

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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2005 MAY 31 P 12: 13

In the Matter of The
Arbitration Between:

Before Arbitrator
James E. RIMMEL

City of Hudson

Case No. 04-MED-09-0858

And

Heard: 27 April 2005
Hudson, Ohio

Fraternal Order of Police,
Ohio Labor Council, Inc.

Our File: 05-04179
Issued: 26 May 2005

APPEARANCES

For the City:

For the FOP:

Jon M. Dileno
Duvin, Cahn & Hutton

Charles Wilson

BACKGROUND

This matter comes on for conciliation following FOP rejection of Fact-finder Robert G. Stein's (Stein) 14 March 2005 report to the parties. In all, Mr. Stein dealt with nine separate and distinct issues rendering specific recommendations for each in his report. Specifically, Mr. Stein dealt with the issues of: 1) Bargaining Unit overtime work; 2) Sick time offset of hours worked for overtime; 3) Compensatory time accrual amounts; 4) Call-in pay offset; 5) Wages; 6) Longevity increase; 7) Out-of-classification work; 8) Holiday compensation; and, 9) Sick leave.

Subsequent to the receipt of Mr. Stein's report, the recommendations were presented to the respective constituents of the parties. According to the record, City Council unanimously approved that which was recommended by the Fact-finder. The Union membership, however, opted to reject the report, finding certain matters unacceptable. The results of the respective votes were

communicated to SERB offices in Columbus where, under letter dated 7 April 2005, the undersigned was appointed in accordance with Ohio Revised Code Section 4117.14(D)(1) conciliator. Thereafter, the matter was docketed for hearing on 27 April 2005 at the EMS Training Center in Hudson, Ohio.

Now, Hudson, Ohio is a fairly affluent city located in northeastern Ohio with a population of approximately 22,000. As a city, Hudson is rather young, having come into existence as a result of a merger roughly ten years ago between the Village of Hudson and the surrounding Township. Apparently at the time of merger, while the Township Police Department was organized, and was represented by a collective bargaining agent, the Village officers were not. In any event, it was several years in the making but a collective bargaining agent was eventually certified by SERB for the City's merged Police Officers with the parties negotiating the first of several collective bargaining agreements in 1996. In part, it is what occurred during the initial contract negotiations that serves here as an emotional distracter, perceived/real good-faith issue that resulted in the turn down of the Fact-finder's report. There was also an occurrence where FOP representatives agreed to a provision calling for employee contributions to insurance premiums, with the guarantee that a like action would be taken with all other city employees. Apparently, city fathers had a change of heart and did not follow through with this matter with others employees opting instead to simply terminate, after five months, the co-pay arrangements with the FOP. Both of these prior experiences in negotiations have unfortunately clouded the objectivity of some the bargainers in this current effort. In any event, both parties were provided the opportunity to present evidence/argument in support of their respective positions, with both availing themselves to the opportunity.

At the outset of the hearing, the parties advised me as a result of sidebar discussions that they have agreed to accept eight of the nine Fact-finder recommendations, only proceeding in conciliation with their dispute over wages. In other words, recommendations made by Mr. Stein concerning improvements/changes/continuation of existing provisions on the other eight issues at impasse were and are deemed resolved. Thus, the only matter before me deals with the level of increases over the term of the successor collective bargaining agreement. In this instance, the city proposes a 3.5%, 3.0% and 3.0% over the three years of the successor agreement. In turn, the FOP seeks increases of 3.5%, 3.5% and 3.5% over the term.

In resolving this remaining issue, I am obliged under statute to select one or the other of the respective proposals of the parties taking into consideration the factors outlined in O.R.C. Section 4117.14(G)(7.) Specifically, those criteria are as follows:

1. Past collective bargaining agreements
2. Relevant comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

Now, in his 14 March 2005 report, Fact-finder Stein recommended increases of 3.5% effective 1 January 2005, 3.0% effective 1 January 2006 and 3.0% effective 1 January 2007. In doing so, Mr. Stein made the following relevant observations relative to the rationale underlining such:

As important as comparable data is in these matters, it has its limitations due to the fact that similar employees of the other cities do not have identical benefits. For example, some officers have shooting bonuses, while others do not. Shift differential is paid to some officers, and other employees (e.g. Hudson) work twelve (12) shifts and have more days off. And, health care benefits vary greatly among cities. When it comes to wage increases, internal comparables are often more influential because employees in the same municipality are likely to have similar benefits. It is significant that the City agree to wage increases of 3.5% with its other unionized employees for 2005. It is also a fact that inflation, which has been kept in check for the past several years, has started to rise due to an increasing national debt, rising energy costs, health care costs, and the like. Moreover, a 3.5% increase, while being consistent with wage increase for other Hudson bargaining units, is also likely to make the top wage of the

bargaining unit a little more competitive with the top wage in Tallmadge and Twinsburg (assuming that during the life of the Collective Bargaining Agreement the cities of Twinsburg and Tallmadge do not provide wage increases above 3%).

