STATE EMPLOYMENT
RELATIONS BOARD

SEP 8 11 22 AM '97

IN THE MATTER OF FACT-FINDING
BETWEEN

CITY OF STREETSBORO	)	**FINDINGS AND RECOMMENDATIONS**
	)	
	)	
AND	)	
	)	**CASE NOS. 97-MED-04-0402**
	)	**97-MED-04-0403**
FRATERNAL ORDER OF POLICE	)	**97-MED-04-0404**
OHIO LABOR COUNCIL, INC.	)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE CITY

Sally S. Henzel, Mayor
Gary L. Cross
D. William Weber

FOR THE UNION

Pat Daugherty
Charles Wilson
Elaine L. Byers
Roy E. Mosley, III

SUBMISSION

This matter concerns fact-finding proceedings between the City of Streetsboro (hereinafter referred to as the City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. Fact-finding proceedings were held on August 14, 1997 in Streetsboro, Ohio. The bargaining units involved herein include all full-time police patrolmen, sergeants, and dispatchers.

These fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse but without success. The issues before this fact-finder for his consideration include the following: Overtime Assignment and Equalization; and Extra Jobs.

This fact-finder in rendering the following findings of fact and recommendations on issues at impasse, has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to outstanding issues submitted.

1. OVERTIME ASSIGNMENT AND EQUALIZATION

The Union proposes a modification to the existing Overtime Article which would allow a bargaining unit member to elect to take overtime compensatory time in lieu of compensation. Under the Union's proposal, the accumulation of compensatory time shall not exceed forty hours.

The Employer proposes to allow employees to take overtime compensatory time in lieu of overtime compensation but with a ceiling of up to forty hours earned per calendar year.

The Union contends that its proposal regarding the accumulation of compensatory time is more than reasonable. The Union presented evidence relating to compensatory time provisions in comparable neighboring cities. The comparables included the cities of Ravenna, Aurora, Stow, Twinsburg and Hudson. The Union points out that the police departments in each of these cities allows employees to accumulate at least forty hours compensatory time on a continuous basis. That is if employees use compensatory time, they can once again build up to the forty hours that is allowed.

The Union further submits that the City's chief spokesperson, Mayor Sally Henzel, agreed to a proposal regarding compensatory time which is now being presented by the FOP. Every attempt was made to satisfy the Council regarding the compensatory time proposal. In that regard the Union notes that under its comp time proposal, the Police Chief can deny an officer's request to use compensatory time if the absence

interferes with the efficient operation of the department. Moreover, the scheduling supervisor of the police department has indicated that with the current manpower level of twenty officers and sergeants, it was his opinion that the police schedule could be effectively managed if the compensatory time option was made available to employees.

The Employer contends that a cap on the compensatory hours earned each calendar year is essential in order to ease the immediate financial strain on the budget. City Council Representative, Gary Cross, pointed out that if a Compensatory Time Provision is adopted for the police department, it would be the only department in the City to have such a comp time article. Speaking for City Council, he emphasized that the Compensatory Time Provision was viewed as a monetary issue which should be tightly controlled. In that regard, it would be reasonable to provide that bargaining unit members could accumulate only up to forty hours earned per calendar year and that once these compensatory time hours are used, then the employee will no longer be allowed to accumulate additional hours.

ANALYSIS - This fact-finder after careful review of the evidence presented must conclude that the Union's proposal regarding compensatory time is reasonable and should be adopted by the parties. The comparable evidence produced by the Union shows that other neighboring jurisdictions provide their police officers the right to accumulate and use compensatory time in lieu of overtime payment. The minimum compensatory time bank which officers are allowed to accumulate in neighboring cities

is forty hours. In some jurisdictions, such as Aurora and Twinsburg, police officers can accumulate up to 480 hours and 240 hours respectfully in compensatory time. Most significantly in each of the neighboring jurisdictions cited, police officers are allowed to continuously accumulate and use comp time as long as the amount on the books does not exceed the caps provided. Thus comparable evidence supports the Union's proposal that the bargaining unit members here should likewise be allowed to continuously accumulate and use comp time as long as the amount on the books does not exceed forty hours.

Moreover, the Union's proposal provides adequate safeguards to the City with respect to the efficient operation of the police department. Specifically, the Compensatory Time Provision provides that the police chief may deny a police officer's request to use compensatory time "if the absence interferes with the efficient operations of the department." According to a letter submitted by the scheduling supervisor of the police department, the current manpower level of officers and sergeants means that the department can be effectively managed if a Compensatory Time Provision is adopted. The Mayor concurred that the cost of operating the police department would not be affected by allowing police officers compensatory time off under the pre-approval language found in the proposal. The concerns raised by the City Council Representative simply were not supported by the evidence produced at the hearing. Based on the record presented therefore, this fact-finder must conclude that under the language set forth in the Union's proposal, there is absolutely no basis to City Council's concern regarding the

financial impact which it claimed the Compensatory Time Provision would have on the police department.

