

IN THE MATTER OF FACT-FINDING PROCEEDINGS
BETWEEN

CITY OF FINDLAY)
) CASE NOS. 95-MED-07-0643
) 95-MED-07-0644
AND)
)
) FINDINGS AND RECOMMENDATIONS
INTERNATIONAL UNION OF POLICE)
ASSOCIATIONS)

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

Jeffrey Julius, Esq.
William A. Dunn

FOR THE EMPLOYER

Gary C. Johnson, Esq.
Robert Ruse

S U B M I S S I O N

This matter concerns fact-finding proceedings between the City of Findlay (hereinafter referred to as the Employer) and the International Union of Police Associations, Local 71 (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The two bargaining units involved herein include all full-time police patrolmen and sergeants. The fact-finding hearing was held on May 9, 1996 in Findlay, Ohio.

These fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse but without success. The issues before this fact-finder for his consideration include the following: Wages; Physical Fitness; Probationary Period; and Term of Agreement.

This fact-finder in rendering the following findings of fact and recommendations on issues at impasse, has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before.

1. WAGES

The Union proposes a 3 percent across the board wage increase retroactive to January 1, 1995; a 3 percent increase effective January 1, 1996; and 4 percent increase effective January 1, 1997.

The Employer proposes a zero percent wage increase for 1995 and a 3 percent wage increase effective upon the execution of the successor agreement.

The Union contends that its wage proposal is consistent with the salary increases granted to other city employees for 1995 and 1996. All other safety units in the city received a 3 percent increase in each of those years. Moreover, it is the Union's position that a 4 percent increase in 1997 would be in line with statewide settlements.

The Union cites comparable wages for patrolmen and sergeants in cities in the northwest section of the state. This wage comparison shows that Findlay patrolmen and sergeants' top wages fall below those paid in these other cities. The Union submits that a 3 percent retroactive increase to January 1, 1995 is needed in order to bring bargaining unit members' wages more into line with comparable wages paid in the geographic area.

The Employer contends that a wage freeze for 1995 is justified under the circumstances here. The Employer points out

that bargaining unit employees rejected a fact-finding award issued in 1995 and subsequently decertified the previous employee organization. This has resulted in protracted contract negotiations to the detriment of the city. There has been no retroactivity agreement signed by the parties. In that calendar year 1995 has been concluded, the Employer simply does not have the funds to provide for any retroactive wage increase for the past year.

The Employer maintains that bargaining unit employees are already making above the average wage for comparable positions. The Employer cites ten other metropolitan cities like Findlay which it says have been used in the past by the parties for wage comparison purposes. The wage comparison shows that the top pay for patrolmen in Findlay is currently about \$1.11 greater than the average top pay in the other cities. With the 3 percent wage increase proposed for 1996, the top wage for patrolmen here would be about \$1.20 greater than the average top wage for these metropolitan districts. Thus the Employer submits that comparable wages further supports its position that there should be a wage freeze in 1995 with a 3 percent increase in 1996.

ANALYSIS - This fact-finder after carefully reviewing

the evidence presented would recommend that there be a 3 percent wage increase for all bargaining unit members retroactive to January 1, 1995 with another 3 percent increase effective January 1, 1996.

The evidence shows that all other city employees received a 3 percent wage increase for 1995 with another 3 percent wage increase for 1996. Both the firefighters as well as dispatchers' bargaining units were granted 3 percent increases for 1995 and 1996. There was absolutely no basis established to distinguish the bargaining units herein from other city employees with respect to the wage settlements reached. The fact that there have been protracted contract negotiations due to the decertification of the previous employee organization, does not mean that there should not be any retroactive wage increase for 1995. There simply was insufficient basis established for denying the retroactive increase to the bargaining units involved herein. As such, this fact-finder finds that it would be reasonable to provide for a wage increase for patrolmen and sergeants which is equal to the increases granted to other city employees for 1995 and 1996.

