...TE EMPLOYMENT
RELATIONS BOARD

2008 MAY 29 P 1:56

IN THE MATTER OF FACT-FINDING
BETWEEN

CITY OF RICHMOND HEIGHTS	)	**CASE NOS. 06-MED-09-1067**
	)	**06-MED-09-1068**
	)	
AND	)	
	)	**FINDINGS**
	)	**AND**
FRATERNAL ORDER OF POLICE	)	**RECOMMENDATIONS**
LODGE NO. 57	)	

JAMES M. MANCIN, FACT-FINDER

APPEARANCES:

FOR THE FOP

Robert M. Phillips, Esq.

FOR THE CITY

Marc J. Bloch, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between the City of Richmond Heights (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Lodge No. 57 (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were held on February 27 and April 14, 2008.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit involved in this matter consists of all sworn Patrol Officers and Detectives in Unit A and sworn Sergeants and Lieutenants in Unit B. There are approximately twenty-three officers in the two bargaining units.

This fact-finder in rendering the following findings of fact and recommendations on issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Therefore, the following recommendations on the issues at impasse are hereby submitted.

1. ARTICLE 15, SALARY SCHEDULE

The Union proposes to improve basic wage rates by 12% during the life of a three year successor Contract. The City proposes that there be no change for 2007; a 2% increase in 2008; and a 2% increase for 2009.

The Union further requests that rank differential be improved by 1% incrementally over the Contract term. The Union would also add a DARE officer premium at $40 per month. The FOP further proposes to improve the proficiency allowance under Section 15.7(a) to $1,500 annually, and Section 15.7(b) to $1,000 annually. The City proposes that there be no change in rank differential and no change in the DARE officer premium. The City further proposes to reverse the current formula for the proficiency allowance so that under Section 15.7(a), a $500 payment would be provided for participating in the Cooper Fitness Protocol, with an additional $1,000 allowance under Section 15.7(b) for achieving at least the 50th percentile on the Cooper Fitness Protocol. Currently, a $1,000 payment is automatic, with $500 additional for achievement.

The Union contends that its proposal for a 12% increase over the three year term of the Agreement is in line with the level of wage increases for municipalities in the area. The FOP cites the most recent SERB wage data for police departments in surrounding communities. The FOP submits that there is no justification for the City's position that there should be no increase in wages for 2007. The wage increases which the Union has proposed are justified in order to bring the Richmond Heights patrol officers' wages more

into line with those in neighboring jurisdictions. The FOP points out that the rank differential of 11% falls below the norm for the area which is 12%.

The FOP further maintains that the City has the ability to finance its wage proposal. It cites the testimony provided by Jim Deppert, CPA, who indicated that the City enjoys a stable real estate and income tax revenue stream. He further pointed out that a fire department levy recently passed in November 2007. This means that approximately $900,000 would no longer have to be spent from the General Fund for the fire department. Mr. Deppert concluded that the passage of the fire department levy offers a new source of revenue to the City and clearly shows that the City can afford to pay for the increases of 4% to its police officers for 2007 through 2009.

The City contends that there should be no wage increase granted to the bargaining units for 2007 particularly in light of the financial issues which the City continues to face. The City points out that because of the difficult financial state in 2007 which it was in, no pay increases were issued to employees. It notes that in large measure it was facing significant financial challenges due to a shortfall in the Fire Services Fund. This meant that the City had to transfer over 1 million dollars in 2007 from the General Fund to the Fire Services Fund. Even though a fire levy was passed in November 2007, the City was still forced to forego pay increases for its employees for that year. Even with its belt-tightening, it ended the year with a shortfall of nearly $100,000 between the General Fund revenues and expenditures, and an overall General Fund carryover of only $28,000.

The City cites the testimony of its Finance Director, Lynda Rossiter, who indicated that the City does not have the financial ability to provide for a retroactive wage increase for 2007. She indicated that during the past four years, the City's revenue has been less than its expenses. Ms. Rossiter indicated that revenue continues to remain stagnate whereas expenditures continue to increase significantly. Moreover, the wage and benefit increases proposed by the Union herein would result in greatly increased expenditures which the City cannot afford. Ms. Rossiter concluded that like other municipalities in the area, the City is facing serious financial difficulties and must be able to minimize expenses whenever possible. As a result, the City submits that its wage proposal is reasonable given its financial difficulties.

