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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING PANEL

CITY OF OAKWOOD

AND FOP

OAKWOOD LODGE NO. 107

SERB CASE NO. 00-MED-08-0810

FACT FINDER'S REPORT AND RECOMMENDATIONS

MICHAEL MARMO

FACT FINDER

NOVEMBER 2, 2000

## HEARING

The Hearing took place at 2533 Far Hills, in Oakwood, on Friday, October 20, 2000 and lasted from 12:30 p.m. until 5:20 p.m. Representing the City were Deputy City Manager, Jay Weiskircher; Attorney, David Weisblatt; Chief, Glen Beddies; Staff Services Lieutenant, Walt Conroy; and its principal representative, Attorney, Jeff Mullins. Representing the FOP were its principal representative, Attorney, Peter Rakay; FOP president, Russell Muntz; FOP Secretary, Tony Gressell; and FOP Trustee, Tom Adams.

## ISSUES REMAINING AT IMPASSE

At the outset of the Hearing, the following issues remained at impasse:

1. Article 6.2, Wages
2. Article 6.6, Shift Differentials
3. Article 6.8, 10% on-call premium
4. Article 9, Vacations
5. Article 10.1, Extra Days Off/personal Leave Days
6. Article 10.5, Extra Days Off/Personal Leave Days
7. Article 11.5, Payment for Accumulated Sick Leave on Retirement or Death
8. Article 11.8, Wellness Incentive
9. Article 11.9, Discipline for Excessive Absenteeism
10. Article 14, Life Insurance
11. Article 15, Hospital and Medical Insurance
12. Article 17, Uniform Allowance
13. Article 24, Listing of FOP Representatives
14. Article 25, Work Schedules

## MEDIATION

Mediation was attempted and was successful in resolving the following issues:

- Article 9, Vacations
- Article 14, Life Insurance
- Article 24, Listing of FOP Representatives

#### CRITERIA FOR DECISION

As provided under Rule 4117-9-05(J) of the State Employment Relations Board, the fact finder based his recommendations on the following:

- The past collective bargaining agreements between the parties;
- A comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the employer;
- Any stipulations of the parties;
- Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

#### ISSUES REMAINING AFTER MEDIATION

Article 6.2, Wages

#### POSITIONS OF THE PARTIES

The FOP proposed annual increases of 5.7% for each year of the three year life of the Agreement. The City proposed annual increases of 3% for each year.

The FOP argued that it deserves a relatively high percentage increase because it has received high increases in the past. It cites the fact that over the last eighteen years, its increases have averaged approximately 5.7% per year. It also indicated that its members receive a relatively low rate per hour worked compared with other safety forces. The

Union pointed out that the City enjoys considerable cost savings as a result of the fact that bargaining unit members perform police, fire, and emergency medical services. Finally, the Union argues that its demands should be met because the City is in excellent financial shape.

The City argued that on both an hourly and an annual basis, bargaining unit members receive higher rates of pay than comparable employees in the Dayton area. It pointed out that Oakwood officers receive rates of pay that are 14% higher than the annual compensation of similarly situated employees. The City pointed out that while the unique nature of services performed by the Safety Officers may justify higher annual compensation, it does not justify higher than average yearly increases in compensation.

In addition, the City indicated that the increases offered unit members are in line with the increases granted other Oakwood employees. Finally, the City argued that it should not be penalized for being in good financial shape.

#### FINDING OF FACT

The unique nature of the jobs performed by Safety Officers makes comparisons with “comparable” employees difficult. However, a number of conclusions can be reached:

First, it is not logical to conclude, as the Union argued, that after eighteen years of above average annual wage increases, bargaining unit members continue to receive relatively low wages. Such an argument is particularly unlikely given the extremely forceful and competent representation that the Union enjoys.

Second, the unique nature of the job performed is a two edged sword. As fact finders Keenan and Stanton observed, unit members are entitled to higher than average pay because of their unique qualifications. However, as conciliator Leach observed, it is inappropriate to compare the hourly wages of unit members with those of police officers, because a number of hours unit members spend on the clock are “spent in general inactivity”.

Third, the excellent financial position of the City, the unique qualifications of unit members, and the excellent level of service that employees provide, are all factors that are incorporated in the relatively high base pay currently received by unit members. Higher than average annual increases on a continuing basis would only serve to progressively widen this pay premium.

