

STATE OF IOWA
JUDICIAL BRANCH

MAY 4 10 20 AM '00

**IN THE MATTER OF FACT-FINDING
BETWEEN**

**CITY OF INDEPENDENCE)
)
)
AND)
)
)
FRATERNAL ORDER OF POLICE)
LODGE NO. 67)**

CASE NO. 98-MED-09-0830

**FINDINGS
AND
RECOMMENDATIONS**

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE FOP

Robert M. Phillips, Esq.

FOR THE CITY

Kurt D. Weaver, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between the City of Independence (hereinafter referred to as the City) and the Fraternal Order of Police, Lodge No. 67 (hereinafter referred to as the FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. Fact-finding proceedings were conducted on March 31, 1999.

The 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 with several issues being tentatively agreed upon by the parties. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

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 him.

1. WAGES

The FOP proposes that wages be increased by 4.5% in each of the two contract years. The City proposed wages increases of 3% for each year based upon a three year agreement.

The FOP contends that its wage proposal is warranted in order to bring total compensation levels for patrolmen here more into line with that received by patrolmen in neighboring jurisdictions. The FOP emphasized that when one looks at total compensation received which would include both wages and longevity payments, the patrolmen here receive considerably less than most of their counterparts in the region. The FOP also noted that several neighboring cities have provided pay increases for their patrolmen of 4% or greater.

The City argues that the patrolmen in the bargaining unit are in the top percentage of wages for all patrolmen in Cuyahoga County. In comparable communities, only Brecksville patrolmen receive more based upon 1998 wages. The City also maintains that it has a very "rich" total compensation package for its patrolmen compared to other communities. The City presently pays 62.7 cents in fringe benefits for every \$1.00 in wages paid to Union members.

ANALYSIS – Based upon a careful review of the evidence, this fact-finder would recommend that there be 3.5% wage increases in each year of a two-year agreement. Such increases would be in line with the increases generally provided to patrolmen in the region. For example the evidence showed that for 1999, 3.5% wage

increases were granted to patrolmen in the cities of Strongsville, Parma Heights, Bay Village, Fairview Park, and Bedford Heights. SERB's wage report also establishes that a 3.5% wage increase has been the general norm for patrolmen in the area.

With recommended 3.5% wage increases herein, Independence patrolmen would be able to retain their relatively high ranking with respect to wages in the area. The evidence shows that based on 1998 wages, the top wage for Independence patrolmen of \$46,284 is higher than that of all but one of the nine comparable communities cited by the parties. Only Brecksville patrolmen are paid more than the bargaining unit here.

In addition to the above general wage increases, this fact-finder would recommend that each bargaining unit member be given a \$300 lump sum payment upon execution of the parties' new Agreement. Such a lump sum payment is warranted in order to address the concerns raised by the FOP regarding other cost factors effecting bargaining unit members. The FOP noted that bargaining unit employees must contribute towards their health insurance up to a maximum of \$50.00 per month. There was a presentation made that the two-tiered longevity system is inadequate for patrolmen hired after July 1, 1984. Although both of these issues are subsequently discussed in this report, this fact-finder finds that it would be appropriate to grant employees a \$300 lump sum payment to at least in part help alleviate their cost burden in these other areas. There is no dispute that the City has the ability to fund both the general wage increases as well as the lump sum payments recommended herein.

RECOMMENDATION

It is the recommendation of this fact-finder that there be 3.5% general wage increases provided to the bargaining unit in each year of the Agreement. In addition, each bargaining unit employee shall be entitled to receive a one-time lump sum payment in the amount of \$300. This lump sum payment is to be issued in a separate check from the employee's regularly scheduled paycheck within thirty days following the execution of the Agreement. The lump sum payment shall not be considered to be an addition to or compounding of an employee's hourly and/or annual wage.

<u>Wages</u>	Effective January 1, 1999 – 3.5% increase. Second Year of Agreement – 3.5% increase. One Time Lump Sum Payment - \$300
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2. LONGEVITY COMPENSATION

The FOP proposed a new longevity compensation provision for members hired after July 1, 1984. It basically raises the annual payment for each of the years listed by \$300. The City initially proposed that there be no change in the current longevity compensation provision. However during the hearing, the City did present a modified longevity provision for those hired after July 1, 1984.

The FOP argues that the two-tier system is unreasonable and contributes to low morale. In addition, the second-tier longevity provision does not compare favorably those found in police contracts in the area.

