

STATE EMPLOYMENT
RELATIONS BOARD

FACT-FINDING REPORT

2006 MAY 11 A 11: 36

In the Matter of:)
)
THE CITY OF FOSTORIA)
)
)
OHIO POLICE OFFICERS)
BENEVOLENT ASSOCIATION)
-Dispatchers-)
)
SERB Case No. 2005-MED-03-0344)

Date of Hearing
April 20, 2006

Date of Report/Recommendation:
May 9, 2006

FOR THE EMPLOYER:

FOR THE UNION:

Patrick A. Hire
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FACT-FINDER

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STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)--

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the 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 standard of public service;
 - (4) The lawful authority of the public employer;
 - (5) Any stipulations of the parties; and,
 - (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.

BACKGROUND

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This matter came up for hearing on Thursday, April 20, 2006 before Donald R. Burkholder, appointed Fact-Finder pursuant to Ohio Rev. Code Section 4117.14 on January 11, 2005, after negotiations and SERB mediation did not result in a settlement. The hearing was conducted between the City of Fostoria and the Ohio Patrolmen's Benefit Association (OPBA). The bargaining unit consists of all full-time dispatchers employed by the City of Fostoria Police Department; there are three such individuals, although it should be noted that there are some part-time dispatchers who are not part of the bargaining unit.

The population of the City of Fostoria is approximately 13,900. It operates under a Mayor and Council form of government, is studying the possibility of establishing a city charter, is shared among three counties, and has lost some tax base due to a reduction in the number of industries and businesses during the last ten years.

Some of the rationale for the delay in fact-finding had to do with waiting for the settlement of the two police agreements, i.e., sergeants and lieutenants, and patrol officers. The unresolved issues in this case are as follows:

1. Article 12, Hours of Work and Overtime- Sections 12.10 and 12.11
2. Article 13, Sick Leave - Section 13.4
3. Article 15, Injury Leave
4. Article 17, Insurance - Sections 17.1-17.5
5. Article 18, Holidays
6. Article 21, Wages
7. Article 34, Duration

In making the following analysis and recommendations, the Fact-Finder has reviewed the arguments and evidence presented by the parties in their position statements and at the hearing. The parties requested mediation at the outset. That process resulted in temporary agreement on a portion of one of the major issues, Article 12.10, Hours of Work and Overtime. The record presented to the Fact-Finder

indicated tentative agreement was reached during June 20, 2005 negotiations on Sections 17.6 - 17.13, a portion of the article on insurance.

FINDINGS OF FACT

The City has experienced financially difficult times for approximately five years. This has included multiple years with deficit budgets, numerous layoffs, reduction of expenses through unfilled vacancies, and multiple years wage freezes. Since 2000, the income tax has consistently declined, with the 2005 revenue amount more than \$400,000 less than that collected in 2000. The General Revenue Fund, the sole source from which bargaining unit members are paid, was also certified with negative carryovers in 2002, 2003, and 2004. Several bargaining units agreed to keep their wage base for 2004 the same rate as 2003 in order to reduce or eliminate position abolishments or layoffs.

The Employer's December 31, 2004 Statement of Revenues, Expenditures, and Changes in Fund Balance indicated a negative final budget amount of \$173,076, but spending was less, with an 'actual' \$74,684, some \$98,000 under the original figure but nevertheless a negative balance. The December 2005 General Fund ending balance showed a relatively small but promising figure of \$970,100 on income of \$8,248,532; this is generally within the broadly accepted GAAP recommended goal of maintaining a balance in the range of ten percent (10%). This is a positive sign but not an excessive amount considering Fostoria's overall financial status.

The Fostoria Police Department dispatchers organization consists of 3.8 full time equivalent, will the three full-time dispatchers as members of the bargaining unit. The City of Fostoria Safety Services Audit notes that Fostoria dispatchers have a significantly higher public safety related workload per dispatcher than their peer cities, Greenville and Washington Court House, attributed in part to a 0.4 staffing vacancy, as well as the fact that fire runs constitute half of their workload. These

employees clearly should be recognized for carrying a remarkable workload when compared with their colleagues in the comparable municipalities.

Wages and medical insurance are obviously intertwined, and this must be taken into account in considering the parties' positions. The OPBA is seeking an increase of 3.5 percent for each year, the City offers 0% for the first year and 30 cents for the next two years, plus some supplementals. The City would change the major medical insurance to a plan administered by a Health Maintenance Organization (HMO), while maintaining the same level of benefits. The HMO plan has been accepted by the other two OPBA units, the AFSCME unit, as well as non-represented employees. The City as well as the individual employee will be spending less for the same services provided previously, the employer asserts. Further, the Employer asserts that approximately 98% of employees' current physicians already have HMO approval, benefit levels will remain the same as with the current plan, monthly premiums will decrease, and no employee will lose any benefits or coverage. Additionally, the employer notes that there is an established process for adding physicians to the plan. As has transpired nationally, medical insurance premiums have been an area of continual and significant increases over several years, prompting the Employer to look for ways to reduce expenses. HMO plans are in place for approximately 14% of the plans offered by public employers in Ohio and approximately 21% nationwide for all employers.

