



STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding	:	SERB Case Number: 12-MED-09-0886
	:	
Between the	:	
	:	
CITY OF HAMILTON,	:	
	:	
Employer	:	Date of Fact Finding Hearing:
	:	March 27, 2013
and the	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	Howard D. Silver, Esquire
Union	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: City of Hamilton, Ohio, Employer

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## PROCEDURAL BACKGROUND

This matter came on for fact finding on March 27, 2013 at 9:00 a.m. in a conference room at the city of Hamilton, Ohio's administrative offices, 345 High Street, Suite 710, Hamilton, Ohio 45011. A mediation of the unresolved issues separating the parties occurred in which both parties participated in good faith. Following the parties' presentations of their positions the fact finding concluded at 2:00 p.m. on March 27, 2013.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of hearing both parties provided to the fact finder their positions on the issues that remained unresolved. This matter is properly before the fact finder for the issuance of a report and recommended language.

## FINDINGS OF FACT

1. The parties to this fact finding case, the city of Hamilton, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, were parties to an initial collective bargaining agreement that covered the bargaining unit addressed by this fact finding proceeding – full-time and part-time Corrections/Special Police Officers employed by the city of Hamilton, Ohio.
2. The parties' initial collective bargaining agreement expired December 31, 2012.
3. The bargaining unit contains ten members - eight full-time employees and two part-time employees.
4. The parties' second collective bargaining agreement is addressed by this fact finding case.



## TENTATIVELY AGREED ARTICLES

The parties reached tentative agreement as to the inclusion of the following Articles in the parties' successor Agreement:

Article 1 – Agreement

Article 2 – Recognition

Article 3 – Dues Deduction, Fair Share Fee

Article 4 – City's Rights and Limitations

Article 5 – FOP/OLC Business (Employer's proposal)

Article 6 – Discrimination

Article 7 – Grievance Procedures

Article 8 – Investigations and Discipline

Article 9 – No Strike or Lockout

Article 10 – Labor-Management Committee

Article 11 – Layoff Procedures

Article 12 – Probation

Article 13 – Seniority

Article 14 – Personnel Files

Article 15 – Work Rules and General Orders

Article 16 – Drug Screening

Article 17 – Employee Assistance Plan

Article 18 – Workday and Work Period (Employer's proposal)

Article 19 – Overtime (Employer's proposal)



Article 21 – Court Time and Call In (Employer’s proposal)

Article 22 – Officer in Charge

Article 23 – Training Officers

Article 26 – Holidays (Employer’s proposal)

Article 27 – Vacation (Employer’s proposal)

Article 28 – Uniforms

Article 29 – Insurances (Employer’s proposal)

Article 31 – Funeral Leave

Article 32 – Military Leave

Article 33 – Family and Medical Leave

Article 34 – Unemployment Compensation

Article 36 – Retirement Planning

Article 37 – Duration of Agreement

#### UNRESOLVED ARTICLES

The parties were unable to reach tentative agreement as to the following Articles:

Article 20 – Wages

Article 24 –Longevity

Article 25 – Preferential Pay

Article 30 – Sick Leave

Article 35 – Attendance Incentive

Appendix A – Wage Scale

Appendix B – Health Care Plan Level of Benefits



## DISCUSSION AND RECOMMENDED LANGUAGE

### Article 20 - Wages

Both parties are optimistic about the economic future of the city of Hamilton, Ohio and the anticipated increased revenues that are expected to be available for the operation of the city, including wage increases. Both parties are realistic, however, about the present condition of the resources available to the city of Hamilton, Ohio and both parties understand that the fiscal challenges faced by the city are real and substantial.

A clear understanding of the present limitations on the city's resources has moved the Union to agree to a three-year wage freeze.

In exchange for the three-year wage freeze, the Union has proposed that all bargaining unit members be treated equally under the parties' successor Agreement by being assigned to a single, uniform salary schedule comprised of eleven annual steps. The Union resists treating subsets of the bargaining unit, such as new hires, differently from other bargaining unit members. The Union wishes to avoid a bargaining unit that is multi-tiered.

The Employer proposes a second salary schedule that would apply to new hires in the bargaining unit, that is, bargaining unit members hired after the ratification of the parties' successor Agreement.

The arbitrator defers to the Union's wishes on the configuration of the bargaining unit, a subject on which the Union is deserving of deference. The fact finder recommends the wage proposal suggested by the Union that includes a three-year wage freeze, a single salary schedule applicable to all bargaining unit members, and the retention of the eleven-step salary schedule in effect at the end of calendar year 2012.



