

THE STATE EMPLOYMENT RELATIONS BOARD  
June 8, 2017

<b>OHIO PATROLMEN'S BENEVOLENT</b>	)	
<b>ASSOCIATION,</b>	)	CASE NO. 16-MED-10-1222
<b>UNION</b>	)	
	)	
and	)	FACT FINDER: <b>JOSEPH W. GARDNER</b>
	)	
<b>CITY OF BROOK PARK, OHIO</b>	)	
<b>EMPLOYER</b>	)	<b>FACT FINDING REPORT</b>
	)	

**APPEARANCES**

For the **UNION:**

**Andrea Rocco, Esq.,**  
OPBA Counsel

**George Sakellakis,**  
Sergeant, OPBA Director

**James Stoiak,**  
Sergeant, Union Representative

For the **EMPLOYER:**

**Marc J. Bloch, Esq.,**  
Employer Counsel

**David Byrnes,**  
Director of Public Safety

**Jennifer E. Sinatra,**  
Human Resources Commissioner

**James Foster,**  
Chief of Police

**INTRODUCTION**

The parties agreed upon the date and the parties met, fully prepared, for this fact finding conference on May 31, 2017. Both parties timely submitted position statements for review prior to the fact finding conference.

**FINDINGS AND DISCUSSION**

The Union called a dispatcher who had been employed by the City. The evidence showed that the dispatchers' duties increasingly became "clerical" duties as opposed to dispatching. The evidence further showed that more and more of the dispatching work was taken over by a regional dispatch station servicing this City and neighboring jurisdictions. Over time, the number of dispatchers working for the City declined significantly.

These clerical duties were not getting done because of the declining number of dispatchers. As time went on, these clerical duties were being performed more and more by the Sergeants and Lieutenants on each particular shift. These "clerical duties" are work that must be competently performed to keep the law enforcement system working. However, using ranking and seasoned police officers to do this clerical work is somewhat disturbing. This clerical work could be done by trustworthy and competent City employees. The Sergeants and Lieutenants should be spending most, if not all, of their time and supervising patrolmen and conducting investigations with the detectives and patrolmen.

There was testimony that there is low morale and a low desire to aspire to the rank of Sergeant because of the extra "clerical work," required of Sergeants and Lieutenants. This is also disturbing.

Given this background, the Union and the City negotiated a collective bargaining agreement for January 1, 2016 – December 31, 2018. In the Collective Bargaining Agreement effective January 1, 2016 through December 31, 2018, both parties agreed as follows:

"In 2017 and 2018, there *shall* be a "reopener" for healthcare, and increases in professional pay and rank differential ..." See, CBA, p.12. (emphasis added).

At the fact finding hearing and in the position statements of the parties, each party has stated the reasons why the parties agreed with the above “reopener” clause.

Whatever the reasons for either side agreeing to this clause, the parties did agree that there “shall” be a reopener discussing “increases in professional pay and rank differential.” The reopener was mandatory. The undersigned finds that the City wanted a delay before discussing “health care and increases in professional pay and rank differential.” The Union agreed to the delay and did delay the reopener for the above benefits. Both the City and the Union were on clear notice that a reopener was going to occur.

The CBA’S of other pertinent collective bargaining units and this bargaining unit were signed on the following dates:

Patrol	April 7, 2016
Sergeants and Lieutenants	April 19, 2016
Firefighters	May 2, 2017

In each of the CBA’S of the Patrol and Firefighters, there is a “me too” clause. The respective clauses state the following:

The police patrol and the fire agreements have a "me too" provision in their respective collective bargaining agreements.

Article XXXI (31.02) of the Patrol Agreement (Exhibit "B") states:

This Agreement shall be subject to a 'me too' agreement relating to *any changes* regarding increases, in *wages or economic benefits* in the Agreement between the Employer and the *Ohio Patrolman's Benevolent Association*, International Association of Fire Fighters AFL-CIO, *during the 2016-2018* collective bargaining agreement (emphasis added).

