STATE EMPLOYMENT
RELATIONS BOARD

2005 APR 21 A 11: 54

FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	**REPORT OF FACT FINDER**
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC. **Employee Organization,**	**CASE NUMBERS:**
and	**04-MED-04-0378** **04-MED-04-0379**
CITY OF DELAWARE, **Employer.**	

DATES OF HEARINGS: FEBRUARY 10, 2005, and March 23, 2005

PLACE OF HEARING: DELAWARE, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:	**FOR THE EMPLOYER:**
Mark E. Drum, Staff Representative	**Daniel J. Guttman, Attorney at Law**

PROCEDURAL BACKGROUND

This matter involves the negotiation of a successor collective bargaining agreement between the City of Delaware ("the City" or "Delaware") and the Fraternal Order of Police, Ohio Labor Council, Inc ("Union"). The previous agreement between the parties expired on June 25, 2004. The collective bargaining agreement covers two bargaining units. One unit consists of all full-time patrol officers. The other unit is composed of sergeants and captains, except for the administrative captain.

The undersigned was appointed as fact finder by the State Employment Relations Board ("SERB"). The appointment was made pursuant to Ohio Revised Code Section 4117.14 (C)(3). Fact-finding hearings were held on February 10, 2005, and March 23, 2005.

At the time of the first hearing, the parties had approximately twenty unresolved issues. At the first hearing, the fact finder mediated various unresolved issues. Although no issues were resolved at that time, the parties agreed to engage in further negotiations in order to narrow the number of unresolved issues. At that time, another fact finding hearing was scheduled for March 23, 2005.

Prior to the second hearing, the parties were able to resolve all issues, with the exception of wages. On March 23, 2005, the fact finder conducted an evidentiary hearing on the unresolved issue of wages.

TENTATIVE AGREEMENTS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

BACKGROUND

The current wage structure for police officers includes five steps. Step 1 is the probationary step, which lasts for six months. After six months, the wage of a police officer moves to the Step 2 wage rate. After one year of service, the officer moves to Step 3. After two years of service, the officer moves to Step 4, and, after three years of service, the officer moves to the last step, Step 5.

The Union proposes that the wage rate for the first three steps be frozen for the three year term of the contract. For Step 4, the Union proposes a one percent raise every six months. For Step 5, the Union proposes that wage rates increase by two percent every six months for the first two years of the contract, and by three percent every six months for the final year of the contract. The Union also proposes that the rank differential between patrol officers and sergeants be increased to 16 percent from 15 percent.

The City proposes a wage increase of 2.5 percent per year for each year of the contract. The wage increase proposed by the Employer would be applied to all steps, effective January 1, 2005.

In summary, the City proposes wage increases of 7.5 percent over the life of the contract for all members of the bargaining units. The Union proposes a wage freeze for Steps 1, 2 and 3 for the life of the agreement, a total wage increase of 6 percent for the Step 4 rate, and an increase of 14 percent for the Step 5 rate.

POSITION OF THE UNION

The Union believes that wages for top step police officers must be substantially increased so the that wages are comparable to the Columbus suburbs. The Union argues that the Columbus suburbs are the most appropriate bargaining units to use as comparables. Throughout its presentation, the Union made numerous references to comparative data for police departments in suburban cities which are adjacent to the City of Columbus. The comparison data uses 11 of these municipalities, which will be referred to collectively as the "Columbus suburbs."

The Union asserts that Delaware has historically relied on data from the Columbus suburbs in making presentations in fact finding and conciliation over the past 25 years. It notes that Delaware recently used wage data from the Columbus suburbs in determining the pay rate for its City Manager. In addition, Delaware used wage rates from some of the Columbus suburbs when it made its fact finding presentation for fire department negotiations in 2004. To support its position that Delaware is similar to the Columbus suburbs, the Union presented evidence that an increasing number of high-end homes are being built in Delaware.

The Union maintains that Delaware police officers generally perform more work than officers in the Columbus suburbs. The number of calls per officer is substantially higher than all of the Columbus suburbs. According to the Union, police officers in Delaware handle an average of 1600 calls per year, while the number of calls per officer in the Columbus suburbs ranges from 500 to 1000. In addition, the number of accident reports taken per Delaware officer is higher than all except one Columbus suburb. It points out that the cost of the average police call in Delaware is $68.89, which is lower than all of the Columbus suburbs.