Prudent management has somewhat improved the Employer's financial picture, while it is and undoubtedly for the near future will continue to be constrained by overall economics, part of a national trend related to globalization and factors beyond local control, such as the cost of consumer goods and services. Thus there has been forced restraint not only in government spending, but for the average citizen, with at least a 5.5% increase in the Consumer Price Index (CPI)

between October 2004 and October 2005 in Midwest localities of less than 50,000 population. Energy expenses, particularly gasoline, oil, and natural gas accounted for the bulk of the increase in Midwest localities as well as for the nation at large.

RECOMMENDATIONS

The evidence on its face presents a mixed message, and the bases of comparison differ. Nevertheless, two factors are clear. First, the Fostoria dispatchers are clearly a very productive, hard-pressed group whose average workload per dispatcher significantly exceeds the norm for the peer cities, answering calls for both police and fire assistance. They deserve some financial relief as well as continued high quality health care. Second, although strong and creative management decisions and diligent negotiations have led to some improvement in Fostoria's financial position, the situation remains serious and must be addressed prudently, with an overriding concern and respect for the interests of the parties in the long term, with special reference to the factors listed in Section 4117 of the Ohio Administrative Code (OAC). Special emphasis is required regarding "The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustment on the normal standard of public service". Therefore, the Fact-Finder recommends 3.25% for each of the two remaining years of the Agreement, 2006 and 2007, a level clearly within the range discussed at the Fact-Finding Hearing and consistent with raises received by other units in the City. The City proposal to change the major medical insurance to a plan administered by a Paramount health maintenance organization, while maintaining the same level of benefits, is also recommended for similar reasons. Paramount is the same company administering the current plan, and there are assurances that the services provided will not be diminished. Two factors concerning the wage and insurance recommendations are that all other Fostoria

employees 1) experienced a year without a wage increase, and the 3.25% recommended for each of two years is comparable to the wage increases and the expansion of wage steps accepted by the two other OPBA units and by AFSCME, and 2) the Paramount HMO system is in place for the bulk if not all of the other city employees.

Average employee monthly health insurance contributions in the 141 of 191 surveyed Ohio cities of less than 25,000 population was \$17.75 (single) and 48.79 (family). Noting that some of the cities of less than 25,000 probably have fewer collective bargaining agreements than larger cities, the proposed monthly premium under the Paramount HMO Plan is \$33.90 (single) and \$83.83 (family). These premium ranges are close to SERB's 2004 figures for Region 6-Southeast Ohio, including Toledo, with a monthly average of \$32.00 (single) and \$82.00 (family). This is clear and convincing evidence that the Employer's proposal is equitable. In addition, the Paramount system is a known factor to Fostoria's employees, which one would assume would add to the comfort/confidence level.

The Employer's plan will maintain the same benefit levels for employees, while reducing cost for both the city and the employee. The employees will continue to receive, and get more money in their take home pay, i.e., approximately a 0.46% increase. Over half of the city's employees are already on the HMO plan, including AFSCME and the two OPBA police units, and there have been complaints concerning coverage.

A clearer, more equitable arrangement for hours of work and overtime was negotiated by the parties at the hearing with the assistance of the Fact-Finder, serving as a mediator. It should mitigate hard feelings, misunderstandings, and generally contribute to improved morale. The recommended language is as follows:

Article 12, Hours of Work/Overtime

Section 10 - Full time dispatchers shall be called in for overtime before a patrol officer is called in for overtime to replace a dispatcher. This section does not prohibit the City from using a part-time dispatcher to cover the vacancy or from assigning a regularly scheduled patrol officer from covering the vacancy.

Overtime Equalization

- A. Overtime shall be based on equalization of overtime among the dispatchers and shall be implemented as follows.
- B. All overtime assignments shall be counted on the list.
- C. When an overtime opportunity becomes available, the officer-in-charge shall call full-time dispatchers beginning with the full time dispatcher who has the least number of hours on the list. If hours are equal, seniority shall govern with the most senior full-time dispatcher being offered the overtime first.
- D. Overtime offered and refused shall be charged as if worked.
- E. Employees on sick leave, injury leave, or leave of absence in excess of thirty (30) days, upon return to work, shall be charged the overage of overtime hours worked during the leave period.
- F. New employees added to the list shall be charged the maximum number of hours. Probationary employees need not be placed on the list, but may be added, at the sole discretion of the Chief. Probationary employees not added to the list shall not be eligible for overtime.
- G. All time will be reduced to zero (0) on the implementation of this Agreement and on January 1st of each year thereafter.
- H. Mistakes in offering overtime will be corrected by offering the dispatcher who was missed an equal amount of overtime.

