

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2010 JUN 22 P 1:04

In the Matter of Fact-Finding Between

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

Employee Organization

Case No. 09-MED-09-0943

and

The City of Wyoming, Ohio
Patrol Officers

Fact-Finding: Sarah R. Cole
Date of Report: June 17, 2010

The Employer

FACT FINDER'S 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 – Attorney with Denlinger, Rosenthal & Greenberg, LPA
Representing the City of Wyoming, Ohio

I. INTRODUCTION

This recommendation results from a fact-finding proceeding between the City of Wyoming, Ohio (“Employer” or the “City”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (“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 May 14, 2010. At the beginning of the proceeding, the Fact-finder offered the parties the opportunity to mediate pursuant to the Ohio Administrative Code and the policies of SERB to resolve all remaining disputed provisions of the new Collective Bargaining Agreement. None of the outstanding issues were resolved in mediation, so the fact-finding commenced.

The open issues identified and discussed by both parties included:

ARTICLE 14 – CORRECTIVE ACTIONS AND RECORDS

ARTICLE 15 – SALARIES AND CERTAIN BENEFITS

ARTICLE 16 – OVERTIME

ARTICLE 18 – HOLIDAYS

ARTICLE 19 – SICK LEAVE

ARTICLE 21 - LONGEVITY

ARTICLE 22 – HEALTH INSURANCE

ARTICLE 30 – DURATION OF AGREEMENT

The Ohio Collective Bargaining Law, together with SERB’s rules and regulations, governed the Fact-finding proceeding. During the proceeding, the parties presented arguments and evidence in support of their respective positions on the issues remaining for the Fact-finder’s consideration.

In making the recommendations in this report, the Fact-finder considered the evidence presented on the outstanding issues before her and as well as 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 Patrol Officers of the Wyoming, Ohio Police Department.

Thirteen employees are members of this bargaining unit. The City of Wyoming is located in Hamilton County, Ohio and is a suburb of Cincinnati, Ohio. Wyoming's population was 8,261 at the 2000 census. Wyoming's residents maintain 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, the current recession has had an effect on the City over the last year. The City's income tax receipts dropped 12.3% between 2008 and 2009. Income tax receipts for the first quarter of 2010 were 18.67% lower than they were during the first quarter of 2009. Income tax receipts make up the largest component of the general fund, which provides funds for the police department.

The current Collective Bargaining Agreement expired on December 31, 2009. The parties executed Extension Agreements to permit negotiation and, ultimately, Fact-finding on unresolved issues. The parties tentatively agreed to language on all but eight issues in the new proposed Collective Bargaining Agreement prior to the Fact-finding Hearing.

The Wyoming police clerks, a two person unit, recently agreed to wage increases of 1.5%/2.0%/2.5% for their 2010-2012 collective bargaining agreement. In addition, they agreed to the insurance changes the City proposed. The Wyoming police sergeants were unable to reach agreement with the City on several issues, including wages, pension contributions, Kelly time, duration of agreement and health insurance. The parties submitted these issues to Fact-finding. Fact-finder Sellman recommended that the sergeants, who maintain a four-member unit, receive the City's proposed wage increase of 2.0%/2.5%/3.0% for the next three years, and that the wage changes, as well as other changes, be retroactive to January 1, 2010. In addition, the Fact-finder recommended that the unit accept the City-proposed changes to health insurance but that the Kelly time payments continue as part of the agreement. Finally, the Fact-finder did not recommend a change to the employees' pension contribution plan, capping the City's contribution on behalf of each employee at 10%.

III. UNRESOLVED ISSUES

A. Article 14: Corrective Action and Records

Union's Position

The Union proposes two changes to Article 14, Corrective Action and Records. First, the Union would permit employees to provide position statements in response to entries in a "supervisor's log" and other files the City maintains. The Union believes that information in these files, especially the supervisor's log, is used to justify subsequent corrective action.

Although the Union is currently permitted to review the supervisor's log, it believes that the employees' right to review the log should be codified in the Agreement and that employees should be allowed to attach a position statement to any document in the supervisor's log as well as any other file kept which contains material concerning the employee.

