

HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	
	:	
Between the	:	SERB Case No.: 03-MED-08-0824
	:	
CITY OF ZANESVILLE, OHIO,	:	
	:	
Employer	:	Date of Hearing:
	:	February 10, 2004
	:	
and the	:	
	:	
FRATERNAL ORDER OF POLICE,	:	Howard D. Silver
OHIO LABOR COUNCIL, INC.,	:	Fact-Finder
	:	
	:	
Union	:	

REPORT AND RECOMMENDATION OF FACT-FINDER

APPEARANCES

For: City of Zanesville, Ohio, Employer

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City of Zanesville
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Zanesville, Ohio 43701

For: Fraternal Order of Police, Ohio Labor Council, Inc., Union

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This matter came on for fact-finding hearing on February 10, 2004, at 10:00 a.m., in a first floor conference room at the City of Zanesville Municipal Building, 401 Market Street, Zanesville, Ohio. Both parties were afforded a full and fair opportunity to present to the fact-finder a settlement offer, along with supporting evidence and arguments, for each unresolved issue that was subject to collective bargaining as provided by Ohio Revised Code section 4117.08, and upon which the parties have reached impasse.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14(C)(3). The fact-finding procedures followed in this process are governed by Ohio Administrative Code rule 4117-9-05.

BACKGROUND

The parties to this fact-finding process, the City of Zanesville, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, are engaged in formulating a successor collective bargaining agreement. The parties' predecessor collective bargaining agreement was in effect from January 1, 2001 through December 15, 2003. The bargaining unit is comprised of twenty-one full-time unsworn corrections officers who work within a full-service jail, a jail which may incarcerate a prisoner for up to one year. Duties assigned to and carried out by members of the bargaining unit include recordkeeping, supervising inmates, and

acting in compliance with jail standards established by the Ohio Department of Rehabilitation and Correction.

Two issues separate the parties from their successor collective bargaining agreement: the amount of wage increases for the three years of the successor agreement, and a new article proposed by the Union which intends the establishment of a promotional system to be followed in filling formerly vacant sergeant positions within the jail.

As to wage increases, the City of Zanesville offers 4%, 4%, and 4% for the three years of the successor collective bargaining agreement. The Union proposes 10%, 5%, and 5% during the term of the successor collective bargaining agreement.

The parties bargained on five separate occasions between November 25, 2003 and January 7, 2004. The Union was certified as the exclusive representative of the bargaining unit in 1994. Both parties have satisfied the requirements of Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-0-05 in moving this matter to fact-finding and in presenting this matter to the fact-finder.

FACT-FINDING RULES - OHIO ADMINISTRATIVE CODE RULE 4117-9-05(K)(1)-(6)

Ohio Administrative Code rule 4117-9-05(K) provides that the fact-finder shall take into consideration, in making recommendations to the parties, the criteria expressed in paragraphs (K)(1)-(6) of this rule. Ohio Administrative Code

section 4117-9-05(K)(1) refers to past collectively bargained agreements between the parties, if any. Ohio Administrative Code section 4117-9-05(K)(2) refers to a comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved. Ohio Administrative Code section 4117-9-05(K)(3) refers to the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service. Ohio Administrative Code section 4117-9-05(K)(4) refers to the lawful authority of the public employer; Ohio Administrative Code section 4117-9-05(K)(5) refers to stipulations by the parties; Ohio Administrative Code rule 4117-9-05(K)(6) refers to such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment. In contemplating and making recommendations intended to resolve the issues separating the parties from their successor collective bargaining agreement, the fact-finder has kept in mind and has applied the criteria expressed in Ohio Administrative Code rule 4117-9-05(K)(1)-(6).

