
In the Matter of Factfinding

Between

SERB Case No. 15-MED-03-0206

FOP-OLC

And

Before: Harry Graham

The City of Sidney, OH.

APPEARANCES: For FOP-OLC:

Barry Gray
FOP-OLC
222 East Town St.
Columbus, OH. 43215

For The City of Sidney, OH.

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of the day in Sidney, OH. on October 8, 2015.

ISSUES: There are 5 issues in dispute. These are:

- 1 Wages
- 2 Overtime
- 3 Physical Fitness Testing
- 4 Corrective Action (aka Amnesia)

5 Uniform Allowance

ISSUE 1, WAGES

POSITION OF THE UNION: The Union proposes three wage increases: 2.75%, 2.5% and 2.0%. Each would take effect on July 1 of the relevant year, 2015, 2016 and 2017. The Union is aware that the City has experienced fiscal difficulty. It has accommodated to the fiscal problems of the City by accepting a zero (0.0%) wage increase in 2012. In both 2013 and 2014 it accepted a one percent (1.0%). This record shows the Union has been mindful of the problems experienced by the City and has responded responsibly.

The City cannot claim an inability to pay the proposed increase. It has rebounded from the calamity associated with so-called “Great Recession.” By 2014 income tax receipts exceeded the previous high attained in 2007. This shows the City is in sound financial condition and well able to meet the wage proposal of the Union it asserts. The Union also points to the “Comprehensive Annual Financial Report” of the City. It states that:

Sidney is a City with fundamental strengths – interstate highway location, a large and diverse industrial foundation, stable political environment, long-term close relationship between City government and the private sector developable land, and capacity to provide services as the City grows.¹

Further, in recent years this bargaining unit has been treated differently from another in the Police Department, the Supervisors. In 2012, 2013 and 2014 the Supervisors received wage increases in excess of those secured by the Patrol Officers. In essence, the proposal of the Union for this group represents a catch-up.

History in the State also supports its proposal according to the Union. Data from the State Employment Relations Board indicates that officers in Sidney have lagged

¹ City of Sidney Ohio, Comprehensive Annual Financial Report for the year ended December 31, 2014, p. v.

behind their counterparts in the State and the Dayton area with respect to wage increases in recent years. As the City can afford its proposal and it is supported by history the Union urges it be awarded in its entirety.

In addition to the proposed wage increase there is another issue involved in this issue: that is the timing of the wage increase. The Union contends it should be retroactive to July 1, 2015. It has bargained in good faith. The parties were unable to come to terms. The Union has exercised its right to Factfinding. It should not be penalized for doing so. Thus, retroactivity is appropriate it contends.

POSITION OF THE CITY: The City proposes a 3 year contract with a 2.0% increase each year. Such an increase would take effect upon signing. The City asserts it is in tenuous financial health. It is the case that the State of Ohio has altered the manner in which municipalities and other political subdivisions of the State are funded. In the past monies were distributed from the State to political subdivisions via the Local Government Fund. These funds have been reduced. This change is estimated to cost Sidney approximately \$25,000 per year. Plus, the City has lost approximately \$1.3 million per year from other changes in the State funding formula: prior reductions in the Local Government Fund, phasing out of the tangible personal property tax and elimination of the estate tax. The State has also enacted House Bill 5 which has reduced income to the City by about \$95,000 per year. In sum, the City has lost about \$1.7 million per year.

There is another uncertainty regarding City revenues. Pending in the Ohio legislature is SB 198. If enacted it would fundamentally alter the manner in which municipal income taxes are paid from the existing system where a person pays where

they work to one where the person pays where they live. The City estimates that should SB 198 be enacted it would reduce City income tax collections from \$6 to \$7 million per year.

In response to these fiscal difficulties the City has reduced expenses. Street maintenance has declined. After two attempts a 0.25% increase in the municipal income tax was approved. Its monies are restricted to maintenance of streets, and other similar infrastructure. The number of City employees was reduced from approximately 243 FTE's in 2008 to 210 FTE's in 2014. Department heads have requested additional staff. Such staff is unfunded.

In 2015 the City provided a 1.0% increase to its full time and part time unrepresented employees. It expects to do the same for 2016. It has made the same offer to the bargaining unit of Dispatchers and AFSCME: 1.0% per year for each year of a three year Agreement.

The City has reached agreement with the Police Sergeants on a 2.0% increase for each year of a three year agreement. Other provisions include reinstatement of a Senior Sergeant pay premium and uniform cleaning. The Firefighters have settled on a 1.5% increase for 2015 and 2016.

