STATE EMPLOYMENT RELATIONS BOARD

2007 MAY -7 PM 12:18
STATE EMPLOYMENT RELATIONS BOARD

IN RE:

City of Upper Sandusky Employer	Case Nos. 06-MED-09-1019 -and- 06-MED-09-1020
and	
IUPA, Local 52, Police Officers and Lieutenants	FACT FINDER DONALD R. BURKHOLDER, PH.D.

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

For the Employee Organization:

William A. Dunn, Staff Representative
Allen Foust
Andrew Silcox

For the Employer:

Pete Lowe, Clemans and Nelson & Associates
Mark Ellis, Law Director

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

The bargaining unit includes approximately 12 employees, all full-time employees employed in the classification of Police Officer and Lieutenant. The Chief of Police, Captain, and all other classifications within the Police Department or other City Departments are excluded. The bargaining unit employees are responsible for citizen protection and law enforcement activities within the City of Upper Sandusky, a city with approximately 6,533 residents. Bargaining unit employees enforce traffic laws, enforce other laws, and investigate crimes. The parties have had six collective bargaining sessions.

A Fact-Finding Hearing was held on March 15, 2007 at which the following unresolved issues were presented:

ISSUES:

1.	Article 2.2	Probationary Employee
2.	Article 9. 2, 4, 6	Disciplinary Action
3.	Article 10	Personnel Files
4.	Article 11.	Hours of Work and Overtime
5.	Article 12	Wages
6.	Article 16	Medical Benefits
7.	Article 19	Holidays
8.	Article 20	Vacations
9.	Article 27	Medical Examinations
10.	Article 34	Shift Differential
11.	New Article	Permanent Shifts

Tentative Agreement was reached on the issue of duration. The parties agreed that the Collective Bargaining Agreement shall be effective upon acceptance of the Fact-Finder's Report by both parties, and shall remain in full force and effect until December 31, 2009.

Testimony was given, the issues were thoroughly discussed and briefs including comparables were presented at the Hearing. Clarification of a number of points, especially where issues overlapped, was useful in assisting the Fact-Finder.

All tentative agreements previously signed by the parties are part of the recommended settlement. Any articles not presented at the Fact-Finding hearing and not otherwise agreed to before the hearing shall remain current language.

Analysis:

The Employer presented persuasive evidence that the present financial picture and that of the near term future is problematic. A weakened economic base is apparent to the visitor who visits the town's outlying areas and sees a number of businesses, most likely supplying the automobile industry, which have gone out of business. The Employer advocate noted that one major operation which shut down resulted in the loss of 563 jobs; since 2004, the City has experienced the loss of several major employers and approximately 903 jobs. Altogether the City has lost over $329,500 in withholding tax revenue since 2003. Pension costs through the Public Employees Retirement System are increasing sharply, and are scheduled to reach a rate of 14 percent by 2011. Individual income tax collections have resulted in a decline of more than $65,000 or 3 percent. The uncertainty of the level of state funding to local government is also a significant factor.

Recommendations:

1. Article 2.2, Probationary Employees. Union Position.

Rationale: There is no persuasive or compelling reason for curtailing the due process rights of employees once they have passed probation.

2. Article 9.2, 9.4, and 9.6, Disciplinary Action. Primarily but not solely Employer position.

Section 9.1. Current Contract Language

Section 9.2. The following procedure shall be followed before an employee is demoted, suspended, or discharged for just cause.

1) A pre-disciplinary conference shall be conducted.

2) A written notice shall be given to the bargaining unit employee not less than 48 hours prior to the conference, containing the date, time and location of the **conference** and the suspected charges. If the employee requests to have an IUPA staff representative present at the pre-disciplinary **conference, upon written request from the union** the **conference** may be delayed an additional 48 hours to allow the staff representative to arrange to be present.

3) During the conference, the bargaining unit employee will be given an opportunity to offer an explanation of the alleged violation. During this conference, the bargaining unit employee shall have the right to be accompanied and represented by a union representative.

