

2005 FEB 15 A 11: 37

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
February 12, 2005

In the Matter of:)

The City of Newton Falls)

and)

AFSCME, Ohio Council 8)
(Local 3629))

04-MED-09-0954

APPEARANCES

For Local 3629:

James Adams, AFSCME Staff Representative
Joe Capan, Water Distribution Superintendent
Ed Carr, President of Local 3629
Dennis Page, Vice President of Local 3629
Harry Shaver, Maintenance Superintendent

For the City of Newton Falls:

David Watson, Newton Falls City Manager

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the members of the Newton Falls Water, Electric, and Road Departments represented by the American Federation of State, County and Municipal Employees (AFSCME) Local 3629 and the City of Newton Falls. Prior to the Fact Finding Hearing, the parties were involved in numerous negotiating sessions and came to agreement on a number of issues. Furthermore, the Fact Finder conducted a mediation session prior to the hearing, and a number of the outstanding issues were settled. However, the parties were unable to come to a final agreement, and five issues remain on the table. The issues are: 1) changes in the medical plan, 2) payment of a shift differential to a "called in" employee, 3) wages, 4) OPERS pick-up, and 5) payment of a bonus for any employee who has a commercial driver's license (CDL).

The hearing was convened at the Newton Falls Library Building conference room on the morning of February 1, 2005, at 9:00 A.M. The hearing lasted approximately three hours, and the Fact Finder heard testimony from each party in support of their respective positions.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues 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 determination of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The report is attached, and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. However, if either or both of the parties desire a further discussion, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Introduction:

There are two main areas of disagreement. First the City is proposing changes to the medical insurance plan that covers all City employees. During the course of negotiations, the City presented a proposal that would increase the amount that the members of Local 3629 pay for insurance. The Union agreed to the plan as presented, and the bargaining committee convinced the membership that the changes were reasonable given the rising insurance costs faced by the City.

Unfortunately, the City's original proposal was incomplete and when the City presented its amended proposal, the Union membership refused to accede to the City's demands. It should be pointed out that the City seems to have made an honest mistake when it presented its original proposal and there was no attempt to whipsaw the employees. Nonetheless, the Union believes that the City did not bargain in good faith over this issue.

The second and most basic disagreement between the parties concerns the Ohio Public Employee's Retirement System (OPERS) payment. Currently, the City pays the full amount of the payment even though nominally, there is an employee payment and an employer payment. The OPERS system is modeled on the Federal Social Security System which mandates that both the employer and the employee make payments into the employee's retirement account. Over the course of the years since the passage of ORC 4117, a number of public employers have agreed to "pick up" the employees' share of the payment. The pick-up is never a give away and in every case of which the Fact Finder is aware, the Union membership paid for the benefit by accepting either a) a wage freeze or b) a reduced wage settlement, usually spread out over a number of years, to pay for the pick-up.

In these negotiations the City argues that the current system, i.e., the City picks up the employees' payment to the retirement system, is causing some adverse reaction from the citizenry. Consequently, the City Council wants to end the current system and have the employees make a payment directly to the retirement system. The Union is adamantly against this demand and refuses to consider the City's position. At its heart, the disagreement between the parties seems to be more of a semantic and/or philosophical problem rather than an economic issue.

Apparently, some citizens do not believe that the City should pay the employee's share of the OPERS cost. The reasoning seems to be that a private employer does not pay the employee's portion of the Social Security tax and,

therefore, there is no logical reason for a public employer to pay the employee's portion of OPERS. Of course, this is fallacious reasoning because Ohio law allows the parties to negotiate a wage freeze (smaller pay raises) as a tradeoff for the employer to make the OPERS payment. Federal law does not allow the employer to pay the entire Social Security amount.

In this case the record shows that the employees "paid for" the pick-up by trading off wage increases for OPERS payments during previous rounds of negotiations. Realistically, the City is paying the same base wage bill that it would pay if it did not pick-up the OPERS payment. In that case the employee's wages would be eight and one-half per cent higher, but that eight and one-half percent would be paid directly to OPERS. The net result is that nothing has really happened. The sum of the City's wage bill and OPERS payment is the same amount that the wage bill would be if the employees were paid more but than made a payment to OPERS. To reiterate, the fact of the matter is that the City's total wage bill is the same regardless of who pays the OPERS payment.

