

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 11-MED-03-0417
	:	11-MED-03-0418
Between:	:	11-MED-03-0419
	:	11-MED-03-0420
City of Franklin, Franklin, Ohio	:	
Employer	:	Date of Hearing: August 19, 2011
	:	Date of Report: September 2, 2011
And:	:	
	:	
Franklin Law Enforcement Association	:	Felicia Bernardini, Fact Finder
Union	:	

Fact Finder Report and Recommendation

Appearances:

For City of Franklin, Ohio

Brett Geary of Clemans Nelson & Associates, Fact Finding Spokesperson

Donnette Fisher, City Law Director

For Franklin Law Enforcement Association

Stephen Lazarus of Hardin, Lazarus & Lewis, LLC, Fact Finding Spokesperson

Megan Glowacki, Hardin, Lazarus & Lewis, LLC

Gerald Massey, Franklin Law Enforcement Association

Jonathan Woods, Franklin Law Enforcement Association

Nancy Wolf, Franklin Law Enforcement Association

Introduction

Case Background

Felicia Bernardini was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board (SERB) on July 1, 2011 in compliance with Ohio Revised Code (ORC) Section 4117.14(C)(3). The case concerns a fact finding proceeding between the City of Franklin (here after referred to as the “Employer” or the “City”) and the Franklin Law Enforcement Association (here after referred to as the “Union” or “FLEA”).

Prior to the hearing, the parties engaged in contract negotiations on four scheduled dates, April 20, June 15, June 29 and July 13. Although brief, the negotiations resulted in 15 tentative agreements (TA’s). Nine issues remained unresolved along with two associated Appendices. The current contract expired on December 31, 2010. After an initial contact with the parties, a time extension was filed. A hearing was scheduled for August 19, 2011. Both parties timely filed the required pre-hearing statements.

The day of the hearing, the Fact Finder proposed mediation of the outstanding issues prior to moving to the evidentiary hearing. The parties accepted the offer to mediate. Although a mediated settlement was not achieved the parties put forth considerable effort and resolved five open articles as well as Appendix D (Shift Assignment Memorandum of Understanding). The parties proceeded to hearing on four open Articles and the remaining associated Appendix. Neither the parties nor the Fact Finder are bound by proposals, positions or possibilities discussed during mediation.

Brett Geary, represented the Employer.

Steve Lazarus, represented the Union.

Issues

The remaining open issues addressed by both parties at the hearing are as follows:

Article 30, Insurance

Article 36, Wages

Article 49, Duration

Article 50, Application of Civil Service

Appendix B, Wage Table

General Background Information

The City of Franklin is located in Warren County in Southwestern Ohio. It is situated along the Great Miami River and Interstate 75 between Dayton and Cincinnati. There are approximately 11,771 residents and 4667 households within the City of Franklin.¹ Population growth in the City of Franklin has been a modest 3.3% in the past decade (2010 to 2000) and 3.4% in the decade prior to that (2000 to 1990).² Median personal income for Warren County was \$38,867 in 2009.³ Household income for the City of Franklin was estimated at \$40,130 in 2009.⁴ In May of 2011, the voters of Franklin approved a municipal tax rate increase of 0.5%. As a result, effective July 2011 the income tax withholding for the City of Franklin is 2.0%. The municipal income tax is by far the largest source of revenue for the City. Prior to the May levy, 2011 income tax revenue was estimated at \$5.1 million.⁵

The Franklin Police Department is a division of city government. It is a professional law enforcement and emergency services department. Both supervisory – to the rank of Lieutenant, and non-supervisory staff are represented by the Franklin Law Enforcement Association. There are two Lieutenants, 3 Sergeants, 16 Police Officers, and 6 Dispatchers covered by this collective bargaining agreement.

Positions, Discussion and Recommendations

The day of the hearing, the parties actively engaged in mediation for the better part of the day. As a result, the parties agreed to accept current contract language in the following Articles.

