

Factfinding Report and Recommendations

STATE EMPLOYMENT  
RELATIONS BOARD

in the matter of Factfinding between

2008 OCT 20 A 9: 00

Teamsters Local 413

and

the City of Powell, Ohio

SERB Case No.: 08-MED-03-0245

Marcus Hart Sandver, PhD

Factfinder

Mediation Date: September 9, 2008

Factfinding Hearing: September 30, 2008

Recommendation Issued: October 17, 2008

Representing the Employer:

Mr. Benjamin Albrecht  
Attorney at Law  
Downes, Hurst & Fishel, LLP  
400 S. Fifth Street  
Suite 200  
Columbus, OH 43215-5430

Representing the Union:

Mr. Sorrell Logothetis  
Attorney at Law  
Cook, Portune, & Logothetis, LPA  
22 West Ninth Street  
Cincinnati, OH 45202

I. Background.

This case involves the negotiation of a successor agreement between the representative of Teamsters Local 413 (the Union) and representatives of the City of Powell (the Employer). The previous CBA expired on June 30, 2008. The parties met on several occasions beginning in April and continuing during the summer months of 2008. Although many issues were settled during these negotiations, not all items in dispute were resolved. Marcus Hart Sandver was chosen by mutual agreement of the parties as the Factfinder in the dispute. On September 9, 2008, the Factfinder conducted a full day of mediation. Although the mediation session was fruitful, not all issues in dispute were resolved. A Factfinding hearing directed at addressing the unresolved issues was scheduled for September 30, 2008.

II. The Hearing

The Factfinding hearing was convened at 10:00AM in the conference room of the City of Powell Police Department. The parties were notified by the Factfinder that the hearing would be conducted, and the report would be developed, in accordance with the rules for Factfinding as found in O.R.C. 4117 et. al. and administrative rules developed by the State Employment Relations Board.

In attendance at the hearing were:

For the City:

- |    |                   |                                  |
|----|-------------------|----------------------------------|
| 1. | Benjamin Albrecht | Attorney/Chief Spokesperson      |
| 2. | Debra Miller      | Finance Director, City of Powell |
| 3. | Stephen Hrytzik   | Powell Police Department         |
| 4. | Steve Lutz        | Powell City Manager              |

5. Gary Vest Chief, Powell Police Department

In attendance for the Union were:

1. Sorrell Logothetis Attorney/Chief Spokesperson
2. Bud Raver Vice President, Teamsters Local 413
3. Ryan Pentz Police Officer, Powell Police Department
4. Fred Hart Police Officer, Powell Police Department

Both parties submitted multi-tabbed loose leaf notebooks as evidence in support of their positions. These notebooks were marked as City Exhibit # 1 and Union Exhibit # 1 respectively. The parties waived opening statements. The hearing moved to a discussion of the unresolved issues.

### III. The Issues.

#### A. Issues One – Wages.

##### 1. Union Position.

The Union position on this issue is for a 4 percent increase in the wage schedule every year for the 3 year duration of the agreement. In addition to the wage schedule increase, the Union is also proposing a 1 percent per year pension pick-up to be discussed as a separate issue.

In support of its position, the Union developed a number of specific arguments.

- a. The economic vitality of the City of Powell.

The Union provided data obtained from a Google search which shows that Powell has an estimated median family income of \$130,600 for the year 2005. Comparable data for the entire State of Ohio was a median household income of \$43,493. The Union cites data from a Columbus Dispatch article (July 10, 2008) which showed that for the period July 1, 2006 to July 1, 2007 that Powell was the top population percentage gainer for all cities in Ohio.

- b. Past History of Wage Increases.

The most recent collective bargaining agreement provided for a 4 percent wage each year for 3 years plus a 1 percent pension pick-up. For the year 2008, the City granted merit increases to its non-union employees that averaged out to a 4 percent wage raise.

- c. The wage raise is warranted by the comparables.

The Union cites comparison wage data for cities that surround Columbus geographically and also cites wage comparison data from selected cities statewide that are similar to Powell in size and possess similarities of municipal character.

The geographic comparison group consists of 13 cities that surround Columbus. Of all the 13 comparison cities, Powell stands as 7<sup>th</sup> lowest in entry level pay. The 13 city average is \$42,217, for Powell the entry wage is \$41,828. For top level wages, the 13 city

average is \$64,777; for Powell the top level pay is \$57,304 making Powell the lowest of 13 comparison cities in top level pay.

