

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

PROCEEDING

Case No. 09-MED-09-0993

The City of Blue Ash, Employer

and

Fraternal Order of Police, Ohio Labor Council, Inc., Employee Organization

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Daniel N. Kosanovich

ISSUED: March 29, 2010

Appearances:

Kirk M. Wall, Esq.  
Dinsmore & Shohl LLP  
191 W. Nationwide Blvd., Suite 300  
Columbus, OH 43215  
(For the City of Blue Ash)

Ross Rader  
Staff Representative  
Fraternal Order of Police, Ohio Labor Council, Inc.,  
222 E. Town Street  
Columbus OH 43215-4611  
(For FOP, Ohio Labor Council, Inc.)

100 HR-1 P 12:05

STATE EMPLOYMENT  
RELATIONS BOARD

## **REPORT AND RECOMMENDATIONS**

### **I. Background**

The bargaining unit in this case consists of all full-time Sergeants employed by the City of Blue Ash, but excluding all other employees. There are approximately six (6) Sergeants in the bargaining unit. The employer is the City of Blue Ash. The parties have a collective bargaining history which dates back to 2005.

The City of Blue Ash and the FOP, Ohio Labor Council, Inc. have engaged in a collective bargaining effort to provide a successor agreement to the contract that expired by its terms on December of 2009. The parties have tentatively resolved all of the issues between them except for wages. The tentative agreements made on all issues except wages and duration are considered to be resolved through negotiations by the parties prior to the hearing and are incorporated into this Fact-Finding Report as if fully rewritten herein.

At the outset of the hearing, the undersigned offered to mediate the open issues and said offer was accepted by the parties.

It must be noted that during the course of the hearing both parties were given full opportunity to submit evidence in support of their respective positions on the remaining unresolved issues and they availed themselves of those opportunities. Set forth below are the undersigned's recommendations on the remaining unresolved issues of wages and duration.

### **II. Criteria**

In compliance with Ohio Revised Code, Section 4117.14(G)(7), and the Ohio Administrative Code, Section 4117-95-05(J), the fact-finder considered the following criteria in making the recommendations contained in this report:

1) Past collectively bargained agreements between the parties.

2) Comparison of unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area in the classifications 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 on the normal standards of public service;

4) Lawful authority of the public employer;

5) Stipulations of the parties; and.

6) Such factors as are not confined to those above which are normally and traditionally taken into consideration.

### **III. Findings and Recommendations**

#### **ISSUE: ARTICLE 19 – WAGES AND COMPENSATION**

##### **The City of Blue Ash's Position**

The City of Blue Ash has proposed a wage freeze for each year of a three (3) year contract. Perhaps the most succinct and effective arguments in support of its position are set forth in the City's pre-hearing statement, which is quoted below.

"This wage rate is a reasonable proposal and comports with sound fiscal management for a public employer. Blue Ash had an essentially stagnant budget for approximately ten (10) years since 1999. In late 2009, Blue Ash suffered a significant decrease in revenues. As the Fact Finder is well aware, the downward trend in the economy has affected the tax base of all public employers. The Union's proposal for a 2.8% and 2.5% increase in each respective year is unreasonable, particularly in light of the economic position of the City.

Blue Ash announced at a Budget Update Presentation in early December of 2009 that the City needs to focus on tightening the budget due to a decrease in revenue and a high level of operating costs. In order to address this issue while controlling costs and preserving jobs, Blue Ash imposed a wage freeze for the 2010 payplan year for all non-bargaining employees.

Prior to the downturn in revenues, Fact Finder Mollie Bowers awarded 2.5% to Blue Ash's Firefighters in fact finding for three (3) years on September 4, 2009. Before that, Blue Ash settled with its Fire Lieutenants at 2.5% per year in January of 2009. Blue Ash's Dispatchers were awarded 3.0%, 2.8%, and 2.5% in fact finding by this Fact Finder on January 9, 2009. Both of the fact finding decisions recognized the City's growth in tax revenues had become stagnant. The economic situation has become far worse since those decisions.

The current proposal is a 0% increase and is consistent with the non-bargaining employee's 2010 wage freeze, as well as the City's current and forecasted revenues. This wage freeze is necessary for Blue Ash to maintain its bond rating and continued viability. Moreover, the proposal is ahead of the Consumer Price Index.

The City's proposal keeps Blue Ash's Police Sergeants among the top paid employees in the region."

