

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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February 21, 2005

In the Matter of the Fact-Finding Between

THE CITY OF YOUNGSTOWN)

Case No.: 03-MED-09-0877

and)

YOUNGSTOWN POLICE RANKING)
OFFICERS' ASSOCIATION)

APPEARANCES

For the City:

John A. McNally, IV, Esq.
Jeanne Rostan

Attorney
Finance Supervisor

For the Union:

Dennis Haines, Esq.
Kenneth Centorame
Ron Rodway
Charles Guzzy

Attorney
President, YPRO
Past President, YPRO
Secretary, YPRO

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Youngstown ("City") and the Youngstown Police Ranking Officers' Association (the "Union"). The bargaining unit consists of all full-time ranking officers in the Youngstown Police Department, excluding the Chief of Police. The bargaining unit includes forty-four (44) Detective Sergeants, three (3) Sergeants, three (3) Detectives, nine (9) Lieutenants and seven (7) Captains. The terms of the parties' collective bargaining agreement expired on November 30, 2003.

The parties held approximately six (6) bargaining sessions, with the last session being held on or about December 29, 2004. The parties have reached agreement on all issues except the issue of wage differential between ranks.

Virginia Wallace-Curry was appointed fact-finder in this matter by SERB. The parties declined the fact-finder's offer to mediate the issues, and a hearing was held on February 14, 2004, at which time the parties were given full opportunity to present their respective positions on the issue. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. In making the recommendations in this report, consideration was given to criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board.

RANK DIFFERENTIAL

The parties agree that the effective rank differential between a senior Patrolperson and a Detective Sergeant/Sergeant, between a Detective Sergeant/Sergeant and Lieutenant, and between a Lieutenant and a Captain had been 15% for the contracts spanning the years 1989 to 2000. This was an increase from the 12% of the previous contracts. However, a written guarantee of a specific rank

differential has not been included in the parties' contract since the 1984-1985 Agreement. Typically, all unionized employees in the City received the same percentage wage increase, which maintained the effective differential between the ranks of the police officers.

In 2000, all City union employees agreed to the same wage increase. However, instead of a straight percentage increase, employees received an increase of \$.30 per hour plus an overall increase of 4%. This caused the rank differential to decrease from 15% to percentages varying from 14.82% to 14.76%. If the ranking officers receive the same wage increase as other unionized employees for this contract term, the rank differential will fall to as low as 14.33%.

Union's Position

The Union is seeking a guarantee of a 15% rank differential written into the Agreement. It argues that the parties had for years agreed that a 15% differential was appropriate and that the recently expired contract should have reflected the same differential. It seeks to correct that error by having a written guarantee of a specific rank differential added to the new Agreement.

The Union asserts that a guarantee of a 15% differential is necessary to encourage senior patrol officers to seek the position of sergeant and to encourage promotion through the ranking officers. The statistics show that fewer eligible officers are taking the promotional exam. The numbers have significantly decreased from 2002 to 2004. Currently, many senior Patrol Officers make more money than Detective Sergeants because of such things as overtime opportunities, court time, holiday pay, and shift differential which are available to senior Patrol Officers. A guarantee in shift differential is a necessary incentive to encourage the most qualified Patrol Officers to apply to be a ranking officer.

The Union argues that a 15% wage differential is comparable to other similar jurisdictions. The

City of Warren has a rank differentials of 16% between senior patrol officers and sergeants (increasing to 16.5% in 2006) and 15% for other ranks. The City of Canton a 16% differential between senior patrol officers and sergeants and 15% for the remaining ranks. The average rank differentials for Cuyahoga Falls, Mansfield and Middleton is 16%.

The cost to the City for increasing the rank differential to 15% for all ranking officers is only \$88,000 over the three years, which is less than \$30,000 a year in a \$17.5 million budget. The City has not argued that it lacks the ability to pay. Therefore, the Union urges the fact-finder to adopt its position.

City's Position

The City argues that historically, the City and its various unions have tried to give all employees the same wage increases and health care benefits. The City relies on this bargaining strategy to keep wages and benefits fair. Because all employee receive the same wage increases, there is no reason for a specific rank differential to be expressly put into the Agreement.

In the recently expired Agreement, the Union agreed to Fact-finder Hewitt's recommendation to give the ranking officers the same wage rate as the other unionized employees received, \$.30 per hour plus a 4% wage increase. Although the Union argued at the hearing that the City implemented the fact-finders award giving the Ranking Officers a 4% increase and then adding the \$.30 per hour increase, that is not so. The City chose to implement the award not as written but in the same way as the other unions, giving employees a \$.30 per hour increase first and a 4% general increase second. Thus, the Ranking Officers received the same increase as all other employees.

Currently, all other City employees have agreed to a 2%, 3% and 4% wage increase

respectively for the three years of the Agreement and the Ranking Officers should receive the same increase. Adding the provision guaranteeing a 15% differential for Ranking Officers would increase the wages of this bargaining unit more than other employees receive, thus causing labor unrest for the City.

