

2003 JUL 28 A 9 39

**IN THE MATTER OF FACT-FINDING
BETWEEN**

CITY OF HUBBARD)	CASE NOS. 02-MED-10-1035
)	02-MED-10-1036
)	02-MED-10-1037
AND)	
)	
)	<u>FINDINGS</u>
FRATERNAL ORDER OF POLICE)	AND
OHIO LABOR COUNCIL, INC.)	<u>RECOMMENDATIONS</u>

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE CITY

Jack L. Petronelli, Esq.

FOR THE UNION

Otto J. Holm, Jr.

SUBMISSION

This matter concerns fact-finding proceedings between the City of Hubbard (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (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 May 30, 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 three bargaining units involved in this matter consisting of all full-time Patrol Officers, Sergeants and Dispatchers. There are approximately eleven Patrol Officers, four Sergeants, and four Radio Dispatchers.

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 3.5% in each of the three contract years. The City proposes a wage increase of 3.5% effective upon the execution of the Agreement, 3% effective January 1, 2004, and 3% effective January 1, 2005.

The Union contends that internal parity establishes that its proposal with respect to wages is fair and equitable. The FOP points out that the City recently entered into an agreement with AFSCME which provided wage increases of 3.5% in each year of their three year agreement. The pattern which has been established with respect to wages should be applied to the bargaining unit here. There was no basis for distinguishing the police units from those employees represented by AFSCME. The Union argues that it would be totally unfair for the employees in the police department to receive a smaller pay increase than that provided to the AFSCME unit. The Union also cites wage comparables which it claims indicates that the wages for the bargaining units here fall below the average for the area.

The City contends that its wage proposal is reasonable in light of what other public employees in the area have been receiving for wage increases, and taking into consideration the City's current financial condition. The City points out that over the past three years, the bargaining units here received wage increases of 3% each year or similar to that which is being proposed herein. Although the City is not arguing that it does not have the ability to pay, it does note that its General Fund revenue has fallen off during the

past year. This is due in part to reduced revenues from the state as well as a decline in investment revenue. At the same time, expenditures have grown especially with respect to healthcare. With respect to the pay increases provided to the AFSCME unit, the City maintains that they are paid out of separate street, water and sewer funds. In contrast, the police units would be paid strictly out of the General Fund. The City also cites comparables in support of its position which it claims show that the wages for the police units currently are slightly above the average for the region.

ANALYSIS – This fact-finder would recommend wage increases of 3.5% effective January 1, 2003, 3.5% on January 1, 2004, and 3.5% on January 1, 2005. Such 3.5% increases would be in line with those which the City recently provided to the AFSCME bargaining unit. Moreover, such increases would allow the bargaining units here to retain their relative standing with respect to police department wages in the area.

The recommended wage increases herein would be the same as those provided to the service department employees represented by AFSCME. Those wage increases were reflected in a recent fact-finder's award with respect to the AFSCME unit. The City did not reject the fact-finder's decision and entered into a contract with AFSCME providing for 3.5% general wage increases in each year of their three year contract. Internal parity with the AFSCME unit clearly supports the recommendation which this fact-finder is making in the instant matter. This fact-finder does not find any compelling reason to distinguish the police units from the AFSCME unit with respect to wage

settlements. There is a heavy burden upon the party which seeks to deviate from a well-established pattern of internal wage increases. There was no evidence presented which would indicate that there would be any justification for providing the police units with a different wage increase than that granted to the AFSCME employees.

This fact-finder does not find any merit to the City's contention that the police units should be distinguished from the AFSCME units because the service department employees are paid out of the street, sewer and water funds rather than the General Fund. To the contrary, it was established by an analysis made by the FOP that most of the AFSCME employees are paid at least in part from General Fund revenues. Moreover in the instant matter as the City readily acknowledges, it is not claiming that it does not have the ability to fund the pay increases which are being recommended herein by this fact-finder. While some revenue sources have declined recently, the City's financial condition appears to have remained relatively healthy. It simply cannot be said here that the City does not have the ability to finance the 3.5% wage increases recommended herein out of currently available General Fund revenues. It should also be pointed out that with one exception, the City has always in the past provided the same wage increases to both the FOP units as well as the AFSCME employees.

