

STATE EMPLOYMENT
RELATIONS BOARD

2002 DEC 16 P 12:35

IN THE MATTER OF FACT-FINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE O.L.C. INC.

AND

THE CITY OF NEW PHILADELPHIA

BEFORE: Robert G. Stein

SERB CASE NO. 02 MED 08 0744, 0745, 0746

PRINCIPAL ADVOCATE FOR THE UNION:

James E. Boomer, Field Representative
FOP OLC INC.
222 East Main Street
Columbus OH 43215-4611

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Nicholas Codrea Jr.
THE LAW FIRM OF ROBERT J. TSCHOLL, ESQ.
236 Third Street S. W.
Canton OH 44306

INTRODUCTION

There are three bargaining units: Patrol Officers (16), Captains (5) and Dispatchers (4) involved in this fact-finding. The units have agreed to multi-unit bargaining and to a multi-unit agreement. Prior to reaching impasse the parties held six (6) bargaining sessions. Both Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of each party's proposal on each issue but instead will reference their Position Statements. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

The ten (10) issues that were initially presented at impasse were: seniority and assignments, sick leave, compensatory leave, holidays, hospitalization, personal leave days, wages, uniform allowance, longevity, and duration. At the hearing the parties reached tentative agreement on the issue of sick leave. The remaining nine (9) issues could not be resolved through mediation and were submitted to the Fact-finder for his recommendations.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 Article 9 Seniority and Assignments

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The Employer desires to create a variety of new assignment areas for the Police Department including such areas as canine officers(s), tactical response officer(s), negotiator(s), special underwater dive team member(s), and drug enforcement officer(s). The Employer, through the Chief of Police, provided persuasive arguments as to why it is important for the Chief to be able to select the best-qualified employees for these unique positions. The Union argued that it was concerned about favoritism being given to certain employees if the Chief were the only person to make staffing decisions in filling these new areas.

It is not uncommon for police chiefs to have the authority to select police officers in assignments that require special skills. For example, not everyone possesses the physical or psychological requirements to be a diver or has the patience and temperament to work well with police dogs. Seniority usually correlates with experience and judgment. Therefore, seniority in addition to qualifications should be factors in making assignments. The concern of the bargaining unit that the Chief would be the only person making such

assignments is not unfounded. Furthermore, the Chief may or may not have complete knowledge of the strengths of all of the officers in the department.

As a matter of fundamental fairness, each employee should have an equal opportunity at one of these positions. However, when it comes to possessing the special qualifications, education, and skills for non-routine positions, the City must have the flexibility to place qualified people in each position. It appears that a reasonable compromise can be fashioned that builds upon what the parties discussed during negotiations. The Captains (members of the bargaining unit) should have a specific role in candidate selection in order for the Chief to have the benefit of their collective knowledge and wisdom.

Recommendation

See Appendix A

ISSUES 2, 3, and 4	Article 24	Compensatory Time
	Article 25	Holidays
	Article 27	Personal Days

Union's position

See UPS

Employer's position

See EPS

Discussion

The parties dealt with these issues as a mini-package of proposals, due to the fact they all involve time off. Fact-finders are not bound by prior tentative agreements that are not supported by statutory criteria; however, in this case what the parties fashioned as trade-offs with these three benefits makes considerable sense. I find the facts support increasing the accumulation of compensation time for members of the bargaining unit from the present 120 hours to 180 hours per year. Time off helps employees to maintain a healthy balance between their work and family lives. Compensatory time allows for the more effective and cost efficient use of manpower in a variety of situations. The Chief of Police stated that the Department has been able to successfully manage the additional time off that is earned by police officers and Captains, and the compensation time benefit has worked well for both the City and the bargaining unit.

The other two issues in the mini-package are holidays and personal leave. The bargaining unit currently has four (4) personal leave days and ten (10) holidays. The trade-off of one personal day for an additional holiday (Veteran's Day) accomplishes several things. In our post "9-11" society there has been a renewed emphasis on the important role of the armed services in maintaining our democracy. Recognizing November 11th as a City holiday underscores this emphasis. From a practical point of view the floating nature of Veteran's Day allows all or most employees to have an equal opportunity to have the day off. It is not like fixed Monday holidays that may disadvantage certain bargaining unit members who have the same days off. If employees have to work the additional Veteran's Day holiday, they will receive compensation in

accordance with Articles 25 and 30, or have the option of adding compensation time to their bank that is earned at a premium rate.

Recommendation

See Appendices B, C, and D

ISSUE 5 Article 26 Hospitalization

Union's positions

See UPS

Employer's position

See EPS.

