

HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2001 MAR -8 A 9:23

In the Matter of Fact-Finding :
Between : SERB Case Number:
CITY OF FREMONT, OHIO : 00-MED-10-1145
Employer :
and : Date of Fact-finding Hearing:
OHIO PATROLMEN'S : February 19, 2001
BENEVOLENT ASSOCIATION, :
Union : Howard D. Silver
Fact-Finder

REPORT AND RECOMMENDATION OF FACT-FINDER

APPEARANCES

For: City of Fremont, Ohio, Employer

Donald J. Binkley
Regional Manager
Clemans, Nelson & Associates, Inc.
417 North West Street
Lima, Ohio 45801-4237

For: Ohio Patrolmen's Benevolent Association, Union

Joseph M. Hegedus, Esquire
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli, Co., LPA
175 South Third Street-Suite 820
Columbus, Ohio 43215-5134

This matter came on for fact-finding hearing at 10:30 a.m., on February 19, 2001, at 323 South Front Street, Fremont, Ohio, within the city of Fremont's Municipal Building. At the fact-finding hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The record in this matter was closed at 12:30 p.m., February 19, 2001, at the conclusion of the fact-finding hearing.

BACKGROUND

The parties to this proceeding, the city of Fremont, Ohio, the employer, and the Ohio Patrolmen's Benevolent Association, the union, were parties to a collective bargaining agreement in effect from January 1, 1998 through December 31, 2000. The bargaining unit addressed by this proceeding is comprised of eight positions, four sergeant positions and four captain positions. The members of this bargaining unit serve as uniformed middle and upper managers of uniformed personnel in the city of Fremont's police department. This bargaining unit has a bargaining history with the city of Fremont, Ohio dating back to (at least) January 1, 1986, when a collective bargaining agreement took effect between the bargaining unit and the city of Fremont from January 1, 1986 through December 31, 1988, which defined wages for lieutenants and sergeants covered by this agreement by applying a ten percent wage differential to the wages of a police officer of comparable departmental longevity to determine a sergeant's pay, and applied a ten percent wage

differential to the wages of a sergeant with comparable longevity of departmental service to determine a lieutenant's wages.¹

In ensuing collective bargaining agreements between this bargaining unit and the city of Fremont, from January 1, 1989 through December 31, 1991; from January 1, 1992 through December 31, 1994; from January 1, 1995 through December 31, 1997; and from January 1, 1998 through December 31, 2000, wages for captains and sergeants (and previously, lieutenants) have always been defined by applying an agreed percentage to the wages of a police officer with equal departmental length of service, with the resulting amount added to the pay of the police officer to determine the pay of a sergeant, and applying the same wage differential percentage to a sergeant's wage to determine a captain's wage level. This method of defining wages within the bargaining unit remained the same throughout the collective bargaining agreements in effect between the bargaining unit and the city of Fremont from January 1, 1986 through December 31, 2000, with the only change being to the amount of the percentage of wage differential to be applied. Since January 1, 1986, when the original wage differential was set at ten percent, the differential has moved from ten percent on January 1, 1986, to twelve percent effective January 1, 1992,² to thirteen percent effective January 1, 1993, to fourteen percent effective January 1, 1994. The wage differential for sergeants and captains

¹ The positions which used to be classified and ranked lieutenant have since become classified captain; the bargaining unit in its present configuration contains no lieutenant positions, just four sergeant positions and four captain positions.

has remained at fourteen percent since January 1, 1994, including the contract effective January 1, 1995, and its successor agreement which was effective January 1, 1998, the parties' predecessor collective bargaining agreement which expired on December 31, 2000.

The employer proposed to the union during bargaining for the successor agreement (which is to be retroactive to January 1, 2001) a move away from the wage differential method of describing captain and sergeant pay levels in the parties' successor agreement. The employer proposed during bargaining and continues to propose in this fact-finding procedure that the wage differential method of defining the wages of sergeants and captains be abandoned, and that the wages for captains and sergeants in the bargaining unit be described digitally, that is, by an exact number of dollars and cents, without reference to wage levels in another bargaining unit.

The union emphasizes the long history of determining wages within this bargaining unit through application of a wage differential based upon police officers of comparable departmental service for sergeants, with the sergeants' wages used to determine the captains' wages. The union sees no reason to abandon a wage method that has been used continuously and successfully over the past fifteen years.

