STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS

REPORT & RECOMMENDATION OF THE FACTFINDER

GREGORY JAMES VAN PELT

AS ISSUED

October 5, 2006

IN THE MATTER OF:

City of Cuyahoga Falls *(Employer)* *-and-* **Fraternal Order of Police, Ohio Labor Council** *(Union)*	)	SERB Case No.: 05-MED-03-~~0249~~ 0251

STATE EMPLOYMENT RELATIONS BOARD
2006 OCT 10 P 12: 27

APPEARANCES:

On Behalf of the Employer:

Robin Bell	Clemans Nelson & Assoc.
Hope Jones	Deputy Law Director
Joe Brodzinski	Finance Director
John Conley	Police Chief

On Behalf of the Union:

Chuck Choate	FOP Staff Representative
Lorrie Scianna	Associate
Angela Hawsman	Associate

Gregory James Van Pelt

SUBMISSION

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until June 30, 2005. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on four occasions prior to reaching impasse on the issues enumerated below. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter.

Having reached impasse, the Parties requested the Factfinder to attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on July 7, 2006 at the Cuyahoga Falls City Hall in Cuyahoga Falls, Ohio. Mediation failed to resolve the issues at impasse, and the Parties were afforded an opportunity to present evidence and testimony supportive of their positions. The matter was submitted to the Factfinder for a Report & Recommendations, pursuant to ORC 41117.14, *et seq.* and was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 13 – Uniform Allowance**
2. **Article 17 – Tour of Duty**
3. **Article 19 – Overtime**
4. **Article 20 – Shift Differential**
5. **Article 21 – Health Insurance**
6. **Article 22 – Other Insurance**
7. **Article 26 – Holidays and Holiday Pay**
8. **Article 27 – Vacation**
9. **Article 28 – Wages**

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;

4117-9-05(K)(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;

4117-9-05(K)(3) The interests 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;

4117-9-05(K)(4) The lawful authority of the public employer;

4117-9-05(K)(5) Any stipulations of the parties;

4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND STATUTORY CONSIDERATIONS

Cuyahoga Falls is a community of almost 50,000 located in northern Summit County. While not rising to the level of financial crisis resulting in an inability to pay the Union's proposals, the Employer shares with other Ohio cities a declining revenue base and an uncertain future revenue stream. According to internal documents presented at hearing, its general revenue fund balance declined from $4,640,665 in 2001 to $3,296,439 in 2005. It projects general fund balances of $1,608,096 in 2006 and $327,893 in 2007, with a 2007 projected shortfall of $1,007,435. Property taxes, income taxes and Local Government Funds returned from the state comprise approximately 77% of the general fund revenue.

The bargaining unit, represented by the FOP/OLC, consists of 12 full-time

Dispatchers who work under the City's Police Department. Police Department wages and benefits in the aggregate represented 27% of the General Fund Revenue in 2005, and are projected to represent 28% and 29% of the fund revenue in 2006 and 2007 respectively.

As is almost universally the case, the City has been met with rapidly escalating and unpredictable health care cost increases. Over the period from 2001-2005, costs for health insurance benefits to its employees generally increased a total of 47%; increases in hospitalization costs for its Police Department for the same period rose almost 50%.

Evidence presented regarding comparable wage rates and other compensation afforded bargaining unit members is, as might be expected, conflicting. Overall, the level of compensation of Cuyahoga Falls Dispatchers is within the norms – that is equal to or above the market wage rates within the Summit/Cuyahoga County labor market.

Finally, the Factfinder takes notice that the CPI-U for the period of August, 2005 to August, 2006 was 3.8%. (http://www.bls.gov/news.release/cpi.nr0.htm) In consideration of these factors, and those enumerated above, the Factfinder respectfully renders this Report & Recommendations.

FINDINGS AND RECOMMENDATIONS

1. Article 13 – Uniform Allowance

City Proposal:

The City proposes language providing that the Chief shall determine the Department uniform, and may change or modify that uniform upon 14 days notice prior to implementation. Members shall then be granted a time period equal to two uniform allotments to come into compliance with any uniform change mandated under the provision.

