

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDER'S REPORT

STATE EMPLOYMENT
RELATIONS BOARD

2003 JAN 31 A 10: 27

In the Matter of Fact Finding)
Between)
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)
THE CITY OF DEFIANCE, OHIO)
)
)
-and-)
)
IUPA POLICE LOCAL 166)

SERB NO. 02-MED-09-0830
SERB NO. 02-MED-09-0831

29 January 2003

APPEARANCES

For the City

Tom Grabarczyk
Rebecca Snow
Jeff Leonard
Roger Reece
N.M. Walker

Labor Relations Mgt. Inc.
Human Resource Mgr.
Finance Director
City Administrator
Defiance Police Chief

For the Union

William A. Dunn
Tom Babcock
Tim Schortgen
Lee Martinez
Steven Gebhart

IUPA Business Agent
Secretary, DPOA # 166
President, DPOA # 166
Treasurer, DPOA #166
Vice President, DPOA # 166

Fact Finder

Daniel L. Merritt Esq.

BACKGROUND

The city of Defiance, Ohio (herein called the "City" or the "Employer") and the International Union of Police Associations AFL-CIO Defiance Police Local #166 (herein called the "Union") are the parties involved in this current labor dispute. The bargaining units involved consist of two units; police officers and command officers. The police officers unit consists of twenty one police officers. The command officers unit consists of three lieutenants and three sergeants. The two units were represented by Mr. William Dunn in negotiations. The Collective Bargaining Agreement between the parties expired on 31 December 2003.

The parties met for negotiations on two occasions. The City offered to extend the current contract with no new economic benefits (wages etc.) for a period of one year. The Union offered a list of proposed changes including a three year contract extension. The City rejected the proposals and the Union rejected the City's proposed one year extension with no changes. The parties did not receive state or federal mediation on the issues. On 29 November 2003 the State Employment Relations Board appointed Daniel L. Merritt Esq. as fact finder in Compliance with O.R.C. Section 4117.14 (C) (3).

A fact finding hearing was scheduled and held on 17 January 2003 at The Municipal Building in Defiance, Ohio. Mediation was offered at the onset of the hearing and the parties resolved two issues. Tentative agreements were reached between the parties concerning ARTICLE 17.1 Leave of Absence and ARTICLE 29.3 Educational Benefits, so they are NOT included as part of this

report.

The parties presented opening statements regarding their respective positions and then each party presented position statements regarding the ten remaining issues. The City generally presented information relating to the “strained financial resources” of the City. The cash reserves of the City had declined and for two previous years the City had essentially engaged in deficit spending. The cash carryover balance has continued to decline and hoped for economic recovery failed to materialize. The Union dismissed the City presentation as false and misleading. The Union contended that the City has mismanaged the funds and made bad financial decisions. The Union submitted the position that monies were available to fund the wage requests contained in the Union proposal. The fact finder reviewed the past contract, a fact finding report for the fire department and voluminous material submitted by the City and Union to present the past and current financial record of the City. The fact finder considered all testimony and documentation submitted and considered the criteria listed in Rule 4117-9-05 (K) (J) of the State Employment Relations Board. The Issues remaining at impasse include: Employee Bill of Rights, Leaves of Absence (17.8), Overtime, Court Appearance Time, Vacations, Uniform Allowance (38.1), Uniform Allowance (38.3), Wages, Shift Differential and Duration of Agreement.

ISSUES AND RECOMMENDATIONS

I. ARTICLE 9, Section 9.1 EMPLOYEE BILL OF RIGHTS

The Position: The Union seeks to have Internal Affairs delay any investigation of an officer charged in criminal offense or subject to a criminal investigation. The delay is to last until after a trial is completed. The officer would be suspended without pay during the delay.

City Position: The City has a separate obligation to investigate the alleged Misdeeds of city officers. The provision proposed would tie the hands of the City.

Recommendations: The fact finder agrees with the City position that the Proposal would impede the City's separate obligation to investigate wrongful Acts. The present provision of the contract should be retained.

II. ARTICLE 17 SECTION 17.8 Leaves of Absence

Union Position: The addition of two additional conditional sick days would be subject to a bank of accumulated unused sick hours would provide incentive to those who do not overuse sick leave.

City Position: If a three year contract was agreed to, the city would incorporate one additional sick day with a reserved bank of hours.

Recommendation: The fact finder agrees with the City offer to increase the additional sick days from 2 days to 3 days.

Contract Language:

Section 17.8 Conditional Sick Leave Days...

This leave shall be deducted from the employee's accumulated but unused sick leave on an hour per hour basis.

Employees who have over five hundred (500) hours of accumulated but unused sick leave may elect to use one (1) additional day of absence with pay, In addition to the two days listed above (for a total of three (3) days.

III. ARTICLE 26 Section 26.4 Overtime

Union Position: The Union proposal would allow two lieutenants to work on the same shift and yet maintain a chain of command. This proposal would enhance manpower needs.

City Position: The city opposed the contract change for economic and administrative reasons.

Recommendation: The fact finder agrees with the Union that manpower needs would be aided by allowing two lieutenants to work the same shift. The City has the resources to fiscally support this recommendation.

Language:

Section 26.4: Eliminate (Two lieutenants may not work at the same shift

at the same time other than provided for below.) Add (When two (2) Lieutenants are working the same shift, the regularly scheduled Lieutenants shall be the "Watch Commander" and the second Lieutenant shall assume the duties of the officer whom he is replacing. The following procedure will be followed for CCNO transports.

IV. ARTICLE 27 Court Appearance Time

Union Position: The Union proposal would increase the time paid from one and one half time (1 1/2) to double time (2) for a minimum of court time.

