

IN THE MATTER OF FACT-FINDING ^{2001 AUG 31 A 10: 21}
BETWEEN

| | | |
|---------------------------|---|--------------------------|
| CITY OF LAKEWOOD |) | CASE NOS. 00-MED-09-0966 |
| |) | 00-MED-09-0967 |
| AND |) | |
| |) | <u>FINDINGS</u> |
| |) | AND |
| FRATERNAL ORDER OF POLICE |) | <u>RECOMMENDATIONS</u> |
| LODGE NO. 25 |) | |

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE FOP

Robert M. Phillips, Esq.

FOR THE CITY

Gary C. Johnson, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between the City of Lakewood (hereinafter referred to as the City) and the Fraternal Order of Police, Lodge No. 25 (hereinafter referred to as the FOP or Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. Fact-finding proceedings were held on April 23, May 7, and August 16, 2001.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding this fact-finder attempted mediation of the issues at impasse with several being tentatively agreed upon by the parties. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

There are two bargaining units involved herein with one consisting of all patrol officers and the other the promoted officers which would include sergeants and lieutenants of the police department. There are approximately ninety-five total employees in the two bargaining units.

This fact-finder in rendering the following findings of fact and recommendations of the issues at impasse had taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

1. WAGES

The Union proposes 6% wage increases in each year of the agreement. The City's wage proposal is for increases of 3.5% for each year.

The Union basically argues that the current wage levels for bargaining unit employees fall below those paid to other comparable police officers in the area. The Union seeks to bring the wages here into line with those paid in these other communities.

The City contends that its wage offer is more than adequate based on the average wages paid in the region. Moreover, it notes that the inflation rate has been relatively low at 2.8% and therefore no further increase beyond that proposed is justified.

ANALYSIS – Based upon a careful review of the evidence and arguments presented by the parties, this fact-finder would recommend that there be a 4.5% wage increase in the first year of the contract with additional 4% increases in the second and third year of the agreement. Such increases are warranted in order for the wages here to keep pace with those provided to patrolmen in the region. Moreover, the recommended wage increases would be in line with increases provided to patrolmen in comparable jurisdictions. This fact-finder has also taken into consideration the impact which the proposed change pertaining to sick leave accumulation will have on the overall compensation received by the employees.

This fact-finder has determined that wage comparables support the recommended wage increases herein. Those increases would be in line with those provided to patrolmen as well as sergeants and lieutenants in the area. In general, the

wage increases in comparable communities such as Euclid, Lorain, Elyria and Parma have been in the 4% range. Moreover with the recommended wage increases, Lakewood police officers will be able to retain their relative ranking with respect to wages provided in these other comparable jurisdictions.

As noted, this fact-finder has also taken into consideration the impact which the proposed change in sick leave accrual will have on the overall compensation received by the bargaining unit. The proposal is to reduce the current annual sick leave accrual from thirty days of sick leave to fifteen days. Starting in the thirteenth year of service the amount of accumulated sick leave hours which an officer can buy back each year will be cut in half. In order to make up for the monetary loss involved, this fact-finder has recommended an additional .5% increase in wages in the first year as well as an almost doubling of the longevity pay as subsequently discussed herein.

This fact-finder would like to note that the 4.5%, 4%, and 4% increases recommended herein are in line with the wage increases provided to the bargaining units in the past. It was shown that over the last twenty-five years, wage increases for the department have averaged 4.09% each year.

Finally, it should be noted that there is no dispute with respect to providing for a retroactive wage increase in the first year of the agreement. As a result, this fact-finder finds it appropriate to recommend that the first year 4.5% wage increase be made retroactive to January 1, 2001.

RECOMMENDATION

It is the recommendation of this fact-finder that there be general wage increases of 4.5% effective January 1, 2001 with additional increases of 4% in each of the last two years of the Agreement.

WAGES – General wage increases of:

4.5% - Effective January 1, 2001

4% - Effective January 1, 2002

4% - Effective January 1, 2003

2. LONGEVITY

The FOP proposes to modify the existing Longevity Plan so that commencing after five years the service employees would receive \$500. Subsequently, there would be an additional \$100 provided per year of service up to the twenty-fifth year which would be at \$2,500.

