



## BACKGROUND

The Fact-Finding involves the City of Cuyahoga Falls, (hereafter referred to as the “Employer”) and the Fraternal Order of Police, Ohio Labor Council, (hereafter referred to as the “Union”). The Union’s bargaining unit is comprised of approximately 77 Officers. This Bargaining Unit consist of all Patrolmen and Community Service Officers in accordance with SERB rules. The State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter.

The parties began negotiating a successor collective bargaining agreement on July 21, 2005. The parties met on approximately four occasions and were unable to reach an Agreement. Impasse was declared and the parties proceeded to Fact-Finding.

The Fact-Finding Hearing was conducted on Tuesday, November 29, 2005, in the City’s Offices, Cuyahoga Falls, Ohio. The Fact-Finding Hearing began around 9:30 A. M., and was adjourned at approximately 1:00 P. M. At the beginning of the Fact-Finding Hearing mediation was requested and an attempt was made to mediate the issues at impasse. A serious effort was made, by all, at mediation, which occurred for almost the entire session.

Although the mediation, at face value, was unsuccessful, it gave the Fact-Finder a thorough understanding of each parties respective position on the issues at hand. Because of that understanding, the parties, were able to be brief and were able to get straight to the point, with their respective arguments, on all of the remaining issues.

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 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 agreed-upon dispute settlement procedures in the public service or private employment.

The following issues were considered at the Fact-Finding Hearing on November 29, 2005.

1. Article 5 - Employee Rights.
2. Article 15 - Tour of Duty.
3. Article 16 - Overtime.
4. Article 17 - Uniform Allowances.
5. Article 19 - Wages.
6. Article 22 - Health Insurance.
7. Article 23 - Other Insurances & Benefits.
8. Article 25 - Health Maintenance Standards.
9. Article 28 - Sick Leave.
10. Article 33 - Fitness Evaluation.

The testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, and the City's finances, will be the basis for the following recommendations. However, this Fact-Finder assures the parties that their positions books were thoroughly read, studied and relied upon.

In this first issue the Employer has proposed some reorganization of the article and some general housekeeping modifications for the purpose of clarification. In other issues the Employer has made some format changes and again some modifications for the purpose of clarification.

Since the above "housekeeping" modifications were not discussed, this Fact-Finder will recommend that the parties, within thirty (30) days of this report, meet and discuss the inclusion of the "housekeeping" measures. If the parties can not agree, or do not meet within the thirty (30) days, the current language will then stand without any modifications.

#### **ISSUE #1 - ARTICLE 5, EMPLOYEE RIGHTS**

Four sections of Article 5 are at issue. The Union has proposed modifications to the pre-disciplinary procedure, travel expenses, and personnel files, while the Employer has proposed a modification to probationary removal.

## **SCHEDULING OF DISCIPLINARY HEARINGS.**

### **UNIONS POSITION:**

The Union proposes that if an employee wishes to have a union staff representative attend a disciplinary hearing before the Chief of Police, the initial hearing should be scheduled based upon the mutual consent of the staff rep and the Chief.

The Union cites occurrences where there have been problems with such scheduling activity.

### **EMPLOYER POSITION:**

The Employer opposes an open ended time for which the parties are free to re-schedule the hearings. The Employer is not opposed to the concept but states there needs to be an outside date by which the hearing would be held if the original hearing is not rescheduled within a reasonable period of time. The Employer proposes a seven (7) day time period.

### **FACT-FINDER'S RECOMMENDATION:**

This Fact-Finder believes disciplinary hearings should be held as soon as possible to the affect such a meeting has on an employee and employer alike. However, this Fact-Finder is also cognizant to the rigid schedules both the Chief and Union Staff Representatives have. After reviewing all the evidence and based upon my comments regarding the hearing being held as-  
soon-as-possible, the recommendation is to allow for a thirty (30) day closure period unless mutually agreed between the Chief and the FOP Staff Rep.

