HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD
2005 JAN 26 A 10: 11
25
BAH

Factfinding Report and Recommendations

in the matter of Factfinding between:

The City of Marysville, Ohio

and

The Fraternal Order of Police/The Ohio Labor Council Inc.

S.E.R.B. Case Nos: 04-MED-09-0846,
04-MED-09-0847, and 04-MED-09-0848

MARCUS HART SANDVER, Ph.D.
Factfinder

Hearing Date: January 7, 2005
Recommendations Issued: January 25, 2005

Representing the City:

Mr. Brian Dostanko
Human Resource Manager
City of Marysville
Marysville, Ohio

Representing the FOP/OLC

Mr. Frank Arnold
Staff Representative
FOP/OLC Inc.
Columbus, Ohio

I. Background

This case grows out of a dispute between the City of Marysville (the employer) and the Fraternal Order of Police/Ohio Labor Council Inc. (the union) over the negotiation of a successor agreement to a collective bargaining agreement which expired on December 31, 2004. The parties met on September 16, 22, October 6, 19, 27, November 3, 10, 17, 24, December 1 and 8 in 2004 to resolve the issues in dispute between them. Many issues were resolved in these negotiations. It is the intent of this Report that all issues tentatively agreed to between the parties be included in the Recommendations of this Report. Some issues were not resolved. These include:

1. Issue One: Article 19 Overtime and Compensatory Time
2. Issue Two: Article 21: Holidays
3. Issue Three: Article 34 - Wages - Communications Officers
   Article 35 - Wages - Patrol Officers
   Article 36 - Wages - Sergeants
4. Issue Four: Article 41 - Application of State Civil Service Laws
5. Issue Five: Article 42 - Fitness and Wellness Program

These unresolved issues will compromise the focus of this Report.

II. The Hearing

A. Attendees

The hearing was convened by the Factfinder at 10:00 a.m. on January 7, 2005 in the 2nd Floor training room of the Marysville City Hall. The parties were informed by the Factfinder that the hearing would be conducted in accordance with the rules for such proceedings as found in

O.R.C. 4117.14 and associated administrative rules promulgated by the State Employment Relations Board of Ohio (S.E.R.B.). The parties were further informed that Recommendations would be formulated by the Factfinder in accordance with the criteria for Factfinding as found in O.R.C. 4117.14 (g) (7) (a-f). In attendance at the hearing for the City of Marysville were:

1. Brian Dostanko Human Resources Manager - City of Marysville. Chief Spokesperson.
2. Kathy House Director of Administration. City of Marysville.
3. Floyd Golden Police Chief. City of Marysville.
4. Glenn Nicol Assistant Chief of Police. City of Marysville.

In attendance for the FOP/Ohio Labor Council Inc. were:

1. Frank Arnold Staff Representative. FOP/Ohio Labor Council Inc. Chief Spokesperson.
2. Cheryl Dean Communications Officer.
3. Ronald Nicol Sergeant MPD
4. Roger Wessell Patrolman MPD

B. Exhibits

The following were submitted as employer exhibits:

1. City Exhibit #1 Multi-tabbed Notebook containing City Exhibits on all unresolved issues.

The following were marked as FOP exhibits.

1. FOP Exhibit #1 Multi-tabbed Notebook containing FOP Exhibits on all unresolved issues.
2. FOP Exhibit #2 Data from FOP exhibit #1. Tab 11 displayed graphically.

3. FOP Exhibit #3 Article from Columbus Dispatch (no date) discussing proposed opening of a new Wal-Mart in Marysville in 2006.

III. The Issues

A. Issue One. Article 19

1. Section 2. Overtime.

a. FOP Position

The FOP position on this issue is that the section remain unchanged and that current language be retained.

b. City Position

The City position on this issue is that overtime should not be paid when an officer is on personal time, compensatory time, or vacation time during the 40 hour week for purposes of overtime. The City position on this issue is based on the fact that the F.L.S.A. allows overtime computations to exclude vacation, compensatory time and personal days in the computation of the 40 hour work week. The City further points out that for 80% of city employees, the calculation of the work week for purposes of overtime excludes the use of vacation, compensatory time and personal days.

c. Discussion

The City makes quite a compelling argument to change the agreement in its presentation on this issue. Although the past collective bargaining agreement excluded only sick leave from the computation of the 40 hour work week, the comparables (both internal and external) and the financial logic of excluding compensatory time and personal leave time and vacation are quite persuasive in this instance.

d. Recommendations

That Article 19 Section 2 be amended to exclude compensatory time, personal leave and vacation time in the calculation if the work week for overtime purposes.

