

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 27, 2016**

IN THE MATTER OF FACT FINDING BETWEEN:

City of Pickering

Employer

CASE NO. 2015-MED-09-0765
2015-MED-09-0766

and

FACT FINDER: Howard B. Tolley Jr.

Fraternal Order of Police, Capital City
Lodge No. 9, Employee Organization

Fact Finding Hearing:

April 6, 2016, Police Department, Pickerington

Appearances

FOP, Capital City Lodge No. 9

Russell Carnahan, FOP Counsel
Jim Gilbert, FOP Past President
Wade Steen, CPA, President Steen + Co.
Thomas Spreen, Police Officer
Chad Wallace, Police Sergeant
Tim Planer, Police Officer

City of Pickerington

John Krock, Vice President, Clemans, Nelson & Associates, Inc.
Chris Schernack, Director of Finance
Stephanie Spencer, Deputy Finance Director
Greg Annis, Commander, Police Department

Introduction

The City of Pickerington, located in Central Ohio, mostly in Fairfield County, had a population in 2013 of just over 19,000. The Fraternal Order of Police, Capital City Lodge No. 9 (“FOP”), has represented a police officers’ unit and a supervisors’ unit for nineteen and twenty-five years, respectively. At present, the units consist of 19 full-time police officers and 5 full-time police sergeants, excluding the Chief and Commanders. The parties held five negotiating sessions agreeing to current language on Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 19, 21, 26, 27, 29, 30, 31, 32, and 33 and resolving proposed changes to Articles 7, 14, 16, 17.5, 22, 23, 25, and 28. At the hearing the parties agreed to Article 34, Duration Amendment, providing that a new three-year agreement will take effect December 21, 2015.

The parties mutually agreed to appointment of the Fact Finder on February 29, 2016, a hearing date of April 4, and a report to be issued on April 27. The parties sought a Fact Finding Report with recommendations on unresolved issues involving four contract articles – 17 Compensation/Hours of Work, 18 Insurance, 20 Uniforms and Equipment and 24 Sick Leave.

The parties exchanged and submitted pre-hearing position statements, prepared supporting documents and offered witness testimony 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 factors, 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.

ARTICLE 17 COMPENSATION/HOURS OF WORK

Article 17.1 Wage Rates

FOP Position

The FOP has proposed wage increases of 6.5% (a market adjustment of 3.5% plus a base wage increase of 3%) for 2016; and, 3.5% base wage increases in 2017 and 2018. The FOP proposed a “market adjustment” to prevent the wage rates of Pickerington police officers and supervisors from falling much farther behind their peers in the local market. The FOP based its proposal on:

- (a) Relevant comparable wages and wage increases for the other law enforcement bargaining units represented by the FOP, Capital City Lodge No. 9;

- (b) Significantly increased revenues to the City due to substantial and continuing growth in the local population and in the number of persons employed by local businesses;
- (c) The much-improved and now healthy state of the City's overall finances, which boast significant reserves / carry-over; and,
- (d) The increasing work load and environmental stresses that are being borne by members of the bargaining units.

Employer Position

The City proposed wage increases of 1% in each year of the contract (2016, 2017 and 2018).

Of the 15 cities in Franklin County listed as comparable by the union, Pickerington is the only jurisdiction that has a 1% city income tax, There are only two other Cities that have 1.5% city income tax, all others have 2% or 2.5% city income tax. Therefore, the City of Pickerington receives less revenue for their general fund than any other City within Franklin County, even though there are six (6) other Cities with smaller populations. The current Police Department budget makes up almost 50% of the General Fund revenue compared to an average of 33% of the General Funds for the other Franklin County Cities.

The Employer also argued that the City of Pickerington is more comparable to other Cities surrounding Franklin County with similar populations.

Analysis

The FOP called as an expert witness Wade Steen, CPA, who has extensive experience advising public employers and represented employees. Based on thoroughly documented analysis of the Pickerington Comprehensive Annual Financial Report (CAFR), the City Five Year Forecast 2015-2019) and other city budget reports, he highly praised the Employer's fiscal management.

Steen noted that experts consider an asset to liability ratio of 2.5 good, and that Pickering's ratio of 3.84 is tremendous. General Fund total revenues each year have exceeded budget estimates as a result of a growing tax base and population growth. In the past year income tax revenues increased by over 6%. Since 2012 the city has had budget surpluses rather than the projected deficit and fiscal exigency. The audited figures for 2014 show cash reserves were 59% of expenses, more than double the level deemed sufficient by bonding agencies. The city's projections for 2015 and beyond reveal nothing that impairs its ability to pay significantly increased wages.