The Union asserts that wages for top step officers should be comparable to the wages paid by the Columbus suburbs. The top pay rate for patrol officers in Delaware is now about six

percent lower than the average for the Columbus suburbs. In 2004, the top step wage in Delaware was $55,575,* compared with the average of $59,277 in the Columbus suburbs.

The Union points out that Delaware lags behind the Columbus suburbs only at the upper end of the pay range. Entry level wages for a police officer in Delaware are high, in that only 10 of 209 police departments statewide have a higher starting pay rate. The average starting wage for officers in the Columbus suburbs is about 15 percent less than the starting wage in Delaware. The Union notes that the average rank differential for the Columbus suburbs is 15.24 percent.

The top rate for police officers in Delaware is only 25 percent more than the starting salary. In the Columbus suburbs, the differential between the starting rate and the top rate averages 54 percent. For the cities of Lancaster, Marion, Marysville, Newark, Urbana and Xenia, which the City uses as comparables, the average difference in pay between the starting wage rate and the top wage rate for police officers is 47 percent.

The Union asserts that, because of the relatively low top salary rate for police officers, Delaware has had problems retaining officers. In some cases, the police officers have left to go to police departments in other cities. Some officers have left to work for the Delaware County Sheriff. Leaving to work for a county sheriff is unusual in that, in most cases, police officers in cities with a similar population to Delaware have higher pay rates than the deputy sheriffs. The Union asserts that 11 officers have left in the last four years.

The Union argues that its proposal to apply the wage rate increase to only the top two Steps would be cost effective, with a total wage cost during the term of the contract of

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*All annual wage rates in this report include any pension pick-up.

$6,750,556. The Union states that this is about $55,000 less than the cost of a 3.5 percent across-the-board wage increase during each year of the agreement.

The Union contends that it made major concessions in reaching a tentative agreement on health insurance. Thus, additional compensation is needed to cover the increase in health care costs.

The Union also maintains that Delaware spends less of its general budget for police services than some other cities. The Union asserts that Lancaster, Marion and Marysville spend an average of 33 percent of their budget for police services, while Delaware spends approximately 24 percent of its budget for police services.

POSITION OF THE CITY

The City contends that it should be considered as an exurban city rather than a suburban city. The City defines an exurb as a stand-alone city which is not primarily a bedroom community for a large city. The City notes that the Columbus suburbs, in addition to having higher income tax rates, also have a significantly higher income tax base and property tax base.

The City presented evidence that the most logical comparable cities were those in other exurban cities in Central Ohio. Primarily, these comparative cities would be the county seats of the counties surrounding Franklin County, such as Marysville, Lancaster, Newark and Circleville. The City presented newspaper articles which compare Delaware to other exurbs, rather than to Columbus suburbs.

The City points out that the exurban cities have a median income level which is similar to that of Delaware, and is significantly less than the Columbus suburbs. Data presented by the City shows that the median household income in the exurban cities ranges from $32,000 in

Lancaster to $52,000 in Marysville. The median income in the Columbus suburbs ranges from $52,000 in Grove City to $135,000 in Dublin. The median income in Delaware is $38,000.

The City asserts that, in various other statistical categories, Delaware is much more closely aligned to the exurban cities than it is to the Columbus suburban cities. The City presented evidence showing that the top step salary in Delaware for 2004 is second among ten exurban cities in central Ohio. For the six exurbs that have collective bargaining agreements covering 2005, the Delaware top step salary ranks first.

The City asserts that its proposal of a 2.5 percent wage increase per year is comparable to the expected rate of inflation. Bargaining unit members have received wage increases exceeding inflation for a significant length of time. In the past, when these wage rates were established, the local economic conditions were much more favorable than they are currently. The City maintains that the officers benefitted when economic conditions were favorable, and that they must accept lower wage increases in tougher economic times.

The City notes that wage rates for all City employees must be financed from the various sources of revenue for the City. The City does not want to be placed in a position where it must cut services in other areas in order to fund a wage increase for police officers. In many of the suburbs referred to by the Union, the suburb is not responsible for fire and other services, which Delaware must provide.

