

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD
2005 APR 11 A 10:24

FACT FINDING PROCEEDINGS
CASE NO. 04-MED-09-0902

IN THE MATTER OF:

CITY OF OXFORD

AND

FRATERNAL ORDER OF POLICE
LODGE 164

APPEARANCES:

FOR THE CITY: Donald Crain, Esq.

FOR THE FOP: Timothy R. Evans, Esq.

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

James E. Murphy
Fact Finder

BACKGROUND:

Oxford, Ohio is a "college town" with a population of approximately 26,000 residents, including some 16,000 students of Miami University. It is located in Butler County, about 39 miles northwest of Cincinnati. The FOP has been for some time the duly recognized bargaining representative of a unit consisting of "All full-time sworn police officers below the rank of sergeant" (who both parties refer to as Patrol Officers), currently 16 in number. The most recent contract between the parties expired on December 31, 2004.

Commencing in November 2004, the parties engaged in several collective bargaining sessions, were successful in reaching agreement on many items, but remained at impasse on two issues, to wit: (1) Appendix A, Wage Schedule, and (2) new language establishing a reserve officer program. An unsuccessful mediation session before the undersigned took place on February 25, 2005. Accordingly, this case came on for hearing in Oxford, Ohio on March 23, 2005.

Evidence and able argument in support of the parties' respective positions on the disputed issues were presented at the hearing. What follows is a summary of that evidence, the parties' positions, the Fact Finder's Recommendations and the rationale for same. In making my recommendations, I have considered and relied upon the following statutory criteria, whenever such factors were advanced by the parties: the factor of past collectively bargained contracts; comparisons 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; the interest of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted 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.

WAGES

Evidence and Positions:

The parties are not only apart on the amount of wage increases for the next three years, but also, and in some ways more basically, on the manner of computing them. This latter difference is best explained by reference to the bargaining history. For several years after recognition/certification, the bargaining unit consisted of patrol officers, sergeants and lieutenants, with wages for patrol officer set at 85% of those for sergeant, and sergeant at 85% of those for lieutenant. At some time prior to negotiation of the most recent contract

the unit was split, and each group bargained separately for their 2002-2004 agreements. During the term of those contracts, the 15% differential between patrol officer and sergeant grew to approximately 22.8%, a trend the FOP wants to reverse over the lifetime of the new agreement. Thus, the FOP seeks to peg 2005 wages for patrol officers at 82.7% of those for sergeants, with percentages of 83.9 and 85 in the years 2006 and 2007, respectively.

The sergeants and lieutenants recently agreed upon a new contract for the years 2005-2007. It provides for a 2% wage increase in 2005. Wages for 2006 and 2007 are to be determined by a somewhat complicated formula, to wit: take as a base whatever cost of living increase the City grants to its non-bargaining unit personnel and then add to that whatever additional increase (if any) is required to bring Oxford lieutenants and sergeants to the medium wage for those ranks paid by seven other Butler County jurisdictions, with the maximum increase for any year capped at 5%.

In sum, the FOP now seeks to peg Oxford patrol officers wages at set percentages of those paid to Oxford sergeants, which in turn reflect a 2% increase in 2005 and amounts for 2006 and 2007 ultimately determined by comparisons with other cities in Butler County. The City, on the other hand, offers a straight 2% increase for this unit in 2005, with wages for 2006 and 2007 determined by the same formula (but using patrol officer wages in comparable jurisdictions) described above for lieutenants and sergeants. Here it should be noted that the parties have historically used the same seven Butler County cities to help determine police wages in Oxford, and that both wish to continue doing so, albeit in differing ways.

In support of its proposals, the FOP first notes the growing disparity between wage rates for patrol officer and sergeant which occurred over the life of the last contract, with the former's increasing 12.4% while the latter's grew by 20%. Put differently, in 2001 a patrol officer made 87% of a sergeant's pay, whereas that same patrol officer now makes 81.4%. The City's current wage proposal, the FOP submits, would only serve to make the above disparity greater, with sergeant's pay projected to rise 12.4% over the term of their new contract, while patrol officers during the same period would only receive 10.5%. Not only is there is no justification, according to the FOP, for sergeants to receive 22% more in raises over a six-year period than patrol officers, it is unfair. Moving patrol officers to 85% of sergeant's pay over three years "would be a step toward moving them back to where they were and where they rightfully should be."

