

BEFORE THE  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

Dec 23 8 45 AM '96

IN THE MATTER OF FACT FINDING BETWEEN:

THE CITY OF SPRINGFIELD, OHIO

- AND -

S.E.R.B. CASE NO. 96-MED-08-0667

FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.

APPEARANCES:

For the City:

Jerome Strozdas, Esq.  
Strozdas & Pedraza  
Springfield, Ohio

For the F.O.P.:

Ross Rader  
Staff Representative  
F.O.P., O.L.C., Inc.  
Columbus, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan  
Fact Finder

**BACKGROUND:**

This matter came on for hearing in Springfield, Ohio on December 13, 1996. Having been through the mediation process prior to the hearing, the parties were not interested in still further mediation. The parties' advocates were well prepared and as a consequence the matter was well presented. Due to the time constraints of the Statute, what follows is a terse summary of the salient positions and evidence, and the Recommendation for each issue remaining at impasse. In reaching the Recommendations herein made, the Fact Finder has considered those criteria listed in Rule 4117-9-05(J) of the State Employment Relations Board.

**ISSUE #1 ARTICLE 22 - WAGES; SECTION B - RATE OF PAY PROGRESSION**

**DISCUSSION:**

Currently there is a six month time interval between salary steps D-E, and twelve months between E-F. Of the City's 700 employees, only the bargaining unit is not on even annual pay steps. The City proposes to make the annual step increases uniform by increasing the D to E step interval to twelve months. Under the City's proposal, there is grandfathering language so that the one employee currently in D step will move to E step when his/her six month term is fulfilled. Even with this modest change, bargaining unit employees will "top out" after two years, whereas most other City employees need five years to "top out."

The F.O.P. would adhere to the status quo, asserting that the City can point to nothing broken here which needs fixing. It

points out that it is appropriate to have a short time frame to top out here because, as a supervisory unit, all incumbents come to their positions with experience.

In my view, the F.O.P.'s perspective is the more persuasive. Their view is bolstered by the evidence of record that historically there is no parity between the Police and Fire Departments and consistency with other City bargaining units contractual provisions has not been a determining factor in past Contracts. Accordingly, the F.O.P.'s position, namely, the maintenance of current Contract language, will be recommended.

**RECOMMENDATION:**

It is recommended that the parties retain their current Contract language at Article 22, Section B.

**ISSUE #2 ARTICLE 23 - HOURS OF WORK AND OVERTIME, SECTION D -  
SHIFT ASSIGNMENT BY SENIORITY**

**DISCUSSION:**

The City points out that pursuant to a recent levy, it has hired many new employees and that hence many on the staff are inexperienced. It also notes that the nature of police work can vary considerably from shift to shift. Those on midnights are prone to a mindset and perception of negativity with respect to the citizenry it serves. The current shift assignment system wherein seniority considerations dominate as a practical matter locks senior employees into a particular shift and hence does not permit shift rotation to expose employees to the differing

segments of the community they tend to encounter on the different shifts. It does not permit the City to combine supervisors with differing skills and abilities to create a well-rounded supervisory team to supervise and train employees, especially new employees. Moreover, asserts the City, it's shift assignment plan leaves more time for formal training sessions.

The F.O.P.'s advocate related as to how his own personal experience belies the "mindset" problem the City bemoans. Additionally, the last paragraph of Section D addresses the "training" issue the City expresses concern about. Again, according to the F.O.P., no good basis for changing the status quo has been put forth by the City.

In my view a case is made for shift exposure and augmented on-the-job and formal training for a period of one Contract year, with a reversion to the current seniority-based system for years two and three of the parties' Contract. The seniority right of the current contract is too valuable to be surrendered indefinitely without an adequate quid pro quo which is not offered here by the City. In my judgment, the one year experimentation with the City's proposal will yield the added exposure and training deemed desirable, and given the historic stability and lack of turnover in the work force, that experimentation will have lasting effects.

**RECOMMENDATION:**

It is recommended that for the first year of the Contract, the City's proposal (Appendix I) apply, and that for years two

and three of the Contract, the current Contract's language shall apply.

**ISSUE #3 ARTICLE 23 - HOURS OF WORK AND OVERTIME, SECTION F -  
WORK ON SCHEDULED DAYS OFF**

**DISCUSSION:**

Under the current Agreement, the City is required to pay time and one-half to employees who are required to work on their first regularly scheduled day off, and double time to employees required to work on their second regularly scheduled day off. The City points to its high outlays for overtime payments and its reduction in instances in which it is required to pay double time in other bargaining units.

