STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS

REPORT & RECOMMENDATION OF THE FACTFINDER

AS ISSUED
August 17, 2004

IN THE MATTER OF:

City of Lorain
(Employer)

-and-

OPBA
(Union)

SERB Case No.: 03-MED-10-1252

APPEARANCES:

On Behalf of the Employer:

Michael J. Scherach	Operations Deputy
Craig Miller	Service-Safety Director
Robert Davey	Captain – Lorain Police Department
William Engle	Captain – Lorain Police Department

On Behalf of the Union:

Jeff Perry	Business Agent
Lee Anne Failing	Associate Director
Deborah M. Boone	Alternate
Tina Trifiletti	Director

GREGORY JAMES VAN PELT
LABOR ARBITRATION
MEDIATION & DISPUTE RESOLUTION

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Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until December 31, 2003. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested the Factfinder to attempt mediation of unresolved issues prior to holding an evidentiary hearing, and a mediation session was accordingly convened on July 20, 2003 at the Lorain Municipal Building. Prior to hearing, pursuant to OAC 4117-9-05(F), *et seq.* the Parties submitted to the Factfinder written statements of their respective positions. Mediation resulted in the withdrawal or settlement of four issues at impasse between the Parties, but failed to resolve four remaining issues. Accordingly, an evidentiary hearing was held on August 4, 2004, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 13 – Hours of Work and Overtime Compensation**
   Section 13.1
   Section 13.2
   Section 13.4
2. **Article 18 – Longevity**
   Section 18.1
   Section 18.2
3. **Article 19 – Vacations***
4. **Article 21 – Insurance Coverage**
5. **Article 22 – Clothing/Maintenance Allowance***
6. **Article 24 – Sick Leave***
7. **Article 28 – Wages**
8. **Article 31 – Present Benefits and Past Practice***

*Withdrawn in mediation, by mutual agreement of the Parties.

Background and General Considerations

The City of Lorain, with a population in excess of 68,000, is situated in eastern Lorain County, contiguous to western Cuyahoga County and within the Cleveland metropolitan area. Like many Ohio cities whose economies once depended largely on manufacturing industries that have closed or moved away in recent decades, the City's unemployment rate has soared – to 10.2% in 2002, according to the US Department of Labor. As a result, Lorain's tax base and financial circumstances have declined substantially.

In 2002, at the request of the City, the State Auditor conducted a fiscal watch analysis, and finding a deficit of $2.4 million, placed Lorain on Fiscal Watch. Under the provisions of ORC § 118.023, the Auditor conducted a performance audit, concluded in January of 2004. The Auditor's projections for ending General Fund balances in the three years of the successor Agreement at issue here are for deficits in excess of $4. million in 2004; $7. million in 2005; and $11. million in 2006.

Nor do the City's prospects for future revenue bode well. Three attempts to pass operating levies have been defeated in recent years. The City prevailed in a 2003 action against the Lorain County Budget Commission awarding it a greater share of State Local Government revenue sharing funds, those funds are likely to be increasingly limited as the State attempts to address its own budget problems. Moreover, early in 2004, Ford Motor Company announced that it would close its Lorain Assembly Plant and consolidate Econoline van production at its nearby Avon Lake operation. Ford's approximately 1,700 employees contributed City income tax revenue of $2.2 million in 2002 and $2.4 million in 2003.

Faced with these prospects, Lorain has taken measures to control its operating costs, and anticipates further efforts based on the Auditor's recommendations. It has reduced the number of City employees from 585 in 2001 to the present level of 535. Perhaps most relevant to the present matter are 2003 wage and salary freezes agreed to by a number of the City's bargaining units and non-represented Employees; many of these undertaken in lieu of a recognized need for layoffs. An additional effort to control expenses factors largely in the present negotiations: the City's health insurance benefits are self-funded, and it accordingly has reached agreement with some 60% of its workforce – including the USWA, the

Employer's largest bargaining unit - to institute employee contributions and other modifications of its health care procedures in an effort to get both costs and fund balances in line.

Whether Lorain's admittedly dire financial circumstances rise to the level of inability to pay contemplated by ORC § 4117-9-05(K)(3) is affected by several factors, however. First, the Performance Audit, while finding a number of inefficiencies in City operations, concluded that, "the City's [labor] compensation packages do not negatively contribute to its current fiscal watch status and appear to be appropriate."[1] In addition, the Auditor indicated that Lorain's income tax collection procedures might yield revenue at present going uncollected.