Article 22: Hours of Work and Overtime

Article 23: Vacations

Article 24: Sick Leave & injury Leave/FMLA Leave

Article 31: Personal Leave Days

Article 34: Shift Assignments

Appendix D: Shift Assignment Memorandum of Understanding – Withdrawn

¹ Population and Household Counts for Governmental Units 2010, 2000 and 1990, Revised August 2011, Ohio Department of Development

² 2010 Census Population for Cities and Villages, Ohio Department of Development

³ Ohio County Indicators, Table 17: BEA Personal Per Capita Income 2004-2009, Ohio Department of Development

⁴ City-Data.com

⁵ Employer exhibit 7L Fund:100 General Revenue

Furthermore, prior to the day of the hearing, the parties had moved very close to agreement on Article 30: Insurance. It remained unresolved primarily due to its relationship to the contract duration – itself, an open issue.

Below, Application of Civil Service will be addressed first, followed by a brief discussion of Duration, Insurance, and Wages. The Fact Finder's recommendation for each Article follows the discussion of each issue.

In analyzing the positions of the parties and making recommendations the Fact Finder is guided by available, relevant evidence and the criteria set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). The interests 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;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 50: Application of Civil Service

Union Position

The Union seeks to limit those portions of Civil Service Law superceded by the collective bargaining agreement to those items expressly listed in the index of the agreement. To accomplish this the Union proposes to delete the words “and/or additional” from Section 50.02. It is the Union's position that deleting these words would allow the benefits and protections of Civil Service Law to apply to unit members when those benefits and protections are not in conflict with the provisions of the collective bargaining agreement.

Employer Position

The Employer's position is that the parties should retain current contract language.

Discussion

During the course of the hearing day, there was virtually no discussion of the merits of the Union's proposal. There was no presentation or explanation of the circumstances driving the proposal. The burden is on the Union to more fully develop the rationale for the sought change. Until the parties fully explore the operational and administrative impact of such a change it seems unwise to tinker with contract language that has served the parties as it is for many years.

Recommendation

The Fact Finder rejects the Union's proposal to change Article 50: Application of Civil Service, and recommends that the parties stay with current language.

2. Article 49: Duration*Union Position*

The Union seeks a three-year contract effective July 1, 2011 and expiring June 30, 2014 at 1159p.m. The Union further seeks to delete Section 49.2 of Article 49. The Union's interest in moving the effective date of the contract to July 1, 2011 is two-fold. First, it would separate the new bargaining agent from the old bargaining agent and clearly signify the start of a new era. Second, a three-year contract incorporating the first 6 months of 2014 would allow the parties to settle key economic provisions of the contract as far out as is lawfully permitted bringing labor peace and stability to the relationship for both parties.

Employer Position

The Employer seeks a three-year contract effective January 1, 2011 and expiring December 31, 2013 at 11:59p.m. The Employer further seeks to delete Section 49.2 of Article 49. The City's concern is that today's economic environment is too uncertain to fairly and reasonably settle on future wages as far out as 2014. The Union's proposed effective dates coupled with a wage reopener in 2014 would suit the City as well as their own proposed duration effective dates.

Discussion

Both parties have proposed to delete Section 49.2 of Article 49.

Both parties have proposed a three-year contract duration in Section 49.1 of Article 49.

Although it is conventional to abut a successor agreement's effective dates to the prior contract's expiration date, it is not required by statute. ORC 4117.09(E) provides that a collective bargaining agreement shall not contain an expiration date that is later than three years from the date of execution. This being the case, establishing a new effective date for the duration of a new contract does not constitute a violation of law or the principles of collective bargaining. Rolling the term of the contract forward by 6 months does not work to the detriment of the parties except to the extent that the Employer would prefer to not be obligated to a wage increase in 2014.