At a minimum, the internal comparable indicates that the city ought to increase pay by at least 2% a year. The external comparables indicate that the employer should pay more than 2%

The Fact Finder included the city on a list with 12 comparable municipalities based on population and proximity to Columbus or Pickering -- Bexley, Circleville, Gahanna, Grove City, Hilliard, New Albany, Pataskala, Reynoldsberg, Upper Arlington, Westerville, Whitehall, and Worthington. The Fact Finder did not include townships, jurisdictions that

were significantly smaller or larger than Pickerington, and those at a significant distance. For 2015 top wage rankings, Pickering place 11th out of 13, \$10,828 below the median of \$82,296. For the comparable cities used by the Fact Finder, the top step median wage increase in 2015 was 2.5%, the same as the median increase for six comparable municipalities in 2016. At least a 2.5% increase would be needed to prevent Pickerington officers from falling further behind.

The Fact Finder concludes that the FOP made a compelling case that Pickering should pay a higher increase as a market adjustment in order to bring the city FOP closer to the median in the market area. Since the city has the ability to pay, the Fact Finder gave weight to the statutory provision for considering “those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;” In the thriving Columbus market area, two comparable jurisdictions which already offer wages considerably higher than -- Pickerington Reynoldsburg and New Albany -- granted increases in 2015 of 4.75%, and 5.75%. For 2016, 2017 and 2018 top ranked Upper Arlington will pay annual increases of 2.75%.

Recommendation:

Section 17.1. Wage Rates. Members shall be paid in accordance with the following rates.

Increase to base rate of 3% for all steps and Sergeants, effective 1/1/2016.

Increase to base rate of 3% for all steps and Sergeants, effective 1/1/2017.

Increase to base rate of 3% for all steps and Sergeants, effective 1/1/2018.

The parties will develop the actual pay rate charts for each of the three years of the Agreement for inclusion in this Section

Article 17.4 Overtime

Employer Position

The City proposes to delete in the second paragraph “sick leave” from counting as hours worked for computing overtime. Currently all hours in paid status are considered as hours worked for computing overtime. The Fair Labor Standards Act only requires Employers to count hours actually worked when computing hours for overtime purposes. The City is willing to continue to count all other hours – vacation days, holiday leave, and personal days -- toward the overtime standard.

FOP Position

Standard language throughout FOP Lodge No. 9 contracts provides that all leaves (including sick leave) count towards “hours worked” for purposes of calculating overtime. There is no indication that this change in long-standing contract language is needed. The City does not contend (and cannot prove) that it needs to achieve “cost savings” through this proposal; and, the City has not asserted (or produced any evidence) that use of sick leave among bargaining unit members is a “problem”.

Analysis

The City offered insufficient evidence at the hearing to persuade the Fact Finder of any need to delete “sick leave” from Section 17.4.

Article 17 Sections 17.4 Overtime and 17.10 Deviation Pay

FOP Position

The FOP proposes the addition of the following language to Section 17.4: “A member’s regularly scheduled shift shall not be adjusted to avoid paying overtime, except by mutual agreement between the member and the Employer” -- identical to contract language in the City’s current contract with AFSCME Local 1822. As an alternative the FOP proposes to delete Section 17.10 “exception (B)”, which permits the City to alter a member’s schedule with six days advance notice

The union argues that the City uses Section 17.10 to manipulate officers’ work schedules to avoid overtime payment required in Section 17.4. The union contends that current practice results in significant personal sacrifices, such as disrupting sleep schedules, opportunities to attend family events or enjoy holidays at home and personal schedules for daycare, medical appointments, and other personal business. Overtime, especially for law enforcement, is an expected “cost of doing business” that should be paid by the employer, not the employee.

The FOP urges the Fact Finder to accept one or the other proposal to afford relief to the officers whose lives are disrupted by schedule changes with only six days notice

City Position

The Employer rejects the FOP overtime proposal for section 17.4 and seeks elimination of the entire Section 17.10 Deviation Pay. The FOP proposed addition to 17.4 or deletion in 17.10 would infringe on the Employer’s management right to schedule employees, and would increase considerably the Employer’s overtime budget. If the Fact Finder recommends keeping Section 17.10, the Employer seeks to continue the (B) exception that allows adjustments to an employee’s schedule when necessary with six days notice to a regular shift change that involves no overtime pay.