More, many of the costs of police protection in Lorain are not paid from the General Fund, but are specifically provided through the City's Police Levy. In 1992, seeking increased Police protection, Lorain voters passed a City levy providing for a ¼ of 1% annual municipal income tax specifically for "law enforcement purposes only . . . "

By its intent, and the language of enabling legislation, the levy was to fund the hiring of new, additional police officers. Ordinance No. 22-92, implementing the levy, specifically indicated in § XIX (1) that the revenue was to be used, "to provide funds for the purpose of hiring *new personnel* in the Lorain, Ohio Police Department, to include all salaries and fringe benefits for the *additional new personnel;* (emphasis added). Additionally, § XIX(3) specifically required that the Police Department was to be allocated no less than the 24% of General Fund revenues that supported its operations at the time of levy passage.

Over time, attrition and other personnel matters caused variation in the authorized levels of patrol officers, leaving unclear who were, in fact, "additional new personnel" under the terms of the levy. Consequently, seeking clarification, the Fraternal Order of Police brought an action against the City, the result of which was a consent decree establishing a benchmark level of 90 patrol officers as the number to be supported from the general fund, with additional new personnel defined as those hired above the benchmark level. At present, the police department comprises 93 officers, considerably less than its authorized strength of 110 members. At some point, it was also determined by the Council that Policy Levy revenues unspent would be placed in a fund budgeted for law enforcement-related capital

[1] See Auditor of State, Betty Montgomery, City of Lorain, Performance Audit, January 15, 2004 p.1-4

improvements, and has been utilized to build a new police facility, as well as to purchase patrol vehicles.

Unlike the Department's patrol officers, Lorain's Telecommunicators do not have an established benchmark level over which "additional new personnel" may be paid from levy funds. However, practice has set the level at 10 Telecommunicators; as a result, at present four are compensated from the levy, although that number has been as high as six in recent years. Indeed, the present strength level of dispatchers has a significant bearing on the present negotiations; at full force, Lorain employed some 20 Telecommunicators. Now, there are fourteen, with additional departures imminent. As a result, the remaining dispatchers are required to assume additional duties as well as assume responsibility for warrant and other file functions formerly performed by personnel assigned to the tasks exclusively. Moreover, Telecommunicators are regularly required to work beyond their assigned shifts on short notice, usually for four hours, and not infrequently for an additional eight hour shift. The need of Lorain's Telecommunicators to cancel personal and family plans and to arrange childcare with no prior notice exacerbates the already stressful job duties and must certainly lead to resentment and fatigue, a result contrary to the interests of the public.

The imposition of overtime and the assumption of additional duties by the City's dispatchers are perhaps greater considerations than the fact that the present bargaining unit is somewhat below similar units in neighboring jurisdictions. When compared to Lorain County communities, the City's Telecommunicators 2003 aggregate compensation of $34, 518.77 was 96.67% of average; in a broader compilation including Cuyahoga County jurisdictions, bargaining unit members were some 10% below the average.[1] In part, the bargaining unit's relatively comparable position is due to wage increases of some 29% during the last Agreement, effected in order to bring the City's Telecommunicators into parity with their regional colleagues.

In summary, the financial position of the Employer here is dire, and it's economic future tenuous. If not constituting an inability to pay the bargaining unit's economic proposals – it is a small unit, representing a fraction of a percent of Lorain's employees – the

[1] It should be noted that dispatch compensation in East Cleveland, currently in Fiscal Emergency and hence in a somewhat more advanced state of fiscal decline than Lorain, were $28,415.50 for 2003.

City's financial position does require careful consideration of issues having economic impact. Moreover, the City's fear that increases for the present unit may form the basis for the bargaining demands of other City employees is not entirely without foundation.

Nonetheless, Lorain's Telecommunicators suffer from the effects of being under-manned, and the level of their compensation relative to neighboring communities affects the City's ability to attract new dispatchers and, more importantly, to retain the experienced personnel on whom their operations have come to depend.