2. Section 6. Compensatory Time

a. FOP Position

The FOP position on this issue is to maintain current contract language.

b. City Position

The City position on this issue is to eliminate the option of employees receiving compensatory time in lieu of overtime effective January 1, 2005.

c. Discussion

On this issue the data do not support the City position. The external comparability data in tab 2 show that 12 of the 19 cities do provide compensatory time to their police officers. The FOP's calculations suggest substantial monetary savings to the City through the use of compensatory time rather than the use of overtime. The facts to me seem clearly to favor the FOP position on this issue.

d. Recommendation

No change be made to Article 19 Section 6.

B. Issue Two. Article 21. Holidays

1. Section 1. Holidays

a. FOP Position

The FOP position on this issue is that employees who work on a holiday listed in Article 21 should receive time and one half pay for the time worked and that employees who work

overtime should receive double time and a half for hours listed on a holiday. In support of its position, the FOP points to the cities of Bellefontaine, Marion, and Delaware which pay their police officers double time (Bellefontaine) and time and half (Marion and Delaware) for working holidays. The FOP representative pointed out to the Factfinder that in the most recent negotiations with the firefighters the effect of the change in the calculation of the holiday pay rate was to give the firefighters a holiday pay premium.

b. City Position

The City position on this issue is that there should be no change in the present rate of pay for holidays. In support of its position the City points out that the firefighters agreement does not contain premium pay but rather provides straight time pay for holidays at the 40 hour rate of pay. Further the City points out that the cities of Bellefontaine, Marion and Delaware all have higher tax rates than Marysville. Finally, the City points to comparability data from its external comparables which shows that 10 cities do pay premium pay for holidays but 10 cities (including Marysville) do not.

c. Discussion

Premium pay for working holidays seems to be a well established fact of working life. The City provides premium pay for the water and sewer workers. The external comparability data for Delaware, Bellefontaine and Marion are compelling. I'm not exactly sure what the arrangement is in the fire department, but paying the firefighters at the 40 hour rate rather than the 53 hour rate seems like a premium to me.

d. Recommendation

Each employee shall receive eleven (11) days straight time pay as compensation for duty

performed on holidays throughout the year. The eleven (11) days represent the following holidays:

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25

In addition, all members shall receive time and one half pay as compensation for duty performed on any day listed above or time period specified by the Mayor or designee as a "City Holiday" or "Offices Closed" where any City employee is compensated. Any employee required to work more than a normal shift on the above listed days shall receive an overtime rate of two and one half their normal hourly rate for such overtime hours. Hours worked on the above Holidays shall be the hours between 12:00 Midnight till 11:59 PM of the day of the actual Holiday.

Section 2. Holiday Payment Procedure

Payment for such holidays shall be made in the second pay period in November of each

year in a separate check. A member who terminates employment during a given year shall be entitled to a prorated portion of the holiday pay he/she would otherwise be entitled to receive. The proration shall be determined by multiplying the straight time rate by eight (8) times the number of holidays specifically listed herein which have occurred during the year prior to termination.

C. Issue 3. Wages. Articles 34, 35, 36

1. FOP Position

The parties are in agreement on most issues involving wages with the exception of the 2 percent additional raise that the FOP is proposing for July of 2006 and 2007. The City position is to offer a 1.75 percent raise in 2005 a 2 percent raise in 2006 and a 3 percent raise in 2007. With the FOP additional increase this would bring the raise to 1.75 percent in 2005, 4 percent in July of 2006 and 5 percent July of 2007. The FOP comparability data from the SERB data base show that Marysville top step police officers are just slightly below the statewide average for all municipal police officers. The most compelling argument for the additional wage raises in 2006 and 2007 was the internal comparison with the Marysville firefighters. According to the FOP calculations in the 2005 agreement the Marysville firefighters received an effective 10% wage raise such that the top step firefighters in 2005 now makes $52,000 per year in salary.

