

STATE EMPLOYMENT  
RELATIONS BOARD

2001 SEP -4 P 1:07

Factfinding Report and Recommendations

in the matter of factfinding between

the City of Reynoldsburg

and

Fraternal Order of Police Capital City Lodge No. 9

SERB Case No. 00-MED-10-1275 and 1276

Hearing Date: August 17, 2001

Report Issued: September 4, 2001

MARCUS HART SANDVER, Ph.D.  
FACTFINDER

Representing the City:

Mr. Marc Fishel  
Attorney at Law  
Downes & Hurst  
300 South Second Street  
Columbus, OH 43215

Representing the FOP:

Mr. Robert Sauter  
Attorney at Law  
Cloppert, Portman, Sauter, Latanick  
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225 E. Broad Street  
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## I. Introduction

This case arises out of a collective bargaining dispute between the City of Reynoldsburg (the city or the employer) and FOP Capital City Lodge (the union). The dispute arises out of issues that were unresolved in contract negotiations. The parties began bargaining in July of 2000 to negotiate a successor agreement to the existing CBA, which expired December 31, 2000. Despite numerous negotiating sessions the parties were unable to resolve the outstanding issues. In November 2000, Marcus Hart Sandver was chosen, through mutual agreement of the parties as the factfinder to the dispute. The factfinder met with the parties seven times to mediate the dispute. Despite these efforts eight issues remained unresolved. This report addresses these issues.

## II. The Hearing

The hearing was convened at 9:00 a.m. in the second floor conference room in the Reynoldsburg City Hall. In attendance at the hearing were:

### For the City

1. Marc Fishel Attorney
2. Millie Milam Human Resources Director
3. Jeanne Miller Chief of Police
4. George Mussi Safety Director

### For the FOP

1. Shane Mauger Officer
2. Bill Early Officer
3. Steve Baughn Sergeant
4. Robert Sauter Attorney

5. Beth DeSimone - Law Clerk

The parties submitted exhibits into the record. The employer exhibits were contained in a multi-tab notebook collectively labeled employer exhibit #1. The union exhibits were contained in a multi-tab notebook collectively labeled FOP exhibit #1. The parties waived making opening statements.

III. The Issues

Issue One. Investigatory Questioning. Section 10.1

A. FOP Position

The FOP position on this issue is that Section 10.1 of the CBA should be amended such that a member of the bargaining unit is notified whenever an investigation is conducted that could possibly lead to discipline of the member. Presently Section 10.1 requires notification if a member is being investigated in a matter that could possibly involve discharge or suspension.

In defense of its position, the FOP representative directed the factfinder's attention to the 1995 SERB case in re. Davenport and to the 1975 NLRB Weingarten decision. The FOP representative stated his opinion that the changes proposed by the FOP would bring the CBA into conformity with the decisions of SERB and the NLRB.

B. City Position

The City representative stated his view that the member's rights under Weingarten and Davenport were already adequately covered by Section 10.1. Mr. Fishel stated that the City resisted broadening the language of section 10.1 because the City feared that with the proposed FOP language routine matters of discipline would require documentation and make the procedure more cumbersome and formal.

C. Discussion

The standard promulgated by the NLRB and affirmed by the Supreme Court in Weingarten clearly establishes the right to notification and to union representation in cases where the employee reasonably believes discipline could result. This same standard is clearly affirmed by SERB in Davenport. It is difficult as a factfinder to not recommend a change in the CBA that is so clearly a part of the public policy of the NLRB and SERB. While the proposed change by the FOP may make the discipline process a little more formalized, this formalization will result in an important protection of the rights of the officers.

D. Recommendation

The collective bargaining agreement be amended at Section 10.1A in conformity with the contract language proposed by the union in Exhibit 1 Appendix 1 Page 1.

Issue Two. Records Removal/Destruction. Section 10.5 and 10.6

A. City Position

The City position on this issue is that references to destruction of records of disciplinary action in the employees personnel file be removed from Section 10.5. In support of this position the employer's representative directed the factfinder's attention to O.R.C. 149.43, to the Court cases of Dispatch v. Wells and Dispatch v. City of Columbus, and to the city of Reynoldsburg's records retention schedule. It is the position of the City that language in Section 10.5 that allows for records destruction is illegal in light of the Wells and City of Columbus rulings.