FINDINGS OF FACT

1. The parties to this fact-finding process, the City of Zanesville, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, are engaged in formulating a successor collective bargaining agreement.
2. A predecessor collective bargaining agreement between the parties was in effect from January 1, 2001 through December 15, 2003.
3. The bargaining unit is comprised of twenty-one (21) full-time unsworn corrections officers who work within a full-service jail.
4. A full-service jail is a jail in which a prisoner may be incarcerated for up to one year.
5. Bargaining unit members perform recordkeeping, supervision of inmates, and carry out their duties in compliance with jail standards established by the Ohio Department of Rehabilitation and Correction.
6. The two issues separating the parties are wages and a promotional system proposed to be utilized in filling vacant sergeant positions within the jail.
7. The Employer's wage proposal is 4%, 4%, and 4% for the three years of the successor collective bargaining agreement.
8. The Union's wage proposal is 10%, 5%, and 5% for the three years of the successor collective bargaining agreement.

9. The rate of inflation, as quantified through the consumer price index, from 1998 through 2003 ranged from a low of 1.6% in 1998 to a high of 3.8% in the year 2000, with an average annual inflation rate of 2.7%.
10. The wage increases secured by the bargaining unit from 1998 through 2003 range from a high of 10.9% in 1998 to a low of 3.8% in the year 2000.
11. The CPI for 2003 was 1.9%.
12. Wage increases secured by the bargaining unit from 1998 through 2003, on average, were 5.5% annually.
13. The 4%, 4%, and 4% wage proposal from the Employer is equal to or exceeds wage increases negotiated with four other unions in 2002 (to be effective in 2003) and granted to nonaffiliated employees.
14. During the three years of the parties' predecessor collective bargaining agreement, eleven employees left the bargaining unit for higher paying positions elsewhere.
15. The eleven employees who left the bargaining unit during the predecessor collective bargaining agreement secured training at the Employer's expense immediately prior to leaving the bargaining unit.
16. Increasing wages in the bargaining unit will make remaining in the bargaining unit more attractive.
17. Bargaining unit members are employed on a forty-hour per week basis, yet the level of wages presently paid to bargaining unit members qualifies a number of bargaining unit members for public assistance benefits including free and subsidized lunches for children, medical cards for children, subsidized babysitting expenses, and food coupons through the Womens, Infants, and Children (WIC) program.

18. The parties agreed that Article 23, section 23.5, Working Out of Rank, shall be amended to include a definition of what comprises working out of rank, as reflected in a memorandum of understanding attached to the predecessor collective bargaining agreement.
19. The factors which affect the comparability of different political subdivisions include comparing cities or counties, the location of a political subdivision within the state, the population of the comparable political subdivision, and whether the jail service provided is full-service or not.
20. The vast majority of wage increases among political subdivisions presented for comparison to the City of Zanesville's corrections officers from 2001 through 2006, are within a range of 3.5% to 4.0% annually.
21. Civil Service testing has been conducted for the purpose of filling sergeant positions at the Zanesville jail.
22. The Employer has refused to bargain concerning the promotional process to be employed in filling the jail sergeant positions based on the Employer's understanding that this subject comprises a permissive, not mandatory, subject of bargaining.
23. Promotional issues that do not address initial hiring, are issues which affect wages, hours, terms, and other conditions of employment and therefore comprise mandatory subjects of bargaining.
24. A bargaining unit has the authority, pursuant to Ohio Revised Code Chapter 4117., to bargain concerning subjects which affect the wages, hours, terms, and other conditions of employment within the bargaining unit; a bargaining unit does not have the authority, under Ohio Revised Code Chapter 4117., to bargain subjects which

affect the wages, hours, terms, and other conditions of employment of positions outside the bargaining unit.

26. A bargaining unit does have the authority under Ohio Revised Code Chapter 4117. to bargain promotional eligibility within the bargaining unit.

ARTICLE 23 - WAGES

The Employer proposes wage increases of 4%, 4%, and 4% for the three years of the parties' successor collective bargaining agreement, describing this proposal as reasonable for these uncertain times, and when compared to what is paid to employees performing work similar to that assigned to the bargaining unit.

