

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2005 OCT 14 P 12: 05

THE CITY OF GRANDVIEW HEIGHTS, :
Employer, :
-and- : Case No. 04-MED-10-1193, 1194
CAPITAL CITY LODGE NO. 9, :
FRATERNAL ORDER OF POLICE, :
Employee Organization. :

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: October 12, 2005

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STATEMENT OF THE CASE

The parties, the City of Grandview Heights represented by Donald R. Keller, Esq., and the bargaining units, Capital City Lodge No. 9, Fraternal Order of Police, including 12 full-time Police Officers, and a second unit consisting of four full-time Sergeants, represented by Robert W. Sauter, Esq. have entered into negotiations for a successor contract to the contract that expired December 31, 2004.

The parties met and bargained in good faith with a number of meetings between the parties. The parties without dispute, or through negotiation, reached apparent tentative agreement on all but 14 issues in 10 of the Articles that were negotiated.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on September 23, 2005, and the meeting was convened at the Grandview Heights Public Library. In addition to their representative, Patrick Bowman, Director of Administration and Development, James M. Nicholson, Director of Finance, and Rollin A. Kiser, Chief of Police, appeared at the hearing on behalf of the City. In addition to their representative, Leif Bickel, President, F.O.P. Capital City Lodge 9, Mike Ludwig, Patrol Sergeant, Michael Small, Police Officer, Mark Lammers, F.O.P. team member, and Pat Power, Consultant, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The parties agreed that the remaining Articles at issue were not amenable to additional mediation. The parties submitted the matter upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I). The evidence and arguments presented to me convince me that Grandview Heights has experienced flat revenue and net reductions in its carryover balance in three of the last four years, which is clearly a subject of considerable concern to the City, the Local, and the public. Costs of equipment, maintenance, fuel and health insurance seem likely to continue to increase, as will wages and benefits. On the other hand, the voters have approved a .5 % increase in the City income tax for a 5-year period, which will increase revenues by approximately 1.2 million dollars in each of the years the tax will be collected in full and then will bring in half that amount in the last two years before the tax is phased out.

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

Article 10, Negotiation, Section 2, Time Bank

The City's Position: The City proposes no change from the language in the expired contract. The bargaining units proposed deleting the time bank effective January 1, 2006, but the City believes there is no support for doing away with the donation of two hours of vacation leave by each of the bargaining units' members to compensate the off-duty members of the negotiating team during contract negotiations. The provision has been a part of the contract at least since 1990.

Lodge No. 9's Position: The bargaining units propose phasing out the City's annual deduction of two hours of vacation leave for use by off-duty negotiating team members

during negotiation. The parties negotiated a reduction to two hours from the previous four hours that were deducted. The bargaining units are the only ones of all of the suburban municipal jurisdictions who donate time in this manner. The members should not have to pay to negotiate their contract.

Discussion and Recommendation: I recommend current contract language. This is the type of issue that ought to be negotiated and agreed to between the parties. The suburban comparables support the bargaining units' position, but I was not presented with any information about whether such language is contained in the firefighter contract. I don't have a strong feeling that such a provision is unfair or clearly needs to be changed.

Article 12, Internal Review Procedure, Section 4.E, Conduct of Questioning, Section 7, Anonymous and Citizen Complaints

The City's position: The City proposes substituting "truth verification" examinations in place of polygraph examinations as an internal investigation tool. The chief does not favor the use of polygraph examinations, and the protection provided bargaining unit members under the current language still applies. The City also proposes extending the investigation period for complaints to all complaints filed within 90 days of the alleged incident instead of the current 60-day limitation. The City believes the 60-day time period is too short. Finally, the City opposes the proposal by the bargaining units that all citizen complaints be filed in writing and signed with an attestation of truth before the complaints can be investigated. The City claims such administration does not affect terms and conditions of employment and will have a chilling effect on citizen complaints.

