

STATE EMPLOYMENT
RELATIONS BOARD
2005 MAR 16 P 4: 12

IN THE MATTER OF FACT-FINDING

BETWEEN

FRATERNAL ORDER OF POLICE, OLC INC.

AND

CITY OF HUDSON

BEFORE: Robert G. Stein

FACT-FINDING: CASE # 04-MED-09-0858
(Patrol Officers)

PRINCIPAL ADVOCATE FOR THE UNION:

Charles L. Wilson, Staff Representative
FRATERNAL ORDER OF POLICE, OLC, INC.
2721 Manchester Road
Akron OH 44319-1020

and

PRINCIPAL ADVOCATE FOR THE CITY:

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INTRODUCTION

The bargaining unit is comprised of approximately twenty (20) full-time Patrol Officers who are employed in the City of Hudson, Ohio ("City" or "Employer"). When compared to many other cities in northeast Ohio who have long-term bargaining relationships, the bargaining relationship between the City and the Union is still a maturing one. The Fraternal Order of Police, OLC, Inc., ("Union" or "FOP") represents the bargaining unit.

The City of Hudson is located in Summit County and has a population of approximately 22,000 people. Under sound administrative leadership, the City is well managed and is currently in good financial condition. Yet, its cash-reserve balance has been declining, providing an early warning signal that fiscal caution is to accompany all decisions. In response to this decline, the City has taken preventive measures to increase its revenue. In November of 2004, it levied an income tax increase (from 1% to 2%). The Chief of Police has considerable knowledge

and experience in the City and conveys a very responsible, hands-on style of leadership. The Union also appears to be led by responsible and mature patrol officers with considerable experience and knowledge of the job.

In its position statement the City outlined its efforts to address the cost of maintaining the City's infrastructure, and the continuing need to finance it. There is little question that the City of Hudson is one of the most desirable communities to live in northeast Ohio. However, it is also noted that careful management of assets and revenue growth will be necessary in order to maintain the high quality of life that the City has fostered and that the police bargaining unit secures.

The parties held five (5) negotiations sessions and were able to successfully narrow their differences to the issues addressed in this fact-finding report. Advocates of both parties clearly articulated the position of their clients on each issue in dispute. The fact-finder spent a considerable amount of time in mediation in an attempt to narrow the differences between the parties. However, falling short of an agreement, fact-finding went forward. In order to expedite the issuance of this report, the fact-finder will provide a summary of his rationale on all issues, followed by detailed recommendations for resolution of each issue.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered by fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning the relative weight of each. Nevertheless, they provide the basis upon which the following recommendations are made.

OVERALL RATIONALE FOR RECOMMENDATIONS

These are trying times for Ohio public employers. While the state of Ohio struggles with a shortfall between revenue and expenses that is tallied in the billions of dollars, the governor is seriously considering reducing support to cities that has been traditionally provided via local government funding. The federal government is reducing aid to the states and, in turn, the states are reducing aid to municipalities and other local government entities.

However, cities like Hudson are in far better shape than many other municipalities to withstand the economic foul weather that is likely to exist in Ohio for the foreseeable future. Yet, as with all business there is a bottom line to watch, and the business of public government is no exception. It has been said that the keys to sound management are prudent stewardship of resources, fiscal responsibility, revenue growth, and maintaining quality employees. The City is growing and is in the midst of creating a major upscale retail district. In addition to the complex

nature of running a City, there is the need to provide high quality protective services to the citizens of Hudson. This balancing act of providing quality services, while prudently managing public funds, places considerable pressure upon city councils, city administrators, and the very employees a city must rely upon to provide a secure environment. As many of the corporate citizens of Hudson well know, in order to retain and recruit good employees they must be compensated fairly.

The police department is a state-of-the-art operation with highly trained professional officers. It is also recognized that the patrol officers in the bargaining unit, while comparing favorably with surrounding and comparable cities, rank in the middle of these other jurisdictions regarding wages. In the past several years, the relative rank of police department wages has gravitated to the middle, being edged out by communities such as Twinsburg and Tallmadge. However, it is also recognized that the other contiguous or nearby communities may have greater sources of tax revenue from industry that may not be present in Hudson.

