

STATE EMPLOYMENT
RELATIONS BOARD

2005 OCT 17 A 10:19

IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
THE CITY OF MILFORD, OHIO X
AND X
THE FRATERNAL ORDER OF POLICE X
OHIO LABOR COUNCIL, INC. X
X
X

**REPORT OF
THE FACT FINDER**

SERB FILE NOS.: 2005-MED-04-0432 and 0433

HEARING: September 20, 2005; Milford, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the City

Charles A. King, Consultant

For the FOP/OLC

Barry L. Gray, Staff Representative

ADMINISTRATION

By way of a letter dated June 7, 2005, from the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as fact finder regarding a successor labor contract, negotiations impasse. On September 20, 2005, and following receipt of pre-hearing submissions, a fact finding hearing went forward where testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

FINDINGS AND RECOMMENDATIONS

This matter involves a bargaining unit consisting of nine sworn, full-time patrol officers below the rank of sergeant employed by the City of Milford, Ohio ("the City") who are represented in collective bargaining by the Fraternal Order of Police, Ohio Labor Council, Inc. ("the FOP/OLC"). In addition, the FOP/OLC also represents the other herein bargaining unit made up of the City's two full-time police clerks. Thus, the City and the FOP/OLC ("the Parties") are each signatory to the two instant collective bargaining agreements ("the Agreement" or "the Labor Contract").

The Parties have successfully negotiated many of the terms of the two successor Agreements; including several which were tentatively agreed upon during the course of the September 20, 2005, fact finding proceedings. Accordingly, a number of items remain at impasse, items which are dealt with in this report.

The following criteria set forth in ORC 4117.14 is the basis for the herein recommendations:

* * *

- Past collectively bargained agreements between the parties;

- Comparison 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 and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service,
- The lawful authority of the public employer.
- Any stipulations of the parties,
- Such other factors, not confined to those listed 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.

* * *

Furthermore and in light of this statutorily provided for criteria, what has also been looked to for guidance is the last “Fact finder’s Report and Recommendations” involving the Parties; one which was issued by Michael Marmo on August 12, 1999 (SERB Case Number 9-MED-04-03878). What is felt to be of particular importance is Dr. Marmo’s following “Finding of Fact”:

* * *

Based on the statutory criteria the Factfinder is required to use, there is one major issue to resolve, who are comparable employers. The FOP argues that a local comparison is most appropriate, the City provided support for its position using statewide data.

The Factfinder believes that when available, local comparisons are most appropriate. As the City itself argued in recent years they agreed to above average increases for their police officers because of the need to “remain competitive”. For the job of a police officer, the labor market is primarily local. Thus, a Cincinnati area force will likely lose officers to other Cincinnati area police departments if their pay is too low, but they typically do not have to worry about competitive pressures from the Cleveland or Toledo areas.

With this in mind, the Factfinder used the data provided by the City and compared the wages of Milford officers with those of the eleven other Cincinnati

area departments; Cheviot, Deer Park, Harrison, Loveland, Maderia, Montgomery, Mount Healthy, St. Bernard, Silverton, Springboro, and Wyoming.

* * *

In addition and as gathered from the instant record; the cities of Hillsboro, Monroe, and Moraine are added to this list. Accordingly, small cities of comparable size in southwestern Ohio have been considered for purposes of the herein “comparable work” standard. Also, the other City employee units are obviously relevant in this connection as well. Indeed there appears to be little if any dispute between the Parties regarding the “comparable work” standard; at least from a general standpoint. Finally, it is observed that there also seems to be little if any disagreement regarding each city’s current economic condition, as well as the financial cost of an increase in wages.

Against this backdrop, and in addition to it being recommended that all tentatively agreed upon and/or unchanged contract provisions be hereby adopted, the following is recommended as to the remaining items at impasse:

I
ARTICLE 19
HOURS OF WORK AND OVERTIME

City position: Regarding the patrol officers bargaining unit, maintain the current Article 19 contract language

FOP/OLC position: Regarding the patrol officers bargaining unit, add or change Article 19 as concerns the following underlined portion –

ARTICLE 19
HOURS OF WORK AND OVERTIME

Section 19.1. The standard work period for all bargaining unit employees shall consist of eighty-four (84) hours of work within the established fourteen (14) day pay period. The standard work day shall normally consist of twelve (12) hours, inclusive of a forty (40) minute paid meal period. Shifts shall be bid by seniority in the month of November for the following year’s schedule. The schedule shall be instituted the first full pay period in January.

Section 19.2. All hours in active pay status (excluding holiday pay, but not holiday work) in excess of eighty-four (84) hours in the work period shall be considered overtime and shall be paid at the rate of one and one-half times the employees regular straight time hourly rate of pay for all such excess time, or, Compensatory time may be accumulated at the discretion of the employee at the rate of one and one-half (1½) times hourly rate and to be used at employee discretion with prior approval of the Employer. Maximum accumulation of Compensatory time will be forty (40) hours. During the month of November each year, employees may sell back up to forty (40) hours Compensatory time. There shall be no pyramiding of overtime.

Also, the FOP/OLC proposes that Article 19.5 be altered so as to redefine a patrol officer's on-call status.

