

**IN THE MATTER
OF
FACT FINDING
OPINION AND RECOMMENDATION**

Dec 16 12 42 PM '98

BETWEEN	
The	
FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL, INC.	CASE NO. : 98-MED-07-0689
and the	FACT FINDER: JOHN S. WEISHEIT
City of Upper Arlington, OH	DATE OF HEARING: Nov. 17, 1998
	DATE OF REPORT: Dec. 14, 1998

REPRESENTATION

by

<u>Employer Representatives</u>	<u>Union Representatives</u>
Daniel More, Ass't City Attorney	John Looman, FOP, OLC, Inc. Rep
Bonnie Cross, Ass't City Manager	Karen Yinger, Records Custodian
Cathy Armstrong, Finance Dir.	Kim Stambaugh, Animal Control Officer
Dwight Holcomb, Chief of Police	Carla Howerton, Admin. Sec.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

BACKGROUND

The City of Upper Arlington, hereinafter called the "City" and/or the "Employer", has recognized the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter called the "OLC" and/or the "Lodge", as the bargaining representative of certain employees for purposes of collective bargaining since, January, 1998. The bargaining unit includes six (6) employees in the positions of full-time Administrative Secretaries & Animal Control Officers within the Division of Police.

Collective bargaining was for the initial agreement between the parties. Negotiations occurred during the months of September & October, 1998. The parties, by mutual agreement extended the Fact Finding Hearing until November 17, 1998, with the further understanding that the Fact Finder's recommendation would be issued on or before December 17, 1998. All transmittals of documents to the Fact Finder were submitted in a timely manner. The Fact Finding Hearing was held on November 17, 1998, at the Upper Arlington Administrative Center.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
2. Comparison of the 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, 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;
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 public service or in private employment.

The following Report is based on information provided in documents and testimony introduced at that time and in keeping with statutory consideration cited above..

Employer	Issue	Lodge
The City rejects the concept to remove any personnel records.	Article 7 Corrective Action & Records 7.4 Records B. 1 Inspection & Complaints	The Lodge proposes a provision that could result in removal of disciplinary action records on a progressive time schedule.
The City rejects use of seniority in determining the filing of bargaining unit vacancies.	Article 11 Miscellaneous 11.5 Filling of Job Assignments	The Lodge proposes that seniority be the determining factor in filing bargaining unit vacancies.
The City proposes a “merit pay” provision be included in the Agreement.	Article 15 Rates of Pay/Wages 15.1 Wages	The Lodge proposes a structured pay schedule that provides 7% inc., eff. 1/1/99; 3.5% inc. eff. 1/1/00; 3.5% eff. 1/1/01.
The City rejects inclusion of Tuition Reimbursement.	15.7 Tuition Reimbursement	Full tuition reimbursement for course work taken.
The City rejects the inclusion of the flexible Holiday provision proposed by the Lodge.	Article 18 Holidays Personal Leave 18.3 Alternate Holidays	The Lodge proposes a “flex” Holiday provision be included in the Agreement.
The City rejects inclusion in the Agreement of the “Wellness” provision proposed by the Lodge.	Article 20 Sick Leave With Pay	The Lodge proposes the inclusion of a “Wellness” pay back provision in the Agreement.

GENERAL DISCUSSION & DETERMINATIONS

General

The economic issues are considered in context of appropriateness and the cost factor as a whole. These issues are reviewed in general context and recommendations are item by item, as required under ORC 4117.

Ability to Pay

Ability to pay is not an issue raised by the parties. Availability and appropriateness in the amount of wage and economic benefits is in dispute. Matters regarding Wages, Insurance, Holiday Pay, premium pay and overtime are considered in total perspective, though recommendations are item by item, as required under ORC 4117.

Comparables

All comparables are given due consideration. In presentation and documentation, comparables to other employers and of other City employees, recognizing that some employees are represented by a bargaining agent while others are not. Totality of economic benefits, take-home pay, etc. also effect the determination and recommendation of the Fact Finder.

Bargaining History

The Lodge attained bargaining recognition as a result of SERB Representation election early in 1998. Bargaining is for an initial collective bargaining unit. There are other bargaining units within the City inclusive of other units in the Division of Police.

