



STATE EMPLOYMENT  
RELATIONS BOARD

2007 JAN 19 P 1:05

IN THE MATTER OF FACT-FINDING

BETWEEN

THE CITY OF CONNEAUT OHIO

AND

THE FRATERNAL ORDER OF POLICE

BEFORE: William C. Binning

SERB CASE NO. 06-MED-09-1043

PRINCIPAL ADVOCATE FOR THE UNION:

Rick Grochowski  
Staff Representative  
807 Falls Avenue  
Cuyahoga Falls, OH 44221

PRINCIPAL ADVOCATE FOR THE CITY:

Lori B. Lamer  
Law Director  
Law Director's Office  
City of Conneaut  
294 Main Street  
Conneaut, Ohio 44030

## INTRODUCTON

The bargaining unit consists of 13 patrol officers, 4 sergeants, and 1 lieutenant. These officers provide law enforcement services to the City of Conneaut that include Patrol duties, crime detection and prevention, investigations as well as housing and transportation of suspects/charged individuals.

Both advocates represented their respective parties very well and clarified for the fact finder the position of their clients on the three outstanding issues.

The hearing was held on January 10, 2007 in the City Council Chambers of the City of Conneaut, Ohio at 10:00 a.m.

The parties worked very hard to settle their contract. They have a mature relationship. There were three unresolved issues which included:

1. The shift/rotation language.
2. Employee contribution to health insurance.
3. The Grievance Procedure

In accordance with SERB guidelines and O,R,C, Section 4117.14 [C] (3) (f) “Prior to initiating hearing procedures the fact finder is encouraged to attempt mediation to resolve issues at impasse.” (SERB FACT FINDING GUIDEBOOK, page 13).

In response to the factfinder’s inquiry, the parties requested that the factfinder attempt to mediate the issues.

With the cooperation and hard work of the parties, two of the issues were resolved by mediation on the day of the hearing.

The Union requested that the language for those two issues agreed to in mediation be made part of this report. The language accepted by both parties on the two issues is presented below, without any discussion by the factfinder of the varying positions of the parties on the relevant issues prior to the tentative agreement.

The issues settled by mediation resulted in the following tentatively agreed upon contract language:

## **ARTICLE 11 HOSPITALIZATION**

Section 11.01 The City and the F.O.P./O.L.C. agree to modify the Hospitalization Plan in effect July 1, 1992, to the extent outlined in Appendix A. Effective January 1, 2007 each employee's monthly deduction shall be increased to 5% of the amount of the employee's monthly health insurance premium as charged to the City by the insurance carrier; however, such employee contribution shall not exceed a cap of \$60.00 in 2007, \$70.00 in 2008, and \$80.00 in 2009, per month.

The employee shall pay the lesser of the 5% premium or the cap as specified above.

## **ARTICLE 13 GRIEVANCE PROCEDURE**

Section 1. It is mutually understood that the prompt presentation, adjustment and/or answering of grievances is desirable in the interest of sound relations between the employees and the City. The prompt and fair disposition of grievances involves important and equal obligations and responsibilities, both joint and independent, on the part of representatives of each party to protest and preserve the grievance procedure as an orderly means of resolving grievances. Actions by the City or Union which tend to impair or weaken the grievance procedure are improper.

Section 2. A grievance is a dispute or difference between the City and the Union, or between the City and the employee concerning the interpretation and/or application of and/or compliance with any provision of this agreement, including suspension or discharge, and when any such grievance arises, the following procedure shall be observed.

Step 1. The Union President or his authorized representative, with the aggrieved employee, shall take the grievance or dispute with the department head within five (5) business days of the grievance or his knowledge of its occurrence. The department head shall meet with the FOP Staff Person, Union Representative and the employee within five (5) business days after notice of the grievance has been given. The department head shall respond within five (5) business days.

Step 2. If the grievance is not resolved at Step 1, the Union may appeal the grievance to the City Manager in writing within five (5) business days after receipt of the Step 1 answer. Within ten (10) business days of the Step 1 appeal, the City Manager shall meet

with the FOP Staff Person, Union Representative and the employee to discuss the Step 1 appealed grievance. If the grievance is not settled at Step 2 with the City Manager, he shall issue a written answer within ten (10) business days after the Step 2 meeting.

Step 3. If the grievance is not resolved at Step 2 of the procedure, if both parties agree, the parties may agree to submit the grievance(s) to a non-binding grievance mediation if the subject matter of the grievance is one that would be amenable to mediation. The parties shall, within ten (10) business days, jointly contact a mediator from the Ohio State Employment Relations Board (SERB), the Federal Mediation and Conciliation Services (FMCS), or a mutually agreed upon third party mediator, to hear the grievance(s) in question. The mediator shall issue a non-binding opinion on the merits of the case. The decision shall be issued at the close of the hearing on the day of the hearing. The costs of mediation shall be paid equally by the parties.

Neither party may use the opinion of the mediator as evidenced in any further proceeding involving the grievance in question.

Step 4. If the grievance is not satisfactorily settled at Step 3 or if the parties do not exercise Step 3 mediation, the Union may, within ten (10) business days notify the City of its intent to submit the grievance to arbitration. The Union shall notify the Federal Mediation and Conciliation Services (FMCS) and the City at the same time of its intent to appeal the grievance. The arbitrator shall be chosen at the same time in accordance with the rules of FMCS. The fees and expenses of the arbitrator shall be borne equally by the parties.

Section 3. The grievance procedure set forth in this memorandum shall be the exclusive method of reviewing and settling disputes between the City and Union and/or between the City and employee (or employees), and all decisions of arbitrators consistent with Step 4