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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD
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CITY OF SIDNEY, :
Employer, :
-and- : Case Nos 97-MED-02-0151 and 0152
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :
Employee Organization. :

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: September 26, 1997

*Daniel G. Rosenthal, Esq.
Denlinger, Rosenthal & Greenberg
425 Walnut Street, Suite 2310
Cincinnati, Ohio 45202*

FOR THE EMPLOYER

*Robert E. Malone
Staff Representative
409 Brentwood Drive
Marion, Ohio 43302*

FOR THE EMPLOYEE ORGANIZATION

STATEMENT OF THE CASE

The parties, the City of Sidney, represented by Daniel G. Rosenthal, Esq., Denlinger, Rosenthal & Greenberg, and the bargaining units, including all full-time Patrolmen, and all full time Sergeants, and Lieutenants, represented by Robert E. Malone, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., (hereafter FOP) have entered into negotiations for a successor contract to the contract which expired June 30, 1997.

The parties met and bargained in good faith, with six meetings between the parties, and one meeting with the services of the SERB mediator. Many of the articles of the existing contract were accepted by the parties without dispute. The parties reached tentative agreement on all but sixteen of the issues which were negotiated.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen as fact-finder.

The parties agreed to a fact finding hearing on September 12, 1997, and the meeting was convened at 9:30 A.M., at the Sidney City Hall. In addition to their representative, Michael Puckett, Finance Director, Mark S. Cundiff, Assistant City Manager and Steve Wearly, Chief of Police, appeared on behalf of the city. In addition to their representative, David Godwin and Greg Vondenhuevel, Patrol Bargaining Team, and Rod Austin and Dan Kimpel, Supervisor Bargaining Team, appeared on behalf of the bargaining units. The parties and the fact-finder discussed the procedure to be followed by the parties. The parties engaged in no additional mediated discussions. The remaining issues were not amenable to additional mediation. The matter was submitted upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

ARTICLE V, Sections 2 and 3. Committee Business

The City's Position: The city proposes a change in the expired contract. The city would do away with union negotiating time and union leave time. The city argues that these benefits should not continue to be paid because they are not city business and the union members receiving these benefits should not receive them because the activities performed are more akin to personal business which is paid for no other city employees.

The FOP's Position: The bargaining units believe the language of Article V should be adopted without change. The members who receive this benefit do not misuse it, the city has pointed to no specific problems with the current process, and union business benefits the entire bargaining units, not just the few officers who receive it.

Recommendation: I recommend the language of the current agreement. There was little discussion of this issue, no evidence presented of some particular problem in need of correction, and no comparability information. Under the circumstances I am not inclined to recommend a change which the parties were unable to compromise in their negotiations.

ARTICLE XIII Wages

The City's Position: The City proposes a 2.25% across the board wage increase effective July 1, 1997(provided the parties do not go to conciliation); a 2.25% across the board wage increase effective July 1, 1998; and a 2.25% across the board wage increase effective July 1, 1999. The City does not argue inability to pay, but believes its position supporting limited raises is consistent with the wage increases in comparable departments, the inflation rate, and careful management of limited resources. An examination of the comparability data presented by the city shows the city attempting

to compare what it calls "total compensation". The city conducted surveys of all cities with full-time police departments within a 35 mile radius of Sidney, regardless of size, and of all Ohio County Seats with populations between 15,000 and 25,000. The surveys include salary, uniform allowance, holiday pay, pension pickup, shift differential, longevity and educational bonus. The surveys assume an officer with 7 years of service and 7 years in the classification, a sergeant with 17 years of service and 3 years in the classification, and a lieutenant with 22 years of service and 9 years in classification.

The city asserts that these assumptions are typical of the situation in Sidney, where most of the members of the two bargaining units are at the top pay scale. The city presents its surveys to show that the city compares favorably with the total compensation offered by comparable cities. The city asserts that it has moved during the last contract from below average to considerably above average in the total compensation provided its employees in both bargaining units.

