

HAND DELIVERED

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of Fact-Finding	:	SERB Case No. : 06-MED-02-0135
	:	
Between The	:	
	:	
CITY OF ELYRIA, OHIO,	:	
	:	
Employer	:	Date of Fact-Finding Year:
	:	August 10, 2007
And The	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	
Union	:	Howard D. Silver Fact Finder

2007 SEP 12 A 8:50
 STATE EMPLOYMENT
 RELATIONS BOARD

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: City of Elyria, Ohio, Employer

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For: Fraternal Order of Police, Ohio Labor Council, Inc.,
Union

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BACKGROUND

This matter originally came on for a fact-finding hearing on April 26, 2007 during which the parties reached a tentative agreement as to all language to be included within the parties' successor collective bargaining agreement, to be in effect from 12:01 a.m. on July 7, 2006 through midnight, July 6, 2009. The tentative agreement reached by the parties' bargaining representatives was rejected by a majority of the nine full-time dispatchers who comprise the bargaining unit to which the parties' successor collective bargaining agreement is to attach.

A second day of fact-finding was scheduled for August 10, 2007, at which most of the language intended for inclusion within the parties' successor Agreement was agreed by the parties. The Articles that remained at impasse at the conclusion of the fact-finding hearing on August 10, 2007 are: Article 10, Work Schedule and Hours; Article 12, Overtime; Article 14, Wages; Article 17, Holidays; Article 21, Bereavement Leave; Article 33, Clothing Allowance; Article 32, Duration; and Appendix A-1, Parity Clause.

Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions as to the Articles that remained unresolved at the fact-finding hearing on August 10, 2007. The fact-finding hearing concluded at 11:10 a.m. on August 10, 2007.

This matter proceeds under the authority of Ohio Revised Code Chapter 4117., and in accordance with rules adopted under that Chapter by the Ohio State Employment Relations Board found in Ohio Administrative Code Chapter 4117.

ARTICLES AT IMPASSE

Article 10 - Work Schedule and Hours

It is the Employer's position that the language proposed by the Union for inclusion within Article 10 relates to minimum staffing, an issue to be unilaterally determined by the Employer and therefore the language proposed by the Union addresses a subject that is a permissive subject of negotiation, not a mandatory subject of bargaining. The Employer made explicit at the fact-finding hearing on August 10, 2007 that it chooses not to bargain on this subject.

The Union's proposed language involves ten-hour to twelve-hour work shifts that are to occur in the context of a forty-hour work week. Although the Employer expressly refuses to negotiate this subject as it is a permissive subject of bargaining and the Employer has the right to refuse to bargain about it, it was nonetheless agreed at the fact-finding hearing that both parties would enter into a letter of understanding intended to lead to an exploration of the establishment of ten-hour to twelve-hour work shifts within the context of a forty-hour work week. The letter of

understanding does not obligate either party to agree to a change but the language proposed by the Union for inclusion within Article 10 expresses that change would only occur if agreement by both parties were to be reached.

The fact finder endorses the letter of understanding between the parties and the subsequent discussion between the parties as to the feasibility and advisability of ten-hour to twelve-hour shifts within the context of a forty-hour work week. Both parties appeared genuinely interested in exploring the subject, and the letter of understanding appears to the fact finder to be a more appropriate memorialization of the parties' intentions in this regard than inclusion of formal language within the parties' successor collective bargaining agreement. The fact finder notes that the letter of understanding agreed by the parties effects nothing more nor less than that which was proposed by the Union in language suggested to be included in the parties' successor Agreement.

As the fact finder finds the letter of understanding to be an appropriate precursor to a discussion by the parties of changes to Article 10, the fact finder recommends that the letter of understanding be executed and implemented, and that the language contained within the parties' predecessor Agreement in Article 10 be brought forward to the parties' successor Agreement, unchanged.

The Union also proposes a guarantee be included in the parties' successor Agreement that a minimum of two dispatchers be employed at all times. This language does not appear in any of the

parties' predecessor Agreements and would impose a new minimum staffing level upon the Employer.

The Employer has no interest in understaffing the communications center of the city of Elyria's Police Department, and there has been presented no evidence of such understaffing. The fact finder finds an insufficient basis upon which to recommend the new two dispatcher requirement proposed by the Union for inclusion in the parties' successor Agreement. Accordingly, the fact finder recommends that the language of Article 10 within the parties' predecessor Agreement be included in the parties' successor collective bargaining agreement, unchanged.

Recommended Language - Article 10

The fact finder recommends that the language within Article 10 in the parties' predecessor collective bargaining agreement be included in the parties' successor collective bargaining agreement, unchanged.

