

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
January 20, 2005**

STATE EMPLOYMENT
RELATIONS BOARD
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In the Matter of)
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City of Struthers)
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)
And) **04-MED-06-0663**
)
Ohio Patrolmen's Benevolent)
Association (OPBA))
(Full-Time Dispatchers))

APPEARANCES

For the City of Struthers

Michael Esposito, Clemans Nelson & Associates
John P. Sveda, Safety Service Director
Michael L. Seyer, Clemans Nelson & Associates

For the Ohio Patrolmen's Benevolent Association

Jeff D. Perry OPBA Business Agent
Brenda Lee Pavlick, Dispatcher

Fact-Finder, Marc A. Winters

BACKGROUND

The Fact-Finding involves the City of Struthers, (hereafter referred to as the "Employer") and the Ohio Patrolmen's Benevolent Association (hereafter referred to as the "Union"). The Union's bargaining unit is comprised of approximately four (4) full-time Dispatchers in accordance with SERB rules. The State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter.

The Fact-Finding Hearing was conducted on Wednesday, December 29, 2004, at the Struthers Municipal Department Conference Room. The Fact-Finding Hearing began around 9:00 A. M. and was adjourned at approximately 1:00 P. M.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well. The Fact-Finder also appreciates the brevity given at the Hearing to each parties position.

This Fact-Finder also would like to convey his gratitude for the parties cooperation in extending the date for which this report to be in . Due to surgery, complications and recover time, this Fact-Finder needed the extension to finish the report in a professional manner. Although this report may not be the most wordy report this Fact-Finder has ever completed, I can assure you that all respective positions, evidence and testimony was taken into consideration before arriving at any conclusions. In fact, the tapes were listened to repeatedly in order not to miss a fact. This Fact-Finder's only concern was to finish the report by the extension permitted by the parties.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The following issues were considered at the Fact-Finding Hearing on December 29, 2004.

1. Hours of Work
2. Wages
3. Longevity
4. Insurance
5. Sick Leave
6. Civic Duty
7. Leaves of Absences
 - A. Military Leave
 - B. Pregnancy Leave
 - C. Combined Leave
 - D. Personal Leave
8. Retirement and Disability Pensions
9. Vacations
10. Holidays
11. Uniform Allowance
12. Injury Leave
13. Communicable Diseases
14. Hazard Duty Pay
15. Duration

The City of Struthers is a small municipality located in eastern Mahoning County. Struthers is bordered by the City of Youngstown, the City of Campbell and the City of Boardman. Struthers's population is about 11,600.

The Fact-Finding Hearing stems from an impasse resulting from an initial set of negotiations for a first time contract. The OPBA was certified as the official representative of all full-time dispatchers in May of 2004. Currently there are two Dispatchers working with an additional two vacancies.

During the course of negotiations the parties met approximately five times in addition to two mediation sessions with a SERB Mediator. The parties were able to reach tentative agreements on approximately 23 different articles, all which will be incorporated by this reference as part of this Report.

The Fact-Finder and the parties briefly tried to mediate the unresolved issues, however, it was clear that the opinions of the remaining differences were too far apart for mediation.

The major differences of the parties lies within each party's own philosophy concerning first time collective bargaining agreements and the part internal parity should play.

The Employer has taken the strict position that would not permit some of the Union's proposals for inclusion into this collective bargaining agreement simply because they are a new Union looking for the same benefits and language that was 20 years in the making for the City and their other larger bargaining units.

The Union, on the other hand, has taken the position that all bargaining units should be equal. Whether the unit is a new unit or whether the unit has 20 years of previously bargain gains with the City. The Union feels that anything less than what the other bargaining units have would be a reduction.

The City further believes that they are in fact giving many of the same benefits or benefit levels as the larger and older bargaining units have, simply without the identical language.

Without getting into a philosophical war of words, the Employer and the Union are both right to some extent. There are benefits that all employees should share equally, without years of bargaining and there are benefits that are earned by the bargaining process no matter how long it takes.

