

FACT-FINDING TRIBUNAL OF THE  
STATE EMPLOYMENT RELATIONS BOARD

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**IN THE MATTER OF:**

**FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.,  
Employee Organization,**

**and**

**CITY OF RIVERSIDE,  
Employer.**

**REPORT OF FACT FINDER**

**CASE NUMBER:**

**05-MED-09-0932**

**POLICE OFFICERS**

**DATE OF HEARING: April 13, 2007**

**FACT FINDER: Charles W. Kohler**

**APPEARANCES:**

**FOR THE EMPLOYEE ORGANIZATION:**

**Ross Rader, Staff Representative**

**FOR THE EMPLOYER:**

**Richard J. Holzer, Attorney at Law**

## **PROCEDURAL BACKGROUND**

This matter involves the negotiation of a collective bargaining agreement between the City of Riverside, Ohio ("City," "Employer" or "Riverside") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP"), for a bargaining unit consisting of only Police Officers.

On November 29, 2005, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder, pursuant to Ohio Revised Code Section 4117.14 (C)(3). A fact-finding hearing was held on April 13, 2007. The parties agreed that the fact finding report would be issued on June 14, 2007.

All prior collective bargaining agreements between the parties have covered two bargaining units, the Police Officers and the Sergeants. The previous collective bargaining agreement, which covered both bargaining units, expired on December 31, 2005.

The parties agreed that subsequent collective bargaining agreements would cover only one bargaining unit. Beginning in October 2005, each bargaining unit engaged in separate negotiations with the City. The collective bargaining agreement with the Sergeants was settled by a Conciliator, who issued his report on December 16, 2006.

This fact finding report pertains to the negotiation of the first collective bargaining agreement covering only the Police Officers in the Riverside Police Department. The negotiations for an agreement have been a long and protracted process. The parties began negotiations about 20 months ago on October 19, 2005. Since that time, the parties have met approximately twelve times.

As of the fact finding hearing of April 13, 2007, the following issues remain unresolved:

Article 14.3 - Staffing  
Article 19 - Hours of Work and Overtime  
Article 20.1 - Wages  
Article 20.5(C) - Field Training Officers  
Article 21.1 - Schedule of Earned Vacation  
Article 24.1 - Insurance  
Article 32.1 - Duration

### **TENTATIVE AGREEMENTS**

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the last agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the last agreement be retained.

### **STATUTORY CRITERIA**

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. 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;
3. The interest and welfare of the public, 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;

4. The lawful authority of the public employer;

5. Any stipulations of the parties;

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **DISCUSSION OF OUTSTANDING ISSUES**

### **Article 14 HEALTH AND SAFETY**

#### **Section 14.3 Staffing**

This section contains language relating to staffing requirements. The provision sets forth the number and type of police personnel required to be on duty at any one time. The last agreement requires that at least three police personnel be working on each shift. The parties have interpreted the use of the term “personnel” to mean Police Officers, Sergeants, and Lieutenants. Thus, the City could comply with the current Article 14.3 by assigning, for example, two Police Officers and one Sergeant to each shift. The current Article 14.3 also requires the City to assign at least three Detectives to the Detective department. Both the Detective and Police Officer requirements must be met unless layoffs result in insufficient manpower.

The FOP proposes to change Article 14.3 by requiring the City to assign at least three Police Officers to each shift. Thus, under this proposal, the City would have to schedule three Police Officers on each shift, in addition to any supervisory officers that the City deemed to be

necessary. The FOP also proposes a requirement that at least two Detectives (excluding Sergeants and OIC's) be assigned to the Detective section.

The FOP asserts that there has been a significant increase in manpower since the last collective bargaining agreement was signed. The FOP maintains that the increase in the size of the police force should allow the City to increase of the number of officers on duty. The FOP also contends that the staffing agreements in this collective bargaining agreement should apply only to members of the Police Officers' bargaining unit.

The City asserts that it plans to schedule more than two Police Officers per shift due to the increase in manpower. The City is willing to bargain over the issue of manpower so long as it is related to safety. However, the City contends that bargaining over a "minimum manning" requirement is not a mandatory subject of bargaining. Thus, the City argues that it is not required to bargain on a minimum manning requirement, unless it chooses to do so. According to the City, the FOP proposal goes beyond safety requirements, and is an attempt to determine the level of service, which is a management decision.

