

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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In the Matter of
Fact-Finding Between:

CITY OF CLEVELAND

-and-

FRATERNAL ORDER OF POLICE, OHIO
LABOR COUNCIL, INC. (Scientific and
Fingerprint Examiners)

Case No. 03-MED-12-1396

Jonathan I. Klein,
Fact-Finder

FACT-FINDING REPORT
and
RECOMMENDATION

Appearances

For the Union:

Otto J. Holm, Jr. - Staff Representative
Charles Sikora - Scientific Examiner
Felicia Simington - Fingerprint Examiner

For the Employer:

Jon M. Dileno, Esq. - Attorney for City
William Menzalora - Assist. Dir. of Law
Sharon Dumas - Finance Director
Edward Tomba - Commander, Clev. Police

Date of Issuance: July 29, 2006

I. PROCEDURAL BACKGROUND

This matter came on for hearing on May 31, 2006, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on March 12, 2004. The fact-finding hearing was conducted between the City of Cleveland (“Employer” or “City”), and The Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”), at the Burke Lakefront Airport, 1501 Marginal Road, Cleveland, Ohio. The bargaining unit represented by the Union is comprised of approximately sixteen scientific and fingerprint examiners.

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations and any provisions of the current collective bargaining agreement, which agreements and provisions were not otherwise modified during fact-finding and/or the present round of negotiations. In making the recommendation which follows, the fact-finder has reviewed the arguments and evidence presented by both parties at hearing, and in their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) 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 classification involved;
- (3) The interest 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, 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.

III. FINDINGS OF FACT AND FINAL RECOMMENDATION

Introduction

The City has been embroiled for several years in addressing a serious fiscal condition which has impacted negotiations with all thirty-two bargaining units that have agreements with the City. The level of services provided to the citizens of the City has been affected. There is very little dispute over the dire fiscal straits of the City, including the lingering impact of a \$60

million shortfall in 2004 that was addressed by significant layoffs and cuts in services. It is with this background that the parties have approached the fact-finding process.

The Union's Position

Nine years ago, the bargaining unit employees approached the City to address a perceived disparity in wages. The response from the City was for the employees to organize, and the Union was recognized as the sole and exclusive representative for all scientific examiners and fingerprint examiners.

The Union recognizes that great strides were made in improving the compensation for members of the bargaining unit through the first and second collective bargaining agreements with the City. It reasons, however, that "one more stride" is necessary, as evidenced at hearing.

Fingerprint examiner Felicia Simington testified that there are nine such examiners employed by the City: four latent print examiners, and five, "ten-print" examiners involved in processing prisoners at the jail. The ten-print examiners must verify a prisoner's identity and complete such work within twenty-four hours. This is to be distinguished from the latent print examiners who perform print work on evidence derived from crime scenes. Simington described the expansion of latent print work in the past five years, and the extensive court testimony she has been required to give over her almost ten years of employment. Further, the fingerprint examiners must continue to take training on their own. Last year she paid for a course costing \$1,000 from her own monies. All nine fingerprint examiners have a minimum

of seven years seniority with the department up to sixteen years, but they all receive the same rate of compensation. The bargaining unit's compensation pales in comparison to employees of the State of Ohio and City of Columbus performing similar work.¹

Simington agreed on cross-examination that court appearances have been a job requirement since she was first hired by the City, but insisted that no fingerprint examiner receives call-in pay similar to the police officers. She insisted that her job duties are the same as with other cities, but acknowledged the Union was not in possession of job descriptions for the comparable bargaining units. While Simington paid for her own training in November 2004, she admitted the City rejected her claim to pay for the class because it was without money to do so, and she was aware of the fact that the City placed 750 employees on layoff.

Charles Sikora, a scientific examiner and member of the bargaining unit, has been employed by the City for 22 years. His date of hire preceded purchase of the Automatic Fingerprint Identification System, or "AFIS," which minimized the manual "scoring" performed by fingerprint examiners and identification of individuals previously arrested. Prior to AFIS, latent fingerprinting was performed only if there was a known suspect as it was impossible to search manually all the fingerprint cards on file. This all changed with the advent of AFIS, which allowed a search for latent prints and the ability to obtain an

1. Union Exhibits 1 and 2. The Union witnesses claimed that in the state unit, Unit 48, latent fingerprint and scientific examiners would fall under the highest pay range, 12, for "forensic examiners." The ten-print examiners would be classified as either fingerprint technicians or examiners in pay ranges 8 or 9, respectively.

identification from the data base. Sikora opined that the job duties of the fingerprint examiners has changed and the City has failed to address the classification of latent print examiners. There are no steps left in the step schedule for the fingerprint examiners to move toward in the future.

Sikora aptly described the formation of the Union at the City's suggestion in order to obtain regular step increases, rather than irregular merit pay increases. In their first collective bargaining agreement, the parties agreed to a twelve-step scale, but the City insisted on a freeze of individual employees at their then current step. The result is that employees with seventeen years of service as of July 2006 will still not have reached the eleven year step, and many remain at the nine year step. During the last agreement effective April 1, 2001, through March 31, 2004, the fingerprint examiners at the top two steps received \$1,000 in merit increases. In contrast, the scientific examiners have not seen a step schedule increase other than percentage increases since the initial collective bargaining agreement. By agreeing to the Union's proposed changes in the step schedule, the City can still maintain its present wage pattern.