The Employer presented City Exhibit 1 which provides a comparison of the rates of inflation to bargaining unit wage increases from 1998 through 2003. The rate of inflation for 1998, presented as the consumer price index (CPI) was 1.6%; bargaining unit increases at the top wage level went up 10.9%. City Exhibit 1 shows that in 1999 the CPI was 2.7%, while bargaining unit wages increased by 3.9%. In 2000 the rate of inflation was 3.4%, while bargaining unit wages went up 3.8%. In 2001 the CPI was 1.6%; the bargaining unit's wage increase for that year was 6.7%. The CPI for 2002 was 2.4%; the wage increase for this year was 4.0%. In 2003 the CPI was 1.9%; the wage increase was 4.0%. The City notes that the rate of inflation for these years, on average, was 2.7%, while the average wage increase for these years in the bargaining unit was 5.5%. The Employer notes that the wage increases within the

bargaining unit over the past six years have remained ahead of inflation.

The Employer notes that in 1998, to facilitate a "catch up" of wages within the bargaining unit in comparison to what was being paid for similar work performed in other political subdivisions, a \$1.00 per hour across the board wage increase was agreed, an increase that amounted to 10.9%. The Employer notes that in 2001, in the first year of the parties' (now) predecessor collective bargaining agreement, a fact-finder had recommended a 6.7% wage increase for the first year of the contract and this recommendation had been accepted by the parties. The Employer notes that its wage increase for the first year of the successor collective bargaining agreement exceeds the rate of inflation for 2003 by more than 2%.

The Employer notes that its wage proposal for the corrections officers' bargaining unit equals or exceeds the wage increases, by percentage, negotiated with four other unions in 2002 (to be effective 2003) and granted to nonaffiliated employees through a municipal ordinance. In this regard the Employer points to City Exhibit 2 which shows that the AFSCME bargaining unit received a 3.5% wage increase in 2003, a 3.5% wage increase in 2004, and will receive a 3.5% wage increase in 2005. For years 2003, 2004, and 2005, the firefighters' bargaining unit received a 4% increase in each of these years. Police Captains received 4% annual wage increases for 2002, 2003, and 2004. The Police Officers' bargaining unit received a 4.0% wage increase for 2003, 2004, and 2005. Police Sergeants and Lieutenants received 4% wage increases for 2003,

2004, and 2005. Nonaffiliated employees received a 3.5% wage increase in 2003, a 4% wage increase in 2004, and will receive a 4% wage increase in 2005. The Employer notes that its wage proposal in the fact-finding herein is for 2004, 2005, and 2006, at 4% for each year. The Employer notes that the AFSCME bargaining unit which received wage increases of 3.5%, 3.5%, and 3.5% for years 2003, 2004, and 2005, received an additional .5% pension pick-up for years 2004 and 2005.

The Employer pointed to City Exhibit 3 as presenting data from the State Employment Relations Board's Clearinghouse in a benchmark report dated January 29, 2004 for corrections officers/jailers among the cities of Broadview Heights (population 15,967); Cleveland (population 478,403); East Cleveland (population 27,217); Euclid (population 52,717); Garfield Heights (population 30,734); Lakewood (population 56,646); Maple Heights (population 26,156); Mentor (population 50,278); Middletown (population 51,605); North Olmsted (population 34,113); Parma (population 85,665); Solon (population 21,802); and Toledo (population 313,619). These thirteen municipal jail operators and employers pay, on average, an entry level wage of \$26,877.65, and a top wage of \$33,110.38. The Employer points out that many of these jails are not full service jails, are not located near Zanesville, Ohio, and most are located in Cuyahoga County. The Employer notes that most of the cities appearing on City Exhibit 3 have populations larger than that of Zanesville, a city with a population between 25,000 and 27,000.