Discussion

The bargaining unit has a basic healthcare plan. Even though it covers a variety of illnesses and injuries, it is not an enriched plan. Of course, having such a plan can be both an advantage and a disadvantage. For employees and their families who are relatively healthy, such a plan is usually adequate. It also has the advantage of costing both the City and employee far less. For employees who have the advantage of being able to be listed on their spouse's healthcare, a low cost plan is also to their advantage.

On the other side of the equation are employees who have healthcare problems and who need to use the healthcare benefit more often. In those cases the current plan only covers part of what they need and premium costs are less important than coverage.

In north central Ohio, Aultcare has been a viable option for many public employers. On a comparison basis with counties north of Stark County, Aultcare has historically been able to offer healthcare at a very competitive price. The Union made the point during fact-finding that bargaining unit members are seeking a plan with greater benefits (e.g. dental coverage) and that the membership is supportive of paying more for better coverage. While this is an understandable view, it comes too late to be considered in this round of bargaining. The principle of good faith bargaining requires issues to be raised properly during negotiations and not after negotiations have reached impasse. In terms of the bargaining history of the parties, the FOP and the Fire bargaining units opted to take a 1% increase in lieu of dental coverage

It is also noted that the Union submitted ground rules in negotiations that restricted the parties from introducing any new issues into the bargaining process. Even though the City did not formally sign off on the rules, the good faith intent of the Union in proposing such rules is clear. In addition, proposing a brand new benefit or an enriched healthcare plan requires research and advanced planning if it is to be taken seriously in a formal round of negotiations. However, during the life of the Agreement the parties always have the opportunity to explore other healthcare options and by mutual agreement may make changes in healthcare coverage. During the life of the current agreement, the employer added optical care as a benefit. Section 26.5 of the Union's proposal in this

regard is sound and in line with the efforts of other employers and their bargaining units to evaluate their healthcare plans.

The bargaining unit has been paying 35 cents a month for health coverage. By today's standards this is inexpensive. The Union recognizes this and is proposing an employee premium of \$25 per month per employee beginning in January of 2003 for family members and no cost for single members. The City is proposing an employee contribution of 25% of the total premium cost. The total premium cost for family coverage (with optical) is approximately \$395.00 per month. Healthcare for the City is on a fiscal year that runs from March 1 to February 28 (or 29th in Leap years). If an employee is required to pay 25% of the premium in January, his or her monthly payment would be \$98.75 per month. This amount of contribution is out of line with the history of bargaining between the two parties and is far above what most comparable cities in the surrounding area ask of their employees (See health insurance comparables, Union brief).

In the last three year agreement the parties agreed to maintain the 35 cents per month premium as one way employees could maintain some say in the type of health care coverage they desire to maintain. It seems reasonable that if the 35 cents per month premium was agreed upon for all three years, it would be adequate as long as healthcare costs remain the same (i.e. until March 1, 2003). The City's advocate clearly articulated the increased cost the City is likely to have after March 1st and that is where the emphasis of a new employee premium pay schedule should be. It is also clear that single coverage costs less than half of what family coverage costs, although most employees have family coverage.

According to SERB data, approximately 70% of public employees pay a monthly premium toward the cost of their healthcare coverage. The average cost of monthly premiums for single coverage is around \$30 per month, and for family coverage the average is approximately \$87 per month. However, these employee premiums are based upon far more expensive plans than the current plan in place in New Philadelphia. SERB reports the statewide averages to be \$288 for single and \$705 for family. This is approximately 44% higher than the Aultcare plan currently purchased by the City. Furthermore, it must be kept in mind that in terms of past collective bargaining the employees have paid very little for their healthcare coverage. The healthcare premium averages used by SERB are based upon bargaining units that have historically paid a portion of their healthcare for several years.

While greater premium sharing is justified, it should be in accordance with the health insurance fiscal year and it should be progressively introduced. It is not reasonable for an employer to demand that “over night” employees go from a virtual no cost policy to paying a substantial amount toward their insurance coverage. Article 26.4 of the Union’s proposal for employees to be able to take advantage of pre-tax 125 benefits should be implemented as a way to lessen the impact of higher premiums.

Recommendation

Section 26.1 The City agrees to provide all bargaining unit employees with Health and medical insurance coverage under the Aultcare Plan. The Coverage under such plan is subject to the master insuring agreement between the City of New Philadelphia and the insurance company.