As a matter of clarification, the above position's of the parties will not be re-written as a matter of argument in this report for any one proposal. However, the intent of the parties will be taken into consideration for each and every unresolved issue.

The Fact-Finder's Report now follows:

ISSUE NO. 1 HOURS OF WORK

EMPLOYER'S POSITION:

The Employer proposes contract language for this Article consistent with the obligations under the FLSA. The proposed language is consistent with the current levels of benefits and working conditions for these bargaining unit members and consistent wit those benefits offered to the majority of other City personnel.

UNION'S POSITION:

The Union proposes language on hours of work taken verbatim from the City's FOP/Police Collective Bargaining Agreement stating the Employer has cited no good reason to treat the dispatchers any differently from police officers.

DISCUSSION AND RECOMMENDATION:

Hours of work language is normally contract and unit specific. Such language, once bargained in a new collective bargaining agreement, is then built on one negotiations after another.

After reviewing the language in both proposals and examining the evidence presented, it is my recommendation that the Employer's proposed language is a good start for this new bargaining unit of four dispatchers.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 2 WAGES

EMPLOYER'S POSITION:

The Employer has proposed a two step system for wages based upon the amount of time that it takes for a bargaining unit member to become proficient as a full-time dispatcher which is one year.

Accordingly, the Employer's proposals reflects a probationary rate, followed by a step increase after one (1) year of employment.

For 2004, the Employer proposed that the initial step be the current rate of pay for a part-time dispatcher, \$9.27 per hour. Upon completion of one (1) year, the rate of pay would increase to \$9.46 per hour.

For 2005, the Employer proposes a general increase of one and one-half percent (1 - 1/2%) to the step system.

The City does not argue an inability to pay. However, the main source of funding for the City, for this bargaining unit, municipal income tax revenues, has remained virtually flat over the last four years.

Other City revenue sources have been reduced or frozen until August of 2005 by the State Legislature. Once the LGF funds are no longer frozen there is a possibility that the City will be in a much better position to offer better increases after this initial one year increase.

The City also argues that this bargaining unit already received a 3% pay increase on January 1, 2004. Well in excess of that received by other bargaining units and other non-bargaining unit employees.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract. In addition the Union proposes a four year step and grade pay system which equates to be 32% increase over the life of a 3 year agreement.

The Union argues that the amount of money requested is large based upon the percentage, however, the dispatchers are sorely underpaid.

Even with the proposed change in wages the dispatchers can still expect to be paid less than other dispatchers during the life of this contract.

The Union further argues that this is not just and must be remedied.

DISCUSSION AND RECOMMENDATION:

After carefully considering the comprehensive financial data provided, reviewing the comparables of the dispatchers and comparing the last raises given the police and fire union for the City, it should be at no great surprise that this Fact-Finder find that the dispatchers for the City are very much under paid.

Now with that said and taken in account the previous arguments concerning the LGF funds frozen until August of 2005, I am persuaded that the level of a wage increase that best balances the needs and interest of both parties is higher than that proposed by the City and more modest that proposed by Union.

In arriving at this conclusion and the recommended increase that follows, I considered all the economic factors costs and benefits included in this report.

It is my recommendation that the wage increase be:

Effective January 1, 2005, a 3% wage increase placed on the two step system proposed by the Employer.

SUGGESTED LANGUAGE:

The increase provide above with the Employer's proposal.

ISSUE NO. 3 LONGEVITY

EMPLOYER'S POSITION:

The Employer proposes a longevity payment schedule identical to that suggested by the Union. The Employer, however, rejects the ambiguous language proposed elsewhere by the Union in this Article.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract stating that all employees should be treated equal with respect to this benefit

The Union further argues that it is the norm in most cities for all bargaining units to receive the same longevity pay.

DISCUSSION AND RECOMMENDATION:

The Employer's longevity scale reflects what the Union is trying to accomplish through the police contract.

Longevity is one of those benefits that you build on from one contract to another.