In addition, the Union proposes an "amnesia" provision to the Agreement. This provision would eliminate discipline from an employee's record after a certain period of time, depending on the severity of the discipline. The Union provided evidence that other jurisdictions, including Springfield Township, North College Hill, Mt. Healthy, Loveland and Harrison maintain amnesia policies similar to the one the Union proposes here.

City's Position

The City objects to the Union's proposal, contending that it is overbroad and would be burdensome to the City. The City states that many files may include information that pertains to a particular officer and that it would be burdensome to be required to allow an employee to review any file in which some mention of the officer's name appeared. The City stated that employees have a right to review the log and that the City plans no change to this policy. The City also objects to the amnesia provision. The City noted that neither the police clerks nor the sergeants have rights to comment on files or "amnesia" provisions in their agreements. In addition, the City believes that the time limits for the elimination of discipline from an employee's records are artificial and could prove problematic in practice. Moreover, the City asserted, the just cause provision of the Agreement already protects the employees from inappropriate use of past discipline – length of time since discipline occurred is always a relevant consideration when an employer imposes further corrective action.

Discussion

During the hearing, the City stated that it does not conduct regular reviews of employee performance. In fact, reviews of employee performance are rare. The City further stated that the supervisor's log contains information that it may rely upon to implement corrective action in the workplace. In the absence of annual or regular employee performance reviews, employees may find it difficult to understand why they receive particular corrective action. The evidence showed that the employer relies on material included in the supervisor's log, and permits employees to review the log. It would make sense to allow the employees to respond to negative comments in the supervisor's log because these responsive comments could be inserted contemporaneously with the negative comment and create a record that could help the employee understand subsequent corrective action. It might also help the City understand whether it would be useful or appropriate to rely on a particular supervisor comment to make corrective action decisions.

While permitting employees to review the supervisor's log and respond to negative comments about their own performance is reasonable, the Union's desire to enable employees to review any file in which information about them might be contained is overbroad and potentially burdensome to the City. In addition, evidence does not support adoption of that proposal. Moreover, it was apparent during the hearing that the Union's real concern stemmed from the potential use of the supervisor's log as a basis for corrective action. Thus, employees should be allowed to review the supervisor's log and respond to negative comments about their own work performance, but should not be permitted to review other files.

Evidence also did not support the Union's proposal to create time limitations for retention on the record of past corrective action. Although the Union brought forward evidence that some

comparable jurisdictions use this type of “amnesia” provision, the Union did not establish the need for an amnesia provision in Wyoming. The just cause provision of the existing Agreement should provide a sufficient basis for the parties and/or an arbitrator to evaluate whether past corrective action should be considered when subsequent disciplinary action occurs.

Recommendation

The Fact-finder recommends that the City permit members of the bargaining unit to review the supervisor’s log and submit responses to negative comments about their work performance that appear in the supervisor’s log. No amnesia provision should be added to the Agreement.

B. Article 15: Salaries and Certain Benefits

(a) Wages

City’s position:

The City proposes that wages beginning in the year 2010 be increased as follows: 1.5% for 2010, 2.0% in 2011, and 2.5% in 2012. The City justified its proposed wage increase on three grounds. First, the City stated that Wyoming citizens would react negatively if the City increased the patrol officers’ salaries more than those of other non-union city employees. Second, the City cited national statistics indicating that the average wage increase for private sector employees in 2010, not including those working in construction, was approximately 2% (City Ex. 4) and that the wage increases in the private sector will likely continue to increase at a slow pace (City Ex. 5). The City also noted that the average national wage increase for state and local government employees was a mere 1.5%. Finally, the City cited a variety of internal factors to support its proposal. According to the City, income tax receipts in April 2010 were 18% lower than tax receipts in April 2009 (City Ex. 6). In addition, property taxes have

remained flat. The City did not identify any evidence inconsistent with its conclusion that Wyoming's economy is in poor shape and shows no immediate signs of improvement. To support a more fiscally conservative approach, the City also noted that management employees received no wage increase in 2010, non-union staff received only a 1.5% wage increase and the city police clerks agreed to the same wage proposal that the City proposes to the patrol officers. The City acknowledged that Fact-finder Sellman's report recommended that the sergeants receive higher across the board wage increases than it proposed to the patrol officers (and that the City proposed higher increases for the sergeants than they now propose for the patrol officers). The City justified this difference on the ground that, historically, sergeants have received higher raises than have the patrol officers -- during the last three years, for example, sergeants received .6% higher wage increases than did the patrol officers. The City also justified that distinction on the ground that morale would be harmed if sergeants made less than officers (a situation that apparently exists for two officers, both of whom earn more than sergeants because the officers worked considerable overtime).

