

FACT-FINDING

STATE EMPLOYMENT
RELATIONS BOARD

NORMAN R. HARLAN, FACTFINDER

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STATE EMPLOYMENT RELATIONS BOARD (SERB) (OHIO)

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FRATERNAL ORDER OF POLICE (FOP)) CASE NO. 04-MED-08-0736-0754
FORT STEUBEN LODGE #1) HEARING: OCTOBER 27, 2004 (
AND) NOVEMBER 15, 2004
CITY OF TORONTO) REPORT: NOVEMBER 24, 2004

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APPEARANCES

UNION

PAUL COX, CHIEF COUNSEL, FOP
RICK PARKER, COMMITTEEMAN
RANDY HENRY, COMMITTEEMAN
RENEE ENGELBACH

EMPLOYER

MICHAEL L. SEYER, SR. CONSULTANT, CLEMANS-NELSON & ASSOCIATES, INC.
ROBERT W. WILSON, MAYOR
JOHN J. GEDDIS, COUNCIL PRESIDENT
BOB OWEN, AUDITOR

BACKGROUND

The City of Toronto is located on the west bank of the Ohio River in Jefferson County, Ohio. The City is 35 miles southeast of Pittsburgh, Pennsylvania. It has an elected Mayor and City Council. The population is about six thousand (6,000).

The City has a COLLECTIVE BARGAINING AGREEMENT (CBA) with the

Fraternal Order of Police (FOP), the American Federation of State, County and Municipal Employees and the Firefighters. These LABOR AGREEMENTS expire on different dates. The AGREEMENT with the FOP covers the period November 1, 2001 through October 31, 2004.

The Parties engaged in collective bargaining prior to the expiration of the CONTRACT. Tentative agreement was reached on the following Articles: PREFACE, 1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, and 30. There was disagreement concerning ARTICLE 4 - WAGES, ARTICLE 5 - CLOTHING ALLOWANCE, ARTICLE 9 - HOURS OF WORK, CALLBACK AND OVERTIME and HAZARDOUS DUTY PAY, ARTICLE 28. The Union proposed a new provision which would provide mid-term bargaining as an alternative to litigating an unfair labor practice (ULP).

Under the OHIO REVISED CODE (ORC), Section 4117.14 (C)(3) the Undersigned was notified by Letter from Bureau of Mediation Administrator Dale Zimmer, dated October 14, 2004 that he had been selected as the Factfinder. Both Parties were contacted promptly. By mutual agreement of the Parties and with the concurrence of the Factfinder the Hearing was set for October 27, 2004. The Parties jointly requested the October 27 Hearing be limited to Mediation. The Hearing began at 5:00 p.m. and concluded about 10:00 p.m. There was no agreement reached and the Matter was referred to Factfinding. The Factfinding Hearing was scheduled and held November 14, 2004. It began at 10:30 a.m. and concluded about 4:00 p.m. It should be noted that the City and the Police provided POSITION PAPERS in advance of the Hearing.

PROPOSALS

ARTICLE 4 - WAGES

The Union's final offer was:

1st Year	0 (zero) per cent
2nd Year	3 (three) per cent
3rd Year	3 (three) per cent

The Employer's final offer was:

1st Year	0 (zero) per cent
2nd Year	0 (zero) per cent
3rd Year	Wage Reopener

ARTICLE 5 - CLOTHING ALLOWANCE

Current language; \$700.00 (seven hundred dollars) a year, payable either on February 15 of each year or at the Employee's option the Allowance may be rolled into the Employees' base pay.

The Union proposes setting the Clothing Allowance at \$900.00 (nine hundred dollars) per year, an increase of (200.00 (two hundred dollars)). It proposes that othere language be unchanged.

The Employer proposes no increase in the Clothing Allowance. It is amenable to paying the Allowance only in a lump sum February 15 of each year with no roll-in option.

ARTICLE 9 - HOURS OF WORK, CALLBACK AND OVERTIME

The Union proposes to maintain the current language.