### **SUGGESTED LANGUAGE:**

The second sentence of Section 2, C, 3, should read: The member or his/her FOP Staff Representative may request to re-schedule a disciplinary hearing, in order to permit the FOP Staff Representative to be present, but in no event shall the hearing be held later than thirty (30) days after the original date unless mutually agreed to by the Chief and the FOP Staff Rep.

## **PROBATIONARY REMOVAL.**

### **EMPLOYER POSITION:**

The Employer proposes that discretionary probationary removal of an employee be permitted at any time during the employee's probationary period rather than only in the second half of the probationary period.

### **UNION POSITION:**

Although the Union opposes the proposal they have no real opposition to it's inclusion into the parties Collective Bargaining Agreement.

**FACT-FINDER'S RECOMMENDATION:**

The Employer's proposal.

**PERSONNEL RECORDS:**

**UNION POSITION:**

The Union wants to place contractual limitations on the time disciplinary actions remain in a employees personnel file. Eighteen (18) months for written warnings and twenty-four (24) months for suspensions.

Citing the need for discipline to be out of a employees personnel record, the Union argues that such contractual limits are not uncommon.

**EMPLOYERS POSITION:**

The Employer opposes the creation of separate tracks for different types of disciplinary actions. The Employer argues that when faced with a possible removal of an officer as a result of the commission of a serious offense, the employer should be able to consider an Employee's entire employment history.

**FACT-FINDER'S RECOMMENDATION:**

While this Fact-Finder is not opposed to placing contractual limitations on the time a disciplinary action can stay in an employee's record, this Fact-Finder usually prefers to see the parties define, through negotiations, a definitive list of offenses which constitutes removal and after how long. Inclusive in that list is usually a description of serious offenses that may be exceptions to the time limits. For now the Union can always rely on their grievance and arbitration procedures to adjudicate discipline they feel is unjust. Normally arbitrators are able to decide how long to consider prior discipline. Therefore, the proposal is denied.

**TRAVEL AND MEAL ALLOWANCES:**

**UNION POSITION:**

The Union proposes to raise the mileage reimbursement rates to the IRS rate and further proposes to raise the reimbursement for meals by \$2.00 for each meal.

The Union cites the rising costs of meals and gas for the reasoning for the proposal.

**EMPLOYERS POSITION:**

The Employer opposes the Union's proposal stating that all City employees should be reimbursed the same rates. Therefore, the Employer proposes that if at any time the City raises these amounts for all City employees, then the higher rate would apply to this bargaining unit as well.

**FACT-FINDER'S RECOMMENDATION:**

Based on the evidence presented which includes that the Patrolmen usually use their patrol cars for travel, there is no convincing evidence to show that this bargaining unit is substandard in the area of travel or meal allowance. Therefore, the Union's proposal is denied and the Employer's counter proposal will be accepted..

**ISSUE #2 - ARTICLE 15, TOUR OF DUTY.**

**UNIONS POSITION:**

The Union seeks to change the language of this article to reflect more accurately the current practice between the parties as what has been the past practice by the Employer for a number of years. Specifically permitting the employees with less than three (3) years of service but more than one (1) year of service to participate in the annual shift bid. The current language does not include them, however, for years the parties have permitted bargaining unit members with less than three (3) years to participate in the shift bid.

**EMPLOYERS POSITION:**

The Employer proposes the retention of the current language. The Employer opposes the Union's proposal to remove the ability of the Chief of Police to create a schedule whereby he can assign the shifts and days off of both probationary employees and rookie patrol officers. The Employer's major concern is to ensure that all of the rookie officers do not have the same days off, which could result in an imbalance of senior and rookie officers working on certain days of the week.

**FACT-FINDER'S RECOMMENDATION:**

The practice of permitting the officers with under three (3) years of service, to participate in the annual shift bid, has taken place and apparently worked well for a number of years and under several Police Chiefs.