The City also pointed to information from comparable jurisdictions as well as its "overall compensation policy" to support its wage proposal. The City's proposed comparables included cities within ten miles of Wyoming who maintain similar populations (no more than 5000 above or below Wyoming's population). With base, longevity and pension pickup considered, the average Wyoming patrol officer earns 69% of what patrol officers in the highest paid comparable city earn. Placing in the 69th percentile (prior to any increases in 2010 or beyond) is consistent with the City's Compensation Philosophy. This philosophy (City Ex. 8) states that the City will base its compensation on the market and that the range for compensation "shall be set between 40% and 80% of the relevant marketplace."

The City also addressed the concerns raised by its agreement with AFSCME, which was negotiated in 2008 and signed as an agreement in January 2009. The City states that the AFSCME contract was negotiated before the tax shortfall occurred. The City acknowledges that some AFSCME employees received 3.5% wage increases but asserts that the average wage increase for each employee that contract covers was 1.22%.

Union Position

The Union proposes a wage increase of 4% in 2010, 4% in 2011 and 4% in 2012. The Union emphasizes that the City cannot claim an inability to pay and that Wyoming, while not immune to the recent negative economic trends, is better off than most communities. In other words, the City can afford the Union's proposed increase. The Union also emphasized that Standard and Poor's Index recently increased the City's bond rating to AAA because of its strong financial performance and management. The Union also noted that the City's fourth quarter of 2009 report stated that the economic picture in the City was not as bleak as the city had expected.

The Union also focused on the City's agreement with AFSCME, emphasizing that, in 2008, members of AFSCME negotiated wage increases of 3.5% for the next three years (2009-2011). The Union conceded that not everyone in the AFSCME unit received such high raises, however. The Union then discounted the impact of the City's agreement with the police clerks. The Union noted that the police clerk unit is comprised of two employees and that the unit is not a binding arbitration (i.e. not a no-strike) unit. Thus, the Union believes that the clerks' settlement is of limited value for purposes of comparison. Although the patrol officers' wage proposal is greater than what the Fact-finder recommended for the sergeants' unit, the Union notes that the City's proposal for the sergeants represents greater increases in percentage terms

than the proposal the City gave to the patrol officers. The Union rejects the City's justification for the different treatment.

The Union did not offer its own comparables but stated that some of the City's proposed comparables were inapt. The Union stated that Indian Hills should not be considered as a comparable because of its extraordinary wealth and that both Cheviot and Lincoln Heights are not reasonable comparables because they are not as well-off as Wyoming. The Union stated that, of the comparables the City proposed, Mariemont, Mt. Healthy, Madera, Montgomery and Blue Ash were useful comparables. Three of those suburbs pay their patrol officers more than Wyoming; the other two pay somewhat less.

Discussion

In order to recommend a wage increase, a Fact-finder must first examine a number of factors, including pay rates in comparable jurisdictions for the same position, the City's ability to pay, wage increases in past agreements between the parties and wage increases in other units or classifications.

Examination of pay rates in comparable jurisdictions, excluding those jurisdictions that the Union claims are not comparable, reveals that, with a 1.5% wage increase, the City will rank fifth out of 14 comparable jurisdictions. In addition, the wage increase will place Wyoming patrol officers well within the parameters outlined in the City's compensation philosophy. The City's financial position, like that of most public employers, is not a rosy one. Income tax receipts, from which patrol officer salaries come, are off over 18% from a year ago. Together with the 12.3% decrease in income tax revenues from 2008 to 2009, it is not immediately apparent when, or if, the City will recover from its current economic doldrums. In addition, the City did not give raises to its management staff and convinced the police clerks to accept the

same wage proposal that it puts forward for the patrol officers here. Non-unionized employees received the same raise as the police clerks. The only contested evidence is whether the AFSCME employees received a 3.5% across the board raise for the next three years. This evidence is not especially revealing, however, when one discovers that the agreement was negotiated in 2008, before the City knew that income tax receipts were going to be so far off predictions. More importantly, though, is that not all of the AFSCME employees received a 3.5% raise. The City's analysis of the AFSCME Agreement show much lower overall wage increases – of .27%, 1.22% and 2.69% for a three year period.