The Union claims that a decrease in the number of eligible employees taking the promotional exam is due in large part to a decrease in rank differential. However, there is no evidence specifically linking the two. The number of individual taking promotional exam may also be heavily influenced by the number of employees participating the DROP program, for example. The decrease in shift differential from the previous contracts is not so significant as to be the main cause for decreasing number of promotional exams taken.

The parties had a written guarantee of rank differential in their 1984-85 Agreement. They chose not to include it in subsequent agreements. The Union has not offered sufficient reason or incentive for the City to agree to reinsert such language in the current Agreement and urges the Fact-finder to reject the Union's proposal to add it at this time.

Fact-Finder's Recommendation

The Union's proposal to add a provision specifically guaranteeing a 15% rank differential is recommended. It is obvious from the pattern of bargaining that the parties believed a 15% rank differential was appropriate. The rank differential was increased from 12% to 15% in 1989 and was maintained through the next three Agreement until 2000, because all employees received the same percentage increase in wages. Thus, the differential between the ranks remained the same.

However, in 2000, the 4% wage increase included a \$0.30 per hour increase, which threw off the pattern of keeping the percentage wage increase the same for all employees. A \$0.30 per hour

increase for an employee earning \$15 per hour is a 2% increase. But, the same \$0.30 per hour increase for an employee earning \$20 per hour is only a 1.5% increase. Consequently, when a specific dollar amount is added to a wage rate, an employee earning more money per hour gets a lower *percentage* increase than the employee earning less per hour. Thus, a \$0.30 per hour increase plus a 4% overall increase will give the \$15 per hour employee a 6% increase and the \$20 per hour employee a 5.5% increase. This is how the 15% rank differential enjoyed in the previous contracts was eroded in the 2000-2003 Agreement.

This erosion of the rank differential appears to be inadvertent. Because the parties increased the rank differential from 12% to 15% in 1989, one can conclude that their choice of 15% was purposeful and was found to be appropriate under the circumstances. They maintained that differential rate until the 2000-2003 Agreement, when it changed. This change appears to have been unintended, at least on the Union's part. There was no evidence submitted to demonstrate that the Union sacrificed maintaining the rank differential to obtain some other benefit. It was obvious at the fact-finding hearing that the Union had been surprised by the change in rank differential that occurred as a result of agreeing to the same wage package that other unionized employees received. In fact, the Union believed that the City had implemented Fact-finder Hewitt's award so that the \$0.30 per hour increase was added after the 4% wage increase. However, Ms. Rostan testified that the Ranking Officers received the pay increase in the same manner as did other City employees.

The Union believed that the City should have added 15% on to the wage rate earned by the senior Patrol Officer to obtain the Detective Sergeants rate and then maintained a 15% differential for each successive rank. However, that is not what the Union had agreed to when it agreed to Fact-finder

Hewitt's recommendation. The Union seeks to correct that mistake in this Agreement by adding language which would guarantee the 15% rank differential. This Fact-finder finds this proposal to be warranted, because the parties had agreed to a 15% rank differential for eleven years, and the Union did not consciously bargain it away.

Rank differentials are common in safety force contracts. As the Union pointed out, comparable jurisdictions, such as Warren and Canton, have rank differential written into their Agreements. The rank differentials in those jurisdictions are 15% and 16%. In Cuyahoga Falls, Mansfield and Middleton, also similar jurisdictions, the average rank differential is 16%. Adding a clause in Agreement for the City and the Union guaranteeing a 15 % rank differential is defensible.

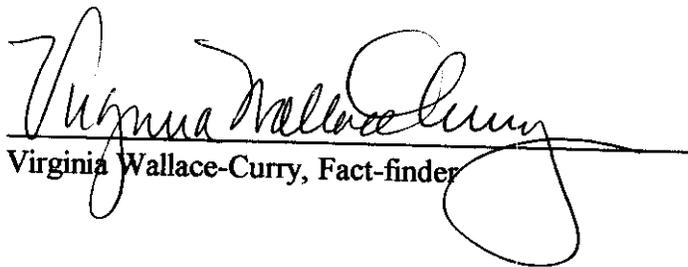
The City does not contend that it does not have the ability to pay for the 15% rank differential. It argues only that it would cause labor unrest and upset the historic pattern of bargaining with the City's other unions. The Fact-finder cannot agree. A rank differential is found only in safety force contracts and would be an issue only for the ranking firefighter officers, if it does not already exist. This one time realigning of wages based on rank for the police officers is unlikely to cause any labor unrest, and in future negotiations, the City and its unions can return to negotiating percentage wage increases that affect all employees in the same manner. The rank differential would remain at 15%, if identical wage increases are given to all employees.

PROPOSED CONTRACT LANGUAGE

Add to Article 7 (A):

Wage rates shall reflect a minimum fifteen percent (15%) differential between the senior patrol officer and the Detective Sergeant, Sergeant, Detective; between Detective Sergeant, Sergeant, Detective and Lieutenant; and between Lieutenant and Captain.

Submitted by:


Virginia Wallace-Curry, Fact-finder

Cuyahoga County
February 21, 2005

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Award for the City of Youngstown and the Youngstown Police Ranking Officers' Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, February 22, 2005. The Fact-Finding Award was served upon:

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