

**FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

STATE EMPLOYMENT
RELATIONS BOARD
2004 OCT 13 A 11: 36

IN THE MATTER OF FACT FINDING :
BETWEEN :
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CITY OF LOVELAND, :
PUBLIC EMPLOYER :
:
-AND- :
:
:
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC, :
EMPLOYEE ASSOCIATION :

REPORT OF THE FACT FINDER

SERB CASE NUMBER: 03-MED-12-1401

BARGAINING UNIT: The bargaining unit consists of four(4) police personnel in the rank of sergeant and above. Their duties are supervisory in nature.

FACT FINDING PROCEEDING: September 21, 2004; Loveland ,Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Charles A. King, Director of Labor Relations, CNA
Dennis Rees, Police Chief

FOR THE UNION

Barry Gray, Staff Representative
Carl A. Ray, Sergeant
Jerry W. Mays, Sr., Lieutenant

ADMINISTRATION

By correspondence dated April 15, 2004, from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); in an effort to facilitate resolution of those issues that remained at impasse between these parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement, proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties, the overall "atmosphere" relative to the prior negotiation efforts by and between the Parties and learned that overall, these Parties have enjoyed, and continue to enjoy, what can best be characterized as an amicable collective-bargaining relationship.

On September 21, 2004, the Fact Finding Proceeding was conducted wherein prior to the commencement of the presentation of evidence and supporting arguments, the Parties were offered mediation with the assistance of the Fact Finder concerning those issues that remained at impasse. Through the informal discussions that followed, the Parties were able to reach Tentative Agreement concerning Article 19, titled "Holidays", and will be recommended to each Party, as part of this Fact Finding Report and Recommendations, that which was agreed to the during the course of the initial aspects of the Fact Finding Proceeding. At the conclusion of those informal efforts that resulted in a Tentative Agreement concerning Article 19, titled "Holidays", the Parties indicated their desire to commence forthright with the Fact Finding Proceeding concerning the impasse concerning Article 17, titled "Wages." The Parties' request was recognized and complied with by the undersigned.

During the course of the Fact Finding Proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding Proceeding and those issues that remain at impasse are the subject matter for the issuance of this Report hereunder.

STATUTORY CRITERIA

The following Findings and Recommendations are hereby offered for consideration by the Parties and were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Fact Finding Process as follows:

- (1) Past collectively-bargained agreements, if any, between the Parties;
- (2) Comparison of 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;
- (3) The interests and welfare of the Public and the ability of the Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
- (4) The lawful authority of the Public Employer;
- (5) Any stipulations of the Parties; and,
- (6) Such other factors not confined in 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.

THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The Collective Bargaining Agreement between the City of Loveland Ohio, hereinafter referred to as the "Employer", and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the "Union", expired on March 31, 2004; thus triggering application of the statutory process relative to negotiating a successor thereto. As contained therein, Article II, titled "FOP Recognition", states as follows:

Section 2.1: The City recognizes the FOP, Ohio Valley Lodge Number 112, as the sole and exclusive representative for those employees of the City in the bargaining unit. This is a multiple unit agreement and, unless delineated specifically by clause, all provisions of this Agreement apply equally to both units. These units are:

Unit 1: Sworn Police Officers - Certified May 22, 1985 by SERB in case number 84-RC-05-1096;

Unit 2: Police Officers, Rank of Sergeant and Above - Certified August 22, 1985 by SERB in case number 85-RC-05-1095.

Excluded: Police Chief, All Other Employees.

As the evidentiary record demonstrates, there are currently four(4) members within the bargaining unit identified under SERB case number 2003-MED-12-1401, under Article II, titled "FOP Recognition", as previously indicated. As is typical with respect to law enforcement agencies, its duties and responsibilities to this community are to "protect and serve" the members thereof with respect to law enforcement or other policing activities generally recognized for any law enforcement agency within the state of Ohio. With this particular group of employees, their responsibilities are more supervisory in nature, thus indicating their higher rank than of a normal patrol officer as previously described.

As the record demonstrates, the Parties have met on three(3) prior occasions to negotiate a Successor Collective Bargaining Agreement and have experienced significant success in reaching Tentative Agreement relative to most articles contained in the Predecessor Collective Bargaining Agreement. Unfortunately, those efforts did not resolve the impasse subject to Article 17, titled "Wages", and/or Article 19, titled "Holidays". As previously indicated, Article 19, titled "Holidays", was tentatively agreed to prior to the commencement of the presentation of evidence on September 21, 2004, relative to the Fact Finding Proceeding that was conducted.

