

2003 AUG 11 A 9 06

IN THE MATTER OF FACT-FINDING
BETWEEN

CITY OF INDEPENDENCE)	CASE NOS. 02-MED-09-0878
)	02-MED-09-0879
AND)	
)	
)	<u>FINDINGS</u>
)	AND
FRATERNAL ORDER OF POLICE)	<u>RECOMMENDATIONS</u>
LODGE NO. 67)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE CITY

Jack L. Petronelli, Esq.

FOR THE FOP

Robert M. Phillips, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between the City of Independence (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Lodge No. 67 (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on June 20, 2003.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

There are two bargaining units involved in this matter consisting of all full-time patrol officers and sergeants. There are approximately twenty-eight patrol officers and six sergeants.

This fact-finder in rendering the following findings of fact and recommendations on issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

1. WAGES

The Union proposes wage increases of 4% in each year of a three year contract. The City proposes wage increases of 3% for each of the two years of the Agreement.

The Union contends that 4% wage increases more accurately reflects the level of wage increases for municipalities with the financial stature of the City of Independence. The FOP cites the most recent SERB data for police departments in the region. This shows that wage increases of 4% have been provided to other police units in neighboring jurisdictions. The FOP submits that there is no justification for providing for any less of a wage increase for the bargaining unit here. The Union disputes the City's contention that the same increase provided to fire fighters should also be given to the patrol officers and sergeants' units. The Union points out that the fire fighters are clearly distinguishable from the two bargaining units here. Moreover, the FOP notes that the fire fighters received a reduction in their workweek.

The City contends that internal parity establishes that its proposal with respect to wages is fair and equitable. The City recently entered into a settlement with the fire fighters' unit which provides for 3% wage increases over a two year agreement. The City has had a long history of compensating its safety forces in a comparable manner and for that reason the pattern which has been established for wages for the fire fighters should be followed in the instant case. Moreover, the Employer submits that its wage proposal is reasonable in light of the fact that it currently pays for the entire cost of healthcare for

bargaining unit members. In that funds have been directed towards payment of healthcare premiums, it would be inappropriate to provide for any additional increase for the bargaining units here.

ANALYSIS – This fact-finder would recommend wage increases of 3% effective January 1, 2003 and 3.5% on January 1, 2004. The first year wage increase of 3% would be in line with that which the City recently provided to the fire fighters' bargaining unit. The second year recommend wage increase of 3.5% takes into consideration the fact that the fire fighters received a reduction in their workweek beginning in 2004 which amounts to approximately a one-half percent wage increase. Moreover, the increases recommended herein would allow the police units here to retain their relatively high standing with respect to police department wages in the area.

The recommended wage increase of 3% for the first year of the Agreement will be the same as that provided to the fire fighters' bargaining unit. Recently, the City and fire fighters' union agreed to 3% wage increases in each year of their two year agreement. However, the fire fighters in the second year also received a reduction in their workweek from 51 to 50.4 hours. They also were given increases in their uniform allowance and OIC pay in the first year of their contract. As a result, this fact-finder finds that it would be reasonable to provide the police units with an additional one-half percent increase in the second year of their Contract which would be roughly equivalent to the value of the additional benefits provided to the fire fighters in the second year of their contract. In

effect, this fact-finder finds that there is justification for providing the police units with a different wage increase than that granted to the fire fighters in the second year of the Agreement especially considering that the fire fighters had their workweek reduced. The wage settlement reached with the Service Department employees which is similar to the fire fighters' also supports the recommendation for a first year 3% increase for the police units.

This fact-finder certainly recognizes the Employer's main argument that the wage increases provided to one of its safety forces should also be given to the other. However once again, it must be reiterated that the fire fighters will be receiving an additional benefit in the second year of their agreement which cannot be accorded to the police units. There can, of course, be no reduction in the workweek for the bargaining units here. Likewise, this fact-finder cannot recommend herein any increase in the uniform allowance or the OIC pay both of which have been increased for the fire fighters.