The city argues that its offer is reasonable because it is above the rate of inflation, and it needs to be lower than that offered to other city employees in order "to bring police officers back into line with other City employees." The city argues that because it was "compelled" by a conciliation to pay higher increases, it is now justified in paying less than other bargaining units, and the unrepresented employees have received. This equalization would bring the police back into the same relative position with the firefighters bargaining unit as existed from 1988-1993.

The city also opposes the bargaining unit proposal to increase the differential between police officers and sergeants, and between sergeants and lieutenants. By comparing its "total compensation" rather than just top step salary the city demonstrates a differential which is well above average, and not in need of change.

The city proposes denying step raises to those employees who are still eligible for them if the employees do not receive at least a satisfactory performance evaluation. The city argues that step raises should be tied to performance, since monetary (dis)incentives encourage correction of performance failings.

The FOP's Position: The bargaining units propose a 5.5% across the board wage increase effective July 1, 1997; a 5.5% across the board wage increase effective July 1, 1998; and a 5.5% across the board wage increase effective July 1, 1999. The FOP asserts that the city can pay an increase. The bargaining unit comparables support such an increase in order to maintain Sidney's position with respect to the others. The percentage increases in the last eight years are as much or more as is now being requested. The bargaining units would also maintain a 15% differential from patrolman to sergeant, and increase the 10% differential to 15% from sergeants to lieutenants, effective July 1, 1997. The bargaining units also point out that reference to the SERB Clearinghouse data for the comparable cities used in the last contract negotiation supports their position with respect to salary and differential between ranks. The city lowered its population range for this fact-finding, and ignored West Carrollton, Fairborn and Xenia which are all cities similar in size and geographical location.

Recommendation: I recommend a 3.25% across the board raise effective July 1, 1997, a 3.25% across the board raise effective July 1, 1998, and a 3.25% across the board raise effective July 1, 1999. I am not persuaded that the increase which the FOP is proposing is supported by the economy, the comparables or even the evidence supporting the size of the raises enjoyed in the last eight years. A raise above that offered by the city is justified because each of the other bargaining units and the unrepresented employees have received the same amount January 1, 1997. I specifically

reject the city's argument that it should "get even" for a past conciliation award. This fact finding concerns these bargaining units and the city now, not three and one-half years ago, and although I accept the argument that , all things considered, the city can try to be consistent in what it pays all of its employees, there is very little reason to accept an argument based on parity of safety force wage awards between firefighters and police whether the bargaining unit or the city is arguing for it.

I recommend no change in the differentials between the ranks, and no change in how step raises are to be paid. Neither side has convinced me of the necessity of their proposed changes from the status quo.

ARTICLE XIV Overtime Pay, Sections 2,4, and 5

The City's Position: The City wishes to change sections 2 and 4 of this article in order to reduce the minimum call out pay (including court time) from 3 hours to 2 hours in the officer's contract. The supervisors currently receive two hours minimum, as do other city employees. If an officer is required to work more than the minimum, that time is paid at the time and one half rate, so there is no loss to the employee except for the situation where the employee actually works two hours or less.

The city also proposes changing section 5 so that the city determines when to allow compensatory time off instead of overtime. Currently the employee chooses, and the city asserts problems with scheduling and potential overtime costs for substitutes support its position.

The FOP's Position: The FOP is satisfied with the current provisions with regard to call-in pay and compensatory time. There is no given reason for the changes which support them, and no problem which needs to be corrected, because management can already control when compensatory time is used, and overtime is not a good thing from the point of view of the bargaining unit

members, but the increased pay or compensatory time received at time and one half at least compensates somewhat for the problems which exist when a person works hours in addition to those regularly scheduled. The FOP asserts that compensatory time is traditional and since it is subject to supervisor's approval the city's argument concerning scheduling problems is not valid.