The Employer proposes the following changes:

SECTION D - CALL BACK

The City proposes to remove the three (3) hour minimum and pay for only time worked.

The Union proposes maintaining current language.

SECTION F - OVERTIME SCHEDULING

The Employer proposes amending the language to permit the City to change an employee's regularly scheduled shift to avoid the payment of overtime.

The Union seeks to maintain current language.

ARTICLE 28 - HAZARDOUS DUTY PAY

The Police propose increasing the Pay from \$700.00 (nine hundred dollars) per year to \$900.00 (nine hundred dollars) per year, an increase of \$200.00 (two hundred dollars) a year.

The City desires to maintain current language.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Union proposes an alternative to its being required to litigate an ULP charge and desires any such agreement be part of the CONTRACT. The Employer is willing to bargain over specific language in the form of a LETTER OF UNDERSTANDING.

EXHIBITS

COLLECTIVE BARGAINING AGREEMENT Between The CITY OF TORONTO and the FRATERNAL ORDER OF POLICE, FORT STEUBEN LODGE NO. 1, November 1, 2001 To October 31, 2003

CITY OF TORONTO, OHIO, YEAR 2005 BUDGET

CITY OF TORONTO, REVENUE HISTORY ACCOUNT REPORT

2005 BUDGET EXPENSES, APPROPRIATION BUDGET ROLLUP LISTING

CITY OF TORONTO, ANNUAL FINANCIAL REPORT (BA05)

CITY OF TORONTO, STATEMENT OF CASH POSITION

OHIO COUNTY PROFILES - JEFFERSON COUNTY

STATE EMPLOYMENT RELATIONS BOARD CLEARINGHOUSE BENEFITS
REPORT - November 02, 2004, 189 pages

SERB - 2001-006 - IN THE MATTER OF STATE EMPLOYMENT RELATIONS
BOARD, COMPLAINANT v. TOLEDO CITY SCHOOL DISTRICT BOARD OF
EDUCATION and ASSISTANT SUPERINTENDENT CRAIG COTNER, RESPON-
DENTS, 10-1-01

UNION POSITIONS

1. The Union recognizes the City has Budget problems. In consideration it proposed no wage increase the 1st Year.
2. The Comparables submitted by the Union show officers in the bargaining unit are paid less than officers in cities which are about the same size as Toronto.
3. The language in ARTICLE 9, CALLBACK PAY, has been in the CONTRACT for a long time. The City has not presented any evidence showing it should be changed.
4. Management has made a number of questionable business decisions which have contributed to the City's poor financial condition. It spent unnecessary funds for a fire truck with a one hundred foot ladder after it budgeted for a truck with a 76-foot ladder. It must make additional payments of \$20,000 a year for five (5) more years.
5. Inability to pay is not necessarily a defense. The City must present a compelling reason for not granting a wage and other increases. This is particularly true since it has within its means the ability to raise revenue.
6. Management has transferred funds from the General Fund to subsidize a particular department, such as sewage. It makes no sense to transfer funds from the General Fund to sewage when Management has the authority to arbitrarily increase rates. Grants are available for certain projects. The City can place a Levy before the public to increase revenue.

7. The three (3) Union's who have CBA's with the City are connected by the "ME TOO" language found in ARTICLE 30. This is not language which should be left to a third party.
8. The Union has shared interests in ADR. However, any agreement related to this must be part of the CBA.
9. If an employer refused to comply with the clear terms of the CONTRACT, resulting in an ULP, the Union is forced to litigate, as in the TOLEDO CASE.
10. The increase of \$200.00 proposed for the CLOTHING ALLOWANCE and HAZARDOUS DUTY PAY is modest considering the nature of the work.