The Chief of Police's concern that rookies, who have spent their first six (6) months in the academy, may cause an imbalance of senior and rookie officers working on certain days of the week is a legitimate one. However, this Fact-Finder's understanding of the evidence is that the very issue of assigning days off was just before an arbitrator and his decision is now before the

parties. This Fact-Finder will not rule on a issue that was just arbitrated especially since the decision was not given into evidence for this Fact-Finder to consider. This Fact-Finder will rule on the proposal that is part of this Hearing which concerns the annual shift bids.

Based on the evidence presented and weighing all the factors, the recommendation is to accept the Union's proposal as written

**ISSUE #3 - ARTICLE 16, OVERTIME.**

**UNION POSITION:**

The Union proposes to increase the number of hours paid for Court appearances from two (2) hours to three (3) hours for bargaining unit members who appear in Court.

The Union states that this bargaining unit is low in the area of court/call in time.

**EMPLOYERS POSITION:**

The Employer rejects the Union's proposal stating that the current two (2) hour inconvenience pay is sufficient. The Employer further argues that most officers' appearances take place in the same building as the police department.

**FACT-FINDER'S RECOMMENDATION:**

Currently this type of call in pay for court time normally runs between three (3) and five (5) hours for most Police contracts. Neither party presented any evidence where they would be harmed by either the City having to pay more or the Union having to receive what they have now.

It is then this Fact-Finder's recommendation that this call in pay be increased to three (3) hours pay for Court appearances.

**ISSUE # 4 - ARTICLE 17, UNIFORM ALLOWANCES**

**UNION POSITION:**

The Union proposes to increase the uniform allowance from \$1,050 to \$1,200.

The Union cites the rising cost of uniforms.

**EMPLOYERS POSITION:**

The Employer opposes the increase to uniform allowances stating that the City's Police are comparable to other similar jurisdictions.

**FACT-FINDER'S RECOMMENDATION:**

Based on the evidence presented and the comparable used, the Police, here, lag a little behind the other comparable jurisdictions The City of Elyria at a low \$700 throws the weighted average off a little. This bargaining unit although not substandard with respect to uniform allowances, does fall behind their external comparables slightly.

In order to keep this unit comparable, with respect to uniform allowances, this Fact-Finder's recommendation is therefore to increase the uniform allowance by \$50.00 per year for each year of the three (3) year Agreement.

**ISSUE #5 - ARTICLE 19, WAGES.**

**UNION POSITION:**

The Union is seeking a 4% wage increase for each year of the new contract. In addition, the Union is seeking to make modifications to the wage scale by elimination of the current starting rate, automatic annual step increases and the addition of a corporal's rate which is 5% above the current step, to be automatic after 20 years of service.

**EMPLOYERS POSITION:**

The Employer proposes annual wage increases of 2.2%, 2.2% and 2.5% respectively for each year of the agreement.

The Employer opposes all of the three Union proposed modifications to the wage scale.

The Employer argues that the current language of the step system requires satisfactory job performance prior to the annual step increase. This performance based system should be retained. The Employer further argues that the current system already award senior employees with 8-year and 13-year levels which were just put into the current Agreement. In addition, there is no need to drop step A. The lowest step was just dropped in 2000 and the City has no difficulties in attracting or retaining qualified candidates.

The Employer believes that adding the new Corporal rate is an improper subject for this Fact-Finder since the creation of this new classification can only be done by amending the certification or by agreement of the parties.

**FACT-FINDER'S RECOMMENDATION:**

After reviewing the financial data, it appears that the financial outlook, for the Employer, is good. In reviewing the external comparables provided, it also appears some adjustments should be made.

From the start rate up to the five year rate, this bargaining unit is competitive as they are about in the middle of the pack with the other like jurisdictions. Years five through nineteen, this bargaining unit starts slipping toward the lower ranks to about fourth from the bottom. Then at twenty years they move back to the middle.

While this bargaining unit is not underpaid, they are not leading the pack buy any measures. There is a need for a moderate wage increase. The Employer at 2.2, 2.2 and 2.5 is a little too low to keep this bargaining unit at least in the middle of all other comparables while the Union's proposal is slightly too high.

