



2006 SEP 22 P 12:10

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between	:	
	:	
CITY OF CUYAHOGA FALLS,	:	
	:	
Employer	:	Case No: 05-MED-03-0250
	:	Sergeants & Lieutenants
and	:	
	:	
THE FRATERNAL ORDER OF POLICE	:	
OHIO LABOR COUNCIL, INC.	:	
	:	
Union	:	

FACT FINDING AND RECOMMENDATIONS

Michael D. McDowell, Esq., Fact-Finder
Report Dated: September 20, 2006

APPEARANCES

For the City of Cuyahoga Falls:

Ms. Robin L. Bell
Regional Manager/Employer Advocate
Clemans Nelson & Associates, Inc.
2351 South Arlington Road, Suite A
Akron, OH 44319

For the Fraternal Order of Police, Ohio Labor Council, Inc.

Mr. Chuck Choate
Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
Northeast Office
2721 Manchester Road
Akron, OH 44319-1020

SUBMISSION

The undersigned was selected as Fact-Finder in this dispute by the parties pursuant to written notice to the Fact Finder dated June 13, 2005. A collective bargaining agreement is in full force and effect between the City of Cuyahoga Falls, Ohio ("City") and Fraternal Order of Police, Ohio Labor Council, Inc., Sergeants & Lieutenants ("Union"), and is hereinafter referred to as the "CBA." The three year CBA became effective July 1, 2002, and the term of the CBA was to end on June 3, 2005. The CBA has been continued by agreement of the parties pending resolution of contested items. The bargaining unit consists of approximately seventeen (17) full time employees in the classification of Sergeant and Lieutenant.

The parties commenced negotiations for a successor CBA in spring, 2005. The parties met on multiple occasions and were able to voluntarily agree on several articles and provisions, but were at impasse on certain other issues.

Several Fact Finding hearings in this matter were scheduled but postponed due to the same or similar issues being the subject to Fact Finding and Conciliation, which eventually resulted in the Agreement Between City of Cuyahoga Falls, Ohio and Fraternal Order of Police, Ohio Labor Council, Inc. (Patrolmen and Community Service Officers), hereinafter "Patrol Agreement" which applies to approximately seventy (70) full time employees. The parties wished to await resolution of those processes before proceeding with Fact Finding in this matter as the parties believed that those proceedings may resolve or eliminate issues in this matter.

After the Patrol Agreement was entered into, the parties met in Cuyahoga Falls, Ohio and participated in a mediation session on August 17, 2006 but no settlement was reached. Following the mediation session, the Fact Finding Hearing was then held on that date.

The parties agreed to extend the time periods to and including the issuance of the Fact Finding Recommendation as provided under the Ohio Administrative Code Rule 4117.260.

In addition to the representatives of the parties and the Fact-Finder, the following individuals were present at the Fact Finding Hearing:

For the City:

John T. Conley - Chief of Police
Jack H. Davis, Jr. - Police Captain
Hope L. Jones, Esq. - Deputy Law Director

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For the Union:

Perry Tabak – Detective Sergeant and Union President
James J. Singleton - Sergeant

The Fact-Finder heard testimony, argument and admitted evidence submitted by the parties on the following issues: Employee Rights – Article 5, Section 2.C.3, Tour of Duty – Article 15, Overtime - Article 16.B, Uniform Allowance – Article 17, Wages – Article 19 and Health Insurance – Article 22. The parties agreed to a three year labor agreement ending December 31, 2007. The parties have withdrawn all other issues.

The parties have cited and relied on the Patrol Agreement. The Patrol Agreement was reached after the issues were submitted to Fact Finding, which Fact Finding Report and Recommendation was filed with the Ohio State Employment Relations Board at 05-MED-03-0249, hereinafter “SERB” on December 7, 2005. The issues in that matter were subsequently submitted to Conciliation, which Conciliator’s Report/Order was filed with the SERB on April 19, 2006.

