

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

2007 OCT 24 A 11: 28

In the matter of Fact Finding between:)	SERB 07-MED-03-0212
)	and 07-MED-03-0213
CITY OF MONTGOMERY, OHIO)	
)	Hearing: September 25,
)	2007 at Montgomery, Ohio
and)	
)	
FRATERNAL ORDER OF POLICE,)	Date of Report:
OHIO VALLEY LODGE NO. 112)	October 22, 2007

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the City:

Joseph Scholler, Esq.,	Attorney
Cheryl Hilvert,	City Manager
Wayne Davis,	Assistant City Manager
Peter Hames,	Finance Director
Don Simpson,	Police Chief
Jerry Beitman,	Police Lieutenant

For the FOP:

Ross Rader,	Staff Representative, FOP-OLC
Michael R. Davenport,	Police Officer
Greg Vondenbenken.	Sergeant
Bob Otte,	Police Officer

I. Introduction and Background.

The State Employment Relations Board ("SERB") appointed the undersigned as the Fact Finder for this public employment labor dispute on July 3, 2007. The parties agreed to conduct a mediation session with the Fact Finder on September 6, 2007. Five of the outstanding issues were resolved and tentatively agreed upon as the result of this mediation. It was agreed that the remaining seven unresolved issues would proceed to a Fact Finding hearing on October 26, 2007 at the City's offices in Montgomery, Ohio. The parties complied with their statutory obligations by timely submitting pre-hearing statements to the undersigned before the commencement of the hearing.

The bargaining units consist of approximately 19 employees, a police officer unit and a supervisor unit of sergeants. Both units were considered together for purposes of negotiations and fact-finding. The parties negotiated throughout May, June and September. Many of their issues were resolved through these negotiations.

The parties continued to engage in mediation efforts during the hearing. Further issues were resolved or clarified as a result of this effort. Those partial agreements will be identified below. The parties presented their respective positions on the outstanding issues, and each party submitted extensive documentary exhibits. The parties agreed that this Fact Finding Report would be issued on October 22, 2007 and delivered to SERB by U.S. first class mail postmarked on that date.

The Fact Finder considered all of the required factors and criteria set forth in the Ohio Revised Code, the Ohio Administrative Code, and the SERB Guidelines in issuing the following recommendations on the unresolved issues.

II. Unresolved Issues.

(1) Wages

The parties, after exhaustive efforts, have been unable to resolve their dispute over the percentage payment for across the board wage increases. More importantly, they disagree about the manner and the methods by which the employees shall be compensated. This is due to the City's proposal that the units approve a bonus and incentive arrangement similar to that in effect among the remaining workforce, including the fire fighters unit. The plan includes a merit bonus increase for employees who have not reached the top of their respective pay ranges. Employees who meet expectations under a comprehensive evaluation system would receive a 4% increase in wages, and employees who exceed expectations would receive a 6.5% increase. These payments would be in addition to general wage increases paid to all employees.

The second incentive is a merit bonus designed for employees who have reached the top of their respective pay ranges. Employees who meet expectations would receive a 1% bonus, and employees who exceed expectations would receive 2%. These payments, as stated above, are in addition to general wage increases that are paid. The City is extremely pleased with the results of its performance based compensation system. Employees are carefully evaluated with respect to their job duties and responsibilities.

They are rewarded for meeting the expectations of the City, and the employees who strive to perform in an excellent manner are rewarded for their efforts. The City maintains that the members of the FOP bargaining team and others would have received approximately \$2,500 more per year based upon their evaluations if the units were under the same compensation incentive plan as the other city employees.

The FOP from the outset of negotiations has remained vehemently opposed to any “pay for performance” or incentive compensation arrangement for employees who have not reached the top of their pay scales. They are willing to consider various types of bonus payments for those who have topped out in their pay ranges. They point to the fact that with the exception of one or two departments, police departments in the state do not operate under such a system.¹ More importantly, the FOP believes that there is no need for a complete compensation makeover. The officers in the unit receive good evaluations and perform as respected and capable law enforcement officers.

The FOP has specific objections to the City’s proposed pay plan and any other comprehensive incentive plan. Officers want the security of knowing beforehand the extent of their expected compensation. Under the proposal, a newly hired officer would need twice the number of years of service to reach the current top pay step. In other words, the pay ranges have been expanded. This would occur even if officers received high scores that exceeded expectations. The City has pointed out that expanded pay

¹ The evidence establishes that Springdale has a type of incentive system, but it is much more subjective in nature than the City’s comprehensive plan. Also, there is one park ranger unit that has an incentive compensation arrangement, the details of which were unknown to the parties.

ranges are irrelevant because employees would be receiving much higher wages under the plan. The key factor is the amount of compensation, not whether a pay range has been expanded. Moreover, the City has proposed a plan where employees who perform satisfactorily would be guaranteed to reach the top of their pay range in five years. These points, nevertheless, have fallen upon deaf ears.