Section 11 - Compensatory Time
[Current Language]

The recommended language on the remaining issues of sick leave, injury leave, insurance, holidays, and wages is intended to provide equity for the employee as well as to help stabilize the City's finances.

Article 13, Sick Leave

Section 13.1. [Current Language]

Section 13.2 [Current Language]

Section 13.3 [Current Language]

Section 13.4 Miscellaneous. Any employee who has accumulated one hundred

twenty (120) sick days shall be paid on the first pay period of December of each year a cash payment for any accumulated sick days over one hundred twenty (120) days, but such payment shall not exceed fifteen days.

At the time of retirement or death of any employee covered by this Agreement, the employee shall received pay for any accumulated sick leave up to one hundred thirty five (135) days.

An employee who dies shall be entitled to the benefit within as if he had retired on the date of death. The benefit shall be paid first to the spouse and if there is no spouse then to the estate.

An employee who is laid off or on unpaid disability leave will, upon reinstatement to service, be credited for any unused or unpaid sick leave existing at the time of his/her lay-off or leave.

The following shall apply to those employees hired after June 1, 1999:

Employees shall receive upon retirement under a plan with the State of Ohio fifty percent (50%) of any accumulated but unused sick leave, to a maximum of nine hundred sixty (960) hours, or four hundred eighty (480) hours pay.

Any employee hired after May 31, 2005, shall not be eligible for either of the above described sick leave conversion upon retirement but may be eligible for a sick leave conversion in accordance with the following provisions:

An employee with at least ten (10) years of service in the employment of the City of Fostoria in the bargaining unit classification that includes full-time Dispatchers who retires from a state sponsored retirement program may request to convert 25% of their accumulated but unused sick leave to pay up to a maximum of 240 hours.

Section 13.5 [Current Language]

Article 14, Injury Leave

Section 15.1. Service Connected Injury. Injury leave is leave of absence with pay for an employee to recover from an injury/disease received in the course of or arising out of employment with the City of Fostoria. Injury leave is not deducted from sick leave credits and it may be granted provided there is no evidence of negligence on the part of the injured employee, that injury is reported in writing within 24 hours of the incident or as soon as able if physically incapacitated and the employee participates in a transitional work assignment as determined by the Employer.

In the event of a service connected injury as determined by the Industrial Commission, Bureau of Workers Compensation, and/or PERS, a leave of absence with normal pay will be granted for a period of up to ninety-six (96) work days per accident or disability. An additional period of up to ninety-six work days may be granted at the discretion of the Mayor and should any employee exhaust the benefits provided herein, he/she may use any accumulated sick leave to his/her credit. Any dis-

approval of injury/disease leave benefits may be referred to the Employee Relations Committee provision of this Agreement.

Section 15.2 Sick Leave Reinstatement. Should any employee use any of his/her accumulated sick leave from the time of the injury/disease to the date of allowance by the Industrial Commission, such sick leave attributed to the allowed service connected injury/disease will be reinstated to the employee's credit and the same charged to injury/disease leave subject to the maximum provided in Section 1 above.

Section 15.3. False Claim. The Management reserves the right to withhold benefit payments and take disciplinary action up to and including discharge against any employee who is guilty of submitting a false claim for benefits covered in the Article or for working for another employer while on injury/disease leave.

Article 17, Insurance

Section 17.1 Coverage. The City shall provide employees with the following life, hospitalization, medical, surgical and dental insurance (dental plan effective as soon as possible after the effective date of this agreement) during the term of this agreement.

A. [Current Language]

B. Hospital, surgical and major medical insurance for the employee and his/her family in accordance with a Health Maintenance Organization.

C. [Current Language]

D. The same optical at the same cost (if any), plan provided to non-bargaining unit employees shall be provided to bargaining unit employees.

E. [Current Language]

Section 17.2 [Current Language]

Section 17.3 [Current Language]

Section 17.4 The City retains its rights to change insurance carriers or to have its insurance provided by a third party administrator.

Section 17.5 The City shall pay 85% of the premium for the cost of the hospital, surgical, and major medical insurance and the employee shall pay 15% of such cost. The employee share of the premium shall be automatically withheld from the employee's paycheck.