Recommendation: The city is asking for a change in call-in pay based upon internal comparability, and a belief, not supported by any specific instances of abuse, that some employees are receiving more pay for call-in than is supported by the number of hours spent. The city also did not provide any specific problems or past instances of problems with letting employees choose whether to take overtime pay or compensatory time, with supervisor's approval of the scheduling of the usage. The bargaining unit is asking for a continuance of language which has proved workable in the previous contract and asserts the city has made no showing of a need for change. I recommend the current contract language concerning the choice of compensatory time because the issues raised by the city are within the city's control. If the scheduling of compensatory time off adversely affects other employees then the supervisor has the authority to deny the request. I also recommend current language in the officer's contract concerning call-in pay. I am not convinced there is support for a change other than internal consistency, and would not therefore impose it.

ARTICLE XV Longevity Pay

The City's Position: The City proposes changing the longevity pay article by limiting it to current employees, and not offering this benefit to new hires. In addition, the city would deny longevity pay to current employees who do not receive at least a satisfactory evaluation. The city points out that it has implemented these proposals for its newly hired unrepresented employees. It argues that no current employee will be adversely impacted by denying longevity pay to new hires,

and it asserts that longevity pay is not merited by an employee who fails to maintain satisfactory performance. The city also offers to delay implementation of this change until an agreeable evaluation program is developed.

The FOP's position: The bargaining units prefer current contract language. The city has pointed to no problems with the current system, and the argument that all new employees will be treated alike does not persuade the union that it should support the taking away of a benefit which the bargaining unit has enjoyed and which most other safety forces receive. There is no evidence presented concerning employment performance, or a need to try to correct some problem.

Recommendation: I recommend the status quo. A majority of the cities in the city's comparability statistics provide longevity pay to their police. Its stated purpose is "As a means of rewarding employees for loyal service and to serve as an incentive for retaining good employees...." It is taken into consideration in the total compensation provided these bargaining units by the city, and the current system appears to have no problems.

ARTICLE XIX Holidays

The City's Position: The City proposes substituting Martin Luther King Day for an existing holiday of the Union's choosing. The city would like to join other municipalities in honoring Dr. King.

The FOP Position: The bargaining units propose current contract language.

Recommendation: The parties provided little information concerning this issue. It appears the actual effect on bargaining unit members would be limited, as only a few work schedules which actually observe holidays by not working. The rest receive pay as a result of the holiday in addition to

regular pay. No problem was identified, and I choose to leave the parties where they are in their relationship rather than recommending change based upon my beliefs or biases.

Article XXI (Article XX Supervisors), Sick Leave

The City's Position: The City opposes the bargaining unit proposals concerning Sick Leave. The proposal from the union to broaden the definition of "family member" would unreasonably expand an already liberal interpretation. There is no particular problem which needs to be solved.

The city also opposes a more generous allowance of payout of sick leave benefits at retirement as an unnecessary increased cost to the city. The city presented comparability information which demonstrates the city is already average in the amount it grants. No other city employees receive more except the supervisors, who do not accrue as much sick leave in a year.

The city proposes increasing the life insurance currently provided to bargaining unit members from \$40,000 to \$50,000 coverage rather than paying all of the sick leave if an employee dies.

The FOP Position: The bargaining units propose to add to the definition of "immediate family" in this article "a person living as a spouse, a former spouse, a parent or a child of a person living as a spouse, or any other person related by consanguinity or affinity to a person living as a spouse or former spouse." Members are allowed to use sick leave for serious injury or death to such immediate family members.

The police officer bargaining unit proposes increasing the payout of sick leave upon retirement and under other circumstances after 20 or more years employment by 5% in each of the years of the contract.

The bargaining units also propose payment of 100% of the accumulated sick leave in the event of the death of a member.

Recommendation: I recommend the status quo. Very little information was submitted by the bargaining units to support any of these proposals. I also recommend the city's proposal for increasing life insurance coverage to provide increased protection to the families of employees who die.

Article XXII (Article XXI Supervisors) Medical/Surgical Life & Travel/Accident Insurance

The City's position: The city proposes increasing the officer's share of the premium for health insurance from 13% to 15%. The city argues that insurance costs are likely to increase, and statewide comparability statistics show that the bargaining units currently pay less than the average.