Recommendation

For these reasons the Fact Finder accepts the Union's proposal for a three-year duration beginning July 1, 2011 and ending June 30, 2014. Further, the Fact Finder accepts the parties' proposal to delete section 49.2 in its entirety. The relevant contract language in Article 49, Section 49.1 shall read as follows:

This Agreement shall be effective on the 1st day of July, 2011 and shall expire the 30th day of June, 2014 at 11:59p.m. If either the Employer or the Union desire to terminate, modify, or negotiate a successor agreement, it shall: (1) serve written notice upon the other party of the proposed termination, modification, or desire to negotiate a successor agreement, said notice shall be served not less than sixty (60) days prior to the expiration date of this agreement; (2) offer to bargain collectively with the other party for the purpose of modifying, terminating the existing agreement, or negotiating a successor agreement; and (3) notify the State Employment Relations Board of the offer, by serving upon the Board a copy of a written notice to the other party and a copy of the existing collective bargaining agreement.

3. Article 30: Insurance

Union Position

The Union proposes that unit members pay a percentage of the applicable insurance premium rate in accordance with the following contribution schedule:

2011, no change – 11%

2012 – 12%

2013 – 12.5%

2014 – 13%

Employer Position

The Employer proposes that unit members pay a percentage of the applicable insurance premium rate in accordance with the following contribution schedule:

2011, no change – 11%

2012 – 12%

2013 – 12.5%

Discussion

There is very little separating the Union's and the City's proposals. But for the City's bargaining position that there is too much economic uncertainty to extend the collective bargaining agreement into 2014, the parties are essentially in agreement. The Union's proposal to extend the annual ½% increase in employee premium contribution into 2014 is fair and consistent with a long standing practice of the parties.

Recommendation

The Fact Finder accepts the Union's proposal and recommends that the parties extend the annual ½% increase in the employee premium contribution to 2014. The relevant contract language in Article 30, Section 30.02 shall read as follows:

The participating employees shall pay eleven percent (11%) of the applicable premium rate in 2011, twelve percent (12%) of the applicable premium rate in 2012, twelve and one-half percent (12.5%) of the applicable premium rate in 2013, and thirteen percent (13%) of the applicable premium rate in 2014. Employee contributions shall be by payroll deduction and shall be divided into two (2) equal deductions per month.

3. Article 36: Wages

Union Position

The Union seeks general wage increases for bargaining unit members in accordance with the following schedule:

0% in 2011

3.5% effective January 1, 2012

3.5% effective January 1, 2013

3.5% effective January 1, 2014

In addition, the Union seeks a 10% wage differential between patrol officers and Sergeants and a 10% wage differential between Sergeants and Lieutenants.

The Union's position is that unit members are compensated well below comparable jurisdictions in the region. In addition to external comparables, for comparison there is the City's own Fire Department. The Fire Department's collective bargaining agreement calls for 3% wage increases annually through 2012 and it has wage differentials between ranks of the sort sought by FLEA. Finally, by all accounts, the City's finances are strong and stable. The City ended 2010 with a reserve far in excess of that required by city ordinance. The reserve coupled with the ½% increase in the municipal tax rate as of this July clearly puts the City in a position to afford annual wage increases for unit members.

Employer Position

The Employer offers the following pay raises during the term of the contract.

0% in 2011

\$750 lump sum payment in 2012

1% + \$250 lump sum payment in 2013

It is the Employer's position that the City is feeling the impact of the sluggish economy and in response there must be a reduction in expenditures. Come 2012, the City will lose both Local Government Funds and Estate Taxes. The City describes the economic outlook as, poor. Through the worst years of the recession – 2008 to 2010, members of this bargaining unit received wage increases that far outpaced inflation. Furthermore, rather than layoff employees or ask for “give-backs” the City cut services and expenditures in other areas to pay for promised wage increases and benefits. Even with a successful levy initiative and the new ½% increase in the municipal tax rate, this contract must be a contract that rebalances the scales, allows the City to restore previously cutback services, and acknowledges that times are still very difficult and uncertain for those living and working in the City of Franklin.