The additional one-half percent increase recommended herein for the police units in the second year of their Agreement is further supported by wage increase comparables which were presented in this case. A recent June 2003 SERB report shows that the average wage increase for the area for the current year as well as for the previous one for police units has been 3.85%. In comparable jurisdictions such as Beachwood, Brecksville and Mayfield Heights, wage increases provided to the police bargaining units have exceeded 3.5%. In contrast, the SERB data shows that there have been only a few

police departments which have provided their police officers with the kind of 3% wage increases proposed by the City here. Such wage comparables clearly support this fact-finder's recommendation that there be a 3.5% wage increase in the second year of the Agreement for the police units involved here.

With the recommended 3% and 3.5% wage increases recommended herein, Independence patrol officers and sergeants will be able to retain their relatively high ranking with respect to wages in the area. It was established that with the 3% increase provided in the first year, the top wage for a patrol officer will increase to \$55,236 which would rank sixth out of the thirty-four districts in the region. The average top wage for patrol officers in this area is \$51,548. Likewise with the 3.5% increase recommended for the second year of the Agreement, the police units here will be able to continue to retain their relatively high ranking with respect to wages in the region.

The fact-finder in making his recommendations herein has taken into consideration the evidence presented by the City pertaining to the decline in revenue which it has recently experienced. The financial analysis submitted by the City indicates that municipal income tax revenue declined from 2001 to 2002 by approximately \$800,000. Although there appears to be a leveling off of income tax revenue in the City for the current year, it is evident that the City has the ability to finance the recommended wage increases herein from currently available resources.

RECOMMENDATION

It is the recommendation of this fact-finder that there be 3% and 3.5% general wage increases provided to the bargaining units in each year of a two year Agreement.

WAGES

Effective January 1, 2003 – Three percent (3%) increase.

Effective January 1, 2004 – Three and one-half percent (3.5%) increase.

2. UNUSED VACATION DAYS AND HOLIDAYS

The Union proposes to improve this benefit so that 80 hours rather than the current 40 hours can be sold back or converted into pay in the first full pay period in January of each year. The Employer is opposed to any change in this provision. The Union maintains that the change in the unused vacation days and holidays provision is reasonable and will not have any cost impact upon the City. The Employer contends that the Union's position conflicts with the purpose behind having time off for vacations, and for that reason the proposal should be denied.

ANALYSIS – This fact-finder would recommend a proposal which was submitted by the City in an attempt to resolve this issue during the fact-finding proceeding. Essentially, the recommendation would be that employees could convert to cash an additional 40 hours of unused vacation and/or holidays if they do not use more than 24 hours of such leave during the preceding November 1st through the following October 31st. In effect, the recommended change would allow employees under certain circumstances to convert into pay an additional 40 hours or five days of unused vacation days and holidays.

RECOMMENDATION

This fact-finder recommends a modification in the current Unused Vacation Days and Holidays Provision as more fully set forth below.

UNUSED VACATION DAYS AND HOLIDAYS

23.01 With the approval of the Chief of Police or his designee, vacation days and/or holidays not used during the calendar year, up to forty (40) hours shall be paid during the first full pay period in January, provided the employee is entitled to such unused vacation days and/or holidays. An additional forty (40) hours of unused vacation and/or holidays may be cashed in provided the employee did not use more than twenty-four (24) hours in the preceding November 1 through the following October 31st. The first forty (40) hours usage of sick leave under Article 26, Disability Leave, shall not count as sick hours for the purpose of this section only.

3. VACATION ENTITLEMENT

The Union has proposed to improve vacation entitlement by adding a fifteenth year level with five weeks of vacation and to increase the twentieth year level to six weeks of vacation allowance. The Employer proposes to maintain the current vacation provision.

The Union submitted SERB data which it claims shows that vacation entitlement here falls below that provided in similar jurisdictions. The Employer submits that the current provision provides ample amount of time off for employees and is in line with other comparable police departments.

