

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 13, 2012**

IN THE MATTER OF FACT FINDING BETWEEN:

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

CASE NO. 12-MED-03-0170, 0171

and

FACT FINDER: Howard B. Tolley Jr.

THE CITY OF CAMPBELL, OHIO

APPEARANCES

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Otto J. Holm, Jr., Staff Representative
John Gulu, Patrolman/Union President
John Rusnak, Detective/Sergeant

CITY OF CAMPBELL

Michael Seyer, Account Manager, Clemans Nelson Associates
Dr. Michael Evanson, Finance Director
Nita Hendryx, Manager, Local Government Services, Auditor of State
Timothy Lintner, Local Government Services, Auditor of State
William VanSutch, Mayor

Introduction

The Campbell FOP currently has thirteen members in the classifications of Police Sergeant/Detective (3) and Patrolman (10). The city in Mahoning County has a population of about 8,235 and has 47 employees including two other collective bargaining units -- IAFF and AFSCME.

On May 10, June 6, and July 27, 2012 the parties met to negotiate a wage reopener for increases to take effect in March 1, 2012 in the final two years of their collective bargaining contract, but were unable to reach an agreement.

The parties exchanged and submitted pre-hearing position statements that summarized their proposals. The parties prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of 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, and 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; and,
- 6) Such other actors, 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 the public service or in private employment.”

Fact Finding Hearing: November 29, 2012, City of Campbell

The Fact-Finder conducted a hearing from 10 am until 1:15 pm with presentation of evidence and argument limited to Article 35 Wages, Section 1 Rates of Pay and Section 2 Shift Differentials.

Fiscal Emergency and Wage History

In 2004 the Local Government Services Section of the Ohio Auditor of State found that as a result of Deficit Fund Balances Campbell was in a state of Fiscal Emergency. During the Fiscal emergency, Campbell's Financial Planning & Supervision Commission composed of state and local appointees has exercised ultimate decision making authority over city expenditures.

The FOP contract for 2004-2006 made two significant changes to the prior three-year agreement. First, for bargaining unit members on October 17, 2005 cash stipends previously added to wages were eliminated and rolled into the base rate, increasing Patrolman's annual base from \$31,900 to \$34,580. Second, Cadets and patrolman hired after October 17, 2005 would be paid at the prior rate in a bifurcated, two-tier wage scale resulting in a difference of more than \$2,000 in their base rate. The pay rates and disparity remained unchanged in the 2006-2009 agreement with no wage increase.

Negotiations in 2010 for a three-year successor agreement resulted in contentious fact finding, conciliation, and litigation that delayed resolution until the current three year contract took effect on March 1, 2011. The current agreement increased the Patrolman's base hourly rate by \$.25 and instituted a five-step scale for Patrolmen. A side letter placed individual members at steps that maintained the two tier scale instituted in 2005 with three senior Patrolmen placed at

step 4 paid about \$2,000 a year more than six officers hired after October 17, 2005 placed at step 2. The contract provided no wage increase for the three Sergeants/Detectives.

Union Position ARTICLE 35

The FOP proposed three changes to Sections 1 + 2: Rates of Pay, Wage Schedule Administration, and Shift Differentials

1. Eliminating the post 2005 tiered step system so that all Patrolmen with less than 20 years of service would once again be paid at the same rate, the wage currently earned by the members at Step 4.
2. An across the board increase to the hourly base rate by \$.60 effective March 1, 2012 and a second \$.60 per hour effective March 1, 2013.
3. An increase in all three shift differentials from \$.10 to \$.25 per hour for the Day Shift, from \$.35 to \$.50 an hour for the Afternoon Shift and from \$.42 to \$.65 an hour for the Midnight Shift.

The FOP presented wage data from comparable police departments in the region to demonstrate that Campbell's top rates are less than starting salaries elsewhere. The inferior wage scale results in frequent turnover, depriving city residents of experienced safety officers. As a result, the Campbell police department is a training way station for new officers who move on to earn more competitive wages elsewhere.

The union representative also argued that the recent oil and gas lease agreement with Hilcorp Energy I.L.P., enables the city to pay the proposed increases. Instead of attending to its employees' critical needs for improved compensation after years of sacrifice, Campbell has mistakenly prioritized equipment purchases and infrastructure repair. Other cities in Fiscal Emergency such as East Cleveland were still able to increase police officer's wages.

Employer Position

As a result of income of \$850,000 from Hilcorp anticipated by January 2013, the city proposes to grant all employees a \$1,000 lump sum payment in 2012 and a second in 2013. Since all employees, both represented and unrepresented, have suffered during the Fiscal Emergency, the city proposes to grant the entire payroll the same lump sum amount received by FOP members. Within the FOP unit, the city seeks to provide an equal lump sum to all rather than to provide more generous increases to more recently hired Patrolmen paid lower wage rates. The city estimated the total two year cost of meeting the union's proposals to collapse the schedule steps, to increase base rates by \$.60 per hour and to increase shift differentials would be \$96,645. The employer proposed lump sum increases with accompanying fringe benefits that would cost the employer \$38,408 over two years for fourteen police officers and an additional \$86,432 to extend the same one time payments to 33 other employees.

