

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
Dec 22 10 06 AM '99

FACT-FINDING PROCEEDINGS
CASE NO. 99-MED-10-0912

DANIEL N. KOSANOVICH
FACT-FINDER

IN THE MATTER OF :
:
FOP OHIO LABOR COUNCIL, INC. :
LODGE 93 :
:
and :
:
CITY OF URBANA, OHIO :

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

FOP Ohio Labor Council, Inc.
Lodge 93

Phil Hatch
Staff Representative
FOP Ohio Labor Council, Inc.
222 E. Town Street
Columbus, OH 43215

City of Urbana, Ohio

Dale R. Miller
Director of Finance
City of Urbana
205 South Main Street
Urbana, OH 43078

REPORT AND RECOMMENDATIONS

I. Background and Procedural History

The City of Urbana is located in Champaign County and has a population of approximately 11,353. The City covers an area of seven (7) square miles. Urbana is a charter city with a Mayor Administrator Council form of government. There are several separate bargaining units within the City.

The bargaining unit in question consists of 12 police patrolmen. The unit was originally certified by the State Employee Relations Board in Case No. 90-Med-07-0674. The current collective bargaining agreement was executed on May 12, 1997 and will expire pursuant to its terms on December 31, 1999.

Bargaining for a successor agreement began on October 28, 1999. Subsequent meetings were held on November 11, November 18, and December 2, 1999. The parties reached tentative agreement on a number of outstanding issues. However, several issues remained unresolved. On December 1, 1999 the undersigned was appointed to serve as the fact finder for the FOP Ohio Labor Council, Inc. and the City of Urbana.¹

A fact finding hearing was conducted on December 16, 1999. The parties identified issues for submission to fact finding. Those issues were:

Article 15 Grievance Procedure

Article 16 Rate of Pay

Article 18 Annual Leave

¹ The undersigned was also appointed to serve as the fact finder in two other units. The unresolved bargaining issues in the unit comprised of Sergeants will be addressed in a separate fact finding report. The parties advised the fact finder that they had reached tentative agreement with respect to the outstanding issues concerning the dispatchers bargaining unit obviating the necessity for a third fact finding report.

Article 22 Overtime

Article 23 Medical Insurance

Article 26 Educational Incentive

At the outset of the hearing the fact finder offered to mediate the unresolved issues and the offer to mediate was accepted. Fortunately, several issues were successfully mediated. The issues mediated to resolution were: Annual Leave; Overtime; and Educational Incentive. The issues submitted to the fact finder for resolution included: the Grievance Procedure; Rate of Pay; and Medical Insurance.

II. CRITERIA

In compliance with Ohio Revised Code Section 4117.14(G)(7) and the Ohio Administrative Code 4117-9-05(J), the Fact-Finder considered the following criteria in making the recommendations contained in this report:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining units 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 affect of the adjustments on normal standard of public service;
4. The lawful authority of the public employer;
5. Stipulations of the parties; and
6. Such factors not confined to those listed above, which are normally or traditionally taken into consideration.

III. FINDINGS AND RECOMMENDATIONS

A. Mediated Agreements

Article 18 Annual Leave

The Union was seeking to alter the schedule for accrual of annual leave. The current agreement calls for 120 hours to be accrued annually after seven years of service; for 160 hours to be accrued annually after fourteen years of service; and 200 hours to be accrued annually after twenty years of service. The Union's proposal calls for the accruals of annual leave to begin at five years of service, twelve years of service, and eighteen years of service. The City sought to maintain the status quo.

Through mediation the parties agreed to maintain the status quo. Therefore, the current collective bargaining agreement language on Annual Leave shall be incorporated into the new collective bargaining agreement.

Article 22 Overtime/Comp Time

The Union proposed that all departmental meetings be considered to be call-in overtime with a minimum of three hours of pay. The City sought removal from the contract of all language related to comp-time. The City also proposed that departmental meetings be treated as call-in overtime and that the pay received would be an "automatic two hours of compensation."