With an interest in keeping this bargaining unit competitive with other like jurisdictions and taking in consideration the upcoming discussion on health insurance, this Fact-Finder makes the following recommendations with respect to wages and the wage scale.

With respect to the wage scale, there will be no changes at this time. With respect to the wage increase, the recommendation is for a 3.5% wage increase for each year of the new three year Agreement.

Effective July 1, 2005 - 3.5%

Effective July 1, 2006 - 3.5%

Effective July 1, 2007 - 3.5%

#### **ISSUE #6 - ARTICLE 22, HEALTH INSURANCE.**

##### **EMPLOYERS POSITION:**

The Employer's proposal consist of two parts. First, the employer proposes that members of this bargaining unit be provided with the same comprehensive major medical/hospitalization health care insurance as provided to all City employees. The Employer's proposal would eliminate a description of the actual benefits provide from the contract, but would provide notification of proposed changes and negotiations of the effects of those changes prior to implementation.

Second, the Employer recognizes that as a result of the Employer's proposed language change, the benefits currently offered to the bargaining unit would change. The specific changes include:

1. Change to percentage payable after the deductible is met co-pay
  - A. From 100% to 90% for network
  - B. From 80% to 70% for non-network
2. Th addition of an in-network maximum out-of-pocket expense of \$750 per individual and \$1500 per family for in-network.

3. Increase maximum out-of-pocket expenses for non-network of \$2000 per individual and \$4000 per family.
4. Emergency room deductible of \$50, which is waived if the covered person is admitted to the hospital.
5. A step-child premium share of \$15.00 per month.
6. A spousal surcharge program designed to reimburse the City for the cost of the potential adverse effect of a spouse's decision to forego his/her own employer's plan and elect to be covered only by the City's benefit plan. It is an effort by the City to ensure that other employers also pay their fair share of health care expenses for their own employees. The surcharge would be 1/3 the COBRA rate for single coverage (approximately \$180.00 per month)

The Employer contends that their proposed changes are consumer driven. Rather than request that all employees share in the premium costs, the Employer is suggesting that the changes actually affect the persons who use the health care plan.

#### **UNION POSITION:**

The Union proposes status quo and rejects the Employer's proposal in favor of their current language. The Union argument is that there is no financial justification for such a radical and costly change. The Employer has the ability to fund the current health care plan.

#### **FACT-FINDER'S RECOMMENDATION:**

First, this Fact-Finder recognizes the benefits to the Employer by trying to have all employees on the same health care plan. Having one single plan as opposed to multiple plans is much easier to administer, the costs associated with only one single larger plan is usually considerably less than the costs associated with having several different plans.

Although, the Employer is not crying an inability to pay with respect to health care cost, the need to reduce such cost is overly apparent. Rising health care cost can adversely and directly contribute to financial problems for any City. It is imperative for all Employers to get some sort of relief in cost sharing and/or plan changes. Such changes would enable the City to significantly reduce cost and allow the City to properly fund its health care plan for some years to come. The Employer has to control rising health care cost in fear of not making budget. On the other hand, the employees always have an interest in improving or at least maintaining their current plan by trying to minimize their burden with respect to any monthly premiums.

With that said, it would be preposterous for this Fact-Finder to suggest that this bargaining unit not help defray the rising cost of health insurance premiums.

While this Fact-Finder believes that the Employer's proposal to be prudent in most of the changes, there are some areas that are in need of modification. The old adage of too much too fast even applies to labor/management settings. Here the Employer is asking for too much too soon in respect to some of the changes and the increases in cost.

First, the initial concept of a step child premium share may seem to be a cost share measure that would work. This Fact-Finder believes such would be an administrative nightmare for the Employer to manage. This Fact-Finder could foresee grievances and law suits escalating to challenge this type of change. The first problem that comes to mind is what would occur if the City's employee had a deadbeat ex-spouse or an ex-spouse that can not be located. It is not fair to penalize your own employee for those types of problems.