These cited factors influence the recommendations in this report to varying degrees and as considered applicable.

Contention that a term and condition of employment should be included in the Agreement since "other bargaining units have it", is not found persuasive in and by itself. Such information is given consideration as a factor but determination and recommendation is based on all factors considered relevant. The parties are engaging in a new labor relationship. Inclusion or exclusion of certain terms of employment because they currently apply to members of the bargaining unit or are found in other bargaining units are also recommended for inclusion solely for that reason. A review of the totality of terms and conditions tentatively agreed to between the parties indicate a wide range of provisions not previously extended to bargaining unit members. It is in consideration of the totality of matters and inter-relationship of these terms that gives direction to the Fact Finder in making the recommendations included in this Report.

Contract Duration

The parties have tentatively agreed to a 3-year Agreement, effective January 1, 1999 - December 31, 2001.

ISSUE BY ISSUE DISCUSSION

Issue	Discussion
Article 3 Union Security 3.1 Dues Deductions & Fair Share Fee	<p>The parties have reached tentative agreement on all provisions of this Article except for the section related to Fair Share Fee, as introduced in Section 3.1 by the Lodge.</p> <p>The parties have raised the standard arguments normally introduced on this subject during development of an initial labor agreement. This is considered a significant benefit to the Lodge, while viewed as a concession of concept to the City. Such a provision not only benefits the Lodge, but can provide an element of stability to the overall employee-employer relations. It is of significance that similar provisions exist with other bargaining units in the City. This is not to say that such provision should be included solely on that basis, rather, it is an influencing factor in this instant issue.</p> <p>This is an intangible benefit to the Union and ordinarily attained at a price. Thus, the ultimate recommendation takes into consideration the totality of all recommendations for inclusion in this Agreement.</p>
Recommendation	<p>It is recommended to be included in the Agreement Section 3.1 as proposed by the OLC.</p>
Article 6 Grievance Procedure 6.7 D. Step 4 Binding Arbitration	<p>The parties are at tentative agreement on the Article except for Section 6.7, Step 4 - Binding Arbitration. It is recognized that this bargaining unit is entering a new labor relations atmosphere. They will develop procedures and practices that are unique to their situation. A basic satisfactory resolution of grievances will act as an integral part of that relationship.</p> <p>There is no conceptual difference of opinion between the parties regarding the final step ending in binding arbitration. The City proposes certain grievance arbitration matters by a tripartite panel, a majority being composed of residence of the City. The Lodge proposes the use of a single arbitrator in all matters. This Fact Finder is of the opinion that adversarial representatives for each respective party can be found</p>

Issue

Discussion

**Article 6
Grievance
Procedure
6.7 D. Step 4
Binding
Arbitration
contd.**

residing in the City. However, grievance resolution at arbitration relies on the basic concept of contract interpretation. To add local residence to the process can cause a reverse effect from that which the City seeks. Arbitrators not only need to be neutral, but skilled and knowledgeable in contract interpretation matters, particularly those related to labor relations in public sector. Such is considered in the best interest of the City, the bargaining unit employees, and citizens. Tripartite arbitration panels have given way over the years to a single arbitrator. This is particularly true in "rights" or grievance arbitration in labor arbitration matters. Occasionally "interest" arbitration (i.e. arbitration of new contract terms) will be found where the parties have agreed to such a provision. It is noted that within the City, other bargaining units grievance procedure end with final and binding arbitration before a single arbitrator.

Recommendation

It is recommended to include in the Agreement Section 6.7 D. Step 4, Binding Arbitration as proposed by the OLC.

**Article 7
Corrective Action
& Records
7.4 Records
B. 1 Inspection &
Complaints**

The Lodge proposes the physical expungement of disciplinary records on a progressive time frame. The City opposes such a concept on the basis that such records are a part of the employees' on-going employment record.

While the Union proposal does limit intent to disciplinary actions of reprimand and suspension, the basic principal being sought can be achieved without the physical removal of the documents. The effect of such documents over time was not raised at the Hearing.