In presenting these recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:’

- (1) Past collectively bargained agreements between the parties;
- (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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) 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 agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUES IN CONTENTION

ISSUE 1 - Article 5, Section 2.C.3. – EMPLOYEE RIGHTS

Union’s Position: The Union proposes a change in Article 5, Section 2.C.3. that provides for the ability for the Bargaining Unit Member’s representative and the Employer’s representative to determine a mutually agreed upon time and date to conduct the disciplinary hearing. In the past, the City has indicated a date and time to conduct the

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hearing and has been occasionally unwilling to modify that for scheduling purposes. The Union seeks new language to provide for the ability to make a mutually agreed upon modification to the date for the hearing.

City's Position: The City opposes the concept of waiting to contact the Union staff representative before scheduling a pre-disciplinary hearing. The City is not opposed to the proposition of rescheduling a date by mutual agreement if a new date is needed. However, the City does not wish a disciplinary process to be stalled if a staff representative is unable to reschedule a meeting in a timely manner. The City proposes that there must be an outside date by which such a hearing would be held if the parties are unable to mutually agree to a rescheduled date. The City proposes a seven-day period in which to reschedule if the member is on administrative leave and a fourteen-day reschedule period if the member is not on administrative leave. The Patrol Agreement includes the City's position with longer time frames.

Recommendations of the Fact-Finder: It is recommended that Article 5, Section 2.C.3 of the CBA be modified to include the following language:

The member or his/her FOP/OLC Staff Representative may request to reschedule a disciplinary hearing in order to permit the 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 Staff Representative. However if the member is on paid administrative leave, the hearing shall not be delayed more than fourteen (14) days.

ISSUE 2: Article 15 – TOUR OF DUTY

Union's Position: The Union has proposed adding to the CBA shift selection by seniority for the Lieutenants and Sergeants in the Patrol Division (currently three (3) Lieutenants and nine (9) Sergeants). The specific Union proposal is as follows:

1. Shift selection by seniority for the Sergeants and Lieutenants assigned to the Patrol Division (currently nine (9) Sergeants and three (3) Lieutenants).
2. All other supervisory positions remain at management's discretion.
3. Anytime a vacancy (permanent separation from the Department per the CBA) occurs in the Patrol Division outside the bid cycle, the Chief may fill that vacancy by utilizing the least senior bid person in the Patrol Division or B.U.M. outside the Patrol Division at management discretion until the next bid cycle.
4. This provision would be effective January 1, 2007.

The Union's rationale for requesting shift selection has two basic parts. First, this Unit of Sergeants and Lieutenants has for many years practiced shift selection by seniority although it was not expressly required by the CBA. Recently, the City ceased to continue the practice. Since there was no language in the CBA, the Union could not require the

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practice to continue. Secondly, the subordinates that the Lieutenants and Sergeants supervise in the Patron Division have the benefit of shift selection by seniority, thus, have a better benefit in this regard than their supervision. The Union offers the Patrol Agreement as evidence to support its position. This is a much larger unit (seventy (70) covered by the Patrol Agreement as opposed to seventeen (17) covered by the CBA) and more complicated unit in the City which has the benefit of shift selection by seniority.

City's Position: The City is opposed to the Union's proposal for shift bidding by the promoted officers. The Chief now specifically has that right because of the language in the CBA and the City desires to maintain the full management right to assign shifts. That the Chief recently began exercising that right after a long period over which he did not do so does not take away what the CBA specifically provides. The Chief needs to have the right to effectuate the efficiency of the Police Department. He needs to have the right to change the combination of supervision on a shift if he determines that a change is necessary based on the needs of the Patrol Division. He would be precluded from doing this if the patrol supervision is permitted shift selection by seniority. The bargaining unit members are paid a shift differential in order to compensate them for assignment to the "off" shifts. The City presented evidence of comparable contracts in comparable cities in the area which show that comparable cities do not have both shift differential and shift bidding for supervisory units. The comparable cities have one or the other, not both. The Patrol Agreement does not have a shift differential. Therefore to recommend shift bidding for patrol supervision when the Union already has a shift differential in place for the patrol supervision would provide a benefit to the Union significantly above other comparable cities in the area.