Issue: Article 14 (1) Hospitalization and Life Insurance

Union Position: The Union demands an increase in dental and/or vision benefit covered by the insurance plan.

City Position: The City rejects the Union's demand for changes in the dental and/or vision insurance.

Discussion: Note: Before the specifics relating to the Union's demand are discussed, some background on the entire health insurance article is necessary to understand the parties' positions on the issue.

The City desires to change the way that it provides health insurance. Currently, the City is self-insured; but based on rising costs, etc., it desires to purchase health insurance on the open market. The Union disagrees with this modification, but does agree that the City has the right to change the funding mechanism by which it provides insurance to the employees of Newton Falls. The Union does not understand the reason(s) for the changes that the City is proposing; and during discussions on the issue, both the City's representative and the Union negotiating committee stated that they believed that Labor/Management meetings to discuss the entire gamut of issues surrounding health care and insurance would be a way that the City and its employees could discuss the issue without the pressure of negotiations. The Fact Finder agrees with this idea.

Finding of Fact: The City should set up a committee to examine the issues surrounding the provision of health care in Newton Falls. The Committee should be both an informational and educational forum for a complete discussion of all issues surrounding the health care plan

The City approached the Union with a proposal that made a number of changes in the insurance plan. The main thrust of the changes was an attempt to control the cost of insurance. As a result, the City's proposal requires that the employees pay more for both medical care and prescriptions. Specifically, the

City proposed that the employees pay higher deductibles, office co-pays, and prescription costs. In addition, the City is proposing a bifurcated payment system whereby an employee who goes to an in-network doctor pays less than an employee who goes to an out-of-network physician. It is the difference between the in-network and out-of-network payments that caused the current impasse.

The City made a proposal to the employees covering all the topics listed above without specifying a difference between the in-network and out-of-network cost of care. The Union, while unhappy over the proposed changes, realized that the upward trend in costs throughout the State and Nation affected the cost of insurance in Newton Falls. Consequently, the Union agreed to the City's proposal.

When the City realized that the proposal was incomplete, it returned to the bargaining table with an amended proposal. The Union was incensed. The Union's bargaining committee believes that the City was not negotiating in a reasonable manner. The Union believes that it agreed to the City's proposal and accepted a large increase in the out of pocket cost of insurance, and then the City attempted to modify its own proposal to the Union's detriment. The City agrees with the facts of the matter, but claims that the original proposal was incomplete.

The change that the City added to its proposal increased the cost of out-of-network physician services by ten percent (10%). The City's original proposal increased the cost of physician services from the current ninety percent (90%)

ten percent (10%) split between the City and the employees to an eighty percent (80%) twenty percent (20%) split. That is, the employees pay an extra ten percent (10%) for physician services. The City realized that it was attempting to coax its employees to go to in network physicians, and as part of the network idea an employee should pay a penalty for going to an out-of-network provider. Therefore, the City amended its proposal to state that the eighty percent (80%) twenty percent (20%) split would apply to in-network physicians and the cost share for out-of-network providers would be seventy percent (70%) thirty percent (30%).

The basic idea behind joining a health network is that the City can negotiate better prices for medical services by utilizing its bargaining power and this will lead to cost savings. Therefore, since the driving force behind the proposed changes to the insurance plan is the idea that a network can lead to lower costs, the City wants the employees to use in-network physicians. As an enticement to the employees to use in-network physicians, the employee should pay a penalty for using an out-of-network physician. That is, the idea that going to an out-of-network provider should cost the employee more is a crucial part of the cost containment strategy.

The Fact Finder believes that the City made an honest mistake in its original offer to the Union by not specifying different in-network vs. out-of-network co-pays and deductibles. Therefore, while the Fact Finder recognizes that the Union has a legitimate concern about the way the issue was presented and negotiated over by the City, the fact is that sometimes mistakes happen.

Finally, the Union accepted the City's arguments and agreed the proposed changes. However, the Union also pointed out the level of benefits in the dental and vision portions of the plan were substandard in its estimation. The City disagreed. The Fact Finder believes that the dental coverage offered by the City is reasonable. However, the \$150.00 vision benefit is low. While there are many ads touting a pair of glasses for \$99.00, the reality is that if a person needs bifocals, etc., glasses usually cost over \$200.00. Therefore, the Fact Finder is recommending that the vision benefit in the contract be raised to \$250.00 per year.

