

STATE EMPLOYMENT  
RELATIONS BOARD FACTFINDER REPORT

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STATE EMPLOYMENT RELATIONS BOARD

March 28, 2007

In the Matter of:

City of Mayfield Heights )

and )

Ohio Patrolmen's Benevolent Association )

Case Nos. 06-MED-05-0647

APPEARANCES

For the City:

William F. Schmitz, Attorney  
Steven A. Onderein, Executive Lieutenant  
Robert Tribby, Finance Director

For the Union:

S. Randall Weltman, Attorney  
Robert Lord, Director  
Donald Oberdoester, Director

Factfinder:

Nels E. Nelson

## BACKGROUND

The instant dispute involves the City of Mayfield Heights and the Ohio Patrolmen's Benevolent Association. The city has a population of 19,350 and is fortunate to have a substantial tax base. The police patrolmen, sergeants, and lieutenants were represented by the Fraternal Order of Police, Lodge 57, until May 4, 2006, when the OPBA became the exclusive bargaining agent for the patrolmen. The sergeants and lieutenants are still represented by the FOP, Lodge 57.

Because of the change in representation, negotiations for a successor agreement to the one which expired on December 31, 2005, did not begin until June 2, 2006. When no agreement was reached, the Factfinder was appointed on November 3, 2006. The parties, however, opted to continue negotiations in an attempt to reach a negotiated settlement.

On December 5, 2006, the union negotiators agreed to submit a complete agreement to the membership for a vote. When it was voted down, the parties contacted the Factfinder and a factfinding hearing was held on March 2, 2007.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

## ISSUES

The parties submitted six issues to the Factfinder. For each issue, the Factfinder will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. He will then offer his analysis for each issue, followed by his recommendations.

1) Article 21 - Wages, Section 21.01 - The current contract establishes a salary for a Class A patrolman of \$60,367 effective January 1, 2005. In addition, Article 24 - Corporal Status, Section 24.02, allows a patrolman with 10 years of service to apply to become a corporal, provided he was not disciplined in the time period set forth in Article 8 - Corrective Action, Section 8.10. The position involves no supervisory authority but offers an annual stipend of \$1000. The record indicates that seven patrolmen are corporals and that the seven includes all of those with ten or more years of service. The union proposes increasing the salary for Class A patrolmen 4% in 2006, 3.75% in 2007, and 3.50% in 2008. The city offers 3% salary increases for 2006, 2007, and 2008.

Union Position - The union argues that comparisons to other jurisdictions support its position. It indicates that total compensation for ten-year patrolmen is less than in the four contiguous jurisdictions and below the average for ten SOM Center Road corridor departments. The union adds that its rank among area departments will fall

under the city's offer given that the average salary increase is 3.25% for the contiguous departments, 3.5% for the SOM Center Road corridor departments, 3.58% for the eastside suburbs, and 3.50% for Cuyahoga County.

The union acknowledges that if corporal pay is included, the city's salary compares more favorably. It notes that with corporal's pay, the city's salary exceeds the salary in three of four contiguous jurisdictions and compares more favorably to the SOM Center Road corridor and Cuyahoga County departments. The union stresses, however, that only seven of 21 or 22 patrolmen receive corporal's pay.

The union charges that the city's offer will result in "things getting worse." It indicates that if the city's position is adopted, by 2008 total compensation, including the corporal bonus, will fall to last among the contiguous jurisdictions and will be \$68,724 compared to an average of \$69,997.

The union complains that the city's offer is inferior to the agreements with the other bargaining units. It claims that the reduction in the firefighters' hours from 2704 to 2620.8 hours amounts to a 4.88% wage increase. The union indicates that the sergeants and lieutenants, who are represented by the FOP, received 3% salary increases plus a 1% increase in the rank differential. It reports that service department employees, who are represented by the Union of State, County and Municipal Workers of Ohio, received a 3% wage increase but also saw the low end of the wage range for each job increased by 10% in 2006 and 3% in 2007 and 2008.

The union argues that the city has the ability to pay its demands. It points out that a city audit dated December 31, 2005, shows that total assets increased from \$57,319,690 to \$63,439,739 while liabilities fell from \$16,610,546 to \$16,317,751. The union notes

that total revenue rose by \$5,693,985, or 30.14%, while total expenditures fell \$1,091,379, or 5.67%. It stresses that the general fund had a year end balance of \$8,615,645 which equals 59% of expenditures.

