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**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
DECEMBER 14, 2000**

STATE EMPLOYMENT  
RELATIONS BOARD  
2000 DEC 18 A 10:54

In the Matter of:  
City of Loveland, Ohio  
and  
FOP Lodge #112

00-MED-06-0734 and 0735

**REPORT AND RECOMMENDATIONS OF FACT-FINDER  
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Charles A. King, Director of Labor Relations  
Dennis Rees, Police Chief  
Bill Taphorn, Finance Director

For the Union:

Jon Heineman, Staff Representative  
Steve Moster, Patrol Officer  
Scott Ackman, Sergeant

## INTRODUCTION

The undersigned was appointed by SERB to serve as fact-finder in the above-referenced matter pursuant to O.R.C. §4117.14(C)(3) by letter dated October 31, 2000. The parties in this matter are the City of Loveland, represented by Charles A. King of Clemans-Nelson & Associates and FOP Lodge #112, represented by Jon Heineman, Staff Representative. The parties agreed to extend the time for the fact-finders' decision until December 14, 2000. Hearing was held at the offices of the City of Loveland on December 4, 2000.

## FACTUAL BACKGROUND

The City of Loveland is a municipality of 9,990 located in Hamilton County, Ohio. FOP Lodge #112 is the exclusive bargaining representative for the City's patrol and command officers, consisting of 12 police officers, 3 Sergeants and 1 Lieutenant. The instant fact-finding concerns a wage reopener contained in the parties' current Collective Bargaining Agreement. That Agreement is effective from April 1, 1998 through March 31, 2001, with a wage reopener on October 1, 2000. The City is not party to any other collective bargaining agreements for any other of its employees.

The sole issue regarding the patrol unit concerns a straight forward wage reopener for the last six months of the Agreement. According to the testimony presented at hearing, the reopener was agreed to as part of a mediated settlement at fact-finding. At the

time that agreement was reached, the Union was seeking a total of a 10% wage increase over two years. In order to resolve the contract, the parties agreed to a three year contract with 4% increases in each of the first two years, and a 3% increase with a wage reopener in the third year.

The issue is a bit more complex as it relates to the command officers. In 1997 the City's police command underwent a reorganization. At that time the Department employed no Sergeants, and three Lieutenants. The Police Chief desired to eliminate the Lieutenant position entirely and replace it with a Sergeants position, and ultimately an Assistant Chief. The Sergeant position was created, and the City attempted to eliminate the Lieutenant position through attrition. Two of the three Lieutenants accepted the retirement package offered by the City, but the third has not, and is still employed. He is, however, performing the same work as the Sergeants at a higher rate of pay. Although the Lieutenant is still employed, it remains the City's intention to eliminate the Lieutenant position through attrition.

As part of the settlement of the last Collective Bargaining Agreement, the parties agreed upon a third pay step for Sergeants in an effort to raise the differential between that position and the patrol officers' rate. It was agreed that Step 3 would be 5% above the Step 2 rate, but a time for advancement to Step 3 was to be part of the wage reopener. Thus, the wage reopener for Sergeants involves not only the question of amount of wage increase, but also the issue of the amount of time worked for

advancement to Step 3. The additional issue created as a result of the fact that one Lieutenant has yet to retire is the pay rate for the Lieutenant.

## ISSUES

### Issue 1. - Article 17: Wages for Police Clerk And Police Officers

#### Union Position:

The Union urges a 4.5% wage increase effective October 1, 2000. The Union contends that during the negotiations for the current Agreement, the parties agreed that the area communities of Mason, Madeira and Montgomery would be used as comparable communities for negotiation purposes. A 4.5% increase would put Loveland Patrol officers in the middle of that group. Their wages are currently lower than the other three.

#### Employer Position:

The City argues that there should be no wage increase at this time. The current Collective Bargaining Agreement will expire on March 31, 2001, and negotiations will commence shortly for a new Agreement. Since this wage reopener occurs in such close proximity to the expiration of the entire Agreement, it is unwise to provide a wage increase without completing negotiations for the successor Agreement.

Discussion:

As noted above, the City contends that since the wage-reopener involved here occurs so close in time to the expiration of the Collective Bargaining Agreement, no wage increases should be given at this time. This argument is not persuasive for two reasons.

First and foremost, it must be stressed that the parties themselves selected the time for this wage-reopener when they consummated the last Agreement. Clearly, the parties when they made that agreement anticipated that for whatever reasons a wage reopener six months prior to the expiration of the Agreement was an appropriate way to reach resolution of the negotiations.

Secondly, although the City points out that the parties are now only weeks away from beginning negotiations anew, it was the City that created the timing. The Union attempted to begin negotiations for the wage-reopener prior to October 1, 2000, but the City went to SERB to delay negotiations until October 1 based upon a literal reading of the reopener language. While this was clearly the City's right, in the Fact-Finder's opinion, having intentionally delayed the negotiations, it should not now be permitted to use that delay as a club in support of its argument that it is now too close to negotiations for the full contract to warrant a wage increase under the reopener.

