

Factfinding Report and Recommendations

in the matter of Factfinding between

the City of Xenia

and

Fraternal Order of Police Ohio Labor Council, Inc.

STATE EMPLOYMENT
RELATIONS BOARD

2010 JAN -8 A 11: 55

Marcus Hart Sandver, PhD

Factfinder

SERB Case No.: 09-MED-03-0214

Hearing Date: December 4, 2009

Report Issued: January 8, 2010

Representing the City:

William R. Groves
Martin, Brown, Hull & Hoppe, P.L.L.
P.O. Box 1488
Springfield, Ohio 45501

and

Jacqueline Potter
Human Resources Director
101 N. Detroit Street
Xenia, Ohio 45385

Representing the FOP:

Mr. Ross Rader
Staff Representative
FOP/Ohio Labor Council, Inc.
222 East Town Street
Columbus, Ohio 43215-4611

I. Background.

This case arises out of a dispute between the City of Xenia (the Employer) and the FOP/Ohio Labor Council, Inc. (the Union). The bargaining unit is comprised of 16 communication officers. The dispute stems from the negotiation of a successor agreement to replace the existing CBA which expired June 27, 2009. The parties met for purposes of negotiating a new agreement on April 30, May 7, May 12, May 13, August 13, and August 17, 2009 and resolved many issues. Some issues remained unresolved and were submitted to the factfinding process as found in O.R.C. 4117.14 and associated administrative rules as promulgated by the Ohio State Employment Relations Board (SERB). By mutual agreement the parties chose Marcus Hart Sandver as the factfinder from a roster supplied by SERB.

II. The Hearing

The hearing was convened at 9:30AM in the conference room of the City Building of the City of Xenia. The parties were notified that the procedure would be conducted in accordance with the rules for factfinding found in O.R.C. 4117.14 and associated administrative rules as developed by SERB. Specifically, the criteria for developing the recommendations are found in O.R.C. 4117.14(G) (7) (a-f).

The parties were notified that it was the intention of the factfinder that all issues tentatively agreed to during the negotiations would be a part of this report.

In attendance at the hearing for the Employer were:

- | | | |
|----|----------------|------------------------------|
| 1. | Jackie Potter | H.R. Director, City of Xenia |
| 2. | William Groves | Attorney |
| 3. | Donald Person | Xenia Police Chief |

4. Ryan Duke No position identified
5. Brent Merriman Assistant City Manager
6. June Johnson Communications Director

In attendance for the Union were:

1. Ross Reder Staff Representative, FOP/OLC, Inc.
2. Tricia Balonier XGCC – Comm. Operator II
3. Jacqueline Foster XGCC – Comm. Operator

The parties were asked to place exhibits into the record. Both parties submitted multi-tabbed notebooks as exhibits which were marked as Employer Exhibit # 1 and Union Exhibit # 1. At this point, the hearing turned to a discussion of the issues. Following this discussion the factfinder engaged in extensive mediation efforts. Two issues were resolved in mediation.

1. New Section – Fitness. Withdrawn from negotiations.
2. Article 25.1 – Life Insurance. Benefit established at \$50,000.

The remainder of this report will discuss the issues not resolved in mediation.

III. The Issues.

A. Issue One – Article 16.7. Compensatory Time.

1. Employer Position.

The employer position on this issue is to limit the employee to the accumulation of 120 hours of compensatory time per year. Any overtime over the 120 hour limit would be paid as overtime pay. Unused compensatory time must be paid out between November 1 and

Thanksgiving. Employees can carryover up to 40 hours of compensatory time from year to year.

The employer rationale for this provision is to limit the accumulation of and use of compensatory time. The present contract limits compensatory time to a 120 hour limit, but places no restriction on how many compensatory time hours an employee may use in any one year and then begin accumulation anew up to the 120 hour limit. The employer proposal would allow an employee to accrue a maximum of 120 hours of compensatory time per year. All other overtime would be paid as overtime pay. The employer representative pointed out to the factfinder that the members of the officers, sergeants and captains bargaining units have all agreed to the proposed employer language on compensatory time in their recently negotiated agreements.

2. FOP Position.

The FOP position on this issue is to preserve current language with the exception of changing the payout date from the month of December to the month of November. The Union position on this issue is that the City cannot demonstrate that the use of compensatory time is excessive in the Communications Center. The Union further challenges the comparability arguments with the other units in the department in that the provisions of this section (accumulation of compensatory time) allow for the accumulation of 180 hours in each of the other 3 units.

3. Discussion.

It is hard to refute the Union's argument that the City has not demonstrated any kind of a problem arising from the use of compensatory time in this department during the past CBA. In fact the City's own data (requested by the factfinder) shows that compensatory time accumulated by employees in this department has dropped from 1496.8 hours in 2007 to 904.2 hours in 2009 (more than a 40% decrease). Compensatory hours used has dropped from 1356.2 hours in 2007 to 696.8 hours in 2009 (a drop of 47.5 percent). Minimum staffing shortages have dropped from 92 in 2007 to 43 in 2009 (a 53 percent decline) and overtime required has dropped from 18 in 2007 to 9 in 2009 (a 50 percent decrease). It is hard to see a strong argument here for control of the use of compensatory time in this department. The Union and the Employer both agree the payout period should be changed from December to November.

4. Recommendation.

It is recommended that the current language of Article 16.7 be unchanged with the exception that the payout month be moved from December to November.

B. Issue Two – Article 18 Wages.

1. City Position.

The City position on this issue is to freeze wages from June 29, 2008 until the first pay period beginning in January 2011. At that time a 4

percent raise will be given. The Employer position is that the agreement will expire at the end of the last pay period in August of 2011.