Article 12 - Overtime

The Union proposes a change to the language of Article 12 that would increase compensatory time accumulation from forty-eight hours to eighty hours; would add a date during the calendar year, the first payday in October, for the cash-out of accumulated compensatory time, and would increase the amount of compensatory time which may be cashed out from twenty hours to forty hours.

The Employer has agreed to the addition of the October cash-out date and has also agreed to increase the cash-out of accumulated compensatory time from twenty hours to forty hours. The Employer does not agree to increasing the amount of compensatory time that may be "banked" and the Employer does not agree, as proposed by the Union, that the changes in Article 12 be made retroactive to July 7, 2006.

The fact finder understands that without the increase proposed by the Union for accumulation of compensatory time, bargaining unit members who accumulate more than the forty-eight hours allowed under the parties' predecessor Agreement are paid for the accumulation of overtime "banked" in excess of forty-eight hours. The Union's proposal comprises a refinement of a benefit already possessed, but in the absence of such changed language, no damage is done to the bargaining unit members' positions.

The fact finder defers to the Employer's opposition to the proposed changes to Article 12, if for no other reason than it would require some increase in complexity in administering the overtime operations of the Employer and would confer a benefit not proportionate to the extra energy and work required by this change. The fact finder recommends that October be added to the cash-out schedule under Article 12 and that the cash-out at any one time be increased from twenty hours to forty hours. The fact finder otherwise does not recommend a change to the language of Article 12 contained within the parties' predecessor collective bargaining agreement, and does not recommend retroactivity to July 7, 2006.

Recommended Language - Article 12

Article 12, sections 12.1-12.5 - Retain prior language

Article 12, section 12.6

In January, April, July, and October, each dispatcher shall have the option of reducing by forty (40) hours their accumulated compensatory time. Payment for these forty (40) hours shall be by separate check and shall be at a rate determined by dividing the employee's annual salary (including longevity) by 2080.

Article 12, sections 12.7-12.13 - Retain prior language

Article 17-Holidays

The parties agreed to add Martin Luther King Day as a holiday to Article 17, section 17.1 within the parties' successor Agreement. All other employees of the city of Elyria, Ohio, organized and exempt, receive Martin Luther King Day as a holiday. The parties further agree that the addition of this holiday would not be retroactive.

The Union has proposed doubling the amount paid (from \$1.00 to \$2.00) for each additional hour worked on holidays enumerated within Article 17, section 17.2. The Employer opposes this increase.

While the fact finder understands the financial benefit to bargaining unit members under the increase proposed by the Union for hours worked on an enumerated holiday, the fact finder also understands that an equal financial burden would be added to the

Employer. The fact finder does not find sufficient grounds in the record of this proceeding to recommend the increase proposed by the Union under Article 17, section 17.2.

Recommended Language - Article 17

Article 17, section 17.1

There are hereby established the following paid holidays for full-time employees:

- 1.) The first day of January, known as New Year's Day;
- 2.) The third Monday in January, known as Martin Luther King Day;
- 3.) The third Monday in February, known as President's Day;
- 4.) Memorial Day;
- 5.) The Fourth of July, known as Independence Day;
- 6.) The first Monday in September, known as Labor Day;
- 7.) The second Monday in October, known as Columbus Day;
- 8.) The eleventh day of November, known as Veterans Day;
- 9.) The fourth Thursday in November, known as Thanksgiving Day;
- 10.) The day after Thanksgiving;
- 11.) The twenty-fifth day of December, known as Christmas Day;
- 12.) One Day for personal business, provided that a twenty-four (24) hour notice is given by the employee to the Employer and that the absence does not cause an undue hardship on the Employer's operations;
- 13.) The Employee's birthday, to be taken on such day or as a floating holiday by mutual agreement between the employee and his/her department head;
- 14.) One-half day off for Christmas Eve;
- 15.) One-half day off for New Year's Eve;
- 16.) One-half day off on Good Friday, and
- 17.) Any other day appointed or recommended by the Mayor.

Article 17, sections 17.2 - 17.4 - Retain prior language

Article 18 - Hospitalization

The parties reached agreement as to Article 18, Hospitalization, for inclusion in the parties' successor Agreement,

adopting the language found in the Patrol Supervisors Unit employed by the city of Elyria, Ohio.

Recommended Language - Article 18

The fact finder recommends that the parties include in their successor Agreement the language on hospitalization adopted by the Patrol Supervisors bargaining unit employed by the city of Elyria, Ohio.