Section 26.2 Effective March 1, 2003, employees of the three (3) bargaining Units shall contribute to the maintenance of hospitalization and major

medical policies as follows:

- Effective 3/1/03** **Employees shall pay \$25 per month for family/\$15 for single coverage**
- Effective 3/1/04** **Employees shall pay \$30 per month for family/\$20 for single coverage.**
- Effective 3/1/05** **Employees shall pay \$35 per month for family /\$25 for single coverage.**
- Section 26.3** **The City agrees to maintain the current VSP eye care program at no additional cost to the employees**
- Section 26.4** **The City agrees to participate in an IRS Section 125 program that will allow contributions by the employees toward health insurance to be made pre-taxed.**
- Section 26.5** **The City and the Union agree to participate in a cooperative effort to research other policies or carriers To reduce costs and/or enhance benefits from current coverage. The committee will also research and make recommendations on other cost containments such as levels of coverage or opting out of coverage in lieu of other financial considerations.**

ISSUE 6 ARTICLE 30 Compensation

Employer's position

See EPS

Union's position

SEE UPS.

Discussion

The City failed to pass a safety levy during the most recent general election. This would have generated additional funding that was initially earmarked for construction of fire fighting facilities, but would eventually provide some funding for salary increases, according to the evidence presented. The City expects income tax receipts to be approximately \$3,150,000 in 2002. This is slightly below the \$3,169,000 amount collected in 2001. However, the trend in receipts appears to be a more important statistic to focus upon. City revenues from 1996 through 2002 have been on a gradual decline and the income revenue per capita is \$216.07. In contrast the per capita income in the wealthier community of Dover is \$259.62.

While not claiming an inability to pay, the City argues that it is in a fiscal state of caution at this time. The data appears to support this position, yet the City is continuing to improve its services and expand opportunities for industrial growth (e.g. new city hall project and money committed for new high-tech business park). The 2000 census data also indicates the City grew by some 1400 residents from 1990. It is also clear that the current salary schedule for police is out of line with those of comparable cities. Comparable cities do not require their police officers to wait 15 years to reach the top pay rate. Most cities the size of New Philadelphia provide considerable opportunities for police officers to gain a variety of experience. In doing so, most officers are able to become more proficient in a shorter period of time than fifteen (15) years.

According to SERB, the average pay increases for police officers have been in the mid-to-high 3% range. The evidence and data presented by the parties demand a balanced and conservative approach to providing a reasonable salary increase while beginning to bring the compensation structure in line with neighboring comparable cities.

Recommendation

See Appendix E

ISSUE 7 Article 31 Uniform Allowance

Employer's position

See EPS.

Union's position

See UPS.

Discussion

The Union's proposal to add \$50 to the uniform allowance is representative of the gradual increases that many employers and unions accomplish in negotiations. It is also noted that the parties agreed that improvements in the uniform allowance were tied to other improvements proposed and debated by the parties that ended up as recommendations in this report.

Recommendation

See Appendix F

ISSUE 8 Article 32 Longevity

Union's position

See UPS

Employer's position

See EPS

Discussion

The Union provided the most convincing comparable data in this regard. Its proposal represents the first step in moving the longevity of the bargaining unit closer to other comparable cities. While it does not achieve parity with surrounding communities (See Union brief), it does move toward what other cities are paying. It is therefore reasonable in light of the limitations placed upon current finances.

Recommendation

See Appendix G

ISSUE 9 Article 39 Duration

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The parties are in agreement over the length of the Agreement.

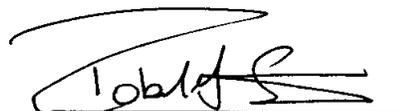
Recommendation

See Appendix H

TENTATIVE AGREEMENTS

During negotiations, mediation and fact-finding the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 14th day of December 2002 in Portage County, Ohio.



Robert G. Stein, Fact-finder

Appendix A

ARTICLE -9 SENIORITY AND ASSIGNMENTS

Section 9.1 For the purpose of this Agreement, seniority shall be defined as total continuous service in the City's Police Department. Continuous service shall not be considered broken due to City approved absences caused by occupations or non-occupational leaves of absence per this Agreement.

Section 9.2 In all matters wherein the Employer shall give consideration and evaluation for two (2) or more Employees on a competitive basis in regards but not limited to shift selection, job vacancies, and vacation selection, such evaluation will be made on the basis of seniority. Seniority shall be based upon the original date of hire. Provided, however, that employment as a dispatcher shall be utilized only in determining seniority as a dispatcher. Provided further, that rank seniority shall govern shift selection by captains. Should two (2) or more Employees have the same date of hire, the evaluation will be additionally made on the basis of the Civil Service test scores, with the highest score given priority. In those cases where two (2) Civil Service test scores are the same, the decision will be made by flipping a coin.