While the City's claims for financial difficulty are relevant, so is its offer of a 2% in 2010, 2.5% in 2011 and 3% in 2012 to the police sergeants unit. The City claims that it always gives higher raises to sergeants than it negotiates with the patrol officers. Over the last three year contract, sergeants received .6% greater increase in pay than did the patrol officers. The City asserted that it is important to maintain this differential in order to ensure that sergeants receive greater pay than officers and morale remains high within the department. Even with the .6% differential in mind, though, it is difficult to see why the proposal to the patrol officers is so much lower than what was proposed to the sergeants. Moreover, because the base pay rate of the patrol officers is lower than the sergeants, the same percentage increase in pay will not result in the officers catching up to the sergeants; in fact, with a lower base pay rate, the officers will continue to lose ground to the sergeants. I do not see that as a problem, however, because the sergeants' higher rank represents greater responsibility. But, at the same time, I am not convinced by the argument that the officers should receive less than the sergeants simply because the officers received .6% less than the sergeants in the last Agreement. Finally, the change from a 8.5 hour day to a 12 hour day for patrol officers has reduced overtime and, consequently,

reduced officers' salaries. While this issue is addressed to some degree with the Kelly time, treating the officers similarly to the sergeants is reasonable and fair, in light of the change to 12 hour shifts and the City's proposal to the sergeants. As a result, I would recommend that the City increase the pay of the patrol officers by 2.0% in 2010, 2.5% in 2011, and 3.0% in 2012. These increases will keep them at the same place among comparable jurisdictions and are consistent with (although still considerably lower than) the wage increases they received during the last agreement of 3.8%, 3.5% and 3.5%.

Recommendation:

The Fact-finder recommends that patrol officers' wages be increased by 2% for 2010, 2.5% for 2011, and 3.0% for 2012.

(b) Pension Contribution

Union Position

Under the current Agreement, the City "picks up" or pays for the employee portion of the pension contributions. The City's "employer contribution" is currently 19.5% of the employee's salary. At the present time, the City also picks up the 10% employee contribution. The Union, concerned that their portion of the pension contribution will increase as a result of the bad economy, proposes that the City continue to pick up the employee contribution even if that contribution percentage increases. The Union believes that this change would give financial stability to the patrol officers and will ensure that officers' net pay is not negatively affected should the pension contribution requirement increase.

Employer Position

The City states that payment of the employee's share of the pension contribution is a rare and generous benefit. 12 of the 16 survey cities that the City identifies do not pick up any

portion of the employee pension contribution. An increase in potential liability during financially worrisome times is not, in the City's view, appropriate.

Discussion

The Union states that the pension fund continually considers whether to raise the employee's portion of the pension contributions. At the present time, however, the pension fund has not increased contribution requirements. The benefit the employees receive is already quite generous. Comparable jurisdictions do not, generally, offer this benefit. Increasing the contribution requirement would potentially create a sense of financial stability for the employees. At the same time, it would create financial insecurity for the City, because it could not be certain how or when the contribution level might change. The unpredictable nature of the potential increase, together with the uncertain financial situation for the City, suggests that any increase to the contribution would be inappropriate at this time. Further, neither the police clerks through negotiation nor the sergeants through fact-finding were able to obtain this benefit. As with wages, these internal comparables are relevant and, in this case, persuasive.

Recommendation: It is recommended that the City's "pick up" of the employees' pension contribution remain the same.