Article 19 - Sick Leave

The Union made a proposal concerning changes in Article 19, section 19.10 which would grant to bargaining unit members compensatory time if, for four consecutive months, sick leave was not used. The Employer and the Union reached agreement as to a staggered benefit, awarding increasing amounts of compensatory time for each consecutive four-month block wherein sick leave was not used. The parties agreed that after the first four-month period during which sick leave was not used, the employee would receive four hours of compensatory time. If a second consecutive block of four months found no sick leave usage, an additional eight hours of compensatory time would be granted. If a third consecutive four-month block (twelve consecutive months) occurred with no sick leave usage, sixteen hours of compensatory time would be approved for the employee. In the event the employee continued to provide consecutive four-month blocks of unused sick leave, at the end of

each consecutive four-month block sixteen hours of compensatory time would be approved for the employee. This benefit would continue until sick leave was used. The fact finder recommends the language agreed by the parties for inclusion within Article 19, section 19.10.

Recommended Language - Article 19

Article 19, sections 19.1-19.9 - Retain prior language

Article 19, section 19.10

An employee who does not use any of his/her sick leave in any period consisting of four (4) consecutive months shall be granted four (4) hours of compensatory time; after two consecutive four-month periods in which an employee does not use sick leave, eight hours of compensatory time shall be granted; if three consecutive four-month periods occur without the use of sick leave, sixteen hours of compensatory time shall be granted; and for every consecutive four-month period thereafter during which sick leave usage does not occur, sixteen hours of compensatory time shall be granted.

Article 21 - Bereavement Leave

The parties agreed to add "aunt, uncle" to the language of Article 21, section 21.1. The fact finder recommends this change as agreed by the parties and recommends that the remainder of the Article be brought forward to the successor collective bargaining agreement, unchanged.

Recommended Language - Article 21

Article 21, section 21.1

Employees shall be granted a leave of absence with pay in the event of the death of his/her spouse, the employee's or employee's spouse's parents, step-parents, children, step-children, brother, step-brother, sister, step-sister, aunt, uncle, grandparents, step-grandparents, grandchild, step-grandchild, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and person in loco parentis.

Article 21, sections 21.2-21.3 - Retain prior language

Article 32 - Duration

The parties agreed that their successor collective bargaining agreement would begin, retroactively, at 12:01 a.m. on July 7, 2006, and would expire on July 6, 2009 at midnight.

Recommended Language - Article 32

Article 32, section 32.1

This Agreement shall be effective as of July 7, 2006 at 12:01 a.m. and shall remain in full force and effect until midnight July 6, 2009 unless otherwise terminated as provided herein.

Article 32, sections 32.2-32.3 - Retain prior language

Appendix A-1, Parity Clause

The Union has proposed a parity clause, language not found in the parties' predecessor collective bargaining agreement, for

inclusion as an appendix to the parties' successor collective bargaining agreement. The language proposed by the Union would obligate the Employer, if any bargaining unit within the city of Elyria were to receive a higher benefit package in wages and health care than that received by the FOP/OLC bargaining unit, to immediately implement that same benefit package for the FOP/OLC bargaining unit. This language is commonly known as a "me too" clause and the fact finder understands this language to apply only to a benefit package that is greater than that which was agreed by the FOP/OLC bargaining unit.

The Employer opposes the inclusion of the parity clause proposed by the Union, pointing out that each bargaining unit is separate and should be treated as such.

The fact finder does not recommend the parity clause proposed by the Union. Bargaining by unit allows each bargaining unit to determine its own priorities. One unit may feel strongly about one aspect of the labor-management relationship, while a different unit may feel strongly about a different aspect of that relationship. As the priorities of separate bargaining units are different, their benefits packages differ. To demand parity with another unit seems to the fact finder to promote multi-unit standardization and a dilution of the bargaining power of a specific bargaining unit. The fact finder does not recommend the parity clause proposed by the Union, finding it in neither party's interest.

Article 33 - Clothing Allowance

The Union proposes a clothing allowance for each of the nine bargaining unit members, a benefit not found in prior Agreements between the parties. The Union points out that providing uniforms to dispatchers would allow dispatchers to appear more professional in duties that require interaction with the public. The Union proposes that the Employer provide articles of uniform clothing to the bargaining unit members for on duty work and proposes that the Employer pay each of the bargaining unit members an annual clothing allowance of \$625.00.

The Employer had previously tentatively agreed to pay a \$400.00 annual clothing allowance to each bargaining unit member but when this tentative agreement was rejected, the Employer, at the August 10, 2007 fact-finding hearing, withdrew its consent to a clothing allowance in any amount.

The fact finder understands that a uniform worn by all dispatchers while on duty presents a particular image to members of the public on those occasions when a dispatcher has reason to interact with a member of the public. The fact finder is also cognizant, however, that it is possible to present a professional image in the absence of uniform clothing. A professional appearance may be presented in many guises and does not demand that only one image be presented.

The fact finder suspects that the impetus within the bargaining unit for the clothing allowance, a payment not formerly received of \$625.00 per year, is based in part upon an

identification with those uniformed officers employed within the Elyria Police Department who do receive a uniform allowance. In arguments concerning the clothing allowance and in arguments concerning wage increases, a sentiment is discernable on the part of the bargaining unit to the effect that bargaining unit members fill positions that are analogous to police officer positions and other uniformed personnel positions within the Elyria Police Department, all of whom enjoy clothing allowances.