In January 2005, the City laid off Police Officers after to the voters' rejection of five consecutive police department levies. In October 2005, a levy was finally approved by the voters. As the result of the passage of the levy, the City began to recall laid off Police Officers and to hire new officers. Since the passage of the levy, the City has hired about fifteen Police Officers. As a result, police coverage has greatly improved.

The issue has had a rather torturous path to get to where the parties are at this time. The parties were very close to an agreement at one point, then drifted further apart. The City asserts that the parties had reached a tentative oral agreement on Article 14.3 on March 27, 2006. The

City's negotiation notes indicate that an oral agreement was reached. The FOP disagrees with the City, and asserts that there was no agreement, oral or otherwise. Since there is no written evidence that a tentative agreement was reached on Article 14.3, the fact finder will consider that Article 14.3 is at impasse, and is properly before the fact finder.

The City's proposal allows the City to have an exemption from the requirements of Article 14.3 in the event that layoffs or employee turnover result in the City being unable to meet the required staffing level. The addition of the exception for employee turnover would allow the City more flexibility while recruiting and training new Police Officers. In the absence of an exception for turnover, the City could be forced to pay many hours of overtime until such time as the new Police Officers are fully trained.

The FOP's argument is based upon the fact that fifteen new officers have been added to the force, and therefore, the number of officers on each shift should be maximized. However, the FOP has not shown that the current assignment practices have resulted in any particular problems, such as a problem with the safety of Police Officers. The City should not be required to schedule more Police Officers than are required to provide reasonable coverage.

The FOP proposal would likely result in additional overtime costs to the City. The City may be forced to call in an off-duty Police Officer to replace an absent officer. Under the current language, the police department can determine whether a replacement is necessary. At this time, the City is attempting to gain credibility in the community after experiencing the defeat of five police levies. To do this, it must maximize the efficiency of police operations. The proposal of the FOP places restraints on management that might require the City to schedule more Police Officers

than are needed. The FOP proposal excessively limits the City's flexibility in the scheduling of police personnel.

### **Recommendation**

The statutory criteria for fact finding provide that the fact finder consider the past agreements between the parties. One principal of fact finding is that current language should be retained unless there is a compelling reason for a change. While the City's proposal would provide more flexibility to the City, neither party has shown that the previous language has caused any problems in the operations of the police department. Therefore, the fact finder recommends that the current language be retained in Article 14.3.

## **Article 19**

### **HOURS OF WORK AND OVERTIME**

The parties reached a tentative agreement on Article 19 during the fact finding hearing. The issue is therefore removed as an issue at impasse for purposes of the fact finding process.

## **Article 20**

### **COMPENSATION**

#### **Section 20.1 - Wages**

The FOP submits that, while the starting wage for Police Officers is about average, the top rate is substantially below the average wage in comparable jurisdictions. Thus, it proposes lower wage increases for levels below the top step. The fact finder observes that it takes only three years of service to reach the top step. Thus, very few Police Officers are subject to the lower rates. The

fact finder does not have sufficient data to make a determination of the proper rate differentials between the various levels of Police Officer experience. Therefore, the wage increases recommended by the fact finder will apply to all five wage categories.

The fact finder notes that the data used by the parties is from different years, which makes comparisons more difficult. The FOP has presented data showing 2007 wages, and the City's comparables are from 2006.

The FOP presented 2007 wage data from seven jurisdictions in the same geographical area as Riverside. (Beavercreek, Fairborn, Huber Heights, Miamisburg, Moraine, Trotwood, West Carrolton, and Xenia.) In 2007, the average top step wage in these cities is \$27.26 per hour. Currently, the 2005 top rate in Riverside is \$24.75, which is \$1.87 below the average.

The City argues that Moraine should not be included because it has the ability to collect more tax revenue due to its large industrial plants. However, if Moraine is removed, the average decreases slightly to \$27.23. Thus, excluding Moraine does not make any difference.

The City's wage comparables are the 2006 wages from the same cities used by the FOP, except that Moraine is excluded. The average wage, excluding Riverside, is \$26.62 per hour.

The City also points out that Riverside is the smallest city among the comparables, and only became a city in 1993. Further, it has a relatively low income tax rate of one percent.