The Employer proposes the following Longevity Provision: five (5) years - \$500; ten (10) years - \$1,000; fifteen (15) years - \$1,500; twenty (20) years – \$2,000.

The FOP contends that its longevity proposal is in line with those found in comparable jurisdictions. Moreover, the increase in longevity is justified in order to compensate for the loss of fifteen days sick time accrual which has been proposed by the City.

The City maintains that its proposal would approximately double the amount of longevity pay currently provided. The City points out that it has made such a proposal in order to trade longevity increases for its proposed reduction in sick leave accumulation from thirty days to fifteen days per year.

ANALYSIS – This fact-finder has determined that for the most part, the FOP’s proposal regarding longevity pay increases is justified. It is in line with longevity pay plans found in comparable jurisdictions. Moreover although it approximately doubles the existing longevity plan, such increases are warranted in order to make up for the impact which the loss of fifteen days of sick time will have on the employees under the proposal

made by the City. As a result, this fact-finder would recommend the FOP's proposed modification to the existing longevity plan with one exception.

The only change which this fact-finder would make in the FOP's proposed longevity plan would be to provide for a limit of \$2,000 after twenty years of service. The Employer was convincing in pointing out that additional yearly increases in longevity for those city employees with more than twenty years would have a substantial economic impact upon its finances. As a result, this fact-finder would recommend the FOP's Longevity Provision with annual increases commencing after the fifth year and continuing to the twentieth year of service.

Finally, this fact-finder would recommend that the modified Longevity Pay Provision be implemented with the beginning of next fiscal year or January 1, 2002. This would be consistent with the recommendation subsequently made herein by this fact-finder pertaining to the change in sick leave accrual. That is, the new sick leave proposal is also to take effect in the second year of the Agreement. It should be noted that the bargaining units have already received one-half of their longevity pay for the current year. It would be reasonable therefore to provide that the new Longevity Pay Provision which provides for significant increases should take effect at the beginning of next year.

RECOMMENDATION

It is the recommendation of this fact-finder that the Longevity Pay Provision be modified as follows:

LONGEVITY PAY – Effective January 1, 2002

Commencing after the fifth year of service, employees shall receive \$500, with an additional \$100 per year of service thereafter up to the twentieth year which would be the maximum provided of \$2,000.

3. HEALTH INSURANCE

The City proposes to limit its HMO contributions to the amount of premium paid for the PPO and offer a new enrollment period. It also proposes to change the prescription drug card co-pay to \$5.00, \$10.00, and \$15.00. The FOP proposes to maintain the current Health Insurance Plan Provision with no change. The City contends that no other city in the surrounding area pays more for HMO coverage than it pays for its basic PPO plan. Under the current Health Insurance Provision, the City is obligated to pay one hundred percent of the premium for the employees regardless of whether they select the PPO or the HMO plan coverage. Again, the City proposes to limit its HMO contribution to the amount of premium paid for the PPO plan with the employee picking up the difference if they enroll in the HMO plan. Moreover, the City submits that the current prescription drug coverage has become so expensive that it is impossible to maintain without some increase of employee participation. The standard drug card co-pays in the surrounding areas are much higher than the City pays and for that reason it has submitted the new co-pays for prescription drug coverage.

The Union contends that there is absolutely no need to change the current Health Insurance Provision. The City has failed to establish any justification for limiting its HMO contribution to the amount of premium paid for the PPO coverage. Such a change would have a substantial impact on those members who currently have HMO coverage. Moreover, any change in the current co-pays for prescription drugs will also have a significant impact on the employees. Currently, the drug card co-pay is zero and \$2.00.

ANALYSIS – This fact-finder finds that there is a basis for changing the prescription drug co-pays to \$5.00, \$10.00, and \$15.00 as proposed by the City. It was established that the prescription drug care coverage has become very expensive and that it would be impossible to maintain without some increase in employee participation. Moreover, the evidence indicates that drug card co-pays are much higher in other comparable communities than it is here. As a result, this fact-finder would have to find that the increases in drug card co-pays are reasonable and in line with that provided to comparably situated employees in the area.

