

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

In the matter of Fact Finding between:)	SERB No. 2013-MED-03-0256
)	and 2013-MED-03-0257
)	
CITY OF DELAWARE, OHIO,)	Hearing: September 6, 2013
)	
Public Employer,)	FACT FINDING REPORT
)	
and)	Before Mitchell B. Goldberg,
)	SERB Appointed Fact Finder
)	
FRATERNAL ORDER OF POLICE,)	Date of Report:
OHIO LABOR COUNCIL, INC.,)	October 1, 2013
)	
Employee Organization.)	

Appearances:

For the Employer:

Darren Shulman,	City Attorney
Jessica Feller,	Human Resources Specialist
Bruce R. Pijanowski,	Chief of Police

For the Council:

Robert L. Goheen,	Staff Representative
Derek Childs,	Patrol Officer
William Deckling,	Patrol Officer
Shawn Snead,	Supervisor
John Radabaugh,	Supervisor

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on July 9, 2013. The matter was heard on September 6, 2013 at the City's offices in Delaware, Ohio. The parties submitted pre-hearing statements setting forth their respective positions on the unresolved issues in their negotiations for a collective bargaining agreement succeeding their CBAs for the Patrol Officers and Supervisors, both of which expired on

June 25, 2013. They were extended by agreement during the negotiations. Their submissions were in accordance with SERB Rules and Guidelines. The parties submitted oral evidence and supplied documentary exhibits.

The parties engaged in mediation efforts, but were unable to resolve the following disputed issues: (1) Article 12-Wages; (2) Article 17-Shift Differential; (3) Article 27-Insurance; and Article 16-Hours of Work and Overtime. Accordingly, the following recommendations on the unresolved issues in this Report incorporates all unchanged articles and provisions from the parties expired CBAs, all tentative agreements reached between the parties during their negotiations, or during mediation, and agreements reached during the hearing. The following recommendations are made in accordance with the existing statutory factors and standards incorporated in SERB Rules and Guidelines. They are: (A) past collectively bargained agreements between the parties; (B) consideration of 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) the stipulations of the parties; and (F) such other factors, not confined to those listed in this section, which are normally, or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact -finding, or other impasse resolution procedures in the public service or in private employment.

II. Economic Evidence.

The City's present economic circumstances and its future prospects may be summarized in its marketing efforts to attract new businesses:

Delaware businesses take great pride in being at the center of one of the nation's fastest growing regions. Development has flourished because of Delaware's beautiful and clean setting, historical downtown, high quality city services,

low crime rate, quality schools and popular parks.

The region that is referred to is the central Ohio area that is driven by the economic engine of the State's capital city of Columbus. The state government agencies and the private sector businesses that engage and do business with the state such as the insurance industry have provided economic stability through the recession. It is by any measure the best regional economy in the state. The City of Delaware and Delaware County are close to the city limits. The City's residents work in the Columbus area and benefit from the City's economic resources, including the Ohio State University, other educational institutions, the large hospital and medical services, and other industries throughout the region. The City still chooses to compare the City of Marysville to Delaware, based upon a Fact Finding Report in 2005 in which Fact Finder Kohler found that Delaware, like Marysville was a "stand alone" city, not like an "exurb" or a Columbus suburb, but for wage purposes, somewhat in between. I find that this analysis was supportable in 2005, but the explosive growth of the Polaris area and I-270 beltway area over the last 7 years has brought Delaware closer if not part of the Columbus suburb umbrella that includes other prosperous development areas such as Dublin, Westerville, Gahanna, and Reynoldsburg. Continuous development that is ongoing will support this proposition, making Delaware more like these suburbs and less like Marysville, which is some 30 miles away from Columbus.

This regional economic prosperity has permitted the City's revenue stream to increase notwithstanding the loss of state funding and the elimination of personal property tax revenue and inheritance tax revenue. The decrease in revenue due to the state budget cuts, elimination of taxes, and the recession is most noticeable from 2010 to 2011 when total revenue declined from \$21.7 million to \$16.5 million. But, from 2011 through the proposed figure for 2013, total revenue has remained stable with slight increases. Moreover, the City has kept its expenditures well under its revenue thereby increasing its year-end fund balances to the point where the balance at the end of 2013 is proposed to

be over \$4.5 million. This is a figure showing a reserve percentage of 27.36%. The increased annual reserve percentage range from 2011 to 2013 of the 25% range is actually much higher than the 16%-18% range that was present during the economic downturn period from 2008-2010. Accordingly, by any reasonable economic or financial measure, the City is among the elite cities in the state in terms of its present financial picture. There is no reason to believe that it will not continue to thrive through the present economic recovery, and certainly through the next CBA period.