Lodge No. 9's position: The bargaining units do not appear to have a strong aversion to the change from polygraph to truth verification, subject to consent by the member. The Lodge opposes extending the length of time in which complaints can be brought, and argues that the City cannot point to a single complaint that was not considered because it was not brought within 60 days of the incident. The bargaining units want to require that complaints be signed with an attestation of truth because they claim that the current practice would not allow successful prosecution for filing a false complaint if the complaint is determined to be false.

Discussion and Recommendation: I recommend the change proposed by the City to the use of truth verification examination in place of polygraph examination. I recommend current contract language for the other two issues. Both proposals for change are based on underlying assumptions that I am unable to accept. I see no evidence of the need to expand the time in which complaints can be brought. Similarly, I see no necessity for an attested signature in order to prosecute false complaints despite one case from a different jurisdiction and documents from other contract negotiations.

Article 22, Wages, Section 1, Rates of Pay, Section 5, Shift Differential

The City's position: The City proposes a wage freeze in the first two years of the contract and a one percent across-the-board wage increase in year three of the contract. The City opposes any change in shift differential. The City proposes the addition of a fifth step for newly hired police officers. The City justifies all of the above based on the size of the City, the significant decreases in its income tax base caused by the loss of large employers who have not been replaced, the current uncertain economy, increased expenses in all areas, large future capital expenditures that cannot be put off, internal comparables that show that

the non-union employees of the City are significantly behind the bargaining units in wage increases, and the agreement of the I.A.F.F. locals to extend the provisions of their collective bargaining agreement through December 31, 2005 in return for two bonus payments capped at \$800 per payment, payable in March and September 2005. The City also argues that the bargaining units' members have total annual compensation that is much higher than the base wage that the bargaining units use as their comparison to comparable jurisdictions in the metropolitan area. The City asserts that there is no reason to increase the shift differential, which only benefits some of the members.

Lodge No. 9's position: The bargaining units propose five percent across-the-board wage increases in each year of the contract. The bargaining units also propose that the current shift differential of 75 cents per hour be increased to 85 cents per hour, effective 12-21-05, and then increased to \$1.00 per hour, effective 12-20-06. The bargaining units assert that the City is able to pay reasonable increases that will allow the Grandview Heights Police Officers and Sergeants to keep pace with the wages received by other Franklin County suburban municipalities, which remains almost at the bottom of those jurisdictions. The work of the bargaining units is valuable to the citizens of the community and should be rewarded. According to the bargaining units' consultant, Pat Powers, of Powers Consulting, the property tax income has increased and the increase in the income tax as a result of the voted increase will more than cover the alleged shortfall in revenue from that source. The consultant also opined that the City should have a separate capital account that allows the City to utilize deferred payment for large purchases. The City is also understating the amount of State local government funds the City is likely to receive.

Discussion and recommendation: I recommend a 1.5 percent across-the-board pay raise retroactive to the expiration of the previous contract, a three percent pension pick-up effective January 1, 2006, and a three percent across-the-board pay raise effective January 1, 2007. I am convinced that the City made its case for smaller wage increases than the bargaining units enjoyed in the last several contracts. However, the City is able to pay. The doom and gloom on the future of the economy is a slender reed on which to base zero offers in the first two years of the contract when it is clear the City will receive increased income tax revenues during the term of the contract. A one percent raise for the bargaining units, including benefits, increases the City's costs by about \$16,500. I calculate a one percent raise at about \$560 for a police officer with four or more years, and the City's offer to pay bonuses that did not result in permanent increases in the rate of pay would have cost \$25,600, at \$1,600 per member. I do not recommend any change in the shift differential. Such a change should be negotiated.

Article 24, Pension Pick-up

The City's position: The City proposes current contract language. Neither party made a proposal during negotiations to change the current 3.5 percent City pension pick-up.

