

STATE EMPLOYMENT
RELATIONS BOARD

2005 DEC 15 A II: 23

IN THE MATTER OF FACT FINDING

BETWEEN

**FRATERNAL ORDER OF POLICE, OLC, INC.
LODGE 41**

AND

CITY OF STRUTHERS

SERB CASE # 05-MED-05-0602

ADVOCATE FOR THE UNION:

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

ADVOCATE FOR THE EMPLOYER:

**Michael D. Esposito, Esq.
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CLEMANS-NELSON, INC.
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INTRODUCTION

The bargaining unit is represented by the Fraternal Order of Police, OLC, Inc. (hereinafter "Union" or "FOP"), and the Employer is the City of Struthers (hereinafter "Employer" or "City"). The bargaining unit is comprised of approximately eleven (11) police patrol officers and four (4) captains. The previous contracts between the parties expired August 31, 2005. Prior to fact-finding the parties bargained for approximately two (2) months. The parties were able to resolve many of the issues before them. A mediation/fact-finding session was held with the undersigned fact-finder on November 9, 2005. Prior to a formal submission of evidence, the fact-finder together with the parties' advocates made a concerted effort to bridge the differences between the parties over the seventeen (17) unresolved issues brought before the fact-finder. Several issues were resolved, including management rights, shift scheduling, vacation, discipline, IOD, sick leave, health insurance, and longevity through this effort; however, sufficient compromise on the remaining unresolved issues could not be achieved in order to bring about total agreement. The

parties then reverted to their position statements on these remaining unresolved issues. In the opinion of the fact-finder, the parties have a sound working relationship which is currently being tested by the economic times impacting employees and employers in Ohio and in particular northeast Ohio. The individuals present during the fact-finding process representing both management and the bargaining unit demonstrated a sincere interest in providing quality service to the citizens of Struthers.

The Advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text the parties' proposals on each issue, but will instead summarize of the parties' positions, which may include excerpts from their Positions Statements. The seven (7) issues submitted to fact-finding are as follows:

Listing Of Unresolved Issue(s):

**Reduction in Force
Wages
Duration
Court Time
Holiday Pay
Shift Differential
Clothing Allowance**

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 for 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 each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

SUMMARY OF THE PARTIES' POSITIONS /DETERMINATIONS

| | | |
|---------|--------------------|------------|
| Issue 1 | Reduction in Force | Article 15 |
|---------|--------------------|------------|

Summary of Union's Position

Current Language

The Union is proposing that current contract language remain unchanged. Oftentimes when a layoff is necessary the parties will meet well in advance of such layoff to resolve any specific concerns in every attempt to save jobs and retain services.

Summary of Employer's Position

Modify Language

The Employer is seeking a clear procedure for layoff and recall. It argues the current language is contradictory and cannot be administered in the light of the Ohio Supreme Court's "Batavia" decision. The Employer further asserts the Union's language will not serve the interest of the public and may force the City to have to layoff bargaining personnel outside of the bargaining unit.

Discussion

There is little question that the parties should have a well reasoned and clearly written layoff procedure that treats people fairly and provides them adequate protection based upon seniority. However, a reduction in force is an event of great significance to an employee's life and is usually a difficult action for many employers to execute. Moreover, this is a small and presumably closely-knit unit with a long bargaining history in the City. Therefore, the parties themselves, and not a third party neutral should be the ones to make these weighty decisions. However, if they cannot, a contingency plan should be available.

DETERMINATION

Add to the current language a new section **C.** as follows:

C. Within sixty-(60) calendar days from the date of ratification of this Agreement, the parties shall negotiate a new Reduction in Force provision that reflects conformance with law and provides protection for the employees based upon seniority.

If agreement on new language cannot be reached at the end of the sixty (60) day period, unless such period is mutually extended by the parties, THE CURRENT LANGUAGE SHALL BE REPLACED BY THE REDUCTION IN FORCE LANGUAGE CONTAINED IN THE FIREFIGHTERS' AGREEMENT, WITH THE PARTIES BEING CONFINED TO REWORD SECTION 3 OF FIRE FIGHTERS LAYOFF LANGUAGE TO REFLECT LAYOFFS OF BARGAINING UNIT MEMBERS BASED UPON THE LEAST AMOUNT OF TOTAL SENIORITY WITHIN CLASSIFICATION WITH THOSE AFFECTED HAVING BUMPING RIGHTS TO LOWER CLASSIFICATIONS PROVIDED THOSE BARGAINING UNIT MEMBERS OCCUPYING LOWER CLASSIFICATIONS HAVE LESS TOTAL SENIORITY.

