

STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

STATE EMPLOYMENT
RELATIONS BOARD
Mar 31 10 32 AM '00

IN THE MATTER OF FACT FINDING :

BETWEEN :

CITY OF READING, OHIO :

-AND- :

FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC. :

REPORT OF THE FACT FINDER

SERB CASE NUMBERS: 99-MED-08-0685
99-MED-08-0686
99-MED-08-0687

BARGAINING UNITS: Thirteen (13) Employees in the classification of
Patrol Officer; four(4) Lieutenants; and, four(4)
Dispatcher/Clerks, in the City's Police Department.

FACT FINDING PROCEEDING: March 13, 2000; City of Reading, Ohio.

FACT FINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Michael Rahall, Safety Service Director

FOR THE UNION

Deborah McCormick, Staff
Representative
Elizabeth Monteith, Committee
Member
Peggy L. Peratt, Committee Member
Michael Robinson, Committee
Member
Jeff Kuhlman, Committee Member

ADMINISTRATION

By correspondence dated September 15, 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); and, (k), in an effort to facilitate resolution of this issue that remained at impasse between these parties. The impasse resulted after attempts to negotiate an amicable resolution to "Wage Re-opener" proved unsuccessful.

As set forth in Article 12, titled "Wages" contains language referencing the Union's contractual right to serve notice upon the Employer to negotiate Wages for calendar year 2000.

That language states:

On or before October 1, 1999, The Labor Council shall serve the Employer a notice to negotiate Wages for the calendar year 2000. Should agreement not be reached, a request for Fact Finding shall be made in accordance with the procedures set forth under Ohio Revised Code 4117.14(Ohio Administrative Code Section 4117-9-05)

As the Record demonstrates, these Parties have met to engage in collective bargaining prior to this proceeding. The Fact Finder met with these Parties prior to the March 13, 2000 proceeding, wherein Mediation was offered concerning the "Wages" issue subject to the Re-opener. However, it became apparent that no resolution thereto could be obtained through Mediation, and therefore, the Fact Finding proceeding commenced thereafter. Prior to the Fact Finding proceeding certain procedural issues were raised, and with the assistance of SERB, they were amicably resolved by and between these Parties. The Fact Finding Hearing commenced forthright. 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

evidentiary Record in this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and the issue subject to the Re-opener concerning Article 12, titled "Wages," that remains at impasse, is the subject for the issuance of this Report hereunder.

The following findings and recommendation is hereby offered for consideration by these Parties; was arrived at based on their mutual interests and concerns; and, is 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-bargained 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.

**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 Reading,

Ohio, hereinafter referred to as the "City," and/or "Employer," has, in Article 12, titled "Wages," the "re-opener" provision that states as follows:

On or before October 1, 1999, the Labor Council shall serve the Employer a notice to negotiate wages for the calendar year 2000. Should agreement not be reached, a request for fact finding shall be made in accordance with the procedures set forth under Ohio Revised Code 4117.14 (Ohio Administrative Code Section 4117-9-05).

As the Record demonstrates, the Bargaining Units represented by the FOP consist of approximately thirteen (13) Patrol Officers; four(4) Lieutenants; and, four (4) Dispatchers within City's Police Department. Article 2, titled "Recognition," of the Parties' Collective Bargaining Agreement indicates in the following language the precise definition of the Bargaining Unit as set forth therein as follows:

Section 2.1

The Employer recognizes the FOP/OLC as the exclusive bargaining agent for the purposes of collective bargaining on all matters pertaining to wages, hours, or terms and other conditions of employment for all employees in the bargaining units. All sections of this agreement shall cover all classifications within the three bargaining units unless delineated specifically by (sic) clause. This agreement is a multi-unit agreement covering the three bargaining units certified by the State Employment Relations Board. The three bargaining units are:

- Unit A – Permanent full-time Dispatchers & Clerks
- Unit B – Permanent full-time Patrolmen
- Unit C – Permanent full-time Lieutenants

As is obvious, based on the type of units presented herein, the Employees provide emergency and safety services for the City of Reading and is considered under statutory considerations as "Strike-prohibited Employees" under 4117.14(D). As the evidentiary record demonstrates there are thirteen(13) sworn Patrol Officers including one(1) Detective; one(1)SWAT officer; one(1) School Liaison; and, one(1) Accident Investigator. There are four(4) Lieutenants, who represent the first-line supervisor and oversee the shift of five(5) Patrol Officers. They are also in charge of

Dispatch, firearms, intoxilizer and Warrant entry. There are four(4) Dispatchers, who, as the Union characterizes, have unique responsibilities because they also serve as Jail Matrons in their five-day holding facility. Additional duties include Dispatch for Fire, Police an Ambulance, as well as, Warrant entry, ticket entries, missing juveniles, stolen property and tow entries. They perform hourly inmate checks, meals and medication for inmates. Also part of the Dispatcher's Job responsibilities include maintaining the State required training for a five-day holding facility.

