

SEP 13 10 05 AM '95

IN THE MATTER

OF

FACTFINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE/
OHIO LABOR COUNCIL, INC.

AND

THE CITY OF MIAMISBURG, OHIO

Hearing: August 25, 1995
SERB Case Nos.: 95-MED-04-0311 and 95-MED-04-0312
Date of Report: September 15, 1995
Issue: Factfinding

Union Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated May 31, 1995, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On August 25, 1995, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on August 25, 1995, and is now ready for a factfinding report.

Factual Background

The City of Miamisburg, is located just south of Dayton, Ohio, in southern Montgomery County, and is responsible for providing certain services to its citizens; pertinent here are the Patrol Officers and Communications Officers, both of which groups are represented by the Union. The current Collective Bargaining Agreement, is dated July 1, 1992, and expired on June 30, 1995. Negotiations for a new contract began early in June, 1995, and resulted in several of the outstanding issues being tentatively agreed to prior to this factfinding hearing. At the factfinding hearing on August 25, 1995, thirteen (13) issues were initially presented. During the hearing certain of those issues were settled and following the hearing the City withdrew its proposal regarding Issue #6 concerning Article 10 - Wages. The outstanding issues are as follows:

1. Article 3, Section 2 - Recognition and Dues Deduction (Fair Share);
2. Article 3, Section 4 - Recognition and Dues Deduction (Part-Time Employees);
3. Article 7, Section 2 - Grievance Procedure;
4. Article 9, Section 6 - Overtime Opportunity;
5. Article 10 - Wages;

6. Article 10, Section 6 - Wages (Hours of Work); (withdrawn following hearing)
7. Article 10, Section 9 (new) - Wages (Shift Premium);
8. Article 13, Section 1 - Sick Leave;
9. Article 14, Section 1 - Health Insurance;
10. Article 16, Sections 2, 3, 5, & 5 - Call-Back & Call-In Pay;
11. Article 18, Section 5 - Other Benefits (Family and Medical Leave); and,
12. Article - Retroactivity of Wage Increase;

Each will be addressed separately.

ARTICLE 3, SECTION 2 - RECOGNITION AND DUES DEDUCTION (FAIR SHARE)

UNION POSITION

The Union proposes this language and asserts that both the internal and external comparables support adoption of the language. Since the Sergeants bargaining unit in the City of Miamisburg has fair share language, and since state-wide 75% of city police departments have fair share fee language, then it asserts such is appropriate here. It argues that the sergeants fair share language has not caused problems and since the proposed language would hold the City harmless, then it would not place a burden on the City. Therefore, the Union asks that the fair share language be recommended.

CITY POSITION

The City maintains that there is no history of fair share language; that only four (4) employees are currently not members of the Union; and, that the push for fair share language was

done due to the maintenance agreement between the Ohio Labor Council (OLC) and the Miamisburg Police Association (MPA). In that maintenance agreement, the OLC is guaranteed to receive dues-equivalent contribution from the MPA based on the total number of employees, regardless of how many employees become members of the OLC. Since the City was not a party to that arrangement, then it asks that the fair share language not be imposed.

RECOMMENDATION

The Union's proposal cannot be recommended. Although the comparables support its request, the City persuasively argued that the proposal was instigated by the maintenance agreement. Further, fair share language is a tough recommendation to make in the best of circumstances. The Union is charged with organizing its members and must have strong reasons to obtain fair share language as a method of gaining more members than it is otherwise able to get. The Union's position here did not justify a recommendation of the inclusion of fair share language even with the comparables. Therefore, the recommendation cannot be made.

ARTICLE 3, SECTION 4 - RECOGNITION AND DUES DEDUCTION

(PART-TIME EMPLOYEES)

CITY POSITION

The City proposes changing the maximum number of hours that a part-time employee can work from thirty (30) hours to thirty-five (35) hours. The City's proposal is based on its need to be able to more effectively use part-time employees. It argues that the current maximum number of hours could potentially interfere with its ability to use part-time employees. Although it maintains

that there are currently no part-time employees working bargaining unit positions, and there are no plans to begin using any, it asserts that its experience in other departments has been that such employees add greatly to its ability to schedule and would like to have the same flexibility here. It argues that the language would help it reduce expenses.

UNION POSITION

The Union contends that the City's proposal would result in erosion of the bargaining unit. It argues that thirty (30) hours is enough to efficiently use part-time help without risking the loss of bargaining unit members.

RECOMMENDATION

The City's proposal cannot be recommended. Although the need for efficiency and cost-savings is important, the Union's argument regarding erosion of the bargaining unit is a strong one. Moreover, since the City has not shown a historical need nor an expected need, then the request must be found to have no support. Although the language has the potential of giving it greater flexibility, without a justifiable need it cannot be recommended.

ARTICLE 7, SECTION 2 - GRIEVANCE PROCEDURE

UNION POSITION

The Union proposes changing the grievance procedure so that the final step is changed from the current appeal to the Miamisburg Civil Service Commission to that of binding arbitration. It contends that 90% of FOP's collective bargaining agreements contain binding arbitration. It argues

that since the Civil Service Commission is public then the findings are more likely prejudiced. Further, the Sergeants bargaining unit in the City of Miamisburg has binding arbitration in its Agreement.