In order to emerge from the Fiscal Emergency Campbell must demonstrate solvency. The employer provided data projecting income and expenses over a five-year period when three income and property tax levies are scheduled for a vote. Two previously renewed levies, one for Public Services in 2013 and an income tax levy in 2014 will be up for renewal again.

In order to emerge from Fiscal Emergency, voters approved a five-year emergency property levy in 2010 that may not be renewed in 2015. In 2009 Campbell's poverty rate of 33.9% was well above the statewide 19.6%, and 13.4% of city residents had income below 50% of the poverty level. 2012 is the final year of income from the Ohio estate tax, and the state's local government fund has been cut by 50%. If one or more of the levies fail, Campbell will incur deficit budgets and remain in financial exigency.

Even though other police departments pay more, Campbell should not be compared to cities that are not subject to fiscal emergency constraints mandated by the state. Campbell continues to find qualified Patrolmen who accept the current wage rate and understand the city's Fiscal Emergency. Retention is not a problem. Giving FOP members special increases the city can not afford to provide other employees who have not received cost of living adjustments would be unfair.

Analysis

In order to evaluate the parties' competing claims, the fact-finder carefully examined comparables, both internal and external, and the city's ability to pay.

Comparables

The fact finder used data from the SERB Clearinghouse Benchmark report provided by the union to identify eight comparable cities from Mahoning, Trumbull and Columbiana counties with populations ranging from 6,344 to 12,303. The number of patrol officers and Sergeants/Detectives ranged from 9 to 18, and the number of officers per residents from 485 to 861. For purposes of comparison, the fact finder also identified the poverty rates in each city. The accompanying table presents the data from nine comparable jurisdictions.

While Campbell is at the median for the nine cities in population, number of officers and the number per resident, its poverty rate is the second highest and the wage rates at both the entry and top level are well below the median. The top Campbell rate for Sergeants falls below the entry rate for Sergeants in all comparable cities, and Campbell's entry rate for Sergeants falls \$13,000 below the median. Campbell's entry level for a Patrolman is the lowest of the nine comparable cities, \$6,000 below the median. Campbell's top rate for Patrolman falls \$10,000 below the median and also falls below the entry rate in two comparable cities. East Liverpool's poverty rate is considerably higher than Campbell's yet that city pays its police considerably more. The base rate comparables offer compelling support for a wage increase, but the union provided no data on comparable shift differentials or other rationale to support that proposed increase.

Internally, Campbell's represented and unrepresented employees have made comparable sacrifices going without cost of living increases since the start of the Fiscal Emergency in 2004. Within the union however, as a result of the two-tier, bifurcated wage rates instituted in 2005 and incorporated as steps in the current contract the FOP argues that its member have been denied comparable treatment. The fact-finder however concludes that step systems are commonly used in other police departments and aid retention by awarding periodic wage increases based on longevity.

City	Population	Officers	Officer per Residents	Poverty Rate	50%<Poverty	Entry Patrol	Top Patrol	Entry Sgt.	Top Sgt
Campbell	8,235	12	686	33.90%	13.40%	28,000	35,620	38,280	40,065
Canfield	7,515	18	485	5.90%	1.70%	42,345	52,713	58,338	59,467
Columbiana	6,384	10	798	12.40%	5.50%	28,163	48,443	49,920	53,185
Cortland	7,104	9	789	11.00%	1.90%	34,091	43,201		
E. Liverpool	11,195	13	861	48.90%	13.60%	28,412	44,137		
Girard	9,958	12	829	23.40%	17.80%	34,068	45,425		
Hubbard	7,874	12	656	15.50%	6.60%	37,173	46,467	51,604	51,604
Salem	12,303	17	723	21.40%	9.30%	31,137	45,385	58,094	58,094
Struthers	10,713	14	765	21.30%	5.60%	34,819	41,184		
Ohio				19.60%	7.00%				

Ability to Pay:

The City provided data projecting renewed budget deficits if voters reject an income tax renewal and a safety forces property tax renewal in 2013, as well as a property tax renewal in 2014. Three years of budget surplus from 2009-2011 increased the city's unencumbered fund balance from \$782,158 to \$1,084,868 at the start of the current fiscal year – a cash reserve at 23% of projected expenses for the year. If all three renewals pass, projected cash reserves for the next four years through 2016 will range from 22% to 26%, well in excess of the recommended 15%.