For the 8 statewide comparison cities, the average entry level wage is \$47,534; in Powell the \$41,828 entry level wage places it at 8<sup>th</sup> of the 8 cities. The top level salary for the 8 statewide comparison cities is \$61,704; in Powell the top rate is \$57,304 making Powell the 7<sup>th</sup> lowest of the 8 cities for the top level salary.

- d. The performance of the Police force justifies the Union's proposed increase.

The Union points out that in February 2008 the City of Powell Police Department was notified by the Commission on Accreditation for Law Enforcement Agencies (CALEA) that it had been selected as a "Flagship Agency". This designation recognizes the excellence of an accredited law enforcement agency.

In a recent City of Powell Community Attitude Survey (Summer 2008), the Police Protection Services received a satisfaction rating of 96% from the citizens responding to the survey. In the conclusion to the report, it is noted that the citizens of Powell were highly satisfied with Powell's services and amenities, especially police protection.

- e. Cost of Living increases are deflating the value of the paycheck.

Recent Bureau of Labor Statistics data (September 16, 2008) showed that the average rate of inflation for the period ending August 2008 was 5.9% for U.S. Urban areas. The rate for Midwestern Cities was 5.9%. The rate for small Midwestern Cities was 6.4%.

2. Employer Position.

The Employer position on this issue is to offer an 11 percent increase over the 3 years of the agreement with no year exceeding a 4 percent increase in total and for the 11 percent to include both wage increases and pension pick-up. Thus, if the Union opted for a 4 percent wage raise in one year of the agreement there would no increase in the pension pick-up. If the Union opted for a 2 percent pension pick-up in one year of the agreement, wages could only raise 2 percent.

In support of its position, the City objects to the inclusion of certain cities in the Union's geographic comparables as being much bigger than Powell and with much more well developed collective bargaining relationships (e.g. Bexley, Dublin, Reynoldsburg, Upper Arlington, Westerville and Worthington). The City points out that its wage proposal exceeds the statewide average for Columbus area cities and for law enforcement agencies statewide.

The City emphasizes that the police officers in the City of Powell enjoy a "quality of life" that is favorable. The City points out that during

the term of the prior CBA, no bargaining unit employees left the City of Powell to work for other law enforcement agencies in the area.

3. Discussion.

It is always interesting to see how cities compare themselves to each other and to discover which cities feel they are comparable to. In the city's brief they object to being compared to certain cities in the Columbus geographic region because they are substantially larger than Powell in population (e.g. Bexley, Dublin, Reynoldsburg, Upper Arlington, Westerville and Worthington). But yet when the City compiles its comparability wage data for Franklin County and contiguous counties it leaves these cities in. The Union objects to the city including in its list of comparables cities that have more of an agricultural or rural base to their economies such as Circleville, Lancaster, Marysville, London, Newark and Pataskala on the grounds that cities are not really comparable to a rapidly growing city in southern Delaware County such as Powell.

Looking at the City's list of comparables (21) we find that 13 are below Powell in entry level starting salary and 7 are above. If we look at these same data for the top step officers, we find that 8 are below Powell and 12 are above. Using the Union's data of 13 cities, 5 are below Powell at the starting level and 7 are above. At the top step, none are below Powell, all are above.

No matter which set of comparables you use to make your calculations the officers in the city of Powell are not grossly overpaid or

underpaid with the possible exception of these at the top step. The city makes no issue of ability to pay and does not refute the Union's assertion that the non-union employees were given an average 4 percent merit raise last year. The Employer also does not refute the Union's BLS data which indicates that the CPI increase for 2008 will be above 5 percent and perhaps higher.

4. Recommendation.

That the officers of the Powell Police Department shall receive a wage raise of

4 percent effective the first pay retroactive to and including  
July 1, 2008.

4 percent effective July 1, 2009.

4 percent effective July 1, 2010.

B. Issues Two – Health Insurance.

1. City Position.

The City has proposed two changes to the current health insurance plan.