The following findings of fact and recommendations attempt to balance these competing considerations.[1]

FINDINGS AND RECOMMENDATIONS

1. Article 13 – Hours of Work and Overtime Compensation

Section 13.1

OPBA Position

Arguing that in the past extensive and often unplanned overtime shifts worked by bargaining unit members led to inconsistent allocation of breaks at the discretion of individual supervisors, the OPBA proposes language it maintains memorializes the current City policy regarding the accrual of break time. Under its proposed language, lunch breaks would accrue in increments of .25 of an hour for each two hours worked.

City Position

The City contends that the Fair Labor Standards Act does not require a paid lunch period. As a result, it proposes to reduce the present hour of paid break to 30 minutes. Scheduling and administering the OPBA's proposal would constitute a burden, it says. Presently, patrol officers are utilized to fill in for Telecommunicators on break, and additional overtime is created.

The determination of appropriate break time is an exercise of management rights, and should not be memorialized in the collective bargaining agreement, according to the City.

Findings & Recommendation

The evidence indicates that the inconsistent allocation of break time to bargaining

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[1] The Factfinder takes notice that the CPI-U for the period July 2003-2004 is 3.0%. See http://www.bls.gov/news.release/cpi.t01.htm

unit members often forced to work overtime led to City to promulgate a policy memorandum containing, essentially, the Association's proposed language. Memorializing the terms and conditions of that policy in the present agreement is a legitimate matter for collective bargaining, and does not inappropriately deprive the Employer of management rights.

Further, the public welfare would seem ill-served by dispatchers required to work extended periods without adequate relief from their often stressful job duties. Consequently, in the interest of maintaining a consistent and uniform break policy, given the overtime demands on members of this bargaining unit, the OPBA's position is recommended.

Section 13.2

OPBA Position

The Association maintains that, despite contractual limitations, bargaining unit members are often required to work in excess of four overtime hours per shift. In order to discourage the Employer from requiring in excess of twelve hours from its Telecommunicators, the Union proposes a provision for double time for all hours worked in excess of twelve consecutive hours.

City Position

The Employer argues that it makes every attempt not to work its Telecommunicators more than the specified twelve consecutive hours, but that sometimes the Chief requires the ability to force bargaining unit members to work in excess of 12 hours. Lorain has paid some $17,000. in overtime to its dispatchers to date this year, and cannot afford the additional cost of the OPBA's proposal.

Findings & Recommendation

The Employer is presently restricted from requiring work in excess of 12 consecutive hours. While it is understandable that emergency situations may sometimes occur that require such forced overtime, it is also reasonable to conceive that Telecommunicators required to work such extraordinary hours would also incur increased childcare, transportation and other expenses related to the extended shift. For such they should reasonably be compensated, and the OPBA's position is accordingly recommended.

Section 13.3-4

OPBA Position

The Union argues that the bargaining unit's manpower shortage results in an inability to use compensatory time, and that some Telecommunicators have lost such time accrued in excess of the present 240 hours. Accordingly, the OPBA proposes changes to the language of §§ 13.3-4 doubling the number of bankable hours to 480. This proposal, says the Union, comports with the language of the FLSA.

City Position

The Employer argues that banked compensatory time constitutes an unfunded liability beyond the City's ability to budget accurately, as it may be reclaimed at a rate higher than that at which it was earned. Moreover, the City argues that most compensatory time is earned for non-emergency overtime.

Findings & Recommendation

The utilization of earned compensatory time is at the discretion of the Employer, as is the assignment of non-emergency overtime. Under prevailing conditions in the City's under-manned dispatch department, the opportunity for bargaining unit members to take such time off is severely limited, if not nonexistent. As accrued compensatory time that cannot be taken, and cannot be banked, is effectively a contract right abrogated, the Union's proposal is recommended.

2. Article 18 – Longevity

<u>Section 18.1</u>

OPBA Position

The Union proposes alterations to the present longevity schedule it contends will maintain internal parity with the City's police officers, who negotiated their longevity increases after the conclusion of bargaining for the Telecommunicator's last Agreement.

These increases, says the OPBA, could be paid for from the Police Levy, rather than Lorain's General Fund. Under the consent agreement with the FOP, only the compensation of police officers above the benchmark 90 members may be funded by the Levy; at present, the number of City police personnel are below 90, leaving only Corrections Officers and Telecommunicators eligible for compensation from the Levy.

City Position

Lorain argues that the longevity benefit afforded members of the present bargaining unit is more generous than that offered by the report's peer cities of Hamilton and

Springfield; accordingly the Auditor recommended that the longevity benefit be reduced from $120 per year of service to $90 per year of service. The City's financial position does not permit it to continue to pay the current benefit level, and it accordingly proposes a reduction to the Auditor's recommended amount.

