

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2009 JAN 12 A 10:12

In the Matter of the Fact-Finding Between

The Fraternal Order of Police,
Ohio Labor Council, Inc.

Employee Organization

Case Nos. 08-MED-08-0796

and

The City of Kettering, Ohio
Division of Police,

Fact-Finder: Jerry B. Sellman
Date of Report: January 9, 2009

The Employer

FACT FINDERS REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

*Brenda Goheen - Staff Representative for the Fraternal Order of Police, Ohio Labor
Council, Inc.*

FOR THE EMPLOYER:

Daniel G. Rosenthal, Esq. – Attorney with Denlinger, Rosenthal & Greenberg, representing the
City of Kettering, Ohio

I. INTRODUCTION

This matter concerns a fact-finding proceeding between the City of Kettering, Ohio (hereinafter referred to as the “Employer” or the “City”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on December 15, 2008 at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. Both parties accepted the offer to mediate and in good faith tried to resolve the outstanding issues, but they were ultimately unable to resolve the outstanding issues and the Fact-finding hearing was commenced.

The only open issues identified and discussed by both parties included:

- Article 7 - Wages – Police Command Officers (Sergeants and Lieutenants)
- Article 7 – Education pay (new)
- Article 8 - Wages – Vacations

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-Finder’s consideration.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issues before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargaining agreements, if any, between the parties;
- (2) Comparison 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, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, 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;
- (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 public service or in private employment.

II. BACKGROUND

The FOP represents the Sergeants and Lieutenants within the Kettering, Ohio Police Department.

The City of Kettering, Ohio is a municipality located five miles south of Dayton, Ohio in Southwest, Ohio. It has a population of 57,502, according to the 2000 census. The City employs approximately 400 employees. It has a bargaining relationship with the Fraternal Order of Police, Ohio Labor Council, Inc. which represents sixteen (16) employees, of which ten (10) are Sergeants and six (6) are Lieutenants. The non-unit command officers are two (2) Captains and the Chief.

The economic environment for the City remains in good condition due primarily to an increase in the City's income tax rate from 1.75% to 2.25% effective January 1, 2007. The

pursuit of the income tax increase was necessitated as a result of continued prior year decreases in the City's General Fund balance. This levy, promoted as needed for "Safety and Stability in the City," allowed the City to fill some previously "held" positions and to continue to hire public safety personnel in both the Fire and Police Departments. The City has been prudent in the management of the funds received from the levy and there is a projected \$30 million dollar unencumbered surplus at the end of 2008.

Notwithstanding the success of the levy and the outstanding management of the City, the unemployment in the City and in the County trended as did the rest of the country in 2008. Unemployment levels by the third quarter 2008 were at record highs. As of October 2008, the City experienced an unemployment rate of 6.8% and the County a rate of 8%. These factors were incorporated in the arguments of the Union and the City.

The current Collective Bargaining Agreement expired on December 21, 2008 and Extension Agreements were executed by the parties to allow for Fact-finding on unresolved issues. The parties tentatively agreed to language in all but three (3) negotiated issues in the new proposed Collective Bargaining Agreement prior to the Fact-finding Hearing.

III. UNRESOLVED ISSUES

Preface

The City is proposing to increase the wages of its Command Officers (Sergeants and Lieutenants) under Article 7, but does not agree with the Union in regard to the amount of wage increases. The Union seeks to increase the level of command officer wages by four percent (4%) for each year over the three year life of the collective bargaining agreement in order to maintain their high level pay in their geographic area and in other comparable areas. The Sergeants and

Lieutenants were instrumental in saving the City money in adopting the City's proposed health insurance plan and in supporting a new levy to pay safety forces in the city. They should reap the benefits of those efforts. The City proposes to increase the wages by three percent (3%) for each year over the three year life of the collective bargaining agreement. While the City is in sound financial condition, current economic conditions merit a prudent increase.