This proposal was made, according to the Employer, in response to the Union's proposal requiring that the Dispatcher's uniform be memorialized in the Agreement. The Union's proposal not having been submitted to the Factfinder in its position statement, the City likewise withdraws its counter-proposal in favor of current contract language.

Union Position:

The FOP argues that many new Chiefs of Police seek to stamp their own imprimatur on departments by altering the uniform – one of the limited means available to them. Out of concern that bargaining unit members might be subjected to unduly burdensome costs associated with purchasing entirely new uniforms, the Union initially proposed that the current uniforms be memorialized in the Agreement.

While the FOP does not bring forward its initial proposal to factfinding, it rejects the City's proposal to allow the Chief to modify the uniform of the day upon 14 day notice. Instead, it proposes continuation of existing contract language.

Findings & Recommendations:

Currently Dispatchers in Cuyahoga Falls wear neat, business casual uniforms purchased through a national catalogue. There is nothing paramilitary in their attire. At mediation, both Parties presented legitimate concerns regarding their respective initial positions. Among these were City contentions that the prerogative to change the nature of the dispatcher's duty uniform – and thus the climate of the workplace - should rest with the Chief, as a matter of management right. The FOP suggests that during or shortly after the period covered by the Agreement, the Dispatchers are likely to be transferred out of the police department proper and into a new facility, at which their uniform might once again be changed.

In order to satisfy both interests, it is recommended that current contract language be retained. Nothing in Article 13 (1)'s language prohibits the City's from modifying the duty uniform. Consequently, it is recommended that additional language be added at Article 13 § 2, as follows:

Should the City institute new duty uniforms, it shall provide bargaining unit members with an initial issue of such uniforms sufficient for the reasonable needs of fulltime personnel.

2. Article 17 – Tour of Duty

City Proposal:

Arguing that the cost of providing lunch relief for Dispatchers is excessive, the City proposes elimination of the current unpaid lunch period from the daily schedule. In support of its position the City presents comparable jurisdictions in a majority of which it maintains lunch periods are taken as part of each shift.

Further, the Employer rejects the FOP's proposal to provide bargaining unit members with the ability to bid annually on shifts and days off. The Union's proposal, it argues, restricts the administration's management right to assign the workforce by experience, and eliminates the City's interest in having more senior dispatchers assigned to each shift. Moreover, the Employer points out that bargaining unit members receive a shift differential in compensation for working inconvenient shifts. In support of this position, the Employer presents comparable peer communities indicating that only one provides both shift bidding on the basis of seniority and a shift differential.

Union Position:

The FOP opposes the City's proposal to delete the thirty minute duty-free lunch period.

It proposes that existing provisions regarding the Chief's discretion to change a Dispatcher's two consecutive rest days, based on exigent conditions be eliminated. The Union also proposes that on each January 1st of the Agreement, bargaining unit members be permitted to bid on their shift selection and days off for the upcoming year, based on seniority.

Findings & Recommendations:

The right of bargaining unit members to a duty-free lunch break is established in the Agreement. Presumably, this benefit was negotiated in predecessor Agreements in exchange for some tangible consideration. The City has failed to present sufficient evidence of burden or inability to continue the existing practice to persuade the Factfinder that it should be eliminated. Notwithstanding that peer communities have not negotiated such a benefit with their own dispatchers, the current contract language and practice should be maintained.

Neither is the FOP's argument for annual shift and day-off bidding on the basis of seniority sufficient to persuade the Factfinder that its proposal should be recommended. The City – and its residents – have a legitimate interest in having experienced, professional dispatchers on each shift. Under the Union's proposal it is conceivable that the most senior dispatchers would elect the most desirable shifts and days off. Accordingly, in consideration of the best interests of the public, current

contract language is recommended.

Retention of current contract language recommended.

3. **Article 19 – Overtime**
FOP Proposal:

In the interests of what it argues is equalization of overtime, the FOP proposes language providing that "[a]ll overtime shall be offered in descending order from the most senior Bargaining Unit member to the most Junior . . . Once the most junior bargaining unit member has been offered and turned down the overtime, at that time the overtime that is available may be offered to part-time dispatchers."