The union contends that income and property tax revenue is very strong. It reports that despite having only a 1% income tax, the city collected \$10,101,049 in 2004. The union observes that the tax duplicate, which was 548,507,574 in 2005, was certified for \$555,335,756 for 2006.

City Position - The city argues that its offer ought to be recommended. It points out that AFSCME, FOP, IAFF, and USCMW accepted 3% wage and salary increases for 2006, 2007, and 2008. The city indicates that it has a 20-year history of pattern bargaining where all of its contracts have included the same wage and benefit provisions. It suggests that if a union wishes to deviate from the pattern, it must present compelling reasons for doing so.

The city contends that the basic salary and total compensation of patrolmen is “very comparable” to the rest of the Hillcrest community. It reports that total compensation for a ten-year patrolman in Mayfield Heights is \$63,127 compared to an average of \$62,996 for the six Hillcrest community departments (Beachwood, Highland Heights, Lyndhurst, Mayfield Heights, Mayfield Village, and South Euclid), and that Mayfield Heights ranks third among the six jurisdictions. The city further states that if Beachwood, the wealthiest of the suburbs, is excluded, Mayfield Heights has the highest basic wage and is second highest in total compensation, only \$140 lower than Highland Heights.

The city contends that its salary compares favorably to salaries in Cuyahoga County. It indicates that Mayfield Heights ranks near the top in both basic salary and total compensation. The city observes that its salary is approximately \$4000 above the average for the county.

The city acknowledges that lower salary increases may cause the patrolmen's salaries to fall from the "very highest" to "well above average." It notes, however, that it recently acquired a \$3,000,000 debt as a result of a lawsuit, needs to be making capital improvements, and saw its health insurance costs rise by \$160,000. The city claims that "the time has come for Mayfield Heights to do some belt tightening."

The city maintains that the contract provides numerous ways for union members to increase their income. It points out that employees can receive a stipend of up to 40 hours for not using sick leave; can convert up to two weeks of vacation to cash; and can exchange 12 holidays and personal days for cash. The city notes that these options add up to 27 days of pay or \$6456, resulting in compensation of nearly \$70,000.

The city rejects the union's charge that it agreed to provide additional benefits to the FOP. It acknowledges that the FOP negotiated a change in the 12% rank differential so that newly promoted officers get 10% for two years, 12% for two years, and 13% thereafter. The city indicates that a 1% increase in the rank differential adds \$620 to a sergeant's salary and \$710 to a lieutenant's salary. It suggests that the OVI Enforcement Bonus was included in the tentative agreement to reflect the increase in the rank differential.

The city challenges the union's claim that the IAFF received more than it is offering the patrolmen. It recognizes that the firefighters' workweek was reduced from

51.7 to 50.4 hours. The city asserts that the reduction “simply moved them closer to the much shorter workweek enjoyed by the OPBA members.” It insists that this does not justify granting the OPBA more than the 3% salary increases it has offered.

The city argues that patrolmen enjoy a much higher hourly wage than the firefighters. It observes that with the 3% salary increases in 2006 and 2007, patrolmen will earn \$30.79 per hour while firefighters will earn only \$24.43 per hour. The city stresses that this means that if a patrolman and a firefighter are called into work during an emergency, the patrolman earns \$46.18 per hour compared to \$36.65 per hour for the firefighter.

Analysis - The Factfinder recommends that salaries be increased by 3.5% on January 1 of 2006, 2007, and 2008. This recommendation is strongly supported by the salary increases in other jurisdictions. Both the city and the union relied on comparisons to a number of nearby jurisdictions. The salary increases in these jurisdictions are as follows:

<u>Jurisdiction</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Total</u>
Beachwood	3.5	3.5	3.5	10.5
Lyndhurst	3.5	3.5	3.5	10.5
Highland Heights	3.5	3.5	3.5	10.5
Mayfield Village	3.5	3.5	4.0	11.0
South Euclid*	4.4	3.0/3.5	3.0/3.5	10.4/11.4
<b>Average</b>	<b>3.7</b>	<b>3.4/3.5</b>	<b>3.5/3.6</b>	<b>10.6/10.8</b>
City Position	3.0	3.0	3.0	9.0
Union Position	4.0	3.75	3.5	11.25

\* The increase for 2006 is from the contract. The union claims that the increases for 2007 and 2008 will be 3.5% but the city indicates they will be 3%.