On cross-examination, Sikora agreed that prior to the initial collective bargaining agreement, the employees were paid a salary with general wage increases, and during the nine years he worked without Union representation he received 2 or 3 merit increases. The step increases are implemented automatically, rather than having employees dependent on the City for "purely discretionary, infrequent and irregular merit increases." City Exhibit 22 demonstrates that Sikora went from wages of \$40,473.89 leading up to 2000, to \$43,987.50

for that year: an increase including a 3.5% wage increase plus a bump of 1 step on the step schedule. In approximately six years Sikora's pay has increased roughly \$13,000, or an average of over 5% per year. Ms. Simington has received wage increases since the first collective bargaining agreement totaling \$11,000.

The Union argues that the City has failed to recognize fingerprint examination as scientifically based, and has refused to establish job classifications which distinguish between latent and 10-print fingerprint examiners.²

The City's Position

The City's position is relatively straightforward. Simply stated, the City is attempting to weather a serious financial crisis which came to the fore in early 2004 when a \$60 million deficit had to be eliminated. Ultimately, 250 police officers and 70 firefighters were laid off and have only been called back to work due to attrition. Most significantly, twenty-seven bargaining units in the City have already accepted the wage proposal put forth by the City, and it constitutes an established wage pattern.

An argument similar to the Union's was made by the police union, CPPA, which represents 1,300 patrol officers challenging the pattern on both wages and health care. CPPA's contentions were rejected by Arbitrator Margaret Nancy Johnson in her decision

2. Both parties alluded to the fact an internal audit of the fingerprint examiner job classification was performed, but the actual results were not disclosed to the fact-finder.

issued September 6, 2005. (City Ex. 3). Arbitrator Johnson recognized the serious fiscal condition and the practice of pattern bargaining which exists in the City. A compelling case to break the pattern has not been made by the Union. *City of Cleveland -and- Ohio Patrolmen's Benevolent Association*, SERB Case No. 00-MED-01-0043 (J. Klein, Arb.) (2003).

Evidence of the City's fiscal condition was detailed by its finance director, Sharon Dumas. Dumas summarized the recent financial history, which included a \$20 million budget deficit in 2001 and a \$40 million deficit in 2002. Each of the deficits was plugged by a one-time injection of revenue. With the budget deficit blooming to \$60 million in 2003, a fifteen percent cost reduction across-the-board was implemented, along with layoffs and compromises with various bargaining units. Besides the layoffs in the police and fire departments, 350 employees in waste, parks and recreation and public service were placed on layoff. Dumas called the 2005 budget an "as is" budget – the cuts remained in place, but no additional layoffs were implemented. Out of approximately 6,000 employees paid from the general fund, there were only 7 employees and 30 police officers as new hires. The 30 police officers were paid for out of grant money from the Department of Homeland Security.

For 2006, Dumas stated the budget would be virtually flat with some additional revenue, but also losses in property tax due to successful valuation protests by various businesses. She also described the increased costs to the City of PERS, utilities, waste disposal fees and other items. Although the number of City employees has not increased, other costs are rising sharply. Statistical data in support of Dumas's testimony was offered into evidence.

Finally, Commander Edward Tomba of the Bureau of Special Investigations testified that at one time the forensics lab and crime scene unit both functioned as a single unit. Prior to the unit's division, the duties of forensic and fingerprint examiners were never interchangeable. In the last four and one-half years, Tomba testified that the duties of the scientific examiners have decreased and no longer include: blood, urine and semen analyses; crime scene examinations and tests; DNA analysis; and, firearms examination and comparison tests. (City Ex. 27). Today, the primary function of the scientific examiners is the analysis of narcotics.

Tomba clarified that latent and ten-print fingerprint examiners are not separate classifications within the City, nor is there a line drawn between junior and senior examiners. He agreed upon cross-examination that the work load for fingerprint examiners has increased significantly along with on-the-job training, whereas the work of the lab has decreased. While the volume of work has increased, Tomba clarified that the increased work did not result from additional job responsibilities. Since 2004, all bargaining unit employees working as fingerprint examiners have topped out on the step scale, and three to four younger examiners have left their employment with the City resulting in a large turnover percentage.

Analysis

The fact-finder has carefully reviewed the arguments and evidence presented by both sides to this dispute. Several conclusions are readily ascertainable and compel the recommendation reached below.

This fact-finder has noted previously that the concept of a City-wide pattern of bargaining has, with few exceptions, existed for many years. To break the established pattern, the Union “bears a significant burden to demonstrate” that its members warrant a more favorable wage increase relative to other bargaining units performing similar work. Assuming comparable bargaining units place the unit at issue in an unfavorable position, the fact-finder would add the necessity for the Union to demonstrate a break in the wage pattern is justified based on the totality of the statutory criteria. In other words, external comparables of public employees doing comparable work cannot, alone, provide justification for breaking a well-established wage pattern. Consideration must also be given to the scope of the wage pattern paid internal bargaining units, past collective bargaining agreements, factors peculiar to the jurisdiction or employer involved, the interest and welfare of the public and the ability of the public employer to finance the proposed wage increase.

