

STATE OF OHIO
RELATIONS BOARD
SEP 23 10 45 AM '99

STATE OF OHIO
THE STATE EMPLOYEE RELATIONS BOARD
FACT FINDING REPORT

In Re: :
: :
Fraternal Order of Police, : Case No. 98-MED-09-0862
Ohio Labor Council , Inc. :
(Lieutenants) and City of Athens :

FACT FINDING REPORT

The undersigned, Steven L. Ball, appointed as State Employee Relations Board fact-finder, makes the following report:

I. Hearing

This matter was heard in the City Council Hearing Room, City of Athens, on September 10, 1999 commencing at 10:30 a.m. The following were present on behalf of the respective parties:

City of Athens

Garry E. Hunter, City Attorney
Wayne Key, Service Safety Dir.
Beverly Henderson, Personnel Dir.
Rick Mayer, Chief of Police

F.O.P. - Athens Police Lieutenants Bargaining Unit

Mel Walcutt, F.O.P. Staff Representative
Tom Pyle, Lt.
John Withers, Lt.

II. Mediation

This matter was the subject of a tentative agreement, which was rejected by the union's vote of the membership on July 20. The parties met subsequent to the vote and agreed to modify certain language in Article 17, as attached hereto. The only remaining issue is the wage package as contained in Article 16.1 of the tentative agreement. Both parties submitted position statements prior to the hearing, which were well-prepared and exhaustive. Mediation was attempted after presentations were made, but no progress occurred. After hearing, at the Fact-Finder's request, the City provided a brief written history as to the wage negotiations, which history was agreed to by the union representative.

III. Criteria

The parties were advised that consideration would be given to the criteria listed in §4117.14 O.R.C. and Rule 4117-9-05(K) of the State Employee Relations Board, as follows:

- (1) Past collectively bargained agreements, if any, 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 the public service or in private employment.

IV. Issues and Recommendations

The previous agreement expired on December 19, 1998. The parties agreed to continue under the terms of the prior agreement pending negotiations. This is the first time that lieutenants have negotiated as a separate bargaining unit. The unit is comprised of six lieutenants.

Finding of Fact - Article 16

The tentative agreement provided for lieutenants to receive 20% more in pay than the highest patrolman (12% during a six month's probationary period). There are no ranks between the two. The union now wishes a 21% differential, having rejected the agreement by a vote of the bargaining unit.

The union contends that the officers have been given increased duties over the last three years. The mayor has instituted a management plan to diffuse the decision-making power to lower supervisory personnel throughout all City departments, including the police department. This has resulted in increased administrative duties, including the budgeting and planning processes.

The union contends that the 21% differential would be more in keeping with other comparable police departments. The City disagrees with the applicability of the comparables proposed by the union.

The City contends that the vote of the membership, and the new demand, is unreasonable given other concessions the City made in the negotiation of the wage increases contained in the tentative agreement. Moreover, the City argues that the wage package as stated in the tentative agreement would still result in a percentage increase to the lieutenants greater than that negotiated by the fire department and non-union service workers, which received 4% increases.

The City also contends that the lieutenants job descriptions have not changed, and that the additional duties and decisions now made by the lieutenants were only those which they wished to assume. The City agrees that sufficient funds exist to pay for the new demand, but argue that the increased demand is made in bad-faith, given the concessions made by the City in the tentative agreement.

Approval of labor agreements are necessarily subject to the vote of union membership, as well as the vote of the public authority. Thus, the mere fact of a negative vote, followed by new demands, does not persuade this fact-finder that bad faith bargaining has occurred. However, especially given the small number of employees in the bargaining unit, it appears to this Fact-Finder that great weight should be given to a tentative agreement absent some obvious error in negotiations or great divergence in bargaining positions justified by the facts.

In this case, the requested increase from that in the tentative agreement is small. Both the tentative agreement and the new proposal as to wages are reasonable and generally in keeping with similarly situated employees working for comparable municipal authorities. The fact finder observes that the union negotiating team did a patently good job of negotiating, resulting in a package with a greater percentage increase than other police and City employees. Concessions were minimal and in no case greater than other bargaining units.

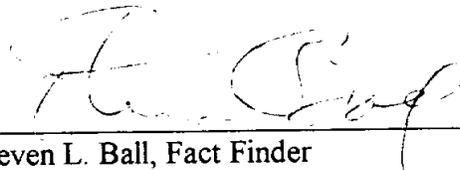
Recommendation

The wage increases in the tentative agreement, and the 20% difference between patrolmen and lieutenants, are reasonable and in keeping with agreements of other City bargaining units and other comparable municipalities. It also appears that no injustice will occur by implementation of the tentative agreement. The Fact-Finder recommends that the tentative agreement be affirmed in

all particulars, except Article 17, which should be modified pursuant to the subsequent agreement of the parties as attached hereto.

The agreement should be retroactive to the expiration of the prior agreement, December 19, 1998.

Respectfully submitted,



Steven L. Ball, Fact Finder
September 27, 1999

CERTIFICATE OF MAILING

I hereby certify that a copy of the above report was mailed (overnight mail) to Garry Hunter, Law Administration Building, 8 East Washington Street, Suite 301, Athens, Ohio 45701 and to Mel Walcutt, 222 East Town Street, Columbus, Ohio 43215, on the 28th day of September, 1999 and on the same date the original of said report was mailed by regular mail to the State Employee Relations Board.



Steven L. Ball

**CITY OF ATHENS
COUNTER PROPOSAL
August 3, 1999**

**ARTICLE 17
SHIFT DIFFERENTIAL**

SECTION 17.1 – SHIFT DIFFERENTIAL

A shift differential of twenty (20) cents per hour will be paid for all hours worked by an employee when a majority of his/her regularly scheduled shift hours occur between 5:00 p.m. and 7:00 a.m., Monday through Friday and weekends. Day shift employees who are held over beyond 3:00 p.m. shall be eligible for shift differential for hours actually worked beyond 3:00 p.m.

Lieutenants assigned to task forces may elect to receive shift differential at the above rate or at a rate of twenty (20) cents per hour for all hours actually worked between 5:00 p.m. and 7:00 a.m., Monday through Friday and weekends and ten (10) cents per hour for all hours actually worked outside the county between 7:00 a.m. and 5:00 p.m., Monday through Friday.

SECTION 17.2 – METHOD OF PAYMENT

Shift differential shall be paid only for actual hours worked during a workday. Shift differential shall not be paid in addition to regular pay for any hours of leave with pay. If shift differential pay is applicable, under terms of this Article, to a workday, and authorized overtime occurs in conjunction with the regular work day, the shift differential shall be paid for each hour of overtime worked. However, the shift differential pay shall not be added to the base hourly rate prior to computing the overtime rate. Shift differential pay is not applicable to court appearance time: but is applicable to hours worked when called back to duty if the member otherwise qualifies for shift differential pay. Shift differential pay will be paid on a bi-weekly basis and will not be cumulative under any circumstance.