No layoff of bargaining unit members shall occur prior to the above referenced sixty (60) day period (or the period of the mutually agreed upon extension has expired) being completed.

Issue 2, 3 Wages and Duration Articles 7 and 27

Summary of Union's Position

The Union proposes the following:

The Union is proposing a 3.5% increase in each of the three (3) years of the Agreement. The Union asserts that the cost of living and inflation coupled with the low 2.5% yearly increase in the prior agreements have eroded the employees bottom line. A 3.25 % is within SERB averages and would simply maintain the bargaining unit financial position (see Union Exhibit 1). In defending its position, the Union also cites the fact that some city officials have received large salary increases in 2004.

The Union is proposing that the duration of the Agreement remain the same, ending August 31, 2008.

Summary of Employer's Position

The Employer proposes a new five (5) year step plan as follows:

Section 1. Base Salaries and Wages. *The following reflects the base rates of pay for bargaining unit members during the course of this Agreement.*

| <u>Patrolman</u> | <u>Annual Salary</u> | <u>Hourly Rate</u> |
|----------------------------------|----------------------|--------------------|
| <i>1st year (80%)</i> | <i>\$30,600.96</i> | <i>\$14.71</i> |
| <i>2nd year (85%)</i> | <i>\$32,513.52</i> | <i>\$15.63</i> |
| <i>3rd year (90%)</i> | <i>\$34,426.08</i> | <i>\$16.55</i> |

| | | |
|--|-----------------------------|---------------------------|
| <i>4th year (95%)</i> | <i>\$36,338.64</i> | <i>\$17.47</i> |
| <i>5th year (full rate)</i> | <i>\$38,251.20</i> | <i>\$18.39</i> |
| <u>Captains</u> | <u>Annual Salary</u> | <u>Hourly Rate</u> |
| <i>1st year (95%)</i> | <i>\$39,559.52</i> | <i>\$19.02</i> |
| <i>2nd year (full rate)</i> | <i>\$41,641.60</i> | <i>\$20.02</i> |

Section 2. Supervisors Wages. Only the senior officer on the appropriate turn shall be permitted to perform the supervisor's duties if the supervisor is absent. When the senior officer performs the duties of the supervisor for a single shift or more, he shall be paid the supervisor's hourly rate, less five cents (\$.05) per hour.

The Employer's proposal follows its original proposal to freeze wages for three (3) years based upon what it contends is a severely limited ability to pay, and not an inability to pay. It's position at fact-finding proposes a system of pay increases that reflects the amount of time that it takes for a bargaining unit member to become proficient as a full-time officer, and a first year rate for captains. The Employer also cited the fact that during the course of the current agreement it had to absorb \$300,000 in costs associated with its health insurance plan. According to the Employer its proposal represents a wage freeze.

The Employer is proposing a thirty-eight (38) month contract period by extending the contract period by two (2) months with an ending date of 11/1/05. This would be the same as the Fire-fighters new ending date of their contract.

Discussion

It appears the parties have not had a sufficient amount of negotiations to consider a new pay scale paradigm. Such an undertaking requires considerable thought and deliberation. It is also noted that in the past three (3) years (2002 to 2004) the parties agreed upon a 2.5% increase in each year of the current agreement. By any measure this settlement reflects understanding and agreement by the parties that the City could afford to wage increases that fell somewhat below the SERB average for those years. It is also noted that in 2002 and 2003 the City's carryover balance was some five times larger than it was in 2004 and is projected to be in 2005 (Employer Exhibit 4H). There is no additional evidence available to demonstrate that the City's financial condition is better in 2005 or that it will be substantially improved in 2006 and beyond. In fact, there is reason to believe the City, like its surrounding counterparts, will continue to face difficult times.