The Fact Finder is required to consider comparable Employee units with regard to their overall make-up and services provided to the members of their respective community. Both Parties have relied upon comparables of 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 these Bargaining Unit concerning "Wages" considerations. 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, deletion or modification 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.

The existing Collective Bargaining Agreement between expires on December 31, 2000 and, as previously indicated, includes the following "wage re-opener" in Article 12 titled "Wages". As indicated by the Parties an extension agreement is in place extending the date for issuance of the Fact Finder's report to April 30, 2000. These Parties have waived the provisions of 4117.14(G)(11) with regard to all matters of compensation or with cost implications which may be awarded by a Conciliator in accordance with Chapter 4117 of the Ohio Revised Code. The Record demonstrates that these Parties agree that a Conciliator may award a wage increase or other matters with cost implications retroactive to January 1, 2000.

The City of Reading, Ohio is unique not only in it's jurisdictional boundaries, but also with respect to what will be characterized as a "steady" final status - no significant increases or decreases in its tax base. Much discussion ensued relative to the City's overall financial status.

The Union contends the City's overall financial picture is one that has not suffered significantly over the past several years and has remained constant. The City maintains that while the overall financial picture has been somewhat constant it does not reflect the amount available in the General Fund that it is alleged by the Union. The financial data presented i.e., the City's Revenue Report identified as Tab 6 in the Union's presentation documentation indicates that the year-to-date actual revenue was \$12,897, 004.95. Moreover the current year-to-date expenses was \$5,369 952.24. The amount budgeted for the same period of time was \$5,574,173. Leaving an "unencumbered balance" of 141,210.14. Based on this information it is clear that he budgeted allotment and that actually incurred results in a "surplus" of approximately \$141,000. City Exhibit-1, which contains a Financial Statement of Receipts and Disbursements, indicates in the "Balance column" of "Fund 101" titled, "General", a balance of \$305,960.21. It is clear based on this evidentiary consideration that the current "carryover balance" would indeed fund a monetary increase in the base rates.. The degree to which the base rate should be raised is subject to differing proposed amounts. The evidence of record also demonstrates that for a one percent(1%) increase in the base rate, the amount necessary to fund that equates to approximately \$11,000. Moreover as set forth in Article 12, titled "Wages" the Employer pays on behalf of each Employee the Employee's contribution to the Police and Fire Disability Pension Fund or the Public Employees Retirement System, an amount not to exceed 9% for the Police and Fire Disability Pension Fund or 8.5% for the Public Employees Retirement System. Discussion ensued relative to the City's obligation to pay this amount in addition to the increases to the base wage of the Employees in each unit. The City contends that based on its proposed increase of 2.5% in conjunction with this "pension pickup" equates to a "real dollar" increase of 4.1%, which represents an increase of .1 percent over that sought by the Union. With regard to this aspect of the Wages re-opener, the Union contends that the contract mandates that the Employer make these contributions to the stated pension funds, and as such, those contributions cannot be considered in arguing against any wage increase the Union seeks.

UNION POSITION

The Union is seeking what it characterizes as a "modest increase" to the base wage