EMPLOYER POSITIONS

1. The City has had serious financial problems for several years. The situation has worsened with the downsizing and closing of industries which have significantly provided revenue to the City.
2. The City has imposed administratively as permitted by Law the one (1) per cent income tax. It sponsored a Levy to increase it to 1.5 percent, but it was rejected by the voters.
3. The City population is largely comprised of retirees and others who live on fixed incomes. Increases on service fees are hard upon these residents.
4. The City cannot offer any wage or benefit increases during the term of the CONTRACT. It cannot speculate that the financial situation will improve. In addition, expenses are always on the increase.
5. The City Council and the Mayor are elected, part-time employees. They have tried to reduce costs in many ways. They eliminated the position of Safety Director, for example.
6. Police Officers' base pay is comparable to other small cities in eastern Ohio. In addition, because the City cannot afford to hire any more officers the officers have substantial overtime opportunities. Total wages vary from \$40,000 to \$50,000. The benefit package is excellent and is competitive.
7. The CALLBACK ARTICLE needs amended. Employees get 3-hours guaranteed, even if they work less, even an hour or so. They should only be paid for time worked; whatever is needed to comply with the CALLOUT.

8. The "MEE TOO" language needs changed. The City is in a vise. Whatever one gets the other gets.
9. Agreement upon ADR language would benefit both Parties. The City proposes a Memorandum of Understanding (MOU).
10. The City is willing to a reopener the 4rd Year of the CONTRACT.

RECOMMENDATIONS

ARTICLE 4 - WAGES

1st YEAR	0 per cent (zero)
2nd YEAR	0 per cent (zero)
3rd YEAR	3 (three) per cent

REASONS:

- a. 1st YEAR - Both Parties proposed 0 (aweo)
- b. 2nd YEAR - 0 (zero) - The City is in a deficit situation. It cannot be predicted with any reasonable degree of certainty that the Deficit will be erase
erase after the first year.
- c. 3rd YEAR - 3 (three) per cent - By this time the City will have had the time to do the following:
 - 1) Pass a Levy
 - 2) More effectively and efficiently manage
 - 3) Seek grants
 - 4) Review fees
 - 5) Seek government funding
 - 6) Recruit new businesses

ARTICLE 5 - CLOTHING ALLOWANCE

RECOMMENDATIONS:

- a. Maintain the Allowance at \$700.00
- b. Pay only in a Lump Sum Payment February 15 of each Year.

REASONS:

- a. Budgetary considerations
- b/ The current amount of \$700.00 is competitive.
- c. Eliminating the option to roll the Allowance in the base pay will save the City about \$1,500.00 a year.

The following language is recommended for ARTICLE 5.

"The annual clothing allowance shall be seven hundred dollars (\$700.00) per employee. All protective clothing, and necessary equipment required by employees to perform their jobs shall be furnished without cost by the City. All uniforms required by employees shall be furnished without cost by the City at the commencement of employment. Thereafter, each employee shall be responsible for his/her uniforms. Employees shall be paid the seven hundred (\$700.00) dollars in one lump sum check on February 15th of each year."

ARTICLE 9 - HOURS OF WORK, CALLBACK AND OVERTIME

RECOMENDATIONS:

SECTION D - CALLBACK - The following amended language is proposed.

"Employees who are called in to work on their regularly day off or who must appear in court during regularly scheduled day off shall be paid in active pay status for time actually worked but in any event a minimum of three (3) hours. If the call-out assignment requires less than three (3) hours, the City has the right to assign alternate work which is job related.

SECTION F - OVERTIME

RECOMMENDATION: Current language. The Employer did not present a compelling reason for changing the language. While it does contribute to overtime, it is not the primary factor.

ARTICLE 28 - HAZARDOUS DUTY PAY

RECOMMENDATION: Maintain current language.

REASONS:

1. Budget considerations.
2. The current amount of \$700.00 is competitive.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

1. Final agreement should be made by the City and the Union for this new language and not by a third party.
2. Any agreement should be in the LABOR AGREEMENT.

It is recommended that all ARTICLES Tentatively agreed-to appearing on page 2, supra, remain intact as part of the new CONTRACT.



Norman R. Harlan, Factfinder

Steubenville,

November 24, 2004