The Union also proposes a new educational pay provision, which the City rejects because it further increases the wages of the bargaining unit employees unnecessarily. The 1.5% (for Associate Degree) to 3% (for Bachelor's Degree) increase to the base wage rate would effectively provide up to a 7% increase in pay to the Sergeants and Lieutenants for each year of the proposed three year contract.¹

The Union proposes a change in the accrual rate for vacations of senior employees. Currently employees with twenty-five years of service receive 25 Vacation days. The Union proposes to reduce the entitlement period to twenty (20) years. Currently, employees with twenty (20) years of service receive 24 vacation days. The City rejects the proposal for this would provide the Command Officers with more vacation than any other employee in the City and the City is already generous in the amount of time off it grants to its Command Officers each year.

1. ARTICLE 7: WAGES

The Union's Position

The FOP is requesting a three year contract with an increase of 4% for each year of the contract, effective at the beginning of a pay period closest to the anniversary of the 2008 pay increase.

¹ Eleven of the sixteen bargaining unit members would receive the additional 3%, four would receive an additional 1.5% and one would receive no additional educational pay.

The Sergeants and Lieutenants are paid well, but their counterparts in the same or smaller communities contiguous to another large metropolitan area are paid at a higher rate. Sergeants in Bexley, Westerville and Dublin, Ohio (suburbs of Columbus, Ohio) are paid annual wages ranging from \$78,702 to \$80,974. Lieutenants in Upper Arlington, Reynoldsburg, Westerville, Whitehall and Gahanna, Ohio (communities which are also suburbs of Columbus, Ohio) are paid annual wages ranging from \$80,932 to \$90,729. In the local area, sergeants in Centerville, Ohio are paid \$36.08 per hour (\$75,046) and lieutenants are paid \$41.21 per hour (\$85,717). While Kettering's Command Officers are well paid, they are not the highest paid in the state.

The Sergeants and Lieutenants were instrumental in saving the City money. They were the first unit to adopt the City's proposed health insurance plan. This plan led to a savings of around \$500,000 for the City, not only because the unit agreed to an increase of their contribution to the insurance premium to 17%, but they also led the way for the other unions' acceptance of the City's proposal on health care.

While the Sergeants and Lieutenants work a lot of overtime, which does provide for additional compensation, they should not be penalized because of this factor. There is no guarantee that overtime will always be present at the same level and therefore, overtime should not be counted in their wages for the purpose of determining whether they merit a 4% increase in pay. The City could cease the programs that require overtime at any time or hire additional staff to cover the special event programs that require overtime. It should be noted that most of the overtime is a result of programs and not covering for other staff. The City requests that Officers work the overtime to provide important services to the City; they are dedicated staff and are willing to provide those services at some loss to home life.

The Sergeants and Lieutenants have always been at the highest-paid levels in their

geographic area and in other comparable areas. The City is well able to afford to pay those wages and it is those wages that attracted the high-caliber officers that they employ. A 4% increase will maintain them at those levels. The City had an unrestricted balance of \$36.3 million at the end of 2007 thanks to the passage of an earnings tax. It is estimated to be around \$34 million at the end of 2008. The City can pay the increased wages and maintain continued stability.

The City's Position

The City proposes a wage adjustment of three (3%) for each year of the agreement. The previous contract provided for three 3% increases, as do the four other City contracts currently in effect. The unrepresented City employees will receive a 3% increase for 2009.

The Sergeants and Lieutenants are among the highest-paid employees in the City at a maximum base pay rate of \$36.66 per hour (\$76,253) and \$39.41 per hour (\$81,973), respectively. Taking into consideration overtime pay, the average gross wage for Sergeants was \$90,683 and the average for the Lieutenants was \$94,112 in 2007. One Sergeant's gross earnings were more than \$3,000 higher than the Chiefs. Four (4) Lieutenants and three (3) Sergeants made more than their supervisors, the Police Captains.

