

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2010 MAY 13 P 12: 16

In the Matter of Fact-Finding Between

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

Employee Organization

Case Nos. 09-MED-09-0942

and

The City of Wyoming, Ohio
Sergeants

Fact-finder: Jerry B. Sellman
Date of Report: May 12, 2010

The Employer

FACT FINDERS REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Mr. Barry L. Gray, Staff Representative FOP/OLC Inc., representing the Union

FOR THE EMPLOYER:

Daniel G. Rosenthal, Esq. – Attorney with Denlinger, Rosenthal & Greenberg, LPA
representing the City of Wyoming, OH

I. INTRODUCTION

This matter concerns a fact-finding proceeding between the City of Wyoming, 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 April 20, 2010 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 determined that sufficient time had already been devoted to mediating their issues the hearing commenced.

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

ARTICLE 15 – SALARIES AND CERTAIN BENEFITS, Section 15.1,
Wages

ARTICLE 15 – SALARIES AND CERTAIN BENEFITS, Section 15.3,
Pension Contributions

ARTICLE 16 – OVERTIME; Memo of Understanding, Kelly Days

ARTICLE 22 – HEALTH INSURANCE

ARTICLE 30 – DURATION OF AGREEMENT

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 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 public service or in private employment.

II. BACKGROUND

The FOP represents the Police Sergeants of the Wyoming, Ohio Police Department. There are 4 employees in this bargaining unit. The City of Wyoming is located in Hamilton County, Ohio and is a suburb of Cincinnati, Ohio. The population was 8,261 at the 2000 census. It's residents have a median household income of \$153,970 and the median value of a single family, owner-occupied home is \$259,000. While the City is financially sound, it has not been immune to the recession over the last year. Its income tax receipts were 12.3% lower for 2009 compared to 2008. Income tax receipts make up the largest component of the general fund,

which provides funds for the police department. Income tax receipts for the first quarter of 2010 were 17.5% lower than the first quarter of 2009. As a result of these decreases, income from tax revenues were down about \$500,000 in 2009 and are projected to be down another \$500,000 in 2010. Property values have remained flat over the last several years. Although Wyoming is in a high property value area, the property taxes have not increased as initially projected.

There are fifty-five employees working for the City; twelve of the fifty-five are in management.

The current Collective Bargaining Agreement expired on December 31, 2009 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 five (5) negotiated issues in the new proposed Collective Bargaining Agreement prior to the Fact-finding Hearing.

III. UNRESOLVED ISSUES

1. ARTICLE 15: SALARIES AND CERTAIN BENEFITS: Section 15.1, Wages.

The City's Position

The City proposes that wages beginning in the year 2010 be increased as follows: 2% in 2010; 2.5% in 2011; and 3% in 2012.

The City is in the financial position to increase the Sergeants' wages over the next three years, but it believes the increase should be in line with overall increases in a recessionary economy, as well in line with other internal and external comparables.

It argues that in this economy, public sector employers, unions, fact-finders and

conciliators cannot ignore the circumstances of the citizens, or their reasonable perceptions. Public sector wages and benefits that are out of line with the private sector have been the subject of much critical commentary in the local and national media. Nationally, private sector union contract wage increases for 2010 have averaged 2.0%, excluding construction settlements which have averaged .8%.¹ The rate of annual wage increases in the private sector likely will continue to slow in the coming months, according to the Bureau of National Affairs revised first quarter Wage Trend Indicator.² The fact-finder must take into account these private sector settlements and the interests of the public. O.R.C. 4117.14(C)(4)(e) and (G)(7)(b), (c) and (f). To award wage increases significantly in excess of these private sector settlements is unjustified and subject to appropriate citizen condemnation.

The City of Wyoming has not been immune to the recession. Its income tax receipts were 12.3% lower for 2009 compared to 2008. Income tax receipts make up the largest component of the general fund, which provides funds for the police department. Income tax receipts for the first quarter of 2010 were 17.5% lower than the first quarter of 2009. Because of dwindling revenues, city management are taking no wage increases for 2010. Non-union staff wages have been increased only 1.5% for 2010.

The City did negotiate a Collective Bargaining with AFSCME, which became effect in 2009, that did provide for a 3.5% increase for several of its employees, but this contract was resolved before the tax shortfalls. Further, while the percentage increase was reflected as 3.5% for each year of the contract, the actual cost to the City was .27% in 2009, 1.22% in 2010 and 2.69% in 2011. The difference resulted from the fact that the AFSME Agreement carved out exceptions that reduced or froze compensation levels for many positions.