Finding of Fact: The vision benefit in the current contract is substandard.

Suggested Language:

Section 14.1 For the duration of this Agreement, the City shall continue to provide medical insurance including hospitalization, eye care, dental care, and prescription drug benefits. It is further agreed that the level of benefits shall not be reduced for the duration of this Agreement nor shall the benefit level change except to increase the level of benefit.

Section 14.2 Starting with the health insurance renewal in May 2005:

- (a) Prescription drug coverage will go from \$0 generic and \$2.00 scripted to \$5.00 generic and \$10.00 scripted.
- (b) Health insurance coverage will go from a 90%/10% employer/employee cost share to an 80%/20% employer/employee cost share for In Network claims. For Out of Network claims the cost share shall be a 70%/30% employer/employee split.

- (c) Office co-pays will go from \$10.00 per visit to \$15.00 per visit.
- (d) Calendar year out of pocket maximums shall go from \$1,000.00 (\$500.00) to \$1,500.00 (\$1,000.00) for In Network family (single) coverage. Calendar year out of pocket maximums shall go from \$1,000.00 (\$500.00) to \$2,000.00 (\$1,500.00) for Out of Network family (single) coverage.
- (e) Maximum lifetime benefits shall be \$2,000,000.00
- (f) Vision Care will have a maximum benefit of \$250.00 with no coverage limits on lens or frames per calendar year.
- (g) Dental Care will have a maximum of \$1,500.00 per calendar year.
- (h) Chiropractic Care will have a maximum of \$750.00 per calendar year.

Section 14.3 (Renumber current Section 14.2)

Issue: Article 18 (8) Shift Differential for call-In pay. (New)

Union Position: The Union demands that an individual who is called in to work receive the pay of the person he/she is called to replace.

City Position: The City rejects the Union's demand.

Discussion: The Union argues that equity demands that a person who is called in to work receive the pay of the person he/she replaces. The Union argues that a shift differential is a way that an employee is compensated for working at times outside the usual work day; and if a person who is called in must work these off hours, then he/she should be paid for the inconvenience involved in reporting to work.

The City argues that a person who is called in to work usually receives overtime during that pay period, and the extra hours are paid at time and one-half. The City believes that this is adequate payment for the potential problems that a called in worker faces.

Shift differentials are a payment given in recognition of the fact that the world operates on a nine to five schedule. Therefore, an employee who works either the second or third shift maintains an unusual schedule where he/she is asleep when the rest of the world is awake. This puts a strain on family life. In recognition of this fact, shift differentials are a fact of industrial life in the United States and Ohio. The shift differential is a payment to partially recompense the effected worker for the problems that working nonstandard hours causes.

A person who is called-in to work may actually suffer more disruption to his/her life than a person who works on the second or third shift as a rule. In the case of a call-in, the effected worker may have to change plans, cut his amount of sleep, etc. In addition, the work is exactly the same regardless of the person who performs it.

Therefore, the Fact Finder is not convinced by the City's argument. Overtime is a payment for working more than forty hours per week. This is mandated by the Fair Labor Standards Act and is paid in recognition of the fact that excessive hours of work require some extra payment. The logical basis of the shift differential is different. Therefore, the two payments recompense an employee for different things.

Finding of Fact: The payment of a shift differential is a standard way to compensate employees who work nonstandard hours.

Suggested Language:

Section 18.8 An employee that is called in as defined in the above Section 18.7 shall be paid the shift differential for that particular shift as outlined in Article 12, Section 12.9 of this Agreement.

Article 28: OPERS Contribution

Union Position: The Union demands that the OPERS pick-up be increased by one percent (1%) over the next two years.

City Position: The City's proposal is for an OPERS buy back. That is, the City is offering to increase the base pay of the employees by eight and one-half percent (8 1/2%) in order to recompense them for paying their own portion of OPERS.