Analysis

The parties first agreed to Section 17.10 three years ago. In support of its alternative proposals for Sections 17.4 and 17.10, the FOP offered an internal comparable, the AFSCME contract. The City presented external information from police contracts in 5 municipalities that it deemed comparable. Three of the agreements correspond to current language in the Pickering contract, and two had language similar to the FOP proposal. Without evidence of additional police contracts from comparable jurisdictions, the Fact Finder found both parties effectively countered the proposed changes made by the other.

Recommendation

Current language for both Sections 17.4 Overtime and 17.10 Deviation Pay

Article 17.15 FTO Pay Supplement

FOP Position

The Union has proposed changing eligibility from “Patrol Officer” to “member” for the current \$2 per hour pay supplement when officers serve as “field training officers” (FTO) for newly hired recruits. The FOP proposal would entitle supervisors (Sergeants) to the \$2 supplement when they provide field training to new recruits. The City has avoided

payment of the FTO supplement by assigning Sergeants – rather than officers – to provide field training to newly hired officers. The increased responsibilities are a significant additional burden for Sergeants who already have numerous important day-to-day responsibilities. The City’s total cost for payment of this supplement to sergeants would be quite small; and, it is unfair and illogical that officers have a contractual right to the supplement but Sergeants do not.

City Position

The Employer favors current language. The City believes that training new employees is part of the Sergeant’s regularly assigned duties. During negotiations the parties had a productive discussion concerning this issue and the Employer also believes that Patrol Officers should be assigned these duties; however, the Sergeant should be available to occasionally supervise or conduct such training at no additional compensation. Therefore, the Employer sees no need for any change to this section.

Analysis

Sergeant Wallace offered compelling testimony at the hearing that his time spent in training new officers has grown to such an extent that he has insufficient time to complete other critical tasks, such as updating general orders. Testimony at the hearing revealed that under current practice the City only assigns Sergeants to provide the field training; The Fact Finder understands that to date no officers have ever received the FTO supplement.

The City conceded that Sergeants have become increasingly burdened by additional time demands for field training, but argued that a pay supplement would not solve the problem. If so, then it would nevertheless provide compensation for an increased workload. The Fact Finder also assumes that a contractual requirement for Sergeants to receive the FTO supplement when they alone have responsibility for field training should result in officers receiving such assignments for the first time. As supervisors, the Sergeants would oversee the officers assigned to Field training without any FTO pay supplement for that more limited role.

Recommendation

Section 17.15. FTO Pay Supplement. Any ~~Patrol Officer~~ **member** who is assigned as a field training patrol officer shall receive an additional two dollars (\$2.00) per hour when so assigned. The time Sergeants spend supervising officers assigned as FTO’s will not qualify for the \$2 supplement.

ARTICLE 18 INSURANCE

City Position

The City proposes four changes: 1) increase member premium share from 13% in 2016 to 14% in 2017 and to 15% in 2018; 2) that HSA funding be the same as for non-union employees (currently 75%) rather than the contractually required minimum 75% of the plan deductible; 3) require employees who leave employment during a plan year to refund a prorated amount of the City’s contribution to their health savings account; and, 4) give the City greater authority to make plan modifications to comply with the

Affordable Care Act or to avoid the imposition of taxes under the ACA.

FOP Position

The FOP proposes current contract language. The City has projected *no significant increase* in cost of health insurance for 2016. In February, Fact Finder Carol Bader rejected the City's proposal to make two of the same changes proposed by the City in insurance for its AFSCME unit – recommending no change in insurance premium share and no change to the 75% HSA funding requirement. Additionally, the City's proposal to unilaterally make changes in health insurance has been made and rejected by the FOP membership and fact finders in previous contract negotiations.

Last, the City's proposal to require that members reimburse their HSA contributions (pro-rata) if they separate from employment during the insurance plan year is unnecessary and punitive. On rare occasions, an employee will retire shortly after the City has funded the employee's HSA, but employees typically cannot control when they (or their family members) are in need of medical care. If an employee depleted funds deposited into their HSA in the first few months of the year; there is no reason to require the employee to "reimburse" the City's HSA deposits at the time that they leave employment.

Analysis

1. Employee Contribution to Insurance Premium.

The Fact Finder used insurance comparison data provided by the parties for five jurisdictions that he considered comparable. Pickering's 13% contribution rate is the median – Bexley and Circleville have higher employee contributions; Pataskala and Worthington have lower contribution rates. In the prior 2013-2015 contract the Fact Finder recommended an increase from 12% to 13% that took effect in 2014. (*City of Pickerington and Fraternal Order of Police Capital City Lodge No. 9*, SERB-MED-10-1305 and 2012-MED-1306, Robert Nowell, August 29, 2013) In February a Fact Finder recommended a 13% contribution rate for AFSCME over the next three years; (*AFSCME Ohio Council 8, Local 1822 and City of Pickerington Ohio*, SERB 2015 MED-09-0922, Carol Bader, February 24, 2016). This Fact Finder recommends the same – current contract language.