B. FOP Position

The FOP position on this issue is to retain the current language referencing destruction of discipline records. The FOP proposal would eliminate reference to retaining expunged documents in a sealed file. The FOP proposal would also establish a new section 10.6 which

outlines the process an officer would follow in initiating a records destruction request. In support of its position, the FOP representative cited the cases of Keller v. Columbus, Dispatch v. Columbus, and FOP v. Columbus. It is the FOP position that the language in Section 10.5 is not illegal in light of the legal decisions cited.

#### C. Discussion

First of all, I'm no legal authority on matters relating to O.R.C. 149.43. But in reading the cases cited (especially Keller) it does not appear to me that the destruction of discipline records is per se illegal. The parties have had records destruction language in the contract since 1995; 10 years after the Wells decision. The City developed a records retention document that allows for the release of retention of personnel records (including discipline) when they are no longer of administrative or legal value. In the survey of other FOP agreements in Franklin County, the employers own data show that in 3 cities records are automatically destroyed or given to the employee after a period of time (Grandview, Whitehall and Worthington), in three others they may be destroyed subject to the approval of the Chief or the City Attorney (Hilliard, Pickerington and Upper Arlington). In Bexley, Gahanna and Grove City disciplinary records are removed from the personnel file but not destroyed. In Westerville, all records of discipline are retained in the employee's personnel file for the duration of his or her employment.

Based on the evidence and testimony presented at the hearing, I see nothing that compels the deletion of the destruction schedule from the current CBA. I do feel, however, that the new section 10.6 that the FOP proposes contain a reference to the City Attorney as well as to the Chief of Police in the request for destruction procedure.

#### D. Recommendation

That Section 10.5 of the CBA remain unchanged. That a Section 10.6 of the CBA be

written to read: Sec. 10.6 Request for a Removal and/or Destruction.

When a member initiates a written request to have a document removed and/or destroyed, the request shall be forwarded to the Chief, or in the Chief's absence to the Acting Chief, and the City Attorney. The Chief (or Acting Chief) and the City Attorney shall act upon the request by (1) Concurring and forwarding the request to the custodian of Records for action or (2) Disagreeing with the request by returning it to the member with an explanation. The Custodian of Records, upon receipt of the request shall act upon it no later than fourteen (14) days after receipt.

Issue Three. Wages. Annual Percentage Increases. Section 20.1

A. FOP Position

The FOP proposal on this issue calls for a 5 per cent increase in wages in each year of the contract. In support of its position the FOP provides comparability wage data for 11 municipalities in Franklin County.

B. City Position

The City proposal on this issue is to offer a 4 per cent increase in the first year of the contract and a 3 ½ per cent increase in year two and three of the agreement.

C. Discussion

Both parties cite pretty much the same data in support of their position. In looking over the SERB wage data for 2001 in Franklin County, I notice that 7 of the 11 municipalities will give their police officers a 4 per cent raise. One will give a little less than 4 per cent (Hilliard) and three will give more than 4 per cent (Grove City, Grandview Heights and Pickerington). To maintain its current rank among cities in Franklin County, Reynoldsburg needs to provide a 4 per cent increase in wages for each year of the agreement.

D. Recommendation

1. 4 per cent raise effective 1/1/2001
2. 4 per cent raise effective 1/1/2002
3. 4 per cent raise effective 1/1/2003

Issue Four. Shift Differential. Section 20.1

A. FOP Position

The FOP proposal on this issue is for a 70 cents per hour shift differential effective 1/1/2001 and for a 75 cents per hour differential effective 1/1/2002. In support of its position the FOP submits shift differential data from 12 municipal police departments in Franklin County.

B. City Position

The City proposal on this issue is to raise the shift differential to 70 cents per hour on 1/1/2002 and to 75 cents per hour on 1/1/2003. In support of its position the City submits SERB data from 11 municipal police departments in Franklin County.

C. Discussion

There was not much discussion of this issue. The positions of the parties are very close. Recognizing that there is a "time value" to money and that the shift differential is a type of compensation for working during the hours that most other people are sleeping, I would recommend that the shift differential be paid sooner rather than later.

D. Recommendation

Effective 1/1/2001 shift differential of 70 cents per hour. Effective 1/1/2002 shift differential of 75 cents per hour.