¹ *BNA Daily Labor Report*, April 12, 2010.

Since 2000, Wyoming has followed a consistent philosophy of compensation, with employees being paid at the 40th to 80th percentile of comparable jurisdictions. Looking at jurisdictions within 10 miles of Wyoming, with populations of 5,000 above or below the population of the City of Wyoming, Wyoming Sergeants' pay is near the top of this range, at 76%. Moreover, the Sergeants' W-2 earnings are very high. One Sergeant earned total compensation of \$99,474 in 2009 and another earned \$88,224 in total compensation as a result of available overtime. Two Sergeants earned more than a Lieutenant and one Sergeant earned more than the Chief of Police. One of the Sergeants is second only to the City Manager in 2009 W-2 earnings.³ Of all of the City's full-time employees, the police personnel are all among the higher paid.

Fact-finders, even with cities that have managed prudently and are weathering the recession, have been reluctant to award more than 2.5%. For example, in recommending a 2.5% increase, the Fact-finder in the City of Blue Ash award said: "In the best of times, a [3%] increase in pay per year for any public employees, union or non-union, was considered to be good. These are not the best of times, even in cities like Blue Ash which has retained economic advantages that other jurisdictions have not."

The national average wage increase for state and local governments in 2010 is 1.3%.⁴ Four of the 17 jurisdictions in the City's survey will receive no pay increase in 2010.⁵ Given all this, Wyoming's 2%, 2.5% and 3% is generous.

The Union's wage proposal for Sergeants, which is to pay the Sergeants at a rate 15%

² *BNA Daily Labor Report*, April 14, 2010.

³ This is predominantly due to available overtime.

⁴ *BNA Daily Labor Report*, April 12, 2010.

⁵ Out of 17 comparable police departments within 10 miles of Wyoming with populations \pm 5,000 of the City of Wyoming, only four of those jurisdictions are paid at a higher rate than the Wyoming Sergeants (in some, the next step above a patrol officer is a lieutenant). Of those four, two of the jurisdictions will have no pay increase in 2010.

more than the highest patrol officer pay, is a permissive subject of bargaining and should be accepted by the Fact-finder. Since by statute, Sergeants and Patrol Officers may not be in the same bargaining unit to avoid the Sergeants' making common cause with the Patrol Officers and to assure the Sergeants' loyalty to management, the Union's proposal for a differential is at odds with this statutory intent. Thus, the Union cannot insist, and the Fact-finder or conciliator cannot compel, the differential proposal.

The Union's Position

The Union proposes that the Police Sergeants be paid 15% above the highest pay rate of the next lowest rank, which would be the rank of Police Officers in Wyoming. Because Sergeants are the veteran officers of the Wyoming Police Department and have reached a high level of proficiency as a police officer, they should be compensated at a clear rate above that of the next lowest rank.

This is the first time that a pay scale based upon a differential has been proposed. Sergeants in Wyoming are paid a 13.5% differential, while the average differential in comparable jurisdictions is 16.28%. These comparables are based upon an analysis of those cities in Hamilton County, where Sergeants are paid within a \pm \$5,000 base wage of the Sergeants in the City of Wyoming. In examining what an appropriate differential should be, it is clear that the Wyoming Sergeants rank at the bottom.⁶ The next lowest differential paid is 15%. Since the last Collective Bargaining Agreement was negotiated, the workload and number of people who the Sergeants supervise has increased and the Sergeants should be brought up to at

⁶ The Union compared the current City of Wyoming top Police Officer Pay (\$60,115.78) and Sergeant pay (\$68,119.34), with a differential of 13.5%, with the top Police Officer pay and the top first line supervisor pay in the jurisdictions of Cincinnati (\$57,473) with a 16.6% differential, Harrison (\$56,804.80) with a 15% differential, Loveland (\$63,434.41) with a 20.6% differential, Mt. Healthy (\$57,488) with a 16.3% differential, North College Hill (\$57,075.20) with a 15% differential, Reading (\$58,849.64) with a 15% differential, and Springfield Twp.

least the minimum differential paid in these other comparable jurisdictions.