The FOP further believes that the current system in effect for the other employees violates FLSA overtime laws because the merit bonuses are not included for purposes of calculating overtime pay. The City, however, had engaged counsel about this issue and believes that it is complying with applicable laws and regulations.

The entire idea or concept of incentive pay is disturbing to the FOP representatives. They believe that professional law enforcement officers should be able to perform their duties without the thought of increased pay or compensation that would result from a decision or action. Decisions must be made based upon morals and ethics, regardless of political or economic influences. The public, judges and juries must believe that officers are performing their duties under strict moral and ethical codes. The respect that has been earned could be eroded if it is believed that certain actions are taken because of economic benefits. This is a particular concern when quantities of work statistics are relied upon in evaluations such as quantifying the number of citations, arrests and crime convictions. The entire concept of motivation through pay or financial gain is inconsistent with the core motivational aspects of law enforcement such as duty, honor and commitment to public service.

Finally, the FOP objects to the inherent subjectivity in the evaluation system, a factor that is inherent in all such systems. They are willing to accept evaluations of this type, but they do not want the results to unfairly determine their compensation. The City argues that their appraisal system is extremely comprehensive and less subjective than other types of employee evaluations. This Fact Finder, based upon experience would compare the City's appraisal form to products used in the private sector by large companies and organizations. There is comprehensive achievement criteria, under the categories of Mission, Vision and Values and Strategic Plan, Initiative and Innovation, Leadership, Quantity and Quality of Work, Professional Growth and Self Development, Stewardship of City Resources, Department and Individual Goals and Objectives, Budget Preparation and Management, Planning and Organizing, Judgment and Decision Making, Operating Guidelines, Communication Skills, Conflict Resolution and Problem Solving, Cooperation and Teamwork, Customer Service, Job Knowledge, and Technical Skills. There are categories for Achievement Plan Progress, an Achievement Plan for the Upcoming Year, and sections for peer review comments and comments by the employee. The City's devotion to this plan is understandable, considering the extensive time, effort and resources that must have been expended in its development.

Nevertheless, it is this Fact Finder's belief that this dramatic change in the compensation system should not be imposed upon the FOP members at this time without their consent. The evidence is clear that they are not receptive to the underlying philosophy of the incentive system. There must be a change in their attitudes with a belief that the plan is workable and in their ultimate best interests. I believe that the merit

bonus portion should be instituted for those members who have reached the top of their pay ranges. But, the system for those within their pay ranges should not be imposed at this time. It is interesting to note that the City was willing to grandfather existing members under the current system if the FOP would permit the incentive plan to be instituted for newly hired employees. The FOP would not even agree to this proposal.

I believe that the City must continue to sell the benefits of their system over the next contract term. It must show the FOP that the plan is addressing their concerns and that it is being administered in a fair and equitable manner. It should show employees what they would have earned in terms of merit increases and bonuses based upon their evaluations under the incentive system, and compare those results with their actual earnings to show how their compensation would be improved even if they simply meet their performance expectations. Forcing the new system upon the members under their present reservations does not appear to be workable at this time. They must be shown that the system operates in a manner that alleviates their most serious concerns.

The FOP is proposing across the board pay increases of 5.56%, 3.5% and 3.5% over a three-year contract. The FOP position, particularly the payment of 5.56% in year one, is an attempt to correct what it perceives is a decline in its position compared to other surrounding departments. The parties agree that comparable departments include Indian Hill, Sharonville, Springdale, Wyoming, Blue Ash, Maderia, Forest Park and Loveland. The FOP believes that Montgomery has fallen from the top one-third of the wages paid by this group, and now ranks seventh. It contends that the first year payment

of 5.56% will still only place Montgomery fourth within this group, if the other departments are paid at the rate of 3% per year. It believes Blue Ash will settle at 3.5% over the next three-year contract term. Wyoming is paying 3.6% in 2008 and 3.8% in 2009. In terms of pay for sergeants, Montgomery would rank only fifth with a raise of 5.56% in the first year if the others receive 3% raises. Blue Ash is paying 3% per year, but adds a \$2,000 payment to the base.

The City is proposing 3% increases across the board in each year, together with its incentive payment plan. This is identical with the raises paid to the other city employees, including the fire fighters, who have agreed to the incentive pay plan. It believes that payments of 3% increases are comparable to the above police departments, and will be much higher than the average when the incentive payments are considered. It is proposing only a 2% raise each year for the FOP members if they reject the incentive pay plan. This Fact Finder does not believe that a disincentive should be imposed upon the members because they are not presently in favor of the City's incentive pay proposal. It is unlikely that the FOP attitudes about incentive pay will change if they believe they are being forced into the system.