However, this fact-finder would not recommend that this bargaining unit lead with any change as proposed by the City pertaining to its contribution towards HMO coverage. As the FOP noted, many members due to the numerous changes in healthcare coverage over the past five years have not only experienced an increase in out of pocket expenses but have also had to change healthcare providers due to plan changes. Therefore, a more reasonable approach would be to provide that if the City were to enter into a contract with any other bargaining unit which would provide for the limitation of its premium costs toward HMO coverage, then it would be appropriate to provide such limitation to the two bargaining units involved in this case.

RECOMMENDATION

It is the recommendation of this fact-finder with respect to Health Insurance that the following modification be made:

HEALTH INSURANCE

Section 4 Include new language as follows:

If any other bargaining unit with the City of Lakewood enters into a contract providing for the limitation of health insurance premiums towards the payment of an HMO which do not exceed the premium of the City's PPO health plan, then such limitation shall be applicable to these bargaining units.

Section 5 Prescription coverage for the PPO and all HMO's shall have a co-pay as follows after an open enrollment period.

- A. \$5.00 for generic drugs**
- B. \$10.00 for name brand drugs**
- C. \$15.00 for name brand drugs when a generic drug is available.**

All employees on maintenance drugs, shall purchase such drugs through the mail.

4. SICK LEAVE

The City proposes to change the amount of sick leave accrual to 4.6 hours for every 80 hours worked or to fifteen days per year. The City also proposes to delete the provision which requires a medical review only every thirty days if a person is off on injury leave and to substitute language which would allow for a medical review to determine the extent of the illness or injury. Finally, the City proposes language prohibiting the abuse or patterned use of sick leave.

The FOP proposes that the current Sick Leave Provision be retained without any change. The current provision allows employees to accumulate up to thirty days of sick leave per year.

The City contends that comparables show that no other city in the area provide its employees with thirty days of sick leave accrual per year. Moreover, many other cities have language which prohibits the abuse or patterned use of sick leave. The Employer wishes to modify the Sick Leave Provision so that it conforms to the benefits afforded to similarly situated employees in the surrounding communities.

The FOP argues that the current Sick Leave Provision has been in effect since 1986 and has worked well for the parties. It points out that the relationship between the City and FOP dates back nearly twenty-five years preceding Ohio's Collective Bargaining Law. There is absolutely no basis to change the current Sick Leave Accrual Provision especially where it is shown that it has a long history of working well both for the bargaining unit employees and the City.

ANALYSIS – This fact-finder under SERB’s guidelines is required to consider comparable evidence in resolving each of the issues presented. With respect to the sick leave accrual issue, it is evident that the current provision is out of line with other similar provisions in the region. There is no other city in the area which affords its employees thirty days of sick leave accrual per year. The norm for the area is fifteen days of annual sick leave accumulation. As a result, this fact-finder must recommend the change in sick leave accrual proposed by the City which would mean that the accrual amount would conform to that provided to similarly situated employees in surrounding communities.

This fact-finder fully recognizes the impact which the change in sick leave accrual will have on the bargaining unit. Currently, the provision provides that employees who have accumulated more than 120 days of sick leave may convert on a three to one basis all days accumulated over 120 days into lump sum cash payment at the end of each calendar year. The payment for this conversion of sick leave is made in January of each year. With the proposed change to an accrual rate of only fifteen days of sick leave per year, it is apparent that it will take longer for employees to accumulate the needed 120 days which then can be converted on a three to one basis. It was shown that currently, for example, employees who have more than thirteen years of service could possibly receive approximately \$1,889 in sick leave conversion compensation. With the recommended sick leave accrual to fifteen days per year, that amount in effect will be cut in half to about \$944.

Therefore in order to make up for the loss in sick leave conversion compensation, this fact-finder has determined to make two recommendations. First, he

would recommend that the change in sick leave accrual be implemented at the beginning of next year so that employees can continue to convert their sick leave accumulated under the current provision for the year 2001. Furthermore, this fact-finder as previously discussed, has recommended an additional .5% wage increase in the first year as well as an increase in longevity pay to help offset the change which will occur with respect to sick leave conversion compensation. In effect the increase in longevity pay, which would be nearly doubled, will compensate bargaining unit members for the loss of the fifteen sick days which they will no longer be able to accumulate under the new proposal.