Beyond the method to be used in defining the wages of the members of the bargaining unit, the parties disagree on the amount of a wage increase to be paid to the bargaining unit members under the successor agreement. There is no claim in this proceeding of an inability to fund the wage proposals at issue in this proceeding;

The union proposes that the parties' successor agreement, to be retroactive to January 1, 2001, include the following language in section 4.10, in lieu of the language cited above:

All employees in the bargaining unit who have been employed at least sixty (60) days and who are not members in good standing of the Union, shall pay a fair share fee to the Union...

The remainder of the language in section 4.10 of the predecessor agreement, which expired December 31, 2000, is carried over in the union's proposal.

The union points out that one employee within the collective bargaining unit was exempted from a fair share fee in the predecessor agreement, an employee who has been permitted, for three years, the length of the predecessor agreement, to have access to the benefits of the union's representation of the bargaining unit without paying any part of the costs of this representation. The union believes it to be fundamentally unfair to allow one employee in the entire department to enjoy the benefits of a collective bargaining relationship between the city of Fremont, Ohio and the union, and not require that employee to contribute his fair share of the costs which arise in the maintenance of this labor-management relationship.

The employer claims that nothing within the past three years has occurred which would alter the need or lack of need for the exemption language which was part of the parties' predecessor collective bargaining agreement for a period of three years. The employer contends that if nothing occurred to change the circumstances which led to the inclusion of this language in the

both the employer and the union agree that a wage increase should be paid to members of the bargaining unit. What separates the parties is the amount of the wage increase for the bargaining unit members.

A second issue presented to the fact-finder in this proceeding addresses a single captain's position within the bargaining unit which is filled by a bargaining unit member who was exempted by the parties' predecessor agreement, which expired on December 31, 2000, from paying a fair share fee. This issue is presented to the fact-finder based upon a proposal by the union that the exemption language under which the incumbent of the position at issue had been employed for the past three years be deleted. The employer indicated at the fact-finding hearing that it can find no particular reason for a change to this exemption language appearing in the predecessor agreement.

ISSUES

1. Article 4 - Dues Deduction

Article 4, section 4.10 of the parties' predecessor agreement, which expired December 31, 2000, reads, in pertinent part:

All employees in the bargaining unit who are currently members of the OPBA and hereafter revoke their check-off authorization and all new employees who enter the bargaining unit after June 1, 1998, shall pay to the OPBA, through payroll deduction, a fair share fee for the duration of this Agreement...

parties' predecessor agreement, there is nothing presented in this proceeding to lead the fact-finder to conclude that a change in this language is warranted.

At the fact-finding hearing, the union presented evidence to the effect that the exemption of this position was a final issue separating the bargaining unit from a three-year contract with the employer, and rather than imperil all that had been negotiated, the exemption language was accepted for no other reason than to reach complete agreement on the negotiated collective bargaining agreement.

In the fact-finding hearing before this fact-finder on February 19, 2000, neither party indicated this to be an issue which, if not decided a certain way, would make impossible an agreement between the parties on a successor agreement. Each party expressed its position on this issue but neither party suggested that this is a "make or break" issue.

The undersigned fact-finder reaches no conclusions about the exemption language in the parties' predecessor agreement, noting only that it was agreed language. In the case herein, the fact-finder finds an absence of any particular reason to maintain a unique, discriminatory category of exemption which benefits a particular incumbent for no ostensible reason. The incumbent of this position may choose, under the collective bargaining agreement between the parties, to refuse to join the union, and may thereby avoid paying union dues. The incumbent of this position, however, in the absence of express language in the parties' successor

collective bargaining agreement, may not refuse to pay his fair share of the cost of maintaining the management-labor relationship between the parties, the relationship through which the parties' collective bargaining agreement is bargained, agreed, and administered. Whether or not the previously exempted incumbent approves of the collective bargaining relationship between the union and the employer, the position filled by this incumbent is paid, administered, and secured under a collective bargaining agreement negotiated by the parties, an agreement applicable to this position. In the absence of some definable reason to extend an exemption from sharing in the obligation of meeting the costs of the parties' labor-management relationship, the fact-finder can find no reason to recommend an inclusion of this now expired exclusionary language which was intended to benefit a particular person for no particular reason. In the absence of such a reason, the fact-finder recommends the language proposed by the union on this issue.

RECOMMENDED LANGUAGE - Article 4, Section 4.10

Section 4.10

All employees in the bargaining unit who have been employed at least sixty (60) days and who are not members in good standing of the Union, shall pay a fair share fee to the Union. The amount of the fair share fee shall be certified to the City by the Treasurer of the Union at the same time and in the same manner as the certification of monthly Union dues. Once the amount of the fair share fee is certified, monthly share fee shall be deducted automatically and without written payroll deduction authorization

from the earnings of employees in the bargaining unit who are not Union members and who have been employed by the City for at least sixty (60) days.