Based on geographical proximity and population size of all cities within a ten (10) mile radius of Kettering with a population of 5,000 or more, the Sergeants and Lieutenants are among the highest-compensated police command officers locally and statewide. Cities in the local Dayton area (Montgomery County) were compared.² The Sergeants average maximum base salary in this local area survey was \$68,335. The lowest paid was \$53,000 in Franklin, Ohio and Kettering Sergeants were the highest paid. The Lieutenants average maximum base salary in this

² Beaver Creek, Bellbrook, Centerville, Dayton, Englewood, Fairborn, Franklin, Huber Heights, Miamisburg, Moraine, Oakwood, Riverside, Springboro, Trotwood, Vandalia, West Carrollton and Xenia.

local survey area was \$78,676. The lowest paid was \$56,472 in Franklin, Ohio and Centerville Lieutenants were the highest paid at \$85, 717.³ Kettering Lieutenants would be the highest paid, if overtime were considered.

The City believes a 4% increase per year would have a significant adverse affect on the City because city-wide compensation has an interlocking structure. The Union's proposed wage increases, as well as the proposed educational incentive (discussed below), for Police Sergeants and Lieutenants would exacerbate that problem. The real compression problem is not between patrol officers and sergeants and lieutenants, but between hourly compensated sergeants and lieutenants and salaried non-overtime compensated Captains and the Chief.

Discussion, Findings and Recommendation

In assessing what is a fair recommendation on wages for employees in this bargaining unit, the Fact-finder considered the wages of public employees doing comparable work, the level of any wage increases over the past several years given to the bargaining unit, and the Employer's ability to pay, among other factors. There is no dispute that the Kettering Command Officers are among the highest paid, if not under some comparables the highest paid Sergeants and Lieutenants in the State of Ohio. Data supports the fact that the Command Officers are also among the highest paid employees in the city, excluding administrative positions. Both the Sergeants and Lieutenants are paid well above the SERB 2008 Benchmark Report.

The City presented a list of comparable local cities within a ten mile radius of the city and a list of comparable statewide cities with what they considered comparable populations. Under the City's comparables of local and state cities, the Sergeants were the highest paid. The

³ The City points out that the Centerville Lieutenants cannot earn overtime and they report to the Chief, making them more of an assistant Chief than a comparable lieutenant rank. The Union argued in its closing that a rank of

Union chose three suburb cities around Columbus in Franklin County to demonstrate that the Kettering Sergeants were the lowest paid in those comparable cities.⁴ On a local basis the Sergeants not only received the highest pay, they were paid more than \$8,000 more than the average wage paid in the area.

Under the City's comparables of local and state cities, there were four cities that paid their lieutenants more than Kettering. The City pointed out that those cities do not pay any overtime and the Kettering Lieutenants do earn overtime. With the overtime factored in, the Kettering Lieutenants would be paid more than any of them. The Union chose six suburb cities around Columbus in Franklin County to demonstrate that the Kettering Lieutenants were the lowest paid in all of those comparable cities.

The Fact-Finder questions the comparability of the Columbus suburban cities chosen compared to Dayton suburban cities primarily because of different socio-economic conditions existing in each. Nonetheless, even assuming those cities are "comparable," a 3.5% increase (one year alone) will move the Sergeants and Lieutenants to the top pay level of all cities compared except a few. The Union made a compelling argument that overtime should not be included in calculating a comparable wage and the Fact-Finder agrees with that position. While overtime has been plentiful in the past, there is no guarantee it will be available in the future. If the overtime were considered, Kettering Command Officers would be the highest paid under any comparable.

The Fact-Finder lauds the Command Officers for their leadership in the acceptance of a new health insurance package and their leadership in a successful levy campaign to bring increased revenues to the city. If these events had not taken place, consideration of any wage

Captain was created in 2008 and the lieutenant's rank is now comparable.

⁴ The Fact-Finder notes that the comparable cities around Columbus chosen by the Union for Sergeants were

increases for anyone in the city would probably be moot. These factors alone are not, however, a valid basis for increasing their wage base. While the levy was for the purpose of ensuring a safe and stable community, wages must nonetheless be comparable and affordable. The Fact-Finder believes it is imperative that the Command Officers be paid a fair wage for their excellent work as compared to other communities in the State, but it would not be in the best interest and welfare of the city to provide the wage increases sought by the Union.