During the course of negotiations, the Parties were able to reach Tentative Agreement relative to the following articles:

- Article 1 - Preamble/Agreement
- Article 2 - FOP Recognition
- Article 3 - FOP Rights
- Article 4 - Union Leave

Article 5 - Management Rights
Article 6 - Probation
Article 7 - Investigation and Discipline
Article 8 - Non-discrimination
Article 9 - Grievance Procedure
Article 10 - Personnel Files
Article 11 - Seniority/Layoff and Recall
Article 12 - Outside Employment
Article 13 - Health and Safety
Article 14 - Hours of Work and Overtime
Article 15 - Uniforms and Equipment
Article 16 - Personal Property

Article 18 - Insurance and Longevity

Article 20 - Vacation
Article 21 - Sick Leave
Article 22 - Injury Leave
Article 23 - Tuition Reimbursement
Article 24 - Paid Absence Day
Article 25 - Severance
Article 26 - Severability
Article 27 - Waiver in Case of Emergency
Article 28 - Wellness
Article 29 - Drug/Alcohol Testing
Article 30 - Lieutenants
Article 31 - Duration

As previously indicated herein, the Parties engaged in informal mediation with the undersigned prior to the presentation of evidence relative to the issues that remained at impasse. During the course thereof, Article 19, titled "Holidays", which according to each advocate apparently did not "get signed off to" during the course of the three(3) negotiation sessions that occurred. When the Parties engaged in informal discussions during the course of mediation that occurred prior to the Fact Finding Proceeding, it was learned that indeed the Parties in fact had reached tentative agreement. As such, it is hereby recommended that the Parties treat Article 19 as being tentatively agreed to, and incorporate that Tentative Agreement into the successor Collective

Bargaining Agreement.

According to the evidence provided, the City of Loveland Ohio is located in three(3) counties, Hamilton, Warren and Clermont. According to the geographical breakdown, approximately 65 percent of the population is contained in Hamilton County, with 30 percent in Clermont, and 5 percent in Warren counties. The City of Loveland realized a 3 percent growth in the population portion of the City for that portion contained in Hamilton County. Numerous other factors relative to the overall makeup of this particular city located in southeast Ohio, will be discussed relative to the recommendation concerning Article 17, titled "Wages."

It is clear to the Fact Finder that these Parties have engaged in painstaking efforts to reach this level of the statutory process, with relatively few, but important to both sides, issues on which they simply could not reach agreement. While the Employer has not raised any "inability to pay" considerations, it emphasizes its accountability to the community concerning fiscal prudence and its ability to finance those economic enhancements that may be recommended herein under this Successor Collective Bargaining Agreement without jeopardizing the level of services it currently provides. The Union seeks what it characterizes as necessary contractual economic improvements based on the comparables it has relied upon being the City of Montgomery; City of Mason; City of Blue Ash; City of Madeira; and, Miami Township to assist with its ability to provide a fair and equitable Collective Bargaining Agreement relative to the economic aspects thereof, for this bargaining unit.

Under the Predecessor Collective Bargaining Agreement the employees of this bargaining unit received a 4 percent wage increase for each of the three(3) years of the Collective Bargaining Agreement. During the course of the mediation aspect of this process, the Employer attempted to bring resolution to the impasse that resulted by proffering an offer to the FOP for consideration by the bargaining unit. Without going into details relative to what information was in fact discussed, since to do so would have a "chilling effect" on the Parties' abilities to engage in settlement offers in the future, it is important to note that indeed the City has made a good-faith

effort even at the time when the Fact Finding Proceeding was to commence to bring resolution to the Wages Article impasse. Unfortunately, such was not recognized by the FOP as being “comparable” to that of other jurisdictions it has relied upon, the internal comparables relative to economic enhancements and what it believes to be necessary increases.