ANALYSIS – This fact-finder has determined that the vacation entitlement should remain the same as currently provided. While there may be some merit to the FOP’s contention that certain modifications should be made in the vacation provision, it is apparent that the same vacation entitlement is provided to all City employees. The fire fighters agreed recently to retain the current vacation provision in their agreement. Therefore, internal comparables support the recommendation that no change be made in the vacation provision.

RECOMMENDATION

This fact-finder does not recommend any change in the current Vacation Provision.

VACATION ENTITLEMENT – Current language, no change.

4. DISABILITY LEAVE

The Employer proposes to change Section 26.01 to remove the two-tiered disability leave provision by eliminating the distinction between hazardous and non-hazardous duties. The City proposes one section for any injury occurring in the line of duty, whether it is hazardous or non-hazardous. However, the leave would only be for a period up to a maximum of 90 calendar days and would require the use of sick leave for the first five days of such service-related disability. The FOP has proposed to delete the reference to hazardous duty injury and to provide for 180 calendar days of leave for any on-duty injury.

The Employer submits that it reached tentative agreements with the Service Department as well as the Fire Department employees with respect to the change in disability leave which it has proposed herein. In effect, it would create a city-wide policy on disability leave of 90 calendar days regardless of how the injury occurred. The Employer maintains that its proposal to limit it to 90 days is more than an ample amount of time before Workers' Compensation benefits would commence.

The FOP argues that the two fold system creates more problems than it solves. Unifying the injury leave to any on-duty injury is clearly preferred in most jurisdictions.

ANALYSIS – This fact-finder would recommend the disability leave provision proposed by the City herein. It would in effect provide for a city-wide policy on disability leave of 90 calendar days regardless of how the injury occurred. Such a provision would provide more than an ample amount of time before Workers'

Compensation benefits would begin for an injured employee. The recommended disability leave provision would be the same as that which has been agreed upon with both the Fire Fighters and Service Department bargaining units. Injury leave comparables also support the proposal to limit the amount of such leave to 90 calendar days.

RECOMMENDATION

It is the recommendation of this fact-finder that there be a change in the Disability Leave Provision as proposed by the Employer.

DISABILITY LEAVE

26.01 An employee who is disabled or injured within the scope of his employment as a full-time employee of the Employer, if such disability or injury prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related disability or injury, but for a period not to exceed ninety (90) calendar days from the date that such service related disability or injury was incurred. The City may approve, in its sole discretion, additional disability leaves for periods of ninety (90) calendar days or less. During such disability leave, compensation shall be paid in accordance with this section whether or not the regular employee has accumulated sick leave. Disability or injury is defined as a disability or injury resulting from either hazardous or non-hazardous duties or Police Department sponsored training. The first (1st) seventy-two (72) hours of said disability leave shall be charged to the employee's accumulated sick leave credit. If less than seventy-two (72) hours accumulated sick leave credit is available, the existing sick leave credit available shall be charged and any remaining time shall be charged to disability leave.

In no event will an employee receive more than his regular compensation while on disability leave.

5. COMPENSATORY TIME

The Union proposes that the current provision be modified to allow employees to elect to accumulate and maintain compensatory time off in lieu of overtime pay to a maximum of 80 hours of accumulation per year. The Employer proposes to retain the current provision.

ANALYSIS – This fact-finder has determined that there was insufficient basis established for any change in the current Compensatory Time Provision. There were no changes made in this provision in the fire fighters’ Agreement. The current provision appears to be adequate in that it allows employees to elect to take compensatory time off in lieu of overtime pay, at the rate of one and one-half hours for each overtime hour worked up to a maximum of 80 hours of accumulation during each year of the Agreement. The provision also states that employees may carry forward any accumulated compensatory time to the following year provided proper notice is given to the Chief in writing and further that such compensatory time would be counted towards the maximum of 80 hours of accumulation provided.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Compensatory Time Provision.

COMPENSATORY TIME – Current language, no change.

6. GRIEVANCE PROCEDURE

The Employer proposes to provide that the first step of the Grievance Procedure commence with the filing of the grievance with the Chief of Police. The FOP proposes retaining current language which is that the first step of filing is with the Executive Officer. It should be noted that the Union withdrew its proposal regarding the date when a grievance must be filed.