This fact-finder would like to add one additional reason for recommending that the parties adopt the Union's Compensatory Time Provision. The parties submitted that Mayor Sally Henzel was the principle representative of the City throughout the contract negotiations leading up to this fact-finding proceeding. The evidence showed that the Mayor tentatively agreed to the Compensatory Time Provision which the Union is now proposing. The Mayor who is also the Safety Director, stated that she believed the Compensatory Time Provision proposed by the Union was not only good for the police department but also brought it into line with similar provisions provided to comparable police department employees in neighboring communities. This fact-finder would completely agree with the Mayor's assessment regarding the Union's Compensatory Time proposal. In every respect, the Union's proposal must be found to be more than reasonable and should be adopted by the parties.

RECOMMENDATION

It is the recommendation of this fact-finder that the Union's proposal regarding Compensatory Time be included in the parties' agreement as more fully set forth in Attachment A.

ATTACHMENT A

TA. 6-2-97

TA 6-2-97

ARTICLE 11

OVERTIME ASSIGNMENT AND EQUALIZATION

Section 01. The city will be the sole judge of the necessity of overtime.

Section 02. The City shall make a good-faith effort to equalize overtime among bargaining unit members within the classification(s) and shift(s) as much as is practicable under the circumstances. Bargaining unit members offered overtime and for any reason refuse or fail to work, shall be credited as if they had worked.

Section 03. Emergency overtime cannot be refused. An emergency is defined as an impairment to City services or operations which cannot be delayed.

Section 04. Overtime compensation shall mean one and one-half (1-1/2) times the hourly compensation rate of a bargaining unit member. **The member may elect to take overtime compensatory time in lieu of compensation. The use of the compensatory time shall be at the discretion of the bargaining unit member.** THE CHIEF MAY DENY SUCH REQUEST IF THE ABSENCE INTERFERES WITH THE EFFICIENT OPERATIONS OF THE DEPARTMENT.

Section 05. The standard work periods shall be eighty (80) hours within fourteen (14) consecutive calendar days. Overtime shall include hours worked in excess of the standard work period and/or continuous hours worked in excess of eight (8) hours in any twenty-four (24) hour period. However, overtime, shall not include those hours worked within the work period and/or a twenty-four (24) hour period that are required due to shift ~~change(s)~~ **rotation** or swing shift assignment(s). **Any modification or change in an eight (8) hour schedule will be discussed with the F.O.P. Ohio Labor Council representative and such discussion may require a mutually signed agreement to said change. Should the discussion fail to have a mutual agreement, either party may submit a notice to negotiate such change.**

SUCH REQUEST SHALL NOT BE UNREASONABLY DENIED.

ACCUMULATION ~~OF OVERTIME~~ OF COMENSATORY TIME SHALL NOT EXCEED FORTY (40) HOURS.

Section 04. Overtime compensation shall mean one and one-half (1-1/2) times the hourly compensation rate of a bargaining unit member. The member may elect to take overtime compensatory time in lieu of compensation. The use of the compensatory time shall be at the discretion of the bargaining unit member. The Chief may deny such request if the absence interferes with the efficient operations of the department. Such request shall not be unreasonably denied. Accumulation of compensatory time shall not exceed forty (40) hours.

Section 05. The standard work periods shall be eighty (80) hours within fourteen (14) consecutive calendar days. Overtime shall include hours worked in excess of the standard work period and/or continuous hours worked in excess of eight (8) hours in any twenty-four (24) hour period. However, overtime, shall not include those hours worked within the work period and/or a twenty-four (24) hour period that are required due to shift rotation or swing shift assignment(s). Any modification or change in an eight (8) hour schedule will be discussed with the F.O.P. Ohio Labor Council representative and such discussion may require a mutually signed agreement to said change. Should the discussion fail to have a mutual agreement, either party may submit a notice to negotiate such change.

2. EXTRA JOBS

The Union proposes a new contractual provision which would amend the current police department policy regarding allowing officers to work extra jobs. Under the Union's proposal, police officers are to be paid at the rate of $17.00 per hour or the prevailing rate, whichever amount is greater, for department approved jobs outside the police department. The Employer submits that this is a non-work related issue and should not appear in the Collective Bargaining Agreement.