The term "comparable" is not an absolute term; it involves an examination of similarities or differences for comparison purposes.² With the exception of Indian Hill, the surrounding departments are fairly comparable in terms of department size, population, services, wages and benefits. Montgomery will remain comparable

² Webster's New World Dictionary and Thesaurus, Macmillan, pp. 119-120 (1996).

regardless of whether across the board increases are 2%, 3%, or 5.56% in year one as the FOP proposes. The City's wages would remain comparable notwithstanding its lower rank within the group.

Recommendation.

I recommend across the board wage increases of 3% for year one, 3.5% for year two, and 3.5% for year three, effective July 1, 2007. I further recommend that the City put in place its Merit Bonus system for those members who have reached the top of their pay scale as described in the Salary Guidelines for Non-Collective Bargaining Unit Employees, as set forth in City Exhibit 1.

(2) Health Insurance

The City provides comprehensive health insurance benefits under plans that are applicable to all of its employee groups. An employee committee reviews proposals from insurers and recommends plans after considering costs, benefits levels, coverage and other relevant factors. The FOP members have representation on the committee. Its efforts over the years have resulted in premium increases substantially less than those incurred by other cities in the area.

A cap system is in place based upon the amount the City has agreed to pay for premiums. Employees must share costs that exceed the cap on a 50-50 basis with the City. The City's cap has increased in 2007 by 6% for all employees except the FOP members, who refused to agree to the increase based upon their belief that to do so would

compromise their negotiations for a new contract. The City wants the FOP to agree to the 6% increase for 2007, and to agree that it will accept an increase in the cap for 2008 and 2009 as applied to the other city employees. The firefighters have agreed to this “me too” provision. The City requests that the cap be fixed at 6% per year as an alternative to the “me too” provision. The City also proposes a cap increase of 3% on the dental insurance. It believes that its system of providing committee recommended plans for its entire employee group with fixed caps on its contributions and a sharing arrangement for increases over the caps has provided quality insurance with reasonable premium costs. The system should remain in tact, without any changes that favor one particular employee group.

The FOP believes that its members are paying a disproportionately high percentage of their insurance premium compared to that paid by other police employees in nearby departments. It computes the average employer contribution at 94.4% and the average employee contribution at 5.6% for the nine other comparable departments. Based upon the 2006 SERB report, cities throughout the state pay an average of 93.5% and employees contribute 6.5%. In the Cincinnati area the figures are 93.2%/ 6.8%. Montgomery, however, pays 86% and employees pay 14% -- a major discrepancy. The FOP is proposing a 90-10 split on the cost of the health insurance premiums.

The City points out that the FOP members have the opportunity to manage their costs by selecting a high deductible plan with a health savings account. The City is willing to contribute toward the deductible as an incentive to select this lower cost plan.

Now, only one FOP member has opted for this coverage; the remaining members continue to select the higher cost PPO plan.

Comparing benefits, costs and coverage is nearly impossible as between the nine comparable jurisdictions. One must consider the total premium and the amount and/or percentage of the premium paid by employees. For example, Forest Park employees pay 10%, but the amount is higher than that paid by Montgomery employees because the overall premium is higher. The percentage paid by Montgomery is 14%, which seems above the norm, but Montgomery's premium increases have been below the norm for coverage that the employees prefer.

The FOP has not shown that their contributions are so out of line, that they should receive some extra benefit over and above those provided to the rest of the city employees. I do believe, however, that the cap for City payments should be fixed over the three-year contract term at a 6% increase per year instead of recommending a "me too" arrangement similar to what the firefighters have agreed to. Beyond that, the parties should continue to share increases on a 50-50 basis. None of the employees, management included, are interested in incurring higher than necessary premium costs. The 6% cap increase per year should continue to provide the committee with the incentive to limit the premium increases to the extent possible, while maintaining desired coverage.

Recommendation.

The health insurance benefits shall remain unchanged. The cap for payment of premiums by the City shall be increased to a maximum of 6% for each year of the contract term. The members shall share any increase costs over the cap with the City on a 50-50 basis. The City's proposal for a 3% increase in its dental insurance cap is accepted. The language in Section 14.1 that appears inconsistent in certain respects with the language in Section 14.3, that established the Employee/Management Health and Benefits Plan Committee should be removed in accordance with the FOP's proposed language change in 14.1. The section shall now read:

The Employer shall make available to all bargaining unit employees comprehensive major medical, hospitalization, health care, dental, and optical insurance substantially equivalent to the plans in effect as of the effective date of this Agreement.

