

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
January 17, 2005

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of:

Fraternal Order of Police,
Lodge #36, Patrol Officers

04-MED-09-0814 / 0813

and

City of Middletown, Ohio

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Leslie S. Landen, Law Director
Bull Becker, Interim City
Manager
Michael Bruck, Acting Police
Chief

For the Union:

Stephen S. Lazarus, Attorney
Stephen C. Winters, Union
President
Philip Salm, Patrol Officer
Michael Bolte, Union Vice
President
William Smallwood, Union Vice
President
Tom McIntosh, Patrol Officer
Dave Kirsch, Union Secretary
Rich Bush, Patrol Officer

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated November 5, 2004 to serve as Fact-Finder in the matter of the City of Middletown (hereinafter referred to as "Employer") and Fraternal Order of Police, Lodge #36 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until January 17, 2005. Hearing was held at Middletown, Ohio on December 20, 2004. The Union was represented by Stephen S. Lazarus, Attorney, and the Employer was represented by Leslie S. Landen, Law Director.

FACTUAL BACKGROUND

The City of Middletown is a city with a population of 51,605 located in Butler County, Ohio. It employs a total of approximately 436 employees in seven different bargaining units as well as non-organized employees. Among these are the seventy-three patrol officers whose Collective Bargaining Agreement is the subject of this Fact Finding. The current Collective Bargaining Agreement between the parties is effective from November 1, 2003 through October 31, 2006. The sole issue before the Fact-Finder is a wage reopener.

The reopener, however, is complicated by the prior Fact Finding Report of Arbitrator James L. Ferree in November, 2003. In

November, 2003 the parties here, as well as the police command officers, who heretofore have negotiated with the patrol officers unit, submitted some twenty-six outstanding issues to fact-finding. A number of the issues were resolved, but fourteen outstanding issues were submitted to the Fact-Finder for decision. Among those was wages.

Fact-Finder Ferree recommended a 2% wage increase in the first year of the Collective Bargaining Agreement, and further recommended language which provided for a wage reopener sixty days prior to November 1, 2004. Mr. Ferree's recommended contractual language further provided that " The results of the negotiation process or any settlement reached between the parties or any determinations ordered by a Conciliator will become effective November 1, 2005." Thus, while the wage reopener recommended was to be negotiated in November, 2004, it was not effective until a full year later in November, 2005. This presumably was a typographical error, but it went apparently unnoticed until after the Conciliator issued a report which adopted the Fact-Finder's recommendation regarding wages. Although the parties attempted to resolve this matter through negotiations, they were unable to do so. The Union at hearing agreed that any wage increase recommended here would not be effective until November 1, 2005.

In rendering a recommendation, the Fact-Finder is charged by OAC 4117-9-5(K) with consideration of the following factors:

- (1) Past collectively bargained contracts;
- (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 classification involved;

(3) the interest and welfare of the public, 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.

The recommendation which follows is made with consideration of these factors to the extent relevant.

ISSUE

ARTICLE VII - WAGES

Union Position: The Union proposes an increase in the amount of 10.5% effective November 1, 2005. This group of employees will forego a wage increase for the year from November 1, 2004 through November 1, 2005 entirely while other groups within the City receive wage increases ranging from 2.5% - 3.5%. The

comparable jurisdictions submitted by the Union include all Ohio municipalities with a population range from 42,605 through 60,605, that is those within populations within 9,000 of Middletown. The Union urges that this method of selecting comparable jurisdictions yields a selection of locales which are more realistically comparable to Middletown than the geographical method utilized by the Employer. In reviewing the comparable data, by the time of an increase in November, 2005, the bargaining unit here will be receiving wages which are 9.83% below the average wages of those comparable cities.

The Union further urges that the economic predictions of the Employer are overly pessimistic. It points out that the largest employer in Middletown, AK Steel, has seen its profitability and stock price rise in late 2004. It is investing money in improvements to its Middletown facility, and there is no imminent threat of closure. Further, the Employer's budgetary predictions as presented at the 2003 fact finding have proved to be unduly pessimistic. Tax receipts have been higher than predicted at that time, and the Reserve fund is greater than predicted.

The Union finally argues that absent the 10.5% wage increase requested, the wage differential between patrol and command officers will be expanded to 22.5%, a gap between the two wages which is far greater than the current 19%. In reviewing the comparable jurisdictions, the average differential between patrol and command officers is 14.5%. The proposed 10.5% increase would bring the differential here closer to the average.

Employer Position: The Employer agrees that these employees should be given a pay increase. It proposes a 3% increase effective November, 2005. The Employer cannot, however, afford the increase requested by the Union. The City's income tax revenues have declined in recent years. Although 2004 collections are up slightly, the City's income has declined overall in relation to its expenses. There have been substantial budget cuts throughout the City's departments in the past year. All departments other than fire, which will implement cuts this year, have undertaken substantial budget cuts. These budget cuts have enabled the City to remain solvent without depleting its reserves, but that specter still looms. In fact, the Employer has had expenditures which exceed its budget in each of the past several years. AK Steel Co. has laid off 200 salaried employees in the last year, and the possibility remains that it may close the steel production side of its operations in Middletown. Additionally, there is discussion that the State of Ohio, in order to balance its budget, will reduce, and ultimately eliminate, the Local Government Fund which comprises approximately 7% of the City's General Fund. Under such circumstances it is imperative that the Employer be fiscally conservative.