The Factfinder's recommendation of a 10.5% salary increase over three years matches the average salary increases in what the parties agree are comparable departments.

The Factfinder's recommendation is also supported by broader comparisons. The union reported that in 2006 salaries increased 3.50% in the SOM Center Road corridor, 3.58% in 18 east side department, and 3.5% for all of Cuyahoga departments. No data was provided for increases in 2007 and 2008 but there is no reason to believe that they are not similar to those granted by the nearby jurisdictions.

The Factfinder believes that the settlements reached in other jurisdictions are especially useful for a Factfinder in making a recommendation for a salary settlement. In any area, whether a small group of cities, such as the contiguous jurisdictions, or a larger group, such as an entire county, there is a hierarchy of salaries, some high and some low. The differences are a function of economic, political, and other forces as well as past bargaining. When a Factfinder grants a salary increase similar to what other jurisdictions have granted, he preserves the hierarchy of salaries that the parties themselves have established.

The Factfinder is not suggesting that the salary structure should never change, i.e., that salary increases smaller or larger than the average increases should never be granted. For example, the addition of major commercial or industrial properties that result in increased tax revenue or the loss of a major revenue source might call for a change in the salary hierarchy. However, the party that wishes to change the existing array of salaries bears the burden of justifying the change.

*In the instant case, the city did not present any reason for changing the existing hierarchy of salaries. Mayfield Heights is and has been in a strong financial position. It*

has also been a city where citizens have demanded and received a high level of services. There is no reason the city's patrolmen should not remain at the top or near the top of the salary hierarchy.

The Factfinder does not believe that his recommendation breaks a pattern established by the city in bargaining with its other unions but is, in fact, supported by those agreements. USCMW accepted the city's offer of 3% wage increases but it also got a 10% increase in the minimum wage for each wage scale in 2006 and 3% increases in 2007 and 2008. While no data was provided by either side about the value of the changes in the wage ranges, it suggests that USCMW got more than 3% wage increases. The FOP did not agree to 3% salary increases but to a 13% rank differential for sergeants and lieutenants.

The settlement with the IAFF also supports the Factfinder's recommendation for the OPBA. The city agreed to reduce the work year for firefighters from 2704 hours to 2620.8 hours. This 3.1% reduction in hours produces the same percentage increase in the hourly wage for firefighters. There is no reasons that the patrolmen should be denied similar treatment.

The Factfinder cannot accept the city's suggestion that the reduction in the firefighters' hours simply reduces the difference between their hours and the patrolmen's hours and is of no relevance when considering the patrolmen's salary demands. Time off is highly valued by firefighters and has a cost, either through increased overtime or hiring additional firefighters. The recommendation of a larger salary increase for the patrolmen reflects the value of the reduction in hours to the firefighters and its cost to the city.

The Factfinder concludes that the city's continued strong financial position, the salary settlements in other jurisdictions, and the city's agreements with its other unions support the recommended 3.5 % salary increases in 2006, 2007, 2008.

Recommendation - The Factfinder recommends the following:

Section 21.01 - The wage scale shall be increased 3.5% effective January 1 of 2006, 2007, and 2008.

2) Article 27 - Holidays, Section 27.02 - The current contract grants 56 hours of holiday time and 40 hours of personal time or a total of 96 hours of paid time-off. The union proposes increasing personal time by 36 hours. The city opposes any increase in personal time.

Union Position - The union argues that an increase in personal time is appropriate. It contends that it is needed along with the OVI Enforcement Bonus to compensate patrolmen for the reduction in the work week granted to the firefighters. The union maintains that the additional personal time will not cost the city any money because the department's rules prevent the use of personal time when it results in the payment of overtime.

City Position - The city argues that the union's demand ought to be denied. It claims that it has always tried to distribute holiday and personal time evenly. The city notes that FOP and OPBA members, who work eight hours, including one-hour paid lunch, get 12 holidays of eight hours; employees in the AFSCME and USCMW, who work eight hours with a one-half hour unpaid lunch, get 13 holidays of eight hours; and employees in the IAFF, who work 50.4 hours per week get seven holidays of 24 hours. It stresses that none of the other unions received additional paid time off.