The City contends that the two-tier longevity provision is a reflection of prior contract negotiations and agreement between the parties that longevity payments should be scaled down. The current second-tier should be considered in light of the relatively high wages received by the City's patrolmen. When total compensation is compared, such payments are reasonable and fair.

ANALYSIS – This fact-finder would recommend a modification to the current Longevity Pay Provision for those hired after July 1, 1984. Specifically, the recommendation would be that the parties adopt the City's final proposal regarding longevity compensation which reflects a 31% increase over the current provision. For example, a ten-year employee would receive a \$750 annual payment under the new longevity schedule as compared to receiving only \$550 under the current provision. Basically the modified provision would provide that upon completion of five years of

service, an employee would receive longevity pay in the amount of \$500 which would be increased by \$50 for each succeeding year of employment until a maximum amount of \$1,500 is reached after twenty-five years of service. The twenty-five year pay out would be \$21,000 as compared to the current \$16,050 for tier two employees. It should be noted that no employee would receive a reduction in the amount which they current receive for longevity compensation. It is evident that the recommended longevity compensation provision would significantly enhance this benefit for bargaining unit employees.

This fact-finder has determined that the longevity schedule for tier two employees should be modified because the current provision is relatively low in comparison to similar provisions in neighboring jurisdictions. Currently, the longevity provision here ranks thirteenth out of the fourteen jurisdictions cited by the FOP. With the recommended longevity provision, the maximum amount of longevity payment would be brought more into line with the-mid range of longevity provisions in the area. Both Beachwood and North Royalton for example also provide for a maximum amount of longevity payment of \$1,500. There is every indication that the City has the resources to finance the modified longevity compensation provision.

RECOMMENDATION

It is the recommendation of this fact-finder that the Longevity Compensation Provision be modified as more fully set forth in Attachment A.

ATTACHMENT A

LONGEVITY COMPENSATION

In addition to the amounts provided in this Agreement each full-time regular member of the Independence Police Department hired on or after July 1, 1984 shall receive effective January 1, 1999 through December 31, 2001, longevity pay commencing upon the completion of five (5) years of continuous full-time employment in the amount of five hundred dollars (\$500.00) which shall be increased by fifty dollars (\$50.00) for each succeeding year of employment until a maximum amount of one thousand, five hundred dollars (\$1,500.00) is reached after twenty-five (25) years of employment and for each year thereafter. For illustrative purposes, the following table may be used:

<u>Years</u>	<u>Annual Payment</u>
5	\$500.00
6	\$550.00
7	\$600.00
8	\$650.00
9	\$700.00
10	\$750.00
11	\$800.00
12	\$850.00
13	\$900.00
14	\$950.00
15	\$1,000.00
16	\$1,050.00
17	\$1,100.00
18	\$1,150.00
19	\$1,200.00
20	\$1,250.00
21	\$1,300.00
22	\$1,350.00
23	\$1,400.00
24	\$1,450.00
25	\$1,500.00
26 & above	\$1,500.00/per year

3. HOLIDAYS

The FOP proposes that the Holiday Provision be modified to include one personal day. In addition, the FOP proposed to change the “third Monday in January” holiday to Martin Luther King Day. Under Section 2, the FOP proposes that if employees work on any of seven named holidays, they are to be compensated at one and one-half times their normal rate of pay in addition to other benefits or premiums. The City is opposed to any change in the current Holiday Provision.

The FOP contends that the current compliment of ten holidays is not comparable to that provided to patrolmen in surrounding communities. The requested increase of one personal day would have minimal impact on cost overhead for the City. Moreover, the proposal to compensate patrolmen who have to work certain holidays at one and one-half times their regular rate of pay is in recognition of the demands of police work. Once again, the FOP cites comparables in favor of its position.

The City contends that its patrolmen receive the same number of holidays as all other employees. Increasing the number of holidays by one additional day for each employee would negatively impact staffing levels as well as overtime costs. The City believes that the current provision providing for ten paid holidays is comparable to what other communities provide to their patrolmen. The City further maintains that the FOP’s request pertaining to payment at one and one-half times an employee’s regular rate of pay if a holiday is worked is totally unreasonable.

ANALYSIS – This fact-finder would not recommend increasing the number of holidays or adding one personal day as proposed by the FOP. The evidence shows that all other city employees receive ten paid holidays. There simply was no basis established for providing this bargaining unit with additional holidays beyond that which is received by other city employees. Moreover, the provision for ten paid holidays is the same as that provided by other neighboring communities such as Broadview Heights and Brookpark. Although this fact-finder would not recommend any increase in the number of holidays, he does find merit in the FOP’s request to change the “third Monday in January” to Martin Luther King Day.