Recommendations of the Fact-Finder: The City's argument for discretion in the assignment of supervision to shifts in this unit, together with the evidence presented in this matter establishing that bargaining unit members are paid a shift differential; that comparable cities do not have both shift differential and shift bidding for supervisory units; and that the Patrol Agreement which contains shift bidding does not contain shift differential, is persuasive. Therefore, the Union's proposal that the supervisory unit have shift bidding is not recommended.

ISSUE 3: Article 16.B – OVERTIME

Union's Position: The Union proposes to increase the number of hours paid for Court appearances from two (2) hours to three hours (3) 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.

City's Position: The City opposes the Union's proposal to increase the court time/call in pay minimum. The municipal court where most officer court appearances take place is in the same building as the police department. The current two-hour inconvenience pay is sufficient.

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Recommendations of the Fact-Finder: The Union's proposal will be recommended. It is recommended that Article 16.B of the CBA be modified as follows:

If a bargaining unit member is required to make an appearance in court at the request of the Prosecutor or other member of the Law or Police Department, he shall be compensated for a minimum of two (2) hours at the overtime rate of pay. If the actual time spent in Court is greater than three (3) hours, he shall be compensated for all hours over three (3) spent in Court at the rate of two (2) times his regular rate of pay. If a bargaining unit member is requested to appear for training purposes or is called in after being released from duty he shall be compensated for two (2) hours or the actual time spent in training or call in, whichever is greater, at the overtime rate. If a Court appearance or training time is scheduled to begin within one (1) hour after the conclusion of a previous Court appearance or training time, the subsequent Court appearance(s) or training time(s) shall be considered a continuation of the initial court appearance(s) or training time(s).

ISSUE 4: Article 17 – UNIFORM ALLOWANCE

Union's Position: The Union proposes increasing the amount of uniform allowance provided to the Bargaining Unit Members from \$1,050.00 to \$1,200.00 dollars. The proposal also outlines the manner in which the uniform allowance stipend shall be distributed to the Bargaining Unit Members. The Patrol Agreement includes the first part of the Union's position on this issue.

City's Position: The City proposes that the annual uniform allowance be increased by \$50.00, thereby providing an annual uniform allowance in the amount of \$1,100. The Employer opposes the Union's proposal to increase the uniform allowance from \$1,050 to \$1,200. The City is not opposed to the Union's proposal to provide members the option of receiving the uniform allowance in cash or as a voucher. If the employee elects this option, members can obtain the benefit of tax-free purchases of uniforms, thereby increasing the "real dollar" value of their uniform allowance. With this option available to employees, no additional increase in uniform allowance is warranted. The Employer is not opposed to the Union's proposal to provide prior notice of uniform changes, or to allow sufficient payment of uniform allowance to pay for the required uniform change. The Employer, however, rejects any proposal that would decrease the Employer's management right to determine what the required uniform would be.

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Recommendations of the Fact-Finder: The first part of the Union's proposal will be recommended. It is recommended that Article 17 be modified to include the following language:

Each bargaining unit member shall receive an annual clothing allowance for the purchase and maintenance of uniforms as follows:

Second year of Agreement \$1,150.00

Third year of Agreement \$1,200.00

This amount is payable one-half on December 31st and one-half on June 30th of each year of the Agreement.

ISSUE 5: Article 19 – WAGES

Union's Position: The Union proposes a five percent (5%) increase for each category represented by the bargaining unit for each year of this Agreement

City's Position: The City proposes annual wage increases of 2.2%, 2.2%, and 2.5%. The Union has proposed annual wage increases of 5% for each of the three years of the Agreement.

Recommendations of the Fact-Finder: The wage rate in the Patrol Agreement will be recommended. It is recommended that Article 19 of the CBA modified to include the following language:

Effective July 1, 2005, the hourly wage rates for bargaining unit members shall be the rates set forth in Appendix A of this contract. The wages set forth in Appendix A reflect a three and two tenths percent (3.2%) wage increase for 2005, a three percent (3.0%) wage increase effective July 1, 2006, and a three percent (3.0%) wage increase effective July 1, 2007. [The City will pay all retroactive monies by means of a separate check.]