CITY POSITION

The City contends that throughout the history of this relationship, the Parties have always had the right to appeal to the Civil Service Commission and it has never been a problem. It argues that such is consistent with the City Charter and the community ethic. It asserts that there has never been an instance of dissatisfaction with the current system and maintains that the police have been fairly treated. Therefore, it argues that there is no reasons to change the current language.

RECOMMENDATION

The Union's proposal must be recommended. In this instance, the comparables, both internal and external, are overwhelming. The fact that the Sergeants have binding arbitration instead of the right to appeal to the Civil Service Commission is a strong indication that the community ethic accepts the arbitration process. When that is combined with the fact that 90% of the state wide bargaining units contain binding arbitration, the proposal becomes axiomatic. The likelihood of a private arbitrator being swayed by public pressure is less than that of a Civil Service Commission and, when the fact that police today can become the object of the ebbs and flows of public opinion is considered, arbitration shows itself to be the better process. For all these reasons, the Union's proposal must be recommended.

ARTICLE 9, SECTION 6 - OVERTIME OPPORTUNITY

UNION POSITION

The Union proposes adding the following language:

Regularly scheduled work shifts shall not be altered to avoid the payment of overtime. Employees may alter their schedules upon mutual agreement of the affected employees and the Employer. Employees shall not refuse assignments or miss work to enhance the ability to receive overtime pay.

It contends that the language would ensure that schedule of employees would not be altered to avoid the overpayment of overtime.

CITY POSITION

The City contends that the proposal has the priorities all wrong. The schedule is management's duty and control of it should not be placed in the hands of employees.

RECOMMENDATION

The proposal cannot be recommended. It must be recognized that the purpose of overtime is to punish employer's for requiring employees to work an unreasonable amount of hours; statutorily defined as forty (40) hours per week. Once this is recognized, then the Union's proposal to forbid management from avoiding punishment shows itself to be illogical. Therefore, the proposal cannot be recommended.

ARTICLE 10 - WAGES

CITY POSITION

The City contends that the Union enjoyed a 13% increase in wages during the life of the

previous Agreement (4.5, 4.5, and 4% wage increases in each year). Since the cost of living rose less than 3% per year, or 8.3% during the three (3) years, it maintains that the Union has achieved significant real wage growth. It compares the public employees here to the private employees in the area who have only experienced a 1.8% increase in wages. It argues that the City's financial outlook is gloomy based on all the loss of manufacturing jobs in the last year. It provided evidence that it has lost a significant number of high-paying professional positions in the area due to the closing of certain plants as well as evidence that those jobs remaining are threatened as well. Since the heart of the City's tax base is its income tax, then it asserts it is looking at a serious decline in resources. It proposes a 2%, 2%, and 2.5% wage increase in each year of the collective bargaining agreement.

UNION POSITION

The Union argues that while the City's position has never changed throughout negotiations, it has moved from an offer of 5%, 5%, and 5.5%, to 4%, 4%, and 4%. It argues that all other employees in the City received a 3.5% wage increase and that is as low as it is willing to accept. It argues that 3.5% will maintain its standing in the list of comparables it introduced. It argued that the City never made an inability to pay argument and it asserts it cannot make such a claim.

RECOMMENDATION

It is recommended that the wage increase be 3.5%, 3%, and 3%. Although the City's position that its tax base is leaving the area was compelling, the internal comparables where the remaining employees received a 3.5% increase demand that a similar increase be given to the police for the coming year. Although the City pointed out that the bad economic news was received after the other

employees were already given a raise, the police should not be punished for the lack of foresight. Further, the City did not make an inability to pay argument, it made an argument that it might not have the ability to pay in the future. Although it was a strong argument, it should not affect the immediate raise for the coming year. However, it does affect the years following. If its predictions turn out to be accurate, the wage increase, otherwise justified, must be lower. Therefore, it is recommended that the second and third years of the Agreement contain a wage increase that is less than would otherwise be reasonable. The recommendation is a wage increase of 3.5%, 3%, and 3%.

ARTICLE 10, SECTION 6 - WAGES (HOURS OF WORK)

By way of a letter dated August 28, 1995, this issue was withdrawn by the City following the hearing.

ARTICLE 10, SECTION 9 (NEW) - WAGES (SHIFT PREMIUM)

UNION POSITION

The Union proposes a shift premium for employees required to work second or third shifts at the rate of 1% of the applicable base hourly rate for each hour worked. It maintains that in the State of Ohio, of the 191 City Police Departments, 77 had shift premiums. It asserts that the percentage of City's that have the premium show it to be common enough for police departments and asks that employees be given the premium as compensation for working undesirable hours.

CITY POSITION

The City maintains that its financial status makes it a bad time to introduce new benefits.

It contends that a shift premium is not very common for Police Departments and thus has no support here.

