Martin R. Fitts

Labor Arbitrator
P.O. Box 2945
Toledo, Ohio 43606-0945

phone: 419-530-3546
fax: 419-530-3548
e-mail: mfitts@utnet.utoledo.edu

May 2, 2007

STATE EMPLOYMENT
RELATIONS BOARD
2007 MAY -4 P 12: 07

Mr. Tom Grabarczyk
Labor Relations Management, Inc.
6800 West Central Av., Suite L-2
Toledo, OH 43617

Mr. John Roca
Gallon, Takacs, Boissoneault & Schaffer
3516 Granite Circle
Toledo, OH 43617-1172

Re: SERB # 06-MED-09-1015 & #06-MED-09-1016
City of Defiance / Defiance Police Officers Association, Local 166

Gentlemen:

With this letter I am sending to both of you via overnight mail my Fact-finding Report in the above-referenced matter. A copy is being sent to SERB via regular mail. Per the request of the parties, a copy of this Report is also being transmitted via fax to each of you today.

An invoice with my fee for this Fact-finding will be sent to you under separate letter.

Sincerely,

Martin R. Fitts

Encls.

✓Cc w/ encls: SERB

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	06-MED-09-1015
	*	06-MED-09-1016
Fact-finding between:	*	
	*	
City of Defiance	*	Fact-finder
	*	Martin R. Fitts
and	*	
	*	
IUPA Local #166	*	
Defiance Police Officers Association	*	May 2, 2007
	*	
	*	

****

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

****

APPEARANCES

For the City of Defiance (the Employer):

Tom Grabarczyk, Consultant, Labor Relations Management, Inc.
Jeff Leonard, Administrator
Tracey Schroeder, HR Manager
Norm Walker, Chief of Police

For IUPA Local #166 (the Union):

John Roca, Attorney
Tim Schortgen, President, Local #166
Tobie Delaney, Vice President, Local #166
Dave Richards, Secretary, Local #166
Scott Campbell, Treasurer, Local #166
Steve Delaney, Trustee, Local #166

PRELIMINARY COMMENTS

This Fact-finding procedure involves two bargaining units. The first bargaining unit consists of all Police Officers employed by the City of Defiance, with approximately 18 employees in the bargaining unit. The second bargaining unit consists of all Lieutenants and Sergeants employed by the City of Defiance, with approximately 7 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on February 21, 2007. A mediation session was held on March 22, 2007. Although unsuccessful, a full and frank discussion of the outstanding issues resulted in several issues being resolved, with those tentative agreements included as part of the recommendations contained herein. The fact-finding hearing was held on April 16, 2007 at the offices of the City of Defiance in Defiance, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. At issue were: Holiday Pay; Duration; Vacation; and Wages. Thus four issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. 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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the April 16, 2007 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 51 – Duration of Agreement

Positions of the Parties

The Employer proposed a two-year term for the agreement, proposing that the new agreement expire on December 31, 2008. It stated that it would like to get this contract back in cycle with the City's Fire and AFSCME units, whose contracts expire in calendar year 2008.

The Union proposed a three-year term for the agreement, so that it would expire on December 31, 2009. It noted that a three-year duration had been the previous pattern prior to the current agreement which was for one-year.

Discussion

The current agreement was for a term of one year. The City's proposal is driven by concern that health care (an issue that has been dealt with outside of contract negotiations) may in the future be folded back into the collective bargaining process. If that occurs, the Employer argued that it makes much more sense for all three of its labor contracts to expire in the same calendar year so that it can deal with the issue fairly with all three unions at the same time.

The Union offered little compelling evidence that contract duration of two years would be an undue hardship for its members, although it did express concern over bearing the cost in money and time of union staff representation again in two years. Its argument in favor of returning to the previous pattern of three-year agreements is weakened by its agreement for a one-year contract in the last negotiations.

Findings and Recommendation

The Fact-finder finds the Employer's argument to be compelling. In the future should a change in the health care issue necessitate returning the issue to the collective bargaining process, it makes sense to the Fact-finder that the three agreements expire in close proximity to each other so that changes can be bargained concurrently or close to it.

Therefore, the Fact-finder recommends the contract be for a two-year duration, expiring at midnight on December 31, 2008.

Issue: Article 32 – Holidays

Positions of the Parties

The Union proposed amending Article 32 of the agreement by adding a new Section 32.4 that would provide for employees that are required to work on the actual holiday to be compensated at the rate of time and one-half for each hour worked.

