

2004 DEC -8 A II: 50

IN THE MATTER OF FACT-FINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE

AND

CITY OF TALLMADGE

BEFORE: Robert G. Stein

SERB CASE NO. 04-MED-04-0476  
TELECOMMUNICATORS

PRINCIPAL ADVOCATE FOR THE UNION:

Hugh Bennett, Sr. Staff Representative  
FRATERNAL ORDER OF POLICE OLC, Inc.  
2721 Manchester Road  
Akron OH 44319-1020

and

PRINCIPAL ADVOCATE FOR THE CITY:

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## **INTRODUCTION**

The City of Tallmadge, Ohio (hereinafter "City" or "Employer") is located in Summit County, Ohio and has a population of approximately 16,000. The bargaining unit is comprised of nine (9) full-time employees holding the classifications of Telecommunicator. Although the City and the Telecommunicators have had an ongoing collective bargaining relationship, in 2003 the telecommunicators voted to decertify their previous bargaining representative, Local 2764 IAFF, and affiliate with the FOP/OLC. This will be the first Collective Bargaining Agreement between the FOP/OLC (hereinafter "Union" or "bargaining unit") and the City. The bargaining unit is responsible for receiving and dispatching calls for assistance from the public, intrastate radio communications, intrastate and interstate computer communications, TDD services, 911 services, fire services, and other related services for the City, as well as the cities of Munroe Falls and Mogadore. In addition, the bargaining unit is charged with the production and maintenance of records related to the above listed activities.

The parties held several negotiation sessions in 2004 and one hearing with the Fact-finder on November 5, 2004. The parties were successful in resolving all but seven (7) issues during the negotiations. The issues brought to impasse and in the order addressed by the Fact-finder

are: **Issue 1:** New Article Management Rights. **Issue 2:** Article 15, Hours of Work, **Issue 3:** Article 16, Overtime, **Issue 4:** Article 20, Longevity, **Issue 5:** Article 24, Uniforms, **Issue 6:** Article 23, Wages, **Issue 7:** Article 35, Duration.

The advocates clearly articulated the position of their clients on each issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of the parties' proposals on each issue, but will instead reference the Position Statement of each party as well as their brief. The Union's Position Statement and brief shall be referred to as "UPS" and the Employer's Position Statement and brief shall be referred to as "EPS". When referring to the Collective Bargaining Agreement the Fact-finder may also use the word "Agreement."

## **CRITERIA**

### OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. 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.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

**ISSUE 1      New Article MANAGEMENT RIGHTS**

**Union's position**

SEE UPS.

**Employer's position**

SEE EPS.

**Discussion**

In the previous Collective Bargaining Agreements between the City and the Union no management rights clause existed. The City is proposing language in this new section that is identical to language that already exists in the Patrol Officers' Collective Bargaining Agreement in which the FOP/OLC is the bargaining unit representative. The Union counters with language contained in ORC 4117. It is not uncommon for a public employer to propose and negotiate its own definition of management rights. Although the statute is written in comprehensive terms, it does not contain the detail that is often necessary to bring clarity to the rights retained by a public employer in a collective bargaining context. The Union has already accepted the City's proposed language for the Patrol Officer's bargaining unit. This internal comparable is persuasive in this matter. If this language is acceptable to patrol officers,

why is it not acceptable to Telecommunicators represented by the same bargaining agent?

The City also makes a persuasive argument for the ease of administration fostered by the existence of identical management rights language covering agreements represented by the same bargaining agent.

**Recommendation**

**The language proposed by the Employer is recommended.**

**ISSUE 2      Article 15      HOURS OF WORK**

**Union's position**

See UPS

**Employer's position**

See EPS

**Discussion**

The crux of this dispute is the City's desire to eliminate language in the Agreement that permits bargaining unit employees to leave the building during a thirty (30) minute paid lunch period. The Employer cites a previous traffic accident that occurred involving a Telecommunicator who was driving her personal vehicle during her lunch break. The City is

concerned about the potential liability and worker's compensation issues that it may be exposed to if bargaining unit employees leaving the building during this brief lunch period.

The Union asserts that the language of this article is mature language that has not been abused over the many years of its existence. The Union argues that there have been no discipline or grievances arising out of this language in recent memory. The traffic accident that the Employer cites occurred between 6 and 8 years ago, and the City found no reason to curtail the practice of having employees leave the building in the ensuing years, argues the Union.

The Union contends that the bargaining unit members work in a highly stressful atmosphere and need a break from the stress associated with telecommunications work. The Union points out that the language of Article 15 also requires a Telecommunicator to be within radio contact of the radio room and to immediately return when requested.

