

STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

SEP 17 10 49 AM '99

IN THE MATTER OF FACT FINDING :
:
BETWEEN :
:
THE CITY OF IRONTON, OHIO :
: **REPORT OF THE FACTFINDER**
-AND- :
:
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :

SERB CASE NUMBERS: 99-MED-01-0049; and, 99-MED-01-0050

BARGAINING UNITS: Eleven (11) Patrol Officers (Blue Unit); Three (3) Sergeants and Four (4) Captains (Gold Unit).

FACT FINDING PROCEEDING: July 14, 1999; Ironton, Ohio.

FACT FINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Robert W. Cross, Consultant
Robert Cleary, Mayor
Cindy Anderson, Fiscal Officer/Treasurer

FOR THE UNION

Frank T. Lambros, Staff Representative
Lon A. Hilton, Sergeant
Jerry L. Leach, Captain
James Akers, Patrolman

ADMINISTRATION

By correspondence dated March 1, 1999, from the State Employment Relations Board, Columbus, Ohio, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j), in an effort to facilitate resolution of those issues that remained at impasse between these parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful. As the Record of evidence demonstrates, these Parties were able to reach tentative agreement that occurred during the course of a negotiation session dated May 11, 1999, which will be referenced throughout this Fact Finding Report with supporting rationale. As indicated by the Parties, they have met to engage in Collective Bargaining on April 5, 1999; and, in Mediation on May 11, 1999 that resulted in the tentative Agreement previously referenced. The Fact Finder met with these Parties on July 14, 1999, commencing at approximately 9:30 a.m. wherein the Parties engaged in Mediation with the Fact Finder concerning those issues that remained at impasse. When it became apparent that the Mediation efforts would not lead to resolution of those issues, the Fact Finding proceeding commenced thereafter. This proceeding concluded at approximately 1:30 p.m. that afternoon. During the course thereof, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The Fact Finder offered the Parties the opportunity to provide a written summation at the conclusion of the Fact Finding proceeding which was declined.

It was apparent to the Fact Finder throughout the course of the Mediation engaged

in as well as the Fact Finding proceeding that these Parties had indeed engaged in “good faith bargaining” throughout the course thereof. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and those issues that remain at impasse are the subject matter for the issuance of this Report hereunder.

The following findings and recommendations are hereby offered for consideration by these Parties and were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117.9 which recognizes certain criteria for consideration in the Fact Finding process as follows:

- (1) Past collectively-bargaining agreements, if any, between the Parties;
- (2) Comparison of 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 and the ability of the Public Employer to finance and administer the issues proposed and the affect of the adjustment on a normal standard of public service;
- (4) The lawful authority of the Public Employer;
- (5) Any stipulations of the Parties; and,
- (6) Such other factors not confined in 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.

I. THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The Collective Bargaining Agreement between the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the “Union” and/or the “FOP” and the City of Ironton, Ohio, hereinafter referred to as the “Employer,” expired on March 31, 1999. It is clear that the Parties do not take issue with considerations relative to retroactivity to certain economic issues that remain at impasse. As indicated by the Parties, they have previously met on April 5, 1999, and engaged in mediation with the assistance of State Mediator Ed Turner on May 11, 1999. During the course of that mediation session, the Parties were able to reach tentative agreement on those issues that remained at impasse. However, subsequent thereto, ratification efforts failed.

As the Record demonstrates, the Bargaining Units represented by the FOP consists of eleven (11) Patrol Officers; three (3) Sergeants and four (4) Captains and excludes all others. The Parties’ Collective Bargaining Agreement in Article I, titled “Purpose and Recognition,” Paragraph B titled “Recognition,” indicates as follows:

“The Fraternal Order of Police, Ohio Labor Council, Inc., shall have exclusive recognition as the Bargaining Agent for the purpose of Collective Bargaining in all matters concerning wages, hours, terms and working conditions of the Members of the Bargaining Unit. The Bargaining Unit shall consist of all full-time Sergeants and Captains and Patrolmen in the Ironton Police Department.”