The evidence reflects a large disparity between the top rate in Riverside in 2005 and the average of the comparables for 2006. Disparities in wages usually develop over a long period of time. Changes toward the average rate should also be made over time. In other words, wide disparities cannot be made up in one year, or even during the period of one collective bargaining agreement. The City has presented data showing that the 2006 wage increases in the comparable

cities were in the range of 3.0 percent to 3.5 percent. However, in order to move the Riverside Police Officers closer to the average wage in comparable jurisdictions, the fact finder believes that the City's Police Officers should receive a wage increase in 2006 that is above the increases contained in other collective bargaining agreements. Wage increases in the second and third year of the agreement should be more in line with the increases found in other collective bargaining agreements.

Note: The parties agreed that any increase in wages will be effective as of January 1, 2006.

### **Recommendation**

The fact finder recommends a wage increase of 4.5 percent for 2006. Thereafter, the fact finder recommends an increase of 3.5 percent for 2007, and 3.0 percent for 2008.

### **Section 20.5(C) - Field Training Officers**

The parties agree that those Police Officers who are assigned to train new officers should receive additional compensation during the time that they are engaged in training duties. Training is an important function. The City is potentially liable for deficiencies in training. Most area police agencies provide some type of additional compensation to officers during the time that they are engaged in training activity.

The parties also agree that a three percent differential is appropriate. However, the City proposes that the supplement should be applied only to training activity that occurs on or after the date of ratification. The City points out that it has not been tracking the time that Police Officers are engaged in training activities. Thus, if the supplement was applied retroactively to January 1,

2006, the City would incur a significant amount of time and expense trying to determine the number of hours that officers were engaged in training activity.

The fact finder agrees that it would be an administrative burden to the City to apply this provision retroactively. The fact that this is a new benefit, rather than an increase in a current benefit, is another reason that persuades the fact finder to recommend that the provision should be effective upon ratification of the collective bargaining agreement.

### **Recommendation**

The fact finder recommends that the following provision be included in the new collective bargaining agreement:

**Article 20.5(C) Field Training Officers** On and after the ratification date of this agreement, employees assigned by the Employer to be Field Training Officers (FTO's) shall receive a three percent (3%) supplement during all hours of such training.

**Article 21**  
**VACATION**

**Section 21.1 Schedule of Earned Vacation**

Both parties propose increases in vacation entitlement. The current vacation schedule is as follows:

| <u>Completed years of service</u>           | <u>Vacation Time</u>   |
|---|--|
| Six (6) Months through Six (6) years        | 2 weeks  |
| Seven (7) years through fourteen (14) years | 3 weeks  |
| Fifteen (15) years through 24 years         | 4 weeks  |
| Twenty-five (25) years and up               | 4 weeks plus One (1) additional day of vacation for each completed year of service over twenty-five (25) years |

The City proposes that the following schedule be adopted:

| <u>Completed years of service</u>                | <u>Vacation Time</u>  |
|--|---|
| Six (6) Months through Six (6) years             | 2 weeks   |
| Seven (7) years through fourteen (14) years      | 3 weeks   |
| Fifteen (15) years through twenty-two (22) years | 4 weeks   |
| Twenty-three (23) years and up                   | Plus one (1) additional day of vacation for each completed year of service over twenty-three (23) years |

The FOP proposes the following vacation schedule:

| <u>Completed years of service</u>            | <u>Vacation Time</u>   |
|--|--|
| Six (6) Months through (5) years             | 2 weeks  |
| Six (6) years through ten (10) years         | 3 weeks  |
| Eleven (11) years through fifteen (15) years | 4 weeks  |
| Sixteen (16) through twenty (20) years       | 5 weeks  |
| Twenty (20) years and up                     | Plus one (1) day of vacation for each completed year of service over twenty (20) years |

The City's proposal is identical to the vacation leave provision in the 2006-2008 Sergeants' contract. The City maintains that the Police Officers and Sergeants should have the same vacation schedule. It points out that, since the Police Officers and the Sergeants work in close proximity to each other, it is best that both have the same vacation entitlement. The City agrees with the rationale the Conciliator used in the Sergeants' contract - changes are better made incrementally. The City points out that the conciliator selected the City's final offer as best meeting the criteria of an incremental increase.

The FOP has prepared data showing the vacation leave schedules in comparable jurisdictions. The data show that, on average, it takes less time to get to higher vacation levels in these other cities. It points out that, at the 5 and 10 year service level, the average number of vacation days in the other cities are 13.75 and 17.25, respectively. The amount of vacation time in the City is 10 days, and 15 days, respectively. At 15 years, the vacation schedule in Riverside "catches up." The comparable jurisdictions provide an average of 20.75 days, while Riverside is very close at 20.00 days.