Fourth, the relationship between wages in Oakwood and comparable communities has evolved over a long period of time. Even if one accepts the conclusion that Oakwood employees are not compensated properly based on the comparables, such a situation should be remedied slowly by granting slightly above average increases. The already negotiated annual increases in comparable communities have averaged about 3.5% for both 2001 and 2002.

In sum, unit members are excellent employees, with unique qualifications, who are fortunate to work for a relatively affluent employer. Such circumstances justify a slightly above average pay increase. In addition, because the fact finder is not recommending economic gains in other areas, some additional increases are appropriate in the wage area.

#### RECOMMENDATION

A four percent (4%) increase in wages should be provided for each year of the three year Agreement.

Article 6.6, Shift Differential

#### POSITIONS OF THE PARTIES

The FOP argued that the \$.35 shift premium for the first relief be increased to \$1.00 per hour and a \$.60 shift premium be instituted for the third relief schedule. The City proposed to increase the first relief premium to \$.45.

The FOP argued that the premium paid for the first relief shift was \$1.00 under the contract that was in effect from 1991-1994. The only reason the premium was reduced, the Union argued, was because the method of working midnight's changed in 1994. Scheduling practices have reverted to the pre-1994 arrangement, the Union said, justifying the re-establishment of the \$1.00 differential. The Union also contended that the current uncertainties regarding scheduling justify a premium for the third relief schedule.

The City believes that an increase of the first relief premium to \$.45 is in order, but that it is not appropriate to almost triple this premium. It argued that the relatively high pay of unit members already takes into account that they sometimes must work undesirable schedules.

#### FINDING OF FACT

Because the fact finder is not recommending economic improvement in areas other than wages, the fact that the cost of this improvement is relatively modest, and the fact that the first relief schedule is quite undesirable, a modest improvement in this area is appropriate.

#### RECOMMENDATION

The premium for the first relief schedule should be increased from \$.35 per hour to \$.60 per hour. No premium should be provided for the third relief schedule.

Article 6.8, 10% On Call Premium

## POSITIONS OF THE PARTIES

The FOP proposed that detectives assigned to on call duty be compensated at 10% of their regular rate of pay for each hour assigned on call. The City opposed this change.

The FOP argued that the on call detective should be compensated because they must carry a beeper and remain within one hour of the City.

The City argued that because detectives have never been compensated for their on call status, because most calls can be dealt with quickly, and because they are compensated at the overtime rate should they have to report for duty, on call pay is not appropriate for detectives.

## FINDING OF FACT

Based on the fact that detectives have worked on call for approximately twenty five years without compensation, the fact finder must conclude that this is not a high priority issue. In addition, he believes that it is more appropriate to increase the wages of all employees by improving their base salary, rather than recommending an increase that only impacts the two detectives.

## RECOMMENDATION

The Agreement should not contain a provision providing that detectives receive 10% on call pay.

Article 10.1, Extra Days Off/Personal Leave Days

## POSITIONS OF THE PARTIES

The City proposed that employees hired on or before October 26, 2000 who are assigned to work a 24/48 schedule would continue to receive 11 EDO's annually. However, employees hired after October 26, 2000 who are assigned to work a 24/48 schedule would only be entitled to 8 EDO's annually. The FOP proposed that the current contract language be continued.

The City's proposal is one of several, designed to reduce the number of days bargaining unit members take off from work. The City argued that in order for it to provide coverage beyond the absolute minimum manning requirements, the number of days employees are entitled to take off must be reduced. This proposal is intended to achieve this end.

The FOP argued that it bargained for almost 20 years to get the 11 EDO's it currently enjoys. They also pointed out that if the City hired an adequate number of employees, its scheduling difficulties would be resolved.

## FINDING OF FACT

As indicated, this is one of a number of proposals designed to ameliorate the scheduling difficulties the City is experiencing.

To be very blunt, a fact finder cannot after a few hours of testimony, and examining of exhibits, fully appreciate how each of these proposals will impact each other. Scheduling, in a department that provides police, fire, and EMT/paramedic services, is clearly a very complicated matter. It is clearly a matter that is best resolved by the parties.

Although it has problems, the current scheduling practices have evolved over a number of years. Because fact finders are required to base their recommendations on what was provided in previous collective bargaining agreements between the parties, it makes no sense to make drastic changes in schedule practices. Unless there is mutual agreement by both parties, any changes to a contract need to be slow and incremental. The fact finder is also mindful of the fact that while both sides have made a number of proposals with respect to scheduling, the present scheduling procedure is the second best option of each side.