City Position: The City opposed the proposal for the immediate economic effect it would have on the budget.

Recommendation: The fact finder agrees with the City position that the net result of this proposal would be increased cost at a time when the budget is strained. current contract language should be retained.

V. ARTICLE 33 Sections 33.1 and 33.2 Vacations

Union Position: The Union proposal would accrue vacation time at a quicker rate and at new years of service intervals. A sixth week would be added.

City Position: The City has proposed to eliminate the holiday and vacation cash out. The current vacation schedule would be maintained.

Recommendation: The Union would add expenses and the City would cut

expenses by their respective proposals. The City did state that it might be willing to modify its position if it secured cash out limitations. The fact finder agrees that the present strained budget of the City will not support the not unreasonable request for changes in vacation accrual intervals. The fact finder recommends that current contract language be retained.

VI. ARTICLE 38 Section 38.1 Uniform Allowance

Union Position: The Union proposed an increase to \$500.00 for 2003 and 2004. The allowance would increase to \$550.00 for the third year of the contract.

City Position: The City was opposed on economic grounds.

Recommendation: The fact finder agrees with the Union position that uniforms wear out and costs have increased. The allowance should be increased.

Language:

Section 38.1: A uniform allowance of \$500.00 during the first year of the contract 2003; \$500.00 during the second year of the contract 2004 and \$550.00 during the third year of the contract 2005 shall be allowed all Bargaining Unit Employees of the Defiance Police Department.

VII. ARTICLE 38 Section 38.3 Uniform Allowance

Union Position: The Union seeks a one time clothing allowance of one thousand dollars for individuals appointed as Detectives. This would be a new contract

provision.

City Position: There are no appointments as a Detective. Officers are assigned to the duties. The City was opposed to the proposal. Individuals can use regular uniform allowance to purchase clothing needed as a Detective.

Recommendation: The fact finder agrees with the City position and recommends that the new language NOT be added.

VIII. ARTICLE 43 Wages

Union Position: The Union seeks a five percent (5%) increase in wages for each year of a three year contract. The officers earn six percent (6%) less than the average officer in a similar situated community. The Union submitted a Financial Report concerning the City of Defiance which questions the accuracy of the financial status as reported by the City of Defiance. The Union believed that mismanagement and faulty decision making resulted in the current financial problems resulted in the current financial problems of the city. The Union believes that pay increases can be supported by the City.

City Position: The City is opposed to any increase in wages because of its inability to pay for the additional increases.

Recommendation: The fact finder found that both parties agree that the City is currently experiencing financial problems. They differ as to causes and severity. The fact finder after a review of all exhibits concurs with the City that currently

it would induce unacceptable financial hardship to fund an increase in wages in 2003. The fact finder agrees that the Union employees deserve an increase but financial prudence is recommended. The fact finder recommends that current wage rates be maintained for one year and that economic reopeners be provided for the second and/or third year of a recommended three year contract.

Language:

The Union has the option of reopening all economic issues within this contract in the second (2nd) and/or third (3rd) year of the contract. The current wage rate will be maintained for the first (1st) year of the contract.

IX. ARTICLE 43 Section 43.2 Shift Differential

Union Position: The Union proposed that the shift differential be increased \$.50 per hour for the afternoon shift and \$.35 per hour for the midnight shift. The City can financially support this proposal.

City Position: The City is opposed on economic grounds.

Recommendation: The fact finder is persuaded by the Union that the City can support this proposal. The fact finder recommends the adoption of the language proposed by the Union.

Language:

Section 43.2 In addition to the above listed wages, officers shall be

compensated an additional \$.50 per hour when working the "afternoon shift".

Officers working the "midnight shift" shall be compensated an additional \$.35 per hour.

X. ARTICLE 51 Section 51.A Duration

Union Position: The Union sees no reason to change the current three year length of contract.

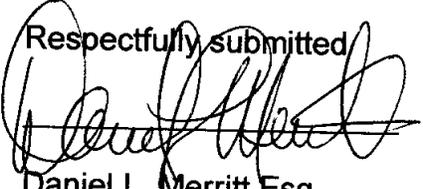
City Position: The City opposed the three year length unless it could reach an agreement similar to one reached with the fire department. The City proposed a one year length to the contract.

Recommendation: The fact finder agrees with the Union that the three year contract would be feasible. Economic issue reopeners in the second and/or third year of the contract make it possible to deal with these monetary issues as the financial picture for the City improves.

Language:

This agreement shall be effective as of 12:01, January 1, 2003 and shall remain in full force and effect until 12:00 midnight, December 31, 2005, provided however that it shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice to the other party.

29 January 2003
Sylvania, Ohio

Respectfully submitted

Daniel L. Merritt Esq.
Fact Finder

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact Finding Report for the City of Defiance, Ohio and the International Union of Police Officers, Defiance Police Officers Local #166 was sent to Mr. Dale Zimmer, ERB by regular mail and to the parties representatives by Express Mail on this day 29 January 2003. The report was served upon;

Mr. Tom Grabarczyk
Labor Relations Management, Inc.
6880 W. Central Avenue, Suite L-2
Toledo, Ohio 43617

Mr. William Dunn
I.U.P.A.
9566 W. Street Rt 163
Oak Harbor, OH 43449

Ms. Rebecca Snow
City of Defiance
324 Perry Street
Defiance, OH 43512

Mr. Dale Zimmer
Adm. Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, OH 43215-4213

A handwritten signature in black ink, appearing to read 'Daniel L. Merritt', written over a horizontal line.

Daniel L. Merritt Esq.
Fact Finder