Issue Five. Compensatory Time. Section 21.4

A. FOP Position

The FOP proposal on this issue is that the compensatory time “bank” limit be raised from 100 hours per year to 112 hours per year. In support of this position the FOP cites SERB data from 12 central Ohio cities in Franklin County.

B. City Position

The City proposal is current contract language of 100 hours. In support of this position the City cites SERB data from 11 Franklin County cities.

C. Discussion

In the City’s brief the City representative observes, quite persuasively, that in a relatively small department (like Reynoldsburg) the management of staffing to fill vacancies due to leaves is a major challenge. Increasing the compensatory time bank to 112 hours would make that challenge even more difficult. The comparability data shows Reynoldsburg to be right in the middle of the compensatory time bank accruals among the cities listed. To my mind, no good reason has been given by the union to change the existing accrual schedule.

D. Recommendation

No change to this section of the CBA.

Issue Six. Vacation Leave. Section 23.1

A. FOP Position

The FOP position on this issue is to increase the vacation benefit for those officers completing 22 years of service to 248 hours. The current benefit provides for 208 hours after completing 15 years of service.

B. City Position

The City position on this issue is to maintain the current 208 hour maximum vacation benefit as found in the agreement.

C. Discussion

The comparability data show that with 208 maximum vacation hours a year, the City is about in the middle of the distribution of central Ohio cities in Franklin County. A raise to 248 hours would propel Reynoldsburg to the top of the distribution eclipsed only by Upper Arlington with 264 hours and the City of Columbus with 252 hours (I acknowledge that the City does not regard Columbus as a comparable). The 208 hour maximum vacation benefit does not appear at this time to be out of line with the comparables. I find no justification to change the vacation benefit.

D. Recommendation

No change be made to this section.

Issue Seven. Protective Vests. Section 29.7 (proposed)

A. FOP Position

The FOP proposal on this issue is that protective vests should be worn at the officer's option. In support of its position the FOP provides contract language from the City of Bexley and the City of Columbus. In further support of its position, the FOP presents a copy of the current departmental policy regarding vests dated 9/7/98.

B. City Position

The City position on this issue is that the subject of vests not be addressed in the agreement. The current CBA has no language regarding protective vests. To support its position that protective vests safeguard police officers while on duty, the City submitted more than 50 pages of articles which support the value of vests in protecting police officers.

C. Discussion

This subject generated more discussion than any other during the hearing. The general

nature of the discussion involved the issues of comfort and past practice on the FOP side and of safety and management's rights on the City side. The comparability data show no clear practice regarding vests among the central Ohio communities in Franklin County. On the one hand, vests are referenced in the CBA and are optional in Columbus and Bexley. On the other hand, vests are referenced in the CBA and are required in Grandview Heights and Worthington. In the seven other municipalities vests are not mentioned in the CBA.

The issue of vests probably would not have come up in Reynoldsburg but for the concern that some officers have that the Chief will soon modify the current departmental policy that makes vests optional to one making them mandatory. I couldn't help noticing that the Chief was wearing a vest at the hearing.

The City proposal is not that vests should be referenced in the CBA and required; the City proposal is that vests not be referenced in the agreement. This is the current state of affairs. This is the practice in most of the central Ohio municipalities in Franklin County; vests are not mentioned in the agreement. I don't know if Chief Miller has a plan to change management policy and to require the wearing of protective vests. I do know that in 1998, four years after coming to the department, she clearly stated the policy that vests were optional. If a change were made in this policy and practice, the union would have some redress under the past practice clause of the agreement (Section 1.5). I see no need at the present time to include the FOP's proposal Article 29.7 in the agreement.

D. Recommendation

Article 29.7 (proposed) not be included in the agreement.

Issue Eight. Medical Insurance. Sections 31.1, 31.6, 31.7, 31.8 and 31.9

A. City Position

The issue of medical insurance is one of the dominant factors in the dispute between the City and the FOP. The City is proposing several quite dramatic changes in the health and medical insurance section of the agreement. The overall issue of proposed changes to the health insurance package can be broken down into four sub-issues.

Sub-Issue (1). Medical Insurance Sec. 31.1

[A] City Position

The current CBA has a provision in Section 31.1 which requires that the City provide its police officers with health insurance that is at least the same level of coverage as was in effect 12/31/97. This obligates the City to provide medical insurance benefits with the same level of coverage and deductibles as was in effect on 12/31/97. The City position on this issue is that it may become unable to provide the exact level of benefit in the upcoming agreement as in the past agreement because the City is contemplating a change in carriers in the near future. As a result, the City would propose to amend Section 31.1 to strike out the term "at least the level of" and substitute the word "comparable coverage." The City would further change the reference date to 1/1/01.