ANALYSIS – After carefully reviewing the evidence presented, this fact-finder would recommend that there be a 3% wage increase retroactive to January 1, 2007, a 3% increase effective January 1, 2008, and an additional 3% wage increase on January 1, 2009. It is also recommended that the rank differential be increased by .5% on January 1, 2008, and an additional .5% on January 1, 2009. The DARE officer premium should be added to Section 15.3 at $25 per month effective January 1, 2009. It is also recommended that effective on January 1, 2009, the proficiency allowance be increased to $1,250, and the additional allowance provided under Section 15.7(b) be increased to $750.

The recommended wage increases of 3% in each year of the Agreement would be in line with the average wage increase granted to patrol officers in neighboring

jurisdictions. As indicated in SERB's most recent wage report, the vast majority of area police departments provided their patrol officers with 3% wage increases. The wage data shows that there are no comparable jurisdictions where officers will be receiving wage increases below 3% as the City has proposed in the instant matter. Likewise, the wage data does not support the Union's proposal for 4% increases. Rather, this fact-finder has determined that based upon the wage comparable data submitted a 3% wage increase in each year of the Agreement would be appropriate.

This fact-finder has further determined that the 3% wage increase in the first year of the Agreement retroactive to January 1, 2007 is warranted in order for Richmond Heights' patrol officer wages to keep pace with those in comparable neighboring cities. A wage comparison of patrol officer wages was submitted for Highland Heights, Lyndhurst, Mayfield Heights, South Euclid, and Wickliffe. The Union and the City acknowledged that such wage comparables had been used in the past by the parties. The comparable wage data shows that officers' wages in Richmond Heights fall below those in most of these other jurisdictions. As such, it would be reasonable to provide that the patrol officers here receive an increase in each year of the Agreement including the retroactive 3% increase for 2007 which is being recommended herein.

This fact-finder also finds that the City has the ability to finance the 3% wage increases recommended herein from currently available revenue resources. As previously discussed, an analysis by the FOP's financial expert, Jim Deppert, indicated that the City of Richmond Heights enjoys "stable real estate and income tax revenue streams." As

even the City's Finance Director acknowledges, these are the two predominate funding sources for the police department. The FOP's expert further stated that the City has a diverse revenue stream and is not heavily dependent on any one employer or industry for revenue. The City has a Moody's rating of AA. Mr. Deppert concluded that the City is "credit worthy" and has an ability to finance the kind of wage increases which are being recommended herein by this fact-finder.

The City claims that it does not have the ability to finance the wage increases and further maintains that such increases would have a detrimental effect on "the normal standard of public service" which the City must provide. The City points out that it experienced a shortfall between General Fund revenues and expenditures in 2007 of approximately $100,000. It also notes that the General Fund carryover was only about $28,000 which is below that recommended for such a government entity. The City maintains that due to shortfalls which it has experienced in recent years, it would be totally inappropriate to provide the police unit with the kind of increases which it seeks especially considering that other employees would also be seeking similar increases in wages and compensation. According to the City, such increases in personnel expenses would plunge the City into a full fledge financial emergency.

However, this fact-finder has determined that the City can fund the recommended increases for the bargaining unit here out of currently available revenue resources and the wage adjustments would not have any kind of detrimental effect on the normal standard of public service. The City's position completely ignores the fact that a

fire levy was passed in November 2007. Prior to that time, the fire department was funded in large part from the General Fund in an amount which averaged about 1 million dollars per year. As even the City's Finance Director acknowledged, the passage of the fire levy means that the fire department operations will now be funded from those levy revenues. This will result in a savings of about $900,000 for the General Fund in current fiscal year 2008. As noted by the FOP's financial expert, it is these additional General Fund resources which can now be used to finance wage increases for the bargaining unit in each year of the Contract. As Mr. Deppert concluded, the City can "easily afford pay increases...to its police officer employees for 2007 through 2009." Although, the FOP has requested increases of 4% to 4.5% per year, this fact-finder finds that it would be more reasonable to provide for 3% wage increases for each year of the Contract.