Examination of the history of negotiations between the City and the Sergeants bargaining unit and the Patrol bargaining unit over the past decade shows both groups have received about the identical wage and benefit increases. Further, the wage differential between the 3 lowest paid Sergeants and the 3 greatest paid Patrol Officers is 3.26%. Any increase greater than 2.0% is not supported by the data and should not be recommended according to the City.

DISCUSSION: The data as is often the case is mixed. On the one hand the Sergeants secured three two percent (2.0%) increases. On the other, Firefighters got two one and one half (1.5%) percent increases. Other City employees will receive one percent (1.0%). There is no history of uniformity of wage increases in the City to support either the Union or the Employer. Similarly, comparison data (Employer Ex. 4) show that Sidney officers are paid more than the average than their counterparts in the area. However, some communities pay more than Sidney, e.g. Englewood, Piqua, Tipp City, Troy and Vandalia. The mythological average conceals more than it reveals and is of no utility in this proceeding.

The group closest to this in terms of duties is the Sergeants. In recent years, Patrol Officers received somewhat greater wage increases than the Sergeants, 7.5% vs. 5.0%.² A longer perspective shows that the Officers and Sergeants have received about the same increase over the past decade. This situation will remain unaltered with the proposal of the City. That proposal, three two percent (2.0%) increases is recommended to the parties.

The course of negotiations for the forthcoming agreement shows that the Union exercised its right to utilize the dispute resolution procedures provided by law, e.g. Factfinding and (perhaps) interest arbitration. No penalty should attach to such a course of action. It is recommended that the forthcoming wage increase be made retroactive to the pay period that includes July 1, 2015.

ISSUE 2, OVERTIME

POSITION OF THE UNION: The Union seeks continuation of current language on overtime without change. In the recently concluded negotiations between the Sergeants

² Employer pre-hearing statement, p. 4

bargaining unit and the City no change in the overtime provision was made. Nor was change made in the pending agreement with the Dispatchers. The agreements between the City and AFSCME and the IAFF do not contain the language proposed by the City to this bargaining unit. Hence, no change should occur according to the Union.

POSITION OF THE CITY: The City regards its expenditures for overtime pay to be excessive. In 2014 bargaining unit members received over \$155 thousand for overtime and comp. time. This amounted to about 10% of additional income to bargaining unit members. The City proposes to alter the current overtime arrangement to overtime pay as prescribed by the Fair Labor Standards Ct.

DISCUSSION: No change in the current overtime provision is recommended. The City did not secure change with any other bargaining unit. It is not proposing any sort of quid-pro-quo. Hence the present overtime language should continue unaltered.

ISSUE 3, PHYSICAL FITNESS

POSITION OF THE UNION: At Article 10 the Agreement provides for a physical fitness program. As seen by the Union elements of the program are overly harsh. If an Officer does not meet a particular standard discipline may result in the form of a three day suspension. Additionally, an Officer who does not meet the standard is subject to retest within 180 days. Should the Officer again not meet the standard a second three day suspension can occur. The potential for six suspension days exists. This situation is overly severe in the opinion of the Union. To deal with that situation it proposes to alter the discipline aspect of the fitness program by instituting a system of progressive discipline. An Officer who fails to meet one or more standards would initially receive an oral warning. A second failure would result in a written warning to be followed by a one

day suspension for a third or more failed event. In no event would any suspension days exceed five in a given year. The Union proposes no change in the current fitness standards. Any Officer who fails to meet a minimum standard would be eligible for a one-time option to enter an agreement to workout on his or her own time to avoid discipline. Additionally, the Union proposal contemplates an Officer exceeding their prior performance standard by 10% (5.0% on the run) to avoid discipline.

POSITION OF THE CITY: As related by the Employer history bears upon this issue. In 2000 the parties agreed that an officer who passes the physical fitness exam is to be tested once per year. An officer who fails the test must retake the failed portion of the test within 180 days. No change is warranted according to the City. The Union proposal as read by the City is to eliminate the 180 day retest requirement and test all officers yearly. In fact, since the fitness program was instituted in 2000 changes have occurred. The fitness program has been modified to increase the annual fitness bonus. In 2012 the Union proposed adding a minimum fitness standard below Level 1. There was also added a one-time waiver in the progressive discipline system. Experience has not been good according to the City. No Officer who has utilized the one-time waiver has shown improved fitness. Nor has any failing Officer attained the minimum fitness standard. In the recently concluded negotiations with the Sergeants the Union proposed altering the fitness program. No changes were made. That should be the result in these negotiations as well according to the City.

