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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Case No:
98-MED-09-0800

In the Matter of the Fact Finding

Between

THE CITY OF NORTH RIDGEVILLE

and

FRATERNAL ORDER OF POLICE,
LODGE NO. 25

REPORT AND RECOMMENDATION OF FACT FINDER
DENNIS E. MINNI, ESQUIRE

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HEARING BACKGROUND

This case came on for formal hearing on May 7, 1999 at the City of North Ridgeville's (hereafter the "Employer", "City" or "Management") municipal complex after two days of mediation with the Fact Finder on March 12 and 19, 1999. The Employee Organization, (hereafter the "FOP" or "Union") is the Fraternal Order of Police, Ohio Labor Council, Inc., Lodge 25.

The parties have had a collective bargaining relationship for approximately the last ten years. During that time span several representatives have bargained for each party and there have been three different mayoral administrations. Prior to the institution of the fact finding process the parties conducted six or seven negotiation sessions with about thirty issues residually left open at the start of mediation. Of these, twelve are Union demands and eighteen are Management proposals.

The Public Employer, a municipality, employs in three bargaining units some twenty-five (25) sworn patrol officers, eight (8) Sergeants, Lieutenants and a Captain and a Dispatcher, Clerk, secretary and Mechanic unit of approximately six (6) persons.

The City comprises some 25 square miles of area and has about 25,000 residents. It is situated in southeastern Lorain County and has an elected Mayor and City Council.

The parties requested both mediation sessions be attempted with limited results being realized. The start of the hearing was timely and the format for the session, although formal in nature, rendered each party an equal opportunity to explain or detail their respective positions to the Fact Finder.

The FOP committee was comprised of FOP-OLC Senior Staff Representative Pat Daugherty. He had officers Swenk, Freeman, Sgt. Carrol, Lt. Dent and dispatcher Spigiel in attendance. Labor Counsel Gary C. Johnson had Safety Service Director Zirzow and Mayor Hill at the hearing.

MEDIATION

As discussed supra, the parties requested two mediation days before proceeding to hearing. This Report And Recommendation therefore, represents the results of hearing the evidence and rendering an opinion on each open issue. The advocates provided their full cooperation to me which helped in gaining an understanding of the open issues and their respective positions.

RESOLUTION CRITERIA

The following recommendations take into consideration the factors enumerated in Section 4117.14 (C) (4) (e) of the Ohio Revised Code. These are:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining units 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 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 mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

The respective positions of the parties have been amply demonstrated and argued. Therefore there is no need, in my view, to author a treatise about the issues separating the parties. They well know both the operation and application of the matters upon which they have been unable to reach agreement. Thus, I will not "pad" this Report And Recommendation by extensive reiteration of the same proposals and stances.

Where a proposal touches only contract language, without ostensible cost, I will provide a rationale for my choice. The parties have submitted contract-ready language for their respective proposals, and, when referenced as a recommendation, these submissions shall be deemed incorporated by reference into this Report And Recommendation.

Ultimately, the resolution of this contract's terms will depend upon the good faith and responsible performance of each side. If either party chooses to seek a different result than what is recommended, it must be remembered that opting for Conciliation brings with it the possibility of an award further from what is recommended hereinafter.

ITEMS FOR RESOLUTION

As a result of some movement between the parties during the fact finding hearing, issues involving Recognition clause, Dispatchers' clothing allowance, new article for Layoffs and Police Dog Handler were settled and withdrawn. Thus the parties presented the following unresolved issues to the Fact Finder for the following recommendations:

1. ARTICLE III: OVERTIME AND COURT APPEARANCES

UNION POSITION

The FOP prefers that the current practice continues. The exhibits ER-1 and 2 showing the AFSCME unit has this change is incorrect because that cba has not been ratified yet. The last three cbas used the current pay provision for call-ins without problems. There is no guarantee of overtime pay even with the pooling arrangement for traffic details.

This is bogus reasoning on the City's part; the Union rests on the practice of the last nine years.

CITY POSITION

The City's concern is that when officers are called in at times abutting their regularly scheduled shift they are not being inconvenienced in the same way as call-in pay is designed to provide compensation for. Their proposal would deny the contract's call-in pay provisions in Sections 13.02 and 13.03 to officers thus called in.

RECOMMENDATION OF THE FACT FINDER

Overtime premium pay is more than sufficient to compensate officers being held over or called in early. The only "inconvenience" resulting from such an event is that the employee typically needs to report to the courthouse instead of the police department. This is paid time; yet it does not command the minimum call-in premium if it abuts the employee's work day, but shall remain unchanged if an officer is called-in or to court on a regularly scheduled day off ("RDO").

Also, the City's exhibits ER-1 and ER-2 show that the AFSCME and IAFF bargaining units have acquiesced to similar language.

For all these reasons the Employer's demand is recommended.