It is recommended that Section 19.1 remain unchanged. At the same time, it is recommended that the FOP/OLC proposal regarding Section 19.2 as concerns compensatory time be adopted. This follows in light of the fact that compensatory time has been adopted in quite a number of the aforementioned, comparable city police departments. In essence, the record establishes that an overwhelming majority of these cities have made "compensatory time" a part of their overtime/hours of work pay system. Furthermore and while recognizing that this police department workforce is small in number, as well as the Fair Labor Standards Act implications of the cited US Sixth Circuit Court of Appeals decision in Robert Beck et al v. City of Cleveland, Ohio, 340 F3d 912, 2004 US App. Lexis 23754 (6th Cir); the same scheduling limitation pressures are presumed to also be present in these other cities. Finally, it is recommended that Article 19.5 not be changed at this time as proposed by the FOP/OLC. Simply put, a strong case was not made in support of this proposal based upon any of the aforementioned criteria.

II
ARTICLE 20
WAGES AND COMPENSATION

City position: Regarding both the patrol officers and police clerk bargaining units, that there be a 3% wage increase in each of the 3 years of the successor Labor Contracts.

FOP/OLC position: Regarding both the patrol officers and police clerk bargaining units, that there be a 6% wage increase in each of the 3 years of the relevant successor labor contracts. In addition, the FOP/OLC proposes a one dollar per hour night shift, pay differential.

It is recommended that there be a 3% increase in the first year, a 4% increase in the second year, and a 5% increase in the third year. This follows in light of the data submitted concerning the aforementioned, geographically proximate cities of comparable size and composition; as well as the up to 3% increase received by the other City employee units for the current for year. It also takes into account that there is no indication that the growth trend in the City's population and economic base will do other than continue. In the end, this recommendation takes into consideration a goal which the Parties apparently share (though the FOP/OLC seeks that they be placed in the middle); ie., that the wages received by the patrol officers at the very least not fall below their current, slightly below average comparable position.

Additionally, it is not recommended that there be a shift differential as proposed by the FOP/OLC. Basically, no case was developed in the record in support of this proposal.

III
ARTICLE 21 OR 22
INSURANCES

City position: Regarding both the patrol officers and police clerk bargaining units, maintain the current "Insurances" contract provision language.

FOP/OLC position: Regarding both the patrol officers and police clerk bargaining units, that the following language be added: "The employee's contribution will be no more than a maximum of \$100.00 per month for the life of this agreement."

It is recommended that the current, Article 21/22 “Insurances” provision remain unchanged. This follows based upon a determination that the FOP/OLC proposal constitutes the introduction of a new concept regarding the employee health insurance package; one which represents a fundamental change and is not supported by either the internal or external “comparable work” standard. While noting that employees have a choice as between these different health insurance plans and that in the end the City has virtually no control over the cost of health insurance; it is pointed out that the present sharing of cost arrangement has been in place since 1993. Accordingly, it would seem that, in order for the employee share of the cost to now be capped; a collectively bargained for exchange is reasonably required.

IV
ARTICLE 23
VACATIONS

City position: Regarding the police clerks, maintain the current Article 23 contract language.

FOP/OLC position: Regarding the police clerks, it proposes that the current language be altered as follows –

- A. One (1) year of service but less than six (6) years completed; rate of accumulation: 3.1 hours per pay period; Total per year: 80 hours
- B. Six (6) years of service but less than twelve (12) years completed; rate of accumulation: 4.6 hours per pay period; Total per year: 120 hours
- C. Twelve (12) years of service but less than twenty (20) years completed; rate of accumulation: 6.2 hours per pay period; Total per year: 160 hours
- D. Twenty (20) years or more of service completed; rate of accumulation: 7.7 hours per pay period; Total per year: 200 hours

It is recommended that the current language be maintained in that the FOP/OLC proposal was not supported by the aforementioned criteria.

V
ARTICLE 24
PERSONAL LEAVE

City position: Regarding the police clerks, maintain the current Article 24 contract language with the following clarification change – in Section 24.1

“Sixteen (16) hours” to “two (2) days” and, in Section 24.2, “eight hours (8)” to “one day (1)”.

FOP/OLC position: Regarding the police clerks, it proposes the granting of thirty (30) hours of personal leave time with pay, that these who do not use any sick leave during any 120 consecutive day period be granted ten (10) additional hours of personal leave, and, that personal leave may be accrued up to a maximum of seventy-five (75) hours.

Similar and as with Article 23, Vacations, recommendation; it is recommended that the current language be maintained, but here in accordance with the City’s proposed clarification language.

VI
ARTICLE 27
LEAVES OF ABSENCE

City position: Regarding the patrol officers bargaining unit, maintain the current Article 27 contract language

FOP/OLC position: Regarding the patrol officers bargaining unit, add the following language as Article 27.2 – In the event an officer on approved injury leave is required to attend a function i.e. court, Departmental meeting, training, or medical appointments shall be paid at a rate of one and one-half (1½) their regular rate of pay for all such hours. Also, add a Section 27.5 – Employees on approved injury leave earn sick leave, vacation or personal leave time during the leave.

It is recommended that Article 27 remain unchanged regarding the suggested Article 27.2 revision. Here, the undersigned concurs with the City that overtime compensation normally is not paid when an employee is off work on a paid leave; where, accordingly, no work has recently been performed. Consistent with this, the FOP/OLC was not able to make a “comparable work” case in support. At the same time and as to the new Article 27.5 proposed by the FOP/OLC, the data submitted establishes that, in the majority of the aforementioned comparable cities, this sick-leave-accrual-while-on-vacation/personal leave, employee benefit is available to patrol officers. Accordingly, it is recommended that the proposed Article 27.5 be adopted.


William C. Heekin
October 13, 2005
Cincinnati, Ohio