

STATE OF OHIO  
RECORDS

Nov 17 10 17 AM '99

IN THE MATTER  
OF  
FACTFINDING  
BETWEEN  
THE CITY OF HARRISON, OHIO  
AND  
THE FRATERNAL ORDER OF POLICE/  
OHIO LABOR COUNCIL, INC.

Hearing: October 26, 1999  
SERB Case Nos.: 99-MED-03-0183; 0184  
Date of Report: November 15, 1999  
Issue: Factfinding

Union Representative:

Debbie McCormick  
FOP/Ohio Labor Council, Inc.  
10979 Reed Hartman Highway  
Suite 311-313  
Blue Ash, Ohio 45242  
FAX: 984.9561

City Representative:

William Ennis  
Ennis, Roberts & Fischer  
121 West Ninth Street  
Cincinnati, Ohio 45202  
FAX: 562.4986

REPORT AND RECOMMENDATIONS

Michael Paolucci  
Factfinder

### Administration

By letter dated April 30, 1999, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On October 26, 1999, a hearing went forward following a brief attempt at mediation and the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on October 26, 1999, and is now ready for a factfinding report.

### Factual Background

The City is located in Southwestern Ohio, about thirty (30) miles from Cincinnati and lies along the Ohio-Indiana border; the Union represents approximately eighteen (18) employees, including Patrol Officers, Sergeants and Lieutenants, who work in the City's police division.

Prior to the beginning of the hearing, mediation was attempted by the factfinder, but was unsuccessful. A hearing was held and twelve (12) issues were submitted as follows:

1. Article 2, Sections 2.1, 2.2., 2.3 - Wages;
2. Article 4, Section 4.2 - Overtime;
3. Article 5 - Court Appearances;
4. Article 10 - Holiday Pay;
5. Article 11, Section 11.1 - Personal Leave;
6. Article 11, Section 11.2 - Personal Leave (Lieutenant);
7. Article 12, Section 12.1 - Sick Leave;
8. Article 15, Section 15.2 - Vacations;
9. Article 22 - Uniforms and Equipment;
10. Article 23, Section 23.1 & Appendix A - Medical Insurance;
11. New Article - Injury Leave;
12. Article 27 - Duration.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (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. (emphasis added)

The issues will be addressed giving consideration to all of the required factors.

## 1. **ARTICLE 2, SECTIONS 2.1, 2.2., 2.3 - WAGES**

### Union Position

The Union proposes a three year contract with increases in each year as follows:

#### Police Officers:

1. \$1.75 per hour increase (to \$20.10 or an approximate 9.5% increase);
2. 3.5 % general wage increase (a .70 increase to \$20.80);
3. 3.5 % general wage increase (a .73 increase to \$21.53);

(NOTE: For purposes of illustration, only the top step wage is used for police officers)

#### Sergeants:

1. \$2.25 per hour increase (to \$22.95 or an approximate 11% increase);
2. 3.5 % general wage increase (a .80 increase to \$23.75);

3. 3.5 % general wage increase (a .83 increase to \$24.58)

Lieutenant:

16% above the Sergeant's wages (or \$26.62, \$27.55, and \$28.50 for each year of a three year contract).

(Please note that all number in parentheses above are calculations by the undersigned and should not be completely relied on without double checking)

The Union argues that the unit has historically fallen in the middle range of comparable units in and around the Hamilton County, Ohio area (an area that includes units in Hamilton, Butler, Warren and Clermont Counties). That historic placement has recently been reversed and the unit is now at the bottom of comparable units in the same area. It argued that the unit is an excellent group of employees and may be quickly reduced by as much as five (5) employees if the wages are not immediately adjusted. It contends that even if the Union's proposal is accepted, the unit will still be 2.25% below any other unit in the County. It emphasizes that its proposal is only intended to make up lost ground and place the unit back where it has historically been. It contends that the City is growing and should be able to afford the raises proposed.