In these economic precarious times, the City must be prudent in determining wage increases. With unemployment up, it is predictable that income from resident's income revenues will trend down. With revenue from businesses declining due to a foreseeable weak economy, a city will need to spend more development dollars to attract business that will employ their residents and generate tax dollars. The data supports an increase for the Command Officers at a rate of 3.5% in the first year to keep them at the top of the pay scale. An increase of 3% per year for the following two years will keep them at the top. With the anticipated increase of wages of all employees at the 3% range, increasing the Command Officers by another percentage point in what could be declining revenues from unemployment (the levy produces increased income only if increased wages are paid) would not be prudent. With this proposed increase, the Command Officers will continue to be one of the highest paid groups in the City, the highest among Command Officers in the local area and the highest in the State.

RECOMMENDATION

It is recommended that ARTICLE 7, WAGES be adjusted by 3.5% in 2009; an

different than those they chose for a comparison of Lieutenants.

additional 3% in 2010; and an additional 3% in 2011 payable on a date at the beginning of a pay period closest to the anniversary of the 2008 pay increase. The remainder of the language in Article 7 should remain the same.

2. ARTICLE 7, WAGES – EDUCATION PAY (NEW PROPOSED PROVISION)

The Union's Position

The Union is requesting a new provision that would include an education package providing a 1.5% increase to the base pay rate to every employee who attains an Associate Degree, and a 3% increase to the base pay rate to every employee who attains a Bachelor's Degree. The City does not propose any education pay.

The Patrol unit currently receives educational pay for Associates and Baccalaureate degrees and this recognition of educational achievements should be extended to the Lieutenants and Sergeants to create parity among employees. If education deserves additional pay at the patrol level, it should not be sacrificed because of a promotion to sergeant or lieutenant.

Currently there exists an eleven percent (11%) gap between the patrol and sergeant's pay. The standard is generally considered to be closer to a fifteen percent (15%) gap between the two units. Awarding educational pay would not skew the pay scale out of the existing standards.

The City's Position

The City opposes the inclusion of a new provision concerning educational pay. For the last several negotiations, the Union has tried to increase the difference between their pay and the patrol officers' pay: in 2002 requesting a "differential," in 2005 requesting additional "Command

Officer Pay," and now requesting additional "Education Pay."

The Union argues that the patrol officers receive extra pay for Associates and Baccalaureate degrees, and so should they. However, the sergeants' pay scale is already more than 11% higher than the patrol officers' pay scale for those with a Baccalaureate degree, and the sergeants are already at the top of relevant surveys, so this is not warranted. At the time the educational pay was given to the patrol, the wages of the Command Officers were increased by a *like amount without any consideration for their educational level. Educational incentive for sergeants and lieutenants would be grounds to provide the same incentive for Captains, one of whom has a master's degree and the other no degree. This is problematic in that one Captain would move further behind Lieutenants in compensation and the other would maintain that relationship, but move closer to the Chief. If done for Police supervisors, the same should be done with Fire Supervisors and Captains, who are more equivalent to Police Lieutenants, and then the same compression comparison would exist for Fire Captains to Fire Assistant Chiefs and the Fire Chief. Furthermore, providing educational incentive for police supervisors sets a standard that would provide argument for another eighty (80) or so professional and supervisory personnel throughout the city to receive the same type of additional compensation.*

The Union's proposal ignores its impact on the City. They imply that the City ought to bump everyone else's salary up to accommodate the desires of the sixteen (16) supervisors represented by this bargaining unit. This would mean a massive overhaul, not just within the police department, but throughout the entire City structure. Department directors' pay would have to be adjusted to a level not acceptable to citizens or elected officials. Meeting the demands of the Union would lead to unreasonable expectations in pay rates throughout the City. Kettering

has approximately 400 additional full-time employees and compensation decisions must be made with all of them in mind.

Discussion, Findings and Recommendation

The Union makes a compelling argument that educational pay should be included in the wage package in order to encourage educational advancement. However, it does appear from the testimony provided at the hearing that wages of the Sergeants and Lieutenants were increased in the past to accommodate them for the patrol officers increased education pay percentages. This comprises part of the pay differential with the patrol officers. At this time, most of the Command Officers already have an advanced degree and the result of the inclusion of an educational provision in the agreement will result in a wage package that will increase the officers pay by an additional 3% over any basic wage increase. If such were the case, the economic benefit to these officers would place them far above any counterpart in the State of Ohio. It does not appear that the lack of increased pay for advance degrees has prohibited the city from attracting command officers and its omission would not adversely affect the welfare of the city.