The F.O.P. asserts that the City's proposal is a "take away," with no quid pro quo such as the extra hour of call-in pay offered to the patrol officers unit. The F.O.P. asserts that employees don't like overtime and the status quo, which it seeks, provides a disincentive for overtime assignments, thereby protecting the integrity of the scheduled time off.

It's often observed that for the sake of morale, an important factor, safety forces need time away from the job. Thus, I'm inclined to recommend retention of a disincentive for the scheduling of overtime on days off. However, in light of the high volume of overtime pay-outs, greater justification than currently exists is necessary to continue paying out at double time rates just because one happens to be assigned on their

second day off. Time and one-half would suffice as a disincentive. The F.O.P. speculates, and I agree, that its likely that the original intent was that double time be paid for the second day off worked where the first day off had been worked as well. Consistent with the need to protect time away from the job, the recommendation will be to modify the City's proposal to the extent of retaining double time pay only when work is required on the second day off after already having been required to work the first day off.

**RECOMMENDATION:**

It is recommended that the parties' Contract provide as follows:

"F. Work On Scheduled Days Off

An employee required to work on the first or the second of his two (2) regular scheduled days off shall be paid at a rate of one and one-half (1 1/2) times his regular rate for each hour or part of an hour which he works.

An employee required to work on his second regular day off, after having already worked his first regular day off, shall be compensated at a rate of twice his normal base rate."

**ISSUE #4 ARTICLE 23 - HOURS OF WORK AND OVERTIME, SECTION M - DEMAND DAYS - EXTENDED LEAVE [NEW]**

**DISCUSSION:**

The F.O.P. seeks the following new and additional provision:

"Section M - Demand Days - Extended Leave

Each bargaining unit employee assigned to a position without permanent week-ends off shall have two (2) demand days each year through the use of their personal

days. For the purpose of time off, any combination of time off (including regular days off) of four (4) or more days off shall constitute extended leave."

Such a provision is necessary, asserts the F.O.P., to offset a policy which has evolved concerning week-end days off for uniform patrol Sergeants whereby scheduled paid leave on weekends are granted only when part and parcel of an extended vacation of five or more days.

The City takes the position that certain changes have transpired which serve to address the Union's concerns. Thus, the City contends that "[t]hree things have occurred which will alleviate this problem [i.e., the inability of Sergeants to get an occasional week-end day off], without requiring a contract change. First, the Lieutenant's days off are being changed to Sunday and Monday since Saturday is one of the busier days and their skill and experience are important resources to have available. Second, the captain now commanding uniform patrol has changed the prior policy which only requires that the "extended vacation" be three or more work days. Finally, the busy afternoon shift now has four sergeants assigned, easing supervisory manpower concerns on this shift.

The City suggests that this is an issue that should be resolved on a policy-making basis through the contractual Labor Management Committee. With overtime expenses already so exorbitant, the parties should have an opportunity to judge whether the recent changes have helped to alleviate any existing problem. If they have not, the parties can discuss alternative

resolutions in Labor Management Committee to determine if there is a mutually beneficial solution to this situation.

Giving employees the right to demand days off without consideration of the then current manpower situation is simply unrealistic and not feasible in a division already awash in overtime expense."

As a general rule, the Undersigned would not recommend referring a matter to the Labor-Management Committee in lieu of a recommendation of specific Contract language attempting to resolve with finality the issue at impasse, even to the point of being disdainful of those Fact Finders who do so. But for every rule there is an exception and I believe the City has made a case for such here. Accordingly, I shall not recommend the F.O.P.'s proposal. It is understood that the matter will be discussed and worked upon in the Labor Management Committee.

**RECOMMENDATION:**

The F.O.P.'s proposal for the addition of a Section M to Article 23 is not recommended.

**ISSUE #5    ARTICLE 24 - PREMIUM PAY - SECTION C, PARITY -  
TEMPORARY ASSIGNMENT AT HIGHER RANK**

**DISCUSSION:**

The Union seeks to lower the "trigger" for the payment of the higher rate of pay when on temporary assignment to a higher rank, from three consecutive days to 4 hours. Some comparables support this. In support of its opposition to such, and in

support of the status quo, the City states in pertinent part as follows:

"The union's proposal is ineffectual because even if it were incorporated into the contract nothing would change. Since both the current contract (which the City proposes to continue) and the union proposal require a written assignment to the temporary position, management determines whether the absence of the higher ranking employee requires such an acting appointment to be made. Management does not make acting appointments for short term absences and does not intend to do so in the future.

When a captain is absent, the lieutenant does not assume the captain's duties unless there is a written appointment made. Similarly, when a lieutenant is absent, a sergeant does not assume his duties unless a written appointment is made. A sergeant may serve as 'officer in charge' when the lieutenant is absent, but periodic service as 'officer in charge' is part of the sergeant's normal duties.