Based on this aspect of statutory process, the Fact Finder is required to consider comparable employee units with regard to their overall makeup and services provided to the members of their respective communities. As is typical and is required by statute, both Parties, in their respective pre-hearing statements, filed, in accordance with the procedural guidelines of the statutory process; and, the supporting documentation provided at the Fact Finding Proceeding, have relied upon comparable jurisdictions and/or municipalities concerning what they deemed “comparable work” provided by this bargaining unit. As is typically apparent, there is no “on-point comparison” relative to this bargaining unit concerning the statutory criteria as will be discussed further by the Fact Finder based thereon. It is, and has been, the position of this Fact Finder, that the Party proposing any addition, deletion or modification of either current contract language; or, a *status quo* practice, where an initial collective bargaining unit may exist, bears the burden of proof and persuasion to compel the addition, deletion or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo*, where that be the previous collective bargaining language, or a practice previously engaged in by the Parties. Based thereon, the Union who is seeking an economic enhancement relative to the three-year wage package of the Successor Collective Bargaining Agreement will have the burden of proof and persuasion to compel the Fact Finder to make the recommendation that would recognize what it is seeking in financial enhancements. Moreover, it is important to note, based upon the statutory criteria that the public employer, herein, has not raised any “inability to pay or financing” arguments relative to its overall economic status. The Fact Finder is mindful of the apparent need of this City to engage in prudent financial endeavors including the funding for this Collective Bargaining Agreement.

As was previously identified, numerous articles were tentatively agreed to during the course of

negotiation sessions, as well as, those in mediation both prior to the commencement of the Fact Finding and otherwise that were identified herein above. It is hereby recommended that those not opened or those previously agreed to by and between the Parties, either during the course of negotiation sessions and/or mediation, or in the informal mediation that occurred prior to this Fact Finding proceeding, be "transferred" for inclusion into the successor collective bargaining agreement either unchanged or modified by the Parties during these discussions.

The following issues remaining in impasse between these Parties, are listed as follows:

Article 17 - Wages

ARTICLE 17 - Wages

FOP POSITION

The FOP is seeking a 3 percent pay increase effective April 1, 2004 and for each successive year of the three year Collective Bargaining Agreement as identified in Section 17.1 of Article 17. Moreover in 17.1(A), which it recognizes would be a new section provision of Article 17, it proposes that the Employee's contribution to the Police and Fire Disability Pension Fund be absorbed by the City at a 3.3 percent increase for years one and two, with the remainder equaling a total of 10 percent, or 3.4 percent for the third year of the Collective Bargaining Agreement. It recognizes that the City has indeed offered a 3 percent wage increase in each of the contract years 2004, 2005, and 2006, respectively, but that simply would continue to increase the discrepancy between the Supervisors of this police department with surrounding comparable agencies. However, if the City were to pick up the Employee portion of the contribution to the Police and Fire Disability Pension Fund, these Employees would in fact realize an increase in "take-home pay" without the City having to increase the base salary over their three percent offer. It emphasizes that the practice of "pension pickup" is indeed commonplace in many Collective Bargaining Agreements, including some of those relative to comparable agencies relied upon herein. It also emphasizes that the City of Loveland pays the Employee contribution to the

pension plans for their non-union employees which includes the police chief and part-time police officers.

The jurisdictions it has relied upon are as follows: City of Montgomery, City of Mason, City of Blue Ash, City of Madeira and Miami Township. It notes that the City has 24 percent more college educated officers under the employment of the City of Loveland Police Department and many have over 5000 hours of additional training in the last three(3) years. It recognizes that many of these police officers, as well as, the Police Department, generally, has received commendations for performance in the community. The overall population has seen an increase thereby effecting the number of police dispatches, radio dispatches and consequently the amount of workload as a result thereof. In comparison to other jurisdictions, it points out base pay and police chiefs comparisons, sergeant comparisons, and police officer comparisons, wherein it contends that, except for the City of Madeira, the City of Loveland relative to police chiefs, is the lowest, and that the sergeant comparisons has the City of Loveland lowest relative to the top salaries of the sergeant comparison. It also recognizes that the patrol officer comparisons where the comparables relied upon showed the City of Loveland as being, on average, 8 percent underpaid.

Of the jurisdictions relied upon, the FOP emphasizes that pay comparisons have the City of Loveland at the bottom relative to supervisory entry pay and at the bottom relative to the top supervisory pay. It also indicates that insurance co-premiums, which affect a bargaining unit member's economic package, are higher than Mason, Blue Ash, Madeira and Montgomery, and that it ranks in the bottom three, relative to vacation comparables. Its exhibits include a gross earnings comparison including sick-leave accrual, medical reimbursement, dental, holidays, vacations, and salary components with the City of Loveland being the lowest of the comparable jurisdictions relative to the package of benefits provided.

