

IN THE MATTER
OF
FACT FINDING

STATE EMPLOYMENT
RELATIONS BOARD

2002 JAN -4 A 11: 03

REPORT

BETWEEN The International Union of Police Associations	CASE NO(s): SERB 01-MED-05-0560 SERB 01-MED-05-0561 SERB 01-MED-05-0562
AFL-CIO	FACT FINDER: JOHN S. WEISHEIT
And the	HEARING DATE(S): Dec. 20, '01
City of Upper Sandusky	AWARD ISSUED: Jan. 2, 2002

REPRESENTATION
by

<u>Employer Representatives</u> Kristine L. Hayes, Esq., Advocate Mark J. Ellis, Esq., City Law Director Robert Hollis, Chief of Police	<u>Union Representatives</u> William Dunn, IUPA Business Agent Dan Ross, Patrolman Rep. Eric Parks, Command Off. Rep.
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AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

BACKGROUND

The City of Upper Sandusky, hereinafter called the "Employer", recognizes the International Union of Police Associations, AFL-CIO, hereinafter called the "Union", for all full time Police Officers, Command Officers, and Fire Fighters employed by the City . The above named parties engaged in bargaining for a successor Agreement to the one expiring December 31, 2000. Since the negotiations of the expiring collective bargaining agreement, the bargaining unit elected the Union as its bargaining agent. In the course of good faith bargaining, several issues were resolved in tentative agreement. The Fact Finding Hearing was convened on December 20, 2001, at the City Building, Upper Sandusky, Ohio. The parties had timely submitted their respective Pre-Hearing Briefs. There were about 30 unresolved issues. The Fact Finder offered and the parties agreed to attempt mediation prior to engaging in a traditional Fact Finding Hearing. The parties also stipulated that any position and/or offer made in mediation could be used by the Fact Finder should issues remain unresolved and a Fact Finding Award became necessary. In the course of conducting mediation, in joint as well as separate sessions, the parties identified submitted rationale and supporting facts regarding their respective positions. The parties made concessions, counter proposals, with further issues reaching tentative agreement. Not all unresolved issues, however, reached tentative agreement in the course of mediation.

The parties requested the Fact Finder to issue a Report incorporating those positions tentatively agreed to in mediation as part of the recommendation in addition to the recommendations on those issues remaining unresolved. After the parties indicated they had nothing additional to submit on behalf of their bargaining position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions, the Hearing was closed. The Fact Finding Award is to be issued to the parties, if possible, on January 2, 2002.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that time and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

All terms in the following Articles were tentatively agreed to, or otherwise resolved through negotiations prior to the parties calling for Fact Finding:

Note: The parties have used a different numbering for Articles in the proposed Agreement. Format is not a substantive recommendation of the Fact Finder. In this section, the Article numbers inserted reflect the number used in the expiring collective bargaining agreement, where possible. Topical listings were extracted from City Exhibit "B".

Article	No.	Title
Article	I	PURPOSE
Article	II	RECOGNITION OF THE UNION
Article	@	PROBATIONARY EMPLOYEES
Article	@	DUES DEDUCTION
Article	@	NONDISCRIMINATION
Article	IV	MANAGEMENT RIGHTS
Article	@	EMPLOYEE'S BILL OF RIGHTS
Article	@	NO STRIKE/NO LOCKOUT
Article	VI	GRIEVANCE PROCEDURE
Article	@	DISCIPLINARY ACTION
Article	@	PERSONNEL FILES
Article	X	EDUCATIONAL BONUS
Article	@	OFFICER IN CHARGE PAY
Article	XII	LIFE INSURANCE
Article	XII	LIABILITY INSURANCE
Article	@	BEREAVEMENT LEAVE
Article	APP. "B"	FAMILY AND MEDICAL LEAVE
Article	XVI	MILITARY LEAVE
Article	XVIII	REIMBURSEMENT FOR TRAVEL AND EXPENSES
Article	XIX	MEDICAL EXAMINATIONS
Article	@	INJURY IN THE LINE OF DUTY
Article	@	LAYOFF & RECALL
Article	@	BULLETIN BOARD
Article	XXIV	ENTIRE AGREEMENT
Article	XXV	SEVERANCE CLAUSE

@ Topic not directly identified to an Article number in the expiring collective bargaining agreement nor indicated as a new or revised provision of that agreement.