The City bases its position on the financial condition of the City of Xenia which has worsened from 2007-2009 (revenue decline from \$9m to \$8m) and is expected to decline further in 2010 (from \$8m in 2009 to \$7m in 2010). The City emphasizes to the factfinder that the firefighters agreed to forego their 3 percent scheduled increase in wages in 2009 and agreed to a 2 percent additional reduction. The firefighters will receive a 6 percent raise on February 5, 2011. The Captains in Xenia will receive no raise from the period November 1, 2008 until February 5, 2011. The Sergeants will receive no raise during the period September 30, 2009 until January 23, 2011 and the officers will go without a raise from September 6, 2009 to January 9, 2011.

2. FOP Position.

The FOP position on this issue is not a disagreement over the size of the raise (4%) but to the timing of the raise. The Union is asking that the 4 percent increase take effect beginning in the first pay period of September 2010 and that the agreement be in effect until September 3, 2011. The Union position on this issue is that its members have not had a raise since June 29, 2008 which was for a 12 month period ending June 28, 2009. For the Union to wait all of the rest of 2009 (6 months) plus all of 2010 (12 months), they would have gone without a raise for 18 months.

By comparison under the current agreements for the Captains, the time lag would be 15 months and for the Sergeants and Patrol Officers 16 months.

3. Discussion.

There is not much difference in monetary impact between the two positions. By my own rough calculations, the cost of a 4 percent increase to a top step communications operator's salary would be \$0.85 per hour. Assuming a 40 hour week, this is \$42 per week, \$160 a month or \$620 difference over the 4 month time period in question. The City has raised the issue of timing; not wanting to give any city employee an increase until after the November election in 2011. The communication officers do not want to wait 18 months for a raise. It seems to me a compromise is possible.

4. Recommendation. Article 18 – Wage Raises.

Beginning the second pay period in November 2010 and continuing until the end of the last pay period of August 2011, the raise in wage rates for the communications officers shall be 4%.

C. Issue 3 – Article 24 Uniforms.

1. Employer Position.

There was probably more time spent on this issue at the hearing than on any other. The employer position on the issue is to eliminate the uniform allowance for the communication officers. The city position is based on the observation that communication officers have very little contact with the public except over the telephone. Unlike the patrol

officers or the sergeants or the captains, the communication officers seldom come in person to person contact with the public. The communication officer's work in a section of the police building that is locked and not easily accessible or visible to the public. Further there is considerable time and energy spent by management personnel in the department ordering, reordering, and returning uniform articles from the approved vendors. Chief Person testified that the present "business casual" dress code was working well.

2. Union Position.

The FOP position on this issue is that uniforms give law enforcement personnel a certain visibility and air of authority that helps them do their job more effectively. The Union representative pointed out that communication officers do interact with members of the public at certain community public events. Further the members of the unit at the hearing pointed out that they interact frequently with the officers and sergeants in the Department and feel that some type of uniform is important to underscore the fact that they are members of the law enforcement community in Xenia.

3. Discussion.

It seems to me that some sort of middle ground could be found here. There is an Appendix to Article 24 at the end of the contract which specifies what the initial issue of uniform items to the communication officers should be. This seems like a good idea to me. On the other hand,

I don't see why the city should provide socks, shoes and belts as part of the uniform package; these are items of personal preference, can vary widely in price, and don't project much of an image of uniformity. Shirts, pants, and sweatshirts, on the other hand, do serve to establish some sense of department identity among the communication officers both to other members of the Department and to the public. In light of the recommendation above, some sections of Article 24 are no longer necessary.

4. Article 24 – Uniforms.

Section 24.1 – Initial Uniform Allotment.

Operators shall be issued a full allotment of uniforms (see Appendix A) at their initial appointment. Such full allotment shall be as recommended by the Communications Director and approved by the City Manager. Operators shall be required to maintain the current casual style uniform only.

Appendix A.

4 shirts

3 pants

2 sweatshirts

Section 24.2

Deleted.

Section 24.3

Unchanged.

Section 24.4

Unchanged.

Section 24.5-24.7

Deleted.

Section 24.8

Unchanged.

Section 24.9

Deleted.

IV. Certification.

This Factfinding Report and Recommendations was prepared by me based on evidence and testimony produced at a Factfinding hearing which I conducted on December 4, 2009.



Marcus Hart Sandver, Ph.D.

January 8, 2010
Columbus, Ohio

V. Proof of Service.

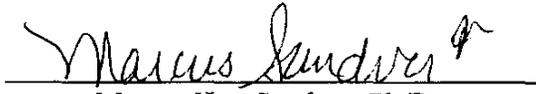
This Factfinding Report and Recommendations was mailed regular U.S. Mail on January 8, 2010 to:

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Marcus Hart Sandver, Ph.D.
Factfinder
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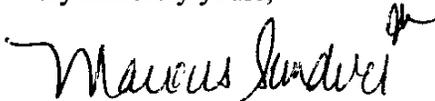
January 8, 2010

Mr. Ed Turner
S.E.R.B.
65 E. State Street
Columbus, Ohio 43215

Dear Mr. Turner:

Enclosed you will find my Factfinding Report and Recommendations for the City of Xenia and the FOP/OLC. I have also enclosed an invoice for my services.

Very sincerely yours,

A handwritten signature in black ink that reads "Marcus Sandver" with a stylized flourish at the end.

Marcus Hart Sandver, PhD
Factfinder

Enclosure