Through mediation, the parties agreed that all departmental meetings be considered call-in overtime with a minimum of two hours of pay. If the meeting(s) lasts longer than two hours, the officers will be paid for all time spent in the meeting(s). All

proposals associated with this issue were withdrawn. The new collective bargaining agreement should contain language to reflect the mediated settlement.

Article 19 Educational Incentive

The City proposed a cap of \$750.00 on the compensation an Associates Degree would command. Currently the cap is 3% of the officer's wages. The City also proposed a cap of \$1500.00 on the compensation an Bachelors Degree would command. Currently, the contract places the cap at 6% of the officer's wages.

Through mediation, the parties agreed to maintain the status quo. Therefore, the new contract shall incorporate the current language regarding Educational Incentive. All other proposals regarding this issue are withdrawn.

B. Findings and Recommendations

Article 15 Grievance Procedure

FOP's Position

The FOP argues that the current Civil Service Commission system is wholly inadequate, largely because of the time that it takes to reach a final Civil Service Commission decision. The Union presented time lines for two relatively recent disputes as illustrative of their point. In one case disciplinary action was taken against the officer involved on January 7, 1999. An appeal was taken to the Director of Administration on January 10, 1999. The appeal to the Civil Service Commission was filed on January 26, 1999. The matter is still unresolved. The second incident a promotional challenge which was filed in August of 1998 and the appeal to the Civil Service Commission was taken in September of that year. The Civil Service Commission made its decision on August 16,

1999. The initiator was promoted to the rank of Sergeant on September 23, 1999 without back pay, which is now in dispute.

The Union seeks an employee election. At the discretion of the affected employee either binding Arbitration would be the dispute resolution mechanism or the Civil Service Commission would be the selected route of resolution.

City's Position

The City argues in favor of the status quo. Primarily the City is resistant to any system which affects the control for decision making remaining in the community. Additionally, the City contends that the Civil Service Commission system works well and that the two illustrations presented by the FOP are exceptions to the rule.

Fact Finder's Recommendation

While the City's desire to maintain local control over the decision making is both important and understandable, it must be balanced against the need for efficient and final resolutions of disputes. The record indicates that the Civil Service Commission members are volunteers. Moreover, the only criteria for appointment to the Commission is that only two of the members of the Commission can be from the same political party as the Mayor. Finally, the Commission's decision is not final and binding. An appeal may be taken to the Court of Common Pleas.

As noted by the Union at the hearing, "justice delayed is justice denied." Nowhere is the need for final and efficient resolution of problems more important than in the labor-management arena. It is unthinkable for the system to produce non-binding (and in some cases incomplete) results a year after a grievance is filed. As issues linger tension mounts. Unresolved issues tend to fester and in many cases take on a life of their own. They

poison the water of cooperation and serve to provide another platform for confrontational bargaining.

I recommend that if the Civil Service Commission system does not produce a decision within the time frame provided, the dispute defaults to arbitration for a final and binding resolution. This recommendation takes into account the City's desire to maintain local control while providing a mechanism for the parties to improve the efficiency of the system. The Commission would not be free to grant themselves additional time for decision making or for briefing. Perhaps, this default procedure will insure the selection of Commissioners who have the time and ability to serve the community.

The contract language will be modified to add a provision that reads: “ **If the Civil Service Commission fails to act within the time limits prescribed, the issue in dispute will default to a binding arbitration procedure. The parties shall meet and confer with one another within 10 calendar days of the default to attempt to mutually agree upon the selection of an arbitrator. In the event the parties cannot reach a mutual selection, the moving party shall notify the Federal Mediation & Conciliation Service and request a panel of qualified arbitrators. The parties' representatives shall confer within 10 days of the receipt of the panel of arbitrators. During the conference each party shall take a turn alternatively striking a name from the list provided, beginning with the moving party. The last name appearing on the list will serve as the arbitrator. The arbitration shall be governed by the FMCS rules.**”