It is my recommendation that the Employer's proposal is best suited for this new bargaining unit.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 4 INSURANCE

EMPLOYER'S POSITION:

The Employer proposes contract language that maintains the level of benefits currently in effect for the bargaining unit and allows for cost containment through an insurance committee and requires contribution levels more in line with the state wide average.

The contributions are 85% paid by the Employer and 15 % paid by the Employee with a cap of \$50.00 per month for 2004/2005. After that year, the percentages remain the same, the cap however, is then dropped.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract stating that all employees should be treated the same in reference to insurances and the amount of premium sharing.

DISCUSSION AND RECOMMENDATION;

There was a great deal of discussion concerning how the City's premium cost has

risen over 30% over the last four years. The need to curb cost for all employees is evident.

There was also a discussion concerning the old adage that the tail will not wag the dog. In essence, that means a smaller unit will not change the pattern, in bargaining, established by a larger unit or several other units who comprise the majority of the employees who have already concluded negotiations. This is especially true with benefits that usually treat all employees of the Employer the same regardless of which bargaining unit they are in or if they are even in a bargaining unit. To break a pattern, a Union must present very overwhelming and convincing evidence.

In Struthers, it seems the reverse is in place. The Employer is trying to set a new pattern beginning with their smallest union working backwards to the larger unions.

Insurance coverages and premium sharing in one area where all employees should be treated the same and held liable or responsible to the same.

It seems premature to start a whole new concept and increase premiums on two employees when the larger unions will be in negotiations later this year. That would be the point to start.

In the Fact-Finding Hearing the Union, with the permission of the Fact-Finder revised their proposal to accept a "me to" provision on the Insurance after this year.

As a general rule, and it will be true in this case, a Fact-Finder cannot recommend that any Employer with multiple bargaining units have a very different collective bargaining agreement with regards to Employer wide insurances.

After carefully reviewing all the arguments, testimony and exhibits presented the recommendation is that the Dispatchers will have the same insurance benefits enjoyed by the Police union for this contract term. After this contract term the Dispatchers will be placed into a "me to" term of bargaining for the Insurance to be the same as contained in the Police Collective Bargaining Agreement.

SUGGESTED LANGUAGE:

The Union's proposal.

ISSUE NO. 5 SICK LEAVE

EMPLOYER'S POSITION:

The Employer proposes language for sick leave that is consistent with R.C. 124.38, the statute under which employee's accumulate sick leave. The Employer's proposal identifies the

method of accrual for sick leave and the reasons that sick leave may be used. It also contains reasonable guidelines for notification of use and documentation. For sick leave conversion, the Employer has proposed a level of conversion consistent with that required by the Revised Code.

The Employer's proposal is reasonable and does not reduce any of the benefits currently afforded bargaining unit employees

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract citing that the Employer has no good reason to treat dispatchers any different from police officers concerning this sick leave benefit

DISCUSSION AND RECOMMENDATION:

Once again, sick leave and the benefits that surround sick leave are usually unit specific. Different needs for different bargaining units. Once a sick leave plan is negotiated, it is built upon from one negotiations to another.

Based on the evidence presented and testimony given it is my recommendation that the Employers' proposal is suitable for this first contract and more unit specific than the police language would be.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 6 CIVIC DUTY

EMPLOYER'S POSITION:

The Employer proposes reasonable, standard contract language to ensure that bargaining unit members will suffer no loss in pay if called to jury duty, or subpoenaed in connection with their job duties.

UNION'S POSITION:

The Union's proposal for this really fell under other language included in the wage proposal which was part of the City's FOP/Police contract. The Union's proposal described as court time calls for a minimum of four hours compensatory time when required to appear before a Court, Administrative Agency, etc.

DISCUSSION AND RECOMMENDATION:

The Employer's proposal is an economic benefit to this bargaining unit. It may not have the complete teeth that the Police Union had bargained for, it is a good start for this first contract.

Taken into consideration all the wage and benefit items for this new contract, this Fact-Finder is recommending the Employer's proposal for Civic Duty Leave.