Findings & Recommendations

While the peer cities cited by the Auditor fail to meet the statutory requirements for comparable jurisdictions under ORC 4117, Lorain's present financial position is not conducive to the Union's proposed increases, which almost double the upper level entitlement in the final year of the agreement. Accordingly, retention of the current contract language is recommended.

Section 18.2

OPBA Position

In consideration of the fact that lay-offs in the City's Corrections Department are imminent, and that as a result some corrections officers may be hired to fill vacancies in records functions, the Union proposes language providing that any new bargaining unit members will be credited with all time in the employ of the City.

Findings & Recommendation

Given the City's need to attract and retain qualified Telecommunicators and records personnel, the Union's proposal is recommended.

3. Article 21 – Insurance Coverage

City Position

The City is self-insured and at present provides first-dollar health care coverage to the instant bargaining unit. Citing the need to control its health care costs – a measure considered essential by the State Auditor, who also determined the City's Internal Service Fund for self-insurance to be under-funded – the Employer seeks acceptance by the OPBA of health care coverage that institutes, among other revisions, employee participation in costs and co-payments and the establishment of maximum deductibles. The same plan, it says, is currently in force for some 60% of Lorain's employees, most recently the USWA, the City's largest bargaining unit.

Under the plan, bargaining unit members would be required to make a 5% monthly premium contribution, with a cap of $20/single and $40/family per month; pay a deductible of $100/$200 for single/family coverage; co-pay of $15.00 per office visit; with a maximum out-of-pocket cost to employees of $1,000/$2,000 for single/family coverage.

The City also proposes elimination of the present dental benefit.

In support of its position, Lorain cites SERB data indicating that employees in comparable area jurisdictions pay considerably more than the premiums proposed by the Employer here – employee contributions in the Cleveland area averaging $43.43/single and $93.83/ family. It's own cost to insure its employees, reflected by the COBRA contribution level, was $416/single; $815.00 family, effective May 20, 2004.

OPBA Position

The Union points out that during the mid-1990s the Telecommunicators were the only bargaining unit subject to payroll deductions for health insurance participation. Although it concedes that those deductions were subsequently refunded by the City, it protests that it would be unacceptable for the dispatchers to once again suffer a reduction in health care benefits not endured by other City employees. Additionally, as a smaller and lower-paid bargaining unit, says the Union, the impact of the proposed payroll deductions on the Telecommunicators would be proportionally greater than on other City employees.

Likewise, the OPBA rejects elimination of the dental coverage now enjoyed by members of the unit, instituted in 1998 as the result of interest arbitration.

Findings & Recommendations

The escalating cost of providing health care to employees continues to be a problem for even the most prosperous employers in both the public and private sectors. For communities suffering the raging unemployment and the consequent loss of revenue faced by Lorain, these unpredictable health care costs add to an already desperate financial situation. There is no doubt that employee participation in the costs of health care is a necessary and reasonable accommodation, and the City's request that the present bargaining unit be covered under the same terms and conditions as its USWA brethren is recommended.

However, the Telecommunicators presently enjoy a dental benefit under § 21.1 equal to that of police officers; the elimination of that existing benefit is not recommended, and the current provisions of §21.1 should be retained.

4. Article 28 – Wages

OPBA Position

The Union proposes wage increases of 0%-4.5%-4.5% on January 1st of each of the respective contract years, applicable only to bargaining unit members with two years or more of service to the City, and with the addition of a fourth wage tier after three years of service. While it acknowledges that Lorain's General Fund balances are threatened, it argues that increases it seeks can be met through the Police Levy.

The Union is willing to sustain a wage freeze in 2004. However, the OPBA asserts that average wage increases in the public sector are presently between 3.5% and 4%, an average it maintains corresponds to its request for a 9% increase over the life of the successor agreement. Citing comparable wage information for area dispatchers, the Union argues that it should not be expected to once again slip to the bottom of the comparable schedule.

City Position

The Employer maintains that its current financial position, as well as the announced closure of the Ford Assembly Plant, precludes any wage increases for at least the first two years of a successor agreement, with provision for re-opening negotiations regarding wages in 2006. It projects that it will sustain a $2.5 million General Fund deficit for fiscal 2004, following deficits in excess of $6.million over the previous three years. Recognizing the problem, other City bargaining units, including the Firefighters and USWA Local 6621 have agreed to wage freezes in lieu of layoffs, according to the City.

