

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

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| In the matter of Fact Finding between: |) | SERB No. 10-MED-10-1530 |
| |) | |
| CITY OF MIDDLETOWN, OHIO, |) | Hearing: January 20, 2011 |
| Public Employer, |) | at Middletown, Ohio |
| |) | |
| and |) | Date of Report: |
| |) | February 11, 2011 |
| FRATERNAL ORDER OF POLICE, |) | |
| OHIO LABOR COUNCIL, INC., |) | |
| Employee Organization. |) | |

2011 FEB 14 P 2:38
STATE EMPLOYMENT
RELATIONS BOARD

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Employer:

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| Sara Mills, | Law Director |
| Greg Schwarber, | Chief of Police |
| David VanArsdale, | Deputy Chief |

For the Union:

| | |
|-----------------|-------------------------------|
| Thomas J. Fehr, | Staff Representative, FOP-OLC |
| Candice Stutz, | Representative, FOP-OLC |
| Lisa McDonald, | Corrections Officer |

I. Introduction and Background.

The State Employment Relations Board, on November 19, 2010, appointed the undersigned as the Fact Finder of this public employment labor dispute. The parties submitted timely pre-hearing position statements on the unresolved issues of their contract negotiations in accordance with SERB rules and guidelines. The matter was heard on January 20, 2011 at the City's offices in Middletown, Ohio.

The Employer is a municipal corporation operating under a City Charter under the home rule provisions of the Ohio Constitution. The City has approximately 51,605 residents and employs approximately 387 full time persons.

The FOP-OLC is the exclusive bargaining representative for approximately 11 corrections officers that are employed in the City operated jail. The parties began negotiations in October 2010. There were 21 unopened articles that were not discussed during negotiations. The following articles were tentatively agreed upon: 5- Management Rights; 9- Discharges, Suspensions, Penalties; 11-Arbitration; 13-Holidays; 20-Insurance; and 30-Termination. The remaining issues were unresolved and are hereby addressed in this Report: Article 15- Longevity; Article 22-Wages; and Article 23-Hours of Work and Overtime.

All unopened articles and all tentatively agreed upon articles, terms and language completed during negotiations or during any mediation are hereby adopted and incorporated into this Report and made a part hereof.

There are eight other unionized bargaining units among the City's workforce. These are: (1) the patrol officers, (2) the police sergeants and lieutenants, (3) the dispatchers, (4) the police civilians employees, (5) the fire fighters, (6) the public workers, (7) the transit system workers, and (8) the water treatment employees. The FOP-OLC represents 14 dispatchers and the 7 police civilian employees. FOP Lodge 336 represents the other police units, consisting of approximately 64 patrol officers and 13

sergeants and lieutenants. The IAFF represents approximately 86 fire employees, and AFSCME represents approximately 43 public workers, 4 full time bus drivers and 20 part-time drivers. The IUO represents 8 water treatment employees.

II. Economic and Financial Evidence.

Middletown has not been spared or exempted from the country's poor economic conditions. In addition to the nationwide recession and slow recovery, Ohio and its cities have experienced declining populations, high unemployment and lower tax revenues. The federal stimulus money that has propped up the revenues in recent times is expected to decline or disappear. Wage freezes, lay-offs and reduced services and expenditures have become commonplace as cities such as Middletown strive to provide the necessary services that are expected from its citizens.

The City, in order to balance its budget for 2010 made over \$1.5 million in cuts. These included layoffs and elimination of positions. It found it necessary to draw down \$500,000 from its reserve fund to balance its 2010 budget. The 2011 budget that was prepared in 2010 projected an additional drawn down from its reserves in the amount of \$762,108. This projection proved inaccurate and the City believes that the draw down will now be almost \$1 million unless it can reduce its expenditures or somehow increase its revenues. It already took the steps of eliminating 3 vacant fire positions. The projected reserve balance for year-end 2011 will be a little above \$5.8 million, down from \$6,786,130 at year end 2010. The 2011 projected unencumbered ending balance is targeted at \$22,319,000, down from a beginning balance of \$25 million.

The unencumbered ending balance for 2011 is projected to decline from 23.4 % in 2010 to 20.1% in 2011; a percentage below the percentage the City believes is acceptable for a city of its size. The target varies between 15%-25%. The reserves have been lower in past years, but the City believes that further circumstances will cut further into its reserves while it continues to operate with its expenditures exceeding its income. Its budget for 2011 assumes that its local government fund revenue will remain at \$1.7 million. This is suspect, however, because state cuts in its local government payments are expected to decline substantially due to the state's budgetary problems.

The City income tax provides the major source of revenue. Loss of population and businesses and high unemployment will continue to depress these tax revenues.¹ The police division, which affects the money for this unit, is also funded through a public safety levy that is scheduled to expire in 2012. The budget for 2011 assumes that City income tax revenues will increase at 2% for 2011 through 2013, but it assumes that the levy will not be renewed after 2012. The safety levy averaged \$2.5 million in revenue each year since 2008.