The FOP also proposes language in Article 19 that would permit utilization of compensatory time "that is available for them immediately upon earning same." Additionally, the Union's proposal provides bargaining unit members with the option "to sell back to the Employer up to two hundred (200) hours two (2) times per year"

City Position:

The Employer rejects the Union's proposal regarding the offering of overtime opportunities, arguing that it would not "equalize overtime" as the FOP maintains, but rather would limit the Employer's use of part-time dispatchers, particularly in view of its present need to cover unpaid lunch breaks.

The City likewise urges that the Union's proposals regarding the accrual and use of comp time not be recommended. The provision for the use of comp time "immediately on earning same" would permit Employees to work overtime on one day, and take the next day off as compensatory time. The City argues that the "sell-back" provision proposed by the FOP would allow a bargaining unit member to sell back 400 hours annually, and accrue another 200 hours. This arrangement, according to the City, would present a substantial economic burden.

Findings & Recommendations:

The FOP's proposals regarding seniority-based overtime opportunities would present the City with an administratively ponderous and economically untenable overtime coverage situation. Accordingly, it cannot be recommended.

Similarly, the Union's proposal to allow bargaining unit members to utilize compensatory time immediately upon having earned it would create a scheduling

problem contrary to the best interests of the public. It also is not recommended.

The FOP's third proposal to modify Article 19 – the resale of up to 400 hours of compensatory time per Dispatcher, per year – is also not recommended in favor of current contract language. The Union failed to demonstrate that individual bargaining unit members had not had opportunity to utilize available comp time sufficiently to warrant the inclusion of the Union proposal.

Retention of current contract language is recommended.

4. Article 20 – Shift Differential

FOP Proposal:

The Union proposes increases of thirty cents ($.30) per hour in the shift differential paid bargaining unit members working the afternoon shift; and an increase of fifty cents ($.50) per hour for those working the midnight shift. These increases would result in differentials of $.50 and $.75 per hour, respectively.

City Position:

The City rejects that FOP's proposal, arguing that it represents an additional 2.2% increase in wages for midnight shift Employees; and an increase of 1.5% for afternoon shift members.

Findings & Recommendations:

The FOP was unable to demonstrate that the City bargaining unit members are substantially under-compensated for undesirable shifts. Nonetheless, in opposing the Union's proposal for seniority bidding on shift assignments, the Employer argues that shift differential is in large measure compensation for not having a choice as to desirable shifts. The differentials presently provided are minimal; while it's not determinable that they require increases of the level proposed by the Union, a modest increase in both afternoon and midnight shift differentials is recommended.

Dispatchers whose job requirements are to work a scheduled afternoon or midnight shift shall receive a shift differential in addition to their regularly scheduled pay which shall amount ~~to twenty cents ($0.20)~~ ***thirty cents ($0.30)*** *per hour in the afternoon and ~~thirty cents ($0.30~~* ***forty cents ($0.40)*** *per hour for the midnight shift.*

5. Article 21 – Health Insurance

City Proposal:

The Employer has changed the comprehensive major medical/hospitalization plan offered to its non-bargaining unit employees, as well as members of other City unions. It asks the Factfinder to recommend its proposed changes for the present bargaining unit as well, in the interest of providing one plan City-wide. The plan presented by the Employer proposes that Employees pay 10% of the cost of network benefits, reducing the City's current 100% payment to 90%. In conjunction with this participation, the Employer's plan would provide *inter alia* for an in-network maximum annual out-of-pocket payment of $750 per single Employee and $1,500 per family – exclusive of deductibles and co-pays. In addition, the Employer seeks a spousal surcharge, intended to reimburse the City for the cost of "the potential adverse effect of a spouse's decisions to forego his or her own employer's plan and elect to be covered only by the City's benefit plan." The surcharge proposed by the Employer would be the greater of 12% of the COBRA rate for single coverage or the amount the spouse's employer best the spouse to opt out of their own plan.

In support of these positions, the City presents evidence in the form of SERB data, indicating that almost 72% of employers responding required employees to pay a portion of the cost of family medical coverage; overall 80% of the state's public sector employees contribute to the cost of their health care coverage. The City argues that virtually all of its other employees – organized and non-bargaining unit alike – are covered under the terms of the plan proposed for the Dispatchers here. Moreover, more and more employers are providing incentives for spouse's opting for coverage under their spouse's health care coverage. As a result, governmental entities particularly are bearing an inordinate burden for the cost of health care. As employees and their spouses enjoy the economic benefits of the City's acceptance of costs, the insurance burden is unfairly placed on City rather than the employer of the spouse.

