

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2001 MAY -9 A 11:40

CITY OF MANSFIELD, :
Employer, :
-and- : Case No. 00-MED-06-0695
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :
Employee Organization. :

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FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: May 8, 2001

*James N. Bowers
Human Resources Director
30 North Diamond St.
Mansfield, Ohio 43902*

FOR THE EMPLOYER

*Hugh C. Bennett
Staff Representative
3076 Hillside Trail
Stow, Ohio 44224-4791*

FOR THE EMPLOYEE ORGANIZATION

STATEMENT OF THE CASE

The parties, the City of Marysville, represented by James N. Bowers, Human Resources Director, and the bargaining unit, including all full-time, sworn patrolmen, represented by Hugh C. Bennett, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., (hereafter FOP), have entered into negotiations for a successor contract to the contract which expired August 31, 2000.

The parties met and bargained in good faith, with at least ten meetings between the parties, and at least a day of mediation. The parties without dispute, or through negotiation reached apparent tentative agreement on all of the issues that were negotiated. However, the city determined that it had agreed to language that changed the way in which the city was calculating overtime, and that it did not intend to do so.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen as fact-finder.

The parties agreed to a fact-finding hearing on April 24, 2001, and the meeting was convened at 10:30 a.m., at the Mansfield Airport. In addition to their representative, Ronald Kreuter, Service Safety Director, Robert Konstam, Law Director, and James J. Boyer, Assistant Chief of Police, appeared on behalf of the city. In addition to their representative, Bret Snively, Mike Yankovich, Brian Cassidy, Dan Martincin, and Eric Bosko, Patrolmen, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The remaining issue was not amenable to additional mediation. The matter was submitted upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contracts, the issues which have been resolved, the unresolved issue, and each party's proposal on the unresolved issue.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

ARTICLE 10, Hours of Work & Overtime. Section 10. 2. Overtime

The City's Position: The city proposes a retention of the language of the expired contract on this issue. Although the parties did sign off on Article 10.2 language that was proposed by the city, the city now takes the position that it did not agree because it did not intend to change its current practice of calculation of overtime and believed the new language was merely to memorialize the current practice. When the city learned that the bargaining unit was expecting the city to follow the proposed language and calculate overtime based on "regular rate of pay" rather than the "straight time rate" that the city has been using the city prepared a letter of agreement that the bargaining unit refused to sign and then asked to go forward with fact finding.

The city agrees that the expired contract language does not reflect the practice of the city, but the city is not willing to calculate all overtime based on the "regular rate of pay" which includes longevity, shift differential, and other premium pay in the base used to calculate the overtime rate. The city believes that it is only required to calculate using the "regular rate of pay" for that overtime it is required to pay by the Fair Labor Standards Act as it applies to safety forces. The city believes it is within its rights when it pays overtime that it has agreed to pay in the contract in addition to the requirements of FLSA at the rate it claims it has used since the 1960's. Since the overtime is not mandated by FLSA it does not have to use the "regular rate of pay" as the base.

If it must pay overtime based on "regular rate of pay" then the city wants to reduce the wages paid by a comparable amount, and it estimates the amount to be about

1.5 percent of the payroll and asks that the pay agreement be adjusted to take it into consideration.

The FOP's Position: The bargaining unit believes the language of Article 10.2 should be adopted as the parties agreed when they reached tentative agreement. There was negotiation over this issue, and the city proposed the language that contained the "regular rate of pay" language. The bargaining unit believes that the FLSA requires the city to use "regular rate of pay" for all of its overtime calculations, and that the contract between the parties should reflect that payment. The bargaining unit also believes that the settlement entered into by the parties in a previous lawsuit brought by bargaining unit members against the city provides for the calculation of overtime in accordance with the use of "regular rate of pay." When the bargaining unit got the city's proposed language it accepted the language in good faith and signed off on it.

Discussion and Recommendation: I recommend the language of the current (expired) agreement:

Section 10.2. Overtime. Whenever it is necessary for a sworn officer to work in excess of eight (8) hours in any twenty-four (24) consecutive hour period or in excess of forty (40) hours in any six (6) consecutive day period, the officer shall be entitled to time and one-half for the excess hours actually worked; provided that, there shall be no overtime paid to officers who, at their request, work more than eight (8) hours in a twenty-four (24) hour period while changing watches; and provided further that the overtime entitlement for employees assigned to four (4) ten (10) hour watches in a seven (7) calendar day period shall be for time actually worked over ten (10) hours in any twenty-four (24) consecutive hour period or in excess of forty (40) hours in a seven (7) consecutive day period. Time and one-half overtime pay shall not be applicable to the hours scheduled and worked within the multiple week cycle.

The language is not unusual in other contracts for the communities in areas near to Mansfield. Neither is the language proposed but then rejected by the city. I have neither the statutory authority nor the expertise to determine whether the FLSA applies to all overtime as the bargaining unit alleges or only after a threshold amount of hours have been worked. Under the circumstances I am not inclined to recommend a change that the parties were unable to agree to in their negotiations.

CONCLUSION

The parties have jointly asked that the tentative agreements between them be confirmed and adopted and I do so based upon the documents submitted to me. The parties cooperated in presenting their positions to me, and in our mediation efforts. The courtesy and professional behavior was evidence of the good relations between the parties, and I encourage them to continue to bargain in good faith even if they are unable to agree on my recommendation.

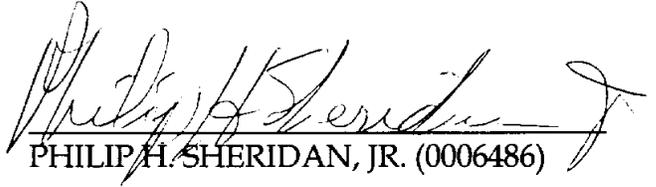
Respectfully submitted,



PHILIP H. SHERIDAN, JR.
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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by overnight mail and FAX transmission this 8th day of May, 2001, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.


PHILIP H. SHERIDAN, JR. (0006486)