Discussion: This is perhaps the most contentious issue dividing the parties. The City wants the employees to pay their own part of the OPERS payment. However, the City recognizes that if its employees pay their own OPERS, that would be tantamount to a reduction in their take home pay. In addition, the City's negotiator agrees that there was some quid-pro-quo for the City picking up the OPERS payment sometime in the past. The City's negotiator was not employed by the City at the time Article 28 was included in the contract and, therefore, he is not sure exactly what the quid-pro-quo was. However, the City argues that it is making the employees whole by buying back the payment.

The Union is adamant that it will not accept the City's offer. The employees believe that the payment benefits them and by accepting the City's buy back offer they would see a diminution of their pay. The mechanism seems to be a change in taxes paid. That is, the Union believes that its members will pay more taxes and this will reduce their income.

The Union rejected the City's demand and in addition demanded that the City increase the pick-up percentage. The Union pointed out that the OPERS payment will increase over the next few years, and the Union wants the City pick-up the increase. However, the Union indicated that it was willing to "buy" the increased payment by accepting a smaller base wage increase to fund the payment.

The pick-up is simply a part of an employee's total compensation and, as such, is no different than any other non-wage benefit. The payment actually has some benefit to the employer because the base wage of the employees is lower and therefore any "roll up" costs are correspondingly less. In the case where there are beneficial tax consequences for the employees, then the payment benefits both parties. Therefore, the Fact Finder does not believe that the Union's position is unreasonable from either party's point of view.

Finding of Fact: The Union's demand benefits both parties. **Note:** The Fact Finder is also recommending that the City pay the increase in the OPERS payment and this will be discussed in the wage section.

Suggested Language: Throughout the term of this Agreement, the City will contribute both the "employer share" and the "employee share" of the

contribution (not to exceed 9.5% of the employee's gross wage) to the employee's retirement account with Ohio Public Employee Retirement System (OPERS).

Article 24: Commercial Driver's License

Union Position: The Union's demand is that all employees who are required to have and maintain a CDL shall be paid an additional \$.50 above their current regular hourly rate of pay.

City Position: The City rejects the Union's demand.

Discussion: The Union's demand is based on two factors. First, some members of the City's labor force who possess a CDL receive a payment for having the license. The Union believes that equity demands that all individuals who have the license should also receive the payment. Second, the Union argues that at one time a CDL requirement was added to the contract as a way to ensure that the employees would be subject to drug testing.

Furthermore, the Union argues that the City benefits when employees, even those employees whose job description does not include the requirement for a CDL, have the license. The Union contends that there are times in the everyday operations of the water or electric departments when someone needs to drive a vehicle which requires a CDL licensed operator. That is, there are occasions when someone needs to pick up supplies, etc. and the vehicle used for the "errand" requires the operator to hold a CDL.

The City rejects the Union's demand. The City argues that its comparables show that only two comparable jurisdictions, East Palestine and Campbell, pay the bonus. Moreover, the City pointed out that only one person receives the payment in Campbell. The City also pointed out the contract in place allows for drug testing and, consequently, it does not need an employee to have a CDL to administer a drug test. Finally, the City argues that it does not require a CDL as a condition of employment for all positions and that the only positions for which it requires a CDL are positions for which State law requires the incumbent to hold a CDL. As a result, the City does not believe that it should be required to make a payment for a CDL.

The Fact Finder recognizes that the Union has a reasonable position on this issue. Many jurisdictions do pay a bonus for anyone who earns a CDL. However, the reverse is also true: many jurisdictions that require a portion of their labor force to have a CDL do not pay the bonus. In addition, the testimony and the current agreement show that the City pays for the training needed to get the license.

For a Neutral to recommend that a jurisdiction add a new payment to its labor agreement over its objections, the evidence must be overwhelming that the benefit is standard throughout the labor market. i.e., a jurisdiction that does not pay the bonus is not paying its employees in a reasonable manner. However in this instance, the comparables data do not lead to the conclusion that a CDL bonus payment is standard throughout the area. Rather, the payment is somewhat unusual. Given the fact that the data do not support its position, the

Fact Finder cannot recommend acceptance of the Union's proposal on this issue.

Finding of Fact: The Union did not prove that a bonus payment to holders of a CDL is a standard payment in jurisdictions comparable to Newton Falls.

Suggested Language: None

Article 21: Schedule A: Wages

Union Position: The Union is demanding a \$.60 per hour increase in base wages for each year of the proposed contract.