4) An employee who has received notice of a pre-disciplinary conference shall be provided copies of documents to be used at the pre-disciplinary **conference.**

The City may relieve the bargaining unit employee from duties with or without loss of pay pending the pre-disciplinary conference.

Section 9.3. Current Contract Language.

Section 9.4 The employee may appeal any suspension, demotion, or discharge for disciplinary purposes in accordance with the grievance procedures contained in this Agreement. **Verbal and written reprimands are restricted from appeals in accordance with Section 8.6 herein.** The parties agree that the grievance procedure shall be the exclusive appeal procedure available to bargaining unit employees.

Section 9.5 Current Contract Language

Section 9.6 Notwithstanding the other sections of this Article, a bargaining unit employee charged with or under indictment for a felony or first degree misdemeanor may elect to be

placed on leave without pay pending the outcome of the criminal prosecution. Electing such leave will stay the City's internal investigation of the facts and circumstances surrounding the criminal charges and stay any disciplinary action that might result from such an investigation. If the bargaining unit employee does not elect to be placed on a leave without pay, the internal investigation may proceed with any discipline subject to all rights and procedures of this Agreement.

If the employee has elected to be placed on leave without pay, upon conclusion of the criminal charges, the City may then proceed with any disciplinary action deemed appropriate for any employment related misconduct associated with the original charge(s).

Rationale: There was no indication of a compelling reason to negate an employee's statutory rights, or to reduce the time permitted to allow a Union representative to be present for a disciplinary conference.

3. Article 10, Personnel Files.

Section 10.1. The City shall maintain one personnel file for each **bargaining unit** employee. Any employee shall be permitted to review his/her personnel file upon written request. In addition, employees may obtain copies of any document contained in his/her personnel file.

Section 10.2. For the purpose of promotion or disciplinary action, past disciplinary actions shall cease to have force and effect in accordance with the following schedule:

A. Counseling Slips or Written Verbal Reprimands - One (1) year from the date of the reprimand.

B. Written Reprimands - Eighteen (18) months from the date of the reprimand, **unless the bargaining unit employee receives an additional reprimand during the 18 month period, in which case the original reprimand shall remain in force and effect for twenty-four (24) months. If the bargaining unit employee receives a suspension during the period the written reprimand is in effect, the reprimand shall remain in effect until the suspension shall cease to have force and effect in future disciplinary proceedings as per C below.**

C. Suspensions - Three (3) years from the date of the suspension, **provided the employee receives no additional discipline during the three (3) year period. The above shall not be applicable to any disciplinary action taken in response to drug or alcohol abuse or to any last chance agreement agreed upon in lieu of more severe disciplinary action.**

Rationale: There is no compelling reason to maintain two personnel files per employee; the potential for the misunderstanding and confusion generated by a two-file system, even assuming the best of intentions, does not warrant a departure from the protections afforded by the single-file.

4. Article 11, Hours of Work, Overtime. Employer position.

Section 11.1. The workday for police employees shall **normally** consist of **eight (8)** hour shifts. Police employees shall **normally** work **eighty (80) hours** every fourteen (14) days. Hours worked in excess of **eighty (80)** hours during that fourteen (14) day period shall be paid at the rate of one and one-half (1 1/2) times the employee's regular rate of pay

Section 11.2. The employer retains the right to compel employees to work additional shifts if deemed necessary by the Chief or his designee. Any proposed change increasing the above designated tours of duty must be forwarded to the L.U.P.A. and bargaining unit representative at least twenty (20) days before such change is to go into effect, and is subject to immediate bargaining

If applicable, the educational bonus shall be included, on a pro-rata basis, with other forms of compensation required by the Fair Labor Standards Act to be included in the calculation of the "regular" rate of pay.

When the Employer determines overtime is necessary, it shall be offered **in accordance with with Section 11.7 herein.**

Section 11.3. Current contract language

Section 11.4. Current contract language.

Section 11.5. Current contract language.

Section 11.6. Current contract language.