**Cuyahoga Falls
 Appendix A**

<i>Effective July 1, 2005</i>	Steps			
<i>3.2% increase</i>	A	B	C	D
Sergeant	24.5161	25.7227	27.0309	28.3277
Over 8 Complete Service Years	25.2039	26.4219	27.7300	29.0832
Over 13 Complete Service Years	25.8017	27.1211	28.4405	29.7824

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Lieutenant	29.0043	29.7034	31.1695	32.7032
Over 8 Complete Service Years	29.7936	30.5267	32.0152	33.5940
Over 13 Complete Service Years	30.5267	31.2597	32.7933	34.4172
Effective July 1, 2006	Steps			
3.0% increase	A	B	C	D
Sergeant	25.2516	26.4944	27.8418	29.1775
Over 8 Complete Service Years	25.9600	27.2145	28.5619	29.9557
Over 13 Complete Service Years	26.5757	27.9347	29.2937	30.6759
Lieutenant	29.8744	30.5945	32.1046	33.6842
Over 8 Complete Service Years	30.6874	31.4425	32.9757	34.6018
Over 13 Complete Service Years	31.4425	32.1975	33.7771	35.4497
Effective July 1, 2007	Steps			
3% increase	A	B	C	D
Sergeant	26.0091	27.2892	28.6770	30.0528
Over 8 Complete Service Years	26.7388	28.0310	29.4188	30.8544
Over 13 Complete Service Years	27.3730	28.7727	30.1725	31.5961
Lieutenant	30.7706	31.5124	33.0677	34.6948
Over 8 Complete Service Years	31.6081	32.3857	33.9649	35.6398
Over 13 Complete Service Years	32.3857	33.1634	34.7905	36.5132

ISSUE 6: Article 22 – HEALTH INSURANCE

City's Position: The City proposes the following changes in the coverage of comprehensive major medical/hospitalization health care insurance provided to all City employees. It is important to note that the City does not propose that employees share in any of the monthly premium costs.

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The specific changes to coverage include:

1. Change to Percentage Payable after deductible is met Co-pay
 - a. From 100% to 90% for network
 - b. From 100% to 90% and from 80% to 70% for non-network
2. The addition of an in-network maximum out-of-pocket expense of \$750 per individual and \$1,500 per family. This provision was not needed with 100% City-paid benefits.
3. Increase maximum out-of-pocket expenses for non-network.
4. Emergency room deductible of \$50, which is waived if the covered person is admitted to the hospital.
5. A spousal premium surcharge if the spouse is eligible for health care coverage under his or her employer's plan. The spousal surcharge would be one-seventh (1/7) the established COBRA rate for single coverage OR any sum received by the employed spouse from his/her employer to decline health care coverage from his/her employer.

The AFSCME, IAFF, Utility Workers, and the FOP/OLC Patrol bargaining units have accepted the changes in coverage and the changes have been implemented for non-bargaining employees.

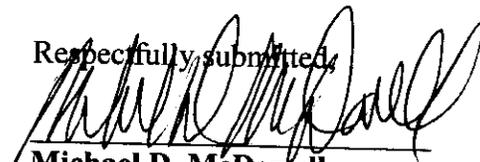
The Patrol Agreement contains the City's proposal.

Union's Position: This proposal that is a significant change in the manner of which health insurance is provided to Bargaining Unit Members. The FOP has responded by taking the position that the current contract language is adequate on health care coverage.

Recommendations of the Fact-Finder: The Patrol Agreement contains the City's proposal. It is recommended that the City's proposal be included in the CBA.

This concludes the Report and the Recommendations of the Fact Finder.

Respectfully submitted,


Michael D. McDowell
Fact Finder

Pittsburgh, PA
September 20, 2006

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CERTIFICATE OF SERVICE

This is to certify that an executed original of the foregoing was mailed this 20th day of September 20, 2006, by U.S. Mail, Overnight Express Mail to Ms. Robin L. Bell, Regional Manager/Employer Advocate, Clemans, Nelson & Associates, Inc., 2351 South Arlington Road, Suite A, Akron, OH 44319; and Mr. Chuck Choate, Staff Representative, FOP/OLC, Inc., 2721 Manchester Road, Akron, OH 44319-1020.



Michael D. McDowell
Fact-Finder