

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT  
STATE OF OHIO RELATIONS BOARD

2005 MAY 31 P 12: 08

FRATERNAL ORDER OF POLICE, )  
OHIO LABOR COUNCIL, INC. )  
 )  
and )  
 )  
THE CITY OF SPRINGDALE, OHIO )  
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 )  
 )  
 )

No. 04-MED-09-0903

**FACT FINDING REPORT**

Hearing: May 11, 2005  
at Springdale, Ohio

Date of Report:  
May 27, 2005

APPEARANCES:

Mitchell B. Goldberg, Appointed Fact Finder

For the Union:

Thomas J. Fehr, Staff Representative  
Jeff Witte, Employee Associate  
Dave Buschmann, Employee Representative  
Jim Grijole, Employee Representative

For the City:

Paul R. Berninger, Esq., Attorney  
Mike Laage, Chief  
Jeff Williams, Finance Officer  
Jeff Tolloch, Development Director  
Derrick Parham, Assistant City Administrator

## I. Introduction and Background.

SERB appointed the undersigned as the Fact Finder for this public employment dispute on November 29, 2004. The parties entered into an agreement extending the fact-finding period during their negotiations. The matter proceeded to hearing on May 11 pursuant to their agreement. Evidence was submitted, which included testimony and documentary exhibits. The parties agreed that the Report would issue on May 27, 2005.

Pre-hearing statements were submitted in accordance with SERB rules. There are approximately 25 employees in the bargaining unit consisting of patrol officers. Supervisors, including sergeants are excluded. The unit was deemed certified on May 2, 1984 and clarified on September 2, 1999. The parties engaged in negotiating sessions from October through February. They reached tentative agreements on ten issues. All tentative agreements and unopened articles and sections are hereby adopted herein and otherwise incorporated into this Report as if fully rewritten herein.

The parties, through mediation conducted at the hearing, were able to resolve and agree upon four of the outstanding five issues that were unresolved before the fact-finding hearing. The remaining unresolved issue involves the Union's proposal to amend Article 9 – Grievance Procedure and Article 10 – Discipline. The following recommendation considers the criteria set forth in SERB Rule 4117-9-05 (J).

## II. Agreements Reached at the Hearing.

The following agreements between the parties are adopted and incorporated herein for purposes of this Report.

### 1. Article 11 -- Wages.

The unit members shall receive across the board raises on their present salary scale as follows: Year one -- 4%, year two -- 4%, and year three -- 3.5%. The wage increases are retroactive to January 1, 2005.

### 2. Article 18 -- Longevity.

The current language shall remain unchanged.

### 3. Article 29 -- Insurance.

The language shall be amended to adopt the City's proposal to have members contribute toward the cost of medical insurance premiums, \$25.00 per month for single coverage, and \$50.00 per month for family coverage. However, the new language shall provide that members shall only be obligated to contribute so long as all other city employees are required to contribute the same amounts or more toward their medical insurance premiums. The obligations of the members shall become effective on the next pay period following the execution of this collective bargaining agreement.

### 4. Duration.

The contract shall begin on January 1, 2005 and expire on December 31, 2007.

### III. Unresolved Issue, Article 9 – Grievance Procedure and Article 10 – Discipline.

The Union proposes to change the current language of Article 9 that provides for binding arbitration of all grievances except disciplinary actions involving a loss of pay or position. Those matters proceed to the City's Civil Service Commission for resolution. The Union seeks an amendment providing for binding arbitration of all grievances filed to contest disciplinary penalties involving suspensions, loss of paid time off, demotion, or discharge. The Union's position further proposes changes to Article 10. Members would have the right to elect between Civil Service reviews of disciplinary matters or to use the grievance and arbitration process in Article 9.

The Union also proposes a change that would require disciplinary action to begin within a fixed time following the infraction or the event giving rise to the action. Further, it proposes that the findings from a pre-disciplinary hearing be made within seven days of the hearing. Finally, stale disciplinary records must automatically be removed from an employee's personnel file.

The Union wants binding arbitration to at least be an available option for a member. Nearly all police contracts provide for arbitration instead of civil service reviews. Civil Service commissions involve elected politicians or appointees selected by politicians. These decision makers are less knowledgeable than experienced labor arbitrators for the most part. The Union believes that it is much more desirable and equitable to remove the political component from the decision-making process when a member faces disciplinary charges.

The other changes are self-explanatory. The City should not be able to drag an investigation out when memories begin to fade and witnesses are no longer available. They must bring the charges within a reasonable time so that due process rights are protected. Likewise, the decision of the Hearing Officer should be timely after a pre-disciplinary conference. Stale discipline records should be removed automatically as a matter of fundamental fairness.

The Employer believes that the existing system is not broken, so there is no need to make changes. The only matter decided by the commission was decided in the employee's favor. The commission members owe their responsibilities to the citizens of the community and not to the persons who appointed them. Moreover, employees who receive discipline as the result of a commission finding may file a de novo review with the county common pleas court and they have further appeal rights under law.

The Employer opposes time limits for issuing discipline and for issuing findings after a pre-disciplinary hearing because investigations should be deliberate and should consider later evidence that may be discovered. The process favors employees to make sure that all relevant evidence is obtained and explored. Stale records, because they are official public records, may be expunged by an employee now through an existing process.

The Civil Service verses arbitration dispute has been a recurring theme between these parties throughout their history of labor negotiations. Previous fact-finders have

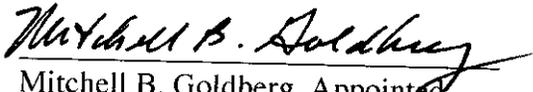
recommended arbitrations, but the City has managed to obtain Union concessions in exchange for other benefits. The Union is now adamant that it will no longer negotiate away its position.

Recommendation.

A second paragraph shall be added to Article IX, Section 5 – Jurisdiction. It shall state the following:

Appeals from decisions of the Civil Service Commission shall not be taken to court as provided under Ohio law. Instead, the member and/or the Union may appeal a decision of the Civil Service Commission to an arbitrator under a final and binding arbitration process in accordance with Sections 11 (B), (C), (D) and (E) *supra*. The appeal to binding arbitration, however, shall be made by the Union and/or the member within fourteen days of receipt of the Civil Service decision. The appeal and request for arbitration shall be made in writing to the Mayor. The appeal hearing before the arbitrator shall be a *de novo* hearing in which the arbitrator shall receive the Commission's record, decisions and findings into evidence, but the decisions and findings of the Commission shall be given the degree of weight or no weight as exclusively determined by the arbitrator.

Date of Award: May 27, 2005

  
Mitchell B. Goldberg, Appointed  
Fact Finder

James H. B. Coyle  
The State of Ohio  
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