#### **FOP Ohio Labor Council Inc.'s Position**

It is the Union's position that wage rates shall be increased 2.8% for fiscal year 2010 and shall be effective December 14, 2009. The Union also proposes that wage rates shall be increased 2.5% for fiscal year 2011 and shall be effective December 15, 2010. The Union relies heavily on comparables, both internal and external. For instance, the FOP Ohio Labor Council Inc. points out that the City agreed to pay Patrol Officers a 3.25%

increase on the base rate effective December 12, 2009. In addition, the City agreed to pay Dispatchers a 2.8% base rate increase in the second year of a three year Collective Bargaining Agreement effective December 12, 2009. Furthermore, the City agreed to pay those same Dispatchers a 2.5% increase in the second year of the contract. The City also agreed to pay a 2.5% increase in the third year of the contract effective December 25, 2010 to the Patrol Officers.

Likewise, the Blue Ash Firefighters did receive a 2.5% wage increase effective February 22, 2010 and are anticipating another 2.5% increase on February 22, 2011. The Blue Ash Fire Lieutenants realized a 2.5% increase on February 12, 2009 and an additional 2.5% wage increase on February 25, 2010.

When compared to other Sergeant's units from similar communities, the record indicates that percentage increases were given to said Sergeants in 2010 and will be given in 2011. For instance, the Sergeants in Clear Creek Township received a 3.0% wage increase in 2010 and an identical 3.0% increase in 2011. The same is true for virtually all of the comparable units in the other communities of Mason, Miami Township, Millford, Montgomery, Moraine and West Carrollton.

Finally, the total cost of the Union's proposal is \$46,726.42. This is hardly an exorbitant expenditure on wages and the City has the fiscal wherewithal to administer the Union's proposal.

Therefore the FOP Ohio Labor Council submits that the proposal is reasonable and should be recommended by the Fact Finder.

#### **RECOMMENDATION**

The parties to this fact finding proceeding worked diligently in an attempt to negotiate a complete successor agreement. To that end, many of the proposed

modifications were tentatively agreed to by the parties. An Index of the tentative agreements reached in negotiations is attached hereto and the tentative agreements themselves are incorporated into this Report as if fully rewritten (Attachment A). In addition, on March 1, 2010, the parties entered into a settlement agreement for the 2010 Collective Bargaining Agreement, (Attachment B) which deals with a number of items and is incorporated herein as if fully rewritten. The settlement agreement reached on March 1, 2010 is attached hereto as Appendix B. Note that the March 1, 2010 agreement limits the submission to fact finding to two (2) issues – Wages and Duration.

With respect to wages, it is incumbent upon the undersigned to balance the City's need to maintain fiscal responsibility while fostering and meeting reasonable expectations of bargaining unit employees. The undersigned issued a Fact Finding Report and Recommendations on January 9, 2009 for the Dispatcher's unit. In that Report, the finding was made that the revenue stream to the City had become stagnant. It appears that overall in 2009 there was a six percent (6%) reduction in revenues. Given the uncertain economic times, this downward adjustment in revenues is to be expected. The economic climate, coupled with the stagnating revenue growth in the City of Blue Ash, militate in favor of a conservative fiscal approach.

However, the City's proposal does not sufficiently meet the bargaining unit employees' expectations, nor do I find the wage freeze for three (3) years to be reasonable. But, the Union's proposal does not address the interest of being fiscally conservative.

Thus, the undersigned recommends a three (3) year agreement, effective March 3, 2010. In year one of the agreement, a wage freeze is recommended. However, in order to recognize the contribution of the bargaining unit employees to the safety efforts of the

City, the Sergeants shall receive two (2) additional paid days off, that must be taken in year one of the contract. These days do not carry forward and cannot be sold to the City. These days are subject to Section 133.12 (Personal Leave Policy). In year two of the contract, the bargaining unit employees will receive a 1.5% raise or the amount of the raise granted to non-bargaining unit employees, whichever is the greater. In year three of the contract, the bargaining unit employees shall receive a 2.0% increase or the amount of the raise granted non-bargaining unit employees, whichever is the greater.

**ISSUE: DURATION**

**The City of Blue Ash's Position**

The contract should be a three (3) year contract from the date of the Fact-Finding Report going forward.

**FOP Ohio Labor Council Inc.'s Position**

The FOP Ohio Labor Council seeks a contract of two (2) years of duration effective December 31, 2009.

**RECOMMENDATION**

Given the fact that there is strategic interest to be met and served with the implementation of a three (3) year agreement, it is recommended that the parties adopt a three (3) year contract effective March 5, 2010.

**IV. Certification**

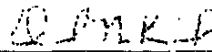
The Fact-Finding Report and the Recommendations are based upon the evidence submitted, testimony presented, and stipulations/agreements entered into by the parties at a hearing conducted on March 5, 2010. The recommendations contained herein are developed in conformity with the criteria set forth in Ohio Revised Code 4717(7)(a-f) and the associated administrative rules developed by SERB. Tentative agreements reached

by the parties prior to the hearing on March 5, 2010 are incorporated herein by reference as if fully re-written.

