STATE EMPLOYMENT RELATIONS BOARD
2006 DEC 14 A 11:3

FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
DECEMBER 12, 2006

In the Matter of	)	
	)	
	)	
	)	
The City of Tallmadge	)	
	)	
	)	
And	)	**06-MED-10-1159**
	)	**06-MED-10-1161**
	)	
Fraternal Order of Police,	)	
Ohio Labor Council	)	

APPEARANCES

<u>For the City</u>
David M. Benjamin,
Oakbury Company

<u>For the FOP/OLC</u>
Rick Grochowski,
Staff Representative

Fact-Finder, Marc A. Winters

BACKGROUND

The Fact-Finding involves the City of Tallmadge, (hereafter referred to as the "Employer") and two bargaining units of the Fraternal Order of Police, Ohio Labor Council, (hereafter referred to as the "Union"). The first Union bargaining unit is comprised of approximately twenty-two (22) full-time Patrol Officers. The second bargaining unit contains two (2) full-time Lieutenants and three (3) full-time Sergeants. These Bargaining Units are consistent with and in accordance to SERB rules.

In a letter, dated December 4, 2006, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter. However, since this Fact-Finder was a replacement fact-finder, the parties also stipulated to the Fact-Finder's authority under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement will expire on December 31, 2006. The parties have met on approximately nine (9) occasions to negotiate a successor agreement. Unable to reach an Agreement, impasse was declared and the parties proceeded to Fact-Finding.

The Fact-Finding Hearing was conducted on Thursday, December 7, 2006, in the City's Offices, Tallmadge, Ohio. The Fact-Finding Hearing began around 9:30 A. M., and was adjourned at approximately 5:15 P. M. At the beginning of the Fact-Finding Hearing mediation was requested and an attempt was made to mediate the issues at impasse. A serious effort was made, by all, at mediation, which occurred for the entire session. At the end, the parties were able to reach an Agreement on all mediated issues.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The issues resolved during the mediation session were in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations and the parties followed these criteria in mediating all impasse issues to settlement. The criteria are:

1. Past collectively bargained agreements, if any.

2. Comparisons 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, given 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 issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The parties have requested that this Fact-Finder issue the mediated settlement as the Fact-Finder's Report. In addition, the parties have requested that this Fact-Finder retain jurisdiction, for a period of ninety (90) days, over all the mediated issues should the parties have any problems with the implementation of any such issues. This Fact-Finder agrees to retain such jurisdiction.

By virtue of this reference, all previous tentatively agreed items will also be made part of this report.

The following eight (8) issues are the issues that were mediated to settlement and now becomes part of the parties successor collective bargaining agreement, dated January 1, 2007.

ITEM NO. 1 DURATION

This Agreement shall be in effect as of January 1, 2007, and shall remain in full force and effect until 11:59 P.M., December 31, 2009.

ITEM NO. 2 WAGES

Effective January 1, 2007, the wage rates will be increased by 3%.

Effective January 1, 2008, the wage rates will be increased by 3%

Effective January 1, 2009, the wage rates will be increased by 3%

ITEM NO. 3 RANK DIFFERENTIAL

Effective January 1, 2007, the City will implement, in the first year of the Agreement, a Rank Differential for Sergeants, of 13% more than the top paid Police Patrol Officer.

Effective January 1, 2007, the City will implement, in the first year of the Agreement, a Rank Differential for Lieutenants, of 13% more than the top paid Sergeant.

ITEM NO. 4 PRE-EMPLOYMENT CONTRACTS

All current police officers, who have previously signed Pre-Employment Contracts, will have such contracts returned to them by the City. And, no such reference to Pre-Employment Contracts will be mentioned in the parties Collective Bargaining Agreement.

ITEM NO. 5 NEW ARTICLE - PHYSICAL FITNESS TESTING

All members of the Collective Bargaining Unit will have an opportunity to voluntarily take a physical fitness test no more than twice per calendar year at approximately six (6) month intervals. Members of the bargaining unit that pass the below standards will be eligible for four (4) hours of overtime pay no more than twice annually. Members who pass the physical fitness standards below will also be awarded the Tallmadge Police Physical Fitness Award Ribbon to wear upon their uniforms in a manner prescribed by department policy. Members must pass all events to be eligible for overtime pay and to be awarded the Fitness Ribbon.

Physical Fitness Test Standards

1) 1.5 mile run in less than 14 minutes and 46 seconds.
2) Minimum 21 push-ups within 1 minute.
3) Minimum 29 sit-ups within 1 minute.

ITEM NO. 6 NEW ITEM

Police Officers who retire either through a service retirement or a disability retirement will be given their service revolver and their badge.

The rules governing how the service weapon will be provided to the retiree at retirement is entirely at the discretion of the City Law Director per City Policy. Such rules may include having the retiree purchase their weapon for $1.00, in order to transfer ownership or to sign a liability waiver as provided for by the Law Director.

ITEM NO. 7 RANDOM DRUG TESTING

Revise Article 33, Section 09 to read:

The City may not require an employee to submit to psychological testing except upon a showing of probable cause, and may engage in random drug or alcohol testing and pre-employment testing

except by "rebuttalble presumption law".

A. Any testing shall be conducted solely for administrative purposes and the results obtained shall not be used in criminal proceedings. All drug testing shall include gas chromatography/mass spectrophotometry. Under no circumstances may the results of drug screening or testing be released to a third party for the use in a criminal prosecution against the affected employee.

B. An employee refusing to undergo the required testing shall be subject to disciplinary action including discharge.

C. Any discipline which shall result from a positive test shall be processed through the disciplinary procedure in this contract and shall include a first abuse offense rehabilitation program paid for by the Employer and as specified in the city EAP program.