The FOP position: The bargaining unit proposes current contract language.

Recommendation: I recommend the status quo. Other than the SERB article on increased insurance costs, the city provided little information concerning its increased costs, and how it treats its other employees. Under such circumstances I do not recommend a change.

Article XXIII, Workers' Compensation

The City's Position: The city proposes increasing Workers' Compensation Leave from the current 7 days to 30 days. During this time the city pays the injured employee his full pay directly. The stated reason is to avoid delays or paperwork problems.

The FOP Position: The bargaining unit did not present reasons for its opposition to the city's proposal.

Recommendation: I recommend the city's position on this issue. However, no proposed language was presented to me for consideration. Since the city asserts that this proposal also applies to the fire employees of the city I recommend the language in that contract, or similar language which refers to these bargaining units.

Article XXVI (XXV Supervisors) Corrective Action

The City's Position: The city proposes that polygraph results be admissible evidence in arbitrations, but that discipline not be based solely on polygraphs. The city asserts that its proposal is in accord with existing law concerning the use of polygraphs in employment cases, and that having the language in the contracts will remove any doubt about its intention to use polygraphs in appropriate disciplinary cases.

The FOP's Position: The bargaining units are close to the city's position concerning the appropriate use of polygraph examination results.

Recommendation: I recommend the status quo on this issue. I am not clear on which language the city is proposing for this issue, and there is no present issue which requires this change. The parties should be able to work out agreed upon language which restates their understanding of the current law, if they feel it necessary.

Article XXIX (XXVIII Supervisors) Layoff and Recall

The City's Position: The city proposes deciding which employees should be laid off or recalled based upon ability and performance rather than seniority. The city argues its obligation to the public should govern, and that the public interest supports its position.

The FOP Position: The bargaining units oppose this proposal and assert that the long-standing way of determining who to lay off or recall is determined by longevity, and they are aware of no contracts throughout the state which contain language like that proposed by the city.

Recommendation: I recommend no change. There are no current plans to lay off employees, and such a proposal would be a significant change in the way in which layoffs are determined, without any evidence of the purported value to the community.

Article XXX Other Benefits

The City's Position: The city opposes the union proposal which would create a special fund to pay educational costs. The city asserts that the current program is successful, and there is no need for a change.

The city proposes that a condition be added to the provision by the city that it reimburse bargaining unit members for their membership in the Sidney-Shelby County YMCA. In order to qualify, each member would need to use the facility 52 times per year, as determined by a record of usage which is already maintained by the YMCA. The city wishes to encourage usage of the facility through this proposal.

The FOP Position: The bargaining unit proposed a special fund for educational purposes but provided no supporting information for this change.

The bargaining unit proposed 26 visits to the YMCA in order to qualify for reimbursement.

Recommendation: I recommend no change in the educational support section. There are no problems with the existing program. I recommend 52 visits to the YMCA, the same as the fire contract, although if a member chooses to "get around" the requirement it will be easy to accomplish, as the record is merely of how many times the member uses his key card at the YMCA.

Article XXIX Supervisory Coverages

The City's Position: The city proposes that overtime assignment mistakes be corrected solely by future assignments. This issue applies only to the supervisor's bargaining unit. The city opposes the current practice which allows payment for the time not worked.

The FOP Position: The bargaining unit opposes any change in the way overtime mistakes are corrected.

Recommendation: I recommend no change in the practice of the parties on this issue..
Neither side provided me with specific incidents to demonstrate a real need for change, and I have
no idea how often this issue arises.

CONCLUSION

The parties have jointly asked that the tentative agreements between them be confirmed and
adopted and I do so based upon the documents submitted to me.

Respectfully submitted,


PHILIP H. SHERIDAN, JR.

Fact-finder

S.C. #0006486

580 South High Street

Columbus, Ohio 43215

(614) 221-2001