ISSUES AT IMPASSE

The following Articles included one or more issues at impasse at time of the Fact Finding Hearing:

Note: The parties used a different numbering for Articles in course of negotiating the proposed Agreement. Format is not a substantive recommendation of the Fact Finder. In this section, while no numbers are inserted, the listing was compiled from position papers submitted by both the City and the Union.

Article
DRUG AND ALCOHOL TESTING
WAGES
ANNUAL BONUS
GROUP HEALTH INSURANCE/MEDICAL BENEFITS/DENTAL INSURANCE
HOLIDAYS
CALL IN PAY/COURT TIME
HOURS OF WORK, OVERTIME
VACATION
SICK LEAVE
EQUIPMENT & UNIFORMS
DURATION
COOPERATION
PERMANENT SHIFTS

**ISSUES TENTATIVELY AGREED TO
AT FACT FINDING**

The following issues reached tentative agreement in the course of mediation at the Fact Finding Hearing and are recommended for inclusion in the Agreement as agreed to by the parties and reflected by the terms indicated below.

Note: The parties have used a different numbering for Articles in the course of negotiations. Format is not a substantive recommendation of the Fact Finder. In this section, the numbers reflect the numbering of articles, by subject, in the expiring collective bargaining agreement.

Article/Sec	Issue	Resolution Terms
Cooperation 3	Cooperation	Parties agree to delete this Issue.
7. __	City introduced adding a new provision stating purpose of the Article.	City withdrew its proposal.
7.2	Name of bargaining agent.	Change the bargaining unit name identification as proposed by the Union.
7.2	Add provision regarding FLSA compliance reference.	Insert Union proposed changes.
7.2	Prior notice to Union regarding change in tour of duty assignment.	Increase from 10 to 20 days advance notice.
7.7	Editorial	3 rd Sentence to read: "Therefore, the City agrees that it will not use part time or auxiliary personnel to displace employees from full time work or to avoid hiring full time employees to perform full time work <u>or overtime.</u> "
8.3	Pay shortage (new issue).	Union withdraws its proposal on this issue.
Art. 9	Rate of bonus.	Union withdraws its proposal on this issue.
12.4	Probationary Employee benefit period.	Union withdraws its proposal on this issue.
12.4	Carryover of unused benefit rate.	Union withdraws its proposal on this issue.

13.1	Add Easter to Holidays.	Increase 1 floating holiday (to be named) not subject to OT Holiday pay, if worked.
13.2	Holiday OT carryover for 3 years.	Union withdraws its proposal on this issue. Retain current language.
13.2	Double time pay for Identified Holiday work.	Include language as proposed by the Union.
13.2	Comp. Time credit added to provision.	Union withdraws its proposal on this issue. Retain current language on this subject.
13.3	Editorial changes.	Parties agree to editorial changes as proposed by the Union.
14.3	Use of vacation time/carryover.	Union withdraws proposed change. Retain current language.
14. ___	(New) Pay rate for time worked on scheduled vacation day(s).	Language as proposed by the Union, deleting the last phrase "and such time shall be credited to their compensatory time."
14. ___	(New) Define the accrual rate.	City withdraws its proposal.
17. ___	(New) Required change in required uniform components, in part or whole.	"If employees are required to wear new uniforms, or to replace existing uniforms from those currently issued, in part or whole, they shall be issued in a quantity and manner as that used for new employees."
26	Duration	3 years. Language as proposed by the Union. Wage only retroactivity to January 1, 2001. Other economic changes effective January 1, 2002.

The City offered two (2) packaged proposals in the course of mediation. They were not accepted in total by the Union. Only those issues reflecting an offer of withdrawal or acceptance of a Union counterproposal are included in this section.

Pursuant to the parties' authorization, information about their respective final positions are incorporated into the Fact Finder's recommendation in the next section of this Report.