Moreover with the recommended 3.5% wage increases herein, Hubbard patrolmen, dispatchers and sergeants will be able to retain their relative ranking with respect to wages in the area. A recent SERB benchmark report dated 2003 indicates that

the wages paid to the police units here are about average for the area. For example, the top wage for patrolmen in the City of Hubbard is currently \$36,161 which compares favorably to the average shown for police officers in the region of \$36,220. Likewise, the sergeants' top pay as well as that for dispatchers fall within the mid range of salaries for the area. If this fact-finder were to recommend the City's proposed wage increases, especially the 3% wage increases in the second and third years of the contract, it would appear that the wages here would fall behind that of other similarly situated employees in comparable departments. Rather, it would be more reasonable to provide the recommended increases of 3.5 % over the term of the Agreement so that the police units will be able to retain their relative ranking with respect to police wages in the region.

The only other issue in dispute regarding wages concerns the effective date of the first year wage increase. The City recommends that the initial increase be effective upon the execution of the parties' Agreement. The FOP has proposed that the wage increases be made retroactive to January 1, 2003. It was shown in this case that in the past, the parties have always provided for retroactive pay increases. This fact-finder in his previous ruling rendered in 2000 found that the first year wages should be made retroactive in that case. Likewise, this fact-finder finds that it would be appropriate to provide that the initial 3.5% wage increase recommended herein for the first year of the Agreement be made retroactive to January 1, 2003.

RECOMMENDATION

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

WAGES

Effective January 1, 2003 – Three and one-half percent (3.5%) increase.

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

Effective January 1, 2005 – Three and one-half percent (3.5%) increase.

2. HEALTH INSURANCE

The City has proposed changes in health insurance with respect to increasing the current deductible from \$100 to \$250. The City would also increase the maximum out of pocket expense for employees from the current \$500 to \$550 for single coverage, and from \$900 to \$975 for the family plan. Also, the contributions for going out of network on the PPO would be at the rate of a 70% contribution by the healthcare provider and 30% by the employee. The prescription deductibles under the City's proposal would also be changed to \$6 for generic and \$12 for name brand with annual deductibles for the prescription plan of \$20 for the single plan, and \$40 under the family plan. The Union opposes any change in the current healthcare plan.

The City maintains that due to rising healthcare costs, it is essential that there be changes in the deductibles and co-pays. The City presented evidence regarding COBRA rates which have increased significantly over the years. The estimated rate for 2003 was \$1,074 for family coverage, and \$429 for single coverage. The City also points to comparable data in support of its position. In several of the other jurisdictions in the area, employees are required to pay the same kind of deductibles and co-pays which the City is recommending for the police units here. The City also notes that its proposal regarding health insurance is in line with the type of contributions paid by employees throughout the state as indicated in SERB's insurance report.

The Union contends that no other City employees have been required to pay the kind of deductibles and co-pays which the Employer is recommending herein for the

police unit. The City agreed with respect to the AFSCME unit to maintain current health insurance language. A pattern therefore has been set with respect to health insurance which should be followed in the instant matter. Moreover, the City has failed to show that there is any need for less coverage and more out of pocket costs. The Union submits that one healthcare plan will cost less than the administrative cost for two plans which would result if changes are recommended for the police contract.

ANALYSIS – This fact-finder would not recommend any change in the current healthcare contractual provision. It was shown that the City has agreed to continue the current healthcare provision for the AFSCME unit. The fact-finder in the AFSCME matter determined that the “wholesale set of changes, in terms of monetary items” which the Employer proposed in that case was unreasonable. Although the City has modified its proposal regarding the health insurance plan to a significant degree in the instant matter, the fact remains that a “pattern” has been set with respect to health insurance which should be followed in this case. Internal parity supports the recommendation that there be no change in the healthcare provision.

This fact-finder fully recognizes the City’s concern regarding recent significant increases in its healthcare costs. The COBRA rates reflect that there have been double digit increases in healthcare costs for the City. However due to the fact that the City does not require anyone else to pay the kind of deductibles and co-pays which it is proposing for the police bargaining units, it becomes apparent that the need for the City to effectuate cost savings with respect to healthcare would be offset to a considerable degree by the

increase in the administrative cost for maintaining two healthcare plans. That is, if this fact-finder were to recommend the proposed changes put forth by the City, there would be two plans, one for the police units and another for everyone else in the City. It would appear to be economically and administratively impossible for the City to have a multitude of benefit packages. A more reasonable approach would be to maintain the current deductibles and co-pays for all employees until such time that the changes can be implemented citywide.