The City notes that it receives most of its revenue from a 1.4 percent income tax. This tax rate is lower than most of the Columbus suburbs, which generally have an income tax rate of 2 percent. The City notes that, while its population has increased, its per capita tax collections have decreased. The growth in population has not necessarily lead to more funds for the City. Although the growth may result in more tax revenue, the growth also requires the City to furnish

more services. The City points out that overall tax revenues increased by an average of 3.08 percent per year between 2001 and 2004, while police officer wages increased an average of 4.1 percent per year.

It asserts that, in the tentative agreements already reached, the Union made gains on five economic issues and on ten non-economic issues. The City acknowledges that bargaining unit members will face an increased cost for health insurance through higher contributions to premiums and less favorable deductibles and co-pays. However, the City's cost of providing health benefits has increased significantly over the years. The City presented data showing that the net annual cost of health insurance has substantially increased. The City presented evidence that the cost to employees of health care benefits in Delaware is comparable to the cost paid by other employees in both the public and private sector.

The City notes that there is a general statewide trend of lower wage increases in public sector collective bargaining agreements. SERB data shows that the statewide average wage increase in 2003 for a police officer was 3.28 percent. During the four previous years, police officers received, on average, a 4 percent wage increase.

The City presented data showing that, from 1993 to 2004, the cumulative increase in the consumer price index was 29.3 percent, while the annual wage increase for top-level police officers in Delaware was 53.7 percent. Thus, the increase in wages for top-level police officers exceeded the rate of inflation by 24.4 percent.

The City asserts that, with overtime and other compensation, many officers earnings are substantially higher than their base rate. The City presented evidence of total wages for 2004 as reported on IRS Form W-2. The average officer, with a top step base rate of $55,575, had wages

in 2004 of $63,335. The average sergeant, with a base wage rate of $63, 911, had 2004 wages of $75,337.

The City notes that there are significant cost implications in the Union's proposal. It asserts that almost all officers are in Step 5. The City calculates that the true cost increase of the Union's proposal for 2005, taking into account the effect of the wage increase on overtime, shift differential and longevity, is 6.1 percent for a captain, 5.6 percent for a typical sergeant, and 5.1 percent for a typical patrolman.

RECOMMENDATIONS

The following recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Discussion

One of the criteria used by fact finders in making recommendations is data from similar jurisdictions. The parties disagree over which jurisdictions are most similar to Delaware for purposes of determining wage rates. Not surprisingly, the jurisdictions chosen by the City reflect lower pay rates than those selected by the Union. Currently, including the ten percent pension pick-up, the top police officer wage in Delaware is $55,575 This rate is relatively high compared to the jurisdictions used by the City for comparison, which reflect an average top rate of $47,469. Conversely, the jurisdictions used by the Union show an average top rate of $59,277.

It is apparent from the evidence that Delaware is in a somewhat unique position. Unlike the Columbus suburbs, it is a "stand alone" city, as opposed to a "bedroom" community for Columbus. It is further from Columbus than the suburbs, and is not adjacent to the City of Columbus. The median income of Delaware residents is significantly lower than that of residents of the Columbus suburbs. The Columbus suburbs have a higher income tax base, and most have a higher income tax rate.

Delaware certainly does have some characteristics of a suburb. The rise in the construction of houses in the half-million dollar price range is evidence that some people are choosing to live in Delaware and commute to Columbus to work. As the Columbus area has increased in population and has expanded northward, Delaware is becoming more suburban-like, yet it is not on a par with the Columbus suburbs at the current time.

Although Delaware cannot be classified as a true suburb of Columbus, both parties have historically used data from the Columbus suburbs as evidence of prevailing wages. The City recently used data from the Columbus suburbs to help establish a wage for its City Manager.

However, wage rates from other jurisdictions have also been used as references. The Columbus suburbs have some relevance, but cannot be used as the only source of comparative data.

In 1987, Delaware had a top step wage which was close to the average wage in the Columbus suburbs. In the most recent collective bargaining agreements, wages in Delaware have lagged behind the Columbus suburbs. The fact that top step wages are lower than in the Columbus suburbs is evidence that, in recent years, the top step wage rate has not been pegged to the rate in the Columbus suburbs. This is an indication that, in the past 15 years, the Columbus suburbs have likely benefitted more from the growth of Columbus than has Delaware.