Second, it is true that spousal surcharge programs help employers provide good health care plans by limiting the potential liability from covering the spouses of employees who are eligible for other health care coverages.

In reviewing the information provided by the Employer on spousal surcharge programs, typical surcharges vary from employer to employer, ranging form \$30.00 to more than \$200.00. However, a prevalent fixed surcharge seen in this Employer's market today ranges from \$50.00 to \$75.00 per month.

Looking at the SERB report on cost of health insurance in Ohio's public sector for 2004 reveals that the average monthly contribution, where employees pay a portion fo the premium cost for medical coverage, to be \$112.43, for family coverage.

For this proposal the Employer is asking for roughly \$180.00 per month as a spousal surcharge. To have this type of measure accepted by employees, especially since this is a radical departure from their previous plan, you must walk before you run.

This Fact-Finder recommends taking the SERB Report of \$112.43 dividing by  $\frac{1}{2}$  to arrive at a truer spousal surcharge to begin with. That amount would be \$56.00 which falls into the prevalent fixed surcharge seen in this Employer's market today.

Third, the addition of an in-network maximum out of pocket of \$750.00 single and \$1500.00 family is another instant of asking too much too soon to have a new concept initiated when inability to pay is not the real problem. Such an addition should be brought in through steps.

Fourth, the restriction that the benefit plan will not be listed in the Agreement and only notification of changes and effects bargaining will take place is not in the best interest of the employees with the beginning of a re-vamp of their old benefits which is a huge departure from what they have previously known.

Therefore this Fact-Finder makes the following recommendations for the health insurance issues:

The Employer's proposal will be accepted as written with the following changes.

1. The description of the actual benefits will be provided in the contract and not eliminated.
2. The spousal surcharge will be \$56.00 per month.
3. There will not be a step-child premium share.
4. The in-network maximum out-of-pocket expense will be \$250.00 per individual and \$500.00 per family for the first year of this Agreement. \$500.00 per individual and \$1000.00 per family for the second year of this Agreement and \$750.00 per individual and \$1500.00 per family for the third year of this Agreement.

The first year of this Agreement out-of-pocket expenses will take affect when the Agreement is signed by both parties.

The out of network maximums will reflect the same three step inclusion. \$1000/\$2000 the first year, \$1500/\$3000 the second year and \$2000/\$4000 the third year of the Agreement

#### **ISSUE #7 - ARTICLE 23, OTHER INSURANCES.**

##### **UNION POSITION:**

The Union is proposing to increase life insurance amounts for employees from \$40,000 to \$75,000 and for retirees from \$9,000 to \$15,000.

##### **EMPLOYER PROPOSAL:**

The Employer rejects the Union proposal stating that they are competitive in this area and that there is no need for a change.

##### **FACT-FINDER'S RECOMMENDATION:**

Based on the testimony given and evidence presented and taking in account of the wage proposal and health insurance proposal, and considering that this unit is not substandard in this area of insurances, the recommendation is status quo.

#### **ISSUE # 8 - ARTICLE 25, HEALTH MAINTENANCE STANDARDS.**

##### **UNION POSITION:**

The Union proposes to specify the type of medical test that must be performed during the Employer provided physical examination and that such medical exams will be provided every three years.

**EMPLOYER POSITION:**

The Employer opposes only the inclusion of one test, Flexible Sigmoidoscopy or Colomscopy and proposes adding random drug testing to the current policy.

**FACT-FINDER'S RECOMMENDATION:**

The Union opposes any random drug testing since the Employer can already drug test for suspicion. This Fact-Finder agrees. There was no evidence to suggest that the current policy was not working or that there was a new problem with drug abuse. Without any justification, this Fact-Finder can not in good conscience recommend the implementation of such a policy.