The FOP asserts that a substantial number of officers retire when reaching 25 years. Thus, the FOP desires to add additional vacation time for officers earlier in their careers, so that they can actually benefit by having an increased number of vacation days before retirement.

One of the largest and most noticeable differences between Riverside and the surrounding cities is at the twenty year level. At the 15 year level, Riverside's 20 days of vacation is similar to these other cities. However, Riverside officers remain at the 20 day level until they attain 25 years of service. Most other jurisdictions provide at least five weeks of vacation at the 25 year service level.

The fact finder does not believe an increase or an acceleration of vacation time is warranted prior to the twenty year level. However, considering the disparity with other cities, Riverside's officers should have 5 weeks of vacation when they reach 20 years of service.

In reviewing the comparables, the fact finder notes that most of the cities do not provide an increase in vacation for service in excess of 20 years. However, in deference to the structure of past collective bargaining agreements, officers who do not retire at 25 years of service should be provided with additional vacation. Thus, the fact finder recommends that Police Officers receive one more day of vacation for each completed year of service over 25 years.

**Recommendation**

The following language should be added to the new collective bargaining agreement:

**Section 21.1 Schedule of Earned Vacation** Effective January 1, 2008, all Police Officers shall be entitled to vacation leave with full pay in accordance with the following schedule:

| <u>Completed years of service</u>                | <u>Vacation Time</u>   |
|--|--|
| Six (6) Months through Six (6) years             | 2 weeks  |
| Seven (7) years through Fifteen (15) years       | 3 weeks  |
| Sixteen (16) years through Twenty (19) years     | 4 weeks  |
| Twenty (20) years through twenty-five (25) years | 5 weeks  |
| Twenty-five (25) years and up                    | Plus One (1) additional day of vacation for each completed year of service over twenty-five (25) years |

## **Article 24 INSURANCE**

### **Section 24.1 Insurance**

Article 14 sets forth the parties' agreements concerning various types of insurance. The only provision remaining at impasse is Article 24.1.

A tentative agreement provides that bargaining unit members pay ten percent of the premiums for health insurance, and the Employer pays the remaining ninety percent. Effective on October 1, 2008, bargaining unit members will pay thirteen percent and the City will pay the remaining eighty-seven percent.

In the last collective bargaining agreement, the City was required to "maintain all existing insurance benefits." At the time that the last collective bargaining agreement was negotiated, the City obtained health insurance for all City employees from a Montgomery County consortium. During the course of the last agreement, the City became unable to renew the Montgomery County health insurance, and had to seek coverage in the open market. The policy obtained by the City in the open market had some reduced coverage levels, compared to the Montgomery County insurance.

The FOP filed a grievance over the reductions in benefit levels. The grievance went to arbitration, and the arbitrator sustained the grievance. Therefore, the City had to become a self-insurer in order to maintain the benefits included in the Montgomery County policy.

The positions of both parties for Article 24.1 modify the “maintain all existing insurance benefits” requirements. The City’s proposal for the disputed provision of Article 24.1 is as follows:

The Employer shall maintain a plan of health and hospitalization insurance.

The Union proposes the following language for the disputed part of Article 24.1:

The Employer shall maintain a plan of health and hospitalization insurance **similar to that currently in effect.**  
(Emphasis added.)

The Employer contends that all City employees are on one plan. In order to obtain any health insurance at an affordable cost, the Police Officers must be insured through the same policy, according to the City. The City asserts that the current health insurance policy insures 63 people, and employee groups must have at least 50 to qualify for group rates. Further, the health insurance companies dictate the benefits that they will provide, and changes are not available. As it is, the City has only three health insurance companies to select from. The City also maintains that it can no longer afford to be a self-insurer for the health insurance of its employees.

The FOP notes that it changed its position from the prior collective bargaining agreement by no longer asking the City to agree to maintain existing benefits. The FOP contends that a plan which provides coverage “similar” to the existing benefit level is not that difficult to obtain. The FOP asserts that in selecting a plan from those available, it is likely that one of the plans will have similar coverage to the existing plan.

The FOP argues that it won the arbitration because the City rejected a plan that would have maintained the benefit levels existing at the time, but the City elected to select a less costly

plan. It asserts that City Council knew that it was breaching the collective bargaining agreement, but chose to do it anyway.