The Employer referred the fact-finder to City Exhibit 3, page 2, which compares City of Zanesville corrections officers' top pay to the top pay paid by the thirteen cities appearing on the SERB benchmark report dated January 29, 2004, City of Exhibit 3, page 1. City Exhibit 3, page 2 also presents the median household incomes for the City of Zanesville and each of the thirteen cities listed for comparison. As an example, the city of Maple Heights, with a population of 26,156 in the year 2003, paid its corrections officers a top wage of \$33,567, while the top pay for Zanesville corrections officers was only 78.71% of that figure, \$26,419. The Maple Heights's median household income was \$40,414 in 2003; the Zanesville median household income for 2003 was only 65.92% of that figure, \$26,642. For each of the thirteen cities listed for comparison a pay differential by percentage and a median household income differential by percentage are provided. The Zanesville median household income is 69.35% of the average median household income among the thirteen cities listed, while the top pay paid to Zanesville corrections officers is 81.75% of the average top pay paid by these cities.

The Employer presented City Exhibit 4, presenting police officer wage increases from 2000 through 2005 for the cities of Cambridge, Heath, New Lexington, and Pataskala, cities located in counties contiguous to the City of Zanesville's county, Muskingum County. Page 2 of City Exhibit 4 presents firefighter wage increases for the cities of Coshocton, Heath, Newark, and Zanesville. Police Officer wage increases from 2000 through 2005

among the cities of Cambridge, Heath, New Lexington, Pataskala, and Zanesville average 3.4% per year, with Zanesville agreeing to 4% wage increases for police officers for 2003, 2004, and 2005. Firefighter wage increases from 2000 through 2005 for the cities of Coshocton, Heath, Newark, and Zanesville averaged 3.7% annually, with the City of Zanesville agreeing to 4.0% wage increases for firefighters for 2003, 2004, and 2005.

The Union proposes a 10% wage increase in the first year of the parties' successor collective bargaining agreement, followed by annual wage increases of 5% in years two and three of the successor agreement. The Union's wage proposal freezes the hourly wage amounts in the first three steps in years two and three, thereby applying the 5% wage increases in years two and three to only those bargaining unit members in the two highest steps, steps 4 and 5.

The Union notes that during the three years of the parties' predecessor collective bargaining agreement, eleven employees left the bargaining unit for higher paying positions. In each case the Employer had invested substantial time and money in training these employees, and when these bargaining unit members left, they essentially used the Employer for training purposes and, once trained, presented themselves as a more valuable asset to another employer. The Union points out that by paying members more in the higher steps, the Employer will save money because the cost of retraining new hires will decrease over time through retaining employees with the most training and experience.

The Union recognizes the accepted practice of comparing city to city and county to county, but submits that in this case the only other full-service city jail facility is in Euclid, Ohio. The Union therefore uses comparables which include some counties and some cities that have populations within a particular range. The Union also uses Muskingum County and the City of Euclid, although both have populations well in excess of Zanesville.

The Union refers the fact-finder to Union Exhibit 1 which compares starting hourly wages among the cities of Garfield Heights, Carroll, and Euclid, and the counties of Madison, Adams, and Muskingum. Also included in this exhibit is Guernsey County which presents the lowest starting hourly wage. Union Exhibit 1 reflects that when Guernsey County is excluded among these comparables, the average hourly rate is \$12.96, while the City of Zanesville's starting hourly wage is \$11.02 (with the 4% increase in 2004), leaving it 17.6% below the average. When Guernsey County is included in the average hourly start rate, the average rate is \$12.48, leaving the City of Zanesville's start rate 13.25% below the average. If the Union's 10% increase for 2004 is implemented, the Zanesville starting hourly rate remains 11.5% below the average without Guernsey County, and 7.0% below the average when Guernsey County is included. The Union stresses that even with the larger wage increase proposed by the Union, the bargaining unit's starting wage rate remains more than 11% behind the average wages of the other political subdivisions compared to it.