There is some comparable wage data available for 2005 and 2006 from cities that either border or are near Hudson. For 2005 and 2006, the City of Tallmadge's patrol unit, with a top pay is \$.30 per hour above that of Hudson's patrol officer top pay, will receive increases of 3%. A 3% increase for the bargaining unit in Hudson would continue to widen the gap in wages between Tallmadge and Hudson. The City of Twinsburg,

which pays their top officers \$1.04 more per hour than the top officer in Hudson, will receive a 3% increase in 2005, as will officers in the City of Kent. In 2004, Kent officers were paid \$.36 less per hour than their fellow officers in Hudson. Streetsboro has provided their officers with increases of 3.75% in both 2005 and 2006. However, in 2004 the difference in top wages between a Hudson officer and a Streetsboro officer was \$1.61 cents per hour. Stow officers will receive a 3.5% increase in 2005. The Employer points out that officers in Hudson far exceed the average salary of patrol officers in Summit County (See Employer Ex. 6).

As important as comparable data is in these matters, it has its limitations due to the fact that similar employees of the other cities do not have identical benefits. For example, some officers have shooting bonuses, while others do not. Shift differential is paid to some officers, and other employees (e.g. Hudson) work twelve (12) shifts and have more days off. And, health care benefits vary greatly among cities. When it comes to wage increases, internal comparables are often more influential because employees in the same municipality are likely to have similar benefits. It is significant that the City agreed to wage increases of 3.5% with its other unionized employees for 2005. It is also a fact that inflation, which has been kept in check for the past several years, has started to rise due to an increasing national debt, rising energy costs, health care costs, and the like. Moreover, a 3.5% increase, while being consistent with wage

increase for other Hudson bargaining units, is also likely to make the top wage of the bargaining unit a little more competitive with the top wage in Tallmadge and Twinsburg (assuming that during the life of the Collective Bargaining Agreement the cities of Twinsburg and Tallmadge do not provide wage increases above 3%).

The Union is seeking increases in longevity. However, the comparable data appears to be mixed in this regard. The top longevity pay is currently \$1500 for officers who achieve 25 years of service. The external comparables are in some cases higher and in some other cases lower. The only discernible area where the bargaining unit may not be competitive with surrounding cities is at the beginning of the scale. Further complicating these comparisons is the fact that the years in which payments are received and upgraded vary widely among municipalities. What appears to be justified is a one-time flat dollar adjustment (with allowance for rounding) that makes modest improvement in the lower end of the scale, and acts as a hedge against inflation for the remainder of the scale.

The Union raised the issue of more highly paid supervisors working the overtime hours that could be worked by lower-paid patrol officers. Whether this has been a frequent occurrence is not clear. It is understandable, depending upon the circumstances, that from time to time supervisors may need to be called in to work overtime in

accordance with Article 7.2. However, the language of Article 7.2 does not encourage the wholesale substitution of higher-paid personnel for lower paid competent bargaining unit employees. Moreover, it makes little sense from a financial perspective to foster such a practice. I find the financial disincentives alone are a deterrent and at this time there is insufficient reason to disturb the current language.

The City's proposal to eliminate sick time from the calculation of hours worked for purposes of making employees eligible for overtime is supported by common practice in both the private and public sectors. In a similar fashion receiving overtime pay for working contractually designated holidays is a common benefit in law enforcement.

The City also made a persuasive argument that compensation time shall not be raised dramatically, as sought by the Union (See Employer Ex. 8 and 9). Again, the external comparables provide little guidance. Moreover, the number of accumulated hours by bargaining unit employees indicates that there is not a need for a substantial change in the cap on compensation time. However, given the employees' twelve (12) hour shifts it is reasonable to bring the structure of compensation time in line with bargaining unit work schedules. The current 80-hour cap does not conform to a twelve-hour workday. A move to a ninety-six (96) hour cap (or 8 full shifts) is justified in this regard. I do not find there is sufficient reason to change the call-in pay provision for employees, particularly

when the other two bargaining units in the City have four (4) hour call-in pay provisions. There is insufficient data to demonstrate the call-in provision has created substantial problems.