SUGGESTED LANGUAGE:

The Employer's Proposal

ISSUE NO. 7 LEAVES OF ABSENCE

MILITARY LEAVE, MATERNITY LEAVE, COMBINED LEAVE &
PERSONAL LEAVE

EMPLOYER'S POSITION:

The Employer rejects the Union's proposal for Military Leave as being unnecessary since it is covered by State and Federal law.

The Employer rejects the Union's proposal calling for a required six months of pregnancy or adoption leave. Leave for pregnancy and adoption is already required under the FMLA and in addition there are a myriad of other leaves that are available to supplement this time

The Employer also reject the Union's proposal on Combined Leave as ambiguous, redundant and unnecessary.

The Employer reject the Union's proposal on personal days as to much leave afforded to bargaining unit members

UNION'S POSITION:

The Union proposes Combined Leave, Pregnancy Leave, Military Leave and Personal Leave and the proposed language is taken verbatim from the City's FOP/Police contract.

The Union argues that the dispatchers are so underpaid that should be given these benefits.

DISCUSSION AND RECOMMENDATION:

Sometimes there are issues that are just fine not placed into a collective bargaining agreement. Military Leave which is governed by Federal Law is one of those issues. Military leave

has the possibilities of always changing base on the times. As long as there is Federal law for protection, it really does not need to go in to a contract, at least at first when other important issues are trying to be obtained.

After re-listening to the testimony, examining the evidence and taken in other wage and benefit issues, this Fact-Finder's recommendation is to exclude Military Leave, Pregnancy Leave and Combined Leave from this first collective bargaining agreement as you can't get it all the first time.

Personal Leave is like vacation another paid day off and is enjoyed usually by all employees. Looking at internal parity and external parity alike and all other wages and benefits. This Fact-Finder does, however, recommend that this bargaining unit be afforded the two personal days

SUGGESTED LANGUAGE:

The Union's proposal.

ISSUE NO. 8 RETIREMENT AND DISABILITY PENSIONS

EMPLOYER'S POSITION:

The Employer rejects the Union's proposal. The Union has failed to offer any valid justification behind it's insistence on this provision.

The Employer's obligation to make pension payments is governed by State statute and the Employer will continue to adhere to those obligations

UNION'S POSITION:

The Union's proposes language taken from the contract between the City and the FOP/Police. The Union states that the dispatchers and police are both part of the safety force and members of the same police department. The language should be the same.

DISCUSSION AND RECOMMENDATION:

It appears that the Employer's argument, in this case is correct. The Employer must make pension payments, for the dispatchers, as governed by State statute.

The Union's proposal in this case is rejected.

ISSUE NO. 9 VACATIONS

EMPLOYERS POSITION:

The Employer has proposed language that affords bargaining unit members the same level of benefits as all other City employees. The Employer's proposal contains language concerning pro-rated prior service credit that was agreeable to the Union. Additionally, it also contains a clear seniority based scheduling procedure.

UNION'S POSITION:

The Union has proposed language taken verbatim from the City's FOP/Police contract. The Union argues that since they are both in the same department the language should be the same.

DISCUSSION AND RECOMMENDATION:

Vacation schedule and vacation language are normally unit specific as long as the schedule for one bargaining unit is not superior to that of another bargaining unit. Such language is meant to be built on from one negotiations to another.

Based on factors in this report, this Fact-Finder recommends the Employer's proposal as a good start for a first contract regarding vacations.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 10 HOLIDAYS

EMPLOYER'S POSITION:

The Employer proposes standard contract language providing employees with ten paid holidays and with pay at a rate of time and one half an employees regular rate, in addition to eight hour of holiday pay for work performed on holiday.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract.

DISCUSSION AND RECOMMENDATION

Once again, holiday language and premium pays earned on holidays are benefits that are negotiated over a period of negotiations. As long as the number of paid holidays remains similar between different bargaining units, any thing up and above is unit specific and earned from one

negotiations to another.