In further support of its proposals, the FOP notes that higher wage rates are needed to attract quality officers, especially in competition with the higher paid Miami University police who operate in the same community. It also points out that an officer recently left the force and that, with each month sans replacement, money is being saved which could be used to fund the desired raises for remaining officers. The FOP also cites the recent income tax increase enacted by the Talawanda school district (which includes Oxford and surrounding areas) and its adverse effect on the take home pay of Oxford patrol officers. Finally, the FOP contends that the City's proposed comparison formula is flawed because two of the seven comparable jurisdictions have (within their patrol officer bargaining

units) the rank of detective, whose pay is higher than that for patrol officer but is not used when computing the medians upon which the formula is based. In Oxford two patrol officers regularly perform detective work on a full-time basis, one on permanent assignment and the other on yearly rotation.

The City, in response, contends that its wage proposal is both fair and reasonable in light of its difficult financial situation. In this connection the City points to the following: (1) income tax revenues (its largest source of income) are expected to fall in the coming year as a result of wage reductions accepted by employees of one of its largest employers and a possible shutdown of that facility, (2) it has been told to expect a 20% yearly reduction in local governments funds provided by the State of Ohio, (3) its inheritance tax revenues and general fund interest income have both dropped significantly in recent years, and (4) its insurance costs, especially those relating to health care, have been increasing substantially each year, and are reasonably expected to continue doing so in the future. The City also cited evidence indicating that the national economy may not be rebounding as rapidly as had been expected and points out the negative effects this may have on Oxford's financial situation. In addition, the City notes that during the past several years, its patrol officers have fared well compared to the general inflation rate in the Cincinnati Standard Statistical Metropolitan Area. Finally, the City points out that its sergeants and lieutenants recently accepted a contract containing essentially the same wage package offered here.

With respect to the method to be used in making comparisons with other jurisdictions, the City contends that it is clearly proper to compare its patrol officers with patrol officers elsewhere, rather than basing comparisons on the essentially unrelated standard of sergeant and lieutenant pay. As to the question of using detective pay as the comparable number for the two jurisdictions maintaining that rank, the City responds that it would be unfair to use such a number for comparison purposes since only a small fraction of the bargaining units in those jurisdictions are detectives. The vast majority are patrol officers and it is their pay rate which should be used when comparing similarly classified officers in Oxford. Finally, the City cites the 2002 Report and Recommendations of Factfinder Michael Paolucci involving the instant unit. The City contends that when confronted with essentially the same issue presented here, that report recommended against fixing patrol officer wages as a percentage of those paid to sergeants.

A final point. Over the course of this proceeding it became apparent that the parties do not agree on the exact annual salaries of senior patrol officers in all seven comparable jurisdictions. It is neither possible nor necessary for me to resolve these differences in order to arrive at the recommendations I have set forth below, but it *will* be necessary for the parties to do so in order to implement those recommendations.

Rationale:

The issue presented here is a difficult one, reflecting an unfortunate but recurring theme in much of America today; local governments seeking to balance budgets in challenging economic times and employees seeking to secure equitable pay for their services. Both

parties made excellent presentations of their respective positions. As my predecessor said in 2002, I am in “the difficult position of choosing between two (2) reasonable and convincing claims.” Hopefully, I can make a recommendation with which both can live.

Initially, I note that, with the exception of year one where the City offers a straight 2% increase, the parties are in agreement that future wage rates should ultimately be determined by some kind of comparison between Oxford and seven other specified jurisdictions in Butler County. Here I believe that, on balance, the City’s argument, namely that patrol officers should be compared with patrol officers, is the more persuasive. It has the “apples to apples, oranges to oranges” symmetry so beloved by the legal profession of which I am a member. Moreover, the factors which go into setting wage rates for the two groups (patrol officers on one hand, sergeants and lieutenants on the other) are not necessarily identical, so that the recent growth in disparity may not in fact continue and may even shrink in the future without utilizing the specific percentages advocated by the FOP.

Although I am essentially adopting the City’s position here, I remain troubled by the fact that two of the seven comparable bargaining units contain detectives, who perform work similar or identical to that performed by two Oxford patrol officers, but who receive higher wages which are nowhere reflected in the comparison formula. At the same time, however, I believe it would be unfair to simply use detective rates as the comparable number for those two jurisdictions, since only a fraction of the bargaining unit members in those cities are detectives. It is possible that some sort of weighted average could be used, but any such calculation would be a complex one, probably far beyond my limited math skills, and in any event not doable on the evidence before me, which does not include the number of detectives as a percentage of the two units in question. Indeed, this subject is perhaps best left to future collective bargaining, where refinements to the formula I am recommending may be found desirable by one side or the other, and where more complete facts will probably be available.

There remains for consideration the exact composition of the formula to be used, together with the question of whether it should be applied to the first year of the proposed contract. During the hearing, both parties indicated (at different times) that they could accept a formula based on average rather than median. Accordingly, I shall recommend using an average rather than a median to determine the midpoint among comparable jurisdictions. I shall also recommend that the average used be that of the seven agreed comparables, excluding Oxford, since it makes more sense to me to determine where Oxford’s wages should be in relation to others by looking *only* at those others. Since wage rates change in the comparable jurisdictions on various dates throughout the year, and since I have been offered no more equitable date, I shall also recommend figuring a given year’s average based on the wage rates in effect on December 1 of that year in each comparable jurisdiction.