  
\_\_\_\_\_  
Daniel N. Kosanovich  
Fact-Finder

**V. Proof of Service**

This report was mailed to Kirk M. Wall, Esq., Dinsmore & Shohl LLP, 191 W. Nationwide Blvd., Suite 300, Columbus, OH 43215 and Ross Rader, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 E. Town Street, Columbus OH 43215-4611 on this 31<sup>st</sup> day of March, 2010. This report was also electronically transmitted to the parties on this 29<sup>th</sup> day of March, 2010.

  
\_\_\_\_\_  
Daniel N. Kosanovich  
Fact-Finder



## TENTATIVE AGREEMENTS

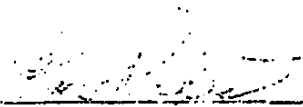
1. **Entire Agreement to be Gender Neutral**
2. **Article 9**                    **Pre-disciplinary Conference**
  - Section 9.1
  - Section 9.3
  - Section 9.6
3. **Article 10**                    **Grievance Procedure**
  - Section 10.5
  - Section 10.15
4. **Article 12**                    **Personal Files**
  - Section 12.4
5. **Article 13**                    **Seniority**
  - Section 13.1
6. **Article 16**                    **Work Period/Overtime**
  - Section 16.10
7. **Article 18**                    **Special Events**
  - Section 18.1
  - Section 18.2
8. **Article 21**                    **Insurance**
  - Section 21.4 Deleted
9. **Article 22**                    **Clothing and Equipment**
  - Section 22.1
10. **Article 23**                    **Travel and Training Allowances**
  - Section 23.3
11. **Article 25**                    **Vacation**
  - Section 25.1
12. **Article 26**                    **Sick Leave**
  - Section 26.7
  - Section 26.11 (New) Attendance

**Settlement Agreement For 2010 Collective Bargaining Agreement Between The FOP Ohio Labor Council (Sergeants) and the City of Blue Ash**

The parties agree that the collective bargaining agreement ("CBA") will be settled on the following terms:

1. The issue of duration and wages will be submitted on March 3, 2009 to fact finding before Mr. Kasonovich. No other issues will be taken to fact-finding.
2. The parties agree that the tentative agreements signed at the table during the course of negotiations will be incorporated into the final CBA.
3. The FOP's October 21, 2009 proposal modify the vacation accrual in Section 25.1 for 24 years (2.5 days) and 28 (2.75 days) will be incorporated into the CBA.
4. The FOP's October 21, 2009 proposal to modify the uniform allowance to include shoes/boots, belts, and gloves will be incorporated into the CBA.
5. The City's November 16, 2009 Settlement Offer for a New Section 26.10 Specific Guidelines for Attendance will be incorporated into the CBA, except that the Item # therein will be changed as follows: Written Reminder will be renamed Documented Counseling. The 6<sup>th</sup> Occurrence will be a 10 day suspension. The 7<sup>th</sup> Occurrence will be a 30 day suspension and the 8<sup>th</sup> Occurrence will be a termination.
6. The CBA will be modified to allow for a pay out for employees who refuse insurance as set forth in the City's November 16, 2009 Settlement Offer.
7. All other outstanding proposals not specifically agreed to in writing by the parties or mentioned in this Settlement Agreement are hereby withdrawn.

Agree to:

  
\_\_\_\_\_  
FOP

  
\_\_\_\_\_  
City of Blue Ash



New Section 26.10

**SPECIFIC GUIDELINES FOR ATTENDANCE**

1 Good attendance, which is defined as minimal absenteeism and tardiness, is clearly tied to successfully meeting the City's job requirements. The nature of our the Police Department makes steady attendance and punctuality at work important and an essential job duty. A great deal of effort is put forth by employees to attend work as scheduled and to be at work locations, ready to start work, when the workday and shift begins.

2 Attendance is measured in terms of "occurrences". The following definitions are applicable to this attendance policy.

- (a) Absence The failure to report for scheduled work.
- (b) Tardiness The late arrival for scheduled work at the designated start time.
- (c) Occurrence A single occurrence is:

- (1) An absence of up to three (3) consecutive scheduled workdays  
or
- (2) Two instances of tardiness

NOTE: An occurrence exists whether or not it has been excused. For example, an occurrence of absence exists even when an employee has presented a letter from a medical doctor verifying the illness or injury. An occurrence exists unless it is specifically excluded below.

3 Certain types of absence from scheduled work are excluded from this definition of occurrence:

- (a) *Vacations*
- (b) *Holidays*
- (c) *Funeral Leave*
- (d) *Military leave*
- (e) *Jury or witness duty or appearing in court for a subpoena*
- (f) *Leave as covered by the Family and Medical Leave Act. Any period of continuous absence for the same health condition that continues after FMLA leave entitlement expires will be treated as a single occurrence*