Union Position:

The FOP argues that Dispatchers are not paid at the rates enjoyed by many other City employees, and accordingly the Employer's proposal for dramatic change in the health care plan would have a dramatic impact on their financial situations and that of their families. Accordingly, it urges the Factfinder to reject the City's

proposal.

Findings & Recommendations:

There is no doubt that burgeoning increases in health care premiums and associated costs are proving unmanageable by public and private sector employers. Increased employee participation in the costs of premiums and care is the norm, not only in peer communities, but in virtually every jurisdiction and political subdivision in Ohio. Moreover, the evidence is also clear that the plan proposed by the City here is shared by all other internal employees, both union and non-union alike.

Additionally, it is increasingly evident that private sector employers are offering incentives to their own employees to seek coverage under the spouse's health insurance plans. Very often, the result of these incentives is to increase the already problematic premium burden borne by public sector employers such as the City here.

Accordingly, the plan proposed by the City and provided its other employees is recommended. So to is the Employer's proposal for a spousal surcharge equal to 12% of the COBRA premium rate.

The City's Article 21 Health Insurance proposal is recommended as proposed and presented.

6. Article 22 – Other Insurance

FOP Proposal:

The Union proposes that the life insurance benefit provided bargaining unit members and retirees be equivalent to that provided members of the FOP patrol bargaining unit.

City Position:

The Employer rejects the Union's proposal, arguing that the present insurance coverage provided both Employees and retirees is adequate.

Findings & Recommendations:

The Dispatchers represented by the FOP are presently covered by a $20,000 per person policy; retirees receive $7,000 in coverage. Under the new Agreement, the City's police patrol officers receive benefits of $40,000 per person, while retirees are covered to the amount of $9,000. As the City has argued that the terms of its health insurance coverage provided this bargaining unit should be comparable to that

provided other employees, including the Police Patrol unit, it seems consistent that the "other insurance" should equally be internally comparable. The Union's proposal is recommended.

All members of this bargaining unit shall be provided life insurance benefits in the amount of forty thousand dollars ($40,000) per person. Life insurance shall further be provided retirees of the bargaining unit who retire from the Department on or after January 1, 1969, at nine thousand dollars ($9,000) per person.

7. **Article 26 – Holidays and Holiday Pay**
FOP Proposal:

The FOP seeks the addition of Columbus Day to the list of holidays enjoyed by the bargaining unit. The Union also proposes to change the current provisions requiring "proof of mitigating circumstances" for purposes of determining sick time utilization in conjunction with recognized holidays to language requiring only "presentation of mitigating circumstances".

City Position:

The City opposes both of the Union's proposals. The bargaining unit already receives more holidays and personal days than comparable communities. In addition, the Union has failed to make its case that its members need more time off.

The Union's proposal with regard to proof of mitigating circumstances would remove the Chief's discretion to approve holiday pay in situations in which an employee does not work the day before or the day after a scheduled holiday. However, the Employer counter-proposes modification of the phrase "extended sick leave" to read "sick leave of two consecutive work days or more".

Findings & Recommendations:

Evidence indicates that Cuyahoga Falls Dispatchers enjoy holiday and personal day benefits equal to or above those of comparable communities. Internally, bargaining unit members receive holiday time equal to other organized employees, with the exception of the City's Firefighters, whose 24-hour shifts and according need for "Kelly days" makes comparison difficult. Consequently, the Union's proposal for Columbus Day cannot be recommended.

Neither is the FOP's proposal to change the language of Article 26 supported by compelling evidence that the City has abused its discretion in requiring proof of

mitigating circumstances in the past. Moreover, "presentation of mitigating circumstances" is unclear both as to the nature and method of such presentation. Consequently, the Union's proposal cannot be recommended.

The City's counter-proposal – altering the broad inclusion of "approved extended sick leave" in those absences excepted from the contiguous working day requirement to a more specific "two consecutive workdays" – is recommended, as its greater precision would seem to reduce the chance of misapplication.