The Parties entered into an Agreement to an extension which addresses retroactivity wherein such shall be applicable even during such time if conciliation is warranted.

The Bargaining Unit Members provide a valuable service to the community within

which it serves wherein it patrols, responds to citizens' calls for service, guards and transports prisoners, handles criminal investigations, traffic investigations, serves warrants and subpoenas and supervises patrol personnel or any other assigned duties that may be applicable.

By document identified as "Exhibit - 2," titled "Ironton Police Department and FOP/OLC, Inc., 1999, Agreed Articles," it was indicated that the following Articles shall be transferred to the successor Collective Bargaining Agreement without change since neither Party proposed any changes or modifications relative thereto as follows:

- Article 1 - Purpose/Recognition
- Article 2 - Dues Deduction
- Article 3 - Nondiscrimination
- Article 4 - Residency
- Article 5 - Management Rights
- Article 6 - Sick Leave/Funeral Leave
- Article 8 - Jury Duty
- Article 9 - Negotiations/Leave of Absence
- Article 11 - Personal Days
- Article 12 - Holidays
- Article 15 - Seniority
- Article 21 - Hospitalization
- Article 22 - Drug Testing
- Article 23 - Outside Employment
- Article 24 - Personally-owned Handguns
- Article 25 - No Strike/No Lockout
- Article 26 - Sole Recourse
- Article 28 - Severability
- Article 29 - Other Organizations
- Article 30 - Patrolmen As Shift Commander
- Article 32 - Injury Leave

As indicated by the Parties, these Articles have been tentatively agreed to and have been dated and signed off by both Party Representatives on April 27, 1999. Moreover, additional documents relative to the following Articles were indicated as being tentatively

agreed to by these Parties:

- Article 7 - Probationary Period**
- Article 14 - Hours of Work and Overtime**
- Article 16 - Layoffs (Relative to the 21 Day Calendar Day Period for Notice in Writing of an Intended Layoff)**
- Article 18 - Grievance (Paragraphs A through C indicating no change)**
- Article 27 - Training and Re-training (Maintaining current language)**
- Article 33 - Paid Absence Day**
- Article 31 - Expenses for Travel (Hotel/Motel, Meals and Overtime Meal Tickets)**

During the course of the mediation engaged in by the Fact Finder, the Parties were able to reach tentative agreement concerning one aspect of Article 16, titled "Layoff" which addresses the recall list duration for any personnel who may have suffered from a lay-off from his employment. During the course thereof, the FOP argued that the statutory recognition relative to this layoff consideration was twelve (12) months and that additional time was necessary under the Collective Bargaining Agreement. During the course of mediation, it was agreed to that twenty-four (24) months would be acceptable relative to the amount of time the recall list would be maintained. As such, it shall be included in this successor Collective Bargaining Agreement.

As previously discussed, several other issues remain at impasse between these Parties. They are listed and addressed as follows and will be discussed more fully herein below where the Fact Finder will state the respective positions of the Parties as well as indicate a recommendation with rationale therefore.

The Fact Finder is required to consider comparable Employee Units with regard to their overall makeup and services provided to the members of the respective community. Both Parties have relied upon comparable data relative to other municipalities and

jurisdictions concerning comparable work provided by these Bargaining Units and, as is typically apparent, there is no “on point comparison” relative to this Bargaining Unit and the jurisdiction within which it performs its functions. Whatever similarities that may exist must be taken into consideration by the Fact Finder based on the above-noted statutory criteria. It is, and has been, the position of this Fact Finder that the Party proposing any deviation or deletion of the current language or of the “status quo,” bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice or current language. Based on the aforementioned considerations, the following issues remain at impasse between these Parties:

I. ARTICLE XVI - “LAYOFF”

ISSUE NO. 1

As indicated by the Parties, agreement was reached to extend the current language requiring a fourteen (14) day notice of layoff to that constituting twenty-one (21) days. As indicated by and between the Parties, such was signed off and, as such, it is recommended for inclusion herein as such. Apparently some discussions ensued from the Mayor’s office concerning probable layoffs, including the Police Department, that were made prior to ratification efforts by the Union. The Union indicated that this prevented any ratification of the tentative agreement reached during the course of the May 11, 1999, mediation session with the State Mediator. Nonetheless, with regard to the twenty-one (21) day calendar day notice of impending layoffs, the Parties indicated that indeed they were still in

agreement relative thereto. As such, that aspect is recommended for inclusion in the successor Collective Bargaining Agreement.

ISSUE NO. 2

The current Collective Bargaining Agreement makes no reference to recall rights and, as indicated by the Parties, absent any specific reference in the Collective Bargaining Agreement, the statutory period of twelve (12) months is applicable. The Union, prior to mediation efforts engaged in by the Fact Finder, indicated it was proposing a thirty-six (36) month recall provision for any personnel who may suffer a layoff from employment. The Employer took the position initially that the statutory provision requiring twelve (12) months was sufficient. During the course of the mediation efforts engaged in by the Fact Finder, the Parties agreed to extend that statutory period for inclusion into the successor Collective Bargaining Agreement under this Article that would provide for a twenty-four (24) month recall provision concerning layoffs. As such, it is recommended.

The remaining issues that are subject to the impasse concern Duration of the Agreement, hourly wage increases, the PFDPF Retirement Pickup, Shift Differential/Shift Inequity, and the FOP's proposal seeking "me too" language for the second and third year of the successor Collective Bargaining Agreement.

As the data presented indicates, the financial picture for this area is not promising. It has a declining tax base and infrastructure and, according to the census data provided, one census tract is 25% below the poverty level. There was some discussion concerning the fact that the 1998 tax year was the first loss in income tax the City has experienced in quite some time. It had employers such as Allied Signal, which was the third largest employer in

the City, closed its operations in February of 1999, wherein sixty-two (62) employees were laid off permanently. RDS permanently closed its facility in February of 1999, with thirteen (13) employee affected. And, Cabletron Systems permanently closed its facility in March of 1999, affecting over three hundred (300) employees. Clearly, with those instances, the tax base revenue the City had access to would indeed be affected. According to Cindy Anderson, Fiscal Officer/Treasurer, this was the worst financial condition that the City has been faced with during the twelve (12) years that she has been employed with the City. The Record demonstrates further that there are certain fundings received by way of a Worker's Compensation Rebate that has been earmarked for capital improvement projects and was not placed into the General Fund. It is basically in a fund characterized as a "Rainy Day" fund that takes a resolution from City Council to move it into the General Fund. Such needs majority approval by Council in order to effectuate that maneuver. Ms. Anderson characterized the next year's budget as "extremely tight," and that any significant increases given the declining tax base and the closures of the plants listed *supra* would have an adverse impact on the City. It was also discussed that the City received what was characterized as an Empowerment Grant that was only afforded to fifteen (15) cities and Ironton was one recipient. As indicated, a census tract of twelve blocks was more than 25% below the poverty level which, unfortunately, qualified it under this program to receive funding. It was also indicated that such Empowerment Grant money cannot be utilized for wages or increases in Collective Bargaining benefits. The Empowerment Grant has an intended purpose for funding infrastructure improvement and, as indicated, could affect the fire station "within the zone" for this Empowerment

Grant being subject to the building of either a new facility or improvements to the existing one. It was indicated that this money could not be used for police cruisers and/or any other contractual benefits.

The Record also demonstrates that other Union Employees received modest wage increases. AFSCME received a 2% increase for each of three (3) years of it's Agreement with the City and a 22¢ additional hourly increase for five (5) skilled positions. The Fire Department received a 2% increase plus Rank Differential increases as well as a 1% pension pickup which equates to 70% of their total pickup for their pension benefit. Moreover, even though attempts were made to increase the income tax, such never made it to the ballot for consideration.