FOP POSITION

The FOP argues the parties are at impasse over an approximate \$15,000 over the term of their successor agreement. It claims not only is the differing amount(s) relatively negligible, we have here a city that is fairly solvent in its sources of revenue, a city that has recently enacted a 100% increase in its income tax, an increase that will yield an additional \$7.4 million annually. It claims further as a result of bad faith bargaining during the initial round of collective bargaining between these same parties, negotiations that led to the Union accepting only a 3% increase while all other city employees received 3.5% increases in 1996, the accumulative affect of this difference has adversely affected the earnings of police officers in excess of \$2,200.00 per officer.

Turning to Mr. Stein's report, the Union suggests there are at least two reasons why I should not defer to his recommendations. First, it contends the State Audit Reports for 2002 and 2003 do not bear out the city's contention that it is experiencing declining revenues in general fund balances at year's end. To the contrary, the Union suggests there are revenues available to the city from various sources and its projection as to a continuing declining revenue picture is simply not borne out by these reports. Secondly, the FOP references a recently published economic development report prepared for the city by Angelou Economics wherein many qualities/strengths of this city have been noted, to-wit: highly educated, large regional workforce, high income, excellent quality of life, central location and performing schools. It also emphasizes the city is in the process of developing what is known as the first and main project to draw quality retailers and others to the city as well as to provide center city living accommodations. It claims this retail and other related projects will likewise bring additional revenues to the city. Specifically, it notes that the project encompasses approximately 190,000 square foot mixed-use development over some 14 acres in and about the Main Street area of the city. It emphasizes, moreover, this \$50 million project includes 110,000 square feet of retail space, approximately 32,000 square feet of office space, 45,000 square feet of

residential space and a village green extension.

The FOP argues that relevant comparable data reflect that while other city personnel are at or near the top of their pay range and far exceed the pay ranges of comparable personnel in other Cities. Yet, according to the FOP, Hudson police officers are only average or slightly average in their level of compensation vis-a-vis their counterparts in other cities. Stated differently, the FOP believes such an affluent, progressive community should always seen to retain the best by paying the best.

Accordingly, the FOP requests I adopt the wage proposals proffered by it in this conciliation.

CITY POSITION

The City contends much of what it has agreed to subsequent to the issuance of the Fact-finder's recommendations have brought additional benefits/compensation to bargaining unit members. It acknowledges while it did accomplish in this exchange certain relief in the area of sick leave administration, that relief cannot be viewed as offsetting the significantly diminishing value/cost of that which was provided to the FOP members under these issues. As for the FOP's contention that the Fact-finder's recommendation(s) in the area of wages should not be deferred to by this Conciliator, the city contends such should only be the case if it is cogently demonstrated that Mr Stein was in error or otherwise significantly misinterpreted that which was before him. In this instance, the city contends the referenced "new data" proffered by the FOP simply does not bear out that which is contended here. It contends upon close examination of the referenced audit reports, reports based upon accrual as opposed to cash accounting principles, there simply is nothing to be gleaned in supporting the FOP's contention that significant revenue streams have been overlooked and/or the declining year end general fund picture is other than as reported by the Fact-finder.

Turning to the issues of good-fath raised by the FOP, the City contends those matters were, all likelihood, addressed by the parties over ten years of bargaining history. It also contends one cannot rightly assume that other forms of adjustment were either provided over the years and/or prior neutrals did not consider such warranting relief. In any event, the City contends that relevant comparable data demonstrate Hudson police officers have been accorded reasonable wage packages

in prior agreements as well as that being proposed here by the City. It argues, moreover, while the City is not raising an issue of the lack of ability to pay that being requested by the FOP, its decision to cap its wage offer is simply a matter of prudent administration, something the Fact-finder believed was appropriate under all surrounding circumstances. It emphasizes, moreover, that even another percent over the term, or half percent in the years 2006 and 2007, clearly would have a ripple effect, both with other employees and over the ensuing years. It emphasizes further the city has demonstrated its good faith in dealing with these officers in constructing a new police headquarters, thus providing a far larger, well-equipped facility, more relevant training and other amenities that are readily available.

Accordingly, the city requests its wage proposal over the term of the successor Collective Bargaining Agreement at issue be adopted, emphasizing this recommendation is the same as set out under Fact-finder Stein's 14 March 2005 report.

DISCUSSION

While the FOP did advance certain rationale why I should not defer to the findings and recommendations of Fact-finder Stein such was not cogent or persuasive. And, while there were some differences in balances in the data provided Mr. Stein and the referenced audit reports proffered at conciliation, those differences are not significant and arguably are rooted, leastwise in part, in the different methods of accounting. What is even more compelling here is the lack of any analysis of the total package, including employment costs increases, derived by these officers under the successor agreement and to what extent Mr. Stein considered such in arriving at his night recommendations. In other words, neither Mr. Stein nor I may rightly decide a given issue in a vacuum given statute requirements and breadth of these types of negotiations. In any event, given what has been already agreed-to by the parties for their successor agreement, including a number of changes recommended by Mr. Stein, there is no sound basis of record that would justify my ordering that requested here by the FOP, a request exceeding the recommendeds of the Fact-finder..