The City argues that it has only given 0-1.5% increases to other employees in the city, but it did approve a 3.5% increase each year for three years to the employees of AFSME. Those increases would have been acceptable to the Sergeants, but they were not offered. The FOP employees should be entitled to at least the same increases over the next three years.

The City can afford the proposed increase because of its strong financial position. Standard and Poor's increased the City's rating from AA+ to AAA on its general obligation bonds because of its continued strong financial performance and proactive management. The City is a wealthy community, is in good shape and can afford to pay the Sergeants the requested increases.

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, the Employer's ability to pay and current economic considerations, among other factors.

The proposal of the City reflects increases in salaries that are in line with, if not above, wages of public employees doing comparable work. The seventeen neighboring cities of comparable size to Wyoming reflected a mix of socio-economic factors; some were poorer and some were as wealthy. Of the seventeen, the City of Wyoming will rank fifth on the list, if the proposed increase of 2% is approved for the first year. In the jurisdictions chosen by the Union for purposes of demonstrating the differential paid to first line supervisors (seven other jurisdictions, see footnote #6), all but two paid their first line supervisors less than what the

(\$62,502..57) with a 15% differential.

Wyoming Sergeants are paid without any proposed increase. With the proposed increase, including a pension pick-up, the City of Wyoming Sergeants will be paid more than any of the first line supervisors in those jurisdictions chosen by the Union.

With a two percent (2%) increase in 2010, the Wyoming Sergeants will rank in the 76th percentile of those compared. This obviously places them in the top percentile of the seventeen jurisdictions used for comparison by the City. While overtime pay is not a factor that should be considered in determining comparable pay with other public or private employees doing comparable work, arguments of inadequate compensation are weakened when the facts reveal that overtime paid to at least two of the four Sergeants in Wyoming (one half of the bargaining unit), when combined with their overall compensation, would exceed the highest paid Sergeants in any comparable jurisdiction, including those used by the Union.⁷

When compared to other employees of the City, the 0% increase given to City management personnel and the 1.5% increase given to non-union city workers in 2010, the increases offered to the Sergeants is generous. The Union did point out that the AFSME contract contained a 3.5% increase in wages per year over three years, commencing in 2009, but the City's analysis of the actual increases, which included certain wage freezes and decreases factored into the contract in Appendix B to the AFSME Agreement, were more in line with a .27%, a 1.22% and a 2.69 % increase over the three year period. A review of the AFSME Agreement shows that AFSME employee wages will be increased 3.5% for each year of the contract, but the following sentence appeared after the 3.5% increase language: "With the exception of those positions (and/or years of service) that are reduced and frozen for the life of

⁷ The Union indicated that the City of Loveland paid their top first line supervisor, based upon a 15% differential, \$76,523.20.

the contract as set forth in Appendix B.” Clearly not everyone received the 3.5% increase.

While the City of Wyoming does carry a surplus in its general fund, in these economic precarious times, the City must be prudent in determining wage increases. With predictable income from resident’s income revenues trending down and overall economic conditions remaining in a state of turmoil, the city must be cautious with its expenditures. The data supports increases for the Sergeants as proposed by the City to keep them near the top. This is particularly appropriate considering the increases that were experienced by the Sergeants in the amount of 4%, 3.6% and 3.8% over the last three years.

The idea of a differential at a percentage above that of the top pay of the next lowest rank as proposed by the Union has merit, but the proposal lacks sufficient specificity to be considered by the Fact-finder in this case. The Fact-finder would be recommending a wage package without knowing its ultimate result or impact. The Police Officers have not negotiated their contract as of the date of the Fact-finding hearing. Information supplied by the Union indicated that currently the differential between the Patrol Officers and the sergeants is 13.5%. The Union seeks to increase that differential to 15%. If the Patrol Officers were to negotiate a 1.5% increase per year, that increase would equate to a 3% increase per year for the Sergeants. If they negotiated a 3% increase per year, that would equate to a 4.5% increase per year. An increase of 4.5% would not be in line with comparable pay rates considering internal and external comparables for the Sergeants and would not be in the public interest in these current economic times. Without addressing the position of the City that bargaining differential pay rates is permissive and not mandatory in the bargaining process, sufficient data was not available to enable the Fact-finder to make a recommendation on wages by using this approach.

RECOMMENDATION

It is recommended that the City's proposal under ARTICLE 15, Section 15.1: be adopted and wages be increased by 2% in 2010; 2.5% in 2010; and 3% in 2012.