[B] FOP Position. Section 31.1 Medical Insurance

The FOP position on this issue is to keep the language of Sec 31.1 pretty much the same as it is currently, but to add a new Section 31.8 to the health insurance provision which sets up a process for the City to follow should it decide to change carriers during the term of the agreement.

[C] Discussion

There was lengthy discussion at the hearing, and at the mediated negotiating sessions that preceded it, about the viability of the consortium that provides health insurance to the City of

Reynoldsburg. Whether a new carrier will be chosen in the next few years remains to be seen, but I sincerely believe that the City needs flexibility in the agreement that would allow it to choose a new carrier should one be found. Thus, I am recommending the “comparable” language in Section 31.1.

The FOP proposal for advance notification and consultation in Section 31.8 (proposed) prior to any change in carriers would serve to protect the member’s interests and give them input into the change process. If the FOP does not agree that the proposed new benefits with the new carrier are comparable then the matter will be submitted to arbitration. I believe that the union’s language in the second section of 31.8 is a bit “heavy handed” and I would delete the language which dictates a remedy to the arbitrator.

[D] Recommendation

Section 31.1 Medical Insurance The City shall provide for the life of this Contract **COMPARABLE** coverage for hospitalization, surgical, major medical and drug participation coverage which was in effect as of **JANUARY 1, 2001**. The member is entitled to single or family coverage, as appropriate, which current medical, dental, and vision insurance premium is to be fully paid by the City, less the percentage co-pay as outlined in Section 31.6.

Section 31.8 Change in Carriers Should the City propose to change its insurance carrier for medical insurance coverage where such a change would result in a lesser level of coverage that was in effect on January 1, 2000, the City shall provide the Lodge with at least ninety (90) days notice of such intended change. Upon request of the Lodge, the parties shall meet to discuss the City’s proposal. If, after these discussions, the City and the Lodge are in agreement as to any change, the City may implement the agreed-upon change. If, after these discussions, the City and the Lodge are in disagreement as to any change, the parties shall submit their

dispute to binding arbitration under the provisions of Article 6 of this contract. The arbitrator shall issue a binding decision resolving the parties' dispute.

Sub-Issue 2. Prescription Coverage. Section 31.1

[A] City Position

Presently there is a \$3.00 co-pay for prescription drugs. The City (and its carrier) have found that this is a very expensive benefit. The City proposes to go to a schedule of drug benefits with the co-pay as follows:

Mail in        6%

Generic        10%

Preferred      15%

Out of pocket limits:

9/1/01 – 12/31/01    \$250

1/1/02 – 12/31/02    \$300

1/1/03 – 12/31/03    \$360

[B] FOP Position

The FOP position on this issue is that effective 1/1/02 the schedule would move to the 6% mail in co-pay, 10% generic co-pay, and 15% preferred co-pay. The FOP would set the cap on out of pocket costs at \$250 per year for the life of the agreement.

[C] Discussion

We were not able, unfortunately, to access usage data for the use of the prescription drug benefit for the Reynoldsburg police. To get a sense of how the proposed changes in the prescription may impact the officers in Reynoldsburg, I will use my own use of my prescription benefit for the sake of illustration. I take one prescription drug, a widely prescribed one. A

prescription of 60 pills (a 30 day supply) costs \$240. Under the current Reynoldsburg plan, I would pay \$3 for this 30 day supply or about \$36 per year in co-pay. Under the proposed plan, I would pay 6% (believe me I would use the mail option) or \$14.40 for a 30 day supply. This would result in an annual cost of \$172.80 or \$136.80 more in cost per year. This is for one prescription for one person. This is a big change. Because of the potential economic magnitude of moving to a percentage reimbursement system, I am recommending that the change be delayed until 01/01/02 to allow the officers to prepare for this big change and would recommend the cap be set at \$250 for the life of the agreement.