The Union does not dispute the data presented by City Exhibit 2 showing that the bargaining unit is paid, on average, well below the average wages for similarly situated employees in southeastern Ohio. The Union contends that this is true even for non-organized jails.

The Union presented a comparison of the Zanesville top hourly wage to top hourly wages paid in the cities of Garfield Heights, Carroll, and Euclid, and the counties of Muskingum, Madison, Adams, and Guernsey. The top rate paid in the bargaining unit, with the 4% wage increase proposed by the Employer, is \$13.29; with the 10% wage increase proposed by the Union the top rate would be \$13.97. The average hourly rate among these comparable cities and counties, without Guernsey, is \$15.38, placing the Zanesville top rate, with the Employer's wage proposal, 13.0% below the average, and with the Union proposal 9.0% below the average, when Guernsey County is not included. Including Guernsey County's top hourly wage in the comparables leaves the Zanesville top rate, with the Employer's 4% wage increase, at 13.0% below the average, and with the Union's 10% wage increase, 8.2% below the average. The Union contends that the top hourly wage to be paid to the bargaining unit members during the first year of the parties' successor agreement, under either the Employer's or the Union's wage proposal, leaves these employees well below comparable average top hourly wages paid to other corrections officers in political subdivisions containing similar populations.

The Union notes that the bargaining unit members are employed forty hours per week on a full-time basis and yet at the level of wages presently paid to bargaining unit members, two bargaining unit members qualify for free lunches for their children; two qualify for medical cards for their children; two employees qualify for babysitting expenses; one employee qualifies for assistance through Women, Infants, and Children (WIC); and one qualified for a reduced lunch program. The Union stresses that even though these employees are full-time, they still qualify for these programs because of the low level of wages paid to the bargaining unit.

The Union proposes that the wage increases for the bargaining unit members in the parties' successor collective bargaining agreement be made effective the first day of the first full pay period after January 1, 2004. The Union proposes that the successor collective bargaining agreement be in effect from January 1, 2004 through December 31, 2006.

The Union also proposes a change to Article 23, section 23.5, Working Out of Rank. A definition of what constitutes working out of rank has been reflected in a Memorandum of Understanding. The Union proposes and the Employer has agreed that the definition of officer-in-charge be moved from the Memorandum of Understanding to the collective bargaining agreement within Article 23, section 23.5. It is the fact-finder's understanding that both parties have agreed to this change.

DISCUSSION

As is always the case in comparing data to the starting and top pay rates for bargaining unit members, what comprises comparability is in the eye of the beholder. The bargaining unit is employed by a municipality with a population in the 26,000 to 27,000 range, located in southeastern Ohio, operating a full service jail. The City of Euclid, Ohio operates a full service jail, but its population is 52,717, roughly twice the population of the City of Zanesville, and Euclid, Ohio is located in northern Ohio, a community abutting a very large metropolitan area, the City of Cleveland. Euclid has a median household income of \$35,151; Zanesville has a median household income of \$26,642. While the Zanesville median household income is 75.79% of the Euclid median household income; the top wage rate for a Zanesville corrections officer, \$27,476, is 97.73% of Euclid's top wage, \$28,115.

Comparing different political subdivisions in different areas of the state among cities and counties affects how the bargaining unit's wages appear based on the particular political subdivisions selected for comparison. Factors which affect comparability include population, location within the state, whether a county or municipal subdivision operates the jail, and whether the jail is full-service or not.

What is striking, however, among all of the political subdivisions presented for comparison, is the general consistency of wage increases from 2001 through 2006 which, in the vast

majority of cases, are within the 3.5% to 4.0% range. This general range of wage increases is true for the counties and cities proposed for comparison by the parties, and is even more noticeable when considering the wage increases from 2003 through 2006 for the other four bargaining units with which the City of Zanesville negotiates, and among non-organized employees of the City of Zanesville. With the exception of the 3.5% wage increases for the AFSCME bargaining unit for 2003, 2004, and 2005, in exchange for which the AFSCME bargaining unit received an additional .5% pension pick-up for 2004 and 2005, and except for the wage increase for 2003 for non-organized employees amounting to 3.5%, all other annual wage increases from 2002 through 2006, whether agreed, yet to occur, or proposed, are at 4.0%.