ANALYSIS – The parties reached tentative agreement on this issue at the fact-finding hearing. Therefore, this fact-finder would recommend that the change to this provision agreed upon be incorporated into the parties' Agreement.

RECOMMENDATION

This fact-finder would recommend the change in the Grievant Procedure agreed upon by the parties with respect to the first step.

GRIEVANCE PROCEDURE

Modified to eliminate the first step of presenting a grievance to the Executive Officer. Instead, the first step will commence with the filing of the grievance with the Chief of Police.

7. HOLIDAYS

The Employer proposes to change Section 22.02 to delete the phrase “in addition to any other benefits.” The Union proposes that the current language be retained.

ANALYSIS – This fact-finder has determined that there was insufficient basis established for any modification in the Holidays Provision. It was unclear as to whether or not the language cited by the Employer under Section 22.02 is meaningless as claimed. As a result, this fact-finder does not believe that any change is warranted.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Holidays Provision be retained without any change.

HOLIDAYS – Current language, no change.

8. UNIFORM ALLOWANCE

The Employer proposes to change the current provision to provide that the uniform allowance be payable through a purchase order system rather than the current method of providing cash to the employees. The Union proposes to retain the current provision.

ANALYSIS – This fact-finder would not recommend any change as proposed by the Employer to go to a purchase order system. There was an indication that the current cash method of payment to the employees was only recently made a part of this provision during the last negotiations. There was no showing made that the current cash method has caused any difficulties for the City. As a result, this fact-finder does not find any basis for changing the current Uniform Allowance Provision.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Uniform Allowance Provision be retained without any change.

UNIFORM ALLOWANCE – Current language, no change.

9. HOSPITALIZATION INSURANCE

The Employer proposes a change effective January 1, 2004 in the healthcare provision to the effect that employees would be required to pay 7.5% of the premium through automatic payroll deduction. The FOP opposes any change in the current Hospitalization Provision.

The Employer submits that healthcare costs have increased dramatically over recent years. The Employer believes that paying 92½ % of the premium is a substantial benefit to the employee. Moreover, the Employer cites the SERB report which indicates that most public sector employees share in the cost of healthcare.

The FOP points out that during the last negotiations, it agreed to allow the City to achieve cost savings by eliminating three of the health insurance plans then in effect. The Union also agreed that prescription drug deductibles could be increased. As a result, the City achieved savings which it estimates at being over \$500,000. Moreover according to the FOP, the Mayor stated that healthcare would not be an issue in the current negotiations.

ANALYSIS – This fact-finder finds that there should be no change in the current Hospitalization Insurance Provision as proposed by the Employer. It was shown that during the last negotiations, the Union agreed that the City could achieve cost savings by eliminating three of the healthcare plans which were then provided and to increase the deductibles for prescription drugs. Currently, the prescription card deductibles are \$8 for generic and \$15 for name brand drugs. These changes which were

negotiated two years ago helped the City to achieve significant healthcare cost savings. There does not appear to be any justification for now shifting some of the burden for premiums to the employees as proposed by the City.

Moreover as the City acknowledged, none of the other bargaining units agreed to any change in the Hospitalization Insurance Provision. The fire fighters as well as the Service Department employees have all retained the current provision which does not provide for any employee contribution towards premiums. As a result, this fact-finder finds that it would be unreasonable to only require the police units to make contributions towards premiums for healthcare coverage when other City employees are not being requested to make such payments.

RECOMMENDATION

It is the recommendation of this fact-finder that that there be no change in the Hospitalization Insurance Provision as proposed by the Employer.

HOSPITALIZATION INSURANCE – Current language, no change.

10. OFFICER IN CHARGE PAY

The Employer proposes to modify this provision so that the Chief of Police would have the exclusive right to decide which officer will be in charge of a shift. The Union opposes any change in the current OIC Pay Provision.