Lodge No. 9's position: The bargaining units propose leaving this article open for an alternate method of providing for the equivalent of a wage increase to the bargaining units. Such a pick-up would be less costly to the City because such a pick-up is not burdened with increases in benefits as well. The Lodge points out that the unrepresented employees currently enjoy a 6 percent pension pick-up, and the I.A.F.F. unit enjoys a 10 percent pension pick-up.

Discussion and recommendation: I recommend a three percent increase in pension pick-up, effective January 1, 2006, as stated in the wage article.

Article 25, Longevity Pay

The City's position: The City proposes current contract language. The City asserts that there is no support for an increase in longevity pay based on comparables.

Lodge No. 9's position: The bargaining units propose that annual longevity be increased from a current base of \$400 to \$450, with an increase in the annual increments of \$40 to \$45. The increase is supported, according to the Lodge, by the same arguments that support its wage increase proposals and by its comparables.

Discussion and recommendation: I recommend no change in the contract in this article. This is the type issue that should be settled by negotiation and compromise, as the differences in the comparables are not so significant that they support a change.

Article 26, Hours of Work, Section 2, Compensatory Time

The City's position: The City proposes no change to the current language. The City claims the conversion of compensatory time to cash where a member has accrued more than 40 hours of compensatory time would result in an unbudgeted increase in cost to the City, which it is not capable of incurring in its current financial condition. The bargaining unit member chooses whether to take compensatory pay or overtime when the work opportunity is accepted.

Lodge No. 9's position: The bargaining units propose the payout as a cost saving to the City because the hours would be paid at the bargaining unit member's current rate of pay rather than the higher rate at termination of employment.

Discussion and recommendation: I recommend no change, based on the same reasoning as the previous issue.

Article 30, Vacation, Section 1, Vacation Accrual, Section 2, Personal Leave

The City's position: The City proposes current contract language. The City's force is small, and the scheduling is already difficult to avoid overtime while properly scheduling sufficient manpower. Such changes would result in increased costs to the City. The City agreed to 8 hours of personal leave time in the last contract, and the members already accrue sufficient vacation and personal leave.

Lodge No. 9's position: The bargaining units propose an increase in the bi-weekly accrual rate, an increase in the total balance that can be accumulated, and a one year decrease in the number of years necessary to reach increased accrual rates. They also propose an increase of 8 hours of personal leave accrued annually. The Lodge suggests such changes as an alternative to the City's failure to consider reasonable wage increases.

Discussion and recommendation: I recommend no change, based on the same reasoning as the past two issues.

Article 31, Sick Leave, Section 4, Abuse of Sick Leave, Section 8, Pay of Accumulated Sick Leave

The City's position: The City proposes removal of language from the language that identifies grounds for suspicion of sick leave abuse as follows: Section 31.4 A.

3. Present in a **tavern or other** place inconsistent with a claim of illness or injury;
4. Absent from home or place of confinement or convalescence **when called or visited by representatives of the City**, except in cases where the member can produce verification (such as hospital or medical clinic admissions or treatment slip or a receipt for the purchase of medicines from a pharmacy or a reasonable explanation) that the member's absence was for reasons directly related to the treatment of the member's illness or injury. (Deletions in bold)

The City argues that the first change has no substantive effect on the provision and that the second deletion is necessary in order to allow the City to establish prohibited absence from home by other evidentiary means than a requirement that a call or a visit be made by a City representative. The City opposes the increase in the pay-off formula for payment of accrued but unused sick leave upon retirement, non-duty-related death, or resignation in good standing after 10 or more years of service. The change proposed by the bargaining units would result in a 17 percent increase in the payment for the first 2400 hours and a new financial obligation for sick leave in excess of 2400 hours.

Lodge No. 9's position: The bargaining units propose no change in the abuse of sick leave provisions because the City is attempting to add to surveillance of its employees beyond that allowed in the current contract. The Lodge believes its comparables show that the City is lagging behind other Franklin County suburban municipalities in the payment of a portion of the accumulated sick leave of members who leave the City's employ.