Moreover with the 3 percent wage increases in 1995 and 1996 which is recommended herein, bargaining unit employees

would be able to retain their relative ranking among police salaries in comparable jurisdictions. For example, the top patrolman's wage in Findlay in 1994 was higher than that paid to patrolmen in Fostoria and Bowling Green. However if the retroactive 3 percent wage increase is not granted in this case, the top wage for patrolmen in Findlay would fall below that paid to patrolmen in these two other jurisdictions in 1996. With the 3 percent wage increases for 1995 and 1996, bargaining unit wages will keep pace with those paid to similarly situated police officers in neighboring jurisdictions.

This fact-finder has determined that there is no basis to the Union's request for a 4 percent increase in 1997. As discussed more fully under the contract duration issue, this fact-finder will recommend a two year contract running from January 1, 1995 through December 31, 1996. There was no justification established by the Union for a three year agreement. As a result, the Union's proposed wage increase for the third year of a contract is inappropriate.

Therefore like the fact-finder who preceded him, the undersigned finds it appropriate to award bargaining unit employees with a 3 percent retroactive wage increase to January 1, 1995 with another 3 percent increase on January 1,

1996. As indicated, such wage increases were granted to all other city employees and there was no showing made as to why the bargaining units involved herein should not likewise be granted identical wage increases.

RECOMMENDATION

It is the recommendation of this fact-finder that the following Wage Provision be provided for in the parties' bargaining agreement:

WAGES

There shall be a three percent (3%) wage increase retroactive to January 1, 1995 and a three percent (3%) wage increase effective January 1, 1996.

2. PHYSICAL FITNESS

The Employer proposes that a new Physical Training Provision be included in the parties' agreement. Under the proposal, all full-time employees would be given an annual physical fitness evaluation conducted by a Y.M.C.A consultant. Employees who are ranked in the above average and higher grouping would receive a lump sum payment of \$1,000. Those employees who do not meet minimal acceptable levels of physical fitness evaluation would be subjected to a progressive discipline system.

The Union opposes the Physical Fitness Provision proposed by the Employer. The Union proposes that a committee be established to study alternatives and make recommendations for the implementation of a voluntary wellness program. The committee's recommendations would not be implemented except by mutual agreement of the parties.

The Employer contends that a physical conditioning program is needed in order for the police department to provide an efficient and high-quality service to the community. Considering that law enforcement can often be a physically demanding profession, it is reasonable to require officers to be physically fit. It is apparent that officers would be able

to perform their duties better if they are physically fit.

The City points out that the same Physical Fitness Provision as proposed herein was agreed to by the firefighters. The evidence shows that forty of the fifty-five firefighters who took the test in 1995 achieved average or above average scores and as a result received the \$1,000 bonus. The Employer submits that the program has worked well for both the firefighters and the city.

The Employer further produced expert testimony from an exercise physiologist from the State Highway Patrol. Tom Chodzia testified that the Y.M.C.A. program proposed herein is very similar to the physical fitness program which is included in the State Highway Patrol agreement. He stated that the Employer wanted the State Highway Patrol officers to be physically fit so that they are able at all times to handle their stressful duties. Mr. Chodzia further indicated that there is an indirect relationship between physical fitness and job performance. He referred to fewer injuries, sickness and better self-esteem for the State Highway Patrol.

The Employer also refers to a Physical Fitness Provision contained in the Collective Bargaining Agreement between the City of Bowling Green and their patrolmen's

association. The Employer notes that the Bowling Green provision is even more demanding than that proposed herein. Finally, the Employer cites Fact-Finder Feldman's previous award in this matter which was that the City's physical fitness program should be included in the parties' agreement.

The Union contends that the Employer's proposal could violate various Civil Rights Laws as well as Americans with Disabilities Act since there is no showing that the physical fitness program is job related. It would be unfair to discipline employees for failing to meet requirements that are not job related. The Union claims that the physical fitness test does not predict whether a police officer would be better able to perform his duties if he passes the test.

The Union points out that it is not completely opposed to its officers getting in better shape. Rather, it opposes the physical fitness program proposed by the Employer because it won't achieve the goals desired and could be counter productive. The Union especially disagrees with the disciplinary aspects of the Employer's proposal.

The Union produced its own expert witness, Dr. Lawrence N. Blum, a Clinical Psychologist. Dr. Blum has served as a police psychologist for various law enforcement agencies

primarily in California. Dr. Blum has performed research and developed programs dealing with police stress. Dr. Blum stated that because police work is one of the most stressful occupations, police officers suffer from a higher degree of coronary heart disease, gastrointestinal disturbance and other emotional disorders. Many police officers suffer from irregular sleeping and eating habits because their bodies are in a constant "fight or flight" condition.