RECOMMENDATION

This fact-finder does not recommend any changes in the current Health Insurance Provision as proposed by the City.

HEALTH INSURANCE – Current language, no change.

3. LAYOFF AND RECALL

The City is proposing to expand the basis for layoffs to include such reasons as state of the economy, consolidation or abolishment of functions, and the curtailment of activities. The City further proposes that employees can be laid off within the affected job classification according to their departmental seniority. The Union opposes any change in the current Layoff Provision which allows for a layoff to occur due to a lack of funds, lack of work, or job abolishment. In addition, the current provision states that all part-time or temporary employees are to be laid off first within the affected job classifications.

ANALYSIS – This fact-finder would not recommend any change in the current layoff provision. The current language appears to be more than adequate in that it allows a layoff to occur because of a lack of funds, lack of work, or job abolishment. The much more general language set forth in the Employer’s proposal regarding layoffs is not commonly found in other public sector agreements. Moreover, there was no basis established for changing the order in which employees are laid off which under the current provision states that part-time, as well as temporary or seasonal employees are to be laid off first within the affected job classifications. It should be noted that the changes in the Layoff Provision which the City has proposed here apparently were not proposed with respect to the AFSCME employees. The AFSCME agreement maintains the current layoff language found in the police units’ Agreement here.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Layoff Provision as proposed by the City.

LAYOFF AND RECALL – Current language, no change.

4. HOLIDAYS

The Employer proposes to delete the one-half day holiday on Election Day. The Union proposes to retain the current Holiday Provision which provides for a one-half day paid holiday for general Election Day.

The City maintains that even with the elimination of the one-half day on Election Day, employees will still have fourteen paid holidays. This is more than an ample amount of time off especially considering what other departments in the area are offering their similarly situated employees. Moreover, public employers are no longer providing holiday time off on Election Day as had been done in the past.

The Union takes the position that all other City employees receive a half day off on Election Day and likewise the police units should too. Internal parity with the AFSCME employees in particular should be maintained.

ANALYSIS – This fact-finder would not recommend any change in the current Holiday Provision. There was insufficient basis established to delete the one-half day paid holiday for Election Day. The same issue was brought up in the AFSCME fact-finding proceeding with the fact-finder recommending that there be no change in the current language. Likewise, this fact-finder has determined that there was no justification shown to eliminate the one-half day for Election Day.

RECOMMENDATION

This fact-finder would not recommend any change in the Holiday Provision.

HOLIDAYS – Current language, no change.

5. VACATIONS

The Employer proposes to reduce the amount of vacation accrual at each level set forth in the provision. The Union seeks to maintain current language.

The City argues that its proposal to reduce the amount of vacation accrual would be in line with what other comparable departments are offering their employees. The City's proposal is to reduce the current level of vacation entitlement by one week at each of the five steps set forth in the provision. The Union contends that the current provision allows vacation accrual at the same rate as that provided to all other City employees. The Union points out that the City lost this issue at the fact-finding with the AFSCME bargaining unit.

ANALYSIS – This fact-finder would not recommend any change in the current Vacation Provision. A review of comparables indicates that the vacation entitlements provided to the police units fall in line with that provided in other comparable jurisdictions in the area. Moreover, the Employer has not implemented any change in vacation accrual for other City employees. The current provision was retained in the AFSCME contract. Internal parity supports the finding that there should be no change in the vacation accrual for the police unit.

RECOMMENDATION

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

VACATIONS – Current language, no change.

6. PRE-DISCIPLINARY PROCEDURE

The City is proposing to change the language of the contract to provide that the penalty of discipline can be implemented at the conclusion of Step 4 rather than at the Arbitration stage. The Union proposes to retain current language.

The City contends that the proposal which it has presented here is the same as that which it has agreed to with the AFSCME unit. The change is needed because the current provision provides that a disciplinary penalty cannot be implemented until an arbitration decision has been rendered. There have been long delays in the past in receiving such arbitration decisions. The Union takes the position that no change is needed for the police bargaining units because there have been no arbitrator rulings in the past. In other words, the Union claims that there have been no problems here and as a result any change would be unwarranted.

ANALYSIS – This fact-finder would recommend the change in language proposed by the City with respect to the pre-disciplinary procedure. There was a showing made that the current provision could unduly delay the implementation of discipline in certain cases. A more reasonable approach would be to allow the Employer to discipline employees at the conclusion of Step 4 rather than at the Arbitration stage. Moreover for purposes of internal consistency, the same pre-disciplinary procedure agreed to with the AFSCME unit should be applied here. Therefore, this fact-finder would recommend the proposed change submitted by the City.