These are uncertain times for Ohio public employers. While the state of Ohio continues to struggle with a continual shortfall between revenue and expenses that this year was tallied in the billions of dollars, a large part of

the country is enjoying a robust economy. The federal government is reducing aid to the states and, in turn, the states are reducing aid to municipalities and other local government entities. The difference is that other states are in far better financial shape than Ohio. In recent weeks General Motors announced a reduction of some 25,000 employees, Ford followed with the announcement of layoffs of white-collar workers, plant closings, and the promise of more announcements in January of 2006. It is reasonable to assume there will be an impact upon Ohio plants and parts' makers. These represent a few in the series of plant closings and job losses that have hit manufacturing in Ohio during recent years. It appears economic foul weather may be plaguing Ohio for the foreseeable future. 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. Northeast Ohio is very dependent upon the auto industry as a bellwether to its future.

It is noted that the City of Struthers, through strong leadership, has fared somewhat better than some neighboring communities and has been able to provide its employees with relatively reasonable wages in spite of lower tax revenue than some communities and to avoid having to lay off large numbers of employees (see Employer Exhibit 4K). It is also noted that the median income in the City is lower than the median family income in the City of Campbell, a city that reportedly is experiencing financial difficulty (see Employer Exhibit 4J). It is also noted that the Fire-fighters' unit, commonly used as the most often compared internal comparable, settled for a first year wage freeze, a 2% increase in the second year, and a 2.5% increase in the third year of their agreement. However, requiring the police bargaining unit to accept the same wages would not account for all real income earned by the fire-fighters. The facts indicate that the fire-fighter unit can annually earn extra pay for meeting certain job related fitness standards not currently included in the patrol bargaining unit agreement. The fire-fighters have the opportunity, presumably on the job, to work out and to qualify for the bonus. Therefore, until such time as the police bargaining unit has an opportunity to earn a similar type of bonus, equity for these often compared internal safety bargaining units cannot be achieved by providing both units the same wage increase. Therefore, equity in wages between police and fire must be dealt with in terms of "approximate equity."

The Union argues that the latest SERB quarterly data indicates the average salary increase is currently 2.99% for the jurisdictions of cities and police. The same data also indicates that for the Warren/Youngstown

region the average wage settlement has gone from 3.52% in 2002 to 3.10% in 2003 to 2.25% in 2004. In the private sector the average increase in 2005 is expected to be approximately 3.5% (Union Exhibit 5). As stated above, the problem is Region 8, and many other parts of Ohio, do not reflect what is occurring in more prosperous parts of the country.

The Employer wishes to extend the length of the agreement beyond three (3) years. It argues that the contract is prospective in nature, and that the Union protracted the bargaining process by its refusal to bargain in good faith. Negotiations are rarely easy, and when there is the prospect of financial concerns they become even more difficult. The Employer's proposal to add months to the agreement runs contrary to the long history of bargaining between the parties, and it also leaves the bargaining agent more susceptible to a challenge from a rival bargaining agent, one of whom currently represents the dispatchers. Moreover, concessions of this magnitude are not given away, but must be "bought" on a quid pro quo basis. No such concession was evident in the position presented by the City.

DETERMINATION

Wages

- 1. The salaries of the bargaining unit shall remain the same for the first year of the Agreement. However, in the pay period that includes January 1, 2006, each bargaining unit member shall receive a lump sum cost of living payment equivalent to 2.5% of each bargaining unit member's current base salary.**
- 2. Effective September 1, 2006 a 2.5% wage adjustment**
- 3. Effective September 1, 2007 a 2.5% wage adjustment**

Duration

The contract shall expire on August 31, 2008.

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| Issue 4, 5 Court Time and Hours of Work Articles 6, 7 |
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Summary of Union's Position

The Union is proposing to allow employees the option of taking court time as overtime pay compensation. Currently court time is granted as compensatory time only. Testimony will support that some officers are capped at the F.L.S.A allotted compensatory time maximums, and have been denied requests to cash out such compensatory time. Therefore they are forced to adjust schedules to accommodate court appearances. The reduction in compensatory time banks is normally an Employer driven proposal, but in this case the low wages proposed by the Employer make this available overtime cash of utmost importance. The Union in the hearing stated that it is difficult in this small bargaining unit for employees who are given compensation time for court time to be able to take off such time during the year. In light of this, many bargaining unit employees wish to opt for pay instead of compensation time.

As far as hours of work is concerned, the Union argues the Chief of Police does a good job of giving people time off and that is why it agreed to the City's shift scheduling language. At this point in time it opposes any changes in language that would reduce benefits for bargaining unit members.