C. Kelly Time

City Position

In the last Agreement, the City negotiated for the right to move patrol officers and sergeants to 12 hour shifts. During the life of the recently expired Agreement, the City changed the patrol officers' work schedules from 8.5 to 12 hour shifts. Recognizing the disruption the change in shift length would have on the patrol officers' work and personal lives, the City granted the patrol officers "Kelly Time" – four hours of paid time off every two weeks to

compensate them for this change. The City states that these extra hours are not “Kelly Time” (because Kelly Time arose with firefighters to avoid scheduled days that were otherwise overtime under the Fair Labor Standards Act) and that the additional pay was intended to be a temporary measure to facilitate the change to the new shift. The City acknowledges that the shift change is beneficial to them because it results in fewer overtime payments to employees. The City proposes elimination of “Kelly Time” because it granted this extra pay unilaterally and the need for the pay adjustment is no longer present.

Union Position

The Union believes that the practice of paying Kelly Time to employees moved from a 8.5 hour shift to a 12 hour shift should be codified in the Agreement. The Union believes that the shift change benefits the City more than the employees because it eliminates overtime payments, thus saving the City money. The Union contends that the shift change is a hardship for its members and that several divorces have occurred in part as a result of the shift change. At the same time, the Union cites Fact-finder Sellman’s Report, which states that the shift change benefits both parties. The Union also quotes Fact-finder Sellman’s Report to support its claim for continued Kelly Time: “While the grant of four hours every two weeks was intended to help the Sergeants ‘settle into the new schedule,’ this intended result was achieved and it appears to now be deemed a benefit derived from the schedule change . . . [because Kelly days work well for the City and the police] [i]t is recommended that the use of ‘Kelly Time’ remain unchanged.” The Union proposes that Kelly Time become a permanent part of the Agreement between the patrol officers and the City.

Discussion

The change to a 12 hour shift provides benefits to the City and the citizens of Wyoming. The City benefits because it pays less overtime. The citizens benefit because more police officers are on the street for more hours. Although Fact-finder Sellman stated that the shift change also benefits the officers, in the hearing, the Union claimed that the shift change has had deleterious effects on some officers' personal lives. While the Kelly time was initially offered as an accommodation for the shift change, the benefits the City and its citizens reap as a result of the change make it unlikely that the City will return to the 8.5 hour shift. Moreover, the overtime savings the City realizes due to the shift change will not be offset if the Kelly time remains. Finally, it seems that at least some officers do not like the shift change. As a result, continued payment of Kelly Time to the officers will offset some of this unhappiness and, in addition, fairly compensate the officers for the change.

Recommendation: The Fact-finder recommends that the current use of "Kelly Time" continue.

D. Duration

City's Position

The City believes that the Agreement should not be retroactive to January 1, 2010 but, instead, be effective on the date it is signed. The City states that the Union did not bargain in an efficient manner and delayed bargaining sessions as well as the fact-finding hearing.

Union's Position

The Union proposes that the Agreement's effective date be retroactive to January 1, 2010. The Union states that both parties agreed to the extensions, therefore, the Union should not be punished by a finding of no retroactivity.

Discussion

The Union offered into evidence a number of mutually agreed-upon extension agreements. The City contended that the Union delayed negotiations and fact-finding, and put into evidence several e-mails regarding negotiations and fact-findings with both the sergeants and patrol officers. While the parties appeared to have difficulty agreeing on dates for negotiation and fact-finding, these difficulties do not amount to unreasonable delay. As a result, the Agreement's effective date should be January 1, 2010.

Recommendation

The Fact-finder recommends that the Agreement's effective date be January 1, 2010.

Article 16: Overtime

Union's position

The Union proposes that an employee who is called or e-mailed or is otherwise engaged in work-related business during the officer's off-duty time receive two hours of compensatory time for each contact. The Union states that the City of Loveland has a provision that compensates officers for "off-duty consultations." The City of Loveland provides 30 minutes of overtime compensation for any telephone consultations that exceed six minutes in length.

City's Position

The City surveyed sixteen comparable jurisdictions and found only one (North College Hill) that pays overtime for off-duty contacts and that jurisdiction pays time in quarter hour increments. The City noted that officers already receive a monthly stipend of up to \$25 for off-duty cell phone contacts. The City states that the sergeants' unit did not obtain this benefit and that sergeants are as likely to receive phone calls as are officers. Ultimately, the City is

concerned that additional monetary expenditures cannot be justified in a time of financial uncertainty.