The city maintains that its paid time off is average for the community. It points out that in six comparable communities, paid time off ranges from 80 hours in Beachwood and Highland Heights to 104 hours in Lyndhurst, South Euclid, and Mayfield Village.

The city complains that if patrolmen are granted additional time off, they will simply convert it to cash. It reports that in 2004 police department employees cashed in \$17,554 in holiday and personal time; in 2005, when the 12-hour schedule began, the amount increased to \$44,217; and in 2006, the cost rose to \$52,877. The city asserts that it is obvious that no additional time off is needed.

The city rejects the union's argument that the additional holiday time is equivalent to the hours reduction obtained by the IAFF. It points out that firefighters work 10.4 hours more per week or 541.6 hours more per year than the patrolmen. The city observes that the reduction in the firefighters' hours brought them closer to South Euclid and Lyndhurst where the firefighters' workweek is 49.8 hours and Cleveland Heights where it is 50 hours.

Analysis - The Factfinder rejects the union's demand to increase personal leave hours. The holiday time in nearby jurisdiction is as follows:

<u>Jurisdiction</u>	<u>Holiday Time</u>
Beachwood	104 hours
Highland Heights	80 hours
Lyndhurst	104 hours
Mayfield Village	104 hours
South Euclid	104 hours
<b>Average</b>	<b>99.2 hours</b>
City Position	96 hours
Union Position	132 hours

Clearly, comparisons to nearby jurisdictions do not support an increase in paid time off for patrolmen.

In addition, the motivation for the union's demand for a substantial increase in holiday time has been removed. The union saw an increase in paid time off as a way to compensate for a wage offer which it saw as inferior to salary settlements in nearby departments and with the other unions in the city. Since the Factfinder has recommended 3.5% salary increases rather than the 3% increases offered by the city, there is no justification for increasing holiday time or, as will be discussed below, creating a OVI Enforcement Bonus.

Recommendation - The Factfinder recommends no change in holiday time.

3) Article 29 - Clothing Allowance, Section 29.01 - The current contract provides for an annual clothing allowance of \$900. The union proposes increasing the allowance to \$950 in 2006, \$1000 in 2007 and \$1050 in 2008. The city seeks to retain the current clothing allowance.

Union Position - The union argues that an increase in the clothing allowance is justified. It indicates that its clothing allowance is among the lowest in the area. The union claims that because the cost of uniforms and their maintenance has risen and will continue to rise, it has proposed a series of small, incremental boosts to the current allowance.

City Position - The city contends that no increase in the clothing allowance is appropriate. It points out that the FOP and IAFF agreed to no increases in their

allowances and claims that this pattern must be followed. The city notes that the AFSCME and USCMW contracts do not include clothing allowances.

The city acknowledges that many other communities pay higher clothing allowances. It claims that those higher amounts do not reflect the cost of uniforms but are often paid as an “equalizer” by jurisdictions with lower salaries. The city offers Euclid, with a base salary \$49,338 and a clothing allowance of \$1750, as an example.

Analysis - The Factfinder recommends that the union’s demand for an increase in the clothing allowance be granted. While the city is correct that the clothing allowance can be viewed as an “equalizer,” the basic purpose is to reimburse employees who are required to wear uniforms as part of their job. Although the parties did not focus of the clothing allowance or the increases in those allowances, the material submitted by the parties reveals the following:

<u>Jurisdiction</u>	<u>Allowance</u>	<u>Increase in Allowance</u>		
		<u>2006</u>	<u>2007</u>	<u>2008</u>
Beachwood	\$1000	\$0	\$0	\$0
Highland Heights	1028	75	?	?
Lyndhurst	459	100	100	100
Mayfield Village	750	25	25	25
South Euclid	1125	100	100	100
<b>Average</b>	<b>872</b>	<b>60</b>	<b>56</b>	<b>56</b>
City Position	900	0	0	0
Union Position	950/1050	50	50	50

This evidence indicates that while the amount of the clothing allowances differs, i.e., clothing allowances play varying roles as “equalizers” for salary differences, nearby jurisdictions have granted increases in uniform allowances. The Factfinder sees no reason why the city’s patrolmen should not receive a similar increase in their clothing allowance.