As to the inclusion of the five tests, the Fact-Finder will agree with the Employer. The following four tests will be listed in the Agreement EKG, Chest X-ray, Pulmonary Function and Stress Test. It is also this Fact-Finder's recommendation that the test be given every three years since this Fact-Finder and the Employer agree that all four test listed could provide indications of conditions that could directly effect an officer's ability to perform the essential functions of his position. Although the Flexible Sigmoidoscopy or Colomscopy are important tests, they are covered by the employees health insurance and are best to be taken care of under that system.

**ISSUE #9 - ARTICLE 28, SICK LEAVE.**

**UNION POSITION:**

The Union proposes that a sick leave donation policy be added to the sick leave article.

The Union also proposes three changes to the system for cashing out accrued sick leave upon retirement. 1, an increase in the amount of sick leave cashed out upon retirement from 960 hours to 1500 hours. An increase in the amount of sick leave cashed out during the three years prior to retirement from 320 hours to 500 hours, and 3, the payment of the amount of permitted sick leave cash out to an employee's estate upon the employee's death.

**EMPLOYER POSITION:**

The Employer is not opposed to the adoption of a sick leave donation program so long as that program is governed by a policy that sets forth the details of such program.

The Employer does oppose any increase in the maximum amount of accrued but unused sick leave that can be cashed out either upon retirement or during the employee's death. The

Employer also opposes removing the three year restriction prior to retirement for collecting the cash out payments.

The Employer does not oppose the payment to the employee's estate. The Employer proposes that said payment also be provided to the employee's surviving spouse in lieu of the estate.

**FACT-FINDER'S RECOMMENDATION:**

It appears that both parties are in agreement with the sick leave donation program. The Employer wants a policy in place to control the program and has offered a policy for the parties to consider. This Fact-Finder finds such to be reasonable. Therefore, this Fact-Finder recommends that the Employer's sick leave donation policy be adopted. The parties will have thirty (30) days from this report to try and tweak the policy to fit this bargaining unit. However, if there is no agreement at the end of the thirty (30) days, the Employer's policy will control as written.

With regards to the Union's request of making the payment of the amount of sick leave cash out to an employee's estate upon the employee's death and the Employer's counter to include surviving spouse as both reasonable and acceptable. Therefore, the recommendation is to accept the Employer's language as proposed which includes language containing both the estate and the surviving spouse.

The Union supports their argument for increasing the sick leave cash out by looking at both the internal and external comparables.

Based on the external comparables this unit is about in the middle once again for the amount of sick leave for cash out. Based on the internals, one other unit receives the \$1500.00 and has the three year restrictions removed.

The Employer argues that with removing the restriction an employee can collect their cash out payments and then not retire. There is no requirement to retire. That person who does not retire may have a future problem if or when sick leave is needed.

After reviewing all the evidence and listening to all the arguments made with respect to increasing the sick leave cash out and removing the restrictions, this Fact-Finder agrees with the Employer that removing the three year restrictions would be a problem and it deviates from the intent of sick leave cash out for retirement. This Fact-Finder, however, believes that the cash out amount for this unit should be increased, somewhat, to keep them competitive with like jurisdictions. Therefore, the recommendation is to increase sick leave cash out by 40 hours to a maximum of 1000 hours to be given 1/3 of that amount in each year of the three years prior to retirement in accordance with the language contained in the current Agreement.

**ISSUE #10 - ARTICLE 33, FITNESS EVALUATION.**

**UNION POSITION:**

The Union is requesting to increase the amount currently paid for voluntary participation in the fitness evaluation program to double the current stipend.

**EMPLOYER POSITION:**

The Employer opposes the Union's proposal stating that most comparable jurisdictions do not offer a paid fitness evaluation.

The Employer proposes to make the fitness program mandatory for all employees hired after January 1, 2006.

**FACT-FINDER'S RECOMMENDATION:**

After reviewing all the evidence, proposals, comparables and after listening to both parties arguments, this Fact-Finder's recommendation is to make no changes in this Article and remain status quo.



Marc A. Winters, Fact-Finder