Section 11.7 The parties recognize that the City currently employs part-time or auxiliary personnel to perform bargaining unit work and that the City has retained its inherent management rights to use such personnel in the future. It is not t he intention of the City to use such personnel to displace full-time employees or to avoid hiring full-time employees for full-time work or overtime. Therefore, the City agrees that it will not use part-time or auxiliary personnel to displace emplo yees from full-time work or to avoid hiring full-time employees to perform full-time work. Further, the City agrees that it shall not alter the regular work schedule of any full-time employee without the employee's permission to accommodate the desires of any part time or auxiliary employee.

In recognition of the need to schedule part-time and auxiliary personnel while also offering extra work assignments to full-time employees, the City and the Union agree to distribute such additional work assignments as follows:

1. **Replacement of Absent Full-Time Employ ees: Whenever the Employer determines additional personnel is required to replace a full-time employee absent due to vacation, short term sick leave, or other approved leave of absences, such work assignments shall first be offered to available full-time personnel utilizing a rotating list based on seniority, before offering such work to any part-time or auxiliary employees.**

   In the event of a long-term absence of more than ten (10) workdays, the Employer may also utilize part-time or auxiliary personnel to cover such absence.

2. **Special Duty: Whenever the City is requested to provide security personnel for special community or civic functions such as, but not limited to, the festival of lights, car show, summer**

sizzle, and safety pup, such work assignments shall first be offered to part-time or auxiliary employees in a non-overtime status before offering such work to full-time employees. If sufficient personnel can not be obtained using this method, the assignment shall be posted for bid by the full-time employees with the assignment being given to the most senior employee bidding. If sufficient staffing is not obtained in this manner, the assignment may be filled as the Chief of Police determines.

3. Schooling/Training: Whenever additional personnel are needed due to a full-time employee's absence to attend work-related training or schools, the Employer may utilize part-time or auxiliary personnel to cover the full-time employee's absence.

4. Emergency Situations: Whenever the City is involved in an emergency situation and the Employer determines additional personnel is necessary, the following shall apply. If the normal number of full-time employees are already working, the Employer may authorize the use of part-time or auxiliary employees to supplement the full-time staff. If the number of full-time employees working is below the normal number assigned to the shift, available full-time employees shall be called before any part-time or auxiliary employees are offered the assignment.

In the event the City fails to offer an extra work assignment in the manner prescribed above, any eligible bargaining unit employee who is missed, shall be placed at te top of the call-in list and have first opportunity for all future overtime call-ins until the employee has been made whole for the hours previously missed.

Rationale: Convincing data was presented to indicate that safety, health, and performance are best maximized with an eight hour day. The Employer would benefit from an improved ability to schedule efficiently for both regularly assigned work as well as vacations, while reducing costs.

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5. Article 12, Wages. Employer position.

Section 12.1. Increases of 1.7 percent, 2.0 percent, and 2.0 percent are recommended for each of the three years of the Agreement, 2007, 2008 and 2009, with wages based on 2,080 hours.

Section 12.2. Current contract language.

Section 12.3. Eliminated by stipulation of the parties.

Section 12.4. Current contract language.

Rationale: The comparables indicated that the bargaining unit's pay is competitive. The loss of jobs, sharply reduced tax base, and the increasing employer contribution to the Ohio Public Employees Retirement System mandate a reasonable but limited wage increase.

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6. Article 16, Medical Benefits

NOTE: The parties reached mutual agreement on Section 16.4 and Section 16.6 during the Hearing., and that Tentative Agreement is part of my recommendation.

Section 16.1 The City shall provide medical and hospitalization, insurance coverage to each full-time bargaining unit employee as provided in this article.

Effective **July 1, 2007** and thereafter, the **Employer shall offer at least two (2)** medical and hospitalization insurance plans.

Plan A shall provide similar coverage as contained in the City's health insurance plan in effect on January 1, 2007, unless modified by agreement of the parties or as provided in Section 16.5 below.