## RECOMMENDATION

The current contract language should be retained.

Article 10.5, Extra Days Off/Personal Leave Days

## POSITIONS OF THE PARTIES

The City proposed that employees must use at least 50% of their allocated EDO's or personal leave days in a calendar year. Those employees who do not use their entire allotment and who have used no more than three 24-hour days or four 8-hour days of sick leave would be entitled to a payment for any unused EDO's or personal leave days. On an annual basis, the City said, this buy back could amount to an additional \$2,099.20 for bargaining unit members.

The Union argued in favor of maintaining current contract language. It believes that rather than providing for buy backs, the City should improve its wage proposal.

## FINDING OF FACT

Based on the reasons given for the previous Article, no changes are appropriate.

## RECOMMENDATION

The current contract language should be retained.

## Article 11.5, Payment for Accumulated Sick Leave on Retirement or Death

### POSITIONS OF THE PARTIES

Under the existing Agreement, unused sick days of a bargaining unit member who retires or dies can be cashed in at the rate of one days pay for every three days of sick leave accumulated.

The FOP argued that it is more appropriate to pay employees one days pay for every two days of sick leave they have accumulated. Such an approach would be more "fair", the Union argued.

The City argued that there is no justification to change the current contract language, which has been in effect since 1971. It also argued that the current language is comparable to that of similar groups of employees, and therefore does not warrant change.

### FINDING OF FACT

The City argued that the "comparables" dictate that the current language be retained. In fact, the evidence from the comparables is rather mixed. In Fairborn and Kettering, for example, both police and firefighters receive one days pay for each three sick days they have accumulated. Police in West Carrollton and Centerville are also paid at the one for three conversion rate. However, both police and firefighters in Miamisburg, Vandalia, and Dayton receive one days pay for two days of accumulated sick leave.

In addition to taking the "comparables" into account, fact finders must also consider the way in which previous contracts dealt with a particular issue. Because the current conversion rate for unused sick time has been in effect since 1971, and because the evidence from the comparables is mixed, no changes in this provision are appropriate.

### RECOMMENDATION

No changes should be made in the current language.

## Article 11.8, Wellness Incentive

## Article 11.9, Discipline for Excessive Absenteeism

### POSITIONS OF THE PARTIES

These proposals are being discussed jointly, because they were presented as a quid pro quo package by the City. The "carrot" part of the City's proposal provides for cash incentives to employees who do not avail themselves of their sick leave. Such payments would range from \$839.68 to employees who use no sick days in a year, to \$209.92 to

employees who take three sick days. The “stick” part of the City proposal would subject a bargaining unit member to disciplinary action for taking four or more sick days in a calendar year. The City argued that excessive absenteeism is somewhat of a problem in the unit. It also argued that improving attendance would reduce some of the scheduling problems the City currently experiences.

The FOP argued that it is not appropriate to penalize employees for using a benefit that is provided in the Contract. It also pointed out that taking disciplinary action for use of sick leave has been contractually prohibited since 1979.

#### FINDING OF FACT

It is quite common in the public sector, as well as in private employment, to provide monetary incentives to employees not to use their contractually provided sick days. Such provisions are considered a win-win proposition; the employee receives extra compensation, and the employer saves on overtime expenditures.

Penalizing employees for use of sick days, however, is not usual. In fact, such an approach is inconsistent with one of the main principles of contract interpretation employed by grievance arbitrators; that an agreement should be construed as a whole. It would make very little sense to contractually provide a certain number of sick days to employees, and then to turn around and discipline employees for taking such sick leave. Because these proposals were presented in a quid pro quo fashion, and because one is not appropriate, both must be rejected.

#### RECOMMENDATION

No changes should be made in these provisions.

Article 15, Hospital and Medical Insurance

#### POSITIONS OF THE PARTIES

The existing Contract provides that each employee receive the same hospital, medical care, drug, and vision coverage as that provided to the City’s management and office personnel.

The FOP proposed that this language be changed to require that the present benefit levels be maintained under the new Agreement. The FOP argued that this change would amount to a reversion to the pre-1994 contractual language. The Union also maintained that the City could easily afford to provide this benefit.