Sections 17.6 - 17.13. [Tentative agreement signed June 20, 2005].

Article 18, Holidays

Section 18.1. Designated Holidays. In addition to his/her vacation, the following paid holidays shall be granted to all employees. To obtain payment for these holidays, an employee must work the day before or the day after a paid holiday.

New Year's Day	Two (2) Personal Leave Days
Martin Luther King Day	Veteran's Day
Good Friday	Thanksgiving Day
Easter Sunday	Friday following Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	Employee's Birthday
Labor Day	

One (1) additional holiday shall be granted each year and be recognized on the day before Christmas or the day before New Year's. The holiday shall be granted recognizing the employee's preference while protecting the welfare of the citizens of Fostoria in the best interest of our community. Any employee regularly scheduled to work on any of the holidays set forth above may make either of the following two elections with at least two (2) weeks notice to the Employer with respect to each holiday:

1. The employee may choose to work on the holiday for his/her regular base rate of pay for all hours worked up to eight (8) hours and then elect to take eight (8) hours of paid leave at a later date. The employee must give the Employer at least twenty-four (24) hours notice prior to utilizing the paid leave referenced above; or
2. The employee may choose to take the eight (8) hours of paid leave on the date designated as the holiday set forth above.

Section 18.2. Holidays Worked. Should any employee be required to work on a holiday, he/she shall be paid time and one-half in addition to his/her regular eight (8) hours pay or compensatory time off for eight (8) hours in lieu therefore at a time mutually agreed upon. If an employee works more than eight (8) hours on a holiday, he/she shall earn time and one-half for the hours worked. Effective June 1, 1999 employees who are required to work on Martin Luther King Day shall receive time and one-half (1 1/2) in addition to eight (8) hours holiday pay. Effective March 1, 2000 employees who are required to work on Martin Luther King Day or Veteran's Day shall receive time and one-half (1 1/2) in addition to eight (8) hours holiday pay. Effective March 1, 2001 employees who are required to work on Martin Luther King Day, Veteran's Day or the Friday following Thanksgiving Day shall receive one and one-half (1 1/2) in addition to eight (8) hours holiday pay.

[Section 18.3 in the previous agreement is omitted.]

Section 18.43. Holidays During Vacation - When one of the above holidays falls within an eligible employee's approved vacation period and he/she is absent from work during this regularly scheduled work week because of such vacation

he/she shall be paid for the holiday in lieu of vacation pay for that day. (To be paid with the employee's earnings for his/her first work week following his/her vacation.) When one of the above holidays falls within an employee's approved vacation period, he/she shall not be charged for vacation for the day on which the holiday falls.

Section 18.5. [Current Language].

Article 21, Wages

Section 21.1 Wages. New hires and/or employees of the City who are employed as dispatchers after the effective date of this Agreement shall be paid the following hourly rates during the term of this Agreement.

1. A wage freeze is in effect for the first year of the Agreement.
2. Three and one-quarter percent (3.25%) effective the first full pay period following June 1, 2006.
3. Three and one-quarter percent (3.25%) effective the first full pay period following June 1, 2007.

Miscellaneous Provisions

1. The length of time required to be served in each step shall be as follows:

Step 1	Step 2	Step 3	Step 4	Step 5
6 months	12 months	12 months	12 months	12 months
	(After 6 mos.)	(After 24 mos.)	(After 36 mos.)	(After 48 mos.)
2. The effective date of pay progression shall be the start of the workweek closest to the employee's seniority date.
3. Step Increases - Dispatchers shall receive step increases after serving the designated years in the entitled step until the maximum is reached.

Article 34, Duration of Agreement

This Agreement shall be, subject to council ratification, effective as of the date of signing and shall remain in effect through May 31, 2008, and shall continue thereafter for successive periods of twelve(12) months, unless either party to this Agreement on or before sixty (60) days prior to the expiration of any such period, notifies the other party, in writing, of its intention to terminate this Agreement. Within ten (10) days after the receipt of such notice, a conference shall be arranged between the parties hereto and such conference shall be held at a time mutually agreeable to the parties.

The Fact-Finder notes with appreciation the thoroughness and professionalism of the advocates and the high level of respect among and between the various individuals who participated. Both parties were well represented, and the good will and readiness to assist in clarifying sometimes complex matters went far to assist in rendering what is hopefully an equitable set of recommendations under the law, and in light of the numerous factors to be evaluated. This concludes the Fact-Finder's analysis and recommendations.

Respectfully,



Donald R. Burkholder, Ph.D., Fact Finder

This certifies that this Fact-Finding Report was faxed to the parties on May 9, 2006, mailed USPS Express to the parties, and mailed USPS first class to the State Employment Relations Board on May 9, 2006.