The first change would be to amend Article 23.1 to take out the second sentence of the Article. This sentence reads “the level of insurance benefits provided to employees shall remain the same or substantially similar to the benefits in effect as of the effective date of this agreement.” In its place the City would substitute language that states “bargaining unit

employees shall receive the same insurance plan and level of benefits as all City non-bargaining, general fund employees”.

The second change would remove the premium contribution caps paid by bargaining unit employees. The caps are currently \$30 per month for single coverage and \$70 per month for family coverage. The Employer would propose that the premium contribution be changed to a percentage contribution. The premium contribution would be 7.5% upon the effective date of the agreement, 8 percent on July 1, 2009 and 8.5 percent on July 1, 2010.

The city makes 5 arguments in defense of its proposed changes to Article 23. First, increasing the contribution amount by a half percent each year will hopefully require the bargaining unit to take an interest and/or ownership of the plan and work with the City to consider other insurance plans/options which make help reduce costs.

Second, the City makes the point that from an internal equity or internal comparability perspective, the City’s proposed changes would provide the police officers with the same health insurance plan as all other City non-bargaining unit general fund employers. Further, the members of the AFSCME bargaining unit pay \$100 a month for family coverage and \$40 a month for single coverage.

Third, the City emphasizes that its proposed change will provide financial benefit to the City and will help shelter it somewhat from rising health care costs. The health insurance costs paid by the City over the past

3 years have increased 37.80 percent for single coverage and 43.64 percent for family coverage. The share of the premium paid by the officers has not changed since 2002. Thus, the rising cost of health insurance over the past 6 years has been borne entirely by the City.

The fourth argument the City makes concerns the proposed language change in the second sentence of Article 23.1. The City representative emphasizes that the “same or similar” language takes away the flexibility the employer has in “shopping around” for alternative sources of health insurance for its police officers.

The final point the employer’s representative makes on this issue involves SERB comparability data for 30 other police departments. By the city’s calculations in 21 of the 30 comparable cities, the police pay more for health insurance than they do in Powell.

2. Union Position.

The Union position on this issue is to maintain current contract language regarding both the “same or similar” language and the premium share. In support of this position, the Union argues that it is already paying more per month than the non-union employees; the non-union employees currently pay \$37.50 per month for family coverage and \$11.00 for single coverage. The non-union employees began paying a share of the premium in 2006; the police have been paying the current premium share since 2002. The Union maintains that the City can show no compelling reason to raise the premium share for the police.

As regards the “same or similar” language the Union maintains that this language protects the benefit levels provided to the police officers by the City. The Union representative stated his view that without this language the Union would be powerless to bargain over arbitrary changes in benefits provided to the police.

3. Discussion.

In his brief, Mr. Logothetis stated his opinion that the health insurance issue presented the major stumbling block to settlement in these negotiations. As in many negotiations, health insurance is a central source of disagreement between the police and the City of Powell. Both sides have well thought out and deeply held convictions regarding this matter.

On the one hand there is the money involved; to the city this is a large and ever increasing component of labor costs. To the Union, an increase in health insurance premiums represents a cut in disposable income to the members and their families. The comparability data do not help us make a clear conclusion about whether the premium share for the Police in Powell is too much or too little. For example, in Dublin the police make no contribution to premiums the City pays the entire amount. In Springboro the employees pay 90% of the premium and the employer pays 10%. In many cities; Bexley, Delaware, Gahanna, Grandview Heights, the premium share is 8% but the data don't tell us what the total premium is. In other words, 8% of what? Without that crucial bit of

information, we don't know what the monthly contribution to premium really is.

The issue of "same or similar" language offers even a greater challenge than the monetary issue. The Union representative stated that the "same or similar" language is common in police labor agreements and provides essential protection to benefits. The employer representative argues that this language severely limits the ability of the City to change providers or to change the mix of benefits from anything already provided. We do know that this language has been in the labor agreement since the police began bargaining in Powell in 2002. Without something more substantial or clear and convincing on the City's part, I can't recommend in Factfinding a change in the health provision so sweeping as that proposed by the employer.

4. Recommendation.

That no change be made in this section of the labor agreement.

C. Issue Three – Longevity Pay.

1. Union Position.

The Union position on this issue is for a longevity payment to be made to officers of \$500 per year who have worked for the City for five years and for a payment of \$1,000 per year for those officers who have worked for the City 10 years or longer. The purpose of the longevity pay is to recognize and reward officers with a relatively long service record

and to reduce turnover. In support of its position, the Union provides data for 21 Ohio cities; some in the local geographic area and some statewide. The SERB data show that all cities in the sample (except Vandalia) provide some longevity pay for their police officers.