Dr. Blum testified that physical fitness programs for police officers like that proposed herein by the City are insufficient in and of themselves to insure a higher degree of police officer performance. According to Dr. Blum, mandatory physical fitness requirements could create further health problems for the officers. For example, fear of being disciplined for failure to pass the physical test could exasperate any current physiological or emotional problem which the officer has. Dr. Blum stated that what is needed is a comprehensive wellness program for police officers. Under this program, each officer's mental, emotional and physical well being would be assessed. Wellness technologies would then be implemented which would apply more resources than solely physical conditioning and which would be applied in a manner

that would not create further stress upon the police officers. The components of wellness technology would include stress management techniques. Dr. Blum submits that officers who are both mentally and physically in shape can respond better to emergencies.

ANALYSIS - This fact-finder upon review of the evidence submitted has determined that the Employer's proposal for a new Physical Training Provision should be adopted and included in the parties' agreement. In all respects, this fact-finder finds that the physical conditioning program set forth in the Employer's proposal is reasonable and appropriate for bargaining unit employees. Considering the physically demanding requirements of police work, it is reasonable to require officers to be physically fit. Moreover, similar physical training provisions are found in other law enforcement contracts as well as in the City's fire fighters' agreement.

The record before this fact-finder establishes that the same Physical Training Provision proposed herein is set forth in the City's fire fighters' contract. The Employer produced statistics which indicate that the physical conditioning program for the fire fighters has proven to be successful. In the past two years, most of the fire fighters have achieved

an average score or greater on the annual physical fitness test and as a result have received the \$1,000 bonus. Only two fire fighters in each of those years has failed the Y.M.C.A. fitness test. This evidence not only shows that the Physical Fitness Provision is reasonable but also clearly indicates that such a physical conditioning program would be appropriate for police department employees. There was no reason offered as to why the bargaining units involved herein should be distinguished from the fire fighters' unit with reference to physical training requirements.

Moreover, physical fitness provisions like that recommended herein are found in other law enforcement bargaining agreements. The State Highway Patrol and the neighboring city of Bowling Green both have physical conditioning programs for their respective law enforcement personnel. As attested to by the expert from the State Highway Patrol, all patrol officers are required to pass a physical fitness test which in many respects is similar to the Y.M.C.A. test which the City has proposed herein. As the expert indicated, patrol officers who are physically fit are better able to perform their job. Likewise, it can be anticipated that the physical fitness program recommended for police personnel in this case should also

have a favorable effect upon the job performance of the City's police officers. It should be noted that the Physical Fitness Provision set forth in the City of Bowling Green contract actually contains more stringent requirements than that which is being recommended herein. In any case, the fact that similar physical fitness provisions are found in the State Highway Patrol contract as well as the City of Bowling Green-IUPA Agreement further supports this fact-finder's recommendation that the physical training proposal offered by the City herein should be adopted by the parties.

The reasonableness of the Employer's physical fitness program is demonstrated by the fact that employees will be compensated for achieving an average or greater score on the annual test. Those employees would be awarded a lump sum payment of \$1,000. On the other hand, the plan provides for a reasonable progressive discipline procedure for those employees who fail to comply with the minimum average acceptable level of physical fitness evaluation. The Y.M.C.A. test itself must be considered to be reasonable in that it is graduated to indicate fitness levels based on a percentage of the general population, adjusted for sex and age. Therefore in all respects, this fact-finder like Arbitrator Feldman who preceded him, finds

the Physical Training Provision to be reasonable and appropriate for the bargaining units involved herein.

This fact-finder does find some merit to the Union's contention that a joint committee should be established to study the possibility of adopting a comprehensive wellness program for bargaining unit employees. Dr. Blum's testimony certainly presented a compelling argument for the need of a comprehensive approach to police wellness. As stated by Dr. Blum, it would be appropriate under ideal circumstances to assess each officers mental, emotional and physical well-being in order to apply wellness technologies to their particular situation. However, this fact-finder cannot recommend any specific comprehensive wellness program for the police officers of the City of Findlay because no such plan was ever offered or discussed at the fact-finding hearing. The City though indicated a willingness to discuss with the Union the possibility of adopting a wellness program. While the formation of a joint committee is not part of this fact-finder's award herein, he would suggest that the City give serious consideration to the establishment of a joint committee which would study the possible creation of a comprehensive wellness program for bargaining unit employees.