City Position

The City proposes a three year contract with increases in each year as follows:

Police Officers:

1. \$.75 per hour increase (to \$19.10, an approximate 4.1% increase);
  2. \$.40 per hour increase (to \$19.50, an approximate 2.1% increase);
  3. \$.40 per hour increase (to \$19.90, an approximate 2.1% increase).
- Total: \$1.55 (an average of 2.77% increase per year or a total of 8.3% over three (3) years)

(NOTE: For purposes of illustration, only the top step wage is used for police officers)

Sergeants:

1. \$.85 per hour increase (to \$21.55, an approximate 4.1% increase);

2. \$.45 per hour increase (to \$22.00, an approximate 2.1% increase);
  3. \$.45 per hour increase (to \$22.45, an approximate 2.0% increase).
- Total: \$1.75 (an average of 2.73% increase per year or a total of 8.2% over three (3) years).

Lieutenant:

1. \$.90 per hour increase over the sergeants (to \$21.60, an approximate 4.3% increase);
2. \$.50 per hour increase (to \$22.10, an approximate 2.3% increase);
3. \$.50 per hour increase (to \$22.60, an approximate 2.3% increase).

Total: \$1.90 (an average of 2.97% increase per year or a total of 8.9% for three (3) years).

(Please note that all number in parentheses above are calculations by the undersigned and should not be completely relied on without double checking)

The City concedes that the unit has fallen behind where it has normally fallen in terms of comparables, but argues that the financial condition of the City does not justify the enormous increase proposed by the Union. The City introduced evidence that it has incurred increased expenses as a result of the deterioration of its infrastructure due to age and the growth of the City. Not only has the current equipment become old and obsolete, but the City is growing and its income is not rising along with the expenses that follow such growth. In sum the City presented evidence that its financial condition is not good.

As an example of the poor financial condition of the City, it introduced evidence that it has begun a hiring freeze and the Department Director has been ordered to make a 10% across the board cuts. Indeed, the City has taken on an extra 3.6 million in debt — some of which will be used to retire current debt, the rest will be used to improve the streets. The cause of these reductions is a large deficit that the City has incurred. Even though the City is growing, the growth is limited due to access to utilities and the limited amount of available land. In fact, it points out that it lost 150 jobs in 1998 when a major employer moved to Indiana. Moreover, it is predicting a deficit in the general fund for 1999 and 2000.

## Recommendation

In reviewing the Parties positions two (2) facts must be found as incontrovertible — this police unit has lost ground in wages from where it has historically been and the City is not in good financial condition. The Union proved that all other things being equal, its proposal would be reasonable and justified. The unit has lost a significant amount of ground as it applies to wages; the unit should reasonably expect to maintain its historic position among other units in and around the Hamilton, County area; and the lost ground should be made up in some way. Unfortunately all other things are not equal and the City has a valid position to consider in making a recommendation on wages.

The City proved, and the Union conceded that the financial condition of the City is in a state of flux. The next few years may result in the City incurring a deficit in its general fund. The deficits it has incurred may increase and it may not be able to readily pay for the deficit from the remaining funds. This serious condition is valid to consider in determining what affect the unit's wage increase should be.

These countervailing factors were considered in making a recommendation. The Union's otherwise strong position was tempered by the weak financial condition of the City. An attempt was thus made in recommending a wage increase to keep the Union from being at the bottom of the comparables, yet without raising them to the level they might otherwise expect due to the City's financial condition. While neither goal is possible to reach, a compromise recommendation is made based on the foregoing.

It is recommended that the wage increase for three (3) years be as follows:

5%, 3%, and 3% for each year of a three (3) year contract. This would apply to all positions.

The precise hourly wage for each position has purposefully not been calculated and is left for the Parties to compute.

For all of the remaining issues, the Union addressed each proposal one (1) issue at a time while the City addressed all in one argument. For this reason, the City's position will be summarized in the second issue but will not be repeated for each similar issue that follows except where appropriate. The issues that contain the same response of the City include:

- Comp time - Issue 2;
- Sick Leave - Issue 7;
- Holidays - Issue 4;
- Personal Leave - Issues 5 & 6;
- Injury Leave - Issue 11; and,
- Lieutenant Vacation - Issue 8 (but ultimately settled below).

## **2. ARTICLE 4, SECTION 4.2 - OVERTIME**

### Union Position

The Union proposes modifying the Agreement such that employees can elect to receive compensatory time off instead of overtime. It points to the common existence of such language with only two (2) other police units within the area not having the benefit. Since it is a common benefit for police officers; and since the benefit has no cost attached; then the Union argues that it is reasonable to grant.

City Position

The City contends that it has an absentee problem. Thus, regardless of what the outside comparables show, it has as important interest in maintaining a certain number of employees on the clock. If the comp time benefit is granted, the City fears that its staffing problem will become even worse.