As indicated, the dispute regarding wage increases centers on the question of whether or not there should be a retroactive increase for 2007. The City has included a 3% wage increase in its budget for the bargaining unit for the current year 2008. However, the City takes the position that there should be no wage increase for the bargaining unit for 2007. This fact-finder finds that there is absolutely no justification for giving the bargaining unit a zero increase in the first year of the Agreement. It was shown that each additional percent increase will cost the City approximately $30,000 with benefits for the police unit. Therefore, a 3% retroactive increase for 2007 will cost the City $90,000. It is evident that the City can afford to fund such an increase out of available revenue resources especially considering that the recent passage of the fire levy

has freed up an additional $900,000 in the General Fund for such increases. Moreover, it is important to recognize that the officers have not had an increase in their wages since January 2006. The evidence establishes that if a wage freeze is to be provided to this bargaining unit for 2007, it would result in their wages falling behind those in comparable neighboring jurisdictions. It should also be noted that such a zero percent increase would have a detrimental compounding effect on an officer's final three highest years' average wages which is used for retirement purposes. This fact-finder must find therefore that a 3% wage increase retroactive to January 1, 2007 for the bargaining unit is warranted in the instant case.

With respect to the rank differential, the evidence shows that the 11% differential in Richmond Heights falls below that found in neighboring jurisdictions. In such comparable jurisdictions, the rank differential is either 12% or 13%. Therefore, comparable data supports this fact-finder's recommendation that there should be an increase in the rank differential.

As for the proficiency allowance, this fact-finder finds that it would be reasonable to increase the amounts set forth in Section 15.7(a) and (b) by $250 on January 1, 2009. Comparable data indicates that in some of the neighboring jurisdictions, the proficiency allowances are greater than that provided in Richmond Heights. Considering that the base wage for patrolmen in Richmond Heights is one of the lowest in the area, this fact-finder finds that an increase in the proficiency allowance should be provided. This fact-finder does not find any basis for the City's proposal to reverse the

current formula which provides for an automatic annual $1,000 payment as a proficiency allowance for satisfactory annual firearms certification and an additional $500 allowance for achieving at least a 50th percentile in the Cooper Fitness Protocol.

Finally with respect to the DARE officer premium, this fact-finder would recommend a $25 per month additional stipend. This would be in line with the additional compensation provided to others in the department for special assignments such as a crime patrol officer, detectives, traffic control officers, dog officer, and others. The additional compensation for the DARE officer would become effective on January 1, 2009.

RECOMMENDATION

It is the recommendation of this fact-finder that there be 3% wage increases in each year of the Agreement with additional increases in the rank differential, proficiency allowances, and for the DARE officer as more fully set forth below:

ARTICLE 15, SALARY SCHEDULE

15.1 Effective January 1, 2007 – a three percent (3%) wage increase.

Effective January 1, 2008 – a three percent (3%) wage increase.

Effective January 1, 2009 – a three percent (3%) wage increase.

Improve rank differential by .5% on January 1, 2008, and .5% on January 1, 2009.

15.3 Add DARE officer premium at $25 per month effective January 1, 2009.

15.7(a) Improve to $1,250 annually on January 1, 2009.

15.7(b) Improve to $750 annually on January 1, 2009.

2. HOLIDAYS

The Union proposes to add one additional personal day for a total of two days under the Agreement. The Union further proposes to include the MLK holiday under the premium pay Section 16.4 of the Agreement.

The City proposes to maintain the current Personal Days and Premium Pay Provisions found in Sections 16.3 and 16.4 of the Contract.

The Union contends that additional time off for officers is important for morale purposes. It is reasonable to request one additional personal day under the Contract. Likewise, it would be appropriate to include the MLK holiday among those holidays which employees receive premium pay for working.

The Employer contends that the changes in the holidays proposed by the FOP would only increase the financial drain on the City. The City cites the testimony of its Police Chief who indicated that any additional time off for a personal day could create some scheduling difficulties.

ANALYSIS – Upon review of the evidence, this fact-finder does not recommend any increase in the number of personal days or the inclusion of the MLK holiday for premium pay, if worked. Comparable evidence indicates that Richmond Heights' officers receive about the same number of holidays as those in neighboring jurisdictions. It should be noted that the officers currently receive one personal day which is not found in some of the other contracts in comparable jurisdictions. There was also insufficient basis established for including the MLK holiday among those listed for

premium pay, if worked. Once again, there are a number of such holidays listed which seems to be in line with the kind of premium pay holidays found in other comparable police contracts.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Holiday Provision as requested by the FOP.