(3) Holidays and Personal Leave Days

The FOP members currently receive 8.5 paid holidays and 4 paid personal leave days. The FOP members are presently permitted to cash in three of the four personal days if they are unused at the end of the year. No other City employee may cash in unused personal leave days. The City proposes that the days be used or forfeited.

The FOP wants to retain this benefit because these days were provided in lieu of more paid holidays. The present system is in line with the other comparable departments. Leaving out Indian Hill, others have similar provisions. Sharonville has 11 paid holidays, Springdale has 10, Blue Ash has 10.5, Madiera has 11, Forest Park has 11, and Loveland

has 8 holidays and 4 personal days. Montgomery has 8.5 holidays and 4 personal days. Just as pay is received for a holiday not worked, pay should be available for an unused personal day.

The FOP proposes to add two more holidays at the payment of 1.5 times regular pay plus holiday pay, Christmas Eve and Memorial Day. This pay is presently available for working Thanksgiving Day and Christmas Day.

Recommendation.

This Fact Finder is not persuaded by either of the parties' positions for changing this article. Other comparable jurisdictions pay at 2.5 times and 3 times regular pay for working holidays. Nevertheless, based upon present compensation levels, I see no compelling need for a change, either by removing the present cash in benefit for unused personal days, or for adding more pay for working holidays of Thanksgiving Day and Christmas Day. Any change should be a negotiated change. The article shall remain unchanged.

(4) Hours of Work, Article 12.

Both parties acknowledge a necessary change in Section 12.5. As it is now written, the regular hourly rate is determined by dividing the annual salary by 2080 hours. The bi-weekly rate is determined by multiplying the hourly rate times 80 hours. The City discovered that it has overpaid members because they do not work 2080 hours per year.

Recommendation.

Section 12.5 should read:

Each employee's regular bi-weekly pay shall be determined by multiplying the regular hourly rate of pay by the number of hours an employee is regularly scheduled during the bi-weekly period. Annual and bi-weekly salaries are listed as examples only. All bargaining unit employees are "hourly" employees.

(5) Vacation Pay

The FOP believes that it has fallen behind other comparable departments in terms of paid vacation days. Presently, the maximum amount of paid vacation days is 20 after 20 years of service. All of the other departments pay for more days. Indian Hill is at 28, Blue Ash is at 27, Sharonville is at 26.6, Springdale is at 28.7, Wyoming is at 25, Madiera is at 21.3 and Loveland is at 26.3. The FOP proposes to add one vacation day for each year of service up to 30 years. The City would agree to one day for each year of service up to 25 years if the FOP would accept its incentive pay plan. The evidence at this time does not warrant the additional economic benefit. Any change in this regard should be negotiated.

Recommendation.

No change.

(6) Call-in Pay, Section 11.3

The City proposes a pay change for members who are required to attend committee or team meetings during their time off. If the meeting does not abut either end

of the work shift, members receive a minimum of three hours of overtime pay regardless of the duration of the meeting. The City believes that members are able at times to schedule the meetings themselves so that they may receive this extra pay when the meeting could sometimes be scheduled during their work shift. The City wants to protect against abuse by requiring permission from the Chief before this provision is applied, when the member has the opportunity to provide input into the scheduling of the meeting.

The FOP believes that the benefit is important because many times the meetings are of short duration. Pay at regular rates, or for the time of the actual meeting would not fully compensate members who must spend time for travel, or who may incur expenses such as child care in order to attend the meeting. Management may cure any perceived abuses by scheduling the meetings without member input.

The City has not provided sufficient evidence of any abuse in the manner in which meetings are scheduled. Some FOP members work a third shift, such that attendance during off hours is more of a problem. I agree with the FOP that management could address any problem in this regard without the necessity of its proposed language change.

Recommendation.

No change.

(7) Sick Leave Incentive.

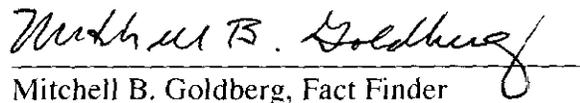
Presently, members who utilize four hours or less of sick leave during the calendar year receive an attendance reward of \$400. Employees who use up to one day of sick leave receive \$300, and employees who use up to two days receive \$200. The City proposes eliminating this benefit because it has been eliminated for all other city employees. The FMLA has diluted the effectiveness of this provision as an incentive.

The FOP wishes to retain this benefit because other comparable departments have similar benefits. Blue Ash provides for fitness bonuses. Madiera provides for an additional personal leave day when employees go for four months without using sick leave. This City's monetary obligation for this benefit is minimal in terms of its budget. There is no compelling reason to remove this benefit other than through continued negotiations.

Recommendation.

No change.

Date of Report: October 22, 2007


Mitchell B. Goldberg, Fact Finder