Recommendation

The City's absentee problem, alone, does not justify excluding this common benefit. It is a common benefit to police officers, it is common in the local area, and its cost is insignificant. However, the Union's proposed language gives too much power to the employee. While it is recommended that the benefit be included, it is recommended that such be done with only forty (40) hours maximum; with the right reserved to management to deny a request to use the compensatory time off; and with the right of management to cancel previously approved requests due to a manning shortage or other emergency. Benefits like this, while justified, can reasonably be assumed to require a breaking in period in which both Parties get used to the use of the benefit. For this reason, the Union's proposal should be modified as stated above.

**3. ARTICLE 5 - COURT APPEARANCES**

Union Position

The Union proposes keeping the benefit for traveling to Court Appearances at four (4) hours. Its proposal for the status quo is based on the length of time it takes to drive to the courthouse in

Hamilton County, Ohio. Since it often takes up to thirty (30) minutes for each direction, then the four (4) hours guarantees that the affected employee will not waste a long part of a day in traveling to a worthless hearing. It discounts the other comparables since none are as distant from the courthouse as the City.

#### City Position

The City proposes reducing the benefit to two (2) hours. The City presented evidence showing that few other units in the area (only two (2) out of seventeen (17)) have a four (4) hour minimum pay for reporting.

#### Recommendation

It is recommended that the *status quo* remain. The distance from the City to the Hamilton County Courthouse (at approximately thirty (30) miles) justifies the difference between this police unit and other comparables.

### **4. ARTICLE 10 - HOLIDAY PAY**

#### Union Position

The Union proposes adding another holiday to make the total paid holiday ten(10) instead of nine (9). It presented comparable police units showing that nine (9) holidays was low since most units received at least ten (10) paid holidays.

### City Position

The City opposes any increase in time off due to its absentee problem.

### Recommendation

It is recommended that the *status quo* remain. Although nine (9) paid holiday is low, when added to the two (2) personal days, it is acceptable. Indeed, when all Hamilton County municipalities are examined, eight (8) out of nineteen (19) receive eleven (11) or fewer paid days off through either holidays or personal days. In this case, the township receives eleven (11) and is within the acceptable range of other comparable police units within the county.

## **5. ARTICLE 11, SECTION 11.1 - PERSONAL LEAVE**

### Union Position

The Union opposes any decrease in personal leave days. It points out that the Union gave up three (3) personal days in 1990 in exchange for Longevity Pay. Since nothing is being offered in exchange for the proposed decrease of personal days, then it argues that the benefit must remain.

### City Position

The City wants a reduction in the number of personal days. The Parties could not agree on the history of the decrease in the number of personal days, but the City contends that its staffing problems justifies a reduction in the number of personal days that are available to the bargaining unit.

Recommendation

Since the analysis in the recommendation for Holiday Pay is the same here, it is sufficient to state that the *status quo* is recommended.

6. **ARTICLE 11, SECTION 11.2 - PERSONAL LEAVE**

Recommendation

The Union's proposal that employees receive an extra personal day for any six (6) month period in which no sick leave is used is not justified. The City's concern of overuse of leave is a legitimate concern. Since it does not find this solution acceptable, it would be improper to impose it as a recommendation. While the proposal may have some justification when misuse of paid time off does not exist, such is not the case here and the benefit can not be recommended.

7. **ARTICLE 12, SECTION 12.1 - SICK LEAVE**

Union Position

The Union proposes increasing the maximum from one thousand (1,000) hours to two thousand (2,000). Since many of the employees have already reached the limit, then it asks that the benefit be increased to continue the motivation for these employee to not use sick leave.

City Position

The City counters the Union's claim with evidence that few employees will benefit from an

increase in this benefit. It asserts that it would take over three (3) years for the average member to reach the maximum under the current contract. Therefore, it argues that justification does not exist for increasing the benefit.

### Recommendation

While the average member may not immediately receive a benefit, the higher seniority employees will. Moreover, the comparables show that unit is a little low. These factors along with the failure to keep up with other units in wages justifies some increase. A review of comparables shows that an increase to a maximum of 1,250 hours is justified and such is recommended.