Discussion and recommendation: I recommend no change in the contract language. I heard no specifics that convince me the City needs to tighten up its ability to investigate and discipline bargaining unit members for abuse of sick leave. The comparables do not show a significant difference between what the City now pays out on termination of employment and that paid by other suburban municipalities.

Article 33, Injury Leave, Section 2, Use

The City's position: The City proposes the addition of the following paragraphs:

- D. Except for scheduled medical appointments or as authorized by the Chief of Police, members on injury leave are to be at a place of confinement or convalescence for the on-the-job injury or at their place of residence during their scheduled work hours.
- E. While on paid injury leave, the member will not accrue sick leave or vacation time.

The City argues that the requirement that a member be confined during normal work hours is a reasonable restriction to avoid the abuse of injury leave. The City also argues that since no leave is required to be used on injury leave it is reasonable that no leave be accrued.

Local 208's position: The bargaining units propose no change in the contract language. The bargaining units argue that the proposed changes amount to punishment of members who were injured on the job. A determination of whether injury leave should be granted should be limited to a consideration of the medical evidence presented.

Discussion and recommendation: I recommend no change. No bargaining unit member properly placed on injury leave should have to worry about trips to the library, the grocery store or the day care center, and the proposed change in accrual of leave is not supported by any persuasive argument.

Article 35, Insurance, Section 1, Insurance, Section 2, Health and Dental Care Premiums

The City's position: The City proposes to remove the following language: "coverage and benefits shall be substantially similar to those in effect on December 31, 2004." The City also proposes adding the Director of Finance to the insurance advisory committee and allowing that committee to "create bid specifications and review insurance proposals received from insurance carriers. The committee shall make a recommendation to City Council as to the insurance proposal preferred by the committee." The Council would then choose "from among the insurance proposals received by the City." The City argues that the current insurance climate is such that the "substantially similar" language is outdated and prevents the City from being flexible, creative, and able to make the necessary and proper modifications to the insurance program in response to either substantive

insurance coverage needs, absence of “substantially similar” coverage, or premium cost concerns. The City only provides one insurance plan to all of its employees, and an active insurance advisory committee should relieve the concerns expressed by the bargaining units. The City also proposes that the bargaining units’ members pay 10 percent of the premiums for single and family coverage and that if the single coverage premium payment by the City exceeds \$325 per month or the family coverage premium payment by the City exceeds \$925, then the member will pay the excess in addition to the 10 percent of the premium. The members can pay through the City’s Section 125 cafeteria plan with pre-tax dollars. The expense of health insurance continues to climb, and even with reasonable cost containment done by the City, a 10 percent increase per year is typical. The members will be more careful about their usage of the plan the more they share in its cost, which could result in savings based on the City’s experience.

Lodge No. 9’s position: The bargaining units propose no change. The “substantially similar” language has proven effective to maintain coverage over the term of a contract. The bargaining units believe any changes that affect their coverage ought to be by mutual agreement. The Lodge is not opposed to an effective insurance advisory committee, but there are no guidelines for its operation and the firefighters local has not agreed to participate. The increase in premium with the possibility of unknown increases is too uncertain and amounts to a potential significant reduction in the members’ take-home pay. The current payments are within the range of payments in the comparables.

Discussion and recommendation: I recommend no change in the contract language with respect to “substantially similar” coverage. I understand the City’s frustration in having to deal with insurance companies that no longer want to enter into multi-year

contracts, but the bargaining units have the right to some certainty in their negotiated contract as well. I recommend an increase in the amount paid for premiums by the bargaining unit members to 8 percent of both individual and family coverage, effective December 20, 2006. That amount is to continue for the life of the contract. Clearly the substantial increases in health insurance costs should be shared by the bargaining units, and this small increase is in line with the relatively small wage increases.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. The parties cooperated in presenting their positions to me, and in our mediation efforts. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by HAND DELIVERY and by E-mail transmission this 12th day of October, 2005, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.


PHILIP H. SHERIDAN, JR. (0006486)

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