2. ARTICLE 10: ALCOHOL AND DRUG TESTING

UNION POSITION

The Union has a big problem with the City's desire to randomly administer urine analysis among its officers. The FOP prefers probable cause be the predicate for testing officers for substance abuse. Absent probable cause, the surprise testing feature the City wants to institute represents harassment. None of the comparable cities have random testing and there has not been a problem or grievance over this in the last nine years. There is no history of drug abuse in these bargaining units, thus this is an insult to these officers..

CITY POSITION

The City's position is that although it cannot speak to what the comparable cities have relative to random testing, there is a compelling need to sample policemen just the same as truck drivers and fire fighters.

With the need to carry a firearm and operate a cruiser the need for this ability to test is obvious. If other City employees have no problem with random testing why do the police officers?

The pervasive nature of drug abuse compels a higher testing parameter such as this one according to Management. It would also be internally consistent since other units have agreed to it.

RECOMMENDATION OF THE FACT FINDER

I find no hardship inherent in randomly administering drug testing. It is circuitous logic to argue that random examinations are not needed because there has not been any history of drug abuse. It begs the question to claim that if there is no substance abuse problem in these units, then what is to be feared from allowing random sampling? I do not feel that police officers need to be held to a higher standard in matters of detecting and remedying substance abuse.

This does not, however, absolve law enforcement personnel from reasonable, uniform, reliable testing and, upon confirmation, access to all contractual and legal assistance measures same as for other employees, sworn or unsworn.

The salient features of the City's proposal demonstrate that officers will be paid during the testing, which shall be done on

duty, at the Employer's expense and that every NIDA protocol will be followed.

Also, I discern that there is no retaliatory or discriminatory aspect to this proposal. I therefore agree with the Employer and recommend its language on drug testing be adopted into the contract.

3. ARTICLE XV HOLIDAYS (Birthday)

UNION POSITION

Currently, if scheduled to work on his/her birthday, an officer receives premium pay for doing so.

The City has not asserted an inability to pay and the other units in N. Ridgeville have different holidays. For example, the Fire Department gets Easter Sunday whereas the Police do not. The FOP has bargained for our current twelve holidays and four personal days. What we negotiated at the table is our contract; and has been for the past nine years. The birthday holiday should be retained it is simply a different approach to designating holiday pay.

CITY POSITION

The City's position is that the birthday premium pay incentive is not needed. Making it a personal day to be scheduled throughout the year makes more economic sense. The other units "float" their birthday holidays, utilizing them the same as if they were a personal day. The City seeks to trim the premium pay aspect but not subtract from the sixteen holidays this unit's members receive annually. The average number of holidays in Cuyahoga County law enforcement agencies is twelve, so this unit is not suffering under the Employer's proposal.

RECOMMENDATION OF THE FACT FINDER

An inability to pay posture is not necessary to be taken or established when an employer is simply opposed to paying a particular premium pay or benefit. That (alleging an inability to pay) would relate to the overall cost of settling a new contract's economic terms, not to seeking a reduction in a given premium benefit. I find no hardship worthy of additional premium pay for working on one's birthday. I therefore recommend that the City's demand be adopted in light of the substantial wage raises it has offered herein.

4. ARTICLE XXIII-CLOTHING ALLOWANCE

UNION POSITION

The FOP addressed its prior demand in this area at the hearing and dropped to a \$50 per year increment for each of the three years it seeks. This would take the allowance to \$700, \$800 and then \$850 in year three. Non-sworn personnel would receive a \$50 increase to \$525 for the three year term. Dispatchers are required to maintain a uniform by the City.

CITY POSITION

The FOP unit does not need the Police Mechanic so his uniform allowance should be dropped. Beyond that, the generous wage increase the City is offering covers uniform maintenance costs and obviates the need for increases.

RECOMMENDATION OF THE FACT FINDER

When weighing the respective economic positions on this item, I discerned that clothing allowances reflect ever escalating apparel costs. Ordinarily, I emphatically would not recommend a substantial wage raise in addition to other cost items. However, this issue makes sense even though the Employer herein has placed on the table an increase well above the current norm in the Ohio. With the Union's drop in its demand for clothing allowance increases for both units, the issue becomes one of keeping pace with inflationary pressures rather than seeking overall just economic terms.

I therefore recommend the Union's position for annual increases in both units for the duration terms recommended hereinafter.

5. ARTICLE XXV-LONGEVITY:

UNION POSITION

The FOP seeks to add five more \$100 steps making the maximum longevity level \$3,000.00 at the thirty year point. The Employer has not proven it cannot afford to make such a move and the maintenance of experienced officers helps the City get bonded and renders law enforcement officers with experience to serve the citizenry.

CITY'S POSITION

While the officers won't submit to random drug testing, or give up overtime for court appearances abutting scheduled shifts, they want more longevity pay; beyond what any other unit in the City receives! The existing language/rates are more than sufficient for this benefit.