As previously indicated, there are five (5) issues within Article XIX, titled "Wages," and they are listed as follows: Duration, Hourly Wage Increase, Retirement Pickup, Shift Differential/Shift Inequity, and, "Me Too" language.

THE FOP'S POSITION:

The FOP initially opposes any re-opener for the second and third year of the Agreement as proposed by the Employer based on recent experiences that it characterizes as aggravating, time consuming and causing morale problems with the employees. It proposes a three (3) year agreement that will enable a known financial standard which may result in a lessor raise however, providing security for three (3) years in duration.

With respect to an hourly wage increase, it proposes a 4% increase for each year of the successor Collective Bargaining Agreement. It contends that its comparables clearly

demonstrate that this Police Department is seriously out of step. The top pay for Patrol Officers is 11% below the average compensation of the comparable agencies. It notes that Sergeants are 16% below the average compensation of the comparable agencies and Captains are 22.85% below that range. It notes that its comparable cities of Gallipolis and Wellston pay 100% of the employee's portion of their retirement contribution and they too are in a similar financial condition to that of this City. It notes that this City continues to hire personnel and create new jobs while, at the same time, building a new City building and Police Department. Given the comparable data it has supplied, a 4% increase would barely keep this membership at the current level and will not in any way place it near the average pay of comparables as they exist.

With respect to the Pension Pickup, the membership currently receive 6% of their 10% contribution to the Police and Fire Disability Pension Pickup paid by the City on their behalf. The FOP is proposing an additional 1% pickup for every year of this Agreement which will place them at 90% at the end of the three (3) year Agreement. It notes that the AFSCME employees currently receive 100% of their portion paid. Public Safety personnel pay a higher portion of retirement than civilians and that AFSCME's total contribution is 8% of their income whereas police and fire personnel pay 10% of their income to their retirement system. The City currently pays 70% of the Fire Department's contribution rate and, therefore, it is recommended, based on the comparable data, both internally and externally, that the Fact Finder recommend it's proposal.

With respect to the Shift Differential/Shift Inequity issue, it proposes an increase of 20¢ per hour for all shifts. It notes that the AFSCME membership in 1996 received a 33¢

per hour increase for all heavy duty equipment operators and during the same negotiations period, the Police Department did not receive an annual raise. This hidden AFSCME raise has seriously undermined the City's credibility and during the most recent AFSCME negotiations, the City even offered an additional 22¢ per hour to all AFSCME-skilled employees. The FOP insists that such is insulting to it's membership who are also skilled employees who are required to maintain current certification with the Ohio Peace Officers Training Academy. It notes several other members maintain additional professional certifications in fire arms, as fire arm instructors, field training officers, and domestic violence instructors. It notes that Shift Differential applies only to Police Department personnel and few, if any, City employees work seven (7) days a week, twenty-four (24) hours per day.

The FOP is proposing "me too" language where if any group of employees receives any raise higher than that received by the Police Department, that it too shall receive the same raise minus what they may have already received. This language would only apply to the second and third years of the successor Collective Bargaining Agreement. It argues that the City has a history of "blind-siding" membership on this issue and that in 1996 it claimed poverty, yet they gave specific AFSCME personnel a 33¢ an hour adjustment. The "Me-Too" language in affect at the time allowed for a re-opener if anyone received a raise. It notes that the City hid that raise and AFSCME also hid this from the majority of its membership. In 1999, the City gave a 22¢ per hour raise to AFSCME's skilled personnel. In 1998, a Grievance was filed and won wherein the FOP received approximately a 2.3% increase based on the raises given to the employees of the City's Finance Department.

Given this credibility issue, it insists that this membership needs the protection of this “Me Too” language.