It is a well established principal in labor agreements that lesser progressive disciplinary action is of no affect in future disciplinary action, if the employee so affected has not had a like or similar offense within a specified period of time. This basic concept is recommended to be included in the Agreement.

Recommendation

The recommendation of this issue is included in the following section of this report.

Issue

Discussion

**Article 11
Miscellaneous
11.5 Filling of Job
Assignments**

The bargaining unit is small and the Fact Finder is persuaded that each position is unique unto itself. It is recognized that certain job duties and tasks may overlap in some cases. Contract provisions governing transfer and reassignment are more common in larger bargaining units in which 2 or more bargaining unit positions are found under a job classification structure.

Recommendation

It is recommended not to include Section 11.5, as proposed by the OLC in the Agreement.

**Article 15
Rates of
Pay/Wages
15.1 Wages**

15.1 Wages

There is a noted conceptual difference in the respective party's position on the wage scale for bargaining unit members. Current wage practice reflects a dual pay range for members in the bargaining unit; one for Civilian Administrative Staff and the second for the Animal Control Officer. The Lodge proposal continues this structure. The City position is to change to what is commonly called a "merit pay" concept. Such a wage format involves greater or lesser review standards, but traditionally reflect subjective assessments in determining individual wage rates and raises.

Wage scales are more the rule than the exception in public sector labor agreements. This results through the evolution of pay practices for public employees. This concept has been reinforced in labor agreements. Merit pay provisions, when found in public sector, apply to employees outside the collective bargaining arena. As the City noted, the concept to change to such a system began when the bargaining unit employees were part of the non-unionized work force of the City.

For purposes of uniformity and equity, the use of a wage scale is found more an deviations of the merit system introduced by the City. In fact, evidence and documents indicate that such a structure is currently in place for most, if not all its employees.

The appropriate amount of wage increase is reviewed as a separate issue. The City proposes no increase for, in effect, a 4-year period. The OLC proposes a 17.5 % increase during the same period.

Issue

Discussion

**Article 15
Rates of
Pay/Wages
15.1 Wages
Reimbursement
contd**

After a review of the comparables introduced, this Fact Finder concludes that members of this bargaining unit are among the higher paid similarly employed in the area. It is a common bargaining practice in such settings to retain relative wage placement.

A wage freeze under any structure will result in the erosion of such a relative wage relationship. This is not considered in the best interest to the parties. The recommended wage increase is tempered by other employment and economic gains reflected in the Agreement. Time and establishment of a contractual labor relationship has a price to both parties. The Lodge argument regarding, in effect, a double increase in the first year of the Agreement due to no wage increase during this initial contract year is not persuasive in this instant case.

Wage increases are influenced by a variety of factors. While it is noted that other bargaining units in the City may have attained wage increases to a greater or lesser amount than what is recommended to this bargaining unit, the recommendation is heavily influenced by the fact that this is a first contract and the totality of contract terms being initially attained.

Taking all of the above into consideration, the following wage rate recommendation is made.

Recommendation

It is recommend the Agreement include in Section 15.1, the Wage Schedule structure as proposed by the OLC. It is further recommended that the amounts, effective January 1, 1999, be a 4.0% increase of the amounts currently in effect. Effective January 1, 2000, the wage schedule is to be increased 3.0% and effective January 1, 2001, the wage schedule is to be increased by 3.0 %.

**Article 15
Rate of Pay/Wages
15.7 Tuition
Reimbursement**

15.7 Tuition Reimbursement

There is not sufficient persuasive evidence to include this provision in the Agreement at this time.

Recommendation

It is not recommended to include in the Agreement Section 15.7 as proposed by the OLC.