The parties agree that rebate procedures for employees challenging the amount of the fair share fee shall be as mandated by federal law and/or Section 4117.09 Ohio, Revised Code. The parties further agree that public employees who are members of and adhere to established and traditional tenets and teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization, as set forth in Section 4117.09(C), Ohio Revised Code, shall have such alternative contribution rights as are provided by law under such conditions and in accordance with such procedures as are required by law.

The Union shall hold the City harmless from any liability arising out of any action by it or omitted by it in compliance with or in an attempt to comply with the provision of this Section.

2. Article 13 - Wages and Benefits

The union proposes that the wage differential method used to define wages within the bargaining unit, a system used since January 1, 1986, be retained, with this system defining the wages of sergeants within the bargaining unit through a wage differential of fourteen percent over police officers of comparable longevity within the department, and that captains' wages be calculated by applying the fourteen percent differential to sergeants' wages. The union emphasizes that applying a wage differential of fourteen percent for the bargaining unit in determining wages has been used since 1994, and the union's proposal does nothing more than extend a longstanding past practice on how wages within the bargaining unit are to be described, and which wage level increase amount is in accordance with historical trends.

The employer emphasized at the fact-finding hearing that it was desirous of a change in the method used to describe wages

within the bargaining unit, wishing to disassociate wage levels in this bargaining unit from the wage levels in any other bargaining unit, in this case the bargaining unit containing police officers. The employer reminds the fact-finder that as wages are a mandatory subject of bargaining, the employer is well within its statutory rights to propose a change of this nature, and urges the fact-finder to recommend wages for the bargaining unit members in specific dollar amounts, rather than as a function (percentage) of the wages of positions in a different bargaining unit.

The employer also emphasized at the fact-finding hearing that city of Fremont police officers, members of a bargaining unit separate and apart from the bargaining unit containing sergeants and captains, were found, based on wage and benefit data from other comparably-sized communities in the State Employment Relations Board's region seven of the state of Ohio (northwest quadrant of Ohio), to be paid wages at a level below a median wage among the police officers of these comparably-sized communities. The city of Fremont, in bargaining with the police officers' bargaining unit, agreed to increase the level of pay for police officers so as to raise their wages to a level more in keeping with police officers' average wages in comparable communities in that part of Ohio. The employer points out that wage increases for the police officers were bargained and intended specifically to bring the police officers' wages in line with average wage levels of comparably-sized communities in that part of the state, and were not intended to increase wages for positions in another bargaining unit, namely

the bargaining unit comprised of sergeants and captains. The employer expressed nothing but admiration for the work provided by the captains and sergeants within the city of Fremont Police Department, but stressed that there was an additional wage increase for police officers for particular reasons that had nothing to do with the captains and sergeants. The employer contends that by simply agreeing to a fourteen percent wage differential based upon the newly increased police officer wages, a level of increase not intended for captains and sergeants would result based upon wage increases intended only for a different bargaining unit. This is not to say that the employer intended no wage increase for the captains and sergeants, only that the increase for police officers was not intended to produce a proportional increase for captains and sergeants.

The union, on behalf of the captains and sergeants, argues that to reduce the wage differential, which has been in effect for captains and sergeants at fourteen percent since 1994, would diminish funds otherwise available to captains and sergeants so as to divert these funds to pay for the extra increase in wages of police officers. The union has no quarrel with the level of wage increases for the police officers, so long as those increases do not diminish wage increases for captains and sergeants which are reasonably and historically in scale with the parties' bargaining history and the economic circumstances faced by these parties.

The fact-finder finds no compelling reason to abandon a wage determination method utilized by the parties continuously over the

past fifteen years. While the employer's wishes in this regard were reasonable and specific, the fact-finder finds no particular reason to stop using this method in determining wages between the parties, and therefore declines to do so.

The fact-finder is also struck, however, by the particular factors applied by the employer in determining a wage increase for a bargaining unit of police officers, a bargaining unit separate and apart from the bargaining unit at issue in this proceeding. The factors applied by the employer in determining a greater increase for police officers than otherwise would be the case (based on police officer wages paid by comparably-sized communities within the northwest region of the state of Ohio) are understood by the fact-finder to be applicable to the particular bargaining unit comprised of police officers, and that at least part of the increase in wages for police officers was intended exclusively for that bargaining unit, and was not intended for the bargaining unit comprised of sergeants and captains.