of 4% for the Patrol Officers and the Clerk/Dispatcher bargaining units retroactive to the beginning of the first full pay period in January 2000. The Lieutenant's salary is based on 15% differential over Step C of the Patrol Officer's wages, and proposes to maintain this differential. The Union notes that since 1995 its membership has recognized the City's troubled financial past and has accepted wage increases that were below the average. The evidence or record demonstrates that for the predecessor Collective Bargaining Agreement, these Employees received a 2% wage increase for 1997, 1998 and 1999 subject to the re-opener at issue herein. It notes, and the City did not refute, that the wage re-opener would result in an adjustment to "catch-up" based on the City's promise attached to the previous increases of 2%. The City projected that its financial status would indeed improve; however, the City's initial offer of 1.7% is below that realized by these Employees the previous two-year period. It notes the Mayor's Inaugural Address, wherein he explains financial improvements, one of which was income taxes collected by the City, as being increased by 22%. It also references the influx of revenue from the Biotech endeavor of the University of Cincinnati with the technical jobs the City will reap the benefits from. The Union also notes that the Corporate levy millage has remained unchanged at 1.76 for at least six(6) years which represents one the lowest rates in the County. For various reasons City Council has resolved not to increase this amount. To refute the City's reliance on the Pension pick-up as part of the overall Wage benefit, it notes that Article 12.1, paragraph (3) states "it is established that the contributions made on behalf of the individual as set forth ... shall not be considered additional salary or wage." It notes that comparable data provided demonstrates that among those Cities within Hamilton County with a population of less than 13,000 that these officers to rank approximately 4.5% below that realized by those municipalities. Its Patrol Officer base Wage is only above Mount Healthy and the City of Cheviot and it rates last out of the seven(7) agencies with regard to the Lieutenant Unit. It notes that Patrol Officers rank 11 out of the 17 agencies reporting in 1997 and that since that time frame their rank has slipped to 14. The average wage has increased by 8% while these Patrol Officers wages have increased only 6%. In 1997 Reading was 5.2% below the average and for the past several years Patrol Officers have slipped 7.5% below the average. It notes that with its proposed increase of 4% to the base wage, Patrol Officers top salary will increase their ranking in the County to No. 13

For these reasons the Union requests that its position be recommended.

CITY POSITION

The City maintains that its proposed increase of 2.5% coupled with the pension pick-up these Employees currently enjoy, represents a 4.1% increase for the wage re-opener at issue herein. Summarily stated the Union's reliance on the financial data presented and that in the Mayor's Inaugural Address wherein he references a 22% increase in income tax revenue actually is now in the neighborhood of 9%. Those numbers, it contends, are more reflective of the current financial status of the City. The City maintains that any way it is characterized, these Employees receive "real dollars" for the 2.5% increase it proposes and with the City's pension pick-up, such equates to a 4.1% increase in real dollars. It notes that the Biotech project of the University of Cincinnati is speculative at best and the City has not realized any financial boon as a result therefrom.

Moreover, for every \$1,000,000.00 it collects in income tax it realizes approximately \$15,000 in income tax revenue. It notes that the Union's comparable jurisdictions have an overall better financial picture than the City of Reading and many of those do not have a pension pick-up obligation that this City has. It notes that the City has an ordinance that requires that it cannot spend over 98% of its General Fund. It also notes that the 1.76 millage for the Corporate Levy, the City receives approximately \$300,000 and such has not been raised based on a campaign promise that was made years prior. A 4.1% increase is real, spendable income to these Employees. The City is attempting to keep up with inflation where revenues have not increased. It does not indicate an "inability to pay" simply that it must exercise fiscal prudence. Its 2.5% increase with the pension pick-up, is indeed an expense, one that equates to 4.1% when taken in conjunction with the pension pickup. Such, as the actual numbers indicate, is above the 1999 Cost of Living in Hamilton County of 2.1%. The National Cost of Living is 2.7% , which is also below that it is proposing when taken in conjunction with pension pick-up in place. It notes that 72% of the City's budget is for wages and fringe benefits. It also notes that a 1% increase in the base wage for these Employees equates to approximately \$11,000.

For these reasons the City requests that its position be recommended.

RECOMMENDATION & RATIONALE

Based on the data provided, the positions taken by the respective Parties, and those factors peculiar to Police personnel, recognizing the unique duties associated with the Dispatchers Unit, it is hereby recommended that the Parties incorporate language that would increase the Base Wage for the Patrol Officer and for Clerk/Dispatcher bargaining unit members, by 3.5%, retroactive to the beginning of the first full pay period of January 2000. The Lieutenant salary shall continue to be based on the 15% differential over Step C of the Patrol Officers wages.

It is clear, based on the evidentiary record, that this City has enjoyed, what has previously been characterized, as a "steady" financial status for, at least, the past three-year period. And if certain situations are realized in the very near future, this City will undoubtedly enjoy continued growth of a greater magnitude for a sustained period. During the course of the 1997 Negotiations, culminating in the current Collective Bargaining Agreement, these Employees were apparently promised an opportunity to obtain a wage increase during the third year of this Agreement that would, in effect, provide some "catch-up" from the 2% increases received in 1997; 1998; and, 1999. Neither the City's proposed increase, or that sought by the Union, would have such a dramatic impact on the wage level of these Employees. Stated another way, even if the Fact Finder were to recommend a 4% increase as sought by the Union, such based on the comparable data provided, would not place these Employees in a catch-up position from the previous wage increases. In this regard it is clear that such "catch-up" cannot, and was not contemplated at that time to, occur immediately, or in any event as a result of this Wage Re-opener.