Here, the Union argues forcefully that its members fair poorly when compared to Unit 48, the Attorney General of Ohio’s forensic science unit, and a similar unit in the City of Columbus, Ohio. On this criteria the Union runs into some difficulty for there was a lack of best evidence that Unit 48’s highest paid classification, forensic scientist, is the functional equivalent of the scientific examiner and the latent fingerprint examiner as claimed by the Union. There was no evidence of the actual job descriptions from the only two comparable departments in the State of Ohio. Assuming this claimed equivalency to be the case, under the City’s wage proposal its highest paid scientific examiner would fall slightly above the median compensation for a Unit 48 forensic scientist at approximately \$54,906 per year.

The same can be said for classifications in the City of Columbus of Criminalist II and Criminalist III, which the Union claims correspond to the ten-print fingerprint examiners, and the latent fingerprint examiners and scientific examiners, respectively. It appears reasonable to assume that when a proper comparison with the truly equivalent classifications in Unit 48 or Columbus can be made for each of the City's two classifications at issue here, fingerprint examiner and scientific examiner, the Union's members will fall short of the wage parity one might objectively expect to find.

This leads to the next analytic step – is the evidence of other statutory criteria sufficiently persuasive as to disregard internal parity in wage increases with over 5,000 other employees who have already accepted or been awarded the same proposal put forth by the City here? The fact-finder finds the answer to be in the negative for the following reasons.

First, it is abundantly clear that the City is not yet on firm financial ground. The poverty level of its residents stated as a percentage of population is frighteningly high. A budget summary for 2006 projects a year ending balance of a razor thin \$19,000. This is premised on projected 2006 expenditures of \$503,604,204. The slightest misstep, including an award to the Union which breaks the well-established wage pattern, may lead to an impermissible deficit. There is simply no evidence the Union presented which can overcome the overwhelmingly precarious state of the City's fiscal condition.

Second, the fact-finder is persuaded that the City and Union have used past collective bargaining agreements to bring the bargaining unit wages up in the direction of wages paid to the two comparable bargaining units in the state. By means of the step schedule and rolling

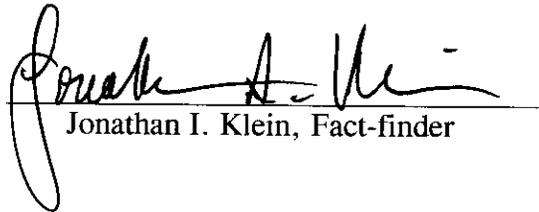
into the schedule of certain merit increases, the members of the bargaining unit have realized wage increases in the range of five to six percent each year since the unit was recognized. It is a slow and arduous process, which is understandably too slow for members of the bargaining unit who feel under compensated. Nevertheless, this process of moving toward comparable units has been temporarily derailed due primarily to the financial condition of the City. The ability of the City to finance and administer the Union's wage proposal is currently in doubt, and the ramifications for such a proposal on other departments which underwent significant cutbacks and have operated on an "as is" basis for 2005 and 2006 year-to-date, cannot be underestimated.

The fact-finder notes that the workload of the respective job classifications is also in flux. There is an admittedly high turnover in the fingerprint examiner classification. It may be necessary in this next round of negotiations to reallocate limited resources to improve retention of bargaining unit employees, and fingerprint examiners in particular. Regardless, there is no evidence that the established wage pattern has been broken by any bargaining unit representing employees compensated from the general fund.

For each of the foregoing reasons, the fact-finder must reject the Union's arguments to break the City-wide wage pattern in this dispute.

Final Recommendation

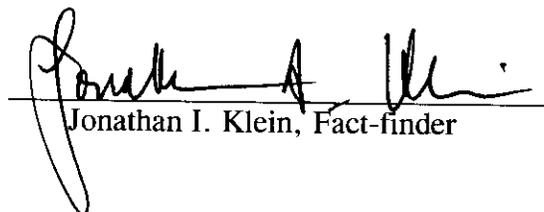
Based upon the evidentiary record presented in this case and upon review of the statutory criteria, it is the recommendation of the fact-finder that the City's position on wages be incorporated into the parties' collective bargaining agreement.


Jonathan I. Klein, Fact-finder

Dated: July 29, 2006

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served upon Jon M. Dileno, Esq., Duvin, Cahn & Hutton at Erieview Tower, 20th Floor, 1301 East Ninth Street, Cleveland, Ohio 44114; Otto J. Holm, Jr., Fraternal Order of Police, Ohio Labor Council Inc. at 14918 Triskett, West Park, Ohio 44111; and upon Craig R. Mayton, Executive Director/Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 29th day of July 2006.


Jonathan I. Klein, Fact-finder