DISCUSSION: That changes were proposed but not implemented in the fitness program in the recently concluded Sergeants negotiations supports the position of the City. So too does the history of developments in the fitness program. A fair reading of

changes over time indicates the program has become less demanding.

Notwithstanding, the record does not show an improvement in Officer fitness. That supports the position of the City as well. No change in the fitness program is recommended.

ISSUE 4, CORRECTIVE ACTION (aka AMNESIA)

POSITION OF THE UNION: The Union is seeking new language in the Agreement that will void the use of past discipline under certain circumstances. Its proposal contemplates a schedule whereby an oral or written reprimand would be voided after one year, a suspension of less than 40 hours after two years and a suspension of 40 or more hours after three years. The Union points out such clauses are commonplace. In Sidney the Firefighters have a clause placing a statute of limitations on the City regarding the life of discipline. Nearby communities, Celina, Piqua, Urbana and Tipp City have clauses of the nature being sought by the Union. Given the widespread adoption of such clauses in jurisdictions near to Sidney as well as the Agreement covering the IAFF the Union urges adoption of its proposal.

POSITION OF THE CITY: The City is aware of the Union proposal that discipline be eliminated from the record of an employee after a period of years. That is unnecessary according to the City. If discipline is protested and reaches arbitration arbitrators consider the length of time that has elapsed between prior instances of discipline, if any. As that is the case the proposal of the Union is unnecessary according to the City. No other Agreement in the Police Department has such a provision. In the present round of negotiations the Sergeants made a similar proposal. It was dropped. No change in the current agreement is warranted the City asserts.

DISCUSSION: Clauses representing a statute of limitations on the life of discipline are common. To reiterate, the IAFF and the City have such a clause. It is not unknown in City service. Similarly, clauses establishing a limit on the duration of discipline are common in the region amongst police departments represented by the FOP-OLC. The City is correct to note that arbitrators will not consider stale discipline. That said the widespread acceptance of contract clauses of nature urged by the Union compels inclusion of such a clause in the forthcoming Agreement. The following language is recommended to the parties:

Employees may inspect his or her personnel file maintained by the Employer by appointment. An employee is entitled to have a representative of his or her choice present during such inspection.

If an unfavorable statement or notation is in the file the employee shall be given the right to place a statement of rebuttal or explanation in the file. No anonymous material shall be included in the personnel file.

Disciplinary records shall cease to have force and effect according to the following schedule:

Oral or written reprimand – one year
Suspension of less than 40 hours – two years
Suspension of 40 hours or more – three years

ISSUE 5, UNIFORM ALLOWANCE

POSITION OF THE UNION: The Union is seeking an increase in the uniform allowance. It points out that the uniform allowance has not changed since 2006. In the past nine years the price of articles that must be purchased by Officers has increased. To cope with that the Union proposes the Uniform Allowance be increased by \$50.00 in 2015, \$25.00 in 2016 and 2017.

The current Uniform Allowance is Sidney is \$655.00 per year. Nearby communities pay substantially more: Troy and Urbana pay \$850.00 per year. Kettering pays \$1000 and is increasing the allowance to \$1500 per year. Given the stipends made by cities in proximity to Sidney and the fact that no increase has been made for many years the Union contends its proposal should be recommended.

POSITION OF THE CITY: The City proposes no change in the current uniform allowance. It regards the present allowance as adequate and not warranting change. The City points out that the dollar amount attributed to the Uniform Allowance is not the entire amount devoted to uniforms in the Police Department. In addition to the funds used for purchase of uniforms the City also provides dry cleaning which it values at about \$554.00 per year. At Article 30 the Agreement continues to provide that items purchased by Officers must meet the approval of the Chief or other relevant authority. That approval has not been withheld. Officers have purchased such items as running shoes and high-end sun glasses with the approval of the Chief. That record shows the current uniform allowance is adequate and change is not justified.

DISCUSSION: The record made in this proceeding does not support the increase sought by the Union. That dry cleaning is provided at City expense serves to offset the fact that the Uniform Allowance has not changed for many years. So too does the record of purchases approved by the Chief. No change in Uniform Allowance is recommended.

DURATION: It is recommended that this be a three year Agreement from July 1, 2015 through June 30, 2018. No further changes are recommended in the terms of Article 33.

AGREEMENTS: All tentative agreements are made part of this report by reference and recommended to the parties.

Signed and dated this 4th day of November, 2015 at Solon, OH.

Harry Graham
Harry Graham
Factfinder.