This fact-finder would however recommend a modification to Section 2 of the Holiday Provision whereby employees would be compensated at one and one-half times their normal regular rate of pay if they are required to work on Thanksgiving Day, Christmas Day or New Year’s Day. Comparable evidence shows that other neighboring jurisdictions provide their patrolmen with such additional holiday compensation. Broadview Heights, Brecksville, Bedford and North Royalton all provide for additional compensation beyond an employee’s regular rate of pay if a patrolman is required to work on a holiday.

RECOMMENDATION

It is the recommendation of this fact-finder that the following modification be made to the Holiday Provision:

Section 1 – Change the “third Monday in January” to Martin Luther King Day. No other change recommended for this section.

Section 2 – Modify by adding: Should a full-time employee be required to work on Thanksgiving Day, Christmas Day or New Year’s Day, then that employee will be compensated at one and one-half (1½) times their normal rate of pay in addition to any other benefits.

4. UNIFORM ALLOWANCE AND MAINTENANCE

The parties reached a tentative agreement with respect to Section 1(a) of this provision which pertains to original issuance of items to employees. The agreed upon provision is more fully set forth in the recommendation herein.

With respect to Section 1(b) of Article XXIV, the Union proposed to increase the uniform allowance by \$50 per year over two years for a total of \$100. The City proposes that there be no change in the current annual maintenance allowance. With respect to the annual uniform maintenance and cleaning allowance, the FOP proposes that there be an increase to \$500 from the current \$475. The City indicated that it could agree to increase this provision to \$500 so long as the employee is required to certify that the funds are used for the sole purpose of cleaning and maintaining their uniform. In addition to the above proposals, the FOP also proposes a new Section 6 whereby any uniform change directed by the Chief would initially be funded by the City without charges against the existing uniform allowance.

The FOP contends that the increases in uniform and maintenance allowances are needed because costs of maintaining uniforms have increased. The City cites comparables that show its maintenance allowance is quite favorable to bargaining unit employees.

ANALYSIS – This fact-finder would recommend that the annual uniform allowance be increased by \$25 to \$475. There also was a basis established for increasing the annual uniform maintenance and cleaning allowance to \$500. The evidence did show

that because costs for purchasing and maintaining a patrolmen's uniform have gone up, there is a need to likewise increase the annual uniform allowance as well as the maintenance and cleaning allowance. Such increases as recommended herein would have minimal cost ramifications for the City. This fact-finder finds no basis for the City's proposal to have a written certification of expenditures furnished by the employee.

This fact-finder would also recommend the FOP's proposed new Section 6 whereby the City would be required to pay for any uniform changes directed by the Police Chief without changes being made against existing uniform allowances. There was an indication that such uniform changes will be proposed by the department in the near future for all uniformed patrolmen. As a result, the FOP's proposal has merit.

RECOMMENDATION

It is the recommendation of this fact-finder that the following Uniform Allowance provisions be included in the parties' Agreement:

Section 1(a)

Upon original appointment as a regular full-time member of the Police Department, the appointee shall be provided the following items as approved by the Chief of Police:

1. 4 pr. Pants
2. 4 long sleeve shirts
3. 4 short sleeve shirts
4. 1 winter coat
5. 1 rain coat
6. 1 jacket, as determined by the Chief
7. 1 pr. shoes
8. 1 pr. Boots
9. 1 summer hat
10. 1 winter hat

11. 1 gun belt
12. 1 bullet holder
13. 1 handcuff case
14. 1 holster
15. 1 baton holder
16. 1 bullet proof vest
17. 1 pair gloves
18. 2 badges
19. 1 hat badge
20. 1 pair gloves
21. 1 garrison belt (worn under gun belt)
22. chemical spray holder
23. canister chemical spray
24. 1 baton, as approved by the Chief
25. 1 set belt keepers
26. 1 portable radio holder

Section 1(b)

Annual maintenance allowance is to be increased to Four Hundred Seventy-Five Dollars (\$475.00).

Section 4

Annual uniform maintenance and cleaning allowance is to be increased to Five Hundred Dollars (\$500.00).

Section 6 (new)

Any uniform changes directed by the Police Chief will initially be funded by the City without charges against the existing uniform allowances.

5. SICK LEAVE

The City proposes a modification to Section 5 whereby sick leave could be used for members of the immediate family whose serious health condition as that term is used in the Family Medical Leave Act requires the care of the employee. The FOP opposes such a modification. The FOP proposes to modify the sick leave buy back provision at retirement to 40% of an employee's unused sick leave. The City opposes any change in the current cash out at retirement provision which provides that unused sick leave may be cashed out to a maximum of three hundred twenty hours.