The Union contends that its proposal to modify and to incorporate the policy into the parties' Collective Bargaining Agreement is more than reasonable. The current policy provides a method of payment for officers for extra jobs based on one and one-half times their hourly rate of pay which for a patrolman would be $25.70. This hourly rate is entirely too high and has resulted in business enterprises in the Streetsboro community hiring other law enforcement officers from other departments because the hourly rate charged is less than that of the Streetsboro Police Department. It would be more reasonable to provide that the cost per hour for extra jobs should be $17.00 per hour or the prevailing rate, whichever is greater.

The Union cited comparable evidence regarding extra job procedures found in neighboring jurisdictions. In most of the other police departments, payment for extra jobs which is made directly from the business to the officers involved is at the hourly rate of $18.00. In some instances, notably the City of Twinsburg and the Portage County

Sheriff's Department, the hourly rate varies. The Union submits that its proposed hourly rate of $17.00 per hour or the prevailing rate, whichever amount is greater, would be comparable to that provided for extra jobs by these other departments.

The Employer takes the position that the Union's proposal regarding extra jobs should not appear in the parties' Collective Bargaining Agreement. City Council Representative, Gary Cross, stated that the Employer objected to the use of paid city employees to schedule off-duty officers for a private enterprise. City Council believes that if a taxpayer would need the services of a police officer they should hire that officer at union wages or contact the officer on a private basis. The Police Chief or designee should not at any time become involved in contacting a private employer for extra jobs while on city time. The City maintains that the current policy which allows extra jobs to be worked by police officers is more than adequate.

ANALYSIS - This fact-finder has determined that the Union's proposal regarding extra jobs is reasonable and should be adopted by the parties. The evidence showed that the police department currently has a policy which allows officers to work "extra jobs" and that the method of payment for the officers is based on one and one-half times their hourly rate which is $25.70 for a patrol officer. The evidence clearly shows that said hourly rate is much too high. As a result, businesses in the Streetsboro community have hired other law enforcement officers from other jurisdictions who charge less than the Streetsboro Police Department. Under these circumstances, it would

be entirely reasonable to modify the current policy in order to provide for a more competitive rate for extra jobs for Streetsboro police officers.

Comparable evidence submitted by the Union supports its position that a reasonable amount to be charged for extra jobs should be $17.00 per hour or the prevailing rate, whichever amount is greater. It was shown that in comparable neighboring police departments, payment for extra jobs is usually established at approximately $18.00 per hour. Such hourly rates are provided for by the police departments in neighboring Ravenna, Aurora, Stow and Hudson. In Twinsburg, the extra job rate varies and the Portage County Sheriff's Department provides a rate of pay ranging from $15.00 to $18.00 per hour. Therefore, the hourly rate for extra jobs proposed by the Union is comparable to that provided by area jurisdictions.

This fact-finder further finds no basis to City Council's contention that there will be a significant cost impact upon the City by the adoption of the Union's extra jobs proposal. A minimal amount of time would be spent by the Police Chief or his designee to make extra job assignments and to monitor them for the purpose of equalization of the officers participating. Moreover, the evidence shows that similar contractual provisions are found in police department agreements in neighboring jurisdictions. In each of the neighboring communities, the request for extra jobs is posted and scheduled by a designated officer. A rotating list is also maintained by the department involved for purposes of insuring equalization for staffing extra jobs. This fact-finder would once

again agree with the Mayor's assessment of the Union's proposal which was that it provided for a simplified procedure for assigning extra jobs which could only benefit the health and welfare of the community. Without question, it would certainly be reasonable to modify the current policy in order to make it more likely that Streetsboro police officers will work the extra jobs called for in the community. Therefore in all respects, this fact-finder finds that the Union's proposal is reasonable and should be incorporated into the parties' bargaining agreement.

RECOMMENDATION

It is the recommendation of this fact-finder that the Union's Extra Jobs Proposal be included in the parties' bargaining agreement as more fully set forth in Attachment B.

ARTICLE 40

EXTRA JOBS

Section 01. All sworn police officers may work any departmental approved jobs outside the police department by an employer different than the City of Streetsboro. The City of Streetsboro shall not be responsible as the police officer's employer when the officer is working such a job.

The cost per hour shall be seventeen ($17.00) dollars an hour or the prevailing rate, whichever amount is greater, and a minimum of four (4) hours shall be required. Payment shall be made directly to the officer from the employer.

Section 02. All job details shall be posted, and the officers may apply to work the details. The Chief or his designee will monitor extra jobs worked for the purpose of equalization for the officers participating.

CONCLUSION

This fact-finder hereby submits his recommendations on the two outstanding issues presented for his consideration. This fact-finder further recommends that all tentative agreements previously reached between the FOP and the City's negotiating committee be incorporated into the parties agreement and that all Articles in the previous agreement for which no changes were proposed, be maintained with existing language.

September 4, 1997

JAMES M. MANCINI, FACT-FINDER