A member must work the last scheduled work day immediately preceding and following a holiday to receive a holiday unless the member's absence is due to authorized vacation, approved compensatory time off or approved personal day, or approved ~~extended~~ sick leave ***of two consecutive workdays or more.***

8. Article 27 – Vacation
FOP Proposal:

The Union proposes the addition of language in §A providing for an additional week of vacation for bargaining unit members working 25 years or more. Experienced Dispatchers, having served the community for years should be rewarded for their service the Union argues.

City Position:

Bargaining unit members already receive sufficient vacation entitlement, according to the Employer. Moreover, under the Agreement Dispatchers can bank two weeks of vacation time and carry over three weeks from year to year.

Findings & Recommendations:

While the FOP's assertion that experienced Dispatchers should be rewarded is well-taken, no evidence indicates that bargaining unit members fall greatly below the top level of benefits enjoyed by peers in other communities. Accordingly, current contract provisions are recommended.

Retention of current contract language.

9. Article 28 – Wages
FOP Proposal:

The Union proposes wage increases of 5% annually for each year of the Agreement, effective July 1, 2005; July 1, 2006; and July 1, 2007. Additionally, the FOP proposes additional compensation of $1.00 per hour for bargaining unit

members required to train new Dispatchers while conducting such training.

City Proposal:

The Employer proposes wage increases of 2.5% in each of the three years of the Agreement. It's wage rate is competitive with similar communities throughout northeastern Ohio and Summit County, it asserts. It rejects the Union's proposal for an additional $1.00 per hour stipend for Dispatchers training new employees.

Findings & Recommendations:

The Factfinder takes notice that the un-adjusted CPI-U for the period August 2005-August 2006 was 3.8% as of the date of issuance of this Report. (http://www.bls.gov/news.release/cpi.nr0.htm) In addition, the City's proposal for Employee participation in its Health Insurance plan, recommended above, would reduce to some degree the real level of compensation of bargaining unit members.

However, no evidence indicates that Cuyahoga Falls Dispatchers are under-compensated in comparison to their peers in similar communities. Moreover, the City's financial position, while not rising to the level of inability to pay, shares with a number of Ohio municipalities general revenue fund balances that have trended downward over recent years, and uncertain revenue projections in the future.

In consideration of these factors and others statutorily required, the Factfinder must determine that in order for bargaining unit members to maintain their present level of compensation, some adjustment relative to the cost of living should be awarded. However, it is likely that the CPI reflects cost of living increases resultant from energy costs increases of limited duration and unlikely to continue throughout the tenure of this Agreement. Moreover, the current level of bargaining unit compensation relative to comparable jurisdictions does not militate for adjustment upward. Accordingly, wage increases of 3.5%-3.5%-3.5% in each of the three years of the Agreement are recommended.

3.5%-3.5%-3.5%

SUMMARY

FINDINGS AND RECOMMENDATIONS

1. **Article 13 – Uniform Allowance**
   § 1 - Retention of current contract language.
   § 2 - Provision for initial issue of changed uniforms

2. **Article 17 – Tour of Duty**
   Retention of current contract language.

3. **Article 19 – Overtime**
   Retention of current contract language.

4. **Article 20 – Shift Differential**
   Increase to $0.30 per hour afternoon; $0.40 per hour midnight.

5. **Article 21 – Health Insurance**
   The City's Article 21 Health Insurance proposal is recommended as proposed and presented.

6. **Article 22 – Other Insurance**
   Parity with police patrol: $40,000 active; $9,000 retired

7. **Article 26 – Holidays and Holiday Pay**
   Union's proposal for Columbus Day not recommended; Union's proposal for change of "proof" requirement not recommended; City proposal to modify "extended sick leave" to read "two consecutive workdays or more" recommended.

8. **Article 27 – Vacation**
   Retention of current contract language.

9. **Article 28 – Wages**
   3.5%-3.5%-3.5%

10. **Article 36 – Term of Agreement***
11. **Any and all other tentative agreements heretofore entered into between the Parties**

***By tentative agreement of the Parties.**

Gregory James Van Pelt

Respectfully submitted this 5th day of October, 2006
At Shaker Heights, Cuyahoga County, Ohio