

IN THE MATTER

STATE EMPLOYMENT
RELATIONS BOARD

OF

2002 OCT 11 A 10:42

FACTFINDING

BETWEEN

THE CITY OF OXFORD, OHIO

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL
Police Officers

Hearings: October 8, 2002
SERB Case Nos.: 01-MED-10-0993
Date of Report: October 9, 2002
Issue: Factfinding

Union Representative:

Lawrence J. Deck
FOP/OLC, Inc.
222 East Town Street
Columbus, Ohio 43215
FAX: 614.224.5775

City Representative:

Donald L. Crain
Frost Brown Todd, LLC
300 North Main Street, Suite 200
Middletown, Ohio 45042-1981
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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated November 30, 2001, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On October 8, 2002, a hearing was scheduled but only mediation took place. Said mediation was unsuccessful. Following mediation, the Parties submitted the issues to the undersigned without a formal hearing. The record was closed at the end of the meeting on October 8, 2002, and is now ready for a factfinding report.

Factual Background

The City is located in Butler County, and is in and around the Miami of Ohio College Campus. Its approximately sixteen (16) patrol officers are represented by the Union. Significant here are the approximately ten (10) supervisory personnel (sergeants and lieutenants) who until recently had been part of this bargaining unit. Although the Parties could not agree to the reasons for the split, it was undisputed that they are no longer part of the bargaining unit and bargained separately for their new contract.

In the spring of 2002, the supervisory bargaining unit (also represented by the FOP, albeit another lodge) reached agreement on a new contract. In that contract, the supervisors were given an approximate six percent (6%) per year wage increase (18% over the life of the agreement). The City conceded that this was a large increase, but argued that the increase was justified since the supervisors are underpaid when compared to other similarly situated employees in the area. It claimed that the supervisory bargaining unit made a persuasive case for its position in that it proved that it was underpaid when compared to other similarly situated supervisor personnel. Based on their persuasive claims, the City agreed to the large wage increases to the supervisors.

The Union did not agree with this assessment and argued that it should be given a similar raise that would maintain the same percentage difference between the top step of the patrol officers when compared to the supervisors (rank differential). It argues that its proposals on wages would maintain that percentage difference in the rank differential (approximately 15%) while the City's proposals would increase the difference until, by the end of the Agreement, it would be about 24.5%.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the 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;
- (3) The interest and welfare of the public, 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) 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. (emphasis added)

The issues will be addressed giving consideration to all of the required factors.

ARTICLE III
Wages

The difficulty in this case is that the arguments from both Parties are entirely reasonable and persuasive. The undersigned is thus placed in the difficult position of choosing between two (2) reasonable and convincing claims. In the end, the City's claim that its supervisors were historically underpaid carries more weight. If there is ever a proper time to separate the ties between the two (2) bargaining units, it is at the beginning of a new Agreement with the newly created bargaining unit rather than following a series of Agreements. While the City may have acted a little hastily in reaching the supervisor's Agreement without first attempting to reach settlement on this Agreement, such conduct does not justify a recommendation that this bargaining unit should necessarily receive the exact same increase. Such would only result in punishing the City's administration for attempting to correct an error that it reasonably believed had been suffered by the supervisory personnel. That is not only not within the realm of the undersigned's authority, it would exacerbate the problems of all three (3) parties.

As a result, a recommendation has been made that attempts to give the bargaining unit a fair increase when compared to other bargaining units in the County, as well as recognizing, without matching, the wage increases given to the supervisors.

RECOMMENDATION

It is recommended that the wage increase be a \$1,200.00 immediate increase in the base wage adjustment; a three percent (3%) per year increase in the wages in each year of a three (3) year Agreement; with the wage increase made retroactive to September 1, 2002.

ARTICLE I
Part Time Officers

RECOMMENDATION

The Union's proposal is recommended as written with the following changes:

1. The outside range of expenditures should be increased to \$40,000.00; and,
2. The per year increase in the allowed expenditures should be increased by three percent (3%) in each year thereafter.

ARTICLE IV
Work Day and Work Period

RECOMMENDATION

Although the Union has identified a problem, and although their concerns are legitimate, the scheduling of the work force is ultimately a management right. A review of their claims shows that the problem is relatively new in that it only occurred about 1 ½ years ago. Absent a showing of an ongoing problem that management has refused or has been unwilling to address, it is not appropriate for a Factfinder to interfere. Unless it could be shown that the Parties require that the problem be addressed by a dispute resolver, it is best that they first attempt to resolve it themselves. Indeed, in this case, the fact that the Parties have a Labor/Management Committee designed to address precisely this type of issue supports a conclusion that the Parties should first attempt to resolve the dispute with the mechanisms already in place. Moreover, the problem is relatively new and the Parties have not had the opportunity to work out the issues themselves. As a result of these factors, it is felt that no changes are currently advisable. This should not be interpreted as a finding that the issue would never be appropriate for a Factfinder to address, it is only a finding that the issues is not yet ripe.

ARTICLE VII
Holidays

RECOMMENDATION

The Union's proposal to add a new Holiday is not recommended. However, it is recommended that employees be permitted to trade holiday shifts with other employees as long as the shifts being traded are during the same holiday. In addition, it is recommended that the employees be permitted to choose their method of compensation for working a holiday. Thus, they can either receive pay at two and one-half (2 ½) times their regular rate, or they can receive pay at one and one-half (1 ½) times their regular rate with, instead of the additional pay, an additional eight (8) hours of leave at a date to be used later. Finally, it is recommended that employees receive Holiday Pay at the rate of ten (10) hours per holiday.

Tentative Agreements:

All tentatively agreed to issues are incorporated herein by reference as if included in their entirety. All such tentative agreements are recommended as tentatively agreed to.

October 9, 2002
Cincinnati, Ohio



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