2. City Position

The City position on this issue is that when you evaluate the firefighters agreement you have to evaluate the entire agreement. The City representative pointed out that the firefighters gave up EMT pay differential, they gave up compensatory time, they gave up language on the definition of time worked for overtime pay status. The City pointed out that the financial future

of the City is uncertain and that the City has a 1% tax rate, one of the lowest of any municipalities in the area.

3. Discussion

I don't see the compelling reason for the 2% increase in July of 2006 and 2007 proposed by the FOP. I agree with the City that the tax base is low and that the wage rates are competitive with cities in the geographic area. The 8.5 pension pick up should be considered in the package as well. There is no emergency that needs to be addressed in the wages of the police officers in Marysville that a 2 percent increase in July of 2006 and 2007 will solve.

4. Recommendation

The City's position on wages is recommended.

D. Issue 4. Article 41. Application of Civil Service Laws

1. FOP Position

The FOP opposes this new provision proposed by the City. This provision would expressly override certain sections of the Ohio Civil Service Laws.

2. City Position

The City wants to add a new provision to the agreement which expressly identifies certain articles of the Collective Bargaining Agreement that override or supercedes provisions of the Ohio Revised Code.

3. Discussion

The FOP feels this provision is unnecessary and that its members would be giving up some of their rights under state laws. I don't see the need for such a provision in the agreement as it is well known that the contract takes precedent over civil service laws as is.

4. Recommendation

That the proposed Article 41 not be included in the agreement.

E. Issue 5. Article 42. Wellness and Fitness

1. FOP Position

The FOP opposes the City's new proposal on fitness and wellness.

2. City Position

The City proposes an extensive physical fitness program with a health component, a physical fitness component, standards, incentives, discipline and wellness.

3. Discussion

While it makes perfect sense that a police officer should be in good physical condition to perform his or her job, the sad fact of the matter is that not all police officers are in good physical condition. The standards proposed in the City's proposal are reasonable, but they are also rigorous. I seriously doubt if everyone in the Marysville Police Department could meet these standards. This means that discipline will be evoked. The FOP representative pointed out to the factfinder that he was not aware of any FOP labor agreement in the state that had a mandatory fitness program with discipline. I have not encountered such a program in my experience as a factfinder or conciliator.

Voluntary programs or mandatory standards for hiring are common. Mandatory fitness programs with discipline to maintain your position as a police officer are not the norm in Ohio municipalities. I did tour the weight room in the Fire Department in Marysville. The equipment is very modern and access is available pretty much any time any one wants to use the facility. There is no reason, other than motivation, that the officers do not avail themselves of the

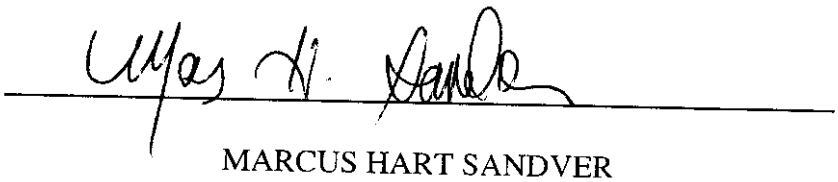
opportunity to use the facility. However, ordering someone to adhere to the fitness standards found in the City's proposal without validating them to some sort of job relevant criteria and then using discipline to enforce them is a step down a very slippery slope. Not one I would recommend.

4. Recommendation

Article 42 Physical Fitness Program not be included in the labor agreement.

IV. Certification

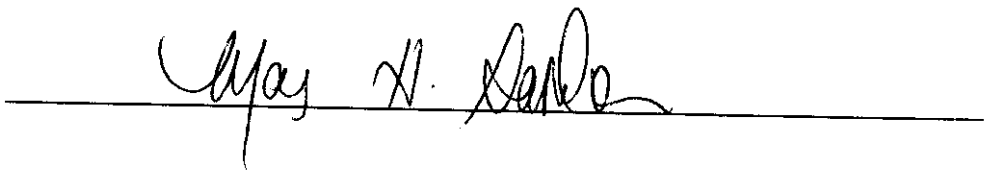
This Factfinding Report and Recommendations is based upon evidence and testimony presented at a hearing conducted by me on January 7, 2005 in Marysville, Ohio.



MARCUS HART SANDVER

COLUMBUS, OHIO

January 25, 2005

V. Proof of Service

This Factfinding Report and Recommendations was hand delivered by Marcus Hart Sandver on January 25, 2005.