While the fact-finder intends to utilize the wage differential method used by the parties over the past fifteen years to describe wages, the undersigned fact-finder is cognizant of the fact that while the bargaining unit at issue in this proceeding uses the wages of another bargaining unit as a basis to calculate wages for captains and sergeants in their bargaining unit, there is no reason to believe that the impetus and dynamics underlying wage increases in these two separate bargaining units are identical, parallel, uniform, or symmetrical.

What the fact-finder refers to as the extra wage increase agreed by the employer through bargaining with the exclusive representative of the bargaining unit containing police officers comprises one to two percent of the total wage level agreed for police officers. The undersigned finds no reason to apply this extra one to two percent, intended to bring police officers up to median wage levels for police officers in the northwest quadrant of the state of Ohio (SERB's region seven), to the captains and sergeants bargaining unit at issue in this proceeding. To apply the fourteen percent wage differential as proposed by the union would incorporate the extra one to two percent increase intended for the police officers into the increase for captains and sergeants, a carry-over increase which the fact-finder can find no reason to propose. The undersigned finds that retaining the wage differential system as used in the parties' previous collective bargaining agreements in determining the wages of captains and sergeants, and by excluding the one to two percent increase intended exclusively for the wage increase for police officers, would result in a wage differential of twelve percent, producing a wage increase for the bargaining unit herein commensurate with a fourteen percent wage differential in the absence of the extra one to two percent wage increase agreed for police officers based on their wages being lower than region seven's median wages for police officers. By applying a twelve percent wage differential for sergeants and captains under these facts, the undersigned finds that the wage increase for the bargaining unit at issue in this proceeding would

be consistent with historical trends, and would not be inflated by a one to two percent wage increase intended for police officers not intended for any other bargaining unit. The wage increase proposed herein, based on a twelve percent wage differential, would produce a wage increase for captains and sergeants well above the consumer price index (3.4%) and would result in a wage increase in this bargaining unit proportional to historical trends and present economic circumstances. Accordingly, the fact-finder recommends a wage differential of twelve percent.

RECOMMENDED LANGUAGE - Article 13, Section 13.1

Section 13.1 - Wages

A Sergeant covered by this Agreement shall be paid an hourly rate twelve percent (12%) greater than the hourly rate paid to a police officer of comparable longevity of departmental service. A Captain covered by this Agreement shall be paid an hourly rate twelve percent (12%) greater than the hourly rate paid to a Sergeant of comparable longevity of departmental service.

The steps for wages are based on longevity:

Step A - less than five (5) years

Step B - at least five (5), but less than ten (10) years

Step C - at least ten (10), but less than fifteen (15) years

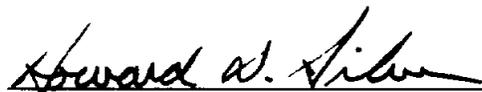
Step D - at least fifteen (15), but less than twenty (20) years

Step E - at least twenty (20) years or more.

When Sergeants' pay rates are adjusted to maintain the differential called for in this section, captains' pay rates shall be adjusted accordingly so as to maintain the percentage rate differentials.

Along with the recommended language presented in this report, the fact-finder recommends that all other articles tentatively agreed by the parties be incorporated by reference into this report as if fully reported herein and recommended by the fact-finder.

In making the recommendations presented above, the fact-finder has kept in mind criteria required by Ohio Revised Code Chapter 4117. and Chapter 4117. of the Ohio Administrative Code, including considerations contained within Ohio Administrative Code sections 4117-9-05(J) and 4117-9-05(K).


Howard D. Silver
Fact-Finder

March 8, 2001
Columbus, Ohio

CERTIFICATE OF FILING

I hereby certify that the foregoing Report and Recommendation of Fact-Finder was filed with the State of Employment Relations Board and mailed this 8th day of March, 2001, to the following:

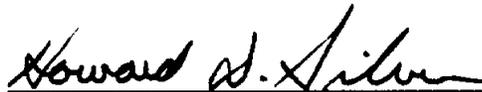
Donald J. Binkley
Regional Manager
Clemans, Nelson & Associates, Inc.
417 North West Street
Lima, Ohio 45801-4237

Representing the City of Fremont, Ohio

and

Joseph M. Hegedus, Esquire
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli, Co., LPA
175 South Third Street-Suite 820
Columbus, Ohio 43215-5134

Counsel for The Ohio Patrolmen's Benevolent
Association



Howard D. Silver
Fact-Finder

March 8, 2001
Columbus, Ohio