2. HSA 75% Funding Requirement.

In 2013 the Fact Finder rejected the City's proposal to eliminate the 75% requirement, as did the Fact Finder in the 2016 AFSCME report. The Employer has not offered sufficient evidence for this Fact Finder to recommend any change in current contract language.

3. Pro rata Reimbursement of HSA Funds.

The FOP effectively countered the City's rationale for pro rating HSA contributions for those who separate from employment during the insurance plan year. The Employer's pre-hearing statement indicated that additional language in Article 18 prorating the HSA account for newly hired employees had been agreed to. The Fact Finder is uncertain whether the union agreed to that change, but recommends including any change the parties signed prior to the hearing, with no other change to current contract language.

4. City Authority to Make Unilateral Changes.

The current agreement provides “representatives from the bargaining unit will have input and participate in the City’s Insurance Review Committee” as recommended in Fact Finder Nowell’s 2013 report. The Employer has not offered sufficient evidence for this Fact Finder to recommend any change in current contract language.

Recommendation

6+ 7 Section 18.1. Insurance Coverage and Member Premium.

Current language with the following revision

- Effective in payroll year 2016 13%
- Effective in payroll year 2017 13%
- Effective in payroll year 2018 13%

In addition ,the Fact Finder notes that if the parties have agreed on revisions to provisions that appear later in Article 18, then those signed results are incorporated in this recommendation.

Article 20 Uniforms and Equipment

The FOP proposes: 1) an increase in uniform allowance for plain clothes officers (Detectives) from \$1000 to \$1500; and, 2) the establishment of a uniform replacement system that will provide officers a \$1,000 annual allowance to obtain their own replacements for normal “wear and tear” through a vendor of the City’s choosing

The City proposes 3) that the newly assigned Detectives allowance be prorated based on the number of months remaining in the initial year, and 4) that Detectives when they separate employment for any reason other than death, pay the City the prorated amount of uniform allowance, based up the number of months remaining in the (6) month period.

FOP Position

1. The increase proposed for the annual clothing allowance for plain clothes officers is warranted based upon comparable contracts throughout FOP Lodge No. 9.
2. The current replacement system for uniformed assignments requires officers to make requests through the chain of command for replacement of uniform and equipment items. The current system is cumbersome (for both officers and administration), provides little flexibility, and results in unnecessary delays when officers need replacement uniforms and equipment.

Sergeant Wallace testified that under the current system he received both boots and shirts that did not fit. If granted an allowance he could use at a city approved vendor, he would be able to try on clothing and get the right size the first time. Sergeant Wallace also noted that if others members were allowed to spend more than their \$1,000 early in the year, the budgeted funds might not be sufficient for him to purchase \$1,000 worth of clothing.

3. The City’s proposal to prorate the clothing allowance for newly assigned detectives is both unwarranted *and* in direct contravention of other language in Section 20.1, which

already provides that newly assigned detectives “shall receive the total yearly allowance immediately to enable him or her to adequately secure necessary clothing for the position.”

4. The City has no need to require that members who retire must reimburse their previously received clothing allowance on a prorated basis. Section 20.1 already spreads the plain clothes allowance out over two semi-annual installment payments; and, members routinely spend their allowance *in advance* for purchases and upkeep of their clothing.

City Position

1. The FOP has not demonstrated that the current allowance for Detectives’ clothing is insufficient, and so current language should be continued.
2. The FOP has not demonstrated that the current system for Officer’s uniform replacement should be changed, the current system is satisfactory, and so current language should be continued.
3. The Employer seeks added language so that newly hired detectives who leave within a year do not receive a windfall benefit resulting from payment of the clothing allowance in advance. Detectives will have their clothing allowance prorated based upon the number of months remaining in the initial year.
4. Similarly the Employer also argues Detectives should reimburse the city a pro rata share of the clothing allowance paid semiannually to assure the Employer only provides the allowance for the actual time served.

Analysis

1 + 2. Based on the data from other jurisdictions provided by the city, the Fact Finder concludes that the FOP failed to demonstrate either the need for increasing the plain clothes Detective’s clothing allowance by 50% or to provide a new \$1,000 allowance credit for uniformed officers to use at a city approved vendor. The current system allows the Employer needed flexibility to cover replacement costs that vary by individual.