The Union also recommends the installation in the parties' successor Agreement language that would require shift differential payments for second and third relief shifts, and premium pay for Saturday work.

The Employer opposes the language proposed by the Union for shift differential pay and premium Saturday pay.

It appears the Employer has, in its discretion, paid shift differential and Saturday premium pay in the past. The Employer has not agreed to include in the parties' successor Agreement language that would require these payments.

The fact finder is reluctant to recommend the wage package agreed by the Union that includes a three-year wage freeze and then recommend adding costs for payments not promised in the parties' predecessor Agreement. The fact finder does not dispute the fairness of the Union's proposal on shift differential or premium Saturday pay, nor does the arbitrator dispute the past practice of paying these additional amounts. The question before the fact finder is whether to recommend that specific, express language be placed in the parties' successor Agreement obligating the Employer to make these payments during the duration of the parties' successor Agreement. In the interest of addressing the severe financial challenges faced by the city, and in an effort to promote consensus on the parties' successor Agreement, the fact finder declines to recommend the language proposed by the Union for Article 20, section 20.4, the proposed new language on shift differential pay and premium Saturday pay.

RECOMMENDED LANGUAGE – Article 20, Wages

**Section 20.1 Wage Rates** Wage rates for unit Officers shall be in accordance with Appendix A.



**Section 20.2 Yearly Increases/Adjustments** Annual step increases/adjustments shall be based on the City's (11 step) pay range and shall be effective on the Officer's anniversary date.

It is understood that once the Officer has completed service time within the steps the Officer will receive the appropriate step pay on the first paycheck after that date.

**Section 20.3 Direct Deposit** All members of the unit shall be required to enroll in direct deposit.

**Article 24 – Longevity**

The Employer proposes the elimination of longevity from the parties' successor Agreement or, in the alternative, freeze longevity payments or maintain longevity for present bargaining unit members but remove longevity from new hires.

The Union opposes the elimination of longevity, pointing to the eleven years required to reach top pay under the parties' current salary schedule.

The Union does not desire a multi-tiered bargaining unit with different benefits for different subsets of the bargaining unit.

The Employer emphasizes the costs associated with longevity pay and is seeking to limit expenses in this regard.

The fact finder does not recommend the elimination of longevity pay from the parties' successor Agreement. One of the complications that arises from the elimination of longevity payments involves the nullification of long-term promises made to bargaining unit members about how their continuing service with the Employer will be treated for purposes of salary step and extra pay based on long-term service. Even those bargaining unit members who have yet to attain the service time needed to qualify for longevity payments have been promised longevity payments, in part, upon the service now being provided that will eventually make the bargaining



unit member eligible for such payments. To eliminate longevity payments among these bargaining unit members would extinguish a promise previously made that was intended to be long-term and continuing. This is not to say that a promise made in a prior contract cannot be modified or eliminated through bargaining a successor Agreement. The absence of an agreement between the parties that such changes should occur, however, makes the modification of what had been intended to be a long-term and continuing promise particularly problematic.

The fact finder does not recommend the elimination of longevity from the parties' successor Agreement nor does the fact finder recommend an elimination of longevity for new hires giving rise to a two-tiered bargaining unit, a configuration of the bargaining unit resisted by the Union. The fact finder finds the three-year pay freeze accepted by the Union, the changes to healthcare coverage agreed by the Union, the suspension of bonus payments and extended benefits, and an expansion of the hours needed by part-time employees to qualify for a *pro rata* accrual of sick leave and vacation leave to be substantial compromises. The fact finder recommends that the Article on longevity be retained unchanged in the parties' successor Agreement.

RECOMMENDED LANGUAGE – Article 24, Longevity

**Section 24.1 Longevity** - Retain current language.

**Section 24.2 Payment** – Retain current language.

**Section 24.3 Break in Service** – Retain current language.

**Section 24.4 Other Conditions** – Retain current language.



### Article 25 – Preferential Pay

The language of Article 25 of the parties' predecessor Agreement provides for bonus payments related to physical fitness and educational attainment. The Employer has proposed the elimination of this Article for reasons of economy. The Union urges the fact finder to retain the language of this Article in the parties' successor Agreement.

The fact finder recommends the retention of the language of Article 25, Preferential Pay, but recommends that the effect of this Article be suspended for the duration of the parties' successor Agreement.