2. City Position.

The City does not want to include a longevity provision in the labor agreement and the Police Department in Powell. The City estimates that a longevity pay plan such as proposed by the Union would amount to a 0.9 percent wage raise. The City points out that it has already made several important concessions with financial implications to the Union in these negotiations such as increasing the Field Training Officer supplement, Officer in Charge application, Detective Uniform Clothing Allowance, sick leave donation, and doubling the comp time bank. The City feels that it is necessary to draw the line on the expansion of financial benefits for the police officers at this point.

3. Discussion.

In looking over the SERB clearing house data, Powell does stand out as one of the very few departments either in the statewide sample or the geographic sample not to provide some type of longevity pay for Police Officers. I realize that this is a relatively new collective bargaining between the parties and that benefits such as this one get added gradually. I think that it is time now for Powell to add this benefit at a modest level and work toward building it in the future as the collective bargaining

relationship matures; and as the bargaining unit ages. The longevity benefit will reward the officers who have chosen to build their careers in Powell.

4. Recommendation.

Section 26.3 – Longevity Compensation.

Employees shall receive Longevity Compensation based upon completed years of service as follows:

- After five (5) years of continuous service = \$500/year.

The Longevity Compensation shall be paid in accordance with the above schedule in two separate lump sum payments during the first pay periods of June and December of each year. Payment shall be based upon continuous years of service as an officer in the Powell Police Department as of the first day of the first pay period in July.

Upon termination of service for any reason, members who are eligible for longevity pay under this section (or in the event of death, the surviving spouse or estate) shall be paid, as part of their termination pay. The final partial year of Longevity Compensation, prorated to the number of months completed during said partial year since the employees last payment date.

D. Issue Four – Comp. Time.

This issue was agreed upon during the hearing.

E. Issue Five – Holidays.

1. Union Position.

Currently Police Officers in Powell are paid for 8 holidays. The Union is proposing one additional holiday; either Martin Luther King Day or the day after Thanksgiving. In support of this request, the Union notes

that of the 20 comparison cities it has used as comparables, 16 of these have more than 8 holidays, 12 have eight holidays and 2 have seven holidays. If personal days are included in the calculation, Powell Officers receive 12 days of holiday plus personal days. Compared to the comparability group, in 11 of the comparison cities Police Officers receive more than 12 total days (holidays and personal days), 9 of the group received 12 or fewer.

2. City Position.

Police Officers in Powell receive the same number of holidays plus personal days as all other employees of the City. In the most recent negotiations the Union negotiated to decrease the number of holidays in exchange for more personal days. The comparability data does not suggest that the City is either too high or too low in the number of holidays it provides its police officers.

3. Discussion.

I do not see any data, nor have I heard any arguments that persuade me that the police officers of the City of Powell need an additional holiday. Due to the fact that Police work does not stop on holidays (in fact it may increase on some) and due to the fact that those officers who work those holidays receive premium pay, increasing the number of holidays will have a negative impact on the Department's budget.

4. Recommendation.

That this section of the CBA remains unchanged.

F. Issue Six – Pension Pick-Up.

1. Union Position.

Under the provisions of the Police and Fire Pension Fund of Ohio, both parties (employer and employee) make an equal contribution each month (10% of earnings) to cover the financial needs of the fund. It is possible, and happens frequently, that the Union negotiates with the employer an agreement that the employer will contribute more than its legally required amount and the employees pay correspondingly less. This is known as pension pick-up. In the previous CBA, the Union negotiated with the City to pick-up 1/10 of the employee's monthly pension contribution.

In these negotiations, the Union is asking the City to pick-up an additional 1 percent of the employee's contribution each year of the agreement such that by the end of the agreement, the employer will pay 14 percent of police payroll into the fund and the employees will pay 6 percent. The Union's comparability data show that 6 of the 20 comparison cities make a pension pick-up. These cities are:

1. Delaware City – 10%
2. Grandview Heights – 6.45%
3. Hilliard – 9.5%
4. Pepper Pike – 2%
5. Reynoldsburg – 5%

6. Whitehall – 6%

2. Employer Position.

The employer position on this issue is that an increase in pension pick-up of 1 percent is equivalent to a 1 percent wage raise. In its wage proposal to the Union, the Employer position was that the wage offer was 11 percent over 3 years and it could be taken as an 8 percent wage raise and a 3 percent increase in the pension pick-up if the Union so desired. The Employer does not seem to have any philosophical objection to the concept of pension pick-up.