¹ AK Steel is one of the largest taxpayers. Its fortunes have fluctuated over the years. There was a long lockout resulting in substantial unemployment from March 2006 to March 2007. It moved its headquarters out of Middletown causing about \$400, 000 in lost tax revenues from 300 of the highest paying jobs. AK, itself, is experiencing financial concerns due to its high pension and health care obligations, and high operating costs in a very competitive market. It is planning to develop a coke production facility with a division of Sunoco, but construction has been delayed. Moreover, the City has lost over 1,000 jobs due to plant closings, company relocations and business closings.

Moreover, Middletown, like other rust belt cities in Ohio, has a high poverty rate, low median income, a poor housing market due to high foreclosures, and a large amount of subsidized housing.

The City frames its economic proposals for these negotiations as “an inability to pay” due to the above negative economic and financial conditions. However, as the Union points out, this is not really an inability to pay case, since the City can pay the economic proposals from the Union without operating in the red or going into bankruptcy. Its reserves are sufficient to meet the Union’s proposals. This unit has only 11 members, so the financial cost to the City is minimal and well within the City’s ability to pay.

The problem in resolving the economic issues at hand have to do with the problem of internal comparables within the City’s employee compensation obligations. In the past, the wages and benefits paid to the larger safety forces drove those paid to the corrections officers, civilian police personnel, and the dispatchers. However, this changed due to the City’s efforts to curb its out of control medical and health care insurance costs. The City decided that it needed to control these costs that provided stated benefits by establishing a health insurance committee with representatives from each of its personnel areas and bargaining units. It would assign a fixed budgeted amount each year that would be devoted to covering these costs, and the committee would formulate a plan with benefits that would operate within this budget. Employee contributions toward premiums, co-payments and deductibles would provide for any

additional benefits not funded by the City. The police units were opposed to these changes. They insisted on retaining their stated benefits at existing City contribution levels, and took the issue to conciliation. A conciliator permitted the police to continue with their existing plan without being limited by committee decisions or the City's fixed budget. Other units, including this unit for the corrections officers agreed to the new committee system as a method of controlling health care costs. The City thereafter negotiated the present police contracts and agreed to pay higher than normal pay increases in exchange for the police units' agreement to accept the health committee, and fixed budgetary limits for reigning in health care costs.

Accordingly, the City does not believe that the police contracts should now drive its negotiations with the other units, including this unit. This is because it needed to buy-out the police units by paying increases to bring them into the fold, when the other units had already agreed to the health care committee and the fixed annual budget for health care costs. It paid the extra money to the police units to insure its participation in the new plan, and otherwise avoid any possible contrary conciliation decision. It believes it acted reasonably because bringing the police units into the new system will allow the City to better control its future costs.

Needless to say, this unit believes it has been shortchanged. It agreed to the new health care system without taking the matter to conciliation in order to accommodate the City during its financial problems. Nevertheless, the City is proposing increases of only 1% in each year of the next 3-year contract, while the police units are receiving 9.5%

over the 3-year period of their contracts. The City's 2010 and 2011 budget and projections for 2012-2014 demonstrates this compensation disparity. The police units are planned to receive increases of 3.5% and 2.5% in 2011 and 2012. CO's, dispatchers and Records Clerks are to receive 1% in each of those years. Fire is to receive 3% in 2011 and 1% in 2012. The police units are not budgeted down to 1% increases until 2013 and 2014. This circumstance is the primary reason for the parties being at impasse over the following unresolved economic issues.

Moreover, the Union does not believe the City's financial circumstances are all doom and gloom. The City's 12/31/10 Budget Report contains some optimistic statements. The City has a thriving university campus. A new 250-bed hospital facility has been added to the 190 acre Premier Health Campus. This is projected to add 1,000 jobs to the existing 1,900 at the site over the next 10 years. The steel and paper industries still have a strong base, employing nearly 3,000 persons. Other development projects have amounted to nearly \$1 billion in corporate investments. Economic indicators such as job growth and increasing retail sales show that the recession has ended and a recovery is gaining some strength in the region.

III. Unresolved Issues.

Article 15- Longevity

The City proposes to eliminate the longevity pay provision for the 11 unit members. The cost savings for eliminating this benefit for the CO unit is minimal, \$5,000 to \$15,000 for the entire unit depending upon the roll-up factor being used.

Longevity payments for the police units still remain. Montgomery County and Hamilton County CO's have longevity payments, as do Middletown police and fire personnel. The Union wants to retain this benefit with current language.

It must be assumed that this benefit was received through negotiations in past years in exchange for accepting lower forms of other compensation or benefits. I see no compelling reason to eliminate this benefit due to its minimal cost, until the longevity payments are removed from the police and fire units.

Recommendation: No change.

Article 22 – Wages

The City's proposal of a 1% across the board increase for CO's mirrors its budget plans for non-bargaining unit employee increases. It also is willing to agree to a "me-too" clause that guarantees further increases for COs if non unit employees are paid increases over the 3-year contract period, 2011, 2012 and 2013.