ANALYSIS – This fact-finder has determined that there was insufficient basis established to change the OIC Pay Provision as proposed by the Employer. The current provision merely provides that when a classified patrolman is assigned by departmental management as the Officer in Charge, that officer shall be compensated at the sergeant's rate of hourly pay. There was no showing made that the current provision has created any difficulties for the department. As a result, no change in the OIC Pay Provision is recommended.

RECOMMENDATION

This fact-finder does not recommend any change in the current Officer in Charge Pay Provision.

OFFICER IN CHARGE PAY – Current language, no change.

11. FAMILY MEDICAL LEAVE

The Employer proposes a new article pertaining to the Family Medical Leave Act. The Union did not strongly oppose such a provision.

ANALYSIS – This fact-finder would recommend the adoption of contract language relating to the Family Medical Leave Act. Currently, there is no provision in the contract for FMLA and if a dispute arose, an employee would be required to pursue remedies through the courts. Including the FMLA article would permit employees to utilize the grievance procedure as a means to resolve any disputes concerning Family Medical Leave. This fact-finder finds that it would be reasonable to adopt the language proposed which states that employees would be required to use all available paid leave before any unpaid leave would be allocated towards the twelve weeks under FMLA. Moreover, it should be noted that the Service and Fire Departments have incorporated into their agreements the new Family Medical Leave Act Provision recommended herein.

RECOMMENDATION

It is the recommendation of this fact-finder that a New Article pertaining to Family Medical Leave be incorporated into the parties' Agreement.

NEW ARTICLE – FAMILY MEDICAL LEAVE

.01 Employees who qualify for FMLA leave may be required to utilize all available paid leave, except eighty (80) hours of the employee's choice of all available paid leave (accumulated sick

leave, vacation and/or holiday time) before any unpaid time will be allocated toward the twelve (12) week annual total paid and unpaid leave.

.02 For purposes of calculation, the Employer will utilize the “rolling” year, measured backwards from when FMLA is first utilized in accordance with Departmental policy.

12. SIGNING BONUS

The Union proposes a \$300 signing bonus. The Employer opposes any such signing bonus payment.

ANALYSIS – This fact-finder has determined that there was no basis established for the \$300 one time cash signing bonus proposed by the Union. There was no signing bonus provided to the employees in the Service or Fire Departments. There simply was no showing made that such a signing bonus would be appropriate in the instant matter.

RECOMMENDATION

This fact-finder does not recommend that there be a Signing Bonus for the bargaining units here.

SIGNING BONUS – Not recommended.

13. DURATION OF AGREEMENT

The Union proposes that there be a three year Agreement. The Employer proposes that there be a two year Contract.

ANALYSIS – This fact-finder would recommend that the parties have a two year Agreement. Historically, the parties have entered into two year agreements over the past four contracts covering an eight year period of time. Moreover, the Service Department as well as fire fighters' contracts are also two year agreements. There was no showing made that a three year Labor Agreement versus a two year would be appropriate at this time for the parties. As such, this fact-finder recommends a two year Agreement commencing on January 1, 2003 and ending on December 31, 2004.

RECOMMENDATION

It is the recommendation of this fact-finder that there be a two year Agreement.

DURATION OF AGREEMENT

A two year Agreement effective from January 1, 2003 through December 31, 2004.

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder would recommend that all tentative agreements previously reached by the parties be incorporated into their final Agreement.

AUGUST 6, 2003



JAMES M. MANCINI, FACT-FINDER

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2003 AUG 11 A 9 06

August 6, 2003

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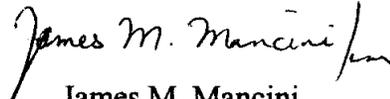
RE: Case Nos. 02-MED-09-0878
02-MED-09-0879
City of Independence
-and-
Fraternal Order of Police, Lodge 67

Dear Mr. Zimmer:

Enclosed herewith is my fact-finder's Findings and Recommendations in the above referred to matter. I have also enclosed my fee statement along with the Services Contracts.

Thank you.

Very truly yours,


James M. Mancini

JMM:em
Enclosures

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