Discussion

Although off-duty contact is an imposition on an officer's time, neither the internal comparables nor the external comparables dictate a change to the City's current policy. Only one or two out of 16 comparable jurisdictions offers this benefit, and at a much lower rate (30 minutes of overtime or quarter-hour increments as compared to the two hours the Union proposes). In addition, the sergeants, who receive similar off-duty calls, do not receive compensation for those calls. The lack of evidentiary support for the change, when considered with the precarious financial situation of the City, does not justify a change to the current Agreement to include call-in compensation.

Recommendation: The Fact-finder recommends that no new call-in time compensation be adopted.

Article 18 and 19: Holidays, Vacation, Personal Leave and Sick Leave

Union's Position

The Union proposes that the new Agreement add a personal day and change the language addressing vacations, holidays, personal leave and sick leave days so that those "days" are calculated at a rate equal to the days in an employee's work schedule. In other words, vacation, holiday, personal leave and sick leave days should be calculated at the twelve hour rate for employees who work a twelve hour day. The Union also noted that, currently, non-union employees receive one more personal leave day than do the unionized employees. In addition, the Union states that employees who work twelve hour days should have twelve hour vacation,

holiday, sick leave and personal leave days so that the definition of “day” is consistent throughout the Agreement.

City's Position

The City contends that the proposed change would provide significantly greater pay for time off than an equivalent forty-hour employee receives. In addition, the City notes that the sergeants did not propose a change in calculating vacation, holiday, sick leave or personal days even though they also moved to a 12 hour shift. The City states that “Kelly Time” already compensates the officers for the change to a 12 hour shift and that any additional compensation would be unjustified. The City’s survey data demonstrated that patrol officers already receive more than the average number of personal days. According to its survey, the average personal leave for officers in comparable jurisdictions is currently 1.5 days, with many officers in other jurisdictions receiving zero personal days. Increasing the yearly sick leave from 120 to 168 hours, which would happen if sick leave accrued based on 12 hour days instead of 8 hour days, would put Wyoming grossly above the existing average sick leave for patrol officers in comparable jurisdictions. The current average sick leave among comparable jurisdictions is 121 hours per year. The City also notes that Indian Hill, whose officers work 12 hour shifts, provides only 120 hours per year of sick leave.

Discussion

Neither the internal nor the external comparables support a change to the existing personal leave, sick leave, holidays and vacation days calculations. To recommend the Union’s proposal would unfairly increase their benefits both compared to employees in surrounding similarly situated communities as well as to employees in the other units in Wyoming. Under the Union’s proposal, the officers would receive 50% more vacation days and sick leave than

employees who continue to work 8 hour shifts as well as more than the sergeants, who work a 12 hour shift but did not request this change. In addition, it is common for public employers to use 12 hour shifts, but pay benefits based on an eight-hour work day. The Union's proposal is not justified because it would create significant disparity both within the City and for the City's patrol officers as compared to officers in similarly situated comparable jurisdictions. In addition, the proposal for an additional personal leave day is not justified in the current economic climate.

Recommendation: The Fact-finder recommends no change to Articles 18 and 19, addressing sick leave, vacation, holidays and personal leave.

Article 21: Longevity

Union's Position

The Union proposes to change the current language of the longevity provision so that longevity pay is no longer calculated based upon merit but is simply awarded based on length of service with the City. The Union is concerned that the City Manager, who awards longevity, does not directly supervise the officers who he evaluates and therefore uses the merit determination as a mechanism to deny longevity to employees who received corrective action or discipline within a calendar year. The Union asserts that it would be more appropriate to eliminate the merit determination and provide longevity pay to all employees with three or more years of continuous service. Paying longevity without consideration of merit would recognize the true purpose of longevity pay, which is to acknowledge the continued service and employment of patrol officers.