It notes that the comparable jurisdictions range from a 4.9 percent difference(Madeira) in salaries for sergeants up to 10.75 percent for the City of Mason. It emphasizes that indeed the population

has increased and that as a result thereof, the workload and growth in square miles over the last three years has increased as well, either through annexation or other means. It ranks approximately third in a geographical comparison relative to the overall square miles of its territorial jurisdiction, and that its population ranks third among the comparables at approximately slightly above 10,000 based on the 2000 census. It also emphasizes that tax preparer salary comparisons, street laborer comparisons, and finance director comparisons, all indicate that they are in a far better position relative to what they receive than what the comparables provide for this particular bargaining unit. Even if the Fact Finder recommends its proposal, the City would still rank slightly above Madeira, but below, Montgomery, Miami Township, Mason, and Blue Ash.

The FOP emphasizes that a 3 percent pay increase for contract years 2004, 2005, and 2006 with retroactivity to April 1, 2004 is indeed appropriate, including a reduction in employee pension contributions of 3.3 percent effective April 1, 2004 and an additional 3.3 percent for 2005 and an additional 3.4 percent for contract year 2006. By reducing the employee pension contribution, it is seeking an increase in the city pension contribution in the same percentages for each of the contract years identified above. The FOP contends that indeed this bargaining unit is worthy of the additional pay relative to the increase in the pension pickup and recognizes that the base Wage offer the City has made in conjunction with the pension pickup would indeed be favorable and would seek the Fact Finder to recommend this proposal.

CITY POSITION

The City contends that the comparables relied upon by the FOP are not entirely accurate relative to the wage pool from which it draws to hire officers for this police force. While the City offered to increase the last, best and final offer that was presented during the final stages of negotiations, its exhibits, it contends, support the wage package as proposed. Those documents indicate that the City of Loveland is indeed very comparable with respect to the wages, that sergeant, supervisory personnel receive as set forth in the Center for Local Government Pay Data

Report for Police Sergeants. It indicates that indeed this is the most updated information that was made available as of September 13th, 2004. Moreover, its lowest paying officer, which is a court clerk, receives \$36,795 and a part time police clerk is paid at \$13/hour presumably, and the chief of police receives a base pay of \$69,950 which is certainly comparable. Moreover, it indicates that the inflation documentation indicates a 1.9 percent increase for 2003—certainly, a 3 percent increase would address inflationary increases. It emphasizes that the Economic News, Labor Relations Reporter indicates that state and local government average increase was 3 percent compared to 3.3 percent, and the median was 3 percent—the same increase as that reported in 2003.

Moreover, the City emphasizes that all other city employees received a 3 percent increase for contract year 2004, which it simply cannot deviate from relative to this bargaining unit. With respect to the pension pickup the Union is seeking, those employees who now receive that so-called 8.5 percent pension contribution realized a pay cut on the hourly rate in order to receive the pension pickup they currently enjoy. The FOP's package relative to the pension pickup and the increases it is seeking equate to over 6 percent per year increase which is simply not the market based on any comparables. It emphasizes that tax collections are down, and there is a 15.4 percent increase in population, which equates to approximately 11,600 people. The average household income is \$63,000, while Montgomery is \$100,000+ with an increase in the overall area of its county. Blue Ash has a 5 percent increase in its population, a daytime population of 30,000, and an increase in income tax. The City of Mason has realized a 92 percent increase in population and the average household income is approximately \$71,000 with a population of 22,000.

Based on its proposal, these employees would be at \$63,433 in two (2) years. Nor does it oppose retroactivity. It opposes the pension pickup because it impacts negatively on the years of service which are computed from the highest three years of service which is computed for retirement purposes. It emphasizes that nothing supports the increase being sought by the FOP based on its comparables that are provided. It simply cannot pay the 3 percent increase, as well as, engage in

the pension pickup the FOP is seeking. It maintains that its proposal of a 3 percent base wage increase, consistent with the 3 percent increase all City employees received for calendar year 2004, is fair and reasonable. The Union's proposal equates to a 6 percent increase per year given the across the board increases relative to the base wages, as well as, the pension pickup it is seeking.

The Employer is of the opinion that indeed its wage and salary comparisons are indeed comparable to like jurisdictions. As such, it recommends that the Fact Finder consider its proposal in his Report and Recommendation.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the Tentative Agreements reached formally prior to and during the course of mediation that occurred prior to the presentation of evidence during the Fact Finding Proceeding that occurred on September 21, 2004, and that all other Tentative Agreements be incorporated into the Successor Agreement as agreed upon by the Parties.