Article XXV "ME TOO" in Fire Agreement (Exhibit "C") states:

Effective for the duration of this Agreement *any wage or benefit* that is given or awarded *to any other safety force* shall be offered to the Union (emphasis added).

See, respective CBA of the patrolmen and firefighters, exhibits B and C, attached hereto.

When the City officials were negotiating with other unions, the City negotiators knew that this particular bargaining unit (Sergeants and Lieutenants) were discussing or had already agreed to discuss, increases in professional pay and rank differential by way of reopeners in 2017 and 2018. When this bargaining unit reopened negotiations, the City negotiators were not surprised.

The City states that the “parties have followed a negotiation process commonly known as ‘pattern bargaining.’” See, City’s position statement, p.4, exhibit D.

“In pattern bargaining, a lead negotiation is established and that negotiation sets the pattern for all other bargaining units in terms of wages and benefits.” Id. at p.5 The City points out that this Union has been a participant in “pattern bargaining” and pattern bargaining agreements. Id. at p.5

“[M]e-too” clauses are often used as the tool to connect collective bargaining agreements. If one bargaining unit gets an economic benefit that the another bargaining unit does not have, the “me-too” clause opens up the opportunity to the other bargaining units to bargain for them or requires that the other bargaining units obtain that same economic benefit. According to the City’s brief, one of the purposes for the “me-too” clause is to stabilize the labor negotiations and to make sure that one unit would not receive a better benefit than another unit. Id. P.5, exhibit D.

The City states that “just one change to one Union’s labor agreement can cost the City over \$300,000.00 due to pattern bargaining and “me-too” clauses.” Id. The City argues that pattern bargaining and “me-too” clauses are used to avoid strikes and labor unrest. The thought is that once the “lead union” reaches an agreement, all other unions will follow suit.

It would be a safe assumption that the patrolmen’s union and the firefighter’s union have more than the seven members of this bargaining unit. The duties of the firefighters unit are

somewhat different than the Sergeants and Lieutenants. The undersigned questions that a bargaining unit with seven members should be considered the lead bargaining unit.

During the hearing, the City and the Union stipulated that “inability to pay” is not applicable to this fact finding. While cost is always consideration when dealing with public funds, the City has stipulated that the City can afford the Union’s demand.

The City, however, states that in addition to the negative effect on morale if the increase in pay differential is awarded, such an increase would lead to additional negotiations with the patrolmen (FOP) and the firefighters (IAFF). See, City’s Position statement, p.4; exhibit D.

The City states that if the City agrees to an increase in wage, economic benefits, or benefit with any safety force, the City must match that benefit at least with the patrolmen and firefighters. At the hearing, the City stated that they could be required contractually to make the same increase with other bargaining units.

In addition to the patrol (FOP) and the Firefighters (IAFF), there exists similar “me-too” clauses in other collective bargaining agreements. The City officials stated that economic benefits given to this collective bargaining unit would be available to all other collective bargaining agreements and non-union employees

Although the City has chosen to incorporate into its collective bargaining policy what it describes as “Pattern Bargaining” and “me-too” clauses, the City knew, when negotiating those other contracts, that the City agreed to reopen negotiations on rank differential and professional pay for this bargaining unit.

In some situations, “pattern bargaining” and using “me-too” clauses, are effective tools in an attempt to equalize benefits for all employees. For example, using the same health care insurance company is an example where pattern bargaining and “me-too” clauses may work out

better rather than each collective bargaining unit having a different health insurance policy or a different insurance company.

There exists economic issues that are different for each collective bargaining unit, however, and those differences may be the reason why there are different unions with different collective bargaining agreements.

For example, payment for training in the use of firearms is indispensable for police officers and payment for that type of training is an economic benefit for the police officers and a significant benefit for the City. Payment for the same firearm training for firefighters would not have the same benefit for the firefighters, or for the taxpayers.

The bargaining units, although of the same employer, are significantly different from one another. City employees have different duties. They have different bargaining units even though they are all employed by the same employer. “Blanket” pattern bargaining and “blanket” “me-too” clauses may not be the panacea that solves all labor relation issues.