The fact-finder is not unmindful of the difficulties encountered by the bargaining unit employees in meeting expenses based upon the wages earned. The fact-finder notes, however, that over the two prior collective bargaining agreements between the parties, the first years of each of those contracts provided bargaining unit members with a 10.9% and a 6.7% annual wage increase for the purpose of "bumping up" their wages to effect a "catch-up." The wage increases for 1999 and 2000 were 3.9% and 3.8%, and the wage increases for 2002 and 2003 were 4% and 4%. The fact-finder understands the desire by bargaining unit members for a larger wage increase, but the fact-finder takes note of the consistency of the Employer's wage increase proposals with other bargaining units employed by the City of Zanesville, and also finds

the amounts of these wage increases, in the face of an economic climate which is, at best, uncertain, to be substantial.

The fact-finder recommends the Employer's wage proposal of 4.0%, 4.0%, and 4.0%, to be effective the first day of the first pay period following January 1, 2004, January 1, 2005, and January 1, 2006. These wage increases are affordable by the Employer; are consistent with other wage increases bargained and agreed with other bargaining units employed by the City of Zanesville, and are generally in accordance with trends in wage increases among comparable political subdivisions in the state of Ohio providing similar work.

RECOMMENDED LANGUAGE - ARTICLE 23 - WAGES

Section 23.1 Salaries, Wages, and Salary Ranges

A. The salaries, and salary ranges for the position classifications of Corrections Officers shall be:

JANUARY 2004

STEPS	1	2	3	4	5
	11.02	11.34	12.27	12.78	13.21

JANUARY 2005

STEPS	1	2	3	4	5
	11.46	11.79	12.76	13.29	13.74

JANUARY 2006

STEPS	1	2	3	4	5
	11.92	12.26	13.27	13.82	14.29

Section 23.2 Current language - no change.

Section 23.3 Current language - no change.

Section 23.4 Current language - no change.

Section 23.5 Working Out of Rank-Officer in Charge

In the absence of the jail sergeant, the most senior Corrections Officer who is on duty and is working a post will assume the duties and responsibilities that go with being the immediate supervisor in the jail. For purposes of this Section, a post is defined as: Central Control, Booking, Rover, Second Floor and Third Floor. When the most senior Corrections Officer assumes the duties and responsibilities of the jail sergeant and serves as Officer in Charge, he/she will be paid for all hours worked in that position provided he/she has served as O.I.C. for at least one (1) hour during a shift. If, during a shift, and because of circumstances, multiple Corrections Officers serve as O.I.C., payment under this Section will be made to each Corrections Officer who serves as O.I.C. provided he/she has met the "at least one hour" criteria.

In consideration of taking on the additional duties and responsibilities of Officer in Charge, the Corrections Officer(s) shall be paid at a rate that is eight percent (8%) above his/her regular hourly rate of pay for all hours served as O.I.C., subject to the provisions above.

NEW ARTICLE

The Union proposes new language for the parties' successor collective bargaining agreement which would affect the filling of positions above the level of corrections officer. The Union points out that, at present, there is no rank above corrections officer employed within the jail, although the Union believes the Employer has plans to hire several sergeants in the jail. The Union notes that civil service testing has been conducted for this purpose but the positions have yet to be filled.

The Union acknowledges that the Employer has contended that it has no obligation to bargain on this topic and insisted that it be excluded from bargaining. The Union maintains that while criteria affecting initial hiring are not subject to collective bargaining, the criteria and procedures for promotions are mandatory subjects of bargaining. The Union notes that the Employer has agreed that the promotion of employees is an appropriate topic for collective bargaining, but the Employer argues it is a permissive topic only, not mandatory.

