

IN THE MATTER

OF

FACTFINDING

BETWEEN

UNIVERSITY OF CINCINNATI

AND

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.
(Non-sworn Security Officers)

STATE EMPLOYMENT
RELATIONS BOARD

2009 SEP 21 A 10:17

Hearings: July 30, and August 13, 2009
SERB Case Nos.: 08-MED-10-1265
Date of Report: September 17, 2009
Issue: Factfinding

Union Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated December 13, 2008, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as Factfinder for the Parties. On July 30, 2009, a hearing was scheduled but only mediation took place. Said mediation was unsuccessful. Following mediation, the Parties submitted the issues to the undersigned at a formal hearing on August 13, 2009. The record was closed at the end of the hearing, and is now ready for a factfinding report.

Factual Background

The Employer is a large university located in Cincinnati, Ohio. The Union represents approximately thirty-five (35) full time Security Officers. This is the first negotiated contract between the Parties and the Union was first certified on April 10, 2008. The University has a police department that the security officers are part of. However, the security officers are different than the sworn police officers because they are not authorized to carry a weapon, and they are not permitted to make arrests. The bargaining unit members wear uniforms similar to the police officers, and in other ways look like police officers, but are not permitted under Ohio law to either carry a weapon or make arrests, and are thus the non-sworn employees in the police department.

The Parties have met numerous times through 2008 and 2009, and have reached agreement on everything except the wages article. The issue is purely economic and the University's position is that it is under a severe financial pressure that prevents any wage increases. The Union's position is that all other employees have received wage increases over the last two (2) years, and these employees have not. The issues will be addressed below in the order that they were presented.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained 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 the public service or in private employment. (emphasis added)

The issues will be addressed giving consideration to all of the required factors.

Background

The University is experiencing financial difficulties. It presented evidence that it is suffering like many other public and private organizations, and is in distress. The General Fund is being cut by eight percent (8%) in fiscal year 2010. The University provided testimony from its Chief Financial Officer, Jim Plummer, and its Police Chief (also the Associate Vice President and Safety Director) Eugene Ferrara, that they are under orders to cut all costs by 8% and that there are no

exceptions to the across-the-board cuts. It agrees that it did give wage and other increases to other bargaining units, including the other police unit represented by the same Union, but contends that those negotiations occurred in a previous Fiscal Year when the financial distress was not so dire. It contends that those comparables are not as material as they might otherwise be, and that this bargaining unit must be treated the same as the other non-represented employees who are receiving a zero percent (0%) wage increase.

The University points out that its position is the same here as it is in other negotiations that have just started. Since the zero percent wage increase is being proposed for everyone, it argues that this bargaining unit should be no different.

The Union underscores the fact that these employees have not received a wage increase since July 2007 – and that raise was only one and one-half percent (1 ½%). During the same time it points out that the Police Officers received 10% in wage increases over three (3) years of their Agreement; they received a shift differential of \$.40/.50 for the second/third shifts; and the employees who received longevity pay continued to receive it. The Union provided a great deal of financial evidence showing that the University has the ability to pay, and it cites the fact that the University did not make an inability to pay argument during negotiations. The Union seeks the same increase in wages that the Police Officers received since they have to work together with those officers. The Union also presented evidence on how little the cost of the Union's proposal would have on the University's budget (a 10% wage increase would only be \$95,373 in a budget of many millions).

The University conceded that many parts of their budget looks like it has plenty of money. However, it provided evidence that restrictions on that money only allow it to be used for specific purposes. As an example, it cited endowments that are charitable gifts that usually have specific uses

attached to them. These are not permitted to be used for wages. The only true source of wages is the general fund, and that is where the University focused its attention.

The University showed that the General Funds sources of revenue are shrinking in dramatic fashion. It cited several facts including: that the State has reduced its contributions to universities; that much of 2009's revenues came from Federal Stimulus money that will not be repeated; and that the next three years will be some of the worst in Ohio's history for finances. It showed that the staff is under orders to cut \$25MM from the budget; that it is expecting cuts of \$90MM from the state appropriations over the next three (3) years (with \$23MM this year alone); and that the University is expecting a second wave of budget cuts in November of this year. The University concedes that it has a \$1B budget, but contends that it is barely in balance now and with the predicted cuts it will be out of balance.