City Position: The City is offering \$.30 per hour for each year of the proposed contract.

Discussion: It must be noted that the City also offered an 8.5% increase in the base rate as a buyout for the OPERS pick-up and the Union rejected that offer. (See OPERS payment discussion above). Because the Fact Finder recommends continuation of the current system, he is discussing the wage offers without the 8.5% included.

The Union's demand works out to be approximately a 4% increase in the median wage of \$14.40. The City during the mediation effort, also increased its offer to \$.45 per hour, which works out to be an approximately 3% raise based on a median wage of \$14.40 per hour. The data presented by the parties on comparable jurisdictions are somewhat hard to understand based on the fact that no other comparable jurisdiction pays the OPERS pick-up. However, it appears that Newton Falls pays below average wages for individuals situated

toward the low end of the wage scale. For individuals who are located at the top end of the scale, Newton Falls pays slightly above average wages. Therefore, a fair analysis of the data shows that the City does not pay the highest or lowest wages in the area, although it is somewhat low on the bottom end of the wage scale. Consequently, the Fact Finder believes that an "average" wage increase is reasonable in this situation. In general wage increases throughout the State have been in the 3% to 3.5% range for contracts negotiated in the last year. Therefore, the City's offer of slightly over three per cent is reasonable. The Fact Finder is going to recommend a marginally higher rate of 3.25%, in light of the fact that the data show that employees who are located at the low end of the City's pay scale are underpaid compared to comparable jurisdictions.

It should also be noted that the Union is not asking for a percentage per hour increase; rather, the Union wants the raise to be an across the board cents per hour. The impact of this is that the spread between the highest and the lowest paid employees will decrease. That is, the Union wants a more compressed wage scale. The City did not comment on this aspect of the demand; therefore, the Fact Finder is recommending \$.47 per hour in each year of the agreement. This is found by multiplying \$14.40, the median wage, by .0325 which gives a yearly raise of \$.468 per hour. That figure is rounded up to \$.47 per hour.

The final part of the recommendation is that the wage increase be reduced by .5 percent in the second and third contract years. OPERS is instituting a Health Care Preservation Plan in order to maintain the financial

integrity of the system in the face of rising health care costs. In order to insure that the system can provide affordable health care to retirees, the system's administrators are increasing the employee contribution up to the statutory cap of 10%. The contribution rate will increase by .5% per year for three years starting in 2006. The Fact Finder is recommending that the base wage increase be lowered by .5% to 2.75% in the second and third contract years in order for the OPERS pick-up to be increased by the same .5%.

The Fact Finder recognizes that the City wishes to end the current system whereby it "pays" both the employer and employee portion of the OPERS payment. However, the pick-up does benefit the City by lowering overall payroll costs, and it is a very important issue to the Union. Given the entire record, the Fact Finder believes that continuing the current system is a win/win proposition for both parties. Given the fact that the Fact Finder is recommending that the employees pay for the pick-up increase via a lower base wage increase, the City is not penalized in any way for continuing the current system.

Finding of Fact: The City's wage offer is reasonable given the data presented on wages throughout the area. The City's own data show, however, that the City is in the low end of the comparables when comparing starting salaries.

Therefore, the Fact Finder is recommending a marginal adjustment of the City's offer in order to raise the lower end of the scale. In addition, the Fact Finder is recommending that the City continue to pay the entire OPERS payment including the .5% increase due in 2006 and 2007. To recompense the City for this

payment, the Fact Finder is recommending the base rate increase given to the employees be lowered by .5% in the second and third contract year.

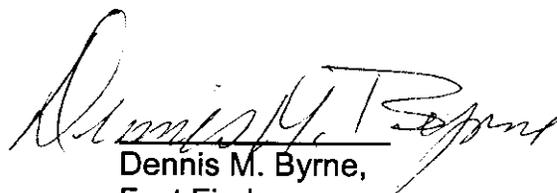
Suggested Language: Schedule A

Starting January 1, 2005	\$.47 per hour
Starting January 1, 2006	\$.40 per hour
Starting January 1, 2007	\$.40 per hour

In addition the City shall pay the increase in the OPERS pick in the second and third contract years.

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this 17th day of February 2005, at Munroe Falls, Ohio.


Dennis M. Byrne,
Fact Finder