Recommendation - The Factfinder recommends the following:

Section 29.01 - Each member of the bargaining unit shall be entitled to a clothing allowance of \$950 for 2006, \$1000 for 2007, and \$1050 for 2008. The clothing allowance shall be paid one-half (1/2) in June and one-half (1/2) in December of each year.

4) New Article - Total Agreement - The current contract does not have a zipper clause. The city seeks to add a strong zipper clause. The union offers a weaker clause.

City Position - The city argues that its total agreement clause ought to be adopted. It claims that during negotiations all conceivable issues were placed on the table and discussed to exhaustion. The city maintains that the execution of the contract should mean the end to negotiations. It observes that the proposed clause will foreclose negotiations for less than two years since the contract will expire on December 31, 2008.

The city contends that bargaining with its other unions supports its demand. It reports that its proposed language was accepted by AFSCME, FOP, and USCMW. The city indicates that only the IAFF has a different zipper clause.

Union Position - The union argues that its proposed zipper clause ought to be adopted. It points out that during negotiations the city proposed a very broad zipper clause, which allowed it to cancel all past practices. The union notes that a compromise was negotiated that it is now offering but the city is rejecting.

The union contends that the city failed to meet its burden of justifying its proposed clause. It claims that the harshness of the city's language makes its burden high. The union adds that no pattern exists with respect to this issue since not all of the unions have the same clause.

Analysis - The Factfinder must recommend the union's proposed total agreement clause. The zipper clause sought by the city goes further than appropriate. The clause offered by the union protects the city's legitimate interests. This is not surprising since it was negotiated by the parties and included in the agreement that was rejected by the membership.

Recommendation - The Factfinder recommends the following:

New Section - The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and the Union for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter not specifically referred to or covered in this Agreement even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated this Agreement.

5) New Article - Secondary Employment - The current contract has no provision dealing with part-time work. The city and the union developed a policy covering the issue. The union wishes to put the policy in the contract but the city opposes including it in the agreement.

Analysis - The Factfinder must reject the union's demand. In many departments, policies relating to extra jobs are not included in collective bargaining agreements. In the instant case, the policy was cooperatively developed and the union seems to have confidence in the city's ability to properly administer the procedure. If the union finds a problem with the policy or its administration, it can address the issue when the contract expires on December 31, 2008.

Recommendation - The Factfinder recommends that the policy regarding secondary employment not be included in the collective bargaining agreement.

6) New Article - OVI Enforcement Bonus - The union proposes creating an OVI Enforcement Bonus for all patrolmen who are certified in the operation of the BAC Data Master. The proposal calls for a cash payment of \$620 for 2006 and 60 hours of leave in 2007 and 2008, which cannot be converted to cash and must be used at the discretion of the chief. The city opposes the union's demand.

Union Position - The union argues that its demand should be granted. It states that the bonus would be paid to every patrolman who becomes and remains certified to operate the BAC Data Master. The union claims that it is seeking the bonus as a way to enhance the city's pay package, which is inferior to the IAFF and USCMW contracts

City Position - The city argues that the union's demand should be rejected. It disputes the union's claim that its offer is substandard. It states that patrolmen's salaries are in the top 10% and that their vacation and holidays are "equal to anyone." The city indicates that the OVI Enforcement Bonus was offered as a "sweetener" to avoid factfinding and must be withdrawn out of respect for the other unions and the pattern. It adds that no other bargaining unit received a similar bonus.

Analysis - The Factfinder must reject the union's demand for an OVI Enforcement Bonus. It was included in the agreement rejected by the union along with 3% salary increases. However, with the recommended 3.5% salary increases, there is no need to create yet another element of total compensation or to grant additional paid time off, which is sure to generate more overtime or to require hiring more patrolmen.

Recommendation - The Factfinder recommends that the union's demand be

denied.

A handwritten signature in black ink that reads "Nels E. Nelson". The signature is written in a cursive style with a horizontal line underneath it.

Nels E. Nelson  
Factfinder

March 28, 2007  
Russell Township  
Geauga County, Ohio