2. ARTICLE 15: SALARIES AND CERTAIN BENEFITS: Section 15.3, Pension Contributions

The Union's Position

The Union proposes that the language in the existing contract regarding payment of an employee's contribution to the Ohio Police and Fire Pension Fund (Pension Fund) be amended to require the City of Wyoming to pay all of an employee's contribution. Currently an employee is obligated to contribute 10% of his/her earned compensation to the Pension Fund, and that portion is paid by the City. The City is not currently obligated to pick up more than the 10% contribution. The Union proposes to eliminate the 10% cap and require the City to pay all of the pension fund contribution, including any potential increases.

The Union argues that increases in pension fund contributions will erode the take home pay of its members and, as a benefit, the City should agree to pick up any increases.

The City's Position

The City proposes no change in the current contract.

The parties' current contribution rate to the Ohio Police and Fire Pension Fund is as follows:

Employer contribution:	19.5% of the employee's salary
Employee contribution:	10% of the employee's salary

Currently, the City "picks up" or pays the employee portion (up to 10%) on top of the 19.5% it is required to contribute. The City's practice of paying the employee's share of the pension contribution up to 10% is extremely generous and a rare benefit. Twelve of the

seventeen survey cities do not pick up any part of the employee's portion. The average amount picked up by the five cities that have this benefit is \$4,677.63. With the City's proposed 2% wage increase for 2010, the amount picked up for the sergeants would be \$7,096.37. At a time when cities are trying to control costs, the Union seeks potentially to increase an already generous benefit. The Union's proposal should be rejected.

Discussion, Findings and Recommendation

While the Union is concerned that increases in required contributions to the Pension Fund will erode further earning power of union members, no evidence exists suggesting that any increase is planned or imminent. Based upon the City's current contributions, it pays well above the average of comparable cities, whether using the City or the Union's comparables. The Fact-finder can find no basis upon which to recommend a change in the Pension Fund contribution of the City.

RECOMMENDATION

It is recommended that the current language in ARTICLE 15, Section 15.3 concerning Pension Contribution remain the same.

3. ARTICLE 30 – DURATION OF AGREEMENT

The City's Position

The City proposes that the Agreement become effective one month later or February 1, 2010. The City believes that retroactivity should be a reward for prompt resolution of differences. It opines that the Union did not bargain in a speedy fashion and it delayed proceeding to fact-finding when it was determined that an impasse had occurred.

The Union's Position

The Union proposes that the Agreement become effective as on the 1st day of January, 2010 and remain in effect until December 31, 2012. It acknowledges that several extension agreements were signed, but those agreements were mutually entered into and its members should not sustain any loss in income as a result of those mutually requested extensions.

Discussion, Findings and Recommendation

The Fact-finder recognizes that extensions are often obtained in an effort to resolve outstanding issues without the need for fact-finding. As such, the Union should not be penalized for seeking extension agreements. The effective date of the Agreement should be retroactive to January 1, 2010.

RECOMMENDATION

It is recommended that the effective date of the Agreement be January 1, 2010.

4. ARTICLE 16: Overtime/Memorandum of Understanding/Kelly Time

The City's Position

The City proposes to eliminate Kelly time, which it agreed to in a Memorandum of Understanding signed in 2007 after the last Agreement was signed. In the last negotiations, the City bargained for the unfettered right to move Police Officers and Sergeants to 12-hour schedules. In the citizens' interest, this results in the officers being on the street for more straight-time hours. Mid-term, to ease the employees into the 12-hour schedule, the City unilaterally granted 4 hours every 2 weeks extra paid time off, referred to as "Kelly Time." This is not contractual. Kelly time is really a misnomer, because the concept of Kelly days arose with

firefighters to avoid scheduled days that were unavoidably overtime under the Fair Labor Standards Act. That is not the case here. The Sergeants are comfortably settled into the 12-hour schedule, it is working well, and the transitional Kelly time should be eliminated. Since it was a unilateral action by the City, there should be no requirement for the City to continue with this method of paid time off.

The Union's Position

The Memorandum of Understanding should be continued and Kelly time provided to the Sergeants as a benefit. The schedule change was a benefit to the citizens for it put more Police Officers on the street and dramatically reduced overtime the City would otherwise have to pay. The Kelly time allowed for increased time for training and education without impacting a schedule directly. This works for the City and the Sergeants and should be maintained.