This fact-finder also finds it reasonable to provide that the City may conduct a medical review at any time to determine the extent of the illness or injury. It would also be appropriate to add language prohibiting the abuse or patterned use of sick leave which would serve as sufficient cause for disciplinary action. Such provisions are found in other police agreements in the area.

RECOMMENDATION

It is the recommendation of this fact-finder that the Sick Leave Provision be changed as follows effective January 1, 2002:

SICK LEAVE

Section 1 Change accrual amount to 4.6 hours for every eighty (80) hours worked or to fifteen (15) days per year.

Section 5 Delete thirty day medical review. Add medical review at any time to determine extent of illness or injury. (effective on execution)

Section 9 (new) Add language which provides that abuse or patterned use of sick leave shall be just and sufficient cause for disciplinary action. (effective on execution)

5. WORKWEEK

The City proposes to add language whereby the Chief would have the right to change an employee's schedule. The FOP proposes to include a provision which would require permanent shifts using seniority as the primary factor. Currently, there is no provision in the Agreement regarding permanent or rotating shifts.

ANALYSIS – It appears to this fact-finder that an agreement was reached and that the Police Chief has issued a policy governing permanent shifts which would commence next year. Part of this agreement is to allow the Chief to change an employee's schedule if necessary, both for departmental needs and for training purposes under Article 24 of the parties' Agreement. In addition, the policy regarding permanent shifts essentially provides that shift selection shall be made based upon seniority so long as departmental needs are met as to shift mix, training, and expertise. Considering the new policy which will cover permanent shifts, which again, will be implemented next year, this fact-finder finds that it is appropriate to include new language in the Bargaining Agreement pertaining to this issue. In particular, this fact-finder finds it appropriate to add new language under the Workweek Provision as well as under the Training Section which basically allows the City to adjust an employee's work schedule to meet departmental needs.

RECOMMENDATION

It is the recommendation of this fact-finder that the following modifications be made to the Workweek/Scheduled Hours Provision in order to accommodate the new policy regarding permanent shifts.

WORKWEEK/SCHEDULED HOURS

Section 6 (new) Notwithstanding any other provisions of this Article or this Collective Bargaining Agreement, the Chief shall have the authority and power to change any employee's respective work schedule due to the needs of the Department.

6. DIFFERENTIALS

The City proposes to delete special operations pay as well as the ability of reserve officers to bid out of their position. The FOP opposes any change in pay currently provided to those working as reserve officers. Currently, those reserve officers receive a 3% wage increase for working as reserve officers and they may bid out of the position after one year of service in such position.

The City submits that the additional pay provision for reserve officers was placed in the contract three years ago with the hopes of encouraging people to volunteer for the position. However, no one has volunteered for the position and the City has been required to assign people to fill the position. As a result, the 3% additional pay increase for reserve officers has been wasted in the sense that it has not served the purpose for which it was intended. Moreover, the City sees no reason why the least senior employee should be allowed to bid out of the position after one year of service.

The FOP contends that the reserve officer pay provision should remain unchanged. Approximately twelve employees currently serve as reserve officer and receive the 3% additional pay above the patrol officer grade one pay. The City did not offer any basis for eliminating the additional pay for reserve officers. Moreover, the FOP argues that reserve officers should be allowed to bid out of the position after one year of service.

ANALYSIS – This fact-finder has determined that there was insufficient basis established for eliminating the reserve officer pay provision. If the City's position were to be upheld, it would mean that approximately twelve bargaining unit members would

suffer a pay loss for the current year. The evidence produced simply failed to show that there was justification for the elimination of the additional 3% special operations pay provision. Moreover, this fact-finder has determined that the current provision which allows the least senior employee to bid out of the reserve officer classification after one year should be retained. It should be noted in that regard that the provision allows management to rotate an employee out of the reserve officer assignment at any time. Again, this provision which allows employees to bid out of the reserve officer position appears to be reasonable and should be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Special Operations Pay Provision or that section which allows reserve officers to bid out of the position.

