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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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* Case No:
* 97-MED-11-1226
* Full Time
* Dispatcher Unit

In the Matter of the Conciliation

Between

THE CITY OF AMHERST, OHIO

and

THE OHIO PATROLMEN'S BENEVOLENT
AND PROTECTIVE ASSOCIATION (OPBA)

CONCILIATION AWARD
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HEARING BACKGROUND

This matter was heard on February 4, 1999 pursuant to administrative appointment. There have been four bargaining sessions held at the City's Police Municipal Building, as well as fact finding procedures, the Report And Recommendation of which was accepted by a sister bargaining unit covering part-time dispatchers. A general wage increase ("GWI") of 4%, 3.5% and 3.5% has been accepted by other organized units in Amherst as well as this one, making that three year term an internal comparable.

The immediate bargaining history of the parties is of a fairly well developed nature, this being a successor contract.

The Public Employer, a municipality, employs in two bargaining units ("Full Time " and "Part Time") police dispatchers. Herein the Public Employer shall be referred to as the "City", "Amherst" or "Management" in this Award. The Employee Organization, referred to as the "Union" or the "OPBA", is formally known as the Ohio Patrolmen's Benevolent Association.

The parties requested no mediation be undertaken; ostensibly since that process had been attempted without yielding closure during the fact finding stage of this process.

No transcript was made of the hearings and the advocates filed pre-hearing position statements in support of their respective stances.

The OPBA committee was comprised of OPBA Staff Representative Nicholas Codrea, Jr. and Dispatcher Barbara Hudson.

The City was represented by James P. Wilkins, Esq.. He had Capt. Barbara M. Cowger in attendance throughout the hearing.

The parties stipulated that the pre-hearing position statements were timely filed and received.

Without begging the question, this being a conciliation proceeding means that fact finding failed to secure both sides' acceptance of the contract terms recommended by Fact Finder Nels E. Nelson on December 10, 1998. The sole issue creating the parties' dichotomy herein is whether or not the current pay structure, even if enhanced by the 4%, 3.5%, and 3.5% over the three (3) year duration recommended by Prof. Nelson, warrants the addition of an "equity adjustment" to position the unit members more fairly amongst their counterparts in other area cities.

MEDIATION

As previously discussed, the parties were not desirous of mediation on the sole issue presented.

The advocates extended their cooperation and skills to me and were equally responsive in presenting their view of the issue.

RESOLUTION CRITERIA

The following recommendations take into consideration the factors enumerated in Section 4117.14 (C) (4) (e) of the Ohio Revised Code. These are:

1. Past collectively bargained agreements, if any, between the parties;

2. Comparison of the unresolved issues relative to the employees in the bargaining units 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 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 mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

ITEM FOR RESOLUTION

The resulting unresolved issue¹ left to the Conciliator is:

1. Article 35-Compensation:

In addition to the wage increments, supra, there shall be an equity increase of \$.15 per hour effective February 7, 1998, again on February 7, 1999 and again on February 7, 2000.

¹ The Union withdrew at the close of the hearing a demand that a wage re-opener be granted if dispatcher job responsibilities were to be increased.

POSITION OF THE UNION

The OPBA desires that full time dispatchers in this bargaining unit have their pay rate enhanced by a \$.15 per hour premium in each of the three years agreed upon as the duration and retroactive (again, by mutual agreement) to **February 7, 1998**. While this concept had been sought in preliminary negotiations and in fact finding, it was for higher annual amounts. Thus, the \$.15 per year demand commenced with conciliation.

In support of its position, the Union relies upon the following points:

1. The Fact Finder "erred significantly in his analysis of the labor market";
2. The AFSCME clerks unit is paid above this unit's rates; and
3. An allowance for being multi-skilled is warranted.

The error claim is attributed to the Fact Finder's omission of the City of Oberlin's wage data, failure to factor in the City of Avon's PERS "pick-up", use of Avon's wage data for Avon Lake's standing in the comparisons and misinterpreting Avon Lake's wage increase (see UX-6) as 6% when it is actually 5%.²

Thus, although agreeing to the GWI recommendation, the OPBA urges that the denial of its equity adjustment demand deserves reversal because when the comparable cities are correctly charted, Amherst's full time dispatchers are last in a field of seven. The Fact Finding process placed them fourth out of six; a significant difference according to the Union.