As set forth in Tab 3 of the Union's Comparable data the City of Reading, with a population of 12,038 currently ranks below Montgomery; Madeira; Silverton; Loveland; Deer Park; Wyoming; and, Harrison. It ranks above Mount Healthy and Cheviot base on the top Patrol Officer base Wage. Of the jurisdictions identified for the Lieutenant unit, Reading ranks last out of the agencies of Montgomery(based on a Sergeant's top wage); Loveland; Harrison; Madeira; Wyoming(based on the Sergeant's base wage); and, Deer Park, while reporting the highest population, as was the case with respect to the Patrol Officer comparables. Granted pension pick-up is a financial obligation and must be funded from the City's General Fund, as is other wages

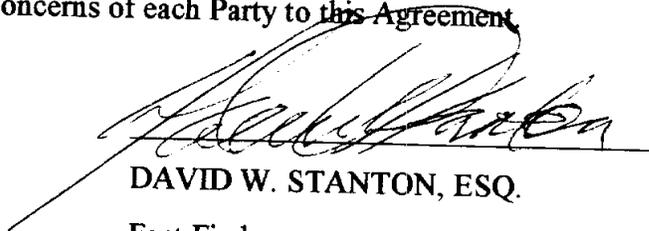
and benefits, it cannot, based on the contractual prohibition contained in Article 12, be associated with, or factored into, any increase to the base wage of these Bargaining Units. Indeed, the City's 2.5% increase coupled with its financial obligation concerning pension pick-up, equates to an actual expenditure. Indeed, it must fund these obligations from its General Fund and any encumbrance thereto will naturally impact its overall financial status. However, the evidentiary record supports the conclusion, that an increase close to that sought by the Union is warranted. Moreover, the un-refuted testimony of record demonstrates that these Employees were essentially promised an opportunity to "catch-up" in the final year of this Agreement.

As previously stated the 4% increase sought by the Union would certainly "help the cause" but, based on the comparable data provided such would not completely improve its position with neighboring jurisdictions. It must be stated that the collective bargaining process is an incremental one that must be exercised and pursued in good faith while leaving room for the entity funding these increases to exercise sound fiscal judgment. The statutory criteria in many ways requires this approach. This Union could have made higher demands and may have been justified in doing so; however, it chose to exercise good faith and fairness. These Parties have realized a "healthy" Collective Bargaining relationship- one that was referenced numerous times both during the procedural aspects of this proceeding, and also during the Fact Finding Hearing, as well as, demonstrated through both positions taken herein. Based thereon, a recommendation of 3.5% not only recognizes these concerns, but also addresses the promise apparently made to these Employees, as well as, some opportunity to address the "below market" increases of previous years. The Fact Finder is precluded from factoring into the equation, or considering the impact of, the pension pick-up which is contractually mandated in Paragraph 2 of Article 12, Section 12.1. Paragraph 3 thereof specifically states that these "... contributions made on behalf of the individual ... shall not be considered additional salary or wage." Based on this clear and unambiguous language, the Fact Finder is precluded from considering any increase that is in some way associated with, or "tied to", the pension pick-up obligation of the City.

CONCLUSION

In the opinion of the Fact finder, the recommendation contained herein is reasonable taking into consideration the concerns of both Parties; i.e., that of the Union regarding financial

improvement for these Employees; and, for the Employer based on the cost associated with increasing the Base Wage that is necessary to implement such a recommendation. In light of the data presented; the representations made by the Parties; and, based on the common interests of both entities, it is recommended that the Parties adopt this recommendation so that this Re-opener can be brought to closure and that the Collective Bargaining relationship can continue without interruption. This recommendation was made based on the comparable data provided; the stipulations of the Parties; the positions indicated to the Fact Finder during Fact Finding; and, was based on the mutual interests and concerns of each Party to this Agreement.


DAVID W. STANTON, ESQ.
Fact Finder

Dated: March 27, 2000.
Cincinnati, Ohio.

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendation has been delivered to Michael Rahall, Safety Service Director, City of Reading, Ohio, 1000 Market Street, Reading, Ohio; Deborah McCormick, Staff Representative, FOP/OLC, Inc., 10921 Reed Hartman Highway, Suite 317, Blue Ash, Ohio 45242; and, to George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 27 day of March, 2000.


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