RECOMMENDATION

It is recommended that ARTICLE 7, WAGES shall not include an Educational Pay Provision. The remainder of the language in Article 34 should remain the same.

3. ARTICLE 9 - VACATIONS

The Union's Position

The Union is requesting a change in the accrual rate for vacation for senior employees.

Currently, employees with over twenty (20) and up to twenty-five (25) years of employment with the City accrue 2.08 days of vacation per month. The Union proposes to reduce the length of service to attain the 2.08 days of vacation per month to employees with over twenty (20) years of service. It argues that since individuals are retiring at twenty-five years of service, they should be able to use vacation days earlier. This is the trend in other comparable communities, such as the City of East Cleveland, the City of Delaware and the City of Cuyahoga Falls.

The City's Position

The City recommends that the current language remain the same. This proposal would provide this unit more vacation than any other City employees. The City of Kettering is very generous in the amount of time off it grants to its command officers each year: 10 holidays, 5 personal days, 15 sick days plus vacation days. Increased paid time off can result in expensive additional coverage at overtime rates. The proposed increase in the command officers' paid time off is not warranted. The Union's proposal should be rejected.

Discussion, Findings and Recommendation

The communities compared to the city by the Union were the Cities of East Cleveland, Cuyahoga Falls and Delaware. The Fact-Finder does not find that these cities set a trend or otherwise demonstrate that the vacation accrual in Kettering is not keeping pace with other comparable cities. The City does appear to offer a vacation package that is fair to the employees and comparable to cities of the same size in Ohio.

RECOMMENDATION

It is recommended that ARTICLE 9, VACATIONS remain the same.

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendation on the outstanding issues presented to him for his consideration. Further, the Fact-Finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

January 9, 2009


JERRY B. SELLMAN, FACT-FINDER

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact Finder's Report was sent by E-mail and First Class Mail on January 9, 2009 to:

Edward E. Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 E. State Street, 12th floor
Columbus, OH 43215
email: eturner@serb.state.oh.us

Brenda Goheen
Staff Representative
Fraternal Order of Police
Ohio Labor Council
222 East Town Street
Columbus, OH 43215
Email: bbbgh@live.com

FOP/OLC
Attn: Tara M. Crawford.
222 E. Town Street
Columbus, Ohio 43215

Daniel G. Rosenthal, Esq.
Denlinger, Rosenthal & Greenberg
425 Walnut Street, Suite 2300
Cincinnati, OH 45202-3918
dgr@drgfirm.com


Jerry B. Sellman

JERRY B. SELLMAN
ARBITRATOR AND ATTORNEY AT LAW

88 EAST BROAD STREET

SUITE 1220

COLUMBUS, OHIO 43215

TELEPHONE (614) 463-1986

FAX (614) 463-1987

sellman@jbsadr.com

STATE EMPLOYMENT
RELATIONS BOARD

2009 JAN 12 A 10:12

January 9, 2009

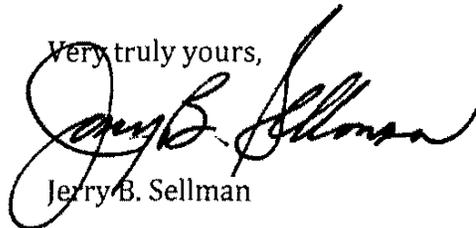
Mr. Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 E. State Street, 12th Floor
Columbus, OH 43215

Re: FOP/OLC, Inc. and City of Kettering, Ohio
08-MED-08-0796

Dear Mr. Turner:

Enclosed herewith is the original of the Findings and Recommendations in the above-captioned case, which was issued as of today's date.

Very truly yours,



Jerry B. Sellman

cc: Ms. Brenda Goheen, FOP
Daniel G. Rosenthal, Esq. City of Kettering, Ohio