Plan A Base Costs: **The employee's base costs for Plan A shall be equal to 10% of the total cost (2007 premium rates for Plan A), effective beginning in April 2007. collected in March 2007:**

A. single person **$52.90** per month;

B. two (2) party, with no additional dependents, **$84.66** per month;

C. two (2) party, with additional dependents, **$126.98** per month.

Plan A Increased Costs: Any increases in costs for medical and hospitalization insurance coverage for Plan A above the rates in effect for **2007** shall be paid 75% by the Employer and 25% by the employee up to a maximum **employee** contribution equal to 15% of the total **premium** cost for health insurance up **to a maximum of 20% in 2008, and 20% of the total premium cost for health insurance coverage in 2009.**

Plan B shall provide coverage as determined by the Employer. Bargaining unit employees shall pay the same share of the cost of Plan B as the City requires non-bargaining unit employees to pay.

Employees may elect annually by no later than November 30 to participate in Plan A or Plan B, or may decline insurance coverage at any time.

Bargaining unit employees shall pay no more than non-bargaining unit employees pay for Plan A.

Section 16.2. Current Contract Language.

Section 16.3. Current Contract Language.

Section 16.4. Tentative Agreement was reached at the Hearing.

Section 16.5. The City shall have the right to change insurance carriers and/or programs provided the same or comparable benefit levels are maintained **for Plan A.** The parties agree to work cooperatively in an attempt to control the rising costs of health insurance coverage. In furtherance of this objective, the union and the Employer may mutually agree to change benefit levels.

Any changes in coverage mandated by state or federal law shall automatically amend the coverage provided by the City. The union shall be provided written verification of the state or federal mandate

Procedural changes under Insurance Plan A which do not adversely affect the economic benefits provided to the employees may be made upon notification
to the union.

The City shall have sole discretion to determine, amend, or modify Insurance Plan B.

Section 16.6. Tentative Agreement was reached at the Hearing.

Rationale: Cost trendss in the health insurance industry resulting in sharply increasing premiums, increasing claims costs, and the weakened financial reality faced by the City as noted in my comments above on Wages justify a new approach to medical benefits.

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7. Article 18, Holidays

Section 19.1. Current Contract Language

Section 19.2. Each holiday shall be equal to **eight (8) hours pay** for the employee involved.

Except in case of bona fide absence due to illness ore other absence authorized by the Chief in his sole discretion, to qualify for Holiday pay, an employee must work the entire shift the last scheduled day before and the first scheduled day after the Holiday.

Each employee will work the regularly scheduled shift through the year regardless of whether or not the regularly scheduled shift falls on one of the above holidays. If a shift falls on a holiday, the employee will be paid the premium overtime rate for the hours worked on a holiday **plus receive the eight (8) hours holiday pay specified in paragraph 1 above.** If the employee works on a holiday and works in excess of the regularly scheduled shift on that day, such that the employee would be entitled to premium overtime pay, then the employee shall be paid a double time rate for all such overtime hours worked **in excess of the first eight (8) hours.**

If the employee is called in to work on a **holiday** on which he/she **was not scheduled to work,** he/she will be paid the premium overtime rate as providedin this agreement for the time actually worked (with a minimum of three (3) hours), in addition to the Holiday pay **specified in paragraph 1 above. Employees not scheduled to work on the holiday shall receive the eight (8) hours holiday pay as specified in paragraph 1 above.**

Rationale: The institution of an eight hour day system obviously requires an adjustment in the system for holidays. It will also reduce the City's cost for Holiday pay.

8. Article 20, Vacations.

Section 20.1 All bargaining unit members shall accumulate and be granted vacation in accordance with the following schedule:

Completed years of service	Amount of vacation
Less than one (1) year	None
1-7 years	**80 hours**
8-14 years	**120 hours**
15-22 years	**160 hours**
22 + years	**200 hours**

Section 20.2. All employees shall qualify for vacation time after completion of one (1) year of service with the City and every **anniversary** year thereafter as set out above.

Section 20.3. Current Contract Language.