RECOMMENDATION

It is the recommendation of this fact-finder that the pre-disciplinary procedure be changed as follows:

PRE-DISCIPLINARY PROCEDURE

36.06 Discipline shall not be implemented until either:

- 1. The matter is settled, or**
- 2. The employee fails to file a grievance within the time frame provided by this procedure, or**
- 3. The penalty is upheld at Step 4 or a different penalty is determined by the Mayor.**

36.08 If a grievance is filed and pursued within the time frames provided below, no penalty can be implemented, except as provided in paragraph 36.12, until the matter is settled or the Mayor renders a determination.

7. ARBITRATION PROCEDURE

At the fact-finding hearing, the parties agreed to place another arbitrator on their permanent panel to replace one who recently passed away. This fact-finder therefore recommends the change in arbitrators which the parties tentatively agreed to at the hearing.

RECOMMENDATION

It is the recommendation of this fact-finder that the arbitration panel set forth under Article XXXVIII be amended to include the name of Robert Stein to replace that of Dr. John Drotning.

ARBITRATION PROCEDURE

Substitute Robert Stein as arbitrator on panel for Dr. John Drotning.

8. ME-TOO PROVISION

The Union requests that a “Me-Too” Provision be included in the parties’ Agreement which in effect would require the City to provide the same benefits to the police units here as those granted to other City employees. The City opposes any Me-Too Provision.

ANALYSIS – This fact-finder would not recommend any Me-Too Provision as proposed by the Union. The Union cites a previous fact-finder’s report rendered in 1987 wherein a Me-Too clause was recommended which in effect would grant to members of the three bargaining units in the police department any raise subsequently given to any other bargaining unit. That particular recommendation regarding a Me-Too Provision however was never incorporated into any of the parties’ Bargaining Agreements. In any case, there was insufficient basis established to incorporate a Me-Too clause into the police unit contracts. It was shown that the parties have been able to negotiate their last four Agreements without any Me-Too clause being used. The basis for the inclusion for the Me-Too clause simply was not established in the instant matter.

RECOMMENDATION

This fact-finder would not recommend any Me-Too clause as proposed by the Union.

ME-TOO PROVISION – Not recommended.

9. PROMOTIONS

At the fact-finding hearing, the parties reached a basic understanding that this particular new provision is first to be submitted to a Labor-Management Conference. If the parties are unable to reach an agreement as to the specific language to be included with respect to a Promotions Article, then the parties will contact this fact-finder to resolve the issue.

RECOMMENDATION

This fact-finder recommends the tentative agreement reached by the parties regarding a new Promotions Provision as follows:

PROMOTIONS – NEW PROVISION

Parties shall submit this issue regarding a new Promotions Provision to their Labor-Management Committee which shall work on an amendment to the Agreement. Should the parties fail to reach an agreement, they shall contact the fact-finder to resolve the issue with the fees to be divided equally.

10. DURATION

The Union proposes a three year Agreement becoming effective on January 1, 2003. The City proposes that the Agreement be effective upon execution and continue in effect until December 31, 2005.

ANALYSIS – This fact-finder would recommend that there be a three year Agreement becoming effective on January 1, 2003 and continuing in full force and effect until December 31, 2005. It was shown that the parties historically have provided for such three year Agreements. That is in the past, the parties have always provided for retroactive pay increases which as discussed previously is being recommended herein.

RECOMMENDATION

It is the recommendation of this fact-finder that there be a three year Agreement which will become effective on January 1, 2003.

DURATION

This Agreement shall become effective at 12:01 a.m. on January 1, 2003 and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight December 31, 2005.

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.

JULY 23, 2003



JAMES M. MANCINI, FACT-FINDER

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**STATE EMPLOYMENT
RELATIONS BOARD**

2003 JUL 28 A 9 39

July 23, 2003

Dale A. Zimmer
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

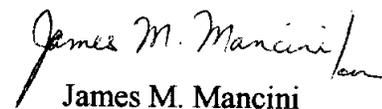
RE: Case Nos. 02-MED-10-1035
02-MED-10-1036
02-MED-10-1037
City of Hubbard
-and-
FOP/Ohio Labor Council, Inc.

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.

Thank you.

Very truly yours,


James M. Mancini

JMM:em
Enclosures

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