Finally, and partly to offset the lack of any “detective factor” in the formula I have adopted, I shall recommend that such a formula be applied in all three years of the prospective contract rather than only the last two. I do this despite my understanding of,

and sympathy for, the difficult economic situation in which the City finds itself. However, I believe that economic forecasting is a somewhat inexact science and that necessarily prudent budget forecasts may perhaps err on the side of caution. Moreover, as best I can determine (since future wage rates in some jurisdictions are not known at this time), the result of using the formula I am recommending in the way I am recommending it be used, will result, over the term of the proposed contract, in raising Oxford patrol officers wages about 12.4%, compared to an estimated 14+% under the FOP's proposal and 10.5% under the City's. On a yearly basis, the same formula will yield raises of approximately 3.58%, 4.5%, and (assuming 3% raises in 2007 for Middletown and Fairfield) 3.8% for Oxford patrol officers, against average raises of 3.49%, 4.1% and 3.36% over the same period in the other seven jurisdictions. In sum, my recommendation will spread the total contract term raise more evenly each year than would the City's, is more in line with the yearly average percentage increases projected in comparable jurisdictions, and should not exceed, in any given year, the 5% ceiling sought more formally by the City.

I recognize that the Oxford lieutenants and sergeants unit recently settled a contract calling for only a 2% pay raise in 2005. However, while internal comparability is certainly a consideration, I do not believe it to be a controlling one. In any event, one of the main contentions made in this proceeding was to the effect that pay rates for the two units should not be interrelated.

Recommendation:

It is recommended that Appendix A, Wage Schedule, of the proposed contract read as follows:

"Officers will be paid biweekly in accordance with the following schedule:

ALL PATROL OFFICERS WITH 36 MONTHS SERVICE IN POSITION

For those calendar years beginning January 1, 2005 the salary of current patrol officers will be the cost of living increase given to employees not under a collective bargaining agreement and that amount by which the salary of current patrol officers are under the average salary of the following police departments. The salary of the seven departments shall be the base salary paid to the most senior officer in the seven departments on December 1, 2004. The seven departments follow:

1. City of Hamilton Police Department
2. West Chester Township Police Department
3. Butler County Sheriff's Department
4. Miami University Police Department
5. City of Middletown Police Department
6. City of Trenton Police Department
7. Fairfield Township Police Department

On January 1, 2005, after adding the cost of living increase granted to City employees not in a bargaining unit to the patrol officer 2004 salary, the resulting sum shall be compared to the average salary calculated. If the average salary is greater than the amount the patrol officers are to be paid after including the cost of living increase, then an amount sufficient to increase their salary to the average amount will be added to their base wage amount. The same procedure shall be implemented on December 1, 2005 with the adjustment effective January 1, 2006, and again on December 1, 2006 with that adjustment effective January 1, 2007.

Remainder of Appendix A: Current language.

NEW PROVISION: RESERVE OFFICER PROGRAM

Evidences and Positions:

The City desires to establish a reserve officer program under which uniformed but unpaid volunteer officers would assist full-time personnel in the day-to-day delivery of law enforcement services to the community. Such officers, the City submits, hold Ohio Police Officer Training certification, have full police powers when so engaged but if on a patrol assignment must work in the presence of full-time officers. They may also assist in jail supervision and during special events, all under the supervision of the Supervisor on duty. The City contends that reserve officers will only perform duties which would not be performed absent their use, and specifically disavows any intent to use them when as a result thereof regular officers would miss overtime opportunities.

The FOP formally opposes the institution of a Reserve Officer Program. It became clear during the hearing, however, that if sufficiently reassured on the missed overtime opportunity issue, it had no serious problem with a reserve officer program.

Accordingly, I shall recommend acceptance of the City's proposal in this area with some minor language changes to reflect what I see as an essential agreement between the parties on this issue.

Recommendation:

It is recommended that a new provision, 11, be added to Article XX, Miscellaneous Provisions, of the proposed contract, to read as follows:

"The City shall have the right to use auxiliary officers to support and assist members of this bargaining unit. It is the intent of the parties that auxiliary officers will in no way supplant members of the bargaining unit and specifically that they will not be used when their usage would cause bargaining unit members to miss overtime opportunities."

Remainder of Article XX: Present Language

Finally, I recommend that the parties include all tentative agreements reached during

negotiations in their final Agreement.

This concludes the Fact Finders Report and Recommendations. I wish to thank all parties for their helpful and cooperative approach throughout this proceeding.

April 8, 2005

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