Section 9.3 When a vacancy occurs in the positions of detective(s), detective captain, canine officer(s), tactical response officer(s) negotiator(s), special underwater dive team member(s), drug enforcement officer(s) or school resource officer(s) the Chief of Police will post a notice for a minimum of seven (7) days prior to filling of either position. The Chief of Police shall take into consideration seniority, personal qualifications, competence, community specific knowledge, personnel records, merit in assignment to the position, **and the recommendations of all of the Captains.** The Chief of Police shall have sole discretion in filling the positions and shall not be subject to Article ten (10), the Grievance procedure.

Bargaining Unit members who have successfully completed their probationary period may submit in writing a request for consideration to the position(s). Said request shall list years of service, special training or qualifications and any personal data that should be considered in qualifying them for consideration. Requests for consideration shall be maintained by the Chief of Police for a period of one year, in case a vacancy occurs.

A job description and duty assignment, as adopted by the New Philadelphia Police Department, shall accompany the departmental job posting.

This section shall not void any portion of Article 9 Section 2 with respect to shift selection, vacation selection and other vacancies in duty assignments.

Appendix B

ARTICLE 24 – COMPENSATORY TIME

Section 24.1 Compensatory time may accrue to one hundred eighty (180) hours. Any Employee who has accrued in excess of 120 hours on or before January 1, 1991, shall carry forward all accrued compensatory hours of record as of that date.

Section 24.2 When compensatory time is earned by an Employee, the City shall have the option of paying said Employee for such accrued time at base rate or to grant the Employee compensatory time in keeping with this Article and administrative practice prior to the effective date of this Contract.

Section 24.3 The use of compensatory time shall not be unreasonably denied.

Section 24.4 In the event of an Employee's retirement, the Employee shall be paid for all accrued and unused compensatory time at base rate of pay. In the event of an Employee's death, the Employee's estate shall be paid for any accrued but unused compensatory time at the Employee's base rate of pay.

Section 24.5 Procedure for use of compensatory time:

1. Bargaining Unit members may utilize compensatory time off by notifying the Chief of Police, or his Designee, prior to the start of the shift that the Employee is scheduled to work.
2. If, a Bargaining Unit member reasonably expects that overtime may be required as a result of his/her request for compensatory time off, the Bargaining Unit member shall provide the Chief of Police, or his designee, in writing with a twenty-four (24) hour advance notice of the request for compensatory time off. The notice required by this paragraph shall be given no less than twenty-four (24) hours prior to the start of the shift the Employee is otherwise scheduled to work. All cancellations of requested compensatory time off that have resulted in overtime being scheduled shall be given at least twenty-four (24) hours prior to the start of the shift the Employee had requested off
3. A maximum of three (3) Employees per shift will be permitted off from duty by the usage of compensatory time, vacation time or pre-scheduled personal leave days.
4. Any on duty supervisor or Officer-in-charge may grant the use of compensatory time off, provided that such usage does not create/cost overtime to the City.

Appendix C

ARTICLE 25- HOLIDAYS

Section 25.1 All Bargaining Unit members are entitled to eleven (11) paid holidays. Each holiday will be paid in the pay period in which it falls.

1. The first day of January, known as New Year's Day.
2. The third Monday of January, known as Martin Luther King Day.
3. The third Monday of February, known as Washington-Lincoln Day.
4. The Friday immediately preceding Easter Sunday known as Good Friday.
5. The last Monday in May, known as Decoration or Memorial Day.
6. The fourth of July, known as Independence Day.
7. The first Monday in September, known as Labor Day.
8. The eleventh day of November, known as Veteran's Day.
9. The fourth Thursday in November, known as Thanksgiving Day.
10. The twenty-fifth day of December, known as Christmas Day.
11. The birthday of the Employee. If the date of birth falls on any of the holidays heretofore designated, the Chief will assign another paid day off to the Employee.

Appendix D

ARTICLE 27 – PERSONAL LEAVE DAYS

Section 27.1 Effective January 1st of each year of this Agreement and in addition to all other leave, each member shall receive three (3) personal leave days each calendar year. These days off may be taken any time at the discretion of the member. All personal leave days must be used within the year or the unused portion will be forfeited. Personal leave days cannot be accrued. A personal leave day shall consist of eight (8) consecutive hours.