3. Discussion.

In the wage discussion, I recommend a 12 percent wage raise; 4 percent per year for 3 years. I think there is merit to the pension pick-up idea and see it frequently in police and fire agreements in Ohio. The issue, in Powell, and in every other public sector agreement is that there are financial limitations which means that we can't do everything at once. I think that the 1% pension pick-up was a good idea in 2005 and a more gradual move towards having the employer pay a larger share of pension contribution than required by state law. It makes sense to me to amend Section 26.2 (pension pick-up) of the agreement such that effective July 1, 2008 the employer will pick-up another one percent of the employees pension contribution such that the employer will now pay 2 percent of the pension contribution. Three years from now the parties may want to revisit this topic.

4. Recommendation.

That Section 26.2 (pension pick-up) of the agreement be amended to provide for the City to contribute 2 percent of the employee's salary to the Ohio Police and Fire Pension Fund.

G. Issue Seven – Shift Differential.

1. Union Position.

Under the current agreement, officers receive a shift differential of \$0.75 per hour if they are assigned to a shift in which at least one half or more of their regularly scheduled hours occurs between the hours of 2PM and 6AM. The Union proposal on this issue is to provide shift differential for all hours worked between 2PM and 6AM. The reason for this is that officers "held over" after 2PM on the day shift do not receive shift differential because they did not work half of their regularly scheduled hours between 2PM and 6AM.

2. City Proposal.

The City proposal would be that the \$0.75 shift differential be paid for all hours between 6PM and 6AM. The City proposal is that shift differential should be paid for the inconvenience of working hours that are outside the normal working day.

3. Discussion.

In find that I agree with the City position on this issue. If an officer is held over for a few hours beyond his or her normal shift, this

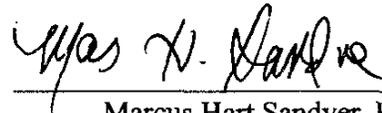
should be viewed as overtime. The shift differential is meant to compensate people for the inconvenience of working hours when people would normally be sleeping, eating or relaxing with friends and family.

4. Recommendation.

That Article 25.3 (Shift Differential) be amended to read:  
Employees shall receive a shift differential of \$0.75/hour for all hours worked between 6PM and 6AM.

IV. Certification.

This Factfinding Report and Recommendations was prepared by me based upon evidence, testimony and pre-hearing briefs presented to me on or before September 30, 2008. It is the intention of this report that all of the tentatively agreed to items negotiated between the parties before and during the hearing be included in this report.

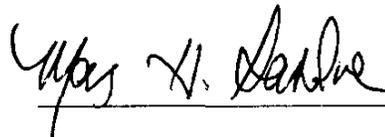


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Marcus Hart Sandver, Ph.D.  
Factfinder

V. Proof of Service.

This Factfinding Report and Recommendations was sent by regular U.S. Mail to Mr. Sorrell Logothetis of 22 West Ninth Street, Cincinnati, Ohio 45202 and to Mr. Benjamin Albrecht of 400 South Fifth Street, Suite 200, Columbus, Ohio 43215-5430 on Friday, October 17, 2008.



Marcus Hart Sandver, Ph.D.  
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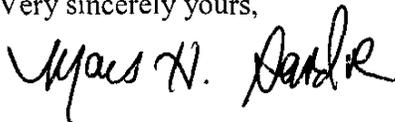
October 17, 2008

Mr. Ed Taylor  
Bureau of Mediation  
S.E.R.B.  
65 E. State Street  
Columbus, Ohio 43215

Dear Mr. Taylor:

Enclosed you will find my Factfinding Report and Recommendations involving Teamsters Local 413 and the City of Powell, SERB Case No. 08-MED-03-0245. I have also enclosed an invoice for my services.

Very sincerely yours,



Marcus Hart Sandver, PhD

Enclosure