Accordingly, the Union's wage proposals of 2% each year under a 3-year contract, employee insurance contributions within the parameters of percentages paid throughout the state, an increase in the shift differential, and higher buy-backs of compensatory time are well within the City's payment capacity, and are reasonable proposals from the perspective of viewing external comparisons. The disputed issues in this case relate more to internal pay and benefit comparisons.

III. Unresolved Issues.

A. Wages.

The expired CBAs covered the effective dates from June 26, 2010 – June 25, 2013. The wage increases under those contracts did not begin until January 1, 2011. Successive increases occurred on January 1, 2012 and January 1, 2013. Therefore, the provisions relative to this succeeding CBA shall be effective from June 26, 2013 – June 25, 2016, but the recommended pay increases, as in the prior agreements shall be paid on January 1, 2014, January 1, 2015 and January 1, 2016.

The City proposes increases of 0% on January 1, 2014, 2% on January 1, 2015, and 2% on January 1, 2016. The proposal is arguably justified to correct wage inequities within the City's entire workforce, and to avoid undesirable wage compression within the police force ranks. The wage freeze for the first year is proposed to correct a situation where both union and non-union employees accepted a wage freeze during the economic downturn, but the police did not. The non-bargaining unit employees and AFSCME clerical staff members accepted a freeze in 2010. The plant operators

bargaining group and AFSCME technicians accepted a freeze in 2011. The firefighters accepted a substantive freeze in 2012 when wage increases became effective upon the execution of their CBA, and were not retroactive.

The result of these circumstances has created a misalignment of the City's wage structure. The FOP's wages have risen by more than 23% from 2008, while other employees received less increases. For example the prosecutor's increases were only 16.18% over the same period. Water treatment plant operators wages increased only 15% for the period. Paying the FOP members 2% as they propose for the first year will exacerbate this inequity due to the compounding of the FOP wages over the new contract period.

Moreover, the City complains of a compression problem. The disparity between the Chief's salary and the top Captain rate has compressed. Moreover, the Captains receive overtime opportunities and shift differentials, further compressing the compensation levels. The City intends to fill an Assistant Chief position that must be slotted in between the Captain's rate and the Chief's salary. An increase in the Captain's top rate as proposed would in effect remove any reasonable differential between and among these positions. A normal separation between management rates and subordinates is between 10% and 20%. The current separation between Captain and Chief is already at 5.8%. An FOP increase instead of a freeze will further encroach upon the existing narrow separation between the Chief and his subordinates.

The City sees no reason to re-adjust its structure because it pays each of these positions fairly within the range of its comparable neighbors. A wage freeze for the first year would maintain the structure without making the compression worse, thereby requiring it to adjust the rates of the Assistant Chief and Chief when their salaries now favorably compare to those positions in comparative communities. The present pay rates must be considered fair considering that the department continues to attract high quality employee candidates for recruitment.

The FOP does not accept the premise that it must accept a freeze for the first year because other employees agreed to do so at a later time. The payment of a wage increase was contained in a CBA that was in effect at the time the other units and employees accepted a freeze. It was before the full effects of the economic downturn and before the State embarked upon its budget cutting and tax eliminations. The CBA was bound to the CBA provisions the same as its other financial obligations. More importantly, the City at all times had the ability to meet those obligations based upon its large ending balances and reserves.

The FOP further argues that the City's compression complaint is a misguided attempt to focus upon its wage structure from the top down instead of wage increases that are driven by higher living expenses for its employees such as higher private and public higher education costs for families, flat returns on household savings, and unmanageable medical insurance costs and higher uninsured medical expenses. If these expenses drive up the cost of living for the middle class incomes of the FOP members, wages should be paid to meet these cost of living expenses. The City can thereafter cure its perceived compression problem by negotiating with the other units and employees to increase their salaries and wages. There is no question that it can pay these increases based upon its increasing revenue, and reserves.