The comparable jurisdictions offered by the Union do not represent a fair comparison. While they are comparable in population size, there are several jurisdictions included which are not comparable in several other important ways in that they

have far higher average property values and median family income. The comparable jurisdictions which should be considered are those within Butler County. It is these jurisdictions with which the City must compete for police officers. The City acknowledges that it is falling behind the pay of comparable jurisdictions, but it remains competitive and must provide wage increases within the limits of its available revenues.

The issue of differential between patrol and command officers should not be considered. The differential in the City has always been at 19%. This differential varies widely between jurisdictions. This is because the amount of this differential is a management call. Its purpose is to compensate command officers for the additional responsibilities which are placed on them. How much police officers are paid should not be driven by the amount of this differential.

Discussion: In applying the criteria to be considered in making a fact finding recommendation to this case, it appears that three are particularly relevant. Those are, past collectively bargained agreements, comparisons with the pay of other comparable jurisdictions and the Employer's ability to pay. The other relevant factor unique to this particular case is the lack of an increase for this bargaining unit until November, 2005.

As noted above, the parties disagree as to the manner in which comparable jurisdictions should be selected. The Union urges that comparable jurisdictions are those which have

comparable population sizes since they have comparably sized police departments and face similar challenges. The Employer, on the other hand, urges that comparable jurisdictions are those in the same geographic area for which the Employer must compete for employees and those with similar economic conditions. Both approaches have merit. The best approach might be to select comparable jurisdictions having both similar population sizes and other demographic measures, such as property values and median family income. This, however, would limit the number of comparable jurisdictions available for examination. By either measure, it appears that pursuant to the Employer's proposed 3% increase, this bargaining unit would be below the average pay for comparable jurisdictions by the time the proposed increase takes effect in November, 2005.

The Fact-Finder believes that in this case, the most salient criteria for determining the amount of the November, 2005 wage increase are the ability of Employer to pay and the rather unusual internal circumstances surrounding this particular wage reopener. The evidence presented at hearing in this matter demonstrated that the Employer is indeed aware that its pay for its police officers is slipping somewhat behind that of comparable jurisdictions. It is further clear that the last few years have resulted in decreased income tax revenues for the Employer and expenditures which have exceeded income. The Employer has been required to utilize some of its reserve funds. Those funds, while not dangerously low, are not at the levels

generally considered to be optimal for fiscal health. At the same time, 2004 has been a better year than the preceding ones. The evidence demonstrated that AK Steel, the largest employer in the City, is doing well and is investing in its local plant. A survey of expected hiring indicates the strongest net increase in hiring in six quarters. Income tax revenues are up from prior years, albeit not at the levels of several years ago. Thus, while it is clear that the Employer is not entirely out of the woods, the economic outlook is improved over that of 2003.

The other important factor to be considered in this particular case is the unusual circumstance presented by the 2003 Fact-Finding Recommendation of James Ferree, which provides for a wage reopener in November, 2004 to be effective in November, 2005. Because of this provision, this bargaining unit is the only group in the City which will forego a pay raise for 2004.¹ Additionally, it is important to note that in 2003 police department employees received a 2% wage increase, while all other groups within the City were granted increases ranging from 3.25% to 3.5%. The only explanation offered at hearing for the disparity between increases was that over the past eleven years this bargaining units' increases outpaced those of other groups. According to the Employer, during that time period, other groups have had percentage increases totaling approximately 30%, while

¹ The command officers were subject to the same fact-finding recommendation which, as noted above, was later adopted by Conciliator Eugene Brundige. That group, however has accepted an offer for a 2.5% wage increase in 2004 and a 3% wage increase in 2005.

this group has had increases of 40.5%. While this may be true, the discrepancy in 2003 increases, taken together with the complete lack of an increase in 2004, would seem to unduly penalize this bargaining unit in the course of two years to rectify incremental percentage differences between bargaining units which have occurred over a period of more than a decade.

In reviewing all of the above criteria, the Fact-Finder is of the opinion that an increase of 6.5% is appropriate in November, 2005. This recommendation incorporates the 2.5 % 2004 increase given by the Employer to the command officers as well as the and 3% 2005 wage increase proposed by the Employer and already granted to the command officers. It also incorporates an additional 1% increase to compensate these employees for a lack of increase in 2004. While the 10.5% increase proposed by the Union appears to be beyond the bounds of the Employer's ability to pay, an additional modest 1% over the amount which the Employer has already acknowledged it is able to pay should be within its ability to pay. The Employer is able to take a year to plan for the increase, and will reap some economic benefit in the interim period by virtue of its not providing these employees with any increase in the coming year.²

² This increase will also serve to decrease the percentage of differential in pay between patrol and command officers. The Fact-Finder does not, however, give great weight to this argument. The differential between command and patrol has as its purpose compensation of command officers for additional duties and responsibilities. It has no direct relevance to patrol officers pay.

Recommendation: Amend Article VII Section 1 to read as follows:

There are hereby established the following biweekly pay ranges for certain members of the Division of Police within the service of the City

PATROL OFFICERS

EFFECTIVE NOVEMBER 1, 2005 (6.5%)

(Pay tables to be adjusted by the parties to incorporate 6.5% increase)

Dated: 1/17/05

Tobie
Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 17th day of January, 2005 to, Stephen S. Lazarus, Hardin, Lefton, Lazarus & Marks, LLC, 915 Cincinnati Club building, 30 Garfield Place, Cincinnati, Oh 45202 and to Leslie S. Landen, Law Director, City of Middletown, One Donham Plaza, Middletown, OH 45042 by UPS Overnight delivery.

Tobie
Tobie Braverman