THE CITY’S POSITION:

The City takes the position that the City of Ironton has experienced a declining tax base given the closure of Allied Signal, RDS and Cabletron Industries, as well as the serious infrastructure problems that need immediate attention. The funding available via the Worker’s Compensation Rebate have been earmarked for addressing certain “capital projects” and requires a resolution by the City Council to move it or utilize it in any way. The Empowerment Grant money cannot be utilized for capital improvements and cannot be utilized for any monetary increases under the Collective Bargaining Agreement. Certain criteria were followed in order to qualify for this funding and it cannot be utilized to fund the increases proposed by the Union. Overall, the City emphasizes that the City has suffered financially for much of the past nineteen (19) years since it filed for bankruptcy in 1980. It has recently experienced a declining tax base and sees no immediate improvement since no developments, industry, etc., have indicated any move into it’s jurisdictional boundaries. As such, it proposes that the Parties adopt that which was contained in the tentative Agreement and, in the event that a three (3) year Agreement is recommended, that the employees receive a 2% increase for each of the three (3) years.

The City emphasizes that the other Bargaining Units within the City received a 2% wage increase, the same offered to these employees with the Fire Department receiving a 1% pension pickup. It notes that the City has experienced a declining income tax revenue from 1997 through 1998, and anticipates a 10% reduction from the 1998 figures. It notes

that the final year of the expired Collective Bargaining Agreement these employees realized a 3% Pension Pickup, 15¢ Shift Differential for all shifts and, a Rank Adjustment for Sergeants of \$125; and a \$250 Rank Differential for Captains.

RECOMMENDATIONS & RATIONALE

It is apparent by reviewing the comparable data provided that the City has, and is likely to continue to, experience a declining tax base. As is evidenced in the Employer's exhibits, titled "The Budget Impact for 2000," it indicates that it indeed received three (3) Warn Act Notices in 1999 concerning Allied Signal, RDS, and Cabletron Systems. In addition, 1997 saw an income tax revenue of \$1,967,122 and for the tax year 1998, that amount decreased by approximately 1% to \$1,947,788. The projected decrease of 5% from the 1998 figure was anticipated for 1999. It notes that a total cost per officer with over 30 months of employment equates to approximately \$44,820 to \$45,770. The unemployment rate as set forth in the Ohio Labor Market Information documentation provided for May, 1999, indicates that Lawrence County has a 5.3% unemployment rate, which is above the U.S. rate and above that recognized throughout the State.

Of significance importance is the documentation identified as "Exhibit - 1" titled the "TA Ironton Police Department" with a date of May 11, 1999. While the Undersigned generally takes the position that a tentative agreement would be the best indication of what the Parties intent was relative to how they were to be bound under the successor Collective Bargaining Agreement, it appears that, based on the testimony of record that the Mayor untimely indicated that despite this tentative agreement, there would likely end up being

layoffs. Whatever attempts the Parties engaged in that resulted in a tentative agreement were jeopardized based on that statement. The Employer takes the position that it would agree to that contained in the tentative agreement and, in the event that a three (3) year successor was recommended, that a 2% across-the-board increase would be recommended. It is important to note also that the other two Bargaining Units apparently received a 2% increase for each year of their successor Collective Bargaining Agreements. Based on the comparable data, the City of Ironton, located in Lawrence County, Ohio, has a population of approximately 12,750. The comparables provided were Gallipolis, Greenfield, Hillsboro, Jackson, Portsmouth and Wellston, ranging in population from 5,000 to 22,676. Of those comparables, each currently have a contractual duration of at least three years. The City proposes a one (1) year contract with re-openers for wages in the second and third years. Based on those comparables, it would indeed seem appropriate to recommend a three (3) year contract and, as such, is recommended.

