Procedure: The position of the Union is awarded.

Issue 4. Premium Pays: The position of the Employer is awarded.

Issue 5. Compensation: The position of the Union is awarded.

Issue 6. Uniform Allowance: The position of the Union is awarded.

Issue 7. Insurance: The position of the Union is awarded.

Issue 8. Duration: The agreement of the parties is awarded.

Signed and dated this 7th day of February, 1997 at Solon, OH.

Harry Graham

Harry Graham
Conciliator