

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
August 10, 2006

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of:

The City of Sidney, Ohio

06-MED-03-0269

and

FOP, Ohio Labor Council, Police
Supervisors

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Daniel G. Rosenthal, Attorney
Tom Judy, Assistant City
Manager
Vickie Allen
Steve Wearly, Police Chief
Mike Lunoy, Police Captain

For the Union:

Andrea H. Johan, Staff
Representative
Lieutenant Dan Kimpel,
Representative
Lieutenant William P. Balling,
Representative

INTRODUCTION

The undersigned was selected by the parties, and was duly appointed by SERB by letter dated May 31, 2006, to serve as Fact-Finder in the matter of the City of Sidney (hereinafter referred to as "Employer") and FOP, Ohio Labor Council, Police Supervisors (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until August 10, 2006. Hearing was held at Sidney, Ohio on July 17, 2006. The Union was represented by Andrea H. Johan, Staff Representative, and the City was represented by Daniel G. Rosenthal, Attorney.

FACTUAL BACKGROUND

The City of Sidney is a City located in Shelby County in Southwest, Ohio with a population of 20,211. The City employs approximately 200 full time employees. Among the full time employees, there are five separate bargaining units. Those include, police command officers, police patrol officers, dispatchers, fire fighters and public works. The remaining approximately 185 City employees are unorganized.

The police command officers bargaining unit consists of eight employees, and includes all Sergeants and Lieutenants. The Collective Bargaining Agreement between the parties expired on June 30, 2006. The parties have waived any statutory claims concerning the award being effective in the following fiscal year. After a

number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. The parties have reached tentative agreement on matters relating to the following Articles of the Collective Bargaining Agreement: 6, 9, 17, 20, 30, 31, and 29. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final Agreement.

The unresolved issues are as follows:

Article 13 - Wages

Article 14 - Overtime Pay

Article 16 - Educational Bonus

Article 18 - Holidays

Article 21 - Medical Insurance

ISSUES

ARTICLE 13 - WAGES

Union Position: The Union would be willing to accept the same wage increases of 3% in the first two years and 3.25% in the third year of the Agreement as given to other bargaining units. However, this increase should be based upon the patrol officer pay including the new Senior Officer Bonus. This method of calculating the pay increase would maintain the pay differentials of 12% between patrol and sergeant and 10% between sergeant and lieutenant which have historically existed for a number of years. Because of the new Senior Officer Bonus, a number of patrol

officers will be eligible for an up to 3% bonus. Unless the wage increase is based upon patrol pay including the 3% bonus, the differentials will shrink. Further, although this will result in a larger than 3% bonus for command officers, it should be noted that many patrol officers will receive a more than 3% increase as well due to the elimination of the bottom step of their pay scale. When compared to comparable cities in the surrounding area, the rank differential is comparable and fair.

Employer Position: The Employer has proposed a three year Agreement with a 3% wage increase in each year of the Agreement, with the first year increase effective upon signing, and the second and third year increases effective on July 1.¹ The Employer argues that this increase is the same as has been given to all other bargaining units and to non-bargaining unit employees except for police patrol and dispatch who were given an additional .25% increase in the third year of the Agreement in exchange for prompt resolution, a condition which does not prevail in this case. The Employer argues that the command officers are among the highest paid employees in the City because although exempt, they still receive overtime compensation. Because of this overtime compensation, they often earn more than the higher ranking Captain in a given year and have in the past

¹ The Employer agreed that for purposes of fact-finding only, it would waive its challenge to the retroactivity of any wage increase to July 1 in the first year of the Agreement, but stated at hearing that it reserved the right to contest retroactivity in the event of conciliation.

earned more than the Chief. When external comparisons with cities of comparable population size are considered, the Sergeants and Lieutenants are paid more than three percent higher than the average pay of those comparable cities.

Discussion: The Employer in this case has expressed a willingness to provide the Union with the same wage increase as has been provided to the other FOP bargaining units with the reservation that the additional .25% was granted in exchange for speedy resolution. There has been no contention that the Employer is suffering from any financial difficulties, and ability to pay is not an issue. The Union, on the other hand, while not averse to accepting the 3% - 3% - 3.25% wage increase granted to the other bargaining units, contends that if this increase does not include the new Senior Officer Bonus of 3%, it will erode long standing percentage differentials between the ranks. This is clearly true since more than half of the bargaining unit is either currently eligible for all or part of the 3% bonus or will become so during the term of the Collective Bargaining Agreement.