The City argued that the current language has worked well for the last six years. They argued that current contract language is identical to what is included in the agreements

with all other City bargaining units. Finally, the City pointed out that unit members receive excellent medical insurance that is entirely paid for by the City.

#### FINDING OF FACT

A number of factors support retaining the current language regarding hospital and medical insurance. First, fact finders are required to base their recommendations on what is included in previous collectively bargained contracts between the parties. In addition, it is significant that all other City employees are presently covered by the same hospital and medical insurance plan. Perhaps most important, however, is that it has become extremely difficult in recent years to provide a separate health insurance plan for a group of 22 -24 people. Insurance carriers are increasingly trying to force all groups into a small number of pre-packaged plans. Although it may still be possible to tailor make a plan for a small group, the cost of such an approach does not justify such action. The fact finder is aware of one case where the employer was contractually obligated to provide the same level of medical benefits for the life of the agreement, and was unable to find any insurance carriers to provide such coverage.

In sum, regardless of what we might prefer in an ideal world, the medical care options available to employers at the present time are relatively limited. It must be assumed that this reality was recognized when the current provision was included in the Agreement six years ago.

#### RECOMMENDATION

No changes should be made in the current contract language.

Article 17, Uniform Allowance

#### POSITIONS OF THE PARTIES

The FOP proposed increasing the uniform allowance paid to plain clothes officers from \$900 to \$1,200 per year. It also proposed providing each uniformed officer with a uniform allowance of \$300 per year. The Union argued that the increase in the allowance paid to plain clothes officers is justified by the increase in clothing costs over the years. It argued that uniformed officers should receive payment of \$300 per year because they need to provide their own boots and shoes.

The City argued that the current \$900 paid to plain clothes officers exceeds the \$705 average amount paid to employees in comparable jurisdictions. It further argued that there is no justification to provide a uniform allowance to uniformed personnel when both their uniforms and cleaning costs are provided by the City.

#### FINDING OF FACT

Although it is true that clothing costs have gone up in recent years, plain clothes officers in this unit presently receive clothing allowances that exceed those paid in other jurisdictions. While it is true that uniformed officers must purchase their own footwear; such allowance is clearly an economic issue. The fact finder believes it is more appropriate to provide economic relief in his wage recommendations, rather than as a uniform allowance.

#### RECOMMENDATION

No changes should be made in the current contract language.

#### Article 25

#### STIPULATION OF THE PARTIES

The parties stipulated that throughout Article 25, all references to the 15 most senior members of the bargaining unit should be changed to the 12 most senior members of the bargaining unit.

#### RECOMMENDATION

The change stipulated by the parties above, should be incorporated in the new Agreement.

#### Article 25.3/Article 25.5, Work Week Schedule

#### POSITIONS OF THE PARTIES

These Articles will be discussed jointly . The FOP made several proposals that would severely limit the flexibility of the City in assigning shifts. They proposed that the 12 most senior employees never be assigned to first relief. They asked that all officers, excluding detectives and the youth officer, be assigned to a 24/48 shift; and should the City assign officers to a daily duty schedule other than first relief, these shifts would be picked by seniority. The City argued that neither change was appropriate. In addition, the City proposed changes (in Article 25.5) to limit employees from working a maximum of 160 hours in any 28 day PAY period, rather than any 28 day ROLLING period. The Union opposes this change.

#### FINDING OF FACT

Essentially, the City wants to preserve as much flexibility as possible in assigning workers to shifts; the FOP wants to restrict that flexibility.

As already indicated, the fact finder is unwilling to make dramatic changes in scheduling practices that have gradually evolved over a long period of time. He is

particularly unwilling to make changes, when each side has expressed the belief that if the changes they desire are not forthcoming, the present system is their second choice.

#### RECOMMENDATION

No changes should be made in the current contract language.

This concludes the findings of fact and recommendations of the fact finder.

*Michael Marmo*

Michael Marmo  
Fact Finder  
Cincinnati, Ohio  
November 2, 2000

#### PROOF OF SERVICE

This is to certify proof of service this second day of November, 2000 by United States Mail Overnight Delivery to Jeffrey A. Mullins, Coolidge, Wall, Womsley & Lombard, 33 West First Street, Suite 600, Dayton, Ohio 45402; and Peter Rakay, 316 Talbott Tower, Dayton, Ohio 45402; and by regular U.S. Mail to George M. Albu, SERB, 65 E. State Street, 12th floor, Columbus, Ohio 43215-4213.

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