Discussion

The City of Franklin has experienced a 15% decline in revenue between 2008 and 2011 – a loss of \$1.3million.⁶ In 2010, the City cut expenditures by \$1.7million in order to end the year with a General Fund Balance carryover required by city ordinance. Cuts were made in all departments. Vacant positions went unfilled – saving headcount expenses, but driving up overtime costs. Fund transfers to the Fire Department, Recreation Department, Economic Development Fund and Water Fund were not made. The City ended 2010 with a balance of \$2,989,028 – a 37.4% carryover (17% higher than what is required by city ordinance). Looking forward, the City expects to lose Local Government Funds and Estate Taxes in 2012. General fund transfers withheld from operating departments in 2010 will be made up in 2011; the Fire Department fund transfer alone will be \$960,000 in 2011. Early projections of revenue generated by the new ½% income tax were estimated at \$750,000 for the last half of 2011. Double that amount for 2012. Those estimates may be high given the loss of Franklin Boxboard and the possibility of other businesses needing to expand to larger facilities outside of Franklin. To-date, tax collection for the first half of 2011 is running slightly higher than at the same time in 2010. With the ½% tax rate increase effective in July, collections for 2011 may be higher than estimated for the first time in three years⁷.

The City of Franklin has been prudent in managing its finances, perhaps overestimating the amount of cutbacks needed in 2010, leaving what appears to be a large carryover to 2011. However, all of the cutbacks in both services and fund transfers of 2010 are expected to be restored in 2011. The 2010 carryover coupled with the successful 2011 levy campaign may suggest to some that the City is flush and that it has no financial concerns. This Fact Finder does not see it quite that way. The Fact Finder see a city carefully managing its income and expenditures; fortunate to have passed a levy that just keeps revenues apace with expenses. It was reported that voters attending meetings and events prior to the levy vote made their wishes concerning the levy clearly known to elected and appointed city officials – Restore services. Don't spend it all on public employee salaries and benefits – A taxpayer message being loudly sent all across the country. And yet, in the City of Franklin, public employees threw their support behind the levy, campaigned to pass the levy, and took a wage freeze in 2011 to demonstrate their commitment to sound fiscal management of the City.

⁶ Employer exhibit 7L, General Fund Revenues

⁷ Employer supplemental exhibit, Monthly Tax Collection Spreadsheet, 2005-2011

Taxpayers may not like to hear it, but cost effective public services are in part a function of maintaining a competitive employee wage structure needed to recruit and retain a high quality workforce. To evaluate the appropriateness of public worker salaries they must be compared against wages in the same occupation in other jurisdictions, not to private industry wages of dissimilar occupations and qualifications. That said, it is important to be mindful of current labor market trends and not overreach for incentives, parity, or equity adjustments in a time of high unemployment and generally flat wage growth.

In evaluating the comparable wage data provided by the parties it is clear that different sets of data produce different conclusions about the relative position of unit members.

As for Lieutenants and Sergeants, both the City and the Union conclude that wage rates for these ranks, even when adjusted for the City's pension pick-up, are sufficiently below similarly ranked employees in comparable jurisdictions, to warrant an adjustment. While the needed adjustment cannot be accomplished in one fell swoop, these ranks should be set on a pay trajectory that will slowly raise their wages creating an appropriate differential between themselves and the rank(s) they supervise; while at the same time brings them into closer alignment with Lieutenants and Sergeants in neighboring jurisdictions.

In reviewing the Patrol Officer data the Fact Finder has created a set of comparable jurisdictions for comparison that is a combination of the lists provided by the parties. The Fact Finder's list includes all of those provided by the Union and many from the Employer's list. Jurisdictions eliminated from considerations were those in Darke and Champaign Counties, as well as those that were clear outliers based on population or household income – five in all. Using the combined set of data the Patrol Officers of the City of Franklin appear to have an adjusted hourly rate that is approximately \$2.00 (i.e., 6.9%) below the average for this selection of comparable jurisdictions – not as bleak as the Union's picture; not as rosy as the Employer's.

Comparable data for Dispatchers is more problematic. There are fewer municipalities employing Dispatchers. Many cities have merged operations with Counties. An average created from only two data points, as the Union has done, is an unreliable number. The Employer provides more municipalities for comparison, however three of the six are disqualified based on dissimilar demographic indicators. That said, simply adding the City of Trenton, from the Employer's list, to the two comparables provided by the Union, results in a three-data-point wage average that exactly equals the current wage rate for Franklin dispatchers. Not a particularly reliable conclusion, more an illustration of how malleable limited data can be.