RECOMMENDATION

It is the recommendation of this fact-finder that a new Physical Training Provision as proposed by the Employer be included in the parties' bargaining agreement as more fully set forth on the following Attachment.

ATTACHMENT

NEW ARTICLE

PHYSICAL TRAINING

28.01 The Employer and Union agree that a physical conditioning program is needed and that such a program will be administered pursuant to the Physical Fitness Standard provision mutually agreed to between the Employer and the Union and contained in Appendix A, attached hereto. All employees shall be required to fully participate in such programs as a condition of employment.

(Incorporated by reference herein is complete Employer Physical Training Proposal).

3. PROBATIONARY PERIOD

The Union proposes that all newly hired employees be required to serve a probationary period of one year after receiving their certification. The Employer proposes to retain the current two year probationary period.

The Union takes the position that a one year probationary period is the norm in northwest Ohio. The Union submits that twelve months is adequate time to review the performance of a new employee. The Union notes that its one year probationary period proposal would not begin to run until after an employee receives their certification.

The Employer contends that a two year probationary period for police officers is reasonable considering the nature of their job. Moreover there is no one constantly watching the performance of a patrolman as there would be in other employment settings. The Employer further points out that the current two year probationary period has been in the police contracts dating back to 1988.

ANALYSIS - This fact-finder would recommend that the current two year probationary period for new police officers be retained. There was insufficient basis established by the Union for changing the two year probationary period. The

current probationary period has been in the parties' agreements dating back to 1988. Moreover, the fire fighters' contract likewise provides for a two year probationary period. This fact-finder would agree with the Employer that a two year period of time to review a patrolman's performance is reasonable considering the nature of their job duties.

RECOMMENDATION

It is the recommendation of this fact-finder that the current two year probationary period be retained.

PROBATIONARY PERIOD - Current language, no change.

4. TERM OF AGREEMENT

The Union proposes a three year agreement effective on January 1, 1995 and expiring on December 31, 1997. The Union contends that three year agreements are common in northwest Ohio. In that regard, the Union submits SERB data which shows that certain cities in northwest Ohio do have three year agreements. The Union claims that it is expensive to constantly negotiate a new agreement every two years.

The Employer opposes a two year agreement. It notes that it has historically engaged in two year agreements with all employee organizations including both the police and fire fighters. No other city union has a three year agreement. The Employer desires to keep consistency among all bargaining unit contracts.

ANALYSIS - This fact-finder would recommend that there be a two year agreement running from January 1, 1995 through December 31, 1996. The evidence clearly shows that historically, the Employer has had two year agreements with all employee organizations. The police agreement has always had a two year contract duration provision. Likewise, the fire department has a two year contract expiring in 1996. No other bargaining group within the City has a three year agreement as

the Union proposes herein. Thus for internal consistency proposes, this fact-finder would recommend that the parties retain a two year agreement.

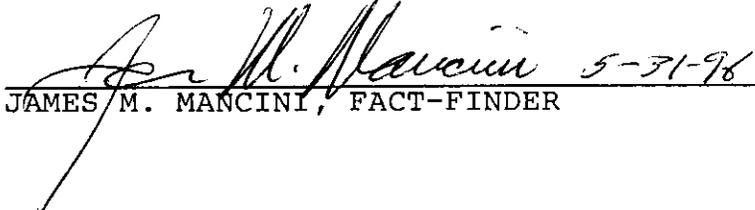
RECOMMENDATION

It is the recommendation of this fact-finder that there be a two year contract running from January 1, 1995 through December 31, 1996.

DURATION - Two year contract; January 1, 1995 through December 31, 1996.

C O N C L U S I O N

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder recommends that all tentative agreements previously reached by the parties should also be incorporated into the their final agreement.


JAMES M. MANCINI, FACT-FINDER 5-31-98