Members of the present bargaining unit benefited from the City's recognition in negotiating the predecessor agreement that its dispatchers had been underpaid in comparison to colleagues in comparable jurisdictions. It maintains that it cannot afford the wage increases sought by the OPBA here, and proposes 0%-0%-0% in the respective three years of the contract, with a clause providing for re-opening bargaining of wages in the final year.

Findings & Recommendation

The evidence that Lorain's financial circumstances are dire is beyond dispute; the City has been faced with declining revenues resulting in substantial deficits, there is no indication that its prospects will improve, and, indeed, great possibility that its fortunes will continue to decline over the course of this successor agreement. The wage increases sought by the Union would seem beyond the Employer's means at present.

However, members of this bargaining unit have been asked to assume additional duties and to work longer hours in an often stressful atmosphere to accommodate the City's declining budgets and consequent shortage of Telecommunicators. Like the City itself, their cost of living continues to rise. As a result, Lorain's budget difficulties cannot be balanced much further on the backs of the dispatchers if the Employer is to retain those very employees on whom the safe operation of its telecommunications facility depends. Moreover, testimony indicates a present resentment that manpower shortages in dispatch are being filled at higher wage rates by police officers, due to a shortage of available Telecommunicators.

It is reasonable to conclude that while Lorain requires some opportunity to rebuild its fiscal house, the reconstruction cannot long continue to leave its employees slipping backwards against an ever-increasing cost of living. Allowing the City the first year of the successor Agreement free of wage increases would seem to accommodate Lorain's need to realign its revenues with its expenses, to attempt once again to pass a tax levy, and to reconsider utilization of the current ¼% law enforcement levy.[1] A wage freeze for 2004 is appropriate. Nonetheless, it is reasonable that in the second and third year of the Agreement bargaining unit members receive modest wage increases in order to offset the cost-of-living increases they are likely to encounter, and a 3% annual wage increase in 2005 and 2006 is accordingly recommended.

However, as Lorain's financial future remains tenuous, it seems advisable that a mechanism for discussion of wages vis-`a-vis the City's current economic position be provided for the third year of the Agreement, and language providing for re-opening bargaining regarding wage and other economic issues in December of 2005 is consequently also recommended.

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[1] A number of solutions in this regard might be undertaken by the Parties; e.g., mutual agreement as to a benchmark level of Telecommunicators might facilitate use of Police Levy rather than General Funds for payment of an increased number of bargaining unit personnel.

Summary

Findings and Recommendations

1. **Article 13 – Hours of Work and Overtime Compensation**
   Section 13.1 – *OPBA proposal; accrual of .25 hours of break for each two hours worked.*
   Section 13.2 – *OPBA proposal; double time after twelve consecutive hours*
   Section 13.3-4 – *OPBA proposal; 480 hour comp time bank*

2. **Article 18 – Longevity**
   Section 18.1 – *Current contract language*
   Section 18.2 - *OPBA proposal; all time with City to count toward seniority*

3. **Article 21 – Insurance Coverage**
   City proposal
   – Premium - 5% of COBRA rate; $20/$40 per month cap
   - Co-pay - $15. per office visit
   - Deductible - $100/$200 network; $200/$400 non-network
   - Out-of-pocket maximum - $1,000/$2000 network; $2,000/$4000 non-network
   - Prescription co-pay - $10 generic; $15 brand name

   Retention of current dental coverage under § 21.1

4. **Article 28 – Wages**

   0% - 2004
   3% - 2005
   3% - 2006; provision to re-open negotiations regarding 2006 wage increases and economic issues in December of 2005

Gregory James Van Pelt

Respectfully rendered this 17th day of August, 2004
At Shaker Heights, Cuyahoga County, Ohio

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August 17, 2004

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City of Lorain
(Employer)
-and-
Ohio Patrolmen's Benevolent Association
(Union)

SERB Case No. s **03-MED-10-1252**

Dear Dale:

Please find enclosed one copy of the Report and Recommendations of the Factfinder in the above matter.

As always, it was a pleasure to assist in resolution of this matter.

Very truly yours,

Greg Van Pelt

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