The Union's position to immediately have all holidays worked subject to payment at a premium rate is contrary to the established bargaining history of the parties to improve this benefit incrementally. While there is substantial justification, based upon external comparables, to make improvements in this benefit from the current seven (7) premium pay holidays (See Union Ex. 8), gradual conformance to the standard is consistent with the past approach taken by the parties. Utilizing the bargaining history of the parties and in consideration that all eight (8) of the contiguous or neighboring cities pay premium pay for all of their holidays, an improvement of one (1) premium eligible holiday each year of the Collective Bargaining Agreement is justified by the facts.

Based upon the findings of an arbitrator in a past arbitration decision I also find that the Union's position regarding the definition of "family" under Article 12.1 does not require a change of contract language.

The Union and the Employer have conflicting positions on out-of-classification work. This is a routine occurrence in police departments and it is commonplace for employees to receive compensation for performing higher-level work within a reasonable period after it begins. It is not

uncommon for a patrol officer to receive higher wages for one or more complete shifts as an acting supervisor. The facts in this situation justify an improvement in this benefit.

For the parties positions on all issues see Employer's and Union's position statements.

Issue 1	Bargaining Unit Overtime Work	Article 7.2
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Recommendation

Maintain current language

Issues 2,	Sick Time offset of Hours Worked for Overtime Article 7.4
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Recommendation

Section 7.4

- (A) When an employee is required to work more than twelve (12) hours on a shift or works overtime on a shift not originally assigned to him on the monthly schedule, he shall receive overtime. **Sick leave will not be counted as hours worked for purposes of overtime.**

Issue 3 Compensatory Time Accrual Amounts Article 7.6

Recommendation

Section 7.6 Except as set forth in Sections 10(B), 10(C) and 11(B) below, an employee shall receive all overtime in either compensation or compensatory time at the time the overtime is worked. An employee may accumulate compensatory time up to **ninety-six (96)** hours, at which point all overtime shall be paid as earned. When compensatory time is paid, it shall be calculated from the employee's base rate at the time it is paid, not earned.

Issue 4 Call-In Pay offset Article 7.8

Recommendation

Maintain current language

Issue 5 Wages Article 8.1

Recommendation

ARTICLE 8

SALARIES AND OTHER COMPENSATION

Section 8.1 Annual Base Pay.

Rank (Classification)

Annual Compensation

Effective 1-1-05 (3.5%)

Ptl. 4th Grade (0-12 mos.)	\$38,646 (\$18.58 hr.)
Ptl. 3rd grade (13-24 mos.)	42,994 (20.67 hr.)
Ptl. 2nd Grade (25-36 mos.)	47,819 (22.99 hr.)
Ptl. 1st Grade (37+ mos.)	53,248 (25.60 hr.)

Effective 1-1-06 (3.0%)

Ptl. 4th Grade (0-12 mos.)	\$39,811 (\$19.14 hr.)
Ptl. 3rd grade (13-24 mos.)	44,283 (21.29 hr.)
Ptl. 2nd Grade (25-36 mos.)	49,254 (23.68 hr.)
Ptl. 1st Grade (37+ mos.)	54,829 (26.36 hr.)

Effective 1-1-07(3.0%)

Ptl. 4th Grade (0-12 mos.)	\$40,997 (\$19.71 hr.)
Ptl. 3rd grade (13-24 mos.)	45,614 (21.93 hr.)
Ptl. 2nd Grade (25-36 mos.)	50,731 (24.39 hr.)
Ptl. 1st Grade (37+ mos.)	56,472 (27.15 hr.)

No pay other than base pay shall be adjusted for longevity.

Recommendation

Section 8.2 Adjustment for Longevity. Every police employee's base pay shall be increased each year, beginning in the fourth (4th) year of continuous employment and service with the City, by the following amounts:

<u>DURING YEAR</u> <u>OF EMPLOYMENT</u>	<u>ANNUAL AMOUNT</u>
4	\$ 340.00
5	400.00
6	460.00
7	520.00
8	580.00
9	640.00
10	700.00
11	760.00
12	820.00
13	880.00
14	940.00
15	1000.00
16	1060.00
17	1120.00
18	1180.00
19	1240.00
20	1300.00
21	1360.00
22	1420.00
23	1480.00
24	1540.00
25 and thereafter	1600.00

This adjustment shall be completed based on the original date of hire or appointment of the police employee and shall be applied to the first full pay

period following the anniversary date of employment. No pay other than base pay shall be adjusted for longevity. Provided, that employees who worked for a predecessor of the City that had a different longevity structure shall not lose any longevity pay as a result of this provision. Longevity shall be paid in a lump sum.