RECOMMENDATION

The Union's proposal cannot be recommended. The City makes a strong argument that the time for new benefits is not when it is facing a loss of its tax base. The number of police departments who do have the benefit is less than half and therefore, the external comparables are not strong. Thus, the Union's proposal cannot be recommended.

ARTICLE 13, SECTION 1 - SICK LEAVE

CITY POSITION

The City proposes modifying the sick leave provision so that employees are restricted from leaving the metropolitan area and are restricted in the use of sick leave if they become ill during vacation. It argues that the change is justified based on several incidents where employees have misused sick leave.

UNION POSITION

The Union argues that the new proposal is a serious infringement on privacy, is not supported by the two (2) cited incidents, and, if a problems does exist it is better handled through discipline, not the City's proposal.

RECOMMENDATION

The City's proposal cannot be recommended. The Union persuasively argued that the language proposed is a serious infringement on the privacy of the employees. Further, the incidents the City relied on were credibly explained at the hearing and the explanations showed that the City's concerns were unfounded. Moreover, the best way to handle misuse of sick leave is through discipline. Therefore, the language cannot be recommended.

ARTICLE 14, SECTION 1 - HEALTH INSURANCE

CITY POSITION

The City proposes changing the method of calculating the employees contribution. The current contract provides for a cap on City contributions above which the employee picks up 25% of the premium. The City change would make the cap on the City's premium change to a fixed percentage to be paid by each party. The percentage would be 95% paid by the City and 5% by the employee with the employee choosing the plan. It maintains that the proposal is reasonable and is in line with external comparables.

UNION POSITION

The Union maintains that the City's proposal would change the average contribution by employees from \$6.00 per month to \$20.00. It contends that this provision just got negotiated last year in an attempt to help the City save money. It contends that the current health care consortium between the City of Miamisburg and several other Cities in Ohio is about to expire next year. It is concerned about the future following the end of the consortium and what affect the City's proposal,

if adopted, would have.

RECOMMENDATION

The City's proposal cannot be recommended. Although what is proposed is reasonable, it is too soon after the just negotiated arrangement last year. Further, the unknowns surrounding the expiration of the consortium next year justify maintaining the current provision in order to protect the employees from the uncertainty of those negotiations. Thus, while the City's proposal is reasonable, the timing is wrong and the status quo is recommended at this time.

ARTICLE 16, SECTIONS 2, 3, 5, & 5 - CALL-BACK & CALL-IN PAY

UNION POSITION

The Union proposes changing the pay rate for employees called-in to time and one half (1.5) and to a minimum call-in for court appearance to four (4) hours at time and one half (1.5). The Union contends that the call-in proposal is fair compensation due to the inconvenience of having to make the necessary appearances.

CITY POSITION

The City maintains that this is the wrong time to introduce new benefits. It argues that its financial situation requires that the proposal be rejected.

RECOMMENDATION

The Union's proposal cannot be recommended. The overtime calculation should be based

on the number of hours worked without regard to the type of work done. The itemization of the type of work as proposed by the Union would be unduly burdensome and is not justified. The calculation should be based on total hours worked with overtime being calculated after the forty (40) hour time has been surpassed.

ARTICLE 18, SECTION 5 - OTHER BENEFITS (FAMILY AND MEDICAL LEAVE)

UNION POSITION

The Union proposes including the Family and Medical Leave Act (FMLA) into the Agreement. It argues that the language is basic and consistent with the FMLA and, since no one disputes that the Act exists, then the Agreement is only recognizing what everyone already understands to be true.

CITY POSITION

The City contends that other federal statutes are not included in the Agreement even though they apply just the same as the FMLA. Therefore, there is no reason to include the FMLA here.

RECOMMENDATION

The Union's proposal cannot be recommended. The inclusion of changing and new federal law raises many problems and can reasonably be expected to cause problems in the future. Its inclusion cannot be seen as being helpful and therefore, should not be done.

ARTICLE - RETROACTIVITY OF WAGE INCREASE

CITY POSITION

The City argues that the wage increase should not be retroactive. It contends that it had trouble in getting the Union to the table since it showed no real sense of urgency in getting the Agreement signed. It argues that a contract should be effective only when its signed.

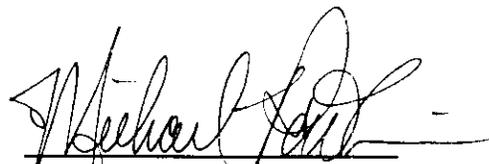
UNION POSITION

The Union argues that retroactivity is common; that it has been granted in the past; that no delays took place; and, that it has never heard this argument before. Therefore, it ask that the wage increase, whatever amount it may be, be retroactive to the expiration of the last agreement.

RECOMMENDATION

It is recommended that the wage increase be made retroactive. Such must be recognized as the commonly accepted method of paying a wage increase following the closing of negotiations. Consequently, the practice can only be modified in the face of exceptional circumstances. The City has not made out an exceptional circumstance and therefore retroactivity must be recommended.

September 15, 1995
Cincinnati, Ohio



Michael Paolucci