Section 27.2 This time may be used in increments of one (1) hour at a time or eight (8) hours at a time or any amount in between. Permission to use this time will be given by the Chief of Police only, or in his absence, the Acting Chief or Captain or Senior Officer on duty. Requests or use of personal leave days shall not be unreasonably denied.

Appendix E

ARTICLE 30 - COMPENSATION

Section 30.1 Effective January 1, 2003, January 1, 2004 and January 1, 2005 Captains, Patrol Officers and Dispatcher/Jailers will be compensated on an hourly basis as follows:

	<u>2003 (3%)</u>	<u>2004 (2.5%)</u>	<u>2005 (2.5%)</u>
<u>Captains</u>			
Probation	\$18.61	\$19.09	\$19.67
Captains (8% above patrol officers)	\$19.52	\$20.01	\$20.51

	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Patrol Officers</u>			
Starting	\$14.97	\$15.34	\$15.72
90 Days- 1 Year	\$16.22	\$16.80	\$17.22
Step 1	\$17.01	\$17.43	\$17.87
Step 2	\$17.22	\$17.65	\$18.09
Step 3	\$17.56	\$18.00	\$18.45
Step 4	\$17.82	\$18.27	\$18.73
Step 5 (New)	\$18.08	\$18.53	\$18.99

	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Dispatcher/Jailers</u>			
Starting	\$13.83	\$14.18	\$14.53
90 Days – 1 Year	\$14.31	\$14.67	\$15.04
Step I	\$14.89	\$15.26	\$15.64
Step 2	\$15.16	\$15.53	\$15.92
Step 3	\$15.49	\$15.88	\$16.28
Step 4	\$15.78	\$16.17	\$16.57
Step 5 (New)	\$16.07	\$16.47	\$16.88

Section 30.2 Effective with the execution of this Agreement, Patrol Officers and Dispatcher/Jailers shall be compensated according to the following “Step” scale:

Contract Year	Step I	Step 2	Step 3	Step 4	Step 5
2003					add 20 plus years
2004	1+ to 4 years	4+ to 8 years	8+ to 12 years	12+ to 20 years	20 plus years
2005	1+ to 3 years	3+ to 6 years	6+ to 10 years	10+ to 20 years	20 plus years

Appendix F

ARTICLE 31 – UNIFORM ALLOWANCE

Section 31.1 Members of the Bargaining Unit of the New Philadelphia City F.O.P. Lodge #4 will receive a uniform allowance from which to replace and replenish uniform articles as follows:

1. \$700.00 in 2003
2. \$750.00 in 2004
3. \$800.00 in 2005

Section 31.2 New hires in the Police Department will be advanced for the first year uniform allowance upon employment. Uniform Allowances are to be refunded to, or deducted from, pay due and owing in the event the Employee's service is less than one year.

Section 31.3 Bargaining Unit Members shall receive a separate uniform allowance check on or about March 1st of each year of this Agreement for the amounts listed in Section 3 1.1

Section 31.4 When a Bargaining Unit member is first assigned to a plain clothes position, promoted or assigned to a position where other than the Patrol Officer uniform of the day is worn, there shall be a one time payment in each instance of three hundred dollars (\$300.00) to cover the cost of appropriate clothing, incidentals and equipment for that assignment.

Section 31.5 Body Armor: The City agrees to provide to all sworn Bargaining Unit members body armor. The City further agrees to replace body armor at such time as the vests are no longer serviceable as provided in the manufacturer's specifications.

Section 31.6 Probationary Employees will be granted a three hundred dollar (\$300) payment at hire to be used toward their initial purchase of uniforms and equipment.

Appendix G

ARTICLE 32- LONGEVITY

Section 32.1 The City agrees to pay members of the Bargaining Unit of the New Philadelphia F.O.P. Lodge #4 the following amounts for the years of service listed below:

1. Five (5) years and one day to ten (10) years, \$15.00 per month.
2. Ten (10) years and one day to fifteen (15) years, \$20.00 per month.
3. Fifteen (15) years and one day to twenty (20) years, \$30.00 per month.
4. Twenty (20) years and beyond, \$40.00 per month.

Appendix H

ARTICLE 39- DURATION

Section 37.1 This Agreement shall remain in full force and effect from January 1, 2003 through December 31, 2005 and from year to year thereafter unless at least ninety (90) days prior to that expiration date or any anniversary thereof, either Party provides written notice to the other of an intent to modify or terminate this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands this _____ day of _____.

CITY OF NEW PHILADELPHIA

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