ARTICLE 16, HOLIDAYS

16.3 No change.

16.4 No change.

3. SICK LEAVE

The FOP seeks to improve the percent of sick leave sell back payment upon death/retirement from 33% to 40% with a cap of 960 hours. In addition, the Union proposes new language which would permit the donation of accrued sick leave to a sick leave bank for use by an officer out of sick time but in need of additional sick leave. The City proposes to maintain the current sick leave buy out language and opposes the new provision pertaining to the donation of sick leave.

ANALYSIS – This fact-finder would not recommend any increase in the sick leave sell back provision set forth in Section 17.11 of the Agreement. It was shown that no other union in the City has a sell back provision which exceeds one-third of an employee's accrued unused sick leave. Therefore, internal comparables support maintaining the current provision.

This fact-finder also finds that there was insufficient basis established for the sick leave donation provision proposed by the FOP.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the sell back payment upon retirement provision and that there be no new article pertaining to the donation of sick leave as more fully set forth below:

ARTICLE 17, SICK LEAVE

17.11 No change, current language.

4. UNIFORM ALLOWANCE

The FOP proposes to improve the uniform allowance by $50 per year. In addition, the Union proposes to improve the SWAT team allowance to $375 per year and to add a $375 stipend for the bomb squad. The City proposes to maintain the current uniform allowance and opposes any new allowance for members of the bomb squad.

ANALYSIS – This fact-finder has determined that it would be reasonable to increase the uniform allowance by $25 effective January 1, 2008 and by another $25 on January 1, 2009. The current provision provides for a uniform allowance of $1,050. Considering that there has been no increase in the uniform allowance since 2006, it would be reasonable to provide increases in the uniform allowance at this time. However, this fact-finder would not recommend any increase in the additional sum provided to members of the SWAT team. Currently, the City pays an additional $325 per year to members of the SWAT team. There simply was insufficient basis established for increasing this allowance for SWAT team members.

RECOMMENDATION

It is the recommendation of this fact-finder that there be increases in the Uniform Allowance but not any additional amount for SWAT team members as more fully set forth below:

ARTICLE 21, UNIFORM ALLOWANCE

21.1 Uniform allowance is to be increased by $25 effective January 1, 2008, and by another $25 effective January 1, 2009.

5. INSURANCE

The City proposes that for contract years 2009 and 2010, employees would contribute 50% of any increase in health insurance premiums. The FOP opposes the City's employee contribution proposal. The FOP proposes an increase to $45,000 for the term life insurance policy for each member of the bargaining unit.

ANALYSIS – This fact-finder would not recommend any change in the current Insurance Provision. There was insufficient basis established by the City for a new provision whereby employees would contribute towards health insurance premiums. Currently, the City pays 100% of the healthcare premiums for its employees. Likewise, none of the other unions or city employees contribute towards healthcare premiums. Moreover, the evidence shows that approximately one-half of the neighboring jurisdictions pay for 100% of health insurance premiums for their employees. For example, Highland Heights, Bedford, Garfield Heights, and Beachwood currently pay 100% of health insurance premiums. As a result, this fact-finder has determined that there simply was no basis established at this time for a new employee insurance premium contribution provision.

This fact-finder also does not recommend the FOP's proposal to increase the amount of life insurance. The current provision provides $20,000 of life insurance for each member of the bargaining unit. This amount appears to be reasonable. Again, there was insufficient basis established for increasing the amount of life insurance.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Insurance Provision remain the same without any change.

ARTICLE 22, INSURANCE

22.1 No new employee contribution towards health insurance premiums as proposed by the City.

22.2 Maintain current amount of life insurance.

6. VACATION

The FOP proposes to increase vacation entitlement by one day of additional vacation per year of service for the 21st through the 25th year. The City proposes to maintain current language.

ANALYSIS – This fact-finder finds merit in the Union's request that the vacation entitlement be increased beyond the current five calendar weeks by adding one vacation day for each additional year of continuous service for the 21st through the 25th year. Such vacation provisions are found in other contracts in the area. For example, the cities of Lyndhurst and South Euclid provide for additional days of vacation for their officers after twenty years of service. There is comparable support therefore for the FOP's proposal to increase the vacation entitlement.

RECOMMENDATION

This fact-finder recommends the FOP's proposal to increase the vacation entitlement as more fully set forth below:

ARTICLE 24, VACATION

24.1 Continue one (1) day of additional vacation per year of service for the 21st through 25th year.

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

MAY 20, 2008

JAMES M. MANCINI, FACT-FINDER