The Union points out that the collective bargaining agreement which covers the bargaining unit of patrol officers employed by the Zanesville Police Department contains an article addressing the filling of positions. The Union's proposal in this case is modeled almost exactly on that language within the police officers' collective bargaining agreement. The Union contends that since the rank of patrol officer is equivalent to that of corrections officer, it is logical and equitable that there be a contractual procedure for filling positions in ranks higher than the "officer" position, whether on road patrol or serving in the jail. The proposed language from the Union provides that no employee shall be eligible for promotion until the employee has a minimum of five years' experience as a full-time corrections officer with the Zanesville Police Department.

In support of its position, the Union cites the Ohio Supreme Court case of DeVennish v. City of Columbus, (1991), 57 Ohio St.3d 163. In this case the Ohio Supreme Court held that Ohio Revised

Code section 4117.08(B) prohibits collective bargaining over all matters concerning pre-hire examinations and the establishment of pre-hire eligibility lists, but does not prohibit bargaining over matters which concern promotional examinations and the establishment of promotion eligibility lists. The Court held that all matters affecting promotions are appropriate subjects of collective bargaining.

The majority in DeVennish, supra, addressed a conflict between the language of a collective bargaining agreement and a regulation of the Civil Service Commission of the City of Columbus. The Civil Service Commission regulation required three years of continuous service as a police officer immediately prior to the date of the promotional examination. The language of the collective bargaining agreement required only three years as a police officer to sit for a promotional examination for sergeant. The majority held that an employer, according to Ohio Revised Code section 4117.08(C), is not required to bargain on subjects reserved to the management and direction of the governmental unit except as they affect wages, hours, terms, and conditions of employment. The Court found that promotions affect and pertain to wages, hours, terms, and other conditions of employment, and thus all matters concerning promotional eligibility are bargainable issues.

The Employer contends that the subject of promotional processes to be followed in filling corrections sergeant positions employed by the City of Zanesville is not a mandatory subject of bargaining and therefore the Employer is not required to bargain on

this subject and has declined to do so. The Employer points out that corrections sergeants are not to be included in the corrections officers' bargaining unit and notes that the AFSCME contract has no language similar to that proposed by the Union for inclusion within the parties' successor collective bargaining agreement. The Employer denies that police officer positions are analogous to corrections officer positions, has refused to bargain this topic, and does not agree to its inclusion in the parties' successor collective bargaining agreement.

DISCUSSION

The fact-finder understands the Ohio Supreme Court case of DeVennish v. City of Columbus, (1991), 57 Ohio St.3d 163, to hold that promotional procedures affect wages, hours, terms or other conditions of employment and therefore are mandatory subjects of bargaining. The fact-finder understands that Ohio Revised Code section 4117.08(C)(5) provides that unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the rights and responsibilities of each public employer to suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees. This language, however, is followed in the same statutory provision by the following:

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms, and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement...

As stated by the Ohio Supreme Court's majority opinion in DeVennish, supra, promotional eligibility pertains to and directly affects wages, hours, terms and other conditions of employment and are, therefore, bargainable issues. The fact-finder feels constrained to follow this construction of Ohio Revised Code section 4117.08, and therefore finds that the promotional process proposed by the Union comprises a bargainable subject and therefore is a subject properly submitted to the fact-finder.

The DeVennish, supra, case addresses the eligibility of a bargaining unit member to sit for a promotional examination. The Union's proposal in this fact-finding proceeding proposes language which would limit eligibility within the bargaining unit for the promotional process to those with a minimum of five years' experience as a full-time corrections officer with the Zanesville Police Department. This proposed language addresses eligibility within the bargaining unit and appears to raise the particular issue addressed in DeVennish, supra.

The language of the Union's proposal, however, goes beyond eligibility requirements within the bargaining unit; the Union's proposed language also attempts to define how the selection is to be made, including how considerations of performance and seniority are to be weighted.