D. When completion of such program and a retest that demonstrates the employee is no longer illegally using a controlled substance or alcohol, the employee shall be returned to his position.

E. If the employee refuses to undergo rehabilitation or detoxification, or if he fails to complete program of rehabilitation, or if he tests positive at any time after his return to work upon completion of the program of rehabilitation, such employee shall be subject to disciplinary action including removal from office. Except as otherwise provided herein, costs of all tests and confirmatory tests shall be borne by the City.

F. For the purpose of implementing the provisions of this article, each bargaining unit member shall execute medical releases in order for the City to obtain the results of the examinations/drug-screen testing provided for in this Article and the city Random Drug Testing Procedures per the City of Tallmadge Drug Free Workplace Policy. Except as otherwise provided by state or federal law with regard to communicable diseases, or with the permission of the employee, the releases referred to in this section shall authorize only the release of examination results and progress reports pertaining to the drug-screening test results. No other medical finding may be released without the express written permission of the employee.

G. The drug testing policy shall be designed to comply with the level 2 drug free workplace plan established by the Bureau of Workers Compensation (BWC). The drug and alcohol testing provisions may be subject to reopening if the BWC requires different standards for a Level 2 drug free workplace plan. If the reopening results in impasse, the dispute resolution procedures contained in the

Ohio Revised Code 4117 shall be used to resolve the dispute. The City shall not attempt to introduce changes to non-drug testing contract provisions as part of any reopener.

CUT OFF LEVELS FOR POSITIVE DRUG TESTING RESULT

SUBSTANCE	INITIAL SCREEN LEVEL	CONFIRMATION LEVEL
Amphetamines	1000 ng/ml	500 ng/ml
Barbiturates	300 ng/ml	200 ng/ml
Benzodiazepines (valium, tranquilizers)	300 ng/ml	200 ng/ml
Cocaine	300 ng/ml	150 ng/ml
Marijuana (THC)	100 ng/ml	15 ng/ml
Methadone (quaaludes)	300 ng/ml	200 ng/ml
Opiates	300 ng/ml	300 ng/ml
Phencyclidine (PCP, angel dust)	25 ng/ml	25 ng/ml
Propoxyphene	300 ng/ml	200 ng/ml

ITEM NO. 8 HEALTH INSURANCE

The City and the FOP have agreed to replace their current Health Plan with the Kaiser HMO/POS Health Plan.

For the HMO Plan: The City will assume all premium cost to the extent they do not exceed 13% in any given year for the life of this contract..

Should the premium cost exceed 13% in any given year Article 24.01 will govern.

Article 24.01 shall read: The Employer will provide the same comparable health insurance program in effect on January 1, 2007, so long as the premium cost does not exceed 13%. To the

extent such costs are not comparable, the City may alter the programs so that they are price comparable.

For the POS Plan: The City will assume premium cost for the POS plan according to the following:

2007, The City will assume 65% of the premium cost up to a City Wide Total of $100,000.00.

2008, The City will assume 65% of the premium cost up to a City Wide Total of $100,000.00.

2009, The City will assume 65% of the premium cost up to a City Wide Total of $110,000.00.

In addition there will be a City Wide Health Care Cost Containment Committee, the language as follows:

That upon the City negotiating these terms with its other bargaining units for which health care benefits are provided, during the term of this labor agreement, a Citywide Health Care Cost Containment Committee shall be established. This committee shall consist of thirteen (13) members. Five (5) of such members shall be union Representatives, one (1) from each of the City's five (5) bargaining units. In addition their will be one (1) member from the City's non-bargaining unit employees. These members shall be selected at the sole discretion of each bargaining unit and non bargaining unit to represent their respective units. The remaining seven (7) members of this committee shall consist of representatives of the City as appointed by the City Mayor.

> This Committee, called the Citywide Health Care Cost Containment Committee, hereinafter referred to as the "Committee," shall meet at least four times per year. These meetings may be scheduled periodically throughout the year, or they may be scheduled in anticipation of the conclusion of the then current health care provision program. The Mayor or the Mayor's designee shall serve as Chairperson of the Committee. The Committee shall, at its first annual meeting, establish rules and regulations for its governance. However, these rules and regulations shall provide that each of the thirteen (13) members shall have one (1) vote, and, that a majority vote will be controlling. These rules and regulations may include provisions providing for the substitution of an alternate representative for any such member who may be unable to attend. Finally, these rules and regulations will provide each representative the opportunity to use any advisor or consultant it deems necessary, at the cost of that representative or the entity that representative represents.
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> The "benefits provision" year ending immediately before the establishment of the Committee (2006) shall be considered the initial base year for the purpose of determining health care cost economic data. The Committee will investigate

methods to contain the overall cost of health care. The Committee will investigate methods to contain the overall cost of health care. These methods may include, but not be limited to, reduction of benefits. The scope of the final determination as to the method utilized to contain the overall cost of health care shall be vested in and the sole responsibility of the Committee.

In the event that the overall cost of health care increases despite the Committee's best containment efforts, those increase costs shall be borne as indicated above.

The next two statements are for clarification purposes regarding the Kaiser Prescription Plan under the POS Plan.

1. Under the POS Plan, prescriptions are available anywhere listed in the "Added Choice Providers" Green Book.

2. If the prescription an employee uses is not found in the Formulary and your Physician should require you to take such a prescription, the employee would get their prescription at the same price as if it were on the list of Formulary prescriptions. In addition, the employee would use a form, provided for by Kaiser, and have his/her physician fill out the prescription necessary and it would be added to the list of Formulary prescriptions for that individual.

Marc A. Winters, Fact-Finder

December 12, 2006