The Fact-Finder also finds that the parties should utilize the three comparables submitted by the Union as a basis for a wage increase. The City urges that a broader range of comparable cities should be examined. While this approach may well be a valid one

for future negotiations, the parties clearly agreed and stipulated at fact finding for the current Agreement that the three suburban communities of Mason, Montgomery and Madeira were the three appropriate comparables on which they intended to rely for comparison of wages for this Agreement. Having made that agreement, those three communities should be utilized for comparison purposes in this wage reopener.

In addressing the amount of a wage increase, it must be noted that the parties have stipulated that ability to pay is not an issue. That being the case, the Fact-finder believes that a 2.5% wage increase is appropriate. This increase would bring the police officers to a wage comparable to the lowest of the three comparable Cities. This increase is further appropriate in view of the fact that it is only for a short time period. The larger increase proposed by the Union would create a 15.5% increase over the term of the current Agreement. This clearly outpaces the norm. This increase should be retroactive to October 1, 2000, the date of the reopener.

Recommendation:

Police Clerks and Police Officers shall receive a 2.5% wage increase effective October 1, 2000.

## Issue 2 - Article 17 - Wages for Sergeants

### Union Position:

The Union's position with regard to a wage and step 3 increase for Sergeants is somewhat confusing. In its written submission, the Union seems to propose a 4.5% increase for Sergeants in four steps, effectively increasing Sergeants' pay by 18%. The Union does not, however make any proposal regarding the time at which the Sergeants will reach the third and fourth steps. The Union argues that Sergeants do not now earn a sufficiently high differential between themselves and patrol officers. Additionally, according to the Union, the City when it restructured the command within the Police Department in 1997 stated that it was not restructuring in order to effect a cost savings. Therefore, the Sergeants should receive increases calculated to bring them up to the Lieutenant rate. The third and fourth step increases would accomplish this task.

### Employer Position:

The Employer contends, as it does with the police officers that there should be no wage increase. It does, however acknowledge that there Sergeants should be a greater wage differential between Sergeants and Police Officers. It, like the Union makes no clear proposal as to when Sergeants should reach the agreed upon third Step.

Discussion:

The parties agree that the purpose of their agreement to step increases for Sergeants was to raise the differential between police officers and Sergeants. They further agree that beyond that purpose, the step increases have no real purpose. It therefore makes little sense for there to be a large time lapse between Step 2 and Step 3 on the Sergeant wage scale. The parties having agreed to the third step, and neither party having expressed any clear desire to abandon the step, the Fact-Finder must determine at what point Sergeants will advance to the third step. The Fact-Finder recommends that since, as the parties agree, the purpose of the steps is solely to provide a graduated advancement to a higher differential between command and patrol, the Step 3 increase should take effect at 19 months in the Sergeant position, that being six months beyond the Step 2 increase.

With regard to the wage increase for Sergeants, the Fact Finder is not persuaded that the City is somehow prohibited from reaping any financial benefit from the departmental reorganization of its command structure. While some statement may have been made to that effect, clearly it was not the basis for the parties' agreement since no mention of it is made in the Agreement. It is not reasonable to expect that the Sergeants will be increased to the rate of the discontinued Lieutenant's position.

Recommendation:

Sergeants shall receive a 2.5% increase effective October 1, 2000. Step 3 shall be effective at 19+ months employment in the Sergeant position. Step increases shall be at 5% as stated in the Collective Bargaining Agreement.

Article 17 - Wages for Lieutenant

Union Position:

Although the City had hoped that all three of its Lieutenants would retire, one has not. He is performing his duties faithfully, and should be given pay increases accordingly in the same manner as other employees. :

Employer Position:

The City has clearly intended to phase out the Lieutenant's position. The remaining Lieutenant is being paid more than the Sergeants, but is now performing identical work. While the City does not propose to decrease his wage, further increases to the base wage for Lieutenant will create further inequities. If he receives any increases they should be in the form of lump sum payments.

Discussion:

The parties have agreed that there is no distinction at this point between the work performed by Sergeants and the last

remaining Lieutenant. As such, the Lieutenant is being paid at a higher rate for no reason other than that his position formerly had different duties. While it might well be inequitable to reduce his pay merely because the City has determined to alter the command structure, it is similarly inequitable to maintain the rate of differential between the Lieutenant and Sergeants when they are performing the same work. The Fact-Finder therefore recommends that the Lieutenant's wage increase be in the form of a single lump sum payment with no increase to his base wage rate.

Recommendation:

The Lieutenant shall receive wage increase in the form of a lump sum payment equivalent to 2.5% of his pay for the last six months of the current Collective Bargaining Agreement. This payment should be calculated at the end of the six month period and include overtime worked in that period.

Dated: December 14, 2000

  
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Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 14th day of December, 2000 to Charles A. King, Clemans, Nelson & Associates, 8520 E. Kemper Road, Suite 4, Cincinnati, Ohio 45249, counsel for City of Loveland, and to Catherine A. Brockman, 222 East Town Street, Columbus, Ohio 43215, by Next Day Air Mail.

  
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Tobie Braverman