[D] Recommendation

Section 31.7 Prescription Drug Co-pay Effective January 1, 2002, members shall pay the following co-pay for a prescription drug purchase: For a mail-in drug purchase, 6% of the total cost; for a generic drug purchase, 10% of the total cost; and for a brand-name drug purchase, 15% of the total cost. The City agrees to reimburse a member for his or her actual out-of-pocket prescription drug costs for approved claims incurred in excess of two hundred-fifty (\$250) dollars in a calendar year. Upon showing of appropriate documentation, such reimbursement shall be made at least monthly.

Sub-Issue Three. Premium Contribution. Section 31.6

[A] City Position

The City position on this issue is that the City proposes to pay 93% of the health insurance premium for the PPO plan and the employee will pay 7%. For those selecting the traditional plan, the City will pay 93% of the PPO rate (\$606 approximately) and the employee will pay the difference (\$198 approximately).

[B] FOP Proposal

The FOP proposes the current premium share (7%) for both the PPO and traditional plan. Under the FOP plan the officers would pay \$45.57 per month for the PPO plan and \$56.28 per month for the traditional plan.

[C] Discussion

The City proposal would have a big impact on the eight officers who are enrolled in the traditional plan. This impact may be necessary to motivate officers to shift out of the traditional plan, the real goal of the City proposal. I think that the officers who are on the traditional plan will shift over to the PPO, but may need a little time to find a new physician who is in the PPO network. Thus, I propose that the cost increase be phased in about 6 months from now. This will give the officers time to make the shift to the PPO over a six-month time frame.

[D] Recommendation

Section 31.6 Premium Contribution Each member will contribute to his or her monthly premium in the amount of seven percent (7%) of the total premium paid by the City for medical, dental and vision insurance. **Effective 3/1/02 employees who have elected the traditional health insurance coverage shall pay the difference in the premium between the traditional plan and the premium for the PPO.**

Sub-Issue Four. Termination of Traditional Plan. Section 31.7

[A] City Position

The City proposes a new section, 31.7, of the agreement which calls for the termination of the traditional plan 12/31/01. The City proposal would stop any switching from the PPO to the traditional plan effective 9/1/01.

[B] FOP Position

The FOP proposal would keep the traditional plan but would allow switching into the

traditional plan for current employees until 1/1/02.

[C] Discussion

I can't for the life of me see anyone switching into the traditional plan at this point; especially given the proposed changes in the financing of the traditional plan effective 3/1/02. I predict that enrollment in the traditional plan will begin to fall in the next few months and then more close to zero by 3/1/02. Of course, there may be one or two officers who will stay with the traditional plan no matter what the cost. I guess that is their choice and if they pay the difference in the premium why should the City care? For this reason I would not recommend terminating the traditional plan.

[D] Recommendation

Section 31.7 The traditional health insurance coverage shall be limited to employees who have such coverage as of January 1, 2001. No additional current or new employees shall be permitted to participate in the traditional coverage.

Sub-Issue Five. Dental and Vision. Section 31.3 and 31.4

[A] City Position

The City position on this issue is that the "comparable to" language in Section 31.1 be extended to dental and vision insurance.

[B] FOP Position

The FOP position on this issue is to oppose the proposed changes due to the fact that they were not discussed in negotiations.

[C] Discussion

The FOP is right here. In the course of seven lengthy and detailed days of mediated negotiations my notes reveal nothing on this issue.

[D] Recommendation

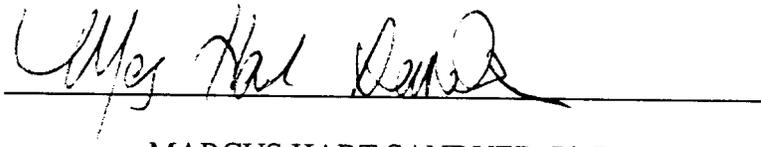
The proposed changes to Sections 31.3 and 31.4 not be adapted.

IV. Resolved Issues

The parties resolved a great number of issues in negotiation. It is recommended that all resolved and tentatively agreed upon issues be incorporated into this report.

V. Certification

This factfinding report and recommendations is based upon evidence and testimony presented to me at a factfinding hearing conducted on August 17, 2001 in Reynoldsburg. The recommendations in this report were based upon the criteria for factfinding found in ORC 4117.14(g)(7)(a-f).

A handwritten signature in cursive script, reading "Marcus Hart Sandver", is written over a horizontal line.

MARCUS HART SANDVER, Ph.D.

Dublin, Ohio

September 4, 2001