I appreciate the concerns expressed by the City in this matter. In a day and age of people having more things to do than there is time to do them, there is a tendency to cram too many tasks into too little time. For example, this could result in taking risks in the traffic of Tallmadge Circle in order to pick up a take out lunch, get to the bank, and to the post office during a brief half-hour break. There is certainly the possibility for an employee to take extra time under these circumstances. However, a

neutral cannot responsibly comply with a request to change language that has remained untouched for years without convincing evidence that the current language is no longer working.

In Article 15.04 it is apparent the parties have negotiated several conditions placed upon a Telecommunicator who desires to leave the building during the half hour paid lunch period. Moreover, it is specifically noted that the parties have agreed to a significant sentence that reads, *"This provision is subject to the discretion of the Police Chief."* Arguably, this sentence specifically provides the Chief of Police with the ability to address any abuse of the negotiated rights contained in this provision for cause. Moreover, the inclusion of the City's new management rights clause further strengthens its position to deal with abuse by an employee. The Employer, other than citing a single traffic accident that occurred more than two contract periods ago, did not provide sufficient evidence under the statute to sustain its position in this matter. The City's position in this matter would have been considerably strengthened had it provided evidence of frequent abuse of the lunch period (e.g. late arrivals, being unresponsive to pages, etc.) or other incidents that negatively impacted the City.

### **Recommendation**

**Maintain current language.**

**ISSUE 3      Article 16      OVERTIME**

**Union's positions**

See UPS.

**Employer's position**

See EPS.

**Discussion**

The City is seeking to overhaul the language of this provision. It is proposing language that eliminates sick time in the calculation of overtime. It contends this change has occurred with other bargaining units. The City is proposing the elimination of overtime worked over eight (8) hours in a day, preferring to pay overtime for hours worked over forty (40) hours in a week. The City is also proposing the elimination of compensatory time off and prefers to pay for all overtime. It also seeks to eliminate the consecutive day's worked premium based upon revenue limitations and ease of scheduling.

The Union contends much of the language that the City wants to eliminate or change represents mature language that has not been negotiated for many years. The Union also contends that the Telecommunicators work a considerable amount of time and the

changes being sought by the City would result in a considerable loss of revenue for the bargaining unit members. The Union also points out that the Chief has the discretion to approve or disapprove the granting of compensation time in lieu of overtime. The Union also contends that the extra compensation contained in Section 6 of Article 16 benefits both parties in terms of staffing.

Based upon the experience of this neutral, the trend in the public sector is to exclude sick leave in the calculation of overtime pay, due to the possibilities of abuse that may occur. The fact that other bargaining units in the City have made this concession is an internal comparable of considerable persuasion. The City's desire to eliminate compensation time is puzzling, given that the language of Article 16.03 permits the Chief to deny any form of compensation in lieu of overtime. There was no evidence introduced to suggest the Chief has had a problem in exercising authority in this area, or has even chosen to do so. Again, the authority of the Chief contained in this section, coupled with the inclusion of the recommended comprehensive management rights language contained in this report provides the City with the right to reasonably deny the accumulation of compensation time in favor of overtime pay.

The Employer's need to curtail expenses is understandable in an age of diminishing state support for cities and given the iffy nature of Ohio's economy. However, its desire to eliminate overtime worked over

eight hours in a day was not supported by comparable data, as was its efforts to eliminate sick leave from the overtime calculation. It is also likely that years ago the bargaining unit had to make concessions or compromises in order to obtain it. To simply eliminate it without some form of quid pro quo exchange, or without evidence of a compelling financial hardship upon the City runs contrary to the normal course of negotiations between unions and employers.

The Employer's desire to eliminate the extra compensation for working employees more than six (6) days does not take into consideration the fact that the City controls such matters when it schedules these employees. Understandably, the City cannot control absenteeism, yet it has a great deal of discretion to avoid having employees work more than six (6) days in succession. The evidence provided by the Union regarding the cost of working more than six consecutive days in 2003 and 2004 appears to be relatively modest (e.g. \$4,207. 28 in 2003) when compared to the typically more burdensome financial obligations experienced by a city the size of Tallmadge.

### **Recommendation**

**Maintain current language but add a new section that reads:**

**20.01 By definition, worked hours will not include sick time for overtime calculation purposes; however, regular holiday hours and vacation hours will be added to the calculation.**

**ISSUE 4      Article 20    LONGEVITY**

**Union's positions**

See UPS.

**Employer's position**

See EPS.