The union's proposal is inappropriate since it is based on certain misconceptions. The union apparently sees this proposal as an effort to achieve parity with the firefighters union which has a four (4) hour acting pay provision. This perception is misplaced.

In the first instance, firefighters respond to fires as a crew. That crew is led either by a captain or a lieutenant. If one of these officers is absent, someone must lead the crew, so an acting appointment is typically made. Police work is

different. Police officers typically respond to calls for service individually or with a partner, not as a crew. If a supervisor is required, one is dispatched. That supervisor is almost invariably a sergeant. The city does not appoint acting sergeants, since its collective bargaining agreement with the patrol officers union (SPPA) prohibits such appointments.

Thus, the comparison of fire and police division in the context of acting pay is truly comparing apples and oranges.

Comparisons between firefighters and police officers should be made with caution."

This is so argues the City, because the pattern of past-collectively bargained agreements in Springfield is one of non-parity between the Police and Fire Divisions.

I find the City's contentions and arguments persuasive. Most significantly, and bolstering the City's contentions, is the fact that the F.O.P. identifies no problem which would warrant the Fact Finder recommending a change from the status quo.

**RECOMMENDATION:**

It is recommended that the parties retain the provisions at Article 24, Section C in the current Contract.

**ISSUE #6 ARTICLE 24 - PREMIUM PAY - SECTION E, SHIFT**

**DIFFERENTIAL**

**DISCUSSION:**

The City would raise the shift differential from the current rate of \$.36 to \$.40. The Union would raise it to \$.45. The

Union concedes that its comparables are not particularly supportive. The City's, and some of the Union's, comparables are essentially supportive of the City's position. The City points out that the proposal represents an 11% increase whereas the Union's increase represents a 25% increase.

In my judgment, the 11% increase of the City is certainly adequate. It shall be recommended.

**RECOMMENDATION:**

It is recommended that Article 24, Section E, Paragraph One (1) read as follows:

"(1) Shift differential shall be paid at the rate of \$.40 for all assigned shifts beginning at or after 2:00 p.m. and prior to 6:00 a.m."

It is further recommended that paragraph two (2); three (3); and four (4) read as per the current Contract.

**ISSUE #7 ARTICLE 24 - PREMIUM PAY - SECTION F - REQUIRED CERTIFICATIONS AND ADVANCED TRAINING AND DEGREES [NEW]**

**DISCUSSION:**

The F.O.P. seeks a new benefit here. It furnished comparable data which is supportive. By the same token, the City presented comparable data which would not support the benefit sought. In resisting the establishment of such a new benefit, the City notes that it is expensive. With a pending layoff of 2,000 employees at Navistar, and potentially 5,000 employees, now is not the time to initiate a new economic benefit, asserts the City. In any event, asserts the City, the Union has simply not

identified a need for it.

In my judgment, this last point of the City, the lack of a demonstrated need for this educational benefit, is particularly persuasive. The benefit sought shall not be recommended.

**RECOMMENDATION:**

The Article 24, Section F sought by the Union is not recommended.

**ISSUE #8 ARTICLE 25 - LONGEVITY PAY**

**DISCUSSION:**

Both parties note that in light of some recent court decisions, longevity payments may have to be included as part of base pay for overtime calculations under the Fair Labor Standards Act. Thus, both parties propose to add such a provision to the Contract. Additionally, the City would raise the amount per year of service to 95.00 per year of service effective in 1998, from the current rate of \$92.50 per year of service. The F.O.P. would raise the amount to \$96.50 per year of service effective with the new Contract date.

Under the City's proposal, the average Lieutenant's longevity will go to almost \$2,000.00 per year and the average Sergeant's longevity will go to over \$1,500.00.

Both parties submitted comparable data which served to support their respective proposals.

In my judgment, the City's somewhat more modest amount is both adequate and appropriate. However, in the absence of a plea

of poverty, I find no sound basis for delaying the effective date of the increase until 1998. Accordingly, it will be recommended that the City-proposed rate be made effective in 1997, and not delayed until 1998.

**RECOMMENDATION:**

It is recommended that the parties' Contract at Article 25 - Longevity Pay, read as follows:

- "1. All employees with five (5) or more years of service with the City shall receive longevity pay at the rate of 95.00 per year of service.  
  
(Paragraphs 2, 3, and 4 shall read as per the current Contract.)
5. Longevity payments shall be included when calculating the overtime rate."