DIFFERENTIALS – Current language, no change.

7. SPECIAL LEAVES

The City proposes to eliminate bereavement leave days from ten to five days, and from five to three days, respectfully. The FOP proposes a modification which would allow for one day of funeral leave for aunts, uncles, nieces, nephews, and one unpaid day for funerals of meaning. The current bereavement leave provision allows for ten days for close relatives such as one's spouse, child, mother or father. A five day bereavement leave is allowed for more distant relatives such as a brother, sister, father-in-law, or mother-in-law.

ANALYSIS – This fact-finder has determined that the current bereavement leave provision should remain the same without any modification. There was insufficient basis established for the changes which the City has proposed in reducing the amount of bereavement leave days. While it may be true that the amount of bereavement leave provided to the bargaining units here could be greater than that provided to others in the area, it was not shown that the current provision has created any problems for the City. It simply cannot be said that the granting of ten bereavement leave days to employees for close relatives and five days of bereavement leave for more distant relatives is unreasonable. There was no basis established for the FOP's proposed modification. As a result, this fact-finder would recommend that the current provision be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Bereavement Leave Day Provision remain the same without any modification as proposed by the City or FOP.

BEREAVEMENT LEAVE – Current provision, no change.

8. SURVIVOR'S BENEFIT

The City wishes to provide insurance for the death of an employee while working instead of paying the salary for three years which is the current provision. The City proposes that this coverage be an accidental death and disability insurance policy (AD&D) of \$100,000. Moreover, the City agreed to the Union's proposal to increase the life insurance to \$25,000. The FOP in response agrees to the AD&D insurance but asks for \$150,000.

ANALYSIS – This fact-finder has determined that there was sufficient basis established for modifying the current Survivor's Benefit Provision. Presently if an officer is killed in the line of duty, his immediate family, spouse, or significant other will receive a salary for three years. There is also a basic life insurance policy in the amount of \$15,000. However, this fact-finder finds merit in the City's contention that it should not have to be put into the position of having to determine who should receive the three-year annual salary. It would be much better to provide an AD&D insurance policy which would be governed as to who receives the benefits based on the employee's declaration of beneficiary. As a result, this fact-finder would recommend that employees be given an AD&D insurance policy of \$125,000.

It would also be appropriate to increase the amount of life insurance to \$25,000. The parties basically agreed to this increase in life insurance coverage.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Survivor's Benefit

Provision be modified as follows:

SURVIVOR'S BENEFIT

Survivor's Benefit Provision changed to provide the benefit coverage through the issuance of an AD&D insurance policy of \$125,000.

Life Insurance shall be increased to \$25,000.

9. CLOTHING MAINTENANCE ALLOWANCE

The FOP proposes to increase the annual clothing maintenance allowance to \$1,000 per year for both new and regular employees. The City opposes any increase in the clothing allowance. The current provision provides for an annual clothing maintenance allowance of \$800.

ANALYSIS – This fact-finder has determined that there should be an increase in the annual clothing allowance to \$1,000 as requested by the FOP. It was shown that the annual cost to employees for uniform maintenance has increased over the years. The two hundred dollar increase which is recommended herein is certainly reasonable to cover the increased maintenance costs involved. However because the uniform allowance has been paid for this year, it would be appropriate to provide that implementation of the new increase take effect during the second year of the Agreement.

RECOMMENDATION

It is the recommendation of this fact-finder that the Clothing Maintenance Allowance be increased to \$1,000 as proposed by the FOP beginning in the second year of the Agreement.

CLOTHING MAINTENANCE ALLOWANCE

Effective January 1, 2002, increase clothing maintenance allowance to \$1,000 for new and regular employees.

10. TRAINING

The City proposes language which would allow the department to change schedules for training purposes in order to meet departmental needs. The FOP takes the position that such a change in schedule for training purposes can take place so long as there are permanent shifts.