If there is any question by either party regarding accuracy in reflecting the terms of tentative agreement as stated in the term of resolution in above, the stated resolution is the finding and recommendation of the Fact Finder.

**ISSUES REMAINING AT IMPASSE
AND
SUMMARY OF RESPECTIVE PARTY POSITION
AT THE START OF FACT FINDING**

The following issues remain unresolved after Fact Finder conducted mediation:

Note: The parties have used a different numbering for Articles in the proposed Agreement. Format is not a substantive recommendation of the Fact Finder. In this section, Article numbers referenced are from the expiring collective bargaining agreement. The positions stated were compiled by the respective position papers on items at impasse submitted by the City and the Union.

Employer	Issue	Union
Reject inclusion of the Union Proposal.	Art. VI Hrs of Wk. O.T. Sec. __ (New) Mandatory Overtime	Insert language to regulate mandatory O.T.
Minimum report time pay of 3 hrs.	7.6(c) Minimum Call in/Court Pay	Minimum report time pay of 4 hrs.
4% annual increases. Retain current step schedules.	Art. VIII Wages Sec. 8.1	7% annual increases. Revised step schedules.
Provide for employees to pay 10% of monthly premium and the City to pay 90%.	Art. XII Med. Benefits 12.1 Group Health Ins.	Retain current dollar amount limits for employee contribution.
Increase City contribution rate to \$600 yr.	12.4 Dental Optical Benefits	Propose increase City contribution rate to \$750/yr.
Reject Union Proposal. Retain current vacation accumulation schedule.	Art. XIV Vacations	Revise vacation accumulation schedule.

Employer	Issue	Union
Reject Union proposed change. Retain current language.	Art. XV Sk. Lv. 15.5	Increase accumulation time and increase severance benefit if death is job related.
Increase benefit allowance from current rate of \$475/yr. for Police \$375/yr. for Fire to \$500/yr. For Police \$400/yr. For Fire duration of the Agreement Otherwise, retain current language.	Art. XXVI Equipment & Uniforms Sec. 16.3	Increase benefit allowance from current rate to: \$500/525/550 for Police \$400/425/450 for Fire annual increases for duration of the Agreement. City to remit allowance to employees twice a year. City to pay for required change in uniform or parts, not subject to the maintenance allowance provided in this Article.
Reject inclusion of Union Proposal.	Art. ____ Perm. Shift	Propose inclusion as a new Article.
Propose inclusion as a new Article.	New ____ Drug & Alcohol Testing	Reject inclusion of the City's Proposal.

DISCUSSION & DETERMINATION

General

The economic issues at impasse are considered collectively. Economic impact was reviewed in context of cost estimates of issues tentatively agreed to as well as those economic issues at impasse. Recommendations were made on an item by item basis as called for under ORC 4117.

Many matters were resolved in the course of mediation. Even though not all matters were resolved in mediation, the degree of difference on most remaining issues were considerably narrowed. The parties were candid in relating the basis of differences on the issues remaining unresolved. There exists a few issues of dispute in which significant ideological difference remains or a lack of understanding of concepts appear to be the basis of resolution between the parties at this time.

Regarding economic issues, inability to pay is not argued. Many major economic issues have been resolved. Significant concessions were offered in the course of mediation. While generally accepted standards used in rights arbitration (Fact Finding) is applied in this matter, positions communicated to the Fact Finder in the mediation sessions are included in the following recommendations.