Issue	Discussion
Article 18 Holidays Personal Leave 18.3 Alternate Holidays	<p>The concept introduced by the Lodge, while unique, is not found persuasive in this initial Agreement. If such a provision has merit, as contended by the Lodge, it will not be altered by delay for consideration in future negotiations.</p>
Recommendation	<p>It is not recommended that Section 18.1-F, as proposed by the Lodge be included in the Agreement</p>
Article 20 Sick Leave With Pay	<p>While the parties tend to agree that the nature of dispute on this issue rests on the issue of the Lodge's "Wellness provision" in Section 20.3, there are noted significant other differences reflected in other provisions of this Article. In keeping with the directives of the Fact Finder to provide recommendations in language that is readily transferable to inclusion in an agreement, this recommendation is written in full text of the Article. The intent is to include other provisions of which no dispute was raised at the Fact Finding Hearing, but are not mutually reflected in the respective final positions of the parties.</p> <p>The "Wellness" provision, simply put, provides employee pay for not using leave. It has been a trend provision in labor agreements over the last 10 or 15 years. Management viewed it as a means to reduce absenteeism and employees looked upon such a provision as a benefit or reward for earned time not used.</p> <p>It is noted that other employees of the City currently enjoy this benefit provision. Persuasive argument is not raised to attain a recommendation to remove this benefit for this unit of employees at this time.</p>
Recommendation	<p>It is recommended to include in the Agreement Article 20 as proposed by the Lodge.</p>

Recommendations on Items at Impasse

Article #3

It is recommended to include in the Agreement Section 3.1 as proposed by the OLC.

Article #6

It is recommended to include in the Agreement Section 6.7 D. Step 4, Binding Arbitration as proposed by the OLC.

Article #7

It is recommended that the Agreement include Section 7.4.B. as proposed by the City.
It is recommended that the Agreement include a Section 7.4.F that reads:

F. Records of disciplinary action shall be handled in the following manner:

1. Oral reprimands will be of no effect in progressive discipline if no reoccurrence of the same or similar infraction is reported within 1-year of the noted infraction.
2. Written reprimands will be of no effect in progressive discipline if no reoccurrence of the same or similar infraction occurs within 2- years of the noted infraction.
3. Suspensions will be of no effect in progressive discipline if no reoccurrence of the same or similar infraction occurs within 3-years of the noted infraction.

Article 11

It is recommend not to include Section 11.5, as proposed by the OLC in the Agreement.

Article # 11

It is recommend not to include Section 11.5, as proposed by the OLC in the Agreement.

Article #15

Section 15.1

It is recommend the Agreement include in Section 15.1, the Wage Schedule structure as proposed by the OLC. It is further recommended that the amounts, effective January 1, 1999, be a 4.0% increase of the amounts currently in effect. Effective January 1, 2000, the wage schedule is to be increased 3.0% and effective January 1, 2001, the wage schedule is to be increased by 3.0%.

Section 15.7

It is not recommended to include in the Agreement Section 15.7 as proposed by the OLC.

Article #18

Section 18.3

It is not recommended that Section 18.1-F, as proposed by the Lodge not be included in the Agreement.

Article #20

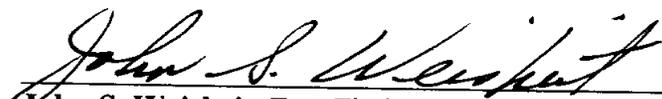
It is recommended to include in the Agreement Article 20 as proposed by the OLC.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **12 pages**, inclusive of this page, and recommendations contained herein, are made in this matter of Fact Finding by the below signed Fact Finder. All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement. If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, that language in the Recommendations shall prevail. All matters of tentative agreement are recommended, to be included in the Agreement.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this **December 14, 1998**,


John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

STATE EMPLOYMENT
RELATIONS BOARD

This will affirm that the Fact finding Report in the Matter of Fact finding between

Dec 16 12 42 PM '98

Fraternal Order of Police
Ohio Labor Council, Inc.

v

City of Upper Arlington, OH

Case No.

98-MED-07-0689

was served to the below named parties at the stated addresses

John Looman, Representative
FOP, OLC, Inc.
222 E. Town St.
Columbus, OH 43215

Daniel Moore, Ass't City Attorney
City of Upper Arlington
3600 Tremont Rd.
Upper Arlington, OH 43221

by 1st Class U.S. Postal Service Mail, on, December 14, 1998.

I affirm, to the best of my knowledge that the foregoing is true and accurate.



John S. Weisheit, Fact Finder

December 14, 1998

Date