With regard to the second point, while the AFSCME clerks' duties cannot be factored on a Hay scale, clerical functions are clerical functions and are admittedly part of the duties dispatchers are required to perform. In June, 1997 AFSCME clerks started at \$12.58/hr. and rose after eighteen months to \$13.44. dispatchers in a three year time span started at \$10.30 and rose to \$12.68. Further, AFSCME's health care program cost the City another \$50.00 per member per month. The Union feels dispatcher duties are very comparable to clerk functions.

Finally, new training and operations such as computer aided dispatching ("CAD") illustrate multiple skills being required of dispatchers deserving some extra compensation.

². Avon Lake dispatchers received 4% on January 1, 1998 and an additional 2% on July 1, 1998, the net increase computes to 5% for the year, not a cumulative 6%.

That "extra" is represented by the equity adjustment demand herein.

POSITION OF THE CITY

In its response to the above, Management states that if the OPBA thrust herein is to demonstrate that the Fact Finder failed to keep the Amherst dispatchers competitive, they were duty bound to place the across the board increases in issue rather than pursuing the narrower issue of an equity adjustment. Thus, whatever errors were contained in the Fact Finder's recommendation are not material herein. Comparables are not a science, their use represents more of an art.

When the total package is weighed the aggregate 11% raise over three years with longevity, holidays and shift differentials considered show that Prof. Nelson considered all enhanced economic items and arrived at a just recommendation. These dispatchers are kept in the middle of the pack by the Fact Finder and there is no compelling need for any type of adjustment.

ANALYSIS AND AWARD

The City and the Union have both made points in support of their respective stances. My objective must necessarily be to proceed in line with what is the required burden of proof and measure that with the issue at hand. The OPBA possesses the burden of proof and must show by a preponderance of the evidence that the Fact Finder committed error sufficient to warrant reversal of the denial of an equity adjustment.

On its face, the Report And Recommendation is comprehensive and understandable. While the City emphasizes that its wage offer will keep it in the middle of the comparable cities, it rejects the Union's claim that the dispatchers are entitled to a wage adjustment due to changes in the dispatcher's job. It states that the dispatchers do the same job they have done in the past except that technology has made their job easier. The City notes that the CAD system has been in use since July 1997 and there was been no retraining since September 1996. It maintains that the dispatchers' only responsibility with respect to the jail is to check prisoners when patrolmen are tied up. It stresses that this only requires looking through a window.

The analysis utilized by Prof. Nelson is as follows:

City:	1998	1999	2000
Avon	3.0%	3.0%	--
Avon Lake	4.0%	2.0%	--
North Ridgeville	5.0%	--	--
Sheffield Lake	4.0%	--	--
<u>Vermillion</u>	<u>4.0%</u>	<u>4.0%</u>	<u>4.0%</u>
AVERAGE	4.0%	3.0%	4.0%

The Recommendation notes that the Union's demand has two parts. The first part is a 4% wage increase in 1998 followed by 3.5% increases in 1999 and 2000. The second part of the union's demand is three equity increases of \$.50 per hour in 1998, \$.30 per hour in 1999, and \$.20 per hour in 2000. These increases are intended to reflect the changes in the dispatcher's job.

The Fact Finder stated that the first part of the Union's wage demand is entirely reasonable. It is consistent with the wage increases received by the City's other bargaining units. The City and the patrolmen and sergeants accepted Fact Finder Mancini's recommendation for exactly the same wage increase as the Union has proposed in the instant case. The AFSCME bargaining unit received a 4.0% wage increase in 1997 and 3.5% increases in 1998 and 1999.

It continues to state that the Union's proposal is also consistent with wage increases in other cities:

"As the data shown above indicates, the average wage increase for dispatchers in nearby departments is 4% in 1998, 3% in 1999, and 3% in 2000. Furthermore, Fact Finder Mancini noted that data from the State Employment Relations Board revealed that the average wage increase in Ohio was 3.59% in 1998 and 3.56% in 1999.