Issue 7 Out-of-Classification work Article 8.4

Recommendation

Section 8.4 Out-of-Classification Work.

(A) Definition: For the purpose of this Article, out-of-classification work shall mean the assignment to a classification in a higher labor grade. Such an assignment shall be referred to as "acting status."

(B) Payment: An employee who is assigned to perform out-of-classification work for a period of **twelve (12)** consecutive regular work hours or longer shall, for all hours worked in such capacity, receive a wage rate to be determined by:

Adding five percent (5%) to the employee's current regular hourly rate and then placing the employee at the step in grade of the higher classification, which is closest to this hourly rate without being less.

Recommendation

ARTICLE 9

HOLIDAYS

Section 9.1 Each police employee shall be entitled to fourteen (14) paid holidays (112 hours) per calendar year as approved by the Chief of Police or his designee. Off time, holidays and vacations must be approved by the Chief of Police or his designee. No police employee shall be entitled to time off on a state or federal designated holiday unless regularly scheduled to be off or if the day off is requested and approved by the Police Chief, providing the request is submitted no later than forty-eight (48) hours before the commencement of the holiday (except in cases of emergency as determined by the Chief of Police or his designee).

Paid holiday time shall be credited to each employee on January 1 of each year, provided that if an employee leaves the employ of the City, the value of any holiday time taken which is in excess of the holidays that have actually transpired (not including personal days) as of the date the employee leaves employment, shall be withheld from the employee's final paycheck. The value of such excess holiday time shall be calculated on the basis of the employee's pay rate at the time of termination of city employment.

Section 9.2 For the year 2005, when a police employee works on **Memorial Day**, Christmas Day, Thanksgiving Day, Labor Day, President's Day, December 24th, New Year's Day, or Martin Luther King Day, he or she shall receive time and one half (1-1/2) pay. All other work on holidays shall be paid at straight-time. In addition, employees shall be entitled to another day off as a paid holiday.

For the year 2006, when a police employee works on Memorial Day, Christmas Day, **Veteran's Day**, Thanksgiving Day, Labor Day, President's Day, December 24th, New Year's Day, or Martin Luther King Day, he or she shall receive time and one half (1-1/2) pay. All other work on holidays shall be paid at straight-time. In addition, employees shall be entitled to another day off as a paid holiday.

For the year 2007, when a police employee works on Memorial day, Christmas Day, Veteran's Day, Thanksgiving Day, Labor Day, President's Day, **Easter Sunday**, December 24th, New Year's Day, or Martin Luther King Day, he or she shall receive time and one half (1-1/2) pay. All other work on holidays shall be paid at straight-time. In addition, employees shall be entitled to another day off as a paid holiday.

Section 9.3 If an employee is on sick leave during a holiday, he/she will only be charged for the holiday and not the sick leave.

Section 9.4 Holidays that occur while an employee is otherwise in an annual leave status shall not be charged against the balance of the employee's annual leave time.

Section 9.5 Employees who do not use sick leave for six (6) continuous months during a calendar year shall be eligible to receive one (1) incentive personal day. The use of sick leave for any purpose will disqualify the employee from the incentive personal day bonus. The bonus incentive personal day must be used during the following six (6) months and may not be accrued.

Section 9.6 In January 1996, the City will allow employees to select holidays for payment rather than use. Effective December 1996 and thereafter, unused holidays will be paid for by the City at the end of each year to each bargaining unit member at the then current rate of pay in effect. This pay shall occur by the end of January of each year.

Recommendation

Maintain Current Language

TENTATIVE AGREEMENTS

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this ____ day of March 2005 in Portage County, Ohio.

Robert G. Stein, Fact-finder