Despite the fact that the new Senior Officer Bonus may erode the rank differentials it must be stressed that it is a bonus, not an increase on the wage rate of patrol officers. In order to be eligible, officers must have a certain number of years of service, meet specific criteria, and be actively working in certain specialized areas. Not all will qualify in any given year, and among those who qualify, not all will receive the

entire 3%. Because the Senior Officer Bonus is a bonus, it is no different that the Educational Bonus or Fitness Bonus. An employee may or may not qualify for payment during any given year. The Union did not include these other bonuses in calculating the pay differential for this reason. It is inappropriate to compute the bonus as part of the patrol officers' pay rate. This is particularly true in light of the fact that the numbers of eligible patrol officers may vary widely in coming years due to attrition, qualifications, and assignments.

Although the Employer argued that the additional .25% should not be granted to this bargaining unit since that additional wage increase was in exchange for early settlement, the Fact-Finder must reject this contention. The failure to provide the command officers with this increase already granted to the patrol unit would indeed encroach upon the traditional pay differentials of these bargaining units. The Sergeants and Lieutenants have historically received pay at 12% and 22% above patrol officers respectively. The command officers' exercising their statutory right to pursue fact-finding does not present a sufficiently compelling argument for shrinking these percentages.

Recommendation: Wage increases in the following amounts:
July 1, 2006 - 3%; July 1, 2007 - 3%; July 1, 2008 - 3.25%.

ARTICLE 14 - OVERTIME

Union Position: The Union argues that the Employer's proposal

regarding overtime is not appropriately before the Fact-Finder. It was not a proposal during interest based bargaining, and was only discussed as part of discussions of wages. The Union opposes the Employer's proposal to limit overtime pay calculations to hours worked. Overtime has always been calculated based upon all hours, including approved time off. There is no justification for its change at this time. Further, the Union points out that the current contractual language on its face supports the Employer's the payment of overtime based upon hours worked, and the change is therefore not necessary.²

Employer Position: The Employer argues that its proposal regarding overtime is properly before the Fact Finder. Although not raised as a separate proposal during bargaining, it was discussed as an option during interest based bargaining. Since it was discussed in that context, it may properly be raised at fact-finding pursuant to the Ohio Supreme Court's ruling in Fairborn Professional Fire Fighters' Association, IAFF. Local 1235 v. City of Fairborn, 90 Ohio St. 3d 170 (2000). Command officers are currently paid overtime for all hours worked over eight in a day and over forty in a week. Those overtime hours are computed on all scheduled hours. The Employer's proposal would base overtime pay on hours worked so that time off during a work week would not be included in calculating overtime. Command

² The Union acknowledges, however, that overtime has been paid based upon scheduled hours, including time off, for some time, and it would grieve any change in the way overtime is paid.

officers are regularly paid for a significant amount of overtime, and this proposal would reduce overtime by calculating overtime as it is defined in the Fair Labor Standards Act. While this is a small step, it is a fair means to reduce overtime payments resulting in a savings for the City.

Discussion: The Union argues initially that the Employer's proposal regarding overtime should not be considered since it was never presented as a proposal or issue needing resolution during interest based bargaining. Both parties agree, however, that the issue of the computation of overtime was discussed during negotiations. Although the proposal appears to have been created for purposes of interjecting an additional issue at fact-finding, pursuant to the Ohio Supreme Court's ruling in Fairborn Professional Fire Fighters' Association, IAFF. Local 1235 v. City of Fairborn, 90 Ohio St. 3d 170 (2000), the Fact-Finder believes that she is compelled to consider it.

The Employer seeks to alter the overtime language in an effort to reduce overtime. It conceded at hearing, however, that this change would be a small step which would not have any significant impact on overtime for command officers. Since the impact of the contractual change would be admittedly small, and since the proposal appears to have been added late in the game without any significant discussion between the parties, there does not appear to be any compelling basis for the language change.

Recommendation: Current Language.

ARTICLE 16 - EDUCATIONAL BONUS

Union Position: The educational bonus is a bonus applicable to employees who have attained higher levels of education. The Union's proposed increases are equivalent to the percentage increase in the bonus given to the patrol bargaining unit. The command officers' educational bonus was greater than that of patrol officers, and has historically been so. The increase given to patrol officers equates to a 25.7% increase. An equivalent percentage increase would increase the education bonuses to \$1,992.00 for sergeants, and to \$2,081.00 for lieutenants.

Employer Position: The Employer argues that the Sergeants and Lieutenants when compared to comparable bargaining units already receive higher educational incentive bonuses. There is no justification for the increases sought by the Union. The Employer is, however willing to increase the educational incentive bonus to \$1,800.00 for both ranks to make it consistent with the educational bonuses which have been agreed to for both patrol officers and fire fighters.