**ISSUE #9 ARTICLE 27 - VACATION**

**DISCUSSION:**

As the City has put it, the parties dispute here "is a rather narrow one." Thus, the Union would repeat the provisions of the current Agreement merely updating the 1995 vacation buy-out to a 1998 vacation buy-out. The City contends that the vacation buy-out feature of the current Contract "was clearly not intended to be a permanent component of the Contract. No other group of City employees has a right to cash out accrued vacation." The City offers two alternatives: "The first is to strike the reference to a vacation buy out. The second is to give the Union the requested 1998 buy-out, but, in so doing, reduce the maximum carryover balance from 360 hours to 320

hours."

The City contends that "the only City employees who can accumulate more than 320 hours are supervisors (the bargaining unit) and management in the Police Division. In return for the special buy-out provision, the Union should be willing to bring the maximum accrual into conformance with other City employees."

Clearly, a reduction in carry-over balance hours was not a quid pro quo for the vacation buy-out concept of the current Contract. Here, the principle justification for same is that no other City employees have so high a carry-over balance limit, nor do any other city employees have a vacation buy-out feature in their collective bargaining agreements. But, as noted elsewhere hereinabove, parity among the city's bargaining units is not the pattern here. I find no sound reason to not adhere to the status quo. Hence, the Union's proposal shall be recommended.

**RECOMMENDATION:**

Article 27 - Vacation, Paragraphs 1, 2, 3, and 5 shall read as per the current Contract. Paragraph 4, should read as follows:

- "4. Upon request, the City will approve a waiver of this carry-over restriction to permit maximum realization of pension benefits. This waiver shall be requested during the year prior to the year of retirement. Should the employee change his retirement date, he will be required to use excess vacation accrued or have his vacation balance reduced to three hundred sixty (360) hours at the end of the year. Upon redetermination of retirement plans; the employee may submit another waiver request.

1998 Pay-out

If, on June 1, 1998 an employee has accrued fifty (50) hours or more of vacation, he may, at his option, be paid for any part of such accrued vacation up to fifty (50) hours. The employee's accrued vacation balance shall be reduced by the number of hours for which he elects to take pay."

**ISSUE #10 ARTICLE 22 - WAGES & APPENDIX A and ARTICLE 25 - TERM**

**DISCUSSION:**

The parties are agreed to a three year term. As for wages, both parties propose across-the-board increases in each year of the Contract. The Union is proposing 4% in 1997; 3.5% in 1998; and 3.5% in 1999. City is proposing 3% in 1997; 2.5% in 1998; and 2.5% in 1999.

The City asserts that its proposals are generally consistent with the increases the City has recently granted to other groups of its employees for comparable periods of time. Reviewing the parties last three Contracts and comparing wage increases for the 1988-1996 period for all City bargaining units, this bargaining unit did best, experiencing a 38.1% increase in wages over the period. Additionally, this union remained ahead of the CPI which averaged a 30.7% increase over the same period.

Both parties submitted comparable wage data which serves to support their respective positions.

As has been seen, the parties are 1% apart for each year of the Contract. Being at impasse and not dramatically apart, the reasonable expectation of the parties is that a compromise will be recommended. In the mid-nineties, settlements have typically been in "the threes," a recognition of tame inflation rates.

Accordingly, it will be recommended that an across-the-board increase of 3.5%; 3%; and 3% be adopted.

**RECOMMENDATION:**

It is recommended that an across-the-board increase of 3.5%; 3%; and 3% be implemented for each respective year of the Contract. Thus, a 3.5% increase is to be effective January 1, 1997; a 3% increase is to be effective January 1, 1998; and a 3% increase is to be effective January 1, 1999.

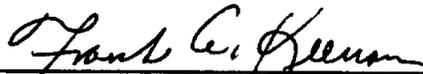
The first paragraph of Article 35 - Term, shall read as follows:

"This Agreement shall become effective as of January 1, 1997. This Agreement shall remain in full force and effect through December 31, 1999."

The second paragraph of Article 35 - Term, shall read as per the current Contract.

This concludes the Fact Finder's Report and Recommendations.

Dated: December 19, 1996

  
FRANK A. KEENAN  
Fact Finder

# APPENDIX I

## SECTION D - SHIFT ASSIGNMENTS

Employees shall be assigned by the Chief or his designee to a shift. Shift assignments may be changed no more frequently than every 112 days, unless the Chief determines that it is necessary to change staffing levels of one or more shifts.

Notwithstanding the prior language in this section, the City may re-assign or transfer one or more employees to alleviate circumstances which gave rise to a disciplinary incident, to address overall departmental concerns of productivity and efficiency, to accommodate reassignments for special police services or units, or for education, training or retraining. If the reassignment requires an employee to work more than eight (8) hours in a day or forty (40) hours in a week the employee shall be entitled to premium pay.