There are obviously functions and goals that are shared by dispatchers and uniformed officers employed within the Elyria Police Department. Both groups are intent on carrying out the operations of the Elyria Police Department through procedures approved by the Department and both are required to operate efficiently and proficiently in serving the citizens of the city of Elyria, Ohio by providing municipal police services.

There is also no question that the communication services provided by the dispatchers within the Elyria Police Department are essential to the operations of the Department and are necessary to good police work.

The need for a clothing allowance, however, does not compare favorably between uniformed personnel who must operate in the field and dispatchers who operate in a secure environment. Police officers who respond to calls for assistance are faced with a broad range of hazardous circumstances that may cause injury to the officer and/or his uniform. These hazards are not encountered in the communication center of the Elyria Police Department by the

dispatchers, and thus the need for a clothing allowance is substantially different among these two bargaining units.

The dispatchers' bargaining unit has managed to present itself in a professional manner to this point in time without a clothing allowance and the fact finder finds insufficient grounds to recommend the increased cost for the clothing allowance proposed by the Union for inclusion in the parties' successor Agreement. The savings occasioned by this recommendation by the fact finder will not be forgotten in the fact finder's analysis of the wage increases proposed by the parties in this fact-finding proceeding.

Article 14 - Wages

As stated above, the fact finder understands the bargaining of wages between the parties herein to be unconnected to negotiations in which the city participated with other bargaining units. Unless otherwise agreed by the parties, each bargaining unit is entitled to bargain the terms and conditions of its employment without influence from bargaining that occurred between the city and a different bargaining unit.

The job duties of a dispatcher are essential to the successful performance of police services in the city of Elyria, Ohio but they are not analogous to the duties of police officers responding to scenes of conflict. The dispatcher positions are distinctly different from the AFSCME positions represented through a separate bargaining unit. In determining a recommendation as to annual wage

increases for the bargaining unit the fact finder finds no connection to the wage increases bargained and agreed by other city bargaining units.

It is generally the case that the consumer price index (CPI), the cost of living, has increased over the past year by about 2.7%. It is also the case that annual wage increases generally among comparable municipal law enforcement positions have been at the three percent level.

The Union's proposal of 3.0%, 3.0%, and 3.0% is therefore well within, if not spot on, the average annual wage increases for the region and the state of Ohio for comparable positions. The Employer's proposal of 2.0%, 2.5%, and 3.0% is, over a three-year period, 1.5% less than that which is proposed by the Union.

The fact finder recommends an annual wage increase over the three years of the successor Agreement of 2.5%, 3.0%, and 3.0%. The \$400.00 yearly clothing allowance that is not recommended for inclusion in the parties' successor Agreement amounts to about 1.1% of the annual wage of a dispatcher earning \$36,000 annually. This 1.1% amount would, under the \$400.00 per year clothing allowance, over three years, amount to 3.3% of that annual wage. The fact finder recommends that in the absence of the \$400.00 clothing allowance, a 3.3% savings by the Employer over three years, one percent of this 3.3% savings, thirty-one percent of the savings over these years, be applied to annual wage increases, with one-half percent added to the Employer's proposed annual wage increase that is retroactive to July 7, 2006, and one-half percent added to

the Employer's proposed annual wage increase to occur in July, 2007, producing annual wage increases of 2.5%, 3.0%, and 3.0%. Such wage increases are within the ability of the public employer to fund, are well within the average increases for similar positions within the region and the state, and are fair to both parties.

Recommended Language - Article 14

Article 14, section 14.1

Beginning the first pay period of July, 2006, all employees within the bargaining unit shall receive a base pay in accordance with the following schedule:

Dispatcher C	30,989.55
Dispatcher B	31,766.04
Dispatcher A	32,700.16

Article 14, section 14.2

Beginning the first pay period of July, 2007, all employees within the bargaining unit shall receive a base pay in accordance with the following schedule:

Dispatcher C	31,919.24
Dispatcher B	32,719.02
Dispatcher A	33,681.17

Article 14, section 14.3

Beginning the first pay period of July 2008, all employees within the bargaining unit shall receive a base pay in accordance with the following schedule:

Dispatcher C	32,876.82
Dispatcher B	33,700.59
Dispatcher A	34,691.61

Article 14, sections 14.4-14.8 - Retain prior language

In addition to the recommended language proposed by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117., and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.


Howard D. Silver
Fact Finder

September 12, 2007
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder was filed, via hand-delivery, with the State Employment Relations Board, and mailed, overnight delivery, postage prepaid, to the following, this 12th day of September, 2007:

Howard D. Heffelfinger
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and

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