Pattern bargaining and “me too” clauses have their place, but flexibility is necessary to reach meaningful collective bargaining agreements.

The Union introduced evidence of external comparables. The City maintains that these external comparables are not relevant. The Ohio Revised Code states that “external comparables” are factors that must be considered in fact-finding and in conciliation. Comparables are:

“...issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;...” See, Ohio Revised Code 4117.14(G)(7)(b).

Fact Finders and conciliators must, by law, consider external comparables:

“The board shall prescribe guidelines for fact finding panel to follow in making findings. In making recommendations, the fact finding panel

*shall* take into consideration, the factors listed in divisions (G)(7)(a) to (f) of this section.” Ohio Revised Code, 4117.14(C)(4)(e).(Emphasis added).

The City maintains that although the rank differential for other Cuyahoga County Cities is higher, this bargaining unit receives other benefits that make the difference non-existent with other Cuyahoga County cities. It is rare that union employees in one city receive the exact compensation (wages and benefits) as union employees in another city. If there are similarities or differences, it is up to each side to present those similarities or differences. The “external comparables” are admissible and relevant by statute. External comparables must be considered by those engaged in fact-finding and conciliation. Ohio Revised Code, Sec. 4117.14(G)(7)(a)-(f) and Sec. 4117.14(C)(4)(e).

Currently, the Sergeants differential pay is 14% higher than the patrolmen. Lieutenant’s differential pay is 14% higher than the Sergeants. According to the Union’s prehearing statement, the Union proposes the Sergeant rank differential to be 16% and the Lieutenant rank differential to remain at 14%. See, Union’s position statement, Exhibit A.

Currently, the “professional pay” to this unit is less than other comparable jurisdictions in Cuyahoga County. Generally, ranking police officers in neighboring cities do not perform the previously mentioned clerical duties, yet receive a higher professional pay. See, Union Position Statement, p.5, Exhibit A.

Because of the external comparables, the fact that there is not an inability to pay and that patrolmen’s morale is adversely affected because of the mandatory performance of clerical duties situation, the demands of the Union on the professional pay and the differential pay issue are reasonable.

Not only have both the parties been zealously representing their clients, the representatives have guided their parties to avoid labor discord and strife. The City requested and

the Union gave the City time to consider these reasonably requested increases. The Union refrained from demanding increases when negotiating in 2015 and during this contract in 2016.

It is recommended that the above changes in the CBA commence on January 1, 2017.

**ARBITRATION AWARD**

The fact finder recommends the following:

Rank Differential:

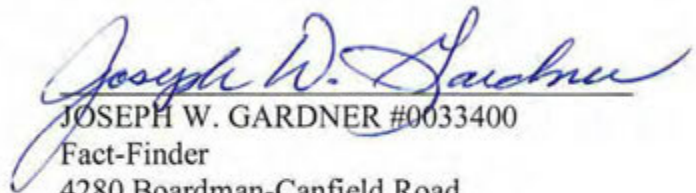
The Sergeants rank differential is 16%  
The Lieutenants rank differential is 14%.  
The amounts are attached as Exhibit F.

Professional Pay:

There is an increase in Professional pay in the amount of \$1750.00 and the total amount of professional pay will be \$2800.00

The date that the above increases will commence is January 1, 2017.

Respectfully submitted,



JOSEPH W. GARDNER #0033400

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**CERTIFICATION**

I hereby certify that on June 8, 2017, a copy of the foregoing Fact Finder's Report was sent via e-mail or regular mail to the following:

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Fact-Finder

**EXHIBIT LIST**

- Exhibit A: Union's Position Statement
- Exhibit B: CBA of Patrolmen
- Exhibit C: CBA of Firefighters
- Exhibit D: City's Position Statement
- Exhibit E: CBA of Sergeants and Lieutenants
- Exhibit F: Union's proposal regarding salary effective Jan. 1, 2017