

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

CITY OF MIDDLETOWN,

Employer,

-and-

Case Nos. 2014-MED-11-1617,
2015-MED-01-0050

FRATERNAL ORDER OF POLICE,
LODGE 36,

Employee Organization.

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: April 6, 2015

Leslie S. Landen, Esq.
One Donham Plaza
Middletown, Ohio 45042
City Law Director
lesl@cityofmiddletown.org

For The Employer

R. Jessup Gage, Esq.
HARDIN, LAZRUS & LEWIS, LLC
915 Cincinnati Club Building
30 Garfield Place
Cincinnati Ohio 45202-4322
jessupgage@hllmlaw.com

For The Employee Organization

STATEMENT OF THE CASE

The parties, the City of Middletown, represented by Leslie S. Landen, Esq., and the bargaining units, the Fraternal Order of Police, Lodge 36, 63 total employees in two bargaining units: 12 supervisors (9 sergeants and 3 lieutenants) and 51 patrol officers, represented by R. Jessup Gage, Esq., have entered into negotiations for a reopener on wages for the period November 1, 2014 through October 31, 2015.

The parties met and bargained in good faith with at least two meetings between the parties, and some telephone contact. The parties have reached an impasse concerning wages.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on March 25, 2015, and the meeting was convened at 10:00 a.m. at the City Administration Building. In addition to their representative, Noah Powers, Esq., Assistant Law Director, Rodney Muterspaw, Police Chief, Douglas Adkins, City Manager, and Michelle Gries, Finance Director, appeared at the hearing on behalf of the city. In addition to their representative, Cris Kelly, President FOP Local 36, Dennis Jordan, vice-president, Steve Ream, Sergeant, and Don Rawlins, Detective and Inner Guard of the local, appeared on behalf of the bargaining units. The parties and the fact-finder discussed the procedure to be followed by the parties.

After an attempt at mediation, the parties agreed that the wage issue was not amenable to additional mediation. The parties submitted the matter upon testimony, statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, memoranda of agreement, agreed extensions of time for fact finding, the waiver of the provisions of R.C. § 4117.11(G)(11), the unresolved article, and each party's proposal on the unresolved issue.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

Article VII, Wages

The city's position: The city proposes a zero percent (0%) increase in wages in the reopener period, November 1, 2014 through October 31, 2015.

The bargaining units' position: The bargaining units propose a three percent (3%) across-the-board increase in wages in the reopener period, retroactive to November 1, 2014.

Discussion: The recent history of the parties is that they have agreed to a three-year contract which expires October 31, 2015, and in which the parties agreed to no wage increases in the first two years, and a reopener on wages for the third year of the agreement.

The city points to the recent recession, the loss of estate tax and personal property tax monies, the reduction in local government funds, a reduction in population, a decline in property values, cost of living increases, a ratings downgrade from Moody's Investor Services, and a reported first quarter loss reported by the city's largest employer to support

its assertion that the city is still in an uncertain financial situation and needs to prudently hold down costs to reflect the reality of the situation.

The city manager added details concerning problems with blighted housing, dead ash trees, sewer issues, street maintenance, development delays, other capital issues, and in general long time deferred maintenance issues. The city has dealt with these issues in a responsible way by cutting spending, not filling vacant positions, reducing the total work force of the city to the point where several departments have only one employee assigned. He explained that the unanticipated revenue the city carried over from 2014 was used in part to bring the gas and pension funds out of negative balances. He also explained the city's new "Performance-Based Compensation" (PCB) program for providing annual payments to employees based on the city's financial health. The city has offered \$1,000 to all of its employees as a result of the city's cost-cutting measures in 2014, and has offered not wage increases to any of the other bargaining units or its unrepresented employees. The city is no longer offering the PCB to the bargaining units because they chose to proceed to fact-finding, and because the city believes these units have fared better than the other units.

The finance director provided more detail about reductions in costs, cutting employees, and the true financial picture, which she believes is still uncertain despite the encouraging revenue increase in 2014.

The bargaining units point to the city's increased revenue as a result of the city's increased effort in delinquent income tax collections, increases in the public safety levy, slow increases in property values, significant private development in the city, elimination of positions in the police department, profitable operation of the police impound lot, substantial cuts in expenses in 2014, as well as the healthy carryover balance going into 2015 as

evidence of the city's ability to fund a wage increase of 3%. The bargaining units point out that pattern bargaining has not occurred in the past with the city, and both Butler County comparables and more broad comparables point to increases to base wage rates rather than a one-time payment that will have no lasting effect on police employee wages. The bargaining units also assert that the Middletown bargaining units are below average when compared to any reasonable combination of employers, whether measured by proximity, population, or type of unit.

The parties agree on the actual receipts and expenditures where those numbers are available, but they differ on the conclusions I should draw. The city argues that a large portion of the balance is "earmarked" for specific expenditures in the budget for 2015; the bargaining units argue that the balance is available for the increases in wages that they should receive. The bargaining units also question the city's decision to transfer from the general fund to pay off debt, and other large transfers which reduced the city's cash in the general fund.

The large carryover balance is evidence of the city's prudent financial dealings, and the way in which it is spent is a matter of the exercise of discretion by the city.

I find the city able to pay a reasonable wage increase, and I do not see the uncertainty in the city's revenues and expenditures that supports a continuing round of reopeners as a substitute for a full and complete three year agreement. The revenue streams seem fairly stable, especially for 2012 and 2014, and the city has 3 months experience in 2014 as well. It appears that stability is sufficient for an increase.

However, despite the strong arguments made by the bargaining units, I am persuaded by the internal comparables within the city, and the significant efforts the city has

taken to hold down and reduce expenditures. A city that is flush and able to fund wage increases for its deserving employees does not cut its work force and its expenditures for city infrastructure. The city's budget process has been conservative, but not unreasonable. I did not see any evidence that insisting on fact-finding has any significant "cost" to the city, and I do not support a punitive result. Finally, the fact that 5 months of the reopener period have already passed supports my recommendation.

Recommendation: I recommend that the city offer and the bargaining units accept the \$1,000 offered to all other city employees under the PBC program.

CONCLUSION

In addition to the comments above, I considered the information provided to me by both parties and am making my recommendations after consideration of the statutory and administrative requirements provided in Chapter 4117 of the Revised Code.

The parties cooperated in presenting their positions to me and in dealing with one another. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,

\s\ Philip H. Sheridan, Jr.
PHILIP H. SHERIDAN, JR.
Fact-finder
S.C. #0006486
915 South High Street
Columbus, Ohio 43206-2523
philsheridan@ameritech.net

CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by email this 6th day of April, 2015, to the principal representatives of the parties, and by email to State Employment Relations Board.

\s\Philip H. Sheridan, Jr.
PHILIP H. SHERIDAN, JR.