3 + 4 Based on his reading of other sections in Article 20.2 the Fact Finder concludes that the City failed to demonstrate the need for changing current language in order to obtain a reimbursement. It appears that Section 20.2 enables the City to deduct from the final pay for a Detective terminating service that part of the pre-paid allowance for which there are no receipts for actual expenditures. The Fact Finder concludes that City’s proposal to seek a pro rata reimbursement for prior expenditures is neither needed nor fair.

Recommendation

Current Language for Section 20.1.

10 Article 24.1 Sick Leave Accrual

City Position

The City proposes that the amount of sick leave accrual be reduced over the life of the contract from 4 hours per pay period to 3.1 hours per pay period -- from 104 hours per

year to 80.6 hours per year. Except for the FOP bargaining unit, all other city employees have accrued 3.1 hours of sick leave per pay period -- 80 hours/10 days -- since the first full pay of 2013 -- all Pickering administrative and management employees and employees represented by AFSCME, (Police Dispatchers and Service employees)

FOP Position

The FOP proposes current contract language. The City already achieved a reduction in sick leave accrual over the life of the current contract -- from 120 hours to 104 hours -- and there is no necessity to further reduce the accrual rate. The current rate of accrual for sick leave is *below all other comparable jurisdictions*, and any further reduction is entirely unwarranted, especially for police officers who are routinely exposed to hazardous and unhealthy working conditions

Analysis

In order to resolve the sick leave accrual issue, the Fact Finder is guided by the Ohio Public Employees Bargaining Statute Rule 4117-9-05 provision regarding comparable work:

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;

The city offered an internal comparable for other Pickerington employees, represented as well as unrepresented. Fact Finder Nowell in 2013 recognized that “the standard sick leave accumulation rate is 4.6 hours per biweekly pay period.” The current agreement reduced FOP sick leave compensation from 4.6 to 4.0 hours per bi-weekly pay period. Data provided by the parties for comparable jurisdictions indicates that 4.6 hours remains the standard sick leave accumulation for employees in the area with the same classification, doing similar work, who face greater hazards than non-safety public employees. The Fact Finder sees no reason to depart further from that standard.

Recommendation

4.0 hours per bi-weekly pay period, the 2015 accrual rate, for all three years of the contract.

11. Article 24.2 Sick Leave Use

City Position

The Employer proposes to delete the following sentence, “For purposes of this paragraph, upon request, a member shall be granted ten (10) days of sick leave to care for a spouse who gives birth to a child; the granting of this leave does not require a member to furnish proof under Section 24.3.” As stated in this section, sick leave that is used for pregnancy related conditions of the member’s immediate family requires that the member’s presence has to be reasonably necessary for the health and welfare of the member or affected family member. The member’s presence could be required more than or less than ten (10) days, whatever is medically necessary to care for the member or the affected family member. Therefore, each employee would receive the amount of sick leave

necessary, based upon the physician statement, which would be consistent with the rest of the City employees.

FOP Position

The City again has offered no justification for eliminating a reasonable benefit. Granting an employee two weeks of sick leave to care for a spouse following childbirth certainly does not put a strain on City finances, and attempting to take away that benefit is entirely unnecessary.

Analysis

The City reasons that eliminating a guaranteed parental leave of two weeks would allow greater flexibility to grant shorter or longer leaves on an as need basis. Bringing the FOP Sick Leave Use article into line with the benefit granted to other Pickering employees does not appear to the Fact Finder as a sufficient basis for the change. As in its proposal for reduced sick leave accrual, the Employers seeks to reduce employee benefits for a bargaining unit whose members are compensated far below the median pay in comparable jurisdictions.

Recommendation

Current language for Section 24.2

Conclusion

For the issues at impasse the Fact Finder reviewed the pre-hearing statements of the parties, their arguments, witness testimony and exhibits presented at the hearing in light of the criteria enumerated in the Ohio Revised Code Section 41117.14(G)(7)(a-f).

In addition to the specific recommendations contained in this Report, all tentative agreements reached by the parties during negotiations and at the hearing are incorporated in the Report's recommendations. Any issues not addressed during negotiations are also intended to remain current language.

Respectfully submitted and issued at Cincinnati, Ohio this 27th day of April, 2016.

Howard J. Tolley

Howard Tolley, Jr. Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April 2016, the Fact Finder submitted his Report and Recommendation by electronic mail to John J. Krock, the City of Pickering's representative, Russell Carnahan, FOP representative, and to the State Employment Relations Board Bureau of Mediation.

Howard J. Tolley

Howard Tolley, Jr. Fact Finder