Discussion: As the Union points out, there has historically been a differential between the educational bonus given to command officers and patrol officers. The difference between the patrol bonus and that of sergeants equaled \$153.00 in the prior Collective Bargaining Agreement, while the difference between patrol and lieutenants equaled \$224.00. The Employer's justification for eliminating this differential is that the bonus

is already generous as compared with other comparable cities, and its elimination would equalize all bargaining units, including fire, which receive an educational bonus.

In reviewing the comparable data submitted by both parties, it is somewhat difficult to determine how the Employer's educational bonus fits into the scheme. This is due to the fact that while some comparable jurisdictions provide an annual flat rate bonus, others provide the bonus as an hourly wage increase. It is clear, however, that the increases proposed by both parties in the educational bonus, while generous and competitive with other jurisdictions, are not excessive.

The Employer has not presented any strong justification for eliminating the historical differential in the bonus between patrol and command officers. The parties, by including the differential in the Agreement, have acknowledged that command officers should receive a greater bonus than patrol officers, presumably due to their greater responsibilities. In the absence of any substantial justification for the elimination of the differential, it should be retained.

Recommendation: Change second sentence of Article 16 to read as follows: The bonus will be \$1,953.00 for a Police Sergeant and \$2,024.00 for Police Lieutenant and will be paid in equal amounts each pay period throughout the year.

ARTICLE 18 - HOLIDAYS

Union Position: During negotiations, the Employer raised the

Martin Luther King Holiday as a holiday which it would like to see recognized. Since the holiday has already been granted to the rest of the employees of the police department, it is nonsensical that it should not also be observed in this bargaining unit of eight employees.

Employer Position: The Martin Luther King Holiday has been added to the patrol and dispatcher bargaining units. The City is willing to provide the holiday to this bargaining unit as well bringing the total number of holidays to eleven, but only as part of an entire package. The effect of the addition of this holiday is an additional .4% increase on base pay.

Discussion: Both parties appear to agree that the Martin Luther King Holiday should be observed. The holiday has already been incorporated into the patrol and dispatch Collective Bargaining Agreements. The Employer's argument for not agreeing to its inclusion for this bargaining unit rests solely upon the idea that it should be granted as part of a total agreed upon package.

Since the employees who the members of this bargaining unit supervise have already been granted the holiday, it is incongruous that the patrol officers and dispatchers should be granted the holiday, while their command officers are denied it only because they pursued fact-finding. This could potentially send an inappropriate message to all three bargaining units that the exercise of statutory rights may result in less generous working conditions. While this result is not a certainty, it is

clearly a result to be avoided.

Recommendation: Add Martin Luther King Day to list of holidays in Article 18.

ARTICLE 21 - MEDICAL INSURANCE

Union Position: The Union argues that, as with the overtime issue, the issue of medical insurance is not appropriately before the Fact-Finder. It was not a proposal during interest based bargaining, and was only discussed as part of discussions of wages. If medical insurance was a concern, the Employer should have appropriately presented it as an issue to be resolved during bargaining. Further, the proposal has not been made in any other bargaining unit, and there is no reason that this unit should be treated differently as it relates to health insurance.

Employer Position: As with the proposal relating to overtime, the Employer argues that its proposal regarding medical insurance is properly before the Fact-Finder. Although not raised as a separate proposal during bargaining, it, like the overtime issue, was discussed as an option during interest based bargaining. The Employer's proposal regarding medical insurance is that employees pay the cost of increases in premiums in any amounts over 12% per year. The Employer currently pays 87% of health insurance premiums and absorbs 100% of all premium increases. This insurance is generous, and its proposal would aid in containing ever increasing health insurance costs.

Discussion: As with the Employer's overtime proposal, its

proposal regarding health insurance was not initiated as a separate issue during negotiations, but was rather discussed as an option during wage discussions. The proposal to have employees absorb all insurance premium increases above 12% per year has not been proposed in any other bargaining unit. Although it is common knowledge that health insurance premiums increase annually at surprising rates, the Employer has presented no evidence to demonstrate that it is currently unable to absorb increases over 12%. In fact, the Employer did not present any evidence regarding either its recent insurance premium increases or any inability to pay. Further, there was no significant justification presented for treating this bargaining unit differently than all others. Under these circumstances, the Employer's proposal to shift the burden for increases of more than 12% to employees must be rejected.

Recommendation: Current language.

Dated: 8/10/04

Tobie Braverman
Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 10th day of August, 2006 to Daniel G. Rosenthal, Denlinger, Rosenthal & Greenberg, , 425 Walnut Street, Suite 2310, Cincinnati, Ohio 45202-3918, counsel for City of Sidney, and to Andrea H. Johan, Staff Representative, FOP/ Ohio Labor Council, 222 East Town Street, Columbus, OH 43215-4611 by U.P.S. Overnight mail.



Tobie Braverman