### RECOMMENDED LANGUAGE – Article 25, Preferential Pay

**Section 25.1** – Physical Fitness Bonus - Retain current language.

**Section 25.2** – Educational Achievement – Retain current language.

**Section 25.03** – The effect of the provisions of Article 25 shall be suspended for the term of this Agreement.

### Article 30 – Sick Leave

The parties reached a tentative agreement as to most but not all of the sections of Article 30. The sections of Article 30 that were not tentatively agreed are Article 30, section 30.3(D) that refers to providing additional sick leave when an employee's regular accumulation of sick leave has been exhausted, and Article 30, section 30.4 that refers to extended benefits. The Employer urges that sections 30.3(D) and 30.4 in Article 30 be eliminated from the parties' successor Agreement. The Union opposes the elimination of sections 30.3(D) and 30.4 of Article 30.



The fact finder recommends the elimination of Article 30, sections 30.3(D) and 30.4 as proposed by the Employer. These additional benefits are generous and no doubt useful to qualifying bargaining unit members. These additional benefits, however, can prove costly, and exposure to these potential increased costs is found by the fact finder to be not affordable by the public employer at this time. For reasons of economy the fact finder recommends the elimination of Article 30, sections 30.3(D) and 30.4.

#### RECOMMENDED LANGUAGE – Article 30, Sick Leave

**Sections 30.1** – Accrual – Employer’s proposal.

**Section 30.2** – Administration – Employer’s proposal.

**Sections 30.3(A), (B), and (C)** – Special Provisions – Employer’s proposal.

**Section 30.03(D)** – Special Provisions – Delete current language.

**Section 30.4** – Extended Benefits - Delete current language.

**Section 30.5** – Line of Duty Injury - Retain current language.

#### Article 35 – Attendance Incentive

Article 35, Attendance Incentive, provides for bonus payments to bargaining unit members who have perfect or near perfect attendance. Attendance incentive programs intend an improvement in attendance rates that serve to lower costs associated with absenteeism.

The Employer proposes the elimination of Article 35 as a program that is no longer affordable. The Union opposes the elimination of the attendance incentive Article, arguing that this Article saves costs.

The fact finder does not dispute the Union’s argument on this Article but nonetheless recommends the suspension of this Article. Because of the financial circumstances faced by the



city of Hamilton, Ohio, an attendance incentive program, at this time, is viewed as no longer affordable. The fact finder does not recommend the elimination of the language of this Article but does recommend that the effect of this Article be suspended during the term of the parties' successor Agreement.

RECOMMENDED LANGUAGE – Article 35, Attendance Incentive

**Sections 35.1 through 35.8** – Retain current language and add the following language:

**Section 35.9** - The effect of the provisions of Article 35 shall be suspended for the term of this Agreement.

**APPENDIX A – Salary Rates and Schedule**

As noted above, the fact finder recommends a single salary schedule for the bargaining unit, a salary schedule comprised of eleven steps. It is the fact finder's recommendation that this salary schedule be the same salary schedule that was in effect for the bargaining unit at the end of calendar year 2012. The fact finder recommends that the salary schedule be singular and that no second schedule or tier be imposed on the bargaining unit.

RECOMMENDED LANGUAGE – Appendix A – Salary Rates & Schedule

The salary rates and schedule in effect between the parties at the conclusion of calendar year 2012 shall be the salary rates and schedule in effect for the bargaining unit during the three-year term of the parties' successor Agreement.



Appendix B – Health Care Coverage Plan

Appendix B attached to the parties' predecessor Agreement presents a health care coverage plan that will be changed under the parties' successor Agreement. Because Appendix B is no longer current the fact finder recommends that Appendix B be deleted from the parties' successor Agreement.

RECOMMENDED LANGUAGE – Appendix B

Appendix B – Delete current language.

In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code sections 4117.14(G)(7)(a) to (f), as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

The fact finder reminds the parties that any mistakes made by the fact finder are correctable through agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire  
Fact Finder

Columbus, Ohio  
April 19, 2013



CERTIFICATE OF FILING AND SERVICE

I hereby certify that the forgoing Report and Recommended Language of the Fact Finder in the Matter of Fact Finding Between the City of Hamilton, Ohio and the Fraternal Order of Police, Ohio Labor Council, Inc., SERB case number 12-MED-09-0886, was filed electronically with the Ohio State Employment Relations Board at [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us) and served electronically upon the following this 19<sup>th</sup> day of April, 2013:

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Columbus, Ohio  
April 19, 2013