The parties have reached an agreement for Article 24.4 of the contract. They have agreed to form a health insurance committee. The committee will include representatives from each of the four bargaining units in the City. The committee will examine possible changes in benefit levels and coverage. The City has the right to make the final decision, however, the Union representatives will be allowed to give input and make recommendations prior to the City making the final decision.

Committees such as the one the parties have agreed to are becoming popular in collective bargaining environments. They are one solution to the very difficult problem of finding a health insurance plan that is optimal for a group of employees.

It is very difficult for an employer, especially a smaller employer like Riverside, to obtain a plan with the same coverages as the prior plan. With this in mind, the fact finder is very reluctant to recommend that the parties include language that requires the Employer to maintain a "similar" plan.

The use of a word such as "similar" is problematic. It is a vague term that is subject to multiple interpretations. It is foreseeable that the parties would, once again, find themselves in arbitration over the meaning of "similar."

The FOP proposed the same language for the Insurance provision of the Sergeant's agreement. The fact finder agrees with the reasoning of Fact Finder Jerry Sellman in his report issued after conducting the Sergeants' bargaining unit fact finding. Sellman states:

The cost of health insurance will continue to escalate during the next several years. In order to cope with the rising cost of healthcare, all employees will be faced with either paying higher premiums or receiving fewer benefits, or both. It is impossible for an employer to agree to continue to maintain the same level of benefits over a three year period, particularly in a time when benefits and premiums change annually, if not more often. \* \* \* While the Union is agreeable to language that would require the employer to provide the same or similar benefits, it is impossible to determine what similar benefits are. As a result, it is reasonable for an employer of a smaller community the size of Riverside to be required to provide health insurance, but not at levels the same or similar to those in effect on the date of the inception of a three year contract.

All other collective bargaining agreements in the City now contain language that require the Employer to provide health insurance for bargaining unit members. None of these agreements specify that the City is required to maintain benefits that are the same or similar to existing plans.

The fact finder will recommend that the parties adopt the language of the Employer's proposal for the first sentence of Article 24.1.

### **Recommendation**

The fact finder recommends that the following be included in the new collective bargaining agreement:

#### **Section 24.1. Insurance**

The Employer shall maintain a plan of health and hospitalization insurance. The Employer shall continue to maintain existing liability insurance in the combined single limit of one million dollars (\$1,000,000.00) provided, in the judgment of the Employer, the premium cost is not excessive.

## **Article 32 DURATION**

### **Section 32.1 - Duration**

The FOP proposes that the new agreement be effective from January 1, 2006, to December 31, 2008. The City proposes that the new agreement be effective from the date of the FOP's ratification of the agreement until December 31, 2008.

The FOP points out that a three year agreement is the standard length of an Ohio public sector collective bargaining agreement. It states that delaying the effective date of the agreement might allow someone to manipulate the system. It asserts that, in accordance with standard practice, only the wages will be retroactive to January 1, 2006.

The City notes that any manipulation of the system is a two-way street. It states that, since the negotiations have lasted for well over a year, the potential for misunderstandings is heightened.

The fact finder observes that the parties have already agreed to wage retroactivity. As far as vacation, the fact finder's recommendation is that the new vacation leave schedule will be effective on January 1, 2008.

The City's objections are very general in nature, and the City has not articulated any specific problems that would be caused by making the agreement effective as of January 1, 2006.

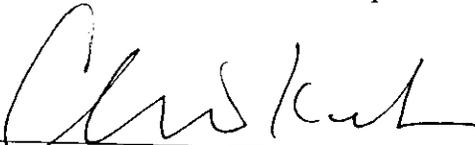
The fact finder believes that the new agreement should become effective as of January 1, 2006, which is the day after the previous agreement expired. Therefore the fact finder will recommend that the proposal of the FOP for Article 32.1 be included in the new agreement.

**Recommendation**

The fact finder recommends that the proposal of the FOP for Article 32.1 be included in the new agreement.

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The above recommendations are respectfully submitted to the parties for their consideration.

  
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Charles W. Kohler, Fact Finder

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 14th day of June 2007, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Ross Rader, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Richard J. Holzer, Attorney at Law, 2251 Charleston Way, Dayton, Ohio 45431, each by Federal Express overnight delivery; and upon Craig Mayton, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

  
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Charles W. Kohler, Fact Finder