The Fact Finder, however, cannot recommend the equity adjustments sought by the Union. While it is true that the way the dispatchers in the City do their job has changed, most of the changes have made their job easier and do not involve sufficiently higher level skills to justify the substantial wage adjustments being sought. The Fact Finder acknowledges that in City of Warren and Ohio Patrolmen's Benevolent Association, he granted dispatchers a significant wage increase under a contract provision which allows the union to seek higher pay when there is a substantial change in a job. However, in contrast to the instant case the dispatchers in Warren, assumed responsibility for taking 911 calls and the operation of an Emergency Medical Dispatch System. The assumption of the 911 function required dispatchers to complete an 80-hour course at a vocational school. The Emergency Medical Dispatch System called for 24 hours of schooling and state certification.

The Fact Finder recognizes that the wages and total compensation of the dispatchers in the city is somewhat below the average for nearby departments. However, an 11% wage increase over three years coupled with the agreed upon increase in longevity and the changes in the contract recommended by the Fact Finder, narrow the gap. It is also important to note that the recommended wage settlement is identical to the wage increases received by the patrolmen and sergeants whose total compensation is also somewhat behind

their counterparts in nearby departments."

Providing scrutiny of what is alleged inequitable error yields support for the Union's claim for enhancing this unit's pay package. It is a demand that can only be countenanced in light of correcting the data relied upon by the Fact Finder. At the onset of the hearing the parties agreed that wage comparables were properly comprised of seven cities, including Oberlin. Exhibits are in the record backing the Union's claims as to the incorrect placing of Amherst dispatchers in this list of comparables. With the correct computations for Avon and Avon Lake and the addition of Oberlin I am persuaded that Amherst is situated last out of the seven cities, not fourth out of the six reported on.

Is this palpable error de minimis as the City urges or a basis for relief justifying the Union's demand? Certainly, internal comparability is a strong factor in reaching an answer to this question. As the proponent of that point the City has noted that working with comparables is more art than science. However, I am constrained to give weight to the Union's establishment of a different ranking for Amherst amidst the outside comparables agreed to before me. While certain economic differences³ do reside within these compared contacts⁴, being precise is best left to "art" rather than "science".

Being last out of seven compels me more so than the alinement shown in fact finding. This coupled with the evidence of some clerical duties akin to what the AFSCME clerks perform and the need for training on new equipment or procedures, which, although they may make dispatching easier than previous manually performed dispatching, nonetheless represent change, as shown by the Union's testimony.

There remains an ironic note which I feel deserves recitation in order to serve as guidance to all of us engaged in these endeavors rather than criticism of any party. After the OPBA rested its case they offered to remake the demand for an equity adjustment in a lesser amount. The City opposed such a manoeuver and I sustained Management's objection to this rather novel, if not bizarre, attempt. Even though the adjustment set forth in this matter would cost some \$9,000.00 over the three years, the OPBA secondary demand would have reduced that cost to about \$6,000.00. My decision was based on procedural considerations, but I wonder what validity that decision would meet with if the non-moving party had favored it?

³. Typically, uniform allowance, PERS "pick-up", varying durations, contingent raises, longevity, shift differentials, etc.

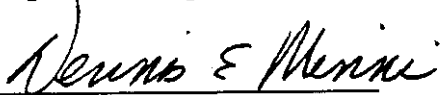
⁴. Oberlin is not organized so their Ordinance compares to the cbas of the other six cities.

In closing, I determine that the Union met its burden of proof on the error allegation and supported that with the clerical duty and job duty arguments to warrant award of their demand for an equity adjustment, based primarily on where the unit resides within the comparables selected by the parties. The cost of this demand was not a factor in this decision but the need to clarify the above stated procedural question, in my opinion, remains.

AWARD

The \$.15 per hour equity adjustment for each of the three years retroactive to February 7, 1998 is awarded.

Respectfully submitted this 9th day of March, 1999.



Dennis E. Minni
Conciliator