Summary of Employer's Position

The Employer is proposing language to clarify what it considers a confusing and complex formula by which court time is provided. The Employer is proposing to maintain the current benefit level for employees, a four (4) hour minimum compensatory time payment, given for making an off-duty court appearance. For overtime situations, the Employer is proposing to utilize an FLSA complaint 207(k) schedule, and include in the overtime rate all payments that are required under the act. According to the Employer the bargaining unit is presently receiving the benefits of the FLSA rate requirements for supplemental payments, without adhering to an FLSA safety forces schedule. The Employer points out that FLSA requires employees to be compensated at one and one-half (1 ½) of their regular hourly rate for excess of hours worked and not hours not actually worked. The Employer argues its proposal mirrors a national, legal standard.

The Employer proposes hours of work contract language changes that provide the City with additional flexibility in scheduling. The Employer is also proposing to delete contract language that calls for automatically paying a full hour of pay when an employee has to work in excess of one-half (1/2) hours.

Discussion

Given the inability of the Employer to provide funding for an average wage increase, changes in contract language that reduce a monetary benefit, during times when employees can only be offered wage increases that are below common averages and comparable SERB averages is difficult to justify. As previously stated, negotiation changes

are made based upon a give and take basis and the City is not in a position to "buy" these changes. Presumably the gains made by the Union came at a price in previous negotiations. It is not reasonable for an Employer to first ask for concessions in granting a benefit, and then propose taking it away without some form of negotiated exchange. Moreover, there was no evidence to indicate how much money would be saved by these changes, and whether it would be used to provide or offset the cost of maintaining other benefits for bargaining unit members. In the same manner it is also unreasonable at this time for the Union to ask for a change in contract language that would place an additional financial strain on the City.

DETERMINATION

Current language for both Articles.

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| Issue 6 Holiday Pay Article 14 |
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Summary of Union's Position

Current language

Summary of Employer's Position

The Employer is seeking to reduce this benefit from paying two and one-quarter time $2\frac{1}{4}$ time for holidays to one and one-half $1\frac{1}{2}$ time for pay for holiday work. The City argues that it pays more than comparable cities for said holiday work (see Employer Exhibit 9B).

Discussion

The Employer's request to reduce monetary benefits, while understandable in face of comparable data, cannot be justified, given the Employer's inability to provide an average wage increase. As with court time and hours of work, the City is not in a financial position to provide a financial "quid pro quo" offer in exchange for a substantial reduction of this benefit.

DETERMINATION

Current language.

Issue 7 Uniform Allowance Article 9

Summary of Union's Position

The Union is proposing an increase of \$75.00 in each year of the contract for clothing allowance. The increase will allow the member to maintain its purchasing power in the face of ever increasing uniform costs. The Union is not interested in changing the reimbursement system due to the freedom of place of purchase the current reimbursement system offers.

Summary of Employer's Position

The Employer asserts that the clothing allowance for bargaining unit members is already very competitive with surrounding jurisdictions (see Employer Exhibit F). However, as a method of increasing the value of the allowance the City proposes going to a quartermaster system that is 100% accountable and according to the City is not subject to taxation.

Discussion

The arguments and data provided by the City are persuasive. The data provided in Employer Exhibit F place the bargaining unit in good position in relationship to surrounding jurisdiction in regard to this benefit. However, in order to maintain the relative value of the benefit, the erosive effects of inflation should be taken into consideration. The change to the quartermaster system most likely will increase the value of the current benefit without any further commitment of financial resources. However, the City is proposing a major change in the methodology for purchasing equipment and uniforms, and there is no evidence to indicate if any groundwork has been laid for such a change. Given the overall impact of the determinations made in this report, and the current level of this benefit, maintenance of the value of this benefit at approximately the same rate of the recommended wage increases is recommended.

DETERMINATION

The uniform allowance rate shall be increased by \$25 in 2007 and an additional \$25 in 2008. During the life of the Agreement the parties are encouraged to meet and confer over the advantages of adopting a quartermaster system during the next contract period beginning in 2008.

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 12th day of December 2005 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein". The signature is written in a cursive style with a large, sweeping initial "R".

Robert G. Stein, Fact-finder