**Discussion**

The Union is proposing an enhancement of this benefit by adding a longevity payment of \$150 monthly upon completion of 25 years of service. The City is willing to agree to this change providing all longevity payments cease after 31 years of service. The City argues the value of longevity payments decrease over time. As an internal comparable, the Patrol Officers bargaining unit receives longevity after completion of twenty-five (25) years of service.

It is not uncommon for an employer to recognize twenty-five (25) years of loyal service with some form of financial award, most typically longevity payments. The comparable data supplied by the Union underscores this fact. However, what the City proposes is both innovative and practical. Once an employee has achieved thirty-one (31) years of service, he or she is eligible for retirement under most circumstances. Longevity as a retention tool becomes greatly diminished after reaching

this level of service. In exchange for relief from this financial burden, once an employee becomes eligible for a normal retirement benefit, the City is offering a quid pro quo exchange that will enhance the benefits provided to senior experienced Telecommunicators during the period when they are beginning to contemplate retirement or plans for a second career.

**Recommendation**

**Maintain current language, but add a new sections E. and F. to**

**Article 20 to read as follows:**

- E. Upon completion of 25 years of service: \$150.00 monthly**
- F. After reaching 31 years of completed service an employee shall no longer be eligible to receive longevity payments.**

**ISSUE 5 Article 24 UNIFORMS**

**Union's position**

See UPS

**Employer's position**

See EPS

**Discussion**

The Union is proposing to increase the uniform payment to \$600 from its current annual level of \$500. The City argues that it has recently eliminated any requirement to wear uniforms on the job. It claims it now simply asks Telecommunicators to dress appropriately similar to that of any

other city employee who does not receive a uniform allowance. The Union points out that Telecommunicators may have to appear in court, and in one instance a Telecommunicator was told by the Prosecutor to wear her uniform. Telecommunicators are not isolated from the public and should be dressed in proper police attire, asserts the Union.

As with any uniform allowance, employees have become accustomed to receiving pay for a work-related requirement. The uniform allowance allows employees to wear clothing paid for by the City, and it also saves employees from having to expend their own money for work related dress. However, an employer certainly has the right to determine whether it desires to have Telecommunicators wear uniforms and to expend funds for this purpose. If a uniform requirement is eliminated, there is no justification for paying employees for uniforms they are not required to wear. The payment becomes a disingenuous expenditure of taxpayer dollars with no defensible basis.

However, it is also recognized that over the years the increase in uniform allowance had to be negotiated, and it most likely came at a cost to the bargaining unit in attempting to achieve other economic gains. It is unlikely the City would agree to a raise in uniform allowance without exacting something from the Union in its wage demands or in requiring it to forgo gains in other benefits. This is typical of negotiations by knowledgeable and competent managers in the public sector. It is also

reasonable to assume that Telecommunicators who have been required for years to wear uniforms may not be prepared with proper business dress in the short period of time the requirement has been eliminated. An elimination of the benefit is justified coupled with a conversion of the benefit to account for what bargaining unit employees have had to give up to maintain it.

### **Recommendation**

**The following language shall appear in place of Article 24:**

#### **UNIFORMS**

**The Uniform Allowance shall be eliminated and this Article shall no longer have any force and effect as long as the City no longer requires Telecommunicators to wear uniforms. If during the life of this Agreement the City again requires Telecommunicators to wear uniforms, Article 24 shall be reinstated as previously constituted. The pay scales for Telecommunicators shall be increased by .24 cents per hour, see Appendix A Wages.**

**ISSUE 6      Article 23      WAGES**

### **Union's position**

See UPS

### **Employer's position**

See EPS

## **Discussion**

The issues surrounding wages, as is typical of disputes that entail a change in bargaining representative, are what the increases in wages should be, how it is to be received, and when it should be received. The bargaining unit was certified by SERB in August of 2004.

The City is proposing 3% increases each year of the Agreement. The Union is seeking annual increases of 6% retroactive to January 1, 2004. It contends the bargaining unit employees are underpaid relative to surrounding communities when considering their workload and level of responsibilities. The Union contends its wage demands would only place the bargaining unit in the middle base wage rates of comparable bargaining units. The top three wage earners in the bargaining unit are paid above the steps and have been for several years. The Union contends these top three wage earners have been given lump sum payments in lieu of regular wage increases because of their relative wage positions compared to those of the other six (6) bargaining unit members. The City is proposing to red circle or freeze the wages of the top three wage earners. It is also noted that one of the three top wage earners is said to be retiring and the other two employees have over twenty-five (25) years of service.