The Employer proposed the retention of current contract language.

Discussion

The current language provides that bargaining unit employees who actually work on a holiday are paid at straight time for all hours worked. Of course they also receive "holidays" off as provided for in Article 32 of the agreement.

The Union argued that bargaining unit employees who actually work on a holiday are deprived of the ability to be with their families and loved ones, and should be compensated for this. The Union also argued that non-bargaining unit employees are compensated in this manner if they actually work on a holiday.

Findings and Recommendation

The Fact-finder does not find a compelling reason to change this provision of the agreement at this time. Law enforcement is a 24-hour a day, 365-day a year operation, and employees are aware of this when they decide to enter the profession. Over time, the natural rotation of the schedule will provide that employees will all work on some holidays, and have some holidays off. The employees do receive a paid day off in lieu of being off on the actual holiday, and in addition are paid for the hours actually worked. The Employer correctly argues that this already provides some premium compensation to employees who work on holidays.

Therefore, the Fact-finder recommends the retention of current contract language.

Issue: Article 33 – Vacations

Positions of the Parties

The parties agreed upon an improved vacation schedule during these negotiations.

The Employer proposed changing the current Section 33.3 of the contract to provide that only one week of vacation could be cashed in by the employees who are eligible for 4 or 5 weeks of vacation, rather than the current provision that the fourth and/or fifth weeks of vacation may be cashed in.

The Union proposed retention of current contract language providing the eligible employees with the ability to cash in up to two weeks of vacation.

Discussion

The Employer argued that given the improvements in the vacation schedule that have been agreed-upon between the parties there will be an immediate cost to the City, and that the cost will only continue to increase over the years. In addition, the language found in the last sentence of Section 33.4 of the current agreement appears to the Fact-finder to imply that the parties believe that actually taking the vacation time off important for the bargaining unit employees' well being.

Considering the improved vacation schedule reached by the parties and recommended below, and the recommendations found elsewhere in this Report, the Fact-finder is persuaded that the change proposed by the Employer is warranted.

Findings and Recommendation

In the matter of the revised vacation schedule, the Fact-finder recommends the revised vacation schedule stipulated by the parties as having been agreed-upon during negotiations.

In the matter of the issue of cashing in vacation, the Fact-finder recommends the Employer's proposal that the cash-in provided for in Section 33.3 be reduced to one week.

Issue: Article 43 – Wages

Positions of the Parties

The Union proposed wage increases of 3.5% effective and retroactive to January 1, 2007; an additional 3.5% wage increase effective January 1, 2008; and an additional 3.5% effective January 1, 2009.

The Employer proposed wage increases of 2.75% retroactive to January 1, 2007 for employees employed on the execution date of the agreement; and an additional wage increase of 3.0% effective January 1, 2008. As it proposed a two-year term for the agreement, it did not offer a proposal for a wage increase for a third-year of an agreement.

Discussion

The actual dollar amount difference between the parties' proposals is not great. In determining an appropriate recommendation, the Fact-finder must consider the wage increases provided for in the other collective bargaining agreements, but also consider the fact that this bargaining unit did forgo wage increases during the City's budget crisis prior to the passage of an income tax increase. The Union's position that it deserves a greater increase than is proposed by the Employer has merit, in part because of its sacrifices when the City was in a budget crisis, and in part because of its early and vocal support of the tax increase proposal in the recent past.

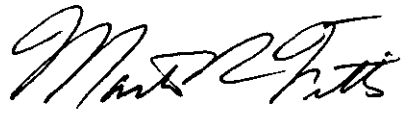
The Fact-finder must also take into consideration that other recommendations found elsewhere in this Report, including the recommendation on contract duration that is favorable to the Employer.

Findings and Recommendation

In consideration of the all of the evidence presented at the hearing, and in consideration of all of the other recommendations contained in this Report, the Fact-finder recommends a wage increase of 3.25% effective retroactively to January 1, 2007 for all bargaining unit employees employed as of the date of this Report, and an additional wage increase of 3.25% to be effective on January 1, 2008.

Additional Findings and Recommendations

In addition to the above recommendations the Fact-finder has also reviewed all tentative agreements reached by the parties in these negotiations, including those reached in the mediation session conducted by this Fact-finder on March 22, 2007, and recommends all of those tentative agreements as well.



Martin R. Fitts
Fact-finder
May 2, 2007