The City has no fear of losing people beyond the fifteen year service point. Thus it need not enhance this already generous benefit and thereby break with internal consistency as well.

RECOMMENDATION OF THE FACT FINDER

This benefit program appears to be in the upper quartile of comparable municipalities for law enforcement personnel. Also, the internal consistency argument is convincing as a predicate for granting the Employer's position on this issue. There can be little claim to an unfair pay structure resulting in the need to enhance longevity at the upper range. There is no demonstrated flight from the force at a particular service point because of low wages making another department more attractive. Absent that, longevity becomes another form of wages; which is an area well served by the Employer's offer in this proceeding.

Therefore, I cannot recommend the proposed longevity increases of the FOP and do recommend the City's position of no change in the current language.

6. ARTICLE XXVI-WAGE RATES:

UNION POSITION

The FOP wants across-the-board increases of 6% per year for each of three years. Additionally, the Union seeks an increase in the rank differentials. Its demands are based upon a survey showing that thirteen comparable law enforcement departments averaged \$40,707 versus the City's \$38,688 for patrolmen. At the Sergeant rank the difference is 14%; \$49,531 compared to N. Ridgeville's \$42,536. The Lieutenant rank is 18% behind the comparable average as is the Captain's rank. The FOP claims that the rank differentials should be increased by 11%, 12% and then, 13% over a three year term.

It is important to note that no inability to pay argument has been established on this record. The Employer is able to make the above demands sought by the FOP.

CITY POSITION

Over a two year span, the City is offering 4.8% in year one and 5% in the second year. Non-sworn employees are offered 3.5% per year for two years' duration.

This concept is based upon the concessions it seeks in Overtime Pay and other areas. ER-9 shows the Sergeants and Lieutenants are not suffering in terms of pay. The way the overtime is pooled allows much more than working a second job or jobs would yield. Their pensions are enhanced and the rate of pay is their contractual rate; not a minimum wage type of rate as paid by other firms using sworn officers off-duty.

Also, paragraphs 26.03 and 26.04, concerning rank differentials, need to be deleted.

The net effect is that the offer of the Employer greatly exceeds wage raises in Ohio by a margin of almost thirty per cent. (7% vs. 10%) over two years. Increasing the rank differentials is not called for due to the handsome earnings shown for the higher ranking officers who partake of the available overtime.

The CPI for 1998 is 1.8%; thus, the upshot of this shows clearly that no one is being abused financially in this unit(s).

RECOMMENDATION OF THE FACT FINDER

I recommend the City's offer because it is a 3.6% year throughout Ohio and even in light of the other concessionary issues granted the Employer herein, it still does not place these units in an unfavorable economic posture. In fact, it is very generous and progressive given the other fringes these units enjoy.

By now it must be obvious that the main theme of this Report And Recommendation is the trade-off of a substantial wage increase for other sought after fringe benefit enhancements and the extra year of duration the Union would like. The realities of the situation are that the cumulative effect of the FOP's demands spends a considerable amount of money even when one discounts the 6% raises and large rank differentials as being unobtainable.

Parties many times must make demands in an area or pursue an issue knowing that there is little or no chance of realizing said changes. I am not criticizing anyone or party; however, what is feasible in terms of cost and meeting the marketplace in the sense of internal and external comparables must soon come to rule the roost.

The police function in North Ridgeville, OH is well attended

to in terms of manpower, earnings opportunity, professional support and advancement and managerial administration. In balancing the City's commitment to its other employees and the public recipients of the police function its position on Wages is recommended by the undersigned.

It should also be noted that the parties agreed at hearing to compensate Field Training Officers by an additional \$1.50 per hour when actually training other officers.

7. ARTICLE XXVIII-HUMANE OFFICER:

UNION POSITION

The FOP says this position should be allowed to remain the same under the same language. In preferring retention of the current language, the Union expressed concern that Management has a hidden agenda which represents an intent to effect wholesale adverse changes for the incumbent Humane Officer.

CITY POSITION

The Employer seeks to grandfather the incumbent humane officer rather than abolish the position and lay-off the incumbent.

The City's incentive herein is to phase out the use and cost of a policeman to be a dog catcher. The need to continue to field a \$40,000 per year humane officer is not compelling to the City.

RECOMMENDATION OF THE FACT FINDER

Both parties have a point. The FOP wants the present language to stay in the cba, while the City wants it deleted, except for a grandfathering provision. The Union has agreed that the City has the right to abolish or not fill the position if it becomes vacant.

The City maintains it has no plans to change the position until it becomes vacant.

Therefore, I recommend that the FOP's position of keeping the provision in the cba be adopted, except that the following provision should be added to the existing provision:

"This Article shall become null and void and without force or effect upon the existing position becoming vacant."