City's Position

The City states that merit has long played a role in determining whether an employee receives longevity pay. The City states that other internal units assess longevity pay in the same

way. In addition, the City states, the Chief of Police provides the City Manager with recommendations regarding longevity pay. Although the Manager is making determinations without personal observation of the officers, the Union's concern on this front is unfounded because the decisions are based on information obtained from the Chief of Police, who has had ample opportunity to observe the officers' work. Moreover, concerns that employees are denied longevity pay on a regular basis are misplaced. Over the past several years, the City has denied longevity pay to only two former employees and one current employee.

Discussion

Past collectively bargaining agreements and internal comparables support the continued practice of using merit to determine whether an employee receives longevity pay. The Union did not establish that the City acts arbitrarily when it makes its merit determinations. In addition, if the parties accept the recommendation regarding comments to the supervisor's log, fair, appropriate and reasonable end-of-year merit determinations should be easier to make.

Recommendation: The Fact-finder recommends that the parties award longevity pay in the same manner as they did under the last collective bargaining Agreement.

Article 22 – Health Insurance

Union's Position

The Union proposes that the Health Insurance Article from the previous collectively bargaining Agreement remain unchanged in the Agreement currently being negotiated except that it proposes increasing from \$400 to \$600 the amount the City pays to each employee for dental and optical benefits. The Union is concerned that an increase in the cost of health insurance will erode the officers' financial stability and will minimize or negate any wage increase negotiated as part of the Agreement.

City's Position

The City proposes that health insurance employee contributions increase from 8% to 9% in 2010, to 10.5% in 2011 and 12% in 2012 and that prescription drug co-pays for generic, name brand and formulary drugs be increased from \$5/\$15/\$25 to \$5/\$20/\$40. The City states that both AFSCME and the police clerks agreed to these changes and that Fact-finder Sellman recommended these changes for the police sergeants in his fact-finding report. All non-union employees work under these changed circumstances as well. According to the City, the Kaiser Family Foundation's 2009 Survey of employer health benefits, covering over 2000 private sector and governmental employers in the United States, found that, on average, employees contribute 27% of the premium for family coverage and 17% for single coverage. These percentages are much higher than what the patrol officers would be asked to contribute. The City states that the proposed insurance changes must be implemented in light of these averages, the internal comparables and the difficult economic times. In addition, the City does not believe a change to optical and dental benefits is appropriate at this time because the other units did not receive this change and the change would be costly to the City.

Discussion

Health insurance continues to be a major expense in a public sector employer's budget. Unfortunately, health care costs are rising for all private and public sector employers. Based on the Kaiser Report, patrol officers, even after the proposed change is implemented, would still pay much less than other, similarly situated employees. Moreover, every other City of Wyoming employee, whether unionized or not, has accepted these health insurance changes. To treat the patrol officers differently would be unreasonable. And, to the extent that the City reaps cost

savings as a result of negotiating a city-wide insurance plan, those savings could be lost or reduced if the proposed plan is not put into place for all the employees.

Although the officers may suffer some decrease in their overall net worth as a result of the proposed changes to the health insurance plan, the Union offered no reason to treat the officers differently than all the other unionized and non-unionized employees within the City. In addition, even with the proposed changes, the officers' premium costs will remain much lower than most workers in the private or public sector.

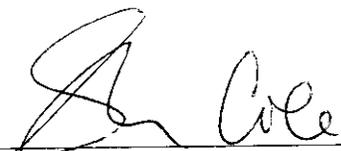
Finally, the Union's proposed change in dental and optical benefits was not supported by internal comparables, external comparables or any statements that the current benefit is inadequate. Because increasing the benefit will increase costs for the City, the move to \$600 is not recommended.

Recommendation: The Fact-finder recommends that the City's position be adopted and that health insurance employee contributions be increased from 8% to 9% in 2010, to 10.5% in 2011 and 12% in 2012. Prescription drug co-pays for generic, brand name and non-formulary drugs should be increased to \$5/\$20/\$40.

CONCLUSION

This Fact-finder submits the above referenced recommendations on the outstanding issues presented to her for consideration. Further, the Fact-finder incorporates all tentative agreements the parties previously reached and recommends that they be included in the Parties' Final Agreement.

June 17, 2010



SARAH R. COLE, 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 June 17, 2010 to:

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