Section 20.4 Vacation time shall normally be taken within the **anniversary year following the anniversary year during which such hours were accrued. Any vacation hours remaining at the end of the employee's anniversary year shall be paid in a separate check to the employee at the previous year's rate of pay, up to a maximum of 80 hours. All hours in excess of 80 shall be forfeited.**

Section 20.5 Current Contract Language.

Section 20.6 Current Contract Language.

Section 20.7 Current Contract Language.

Section 20.8. Current Contract Language.

Rationale: Institution of an eight hour day obviously requires adjustment of the system for figuring vacations. The comparables also support this change.

Article 27, Medical Examinations

NOTE; Tentative Agreement on this Article was reached at the Hearing.

Section 27.1 The City may require any bargaining unit employee to submit to a physical or mental examinationi by a doctor of the City's choosing, **(1)** upon return from any medical or other leave of absence, or **(2)** when the City, in good faith, reasonably believes that the bargaining unit member physically, mentally, or emotionally unable to perform assigned duties.

Section 27.2. Current contract language.

Section 27.3. Current contract language.

Section 27.4. In the event the City requires a bargaining unit employee to report to a physician designated by the City before returning to work, after the bargaining unit employee is released for return to duty without limitation by the employee's personal physician, **the employee shall be placed on paid administrative leave and** no additional sick time shall be charged against the employee pending such examination by the physician designated by the City~~,~~. ~~provided~~ **This section shall be applicable only if** the employee cooperates fully in scheduling and obtaining said examinations.

MEDICAL EXAMINATIONS (continued)

Section 27.5. When ~~a disagreement exists between~~ the bargaining unit employee's personal physician and the City selected physician **disagree regarding the employee's ability to return to work**, the two (2) physicians will mutually select an appropriate physician to provide a third opinion. In the event a third opinion is required, ~~no additional~~ **the employee will be placed on** sick time ~~shall be charged against the employee~~ **if available,** pending the examination by the physician jointly authorized in this manner.~~, unless~~ **If** the employee is ultimately determined to have been ~~un~~able to perform the essential functions of the employee's position during the period of absence**, the sick leave will be recredited to the employee's account**. The third opinion shall be considered final and binding on both parties.

Section 27.6. The uninsured cost of the third opinion shall be ~~borne~~ **paid** by the City. For the purpose of this Agreement, a physician shall be defined as a person graduated from a recognized school of medicine and licensed by the State of Ohio to practice medicine.

Section 27.7. Any bargaining unit employee determined to be permanently unable to perform the essential functions of the employee's position, shall be terminated from employment with the City after the employee has exhausted the employee's entitlement to

MEDICAL EXAMINATIONS (continued)

leave under the Family and Medical Leave Act as outlined in ~~Article 21~~ **the appl cable article** herein.

FOR THE EMPLOYER:

FOR THE UNION:

Date Submitted: 03/15/07

Date Signed: 03/15/07

10. Article 34, Shift Differential.

Officers assigned to the second and third shifts shall receive an additional fifty cents ($ 0.50) per hour.

Rationale: The comparables justify an increased shift differential. The Employer did not object to an increase assuming that an eight hour day was recommended.

11. Article 35, Permanent Shifts *NEW ARTICLE*

Non-rotating shifts shall be established upon completion of the negotiation process for 2007. It shall be as follows:

Annual bidding by seniority shall be conducted during the month of November and be completed by December 1st with implementation beginning January 1.

Probationary officers may not participate until after their probationary requirements are fulfilled.

Any mid-year vacancies shall be filled by posting the vacancy for ten (10) days. The most senior officer submitting a bid shall be awarded the vacancy. If the vacancy goes unfulfilled, it shall be resolved by seniority.

Rationale: Reduced stress, the ability to plan family time, the likelihood of fewer health problems are persuasive. These are basically the same advantages noted for Article 11, moving to an eight hour day.

Donald R. Burkholder,

Fact Finder

May 1, 2007

Faxed & mailed to both parties Wed., May 2, 2007.