8. ARTICLE XXIX-POLICE MECHANIC

UNION POSITION

The FOP wishes to keep the current position of Police Mechanic (in the Police Department) and not change its inclusion in the unit.

CITY'S POSITION

Soon to be abolished, this position will be transferred to the Service Department. The pay raise afforded mechanics in the AFSCME unit is greater than that sought by the FOP herein.

RECOMMENDATION OF THE FACT FINDER

Akin to the Humane Officer position discussed supra, this position is going to be abolished and the existing employee transferred to the Service Department as a mechanic for the Department. This is a logical move, as the mechanic already works in the Service Department's garage and the incumbent will actually make a greater wage.

However, this pending transfer has not yet occurred, even though the FOP has agreed that such a transfer is within the City's management rights. Accordingly, I recommend that the existing provision be left in the cba, except that the following provision should be added to the existing provision:

"This Article shall be null and void and without force and effect upon the existing position becoming vacant, abolished or the existing employee being transferred to the Service Department."

9. ARTICLE XXXIX-DURATION:

UNION POSITION

The Union prefers a three year contract and has couched its demands and responses in this mode throughout negotiations. It seeks to forestall its return to the bargaining table by adopting the longer contract term. Three year agreements have been a pattern between the parties and the FOP feels it should be continued absent some sort of impending disaster.

CITY POSITION

Committing to a three year term is not appealing to the City at this point in time because it experiences varying levels of tax revenue annually and can best plan over a two year span than by being tied into three years' worth of wages and benefits.

The Employer says it cannot guarantee the payment of wages and benefits in the year 2001.

RECOMMENDATION OF THE FACT FINDER

I recommend the Management position on this issue making the duration two years. I do not ascribe a great degree of weight to the City's claim of being unable to guarantee a third year's wage/benefit package. Instead, I categorize this issue's recommendation as being more of what was "purchased" by the Employer's generous wage offer. For whatever reason(s) it seeks a two year agreement, the Management demand is less onerous to the probability of obtaining a new contract without resorting to the next compulsory step, Conciliation.

Coupled with its wage offer, the two year cba position makes more sense in terms of what is likely, in my view, to bring about ratification by both sides.

Duration, or specifically the inability to agree upon the length of a cba, in my experience, is an indicia of a set of very tense negotiations and thus makes for difficult interest arbitration procedures. This is borne out by this process' record; however, I believe my recommendations provide a means to an end or a way out of a tough spot for both parties, depending on how they view their situation.

10. ARTICLE XLII-PROMOTIONS:

UNION POSITION

The FOP desires the status quo and seeks to keep the system used in the past, that is, the Civil Service law. There have been no demotions or removals in the past, so the selection system has worked well for the parties. If not, bad promotions would have compelled a history of removing poor choices from promoted positions. This is not the case.

CITY POSITION

Since Civil Service law is now selection of one out of the top ten candidates, there are many other factors needed to be learned to make the best choice. Assessment centers greatly aid management in selecting promoted employees. If one of the top three qualifiers could be chosen the process would help insure the right officer for the needs of the department in an era of high liability for police departments and municipalities alike.

RECOMMENDATION OF THE FACT FINDER

I concur with the City. The selection of supervisors should not be determined by one single exam, with the highest scorer automatically receiving the promotion. In today's time, other supervisory abilities are of great importance. Additionally police and fire employees should have similar promotion procedures. The City's fire fighters have accepted this provision which adds credence to the proposal and its projected results.

Accordingly, I recommend the City's position.

11. ARTICLE (NEW): FAMILY AND MEDICAL LEAVE ACT

UNION POSITION

It is the Union's proposal to include language requiring the City to allow FMLA leave without using other paid benefits first.

CITY POSITION

Maintain present position and follow the federal law.

RECOMMENDATION OF THE FACT FINDER

I cannot recommend adoption of the Union's position because it is contrary to federal law and would not withstand a legal challenge.

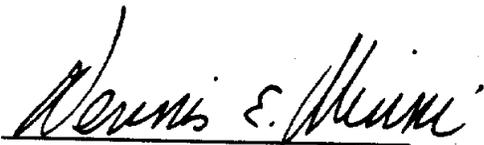
Making the terms of the law a cba inclusion is not needed since the benefits employees receive already are more comprehensive and the Act's terms cannot be denied by Management but do not kick in until other contractual leave benefits are exhausted.

This issue compels siding with the Employer and I must reject

the Union's demand.

My thanks again to the parties and their advocates for their attention to this matter and bringing about an atmosphere hopefully conducive to resolution.

Respectfully submitted this 16th day of June, 1999 to the parties by Priority Mail and by regular mail to the SERB.

A handwritten signature in cursive script, reading "Dennis E. Minni". The signature is written in dark ink and is positioned above a horizontal line.

Dennis E. Minni
Fact Finder