The City contends when it made its comparison with 15 other comparable communities, Tallmadge ranked 6<sup>th</sup> in regard to its starting

rate of pay. In addition, a Telecommunicator in Tallmadge reaches the top pay rate in two years (under its proposal), and in other cities it takes five (5) years or longer to reach the top pay rate. When this factor is taken into consideration, a Tallmadge Telecommunicator's effective median wage rate places them in 8<sup>th</sup> place when compared to the other 15 communities used by the City for comparisons. The City, while not forwarding an ability to pay issue, points to its declining sources of income and the steps already taken to eliminate positions in management. Furthermore, the City points out that other bargaining units in the City have settled for increases of 3% each full year of their contracts. As stated in prior sections of this report, internal comparables are significant factors.

The Union made sound arguments regarding the workload of bargaining unit members and the relative inequity in wages at the top end of the scale in comparison to like municipalities (see Union workload and population comparison). However, limited resources of a small City and Ohio's unstable economy often hinders these type of inequities from being adequately addressed. However, I find justification to partially address this matter with a modest and gradual inequity adjustment based upon a median top pay of \$18.60 for municipalities that are located in northeast Ohio. I find the City's proposal to collapse the wage schedule and to red circle the employees above the schedule to also have considerable merit. However, it is uncommon to view an 18-month

employee in most jobs as having reached a journeyman level. It is more common to reach a journeyman level of proficiency at a three (3) year level in a job of this nature. It is generally more prudent to make a scale change gradually rather than abruptly, given the nature of people to resist change. It is also not customary to simply freeze employees who have been red circled without the equivalent increases in compensation being paid in the form of lump sum payments that are not rolled into their base pay. Finally, in order to avoid the scale spread that results from applying percentage increases to wage levels year after year, it is recommended that for this Agreement cents per hour increases be utilized that approximate a 3% increase on what is currently the level G. salary.

### **Recommendation**

**Retroactive to the certification of the bargaining unit in August of 2004 (the first full pay period occurring in August of 2004), each bargaining unit member who is paid on the pay scale shall receive .50 per hour (the equivalent of 3% on current rate G.), plus adjustments for the loss of the uniform allowance. In addition, new rate C (old G.), the top scale rate, shall be given an inequity adjustment of .25 per hour in 2005 and 2006. Effective January 1, 2005 each bargaining unit member on the pay scale shall receive a .50 per hour increase in wages (approximately 3% on the average pay). Effective January 1, 2006, all bargaining unit members on the scale shall receive a .50 per hour increase in wages (approximately 3% on the average pay). (See Appendix A).**

**Employees whose current salary is outside of the pay scale shall be red circled, but shall receive the cash value of all increases in lump sum payments until such time as the pay scale catches up to their salary level. Once the pay for 3 years or greater nears a red circle rate of pay, the**

affected red circled employee shall receive the combination of lump sum pay and wage increase that will place them back on the scale).

**ISSUE 7      Article 35      DURATION**

**Union's position**

See UPS

**Employer's position**

See EPS

**Discussion**

The parties are in agreement that the Agreement shall expire December 31, 2006.

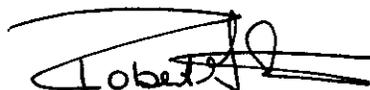
**Recommendation**

**The Agreement shall run from January 1, 2004 through December 31, 2006.**

## TENTATIVE AGREEMENTS

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 6<sup>th</sup> day of December, 2004 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Fact-finder

## APPENDIX A

### WAGES

Wage increase of .50 per hour (3%), plus .24 for uniform allowance elimination, and a .50 per hour inequity adjustment at the top of the scale.

**27.01 Effective (retroactive) to the first full pay period occurring in August of 2004, the wage schedule for the Telecommunicators of the Tallmadge Police Department shall be as follows:**

A.	Entry Level, less than 6 months service	\$14.85
B.	6 months , but less than 1 year service	\$15.28
C.	1 year, but less than 2 years service	\$15.72
D.	2 years, but less than 3 years service	\$16.16
E.	3 or more years of service	\$17.35

**27.02 Effective January 1, 2005 the wage scale for Telecommunicators of Tallmadge Police Department shall be as follows**

A.	Entry Level, less than 6 months service	\$ 15.35
B.	6 months , but less than 1 year service	\$ 15.78
C.	1 year, but less than 2 years service	\$ 16.22
D.	2 years, but less than 3 years service	\$ 16.66
E.	3 or more years of service	\$ 18.10

**27.03 Effective January 1, 2006 the wage scale for Telecommunicators of Tallmadge Police Department shall be as follows**

A.	Entry Level, less than 6 months service	\$15.85
B.	6 months , but less than 1 year service	\$16.28
C.	1 year, but less than 2 years service	\$16.72
D.	2 years, but less than 3 years service	\$17.16
E.	3 or more years of service	\$18.85