The City contends that the modification it proposes for employees use of sick leave to care for a family member is needed because a trend has occurred whereby sick leave for family illnesses has been increasing within the bargaining unit. Basically, the City proposes to limit the use of sick leave for family illness to so-called "serious" illnesses as defined by the Family Medical Leave Act. The FOP maintains that there simply was no basis established for changing the current provision.

The FOP contends that its sick leave pay out upon retirement modification is justified based upon comparables. The FOP produced evidence which indicated that the current forty days maximum which an employee can sell back of unused sick leave falls well below the maximum number of days available for sell back found in similar provisions in neighboring jurisdictions. The City points out that the current maximum for cash out at retirement was recently increased and is comparable to that found in other similar communities.

ANALYSIS – This fact-finder finds that there was some basis established by the City for modifying the provision as to when sick leave may be used to attend to the illness of a member of an employee’s immediate family. It would be reasonable to provide that only in cases of “serious” illnesses of immediate family members, should an employee be allowed to use his own sick leave. The evidence shows that the City’s Dispatcher Unit has agreed to such language and that similar provisions are found in police contracts in such cities as Maple Heights and North Royalton.

This fact-finder would not recommend any change in the sick leave pay out upon retirement provision as proposed by the FOP. The current provision appears to be more than reasonable. It provides that upon retirement an employee is to be paid in cash for one-third of an employee’s accrued but unused sick leave up to a maximum of 320 hours. This is comparable to sick leave cash out provisions found in other police contracts in the area. This provision was incorporated into the parties’ Agreement in 1996 after a fact-finder ruled that the FOP’s proposal should be adopted at that time. There was insufficient basis established for once again increasing this particular benefit.

RECOMMENDATION

It is the recommendation of this fact-finder that the following modification be made to the Sick Leave Provision:

Section 5 Sick leave shall be granted for absences from duty because of illness injury, disease, exposure to contagious disease, or attendance upon members of the immediate family whose serious illness requires the care of such employee...

Section 4, Sick Leave Pay Out Upon Retirement - Current language, no change.

6. SHIFT PREMIUM

The FOP proposes to establish new shift differential premiums of \$.50 for second shift, eight hours, 3:00 p.m.-11:00 p.m.; and \$1.00 for night third shift of ten hours, 5:00 p.m.-3:00 p.m. or twelve hours, 6:00 p.m.-6:00 a.m. The City opposes any new shift differential provision.

The FOP argues that shift premiums are justified in this case because the patrolmen work twelve-hour shifts. The FOP cited Bedford as providing shift premium for its patrolmen who also work twelve-hour shifts.

The City maintains that shift premiums are not commonly found in other communities where permanent shifts are used. There was no basis established for shift premiums which are a cost item.

ANALYSIS – This fact-finder would not recommend any shift premium provision as proposed by the FOP. There was no basis established for such a provision. The evidence shows that in many of the other neighboring jurisdictions where there are permanent shifts, shift differentials are not provided to patrolmen. For example, Broadview Heights, Brecksville and Garfield Heights do not have shift differential provisions.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new Shift Differential Provision as proposed by the FOP.

7. OFFICER IN CHARGE PAY

The FOP proposes that the current provision be modified to permit the payment of a sergeant's rate of pay whenever a patrol officer is assigned as an Officer In Charge. The City proposes that the current provision be retained which provides that whenever a patrolman is assigned as the OI C for an eight hour shift then they are to receive an additional \$10.00 per shift. Officer In Charge assignments exceeding eight hours or less than eight hours are prorated accordingly. The FOP argues that it is only reasonable that a patrolman who performs a sergeant's duties temporarily should be compensated at the sergeant's rate of pay. The City maintains that the current provision is more than adequate.

ANALYSIS – This fact-finder would recommend the FOP's proposed change for Officer In Charge pay. Currently when a patrolmen who earns \$22.25 per hour is asked to perform a sergeant's duties on a temporary basis, the patrolman receives an additional \$1.25 per hour. Under the FOP proposal, the amount of OIC pay received by the patrolman would be increased to \$2.56 per hour. This fact-finder has determined that it is only fair and reasonable to compensate the patrolman who is serving as OIC at the sergeant's rate of pay. Comparables support such a recommendation. The cities of Brookpark, North Royalton and Parma Heights all provide OIC pay at the sergeant's rate of pay.