According to the Mahoning County Board of Elections, in November 2010, Campbell voters approved the special Fiscal Emergency 3.5 mil property tax levy 56.4% to 43.6%. In the November 2012 election, Campbell voters approved a new special street repair 3 mil property tax levy 51% to 49%. The 2013 income tax and property tax renewals are for levies that voters previously renewed, and based on the 2010 and 2012 results, the fact finder concludes that the voters are likely to do so again. Although the fact finder is less certain about the 2015 vote to renew the Fiscal Emergency levy, it appears the city will nevertheless be able to emerge from its Fiscal Emergency while increasing wages.

In addition to the initial \$850,00 lease payment from Hilcorp Energy I.L.P., the agreement in Clause 5(B) provides for future oil and gas royalty payments of 20% of the revenue realized. Even if there are no royalty revenues, the city's five year projections indicate that with the levies renewed the unencumbered fund balance will remain well above the recommended level. If one levy fails and there are no oil/gas royalties the fund balance would still meet the minimum reserve balance – 1/6th of the general fund budget. When the Hilcorp payment of \$850,000 is received by early 2013 the city will have full discretion about how much to place in the restricted infrastructure fund and how much to set aside for overdue wage adjustments for employees who have not had any cost of living increase since 2004.

The fact finder also recognizes that the employer's ability to increase wages may be limited by critical infrastructure needs that will become far more costly without timely attention to cracked streets, collapsed storm sewers, catch basins, demolition of abandoned properties, and a leaking roof. The city's plans to replace vehicles and equipment appeared less compelling in light of the eight-year wage freeze imposed on employees.

At the same time, recommending anything close to the union's wage proposals would jeopardize the city's ability to emerge from Fiscal Emergency. If the city were not subject to supervision pending release from fiscal emergency, the fact finder's recommendation would have included wage increases for all members of the bargaining unit, based on the significant pay disparity with comparable jurisdictions, the budget surplus, extensive cash reserves, and projected income demonstrating the ability to pay.

As a result of the failed conciliation in 2010 and Campbell's ongoing dependence on the Financial Planning and Supervision Commission, the fact finder has attempted to fashion a recommendation that all will find acceptable while enabling the city to emerge from Fiscal Emergency and supervision.

Conclusion

The fact finder recommends a combination of wage increases for the seven members with the lowest base rates and two lump sum increases of \$1,000 for the six members hired prior to October 17, 2005. The base rate increase for the lower steps will reduce but not eliminate the two-tier disparity initiated in 2005 and could help improve retention of recently hired officers. In order to raise Campbell's sub-standard police wages, the recommendation includes base rate increases at all 5 steps for Patrolmen. Based on years of service and the step placement provided in the Side Letter, only the seven FOP employees currently at Steps 1 and 2 will benefit from the recommended increased wages. Instead of base rate increases, the recommendation calls for the remaining six FOP members to receive the two \$1,000 lump sum payments proposed by the city.

RECOMMENDED CONTRACT LANGUAGE ARTICLE 35 WAGES

Section 1. Rates of Pay/Re-Opener

The following reflects ... of the Agreement.

Agreement Year One No Change

Steps	Classification/Rank	Annual Salary	Base Hourly Rate
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Within thirty (30) calendar days following receipt of the estimated revenue from Hilcorp Energy I.L.P., the bargaining unit employees will receive the following adjustments to compensation. Sergeants/Detectives and Patrolmen at Step 4 will receive lump sum payments of \$1,000 and a second \$1,000 lump sum payment on March 1, 2013.

Effective March 1, 2012 all bargaining unit members will be paid the following wages based on changes to the above scale from year one of the agreement:

Agreement Year Two: Changes from Year One

Steps	Classification/Rank	Annual Salary	Base Hourly Rate
Step 5	Senior Patrolman (After 20 Years)	\$36,700	17.6442
Step 4	Patrolman (After 15 Years)	\$35,620	17.1250
Step 3	Patrolman (After 10 years)	\$35,100	16.8750
Step 2	Patrolman (After 5 years)	\$34,060	16.3750
Step 1	Patrolman (After 1 year)	\$31,809	15.2930
	Cadet (Entry)	\$30,598	14.7110

Agreement Year 3: Changes

Effective March 1, 2013

Step 1	Patrolman (After 1 year)	\$33,020	15.8750
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Section 2. Wage Scale Administration Change Section Title to **1a.** No other change

Section 1. Shift Differentials No Change

Side Letter: Prior Conciliation Award and Step Placement No Change

Respectfully submitted,
Howard Tolley, Jr.,
Professor Emeritus, University of Cincinnati

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Corrected Fact Finding Report has been served via electronic mail to Otto Holm, Jr. , Staff Representative, FOP/OLC, ottoholm@sbcglobal.net; Michael Seyer, Clemans Nelson & Assoc. MSeyer@clemansnelson.com, Finance Director, Dr. Michael Evanson, City of Campbell financedirector@campbellohio.gov, and to the State Employment Relations Board, Columbus, Ohio Mary.Laurent@serb.state.oh.us on this 13th day of December, 2012.

Howard Tolley

December 13, 2012

Date