ANALYSIS – This fact-finder has determined that the Training Provision should be modified as proposed by the City. As indicated above, the Police Chief has issued a policy governing permanent shifts commencing next year based upon seniority as long as departmental needs are met. In conjunction with that permanent shift policy, it would be appropriate to allow the Chief to change an employee's schedule, if necessary, for training purposes under this provision. As a result, the proposal submitted by the City concerning the Chief's ability to change schedules for training purposes should be adopted.

RECOMMENDATION

It is the recommendation of this fact-finder that the following Training Provision be included in the parties' Agreement:

TRAINING, Section 6 Delete the second paragraph and substitute the following:

For employees assigned training, the City may adjust the employee's work schedule and days off to meet Departmental needs.

11. OVERTIME

The City proposes to provide language whereby it can cancel an employee's order to report for court duty one hour prior to reporting time by leaving a message on an answering machine. The FOP proposes that the City should be obligated to pay court time unless it is cancelled twenty-four hours in advance.

ANALYSIS – This fact-finder has determined that it would be reasonable to allow the City the right to cancel an employee's order to report for court duty by 6:00 p.m. the day before the scheduled reporting time. It may do so by leaving a message on the employee's answering machine. The current provision only provides that such a message must be delivered to a person by telephone or by direct contact at the employee's residence. This fact-finder believes that with the common use of answering machines, there should be no need for the City to make direct contact with the employee so long as the message is delivered by 6:00 p.m. the day before the time directed to report for duty.

RECOMMENDATION

It is the recommendation of this fact-finder that the Overtime Provision be modified as follows:

OVERTIME PROVISION

Section 5 Modify to provide that the City will have the right to cancel an order to report to duty by leaving an answering machine message by 6:00 p.m. the day before the time directed to report for court duty.

12. VACATIONS

The FOP proposes a new vacation schedule which would provide for a greater allotment of vacation leave. In addition, it proposes new language whereby regular days off that abut scheduled vacation will be treated as vacation for subpoena purposes. The City rejects any changes in the current Vacation Provision.

ANALYSIS – This fact-finder has determined that there should be no new vacation leave provision as proposed by the FOP. The current provision is consistent with that provided to other employees in the City. There was no basis established for varying the citywide vacation schedule.

However, this fact-finder would recommend the new language proposed by the FOP under Section 3 of the Vacation Provision. In particular, it would be reasonable to provide language whereby regular days off that abut scheduled vacation will be treated as vacation for subpoena purposes.

RECOMMEDATION

This fact-finder would not recommend any change in the vacation schedule allotment as proposed by the FOP. However, the new language pertaining to Section 3 is recommended as follows:

VACATION

Section 1 Current provision, no change.

Section 3 (Add new language) Regular days off that abut scheduled vacation will be treated as vacation for subpoena purposes.

13. APPENDIX A (New Provision)

The City proposes a new provision which would provide that any assignment of a patrolman to a higher rated position such as FTO or Investigator should not to be considered a promotion under Civil Service or the Agreement. It is further proposed that the Chief shall have the sole authority to assign employees to any such position or to transfer employees out of such positions to their previous position and rate of pay. The FOP opposes any such provision.

ANALYSIS – This fact-finder finds that the City’s proposal is reasonable. It would be appropriate to provide that assignments to such higher rated positions such as FTO or Investigator should not be considered to be a promotion. The wage increases associated with these temporary assignments certainly should not mean that the officer has been promoted.

It would also be appropriate to allow the Chief the right to make such assignments. The City was convincing in arguing that the Chief needs to maintain flexibility in assigning officers in order to meet the needs of the department. As a result, this fact-finder would recommend that the Chief have the sole authority to assign employees to a higher rated position such as FTO or Investigator or to transfer such employees out of the position to their previous position and rate of pay.

RECOMMENDATION

It is the recommendation of this fact-finder that a new Appendix A provision be included in the parties Agreement as follows:

APPENDIX A

The assignment of a Patrolman to a higher rated position such as FTO or Investigator, shall not be deemed a promotion under Civil Service or this Agreement, and the Chief shall have the sole authority to assign employees to any such position or to transfer such employees out of such positions to their previous position and rate of pay.

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder would recommend that all tentative agreements previously reached by the parties be incorporated into their final Agreement.

AUGUST 29, 2001



JAMES M. MANCINI, FACT-FINDER