ARTICLE 17 - Wages

Additionally, it is hereby recommended that the Parties adopt, relative to each year of the Successor Collective Bargaining Agreement, concerning the base wage increase, a 3% increase for each year thereof. Given the bargaining unit's status with the other bargaining units relied upon as comparables, it certainly will address its overall ranking, however, it will not eradicate certain discrepancies between some of the comparables relied upon. With respect to year one, the internal comparables support a 3 percent increase. As the record demonstrates, all other employees, unionized and otherwise, received a 3 percent increase for year one or the 2004 collective bargaining year under this Successor Agreement. The Employer does not oppose retroactivity requested by the Union, and as such, the effective date of this increase is indeed recommended to be April 1, 2004.

With respect to the other financial aspect of the Recommendation and Rationale, it is hereby recommended that the Parties adopt the pension pickup proposed by the FOP, however, such would not occur or become effective until the second year of the Collective Bargaining Agreement, or effective April 1, 2005. This certainly takes into consideration the across the board increase that all other employees within the City of Loveland received for year one, while also recognizing that the pension pickup is indeed something that would provide additional "take home pay" for the members of the bargaining unit. Internal pension comparisons indicate that all other City employees receive this economic enhancement except this unit and the Patrol officers. As such, internal comparables support its recommendation for the successor agreement.

It is also important to note that this bargaining unit consists of only four(4) individuals, so the overall outlay is not substantial with respect to the Employer's obligation thereunder. Moreover, by not recommending an increase to the base wage, above 3 percent as proposed by the Employer for years two(2) and three(3), respectively, takes into consideration what, if any, impact the pension pickup obligation provides in the second and third years. By initializing the pension pickup in year two(2), it affords the Employer the ability to plan and prepare for whatever increases that may be incurred .

Based thereon, it is hereby recommended that years one(1), two(2) and three(3) of the Successor Collective Bargaining Agreement contain a 3 percent base wage increase for the four(4) members of this bargaining unit, and that, with respect to the pension pickup being sought by the Union, which would be appropriate based on internal comparisons, such would not become effective until April 1, 2005 under the successor agreement.

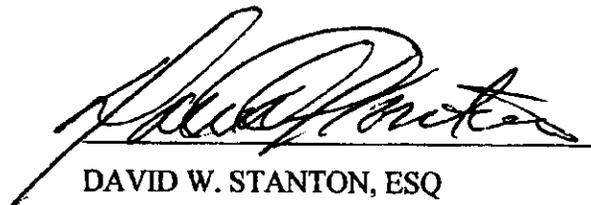
As previously indicated, the Employer is not opposing retroactivity and as such, the base wage increase for contract year 2004 shall be effective April 1, 2004, and the bargaining unit shall receive retroactivity concerning the enhancements recommended herein.

ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Moreover it is recommended, that those issues, if any, not subject to the presentation of evidence in this Fact Finding Hearing, or those not referenced by either Party herein, shall be subject to the recommendation that the *status quo* be maintained for consideration in the Successor Agreement.

CONCLUSION

Hopefully the recommendations contained herein can be deemed as reasonable in light of the data presented; the representations made by the Parties; and, based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulted in many Tentative Agreements being reached. It is hopeful that the Parties can adopt the recommendations contained herein so that the Successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without further interruption. Moreover, these recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; those tentative agreements reached by and between them; any stipulations of these Parties; the positions indicated to the Fact Finder during the course of the informal mediation and during the course of the Fact Finding Proceeding; and, are based on the mutual interests and concerns of each Party to this successor Agreement.



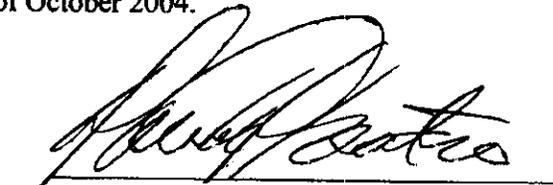
DAVID W. STANTON, ESQ

Fact Finder

Dated: October 12, 2004
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been forwarded by facsimile transmission and overnight U.S. mail to Charles A. King, Director of Labor Relations, Clemans, Nelson, & Associates, Inc., 411 West Loveland Avenue, Suite 101, Loveland Ohio 45140; Barry Gray, Staff Representative FOP, Ohio Labor Council, Inc., 5752 Cheviot Road, Cincinnati, Ohio 45247-4555; and, Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 12th day of October 2004.



DAVID W. STANTON, ESQ (0042532)

Fact Finder