Article 16 Rate of Pay

FOP's Position

The FOP's position is that the base rate for all patrol officers should be increased by 4% in each year of the three year contract. In addition, the Union is seeking to adjust the differential between the various steps in the following manner:

| Step | existing differential | change proposed |
|-------------------|-----------------------|-----------------|
| 0-1 | n/a | n/a |
| After 1 | 9.4% | 10.0% |
| After 2 | 4.8% | 5.0% |
| After 3 | 4.5% | 5.0% |
| After 4 | 4.3% | 5.0% |
| After 5 | 4.3% | 5.0% |
| After 7.5 | 1.2% | 2.0% |
| After 10 | 1.2% | 2.0% |
| After 12.5 | 1.2% | 2.0% |
| After 15 | 1.1% | 2.0% |
| <i>After 17.5</i> | <i>n/a</i> | <i>2.0%</i> |
| After 20 | 1.1% | 2.0% |

In addition, the Union is proposing that a step at 17.5 years be added to the wage scale adjustment for uniformity purposes. The Union points to comparables in Region 4 for support. According to the Union Urbana newly hired patrol officers receive 10.9% less pay than the Region 4 average for officers similarly situated. Further, when compared to 6 other accredited agencies in Region 4 the difference is 11.2%.

Finally, the Union proposes a shift differential citing the fact that they currently have a shift bid procedure. Formerly the officers rotated shifts.

City's Position

The City proposes a 3% across the board wage increase in the base rate for officers in each year of the three year contract. To support its position, the City asserts that within comparable communities (those that have populations within 5,000 persons of Urbana,) the City's top step of the wage scale would be 28% higher than 8 comparable communities. The City also notes that the patrol officers have consistently outpaced the CPI.

The City very strongly resists any attempt to alter the wage scale differential. Moreover, the City argues that the shift bid procedure was the product of discussions with the Union and officers to avoid rotation. There is no justification for the shift premium as proposed.

Fact Finder's Recommendations

The fact finder recommends that the patrol officers receive a 3.75% increase in their base rate of pay in each year of the three years of the contract. Further, the fact finder rejects the proposal to "round off" the wage scale differential. The fact finder recommends that the 17.5 year step be placed in the wage scale. However, the fact finder rejects the Union's proposal for shift differential.

A 3.75% increase in the base rate of pay for all officers is reasonable. While comparables are often helpful in these situations, drawing conclusions based on a different set of comparables results in the parties comparing "apples to oranges." I do find the

comparables based on size and population more helpful than comparables that do not take those factors into consideration.

There is only one officer who would fall within the 17.5 year step during a three year agreement. The City is not advocating an inability to pay and adding the step serves to reward, in some small way, officers for long loyal service.

With respect to the differential adjustment and the shift premium I find the City's position more persuasive. Therefore, I have rejected the Union's proposals on these items.

Article 23 Medical Insurance

FOP's Position

The FOP seeks to maintain the status quo. It resists any attempt by the City to require employee contributions on premiums paid.

City's Position

The City proposes a 10% premium contribution from the officers. According to the City, the City of Urbana is one of three communities of comparable size and population that pays 100% of the health insurance premium.

Fact Finder's Recommendation

The fact finder recommends that the parties maintain the status quo and the City continue to pay 100% of the health insurance premiums for the police patrol officers. The record indicates that the City is in effect a self insured entity. Within the past three years or more, the premium contribution has held steady. The City is not advancing inability to pay as a reason for the proposed change. In fact, no compelling reason was advanced for the change proposed. In addition, no other bargaining unit in the City is required to

contribute to the health insurance premium. Therefore, on balance I find it is reasonable for the City to continue to pay 100% of the health insurance premium for each year of the three year contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Kosanovich". The signature is fluid and cursive, with the first letter of the last name being a large, stylized "K".

Daniel N. Kosanovich

Fact Finder 12/20/99