In sum, the University showed that it is cutting budgets; it is laying off employees; and that it must stay lean to survive the next few years. It argued that no one is getting anything other than 0%. It asks that this bargaining unit not be treated differently.

ARTICLE III

Wages

The Union proposes a 5% wage increase in each year of a three (3) year Agreement.

The Union proposes the same language for advancement that is in the Police Officers Agreement.

The Union proposes hazardous duty pay, longevity pay, and a shift differential, as well as compliance with the FLSA for the calculation of the overtime rate of pay.

The University opposes each and cites its financial condition as justification.

Discussion

The difficulty in this case is that the arguments from both Parties are entirely reasonable and persuasive. The undersigned is thus placed in the difficult position of choosing between two (2) reasonable and convincing claims. In the end, the Union's claim that its members have been treated unfairly compare to all other internal comparables carries more weight. While the University has strong, and almost incontrovertible claims regarding its expected financial condition, this problem does not justify a recommendation that this bargaining unit not receive any increase from 2007 forward. The result would be that these already low paid employees would be harmed beyond reason because their timing was off.

It is understood that the University is worried how this outcome might affect negotiations for all other employees. However, since those employees received wage increases for the same period being discussed here, then the argument of those bargaining units as a comparative analysis would be fallacious. The recommendation is not a forward-looking recommendation. Instead it is intended to make up for time in which this bargaining unit has not received anything.

To avoid punishing this bargaining unit compared to all other employees (not just bargaining unit employees) who had better timing with their negotiations, some wage increase must be recommended. However, to recognize the future problems that are arising the recommendations are limited to the current period, and address future wages in a manner that protects the unpredictable nature of the University's finances.

As a result, a recommendation has been made that attempts to give the bargaining unit a fair increase when compared to other bargaining units, and non-represented employees at the University, as well as recognizing, without matching, the wage increases given to the police officers.

RECOMMENDATION

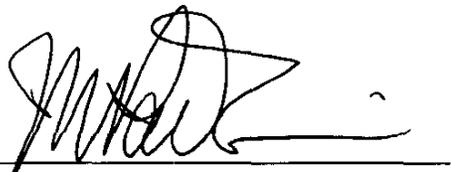
It is recommended that the wages be increased by 2% retroactive to July 2008; and that they be given a 3% wage increase for the current year, retroactive to July 2009 (the precise date should be matched to the last raise given in July 2007). It is recommended that no wage increase be given in the third year of the Agreement, unless the remaining police receive a wage increase. It is recommended that this bargaining unit be given a wage increase in the third year of a contract if and only if the remaining police receive a wage increase, and it should match that amount.

It is recommended that the remaining wage issues match that of the remaining police officers. The record of the undersigned shows that this would result in this bargaining unit receiving a shift differential; FLSA language; some longevity (grandfathering); and additional language on promotions. Hazardous duty pay is not justified and is not recommended. If this record is inaccurate, then it is recommended that the Parties modify these proposals in a manner such that the benefits on this issue match that of the remaining FOP.

Tentative Agreements:

All tentatively agreed to issues are incorporated herein by reference as if included in their entirety. All such tentative agreements are recommended as tentatively agreed to.

September 17, 2009
Cincinnati, Ohio


Michael Paolucci

Paolucci

STATE EMPLOYMENT
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**via fax/e-mail
(Regular Mail — Entire Package)**

RE: UC -and- FOP (non-sworn)
SERB Case No.: 08-MED-10-1265
Issue: Factfinding

To each,

Enclosed please find two (2) copies each of the report and recommendations and one (1) of the Factfinder's Bill. The submission of the enclosed should bring my services for the above-captioned matter to an end and, unless notified to the contrary, I will close my file.

In the meantime, I thank both Parties for giving me the opportunity to serve you in this matter and, if the occasion should so arise, I look forward to working with you in the future.

Cordially yours,

Michael Paolucci

cc: SERB ✓