Moreover, the FOP argues that the police wages should be driven by the wages paid in comparable departments for the same types of services. Police services are unique and specialized. They require a high degree of technical skills and experience, unlike the services required of other employees. There is a higher risk of injuries and death for safety forces that is unlike any other type of employment within the City. Accordingly, it is unreasonable and unnecessary to compare compensation between the safety forces and others providing different services.

In the final analysis, the FOP points out that its proposal is a reasonable one, merely for a cost of living increase over the next 3 years of 2% each year just to maintain the current standard of living

for its members. However, even if its proposal is recommended, the members will likely experience a lower standard of living when the higher costs related to insurance contributions start to kick in due to unmanageable medical insurance costs that are unpredictable over the next contract term.

RECOMMENDATION: I recommend that the City pay an across-the-board wage increase for the members of each FOP unit for each year of the 3-year CBA. Beginning January 1, 2014 the across the board increase shall be 1%; in year-2, beginning on January 1, 2015, the increase shall be 3%; and for the final year, beginning on January 1, 2016 the increase shall be 2%.

B. Insurance.

The City proposes to bring the police units in line with all other city employees in terms of contributions toward medical insurance premiums. Presently, all employees except for firefighters pay 15% toward the City's premium costs. The firefighters presently pay 11%, but will increase to whatever the police are ultimately required to pay as an insurance premium contribution. The police are paying at the present contribution rate of 8% of the monthly premium cost.

The FOP recognizes that higher premium costs are inevitable for high quality hospital and medical insurance plans. It is willing to increase its contributions, but going from 8% to 15% in one year is unreasonable and imposes too heavy a burden upon the members. It is willing to increase toward the state average of 11.60%, but it is unreasonable for the City to require higher contributions based upon its excellent financial condition.

The City believes that the 15% is fair based upon its regional comparisons that show a 13.9% contribution level. Moreover, the state average will continue to increase because state employees are now required to pay 15.10%. It believes that state norm will ultimately be in the 15% range by the end of this CBA. Moreover, it argues that insurance contributions are driven more by uniformity within workforces and that internal parity should control.

RECOMMENDATION: I believe that all employees within a workforce should contribute the same

percentages, absent unusual circumstances that are not present in this case. However, requiring a jump from 8% to 15% in one year with even a 2% wage increase will effectively wipe out the benefit of the wage increase. A fairer approach would be to increase the contribution to eventually get to 15% by the final year, with wage increases that assist the members in meeting this additional expense. The expired CBA provided that “annual changes to the calculated COBRA rate” that occur in April of each year is the rate upon which the contribution percentage applies. Accordingly, I recommend that the present contribution rate of 8% shall apply until the COBRA rate changes in April 2014. Thereafter, beginning in the first full pay period in April 2014, the contribution rate shall increase to 11%. Thereafter, the contribution rate shall increase to 15% with the COBRA rate change in April 2015, beginning with the first pay period in April 2015. The rate of 15% shall remain throughout the CBA contract term. All of these contribution percentages shall be without limitations or caps.

C. Shift Differential.

The FOP proposes increasing the shift differential from \$0.65/hour for the 3:00 pm-11:00 pm shift to \$.90/hour, and from \$0.75/hour to \$1.00/hour for the 11:00 pm-7:00 am shift. There was insufficient evidence presented at the hearing to justify an increase in this area. Some comparable departments have no shift differential and others have varying rates. The present rates are within the norm.

RECOMMENDATION: No change.

D. Payment for Compensatory Time.

Section 7 (C) of the expired CBA provides that a member may cash in up to 2 weeks of compensatory time and receive the equivalent pay during the calendar year. The FOP proposes to increase the benefit from 2 weeks to 3 weeks. The evidence presented at the hearing does not warrant this increase. Many departments have no such benefit and the benefits vary among departments. The present benefit is within the norm of departments that pay the benefit.

RECOMMENDATION: No change.

Date of Award: October 1, 2013

/s/ _____
Mitchell B. Goldberg, Fact Finder

This Report was served upon the following persons by electronic mail on the 1st day of
October, 2013:

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/s/ _____
Mitchell B. Goldberg