RECOMMENDATION

It is the recommendation of this fact-finder that the Officer In Charge Pay

Provision be modified as follows:

Section 1, Officer In Charge Pay – When a classified patrolman is assigned by departmental management as the Officer In Charge, that officer shall be compensated at the sergeant's rate of hourly pay.

8. LIFE INSURANCE

The FOP proposes that there be an increase in life insurance from the current \$25,000 to \$40,000. The City proposes that the current provision be retained.

The FOP argues that the current life insurance provision in the amount of \$25,000 is inadequate. The City maintains that the current amount of life insurance provided is in line with that found in comparable communities.

ANALYSIS – This fact-finder would recommend that life insurance be increased to \$40,000. The FOP’s request to increase the amount of life insurance is reasonable especially considering the dangerous duties associated with being a police officer. The increase in life insurance recommended herein would have minimal cost implications for the City.

RECOMMENDATION

It is the recommendation of this fact-finder that the Life Insurance be increased as proposed by the FOP:

Life Insurance -- Increased to \$40,000.

9. HOSPITALIZATION INSURANCE

The FOP proposed to eliminate the employee contribution requirement currently found in this provision. The employee contribution is capped at \$50 per month. The City opposes any change in the current provision.

The FOP argues that it is unreasonable to continue to require bargaining unit members to contribute towards health insurance. Many members of the bargaining units currently must pay \$50 per month towards the premiums for their health insurance. The FOP claims that comparables support its position.

The City argues that it offers multi-plan health insurance for all of its employees. It was only recently that the employee contribution was bargained for and approved by all the City's bargaining units. With the cap of \$50 per month, the current provision is reasonable. The City also cites comparables in support of its position.

ANALYSIS – This fact-finder would not recommend any change in the current Hospitalization Insurance Provision. The employee contribution is currently capped at \$50 per month which is reasonable. SERB's report on health insurance for the public sector shows that statewide over one-half of the employees contribute towards their health insurance premiums. The SERB report further indicates that an employee contribution in the amount of approximately \$50 per month for health insurance would be near the norm for such contributions. There simply was no basis established for deleting the employee contribution section of the current Health Insurance Provision.

It should be noted that under the current Hospitalization Article there is a provision for a joint medical/hospitalization insurance committee which is to be maintained and convened as necessary to review alternative insurance coverages and plans. The City has indicated that it fully intends to convene the insurance committee in order to discuss the insurance plans. The Union will be involved in participating in the joint medical/hospitalization insurance committee meetings. The parties will then have the opportunity to fully discuss some of the concerns which have been raised by the FOP in the instant matter.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Hospitalization Insurance Provision be retained without any change.

Hospitalization Insurance – Current provision, no change.

10. PAID TIME OFF PROGRAM (Memorandum of Understanding)

The City proposed that the parties convene after execution of the contract, and with all other bargaining units, discuss the possible implementation of a “paid time off” program. The FOP at the hearing agreed to enter into such a Memorandum of Understanding. Therefore, this fact-finder would recommend the Memorandum of Understanding language proposed by the City and agreed to by both parties.

RECOMMENDATION

It is the recommendation of this fact-finder that the Memorandum of Understanding language proposed by the City pertaining to a discussion of the paid time off program be adopted.

Paid Time Off Program (Memorandum of Understanding)

Language proposed by the City and agreed to by both parties.

11. EMPLOYEE RIGHTS -- The FOP withdrew its proposal regarding this provision.

12. COMPENSATORY TIME -- The FOP withdrew its proposal regarding this provision.

13. DURATION

The City proposed a three-year Agreement. The FOP proposed that there be another two-year Agreement.

The City maintains that a three-year Agreement would decrease its administrative costs in having to negotiate a labor agreement every two years. The City cites comparable communities in the area which have three-year agreements. It also points out that its Police Dispatcher Unit recently agreed to a three-year contractual term.

The FOP points out that in the past, the parties here have always had two-year Agreements. The FOP argues that there was no basis established by the City for now entering into a three-year Agreement.

ANALYSIS – This fact-finder would recommend a two-year Agreement. The parties in the past have always had two-year contracts and it would be reasonable to once again provide for a contract duration of two years. There was insufficient basis established by the City for the parties to now have a three-year Agreement.

RECOMMENDATION

It is the recommendation of this fact-finder that there be a two-year Agreement as proposed by the FOP:

Duration of Agreement – Two- year Agreement.

CONCLUSION

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 would recommend that all tentative agreements previously reached by the parties be incorporated into their final Agreement.

MAY 3, 1999


JAMES M. MANCINI, FACT-FINDER