It appears that the City of Hillsboro has the highest entry level for Police Officers at \$26,999 with Gallipolis receiving the least at \$19,532. Ironton, under its current agreement, is at \$21,653. So, comparably-situated, Ironton ranks at the middle of these jurisdictions. The top level for Sergeants with those comparable jurisdictions has the City of Ironton at \$25,501 which is at the bottom with regard to the comparable data provided. Such is also true with the rank of Captain, where Ironton's entry level and top level are the same at \$25,980. The highest is Portsmouth with \$38,418 with the average being \$31,908. It is important to note that the counties of Jackson and Wellston do not have an income tax and that, along with Ironton, Gallipolis has 1% with the remainder at 1.5% and 1.4%,

respectively. Obviously, given those existing income tax bases of the comparables noted, more funding could be generated to address the types of economic issues that are at impasse herein.

Of those jurisdictions recognizing a retirement pickup, Gallipolis and Wellston have a 100% paid by the City contribution, with Portsmouth at 80% and Ironton currently at 60%. The City of Hillsboro has a \$600 per year payment by the City. Currently, the Fire Department receives 70% paid by the City and AFSCME recognizes 100% paid by the City. As such, some adjustment is warranted.

Given the comparable data provided, particularly those internally recognized, the AFSCME employees received an increase of 22¢ per hour for some skilled employees which numbered approximately five to six. However, the Fire Department received a 2% increase as did AFSCME based on across-the-board base wage increases. It is recommended that the Parties' Collective Bargaining Agreement be of three (3) years duration which would provide stability and security relative to those financial items contained therein, subject to the re-opener for wages in year three (3). It is recommended that the Parties adopt a wage increase in year one (1) of the three (3) year successor Collective Bargaining Agreement reflecting a 2.5% increase to current base wages; a 2.0% increase to the year one (1) base wage in year two (2); and, that year three (3) be subject to re-opener. The additional increase in year one (1); i.e., 2.5% vs. 2.0% received by AFSCME and the Fire Department, takes into consideration the additional 22¢ per hour increase the "skilled employees" in the AFSCME Unit received.

Additionally, it is recommended that all Bargaining Unit Members receive a 1%

PFDPF pension pickup of their contribution rate which would bring that rate to 70% which is equal to the Fire Department's pension pickup.

It is also recommended that the Sergeants receive a \$125 per year rank adjustment and that the Captains receive a \$250 per year rank adjustment.

The Union's request for the "me too" language is not recommended given the fact that such was recently removed from the Collective Bargaining Agreement and, as such, there exists no compelling reason to include it at this time.

It is also recommended that the Shift Differential/Shift Inequity amount be increased to 20¢ an hour for all shifts.

The recommendation for PFDPF Pension Pick-up; Rank Adjustments for Sergeants and Captain; and, the Shift Differential/Shift Inequity provisions were gleaned from the May 11, 1999, tentative Agreement and provide compelling basis for inclusion in the successor Agreement.

Moreover, the same holds true for Article 36, "Canine;" Article 10, "Court Time;" Article 17, "Corrective Action;" and, Article 20, "Clothing Allowance." The tentative Agreement further indicates the withdrawal of the FOP's proposals concerning Article 34, "Police Memorial Day;" and, Article 13, "Vacation." Accordingly, they are recommended.

CONCLUSION:

Hopefully, the recommendations contained herein can be deemed as reasonable in light of the data presented, the representations made by the Parties; and, based on the common interests of both entities. It is hopeful that the Parties can adopt these

recommendations so that the successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without interruption. Moreover, these recommendations were made based on the comparable data provided; the stipulations of the Parties; the positions indicated to the Fact Finder during the course of mediation and in Fact Finding; and, were based on the mutual interests and concerns of each Party to this Agreement.



DAVID W. STANTON, ESQ.
Fact Finder

Dated: September 16th 1999.
Cincinnati, Ohio.

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations have been forwarded by overnight mail service to Robert W. Cross, Cross Management, 8593 Ohio River Road, Wheelersburg, Ohio 45694; Frank T. Lambros, 548 Gennie Lane, Cincinnati, Ohio 45244; and, to G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 16th day of September, 1999.



DAVID W. STANTON, ESQ. (0042532)
Fact Finder