## **8. ARTICLE 15, SECTION 15.2 - VACATIONS**

The Parties settled this issue at the hearing. The record of the Factfinder shows that the terms of the settlement were that the Lieutenant would receive three (3) vacation days more than the Police Officers. In addition, the record shows that Lieutenants would not receive overtime unless he/she works more than forty (40) hours per week. The overtime pay would not apply to hours of work per day regardless of the number of hours worked. Only the per week hours would be used in determining whether overtime is appropriate.

**9. ARTICLE 22 - UNIFORMS AND EQUIPMENT**

Union Position

The Union proposes increasing the benefit from \$300.00 to \$500.00 per month. It argues that the increase cost of uniforms, especially if the City imposes the requirement for sports jackets and ties, justifies the increased benefit.

City Position

The City argues that the Union's proposal is too high; that \$300.00 is within the range offered by comparable units; and that the Union's proposal for non-uniformed has no justification.

Recommendation

It is recommended that the current language be modified such that uniformed officers receive \$400.00 per year. While the \$300.00 is within the range of other units, it is low. Further, \$400.00 is closer to the average and is a reasonable increase.

**10. ARTICLE 23, SECTION 23.1 & APPENDIX A - MEDICAL INSURANCE**

The Parties agreed that little negotiating had taken place as it pertained to the issue of Medical Coverage. Indeed, the Union's position, that the current Medical Insurance provider was inadequate and was not providing competent administration, was a fact conceded to by the City. However, the City showed that the Parties had been involved in in-depth negotiations over the other issues listed and had not had the time to address this issue. A fact conceded to by the Union.

Due to the Parties' good faith efforts at negotiating; and since this is an important issue that

must involve negotiation, it would be imprudent for the undersigned to make any recommendation at this time. Although the Union has the issue preserved for conciliation in the event the Parties proceed that far, it is felt to be unwise for the undersigned to make any recommendations. Such would impede the future negotiation of the issue and it is better for the Parties to first explore the issue themselves. For these reasons, no recommendation is made at this time.

**11. NEW ARTICLE - INJURY LEAVE**

Union Position

The Union proposes a new injury leave article. No occupational leave provision currently exists. The Union could not find any other unit in the County that did not have an injury leave provision. It argues that on-duty injuries are very real threats and the police deserve compensation. Further, it argues that the firefighters unit in the City has an injury leave provision and it deserves the same treatment. Since both internal and external comparables justify the inclusion of the benefit, then it asks that such be recommended here.

City Position

The City contends that although the firefighters receive a larger sick leave benefit, such is justified based on the risk factor associated with that job. Although the police are engaged in a dangerous profession, the injury rate is much higher for firefighters thus justifying their higher benefit. Thus, the fact that the firefighters receive said benefit should have no impact here.

It contends that the police have a sufficient sick leave benefit that addresses the threat of on-the-job injury. If the sick leave is properly banked, then any affected employee has adequate

protection from being injured and this extra benefit is unnecessary.

Recommendation

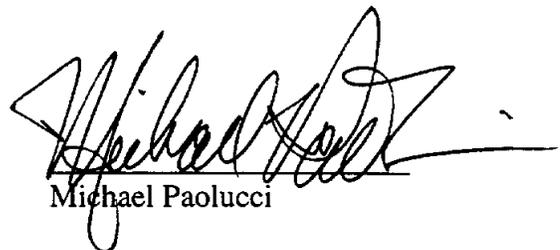
The external and internal comparables overwhelmingly justify an injury leave benefit. However, the precise method in which this benefit is used in other police units was not provided. It is reasonable to expect that injury leave will often work hand-in-hand with other benefits such as Sick Leave, Compensatory Time, and Personal Leave. Thus, while it is possible to recommend that *some* Injury Leave be included, it is impossible to recommend precisely what that benefit will include. While the City's firefighter unit is a good starting point, it must be recognized that the schedule and benefits of firefighters are often very different from police and thus it is nothing more than a good guidepost.

For these reasons, nothing more specific can be recommended than that the Parties include an Injury Leave based on other similar police units in the Hamilton County area. Valid considerations are how those police units are permitted to use the Injury Leave based on accumulated benefits in other categories.

**12. ARTICLE 27 - DURATION**

It is recommended that a three (3) year agreement be made with the increase in wages being made retroactive to the date the contract expired.

November 15, 1999  
Cincinnati, Ohio



Michael Paolucci