Although Delaware may have lost some ground with respect to the Columbus suburbs, its officers have had generous wage increases during the past sixteen years which have averaged 4.4 percent, and have outpaced inflation by a large margin. In the most recent collective bargaining agreement, officers received wage increases of 4 percent, 5 percent, and 3.5 percent, for a total of 12.5 percent. During this same time, the rate of inflation was 6.3 percent.

The fact finder is not convinced that the cities of Bellefontaine, Circleville, Lancaster, Marion, Mt. Vernon, Newark, Urbana and Xenia, are truly comparable. It is the impression of the fact finder that these cities have been less affected by the growth of Columbus than has Delaware.

Of the cities used by the Employer, the City of Marysville is most similar to Delaware. Like Delaware, Marysville is further removed geographically from Columbus than are the suburbs. While Marysville has begun to suburbanize, it is also primarily a "stand alone" city, as opposed to a "bedroom" community. Both Delaware and Marysville have wage rates which fall in between the Columbus suburbs and the exurbs. Wages in the two cities have been relatively close. Its 2004, the top step wage in Marysville was $56,519, compared to $55,575 in Delaware, a difference of 1.7 percent.

The fact finder is of the opinion that wages in Delaware must reflect its mixed character, of part suburb, and part exurb. It is appropriate that wages be lower than the Columbus suburbs, but higher than most the exurban cities. Thus, in general, wages in Delaware are currently appropriate. Officers are not overpaid, as suggested by the City's data, nor are they underpaid as suggested by the Union's data. Under these circumstances, an appropriate wage increase would be one which allows the officers to maintain their current position.

While comparative data is important, the fact finder is also required to consider the ability of the employer to finance the wage increase. The fact finder must also consider the effect of a wage increase on the normal standard of public service. The fact finder cannot recommend a wage increase which would overly burden the City financially.

While Delaware has some characteristics of a suburb, the fact finder believes that its economic situation differs from most of the Columbus suburbs. The median household income is significantly lower than the Columbus suburbs. The lower median income, coupled with a lower income tax rate, means that Delaware has less funding available for police and other municipal services.

Certainly, general economic conditions in Ohio are not as strong as they were when the previous agreement was negotiated in 2001. Fewer new jobs are being created, and Ohio continues to lose high paying manufacturing jobs. Although central Ohio is faring better than the rest of the state, many of the problems plaguing the state economy have a direct impact on Central Ohio. Due to the poor statewide economy, the State of Ohio is seriously considering reducing or eliminating funds transferred to local governments. In 2004, Delaware received about $1.6 million in local government funds. These funds constituted about ten percent of the

City's Discretionary General Fund. The potential loss of local government funds poses a serious threat to the financial condition of the City.

The City is aware of its need for more funding for the police department. It placed an income tax levy before the voters in 2003. The proposed tax increase would have increased the income tax from 1.4 percent to 1.75 percent, an increase of .35 percent. The funds from the increase in the proposed income tax were required to be split between funding for police department staff (.15 percent) and capital improvements (.2 percent). Unfortunately, the issue was not approved. If the City is able to obtain voter approval of a similar issue in the future, the current financial situation will obviously be improved.

As a result of increased costs and the failure of the tax issue, the City has had to reduce spending in certain areas such as transportation improvement projects and other capital expenditures. Additionally, .4 percent of the current income tax can only be used for the fire department.

The amount which Delaware has available to fund capital projects has significantly decreased in more recent years. During 1999, 2000 and 2001, it transferred an average of 1.6 million dollars to the capital improvements fund. In the years 2002, 2003 and 2004, it transferred an average of $.8 million to the capital improvements fund.

The Union notes that its members are concerned that any pay increase will be reduced by the additional amount that they will pay for health care. Officers on a family plan could pay as much as $720.00 more per year in premiums. Increased deductibles and co-insurance when using out-of-network providers could result in large additional costs.

The rise in health care costs is a nationwide problem. This is a fact of life. As health care costs escalate, there is a trend for employees to shoulder more of the costs. The same is true for

retirees in both the public and private sector. The fact finder deems it fair for both parties to share in the cost of the increase in health care costs. The fact that bargaining unit members will have to pay more for health care does not mean that the City will see its costs reduced. The City presented data showing that the net annual cost of health insurance for Delaware was $1,096,633 in 1996. In 2000, it was $1,584,407. In 2004, the cost was $2,503,698.