The Employer's proposal is recommended as a good start for a first time contract.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 11 UNIFORM ALLOWANCE

EMPLOYER'S POSITION:

The Employer rejects the Union's proposal for an uniform allowance since bargaining unit members are not require to wear uniforms

If the Employer would require uniforms, the Employer would provide a \$75.00 allowance for the initial purchase and a \$50.00 maintenance allowance.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract which call for a \$900.00 clothing allowance per contract year. Citing that dispatchers and police officers are both from the same department, they should be equal in all collective bargaining areas.

DISCUSSION AND RECOMMENDATION:

After careful review of all evidence presented and all testimony given, it is this Fact-Finder's recommendation that an uniform allowance is not appropriate at this time. It may for later bargaining and should be taken up at that time.

ISSUE NO. 12 INJURY LEAVE

EMPLOYER'S POSITION:

The Employer is proposing an Injury on Duty Leave provision tht allows a bargaining unit member to receive leave with pay if injured in the line of duty. Additionally, if the bargaining unit member is still unable to work after 30 days, the Employer is willing to consider the possibility of creating a reduced pay light duty position for the injured employee.

The Employer believes that this is a substantial economic benefit to this unit, allowing for paid time off for work place injuries and the additional possibilities of earning more than is available from the BWC for a light duty position.

The Union has proposed language verbatim from the City's FOP/Police contract. Stating that there are few incident that give rise for this language but if needed this language should be there.

DISCUSSION AND RECOMMENDATION:

After comparing the two proposals, it is this Fact-Finder's recommendation that the Employer's proposal best fits the dispatchers if such an event ever should happen.

SUGGESTED LANGUAGE:

The Employer's proposal.

ISSUE NO. 13

COMMUNICABLE DISEASES

EMPLOYER'S POSITION:

The Employer rejects the Unions proposal as unnecessary. The Employer argues that the Union has shown no examples of situations affecting this bargaining unit that would warrant this language.

UNION POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract addressing communicable diseases, vaccination, exposure and testing. The Union argues that hopefully this language will never be needed but if it is needed it should be here in place.

DISCUSSION AND RECOMMENDATION:

After careful review of all testimony and the evidence presented this Fact-Finder agrees that the Union did not prove where such language found in the Police contract is needed at this time. It may be necessary to be the subject of a future round of bargaining, however, not this time.

ISSUE NO. 14

HAZARDOUS DUTY PAY

EMPLOYER'S POSITION:

The Employer rejects the Union's proposal on hazardous duty pay. The duties required of bargaining unit members are distinctly different from those of the police and fire fighters.

UNION'S POSITION:

The Union proposes language taken verbatim from the City's FOP/Police contract which

The Union proposes language taken verbatim from the City's FOP/Police contract which requires bargaining unit members to receive a substantial annual sum of money for hazardous duty.

DISCUSSION AND RECOMMENDATION:

After reviewing all the evidence presented and testimony given, it is this Fact-Finder's recommendation that the Union did not prove to be substandard in this area and therefore the proposal is rejected.

ISSUE NO. 15 DURATION

EMPLOYER'S POSITION:

Based on the funding situation and the fact that all other City Union's collective bargaining agreements expire in August of this year, the Employer is requesting a one year contract.

UNION'S POSITION:

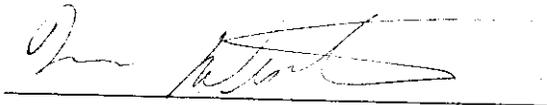
The Union is requesting a two and one half year agreement which would better reflect the dates of the negotiating process.

DISCUSSION AND RECOMMENDATION:

Based on the reasoning above in other Issues, such as wages, it is my recommendation that this contract be for the length of one year. Effective the day of signing and to expire on December 31, 2005. All wage increases will be effective on January 1, 2005.

SUGGESTED LANGUAGE:

Employer's proposal.

A handwritten signature in black ink, appearing to be "D. [unclear]", written over a horizontal line.