The Union has reduced its demands to a proposal of a 2% increase in each of the three contract years. While it is difficult to decipher the evidence in the exhibits in order to make realistic comparisons, it appears that Middletown COs are paid comparable wages to those performing similar work and duties within the region or state. A review of contracts based upon SERB compiled information shows that 2% increases are within reasonable bounds for 2011 and 2012. A CO at the top scale would receive

approximately \$800 (assuming a \$40,000 annual salary). There is no question that the City can afford to make these payments for at least sometime during the next three years until it brings the police units' wages into manageable areas. There are reserve funds available to pay for the CO increases in the event the City experiences further revenue deficiencies or otherwise experiences unexpected increased expenses over this period.

Recommendation: I recommend that the COs receive an across the board wage increase of 2% for 2011 retroactive to January 1, 2011, and a 2% across the board increase for 2012. Due to the uncertainties regarding the renewal of the safety levy, and the possibility of reduced state funding, as well as other controlling economic factors, I recommend that the parties re-open the contract negotiations for the last contract year in order to determine any wage increase, freeze or decrease that may be appropriate for 2013.

Court Time Pay

Presently, COs are paid time and a half for court time during their off-duty time for a minimum of 3 hours pay even if they spend less time. Time spent for more than 3 hours is paid at the overtime rate. The City wants to reduce its costs by reducing the minimum payment from 3 hours to 2 hours. The average court time for COs is approximately 1.23 hours. The City wants to carry this proposal forward in the other CBAs where substantial money can be saved. The Union opposes any change.

I believe any change for the COs on this issue should be driven by changes in the police unit contracts, where real money can be saved. Police officers are called to court more often. It is their contracts that should control this benefit for the COs, which benefit was obtained over the years within the context of comprehensive economic compensation and benefits. Reducing the COs from 3 to 2 hours of minimum compensation in this area would provide only a token savings and would have little effect upon obtaining concessions from the patrol units. It should work the other way around.

Recommendation: No change.

Article 23 – Hours of Work and Overtime

The Union proposes that paid vacation time and compensatory time count toward the calculation of overtime. It argues that most police and police-related contracts count all paid time when calculating overtime or the 40-hour threshold for paying overtime rates. The police contract does not have this specific language, but it does count time for off duty incidents, court time and call-out time for purposes of calculating overtime.

The City contends that the overtime calculation already includes funeral leave time; holiday leave and injury leave toward the threshold. The Union's proposal would, according to the City, cause substantial cost increases at a time when it is trying to control its personnel costs due to its financial concerns. Overtime costs increased dramatically in this unit, from \$37, 465 in 2009 to \$48,209 in 2010. Adding sick time, vacation time and compensatory time to this mix would unreasonably place strains upon

the budget. Granting the Union's proposal would only result in proposals from other units along the same lines.

I see no compelling reason to change the status quo in this area, unless and until changes mirroring these types of additions to the overtime calculation are placed within the other CBAs.

Recommendation: No change.

Uniform Allowance

The Union did not include a proposal on this issue in its Pre-hearing statement, but the parties nevertheless discussed a Union proposal to increase this benefit at the hearing. The present payment is \$700. The Union proposes \$900, the same as the police. The City argues that \$900 is unnecessary due to the difference in duties between the units. Nevertheless, the figure was increased to the COs in the last contract from \$500 to the present \$700.

Recommendation: No change.

Field Training Officer Pay

Presently, each of the two employees on a work shift receives an additional \$.75 per hour when a new employee is being trained. The Union proposes increasing the

amount to \$1.00. The City points out that this amount was increased from \$.60 to \$.75 in the last contract.

The Union is also proposing that anytime a patrol officer works an open shift in the jail, the COs should receive this additional training amount. This regularly occurs because the CO group is small and there are open shifts. Also, this may occur because it is necessary to staff the shift with a female officer. The Union argues that training is often necessary for these fill-in police officers. The City disagrees. It believes that many of the police officers started their careers in the jail, and that they are familiar with procedures such that only minimal new training is necessary, if at all. The City believes that the Union's proposal is a staffing issue that should be totally under management's control.

Again, this issue was not covered in the Union's Pre-hearing statement, but nevertheless was discussed at the hearing. Notwithstanding that this is a payment issue particularly applicable to the COs, I see no compelling need to recommend a new rate, or one that is not negotiated between the parties. Likewise, I am not convinced that a new rate is justified due to extra work by the COs in training police officers who fill in on a periodic basis.

Recommendation: No change.

Call-Out and Mandatory Job Assignment Pay

This issue was not addressed in the Union's Pre-hearing statement. The Union withdrew its proposal at the hearing.

Date of Report: February 11, 2011


Mitchell B. Goldberg, Appointed Fact Finder

CERTIFICATE OF SERVICE

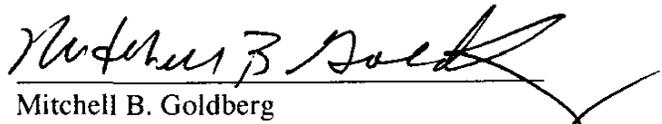
The following persons were served with the foregoing Report on February 11, 2011 by U.S. Mail First Class:

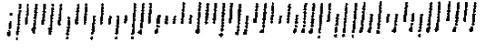
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The Report was also served upon Sara E. Mills and Thomas J. Fehr, FOP-OLC Staff Representative, by electronic mail on the same date.


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