In the previous agreement, the officers received wage increases of 4 percent, 5 percent, and 3.5 percent. During the period of the agreement, the inflation rate averaged 2.1 percent per year. The officers had a real increase over and above the inflation rate. The officers benefitted from the superior financial conditions at the time the prior agreement was negotiated. The wage increases exceeded the rate of increase in the City's revenue, which increased by an average of 3.08 percent during the last four years.

The police department and fire department have generally received similar wage increases. In 2004, both units received a 3.5 percent pay raise. The fire department received a 3.5 percent pay raise for 2005. Non-bargaining unit employees received a raise of two percent for 2005.

In the Columbus suburbs which have completed negotiations through 2006, the average wage increase for 2005 and 2006 is 4 percent per year. In the last negotiated agreements, Lancaster received pay increases of 10 percent, 4 percent and 4 percent. Urbana received raises of 7.6 percent, 3.5 percent and 3.5 percent, while Xenia received raises of 3.25 percent, 3 percent and 3 percent. Bellefontaine received raises of 4 percent, 3 percent, 3 percent, and Circleville received raises of 4 percent, 3.75 percent and 3.75 percent. Aside from the high first year increases in Lancaster and Urbana, which appear to be an aberration, the average wage increase in these exurban cities was 3.5 percent.

The Union has presented convincing evidence that no increase is needed for the officers in the beginning steps. Officers in the beginning steps are among the highest paid in the state. There is no evidence that the City has a problem recruiting new officers. Limiting wage increases to the top steps will increase the current low wage differential between the starting wage and the top wage. By confining wage rate increases to the last two steps, the City will experience some cost savings, although the savings will be tempered by the fact that there are relatively few officers in the lower steps. The City will reap some benefit when officers leave the force and are replaced by officers at the lower end of the wage scale.

Delaware is being required to carefully allocate funds to provide proper services to its citizens. It has been making budget adjustments, such as reducing the funding for capital improvements, in an effort to cope with a relatively modest three percent revenue increase over the last four years. The City must, however, budget sufficient funds to the police department to pay for a reasonable wage increase for officers. The evidence shows that the City is able to fund a fair wage increase.

The rank differential between patrol officers and sergeants is currently 15 percent. The Union proposes that the differential be increased to 16 percent. The evidence shows that the average rank differential in the Columbus suburbs is 15.24 percent. The differentials range from 14 to 16 percent. Thus, the differential in Delaware is very close to that in these suburbs.

Recommendations

The fact finder believes that the officers are deserving of a reasonable wage increase which can be expected to outpace inflation, and maintain their wages in between the Columbus suburbs and the exurbs. Given the current local and statewide economic conditions, along with the current rate of inflation, the Union's proposed wage increase of 14 percent over three years cannot be justified. While the increases of 2.5 percent per year proposed by the City may closely mirror the expected inflation rate, they will not provide any increase in real wages.

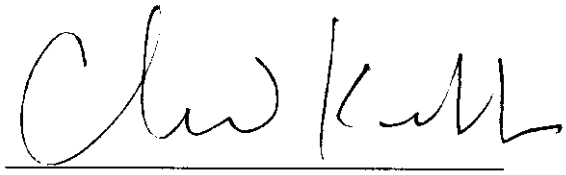
Based on the evidence presented, the fact finder recommends that current wage rates in Steps 1, 2 and 3 be frozen for the life of the agreement. The fact finder recommends that current wage rates in Step 4 and Step 5 be increased by 3.5 percent, effective January 1, 2005, by 3.5 percent effective January 1, 2006, and by 4.0 effective January 1, 2007. This will be an average annual increase of 3.7 percent, which exceeds the 2004 rate of inflation of 2.6 percent. While this increase is less than the average 4.4 percent increase that the officers have experienced over the past 16 years, it recognizes the current economic conditions.

The fact finder believes that there is insufficient evidence to support the Union's proposal to increase the rank differential. Therefore, the wage differential should remain at 15 percent.

Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of April 2005, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Mark E. Drum, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Daniel J. Guttman, Attorney at Law, Baker and Hostetler, 65 East State Street, Suite 2100, Columbus, Ohio 43215; each by Federal Express overnight delivery; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder

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