Discussion, Findings and Recommendation

The City's establishment of the 12 hours schedule has been shown to be a benefit to the citizens of Wyoming and has worked well for the Police Officers. The City asserts that it bargained for the unfettered right to move officer and sergeants to the 12-hour schedule. While the grant of the four hours every two weeks was intended to help the Sergeants "settle into the schedule," this intended result was achieved and it appears to now be deemed a benefit derived from the schedule change. The City indicated in the Memorandum of Understanding that if it decided to return to its then current schedule, paid time off would be handled as it was then. It has not, and there appears to be no reason to thereby change the use of these "Kelly days," particularly since it has worked well for the City and the police.

RECOMMENDATION

It is recommended that use of “Kelly Time” remain unchanged.

5. ARTICLE 22: Health Insurance

The City’s Position

The City has proposed that health insurance employee contributions be increased from 8% to 9%, 10.5%, and 12% in 2010, 2011 and 2012 and prescription drug co-pays for generic, brand name and non-formulary be increased from \$5/\$15/\$25 to \$5/\$20/\$40. These increases are the same agreed to by AFSCME, but effective one year earlier (01/01/2009) and what is currently in effect for all other non-union employees of the City. The City’s management, who received no increase in wages in 2010, accepted these increase, as well as those employees who only received a 1.5% increase in wages for 2010. More than half of the City’s employees have, thereby, accepted this new program.

The Kaiser Family Foundation 2009 survey of employer health benefits (covering more than 2000 U.S. private sector and governmental employers) found that, on average, employees contribute 27% of the premium for family coverage and 17% for single coverage. The citizens have an expectation to accept no less for the City’s employee.

The Union’s Position

The Union proposes that the Health Insurance Article remain as is in force at the expiration of the Collective Bargaining Agreement being negotiated presently. The Union believes that the City’s proposal would require the Sergeants to pay a higher portion of Health Insurance than other comparable employees and at the same time accept less in wages than those other employees.

Discussion, Findings and Recommendation

The rising cost of healthcare without question erodes an employee's earnings. As argued by the Union, any compensation plan must take into consideration other issues such as pension contributions and health insurance. While eloquently argued, I do not agree with the conclusion drawn by the Union that other employee groups are receiving increased wages and the Sergeants are being asked to accept less in wages and shoulder a higher portion of health care costs than comparable employees.

Wages paid to employees in comparable jobs in comparable jurisdictions, whether using the Union's comparable or the City's, show that the City of Wyoming Sergeants are paid in the upper percentile of other Sergeants. Evidence further indicates that non-union employees and other union employees are not receiving the level of increases recommended by the Fact-finder, yet they have agreed to accept the health insurance plan proposed by the City. The Fact-finder believes that maintaining a uniform, city-wide insurance program for all employees has the advantage of affording the Employer an opportunity of more effective competitive bidding resulting in overall savings in total costs to the City and the employees. Since other groups have settled on the offered insurance package, there is no compelling reason for any deviation.

As stated by the City, both private and public sector employees pay on average a much higher percentage of premium costs than that proposed by the City, an indication that the City has negotiated well for a contract for all employees of the City that is benefit rich with relatively low premium contribution costs.

RECOMMENDATION

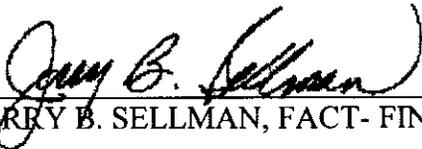
It is recommended that the City's position be adopted and that health insurance employee contributions be increased from 8% to 9%, 10.5%, and 12% in 2010, 2011 and

2012 and prescription drug co-pays for generic, brand name and non-formulary be increased from \$5/\$15/\$25 to \$5/\$20/\$40.

CONCLUSION

In conclusion, this Fact-Finder hereby submits the above referenced recommendations 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.

May 12, 2010



JERRY B. SELLMAN, FACT- FINDER

CERTIFICATE OF SERVICE

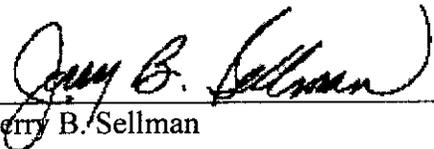
The undersigned certifies that a true copy of the Fact Finder's Report was sent by E-mail and First Class Mail on May 12, 2010 to:

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