What is striking about the Union's proposal is that it attempts to control a process concerning the filling of a position located outside the bargaining unit. The fact-finder believes the corrections officer bargaining unit members would resist the application of language concerning how promotions are to be handled within their bargaining unit where that language was negotiated by a different bargaining unit. It appears to the fact-finder that this bargaining unit, the bargaining unit of corrections officers employed by the City of Zanesville, is attempting to determine, through bargaining with the city, how a position in a different bargaining unit, or at the very least a position outside the corrections officers' bargaining unit, will be considered and filled. While the fact-finder follows DeVennish in determining that promotional processes are appropriate subjects of bargaining because they affect wages, hours, terms, and other conditions of employment, the fact-finder is persuaded that the language proposed by the Union which intends to exercise control beyond the corrections officers' bargaining unit comprises an intrusion into an area better left to a bargaining unit containing the position to be filled.

The fact-finder therefore recommends the Union's proposal as it relates to promotional eligibility within the bargaining unit. The fact-finder does not recommend the language which proposes that a particular promotional procedure be utilized for a position that does not reside within the corrections officers' bargaining unit. Accordingly, the fact-finder recommends the Union's proposal for

new language in part, and declines to recommend the remaining language in the Union's proposal.

RECOMMENDED LANGUAGE - NEW ARTICLE - FILLING OF POSITIONS

This Article specifically covers appointments to the rank of Sergeant. All other positions other than those specified by this section shall be filled by the Employer with the procedure the Employer determines.

Promotions shall be administered through the Zanesville Civil Service Office.

Whenever the Employer determines that a permanent vacancy exists, a notice of such vacancy shall be posted on the bulletin board for fourteen (14) calendar days. During the posting period, anyone wishing to apply for the vacant position shall do so by submitting a written application to the Civil Service Commission. The Civil Service Commission shall not be obligated to consider any applications submitted after the posting period or received from applicants who do not meet the minimum qualifications for the job. Employees may submit a bid on behalf of other employees in their absence.

Nothing in this Article shall be construed to limit or prevent the Employer from temporarily filling a vacant position with the most senior member of the next lower rank, pending the Employer's determination to fill the vacancy on a permanent basis. Such temporary assignments shall not exceed one hundred eighty (180) days. All timely filed applications shall be reviewed by the Civil Service Commission. No employee shall be eligible for promotion until he has a minimum of five (5) years experience as a full-time Corrections Officer with the Zanesville Police Department.

In addition to the language recommended in this report, the fact-finder recommends by reference, as if fully rewritten herein, all Articles agreed by the parties prior to fact-finding.

In making recommendations to the parties intended to resolve the issues separating the parties from their successor collective bargaining agreement, the fact-finder has considered the criteria expressed in Ohio Revised Code Chapter 4117. and section 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.


Howard D. Silver
Fact-Finder

Columbus, Ohio
March 17, 2004

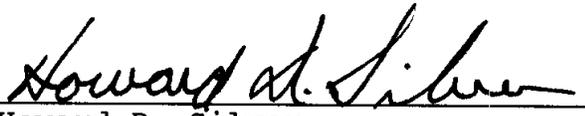
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommendation of Fact-Finder in the Matter of Fact-Finding Between the City of Zanesville, Ohio and the Fraternal Order of Police, Ohio Labor Council, Inc. was filed with the State Employment Relations Board, via hand-delivery, and faxed and mailed this 17th day of March, 2004, to the following:

Dale Raines
Budget & Finance Director
City of Zanesville
401 Market Street
Zanesville, Ohio 43701

and

Andrea H. Johan
Staff Representative
Fraternal Order of Police,
Ohio Labor Council, Inc.
222 East Town Street
Columbus, Ohio 43215-4611


Howard D. Silver
Fact-Finder

Columbus, Ohio
March 17, 2004