After being very low in 2010, both the national consumer price index and the U.S. inflation rate are trending higher over the last 12 months, currently at 3.1% and 3.6% respectively⁸. The State Employment Relations Board data shows that average wage settlement for 2010 averaged slightly below 1.5%. Wage settlements in the Cincinnati area averaged 1.2%, in the Dayton area 1.23%. For all Cities the average wage settlement in 2010 was 1.39%. Police unit wage settlements averaged 1.39%.

For the City of Franklin, modest wage increases in the coming years are appropriate and affordable. After a 2011 wage freeze it is reasonable to provide employees of the Police Department small raises to help offset the rising costs of living expenses. With the exception of rank differentials for Lieutenants and Sergeants, no market adjustments are warranted at this time. However, if the City allows itself to fall further behind neighboring communities by providing no general wage increases in the years to come, or lump sum payments in lieu of wage increases, future market adjustments will be necessary, deserved, and expensive to fund. (Note: Patrol Officers in the City of Franklin appear to be 6.9% below the average wage rate in the surrounding region.)

In light of the revenue projections and budget information presented to the Fact Finder and the reality of the economic times in which these negotiations are taking place, both parties have overreached in their respective directions. The City's wage proposal is unduly austere and the Union's wage proposal is unduly expensive. Modest and predictable wage increases over the next three years will bring stability to the City's fiscal outlook. Rather than push the parties back to the bargaining table in 2014 the Fact Finder recommends eliminating the risks and uncertainty associated with a wage reopener and accept a three-year settlement.

Recommendation

The Fact Finder recommends the following wage settlement for all unit members as well as rank differentials for Lieutenants and Sergeants.

Effective January 1, 2012 all rates of pay shall increase 1.5%.

Effective January 1, 2013 all rates of pay shall increase 2.0%.

Effective January 1, 2014 all rates of pay shall increase 2.0%.

½% increases in the wage differential between Sergeants and Patrol Officers in each contract year. ½% increase in the wage differential between Lieutenants and Sergeants in each contract year.

⁸ Bureau of Labor Statistic, Consumer Price Index and Inflation Calculator, www.bls.gov/cpi

The relevant contract language in Article 36 shall read as follows:

Section 36.1. Bargaining unit members shall receive wage compensation according to the following schedule, which reflects no general increase in 2011; a one and one-half percent (1½%) general increase effective January 1, 2012; a two percent (2%) general increase effective January 1, 2013; and a two percent (2%) general increase effective January 1, 2014.

(Insert adjusted hourly wage chart here)

Section 36.2. The City shall maintain a seven percent (7%) wage differential between Step 4 Patrol Officers and top step Sergeant effective January 1, 2012. The rank of Lieutenant wages are to be established at seven percent (7%) higher at top step Lieutenant than top step Sergeant effective January 1, 2012. Effective January 1, 2013 these wage differentials shall both increase by one-half percent (½%) to seven and one-half percent (7½%). Effective January 1, 2014 these wage differentials shall both increase by one-half percent (½%) to eight percent (8%). These wage differential are based on the rates in Section 36.1 and not in Appendix B.

The relevant contract language in Appendix B shall read as follows:

Patrol Officers hired after January 1, 1999, shall receive wage compensation according to the following schedule, which reflects no general increase in 2011; a one and one-half percent (1½%) general increase effective January 1, 2012; a two percent (2%) general increase effective January 1, 2013; and a two percent (2%) general increase effective January 1, 2014.

(Insert adjusted hourly wage chart here)

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by

reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 2nd day of September 2011.

A handwritten signature in cursive script, appearing to read "Felicia Bernardini".

Felicia Bernardini,
Fact Finder

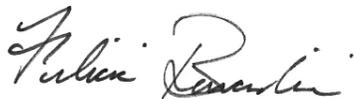
CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail and First Class USPS Mail on September 2, 2011 to:

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