**Fact Finder's Determination
Issue by Issue**

Issue	Discussion/Recommendation
<p align="center"> Art. VII Hrs of Wk. O.T. Sec. __ (New) Mandatory Overtime </p> <p align="center">Recommendation</p>	<p>While the City conveyed a willingness to accept the Union's proposal regarding the issue of Mandatory Overtime, it also related its concern about retaining its right to adopt procedures for notifying officers . It is a standard labor contract understanding that the employer retains the right to adopt such reasonable rules necessary to implement new terms agreed to in a collective bargaining agreement. Such is understood, so long as they are not determined inconsistent with the express terms of the agreement.</p> <p>It is recommended that terms of Article 7 of the expiring agreement be included in the Agreement as tentatively agreed to, with the following added as paragraph 2 of Section 7.2</p> <p>"Mandatory overtime shall be offered to those on the affected shift by seniority with the most senior officer being asked first. If sufficient officers are not obtained by this method, reverse seniority shall be implemented with the least senior officer available being required to work only if part-time or auxiliary personnel are not available. The City retains the right to adopt such reasonable rules and regulations as necessary to implement this provision, so long as such are not contrary to express terms of this Agreement nor applied in an arbitrary or capricious manner."</p>
<p align="center"> 7.6(c) Minimum Call in/Court Pay </p> <p align="center">Recommendation</p>	<p>This recommendation result is based on appropriateness and consideration of the totality of the revision of economic benefits in the Agreement.</p> <p>It is recommended to include the terms of Section 7.6(c) as stated into the expiring agreement into the Agreement with the following change in the last sentence: ".....with a minimum of four (4) hours paid per day."</p>

Issue	Discussion/Recommendation
<p data-bbox="326 279 477 369">Art. VIII Wages Sec. 8.1& 8.3</p> <p data-bbox="302 485 501 510">Recommendation</p>	<p data-bbox="548 279 1458 457">The issue regarding a change in the Step increase rate and number is the major contention in dispute. While the Union rationale to make such an adjustment is persuasive as an individual issue, it is considered prudent to seek resolution of this issue, now that a number of other issues are resolved.</p> <p data-bbox="548 499 1446 678">It is recommended that the terms set forth in Section 8.1 with the following changes: The base rates of pay be increased by 4% effective January 1, 2001, and each step on the existing wage schedule. Those adjusted rates are to be increased by 4% effective January 1, 2002, another 4% effective January 1, 2003.</p>
<p data-bbox="297 747 509 869">Art. XII Med. Benefits 12.1 Group Health Ins.</p> <p data-bbox="302 999 501 1024">Recommendation</p>	<p data-bbox="548 747 1446 968">The percentage basis for determining employer-employee premium contribution was changed to an employee fixed dollar amount in prior negotiations. Considering all economic factors and other benefit provisions proposed for inclusion of the Agreement, it is not recommended to change the basis of determining contribution rate of the medical insurance premiums.</p> <p data-bbox="548 1010 1419 1178">It is recommended that provisions of Section 12.1 of the expiring agreement be included in the Agreement with the following change: “A. Single person. \$27.50 per month. B. Married couple, with no additional dependents, \$44.00 per month. C. Married couple with additional dependents, \$66.00 per month.”</p>
<p data-bbox="318 1239 488 1329">12.4 Dental Optical Benefits</p> <p data-bbox="302 1394 501 1419">Recommendation</p>	<p data-bbox="548 1239 1435 1346">This benefit is City fund, not part of an insurance plan. The City and Union expressed mutual agreement to a concept introduced by the parties. There is no employee contribution to the benefit.</p> <p data-bbox="548 1388 1455 1556">It is recommended the express terms of Section 12.4 of the expiring agreement be included in Agreement with the following modification: “The City shall contribute \$550.00 per year for a single employee; \$600.00; per year for a married employee with no additional dependents; and \$650.00 per year for a married employee with additional dependents.....”</p>
<p data-bbox="347 1617 464 1675">Art. XIV Vacations</p> <p data-bbox="302 1709 501 1734">Recommendation</p>	<p data-bbox="548 1617 1419 1686">The argument to include the proposed change in the computation of vacation is not persuasive at this time.</p> <p data-bbox="548 1728 1357 1797">It is recommended the express terms of Article XIV, listing the “Completed years of service” be included in the Agreement.</p>

Issue	Discussion/Recommendation												
<p data-bbox="354 275 446 359">Art. XV Sk. Lv. 15.5</p> <p data-bbox="297 867 500 894">Recommendation</p>	<p data-bbox="545 275 1458 489">The basis for determining the buyout rate of accrued and unused sick leave, as well as the maximum number of hours to apply to this benefit was set in the prior bargaining period. Being consistent with the rationale used regarding the issue of determining the insurance premium rate basis, changing the basic computation structure is not recommended.</p> <p data-bbox="545 533 1463 678">It is also noted that the severance buyout is limited to use of 30% of the accrued and unused sick leave time. It is considered that a limited increase in the maximum number of hours that can be accumulated for computation of this buyout provision is justified.</p> <p data-bbox="545 722 1446 831">While concept of including a death on duty concept is viewed in a favorable light, it is the opinion of this Fact Finder that it should stand separate and apart from the issue of a sick leave buyout provision.</p> <p data-bbox="545 875 1463 1052">It is recommended that the express terms of Section 15.5 be included in the Agreement with the change of maximum number of hours of sick leave time accrual allowed be increased by thirty (30) hours effective January 1, 2002, and another thirty hours (30) effective January 1, 2003.</p>												
<p data-bbox="318 1115 475 1236">Art. XVI Equipment & Uniforms Sec. 16.3</p> <p data-bbox="297 1272 500 1299">Recommendation</p>	<p data-bbox="545 1115 1395 1224">The parties expressed agreement, at least in concept, to the 2 remaining unresolved issues in this Article. This recommendation reflects the Fact Finder's understanding of the recommendation.</p> <p data-bbox="545 1268 1419 1339">It is recommended the express terms in Article 16 be included in the Agreement, inclusive of the following revisions of Section 16.3:</p> <p data-bbox="545 1383 667 1411">"Section 3.</p> <p data-bbox="639 1415 1451 1503">The City shall provide police officers and firemen the following annual allowances in order to furnish or replace required uniforms and accessories:</p> <table data-bbox="639 1507 1015 1629"> <thead> <tr> <th></th> <th>Police</th> <th>Fire</th> </tr> </thead> <tbody> <tr> <td>2001</td> <td>\$500.00</td> <td>\$400.00</td> </tr> <tr> <td>2002</td> <td>\$525.00</td> <td>\$425.00</td> </tr> <tr> <td>2002</td> <td>\$550.00</td> <td>\$450.00</td> </tr> </tbody> </table> <p data-bbox="545 1665 1414 1787">If an employee is required by the City to attain a new uniform or change in uniform parts, such shall be provided by the City in a manner as provided new employees. Attainment of such uniforms or parts shall not be charged against the fund established in this Article."</p>		Police	Fire	2001	\$500.00	\$400.00	2002	\$525.00	\$425.00	2002	\$550.00	\$450.00
	Police	Fire											
2001	\$500.00	\$400.00											
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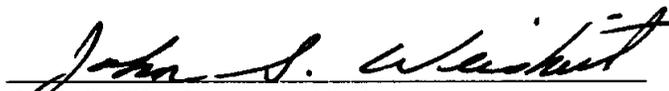
Issue	Discussion/Recommendation
Art. ____ Perm. Shift Recommendation	Based on consideration of the totality of negotiations, inclusive of recommendations of this Award, it is not recommended to include this provision in the Agreement.
New ____ Drug & Alcohol Testing Recommend	It is recognized a common practice to include such a provision in the collective bargaining agreements. However, the depth of detail and lack of interaction on this issue by the parties are not determined conducive for a recommendation to include into the Agreement. It is recognized that management retains the right to adopt reasonable work rules and regulations not necessarily reflected as a term of the collective bargaining agreement. The usual controlling factor being such shall not be in conflict of existing terms of the Contract or shall such rules be applied in an arbitrary or capricious manner.
	It is therefore determined to not recommend inclusion of this provision in the Agreement.

TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of these **13 pages**, inclusive of this page, and recommendations contained herein are made in this matter of this Award and so indicated by the Fact Finder's signature below.
- * All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.
- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.
- * All matters of tentative agreement reached between the parties prior to Fact Finding, conducted by the Fact Finder are recommended to be included in the Agreement in addition to the Fact Finder's specific recommendation.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **January 2, 2002**.



 John S. Weisheit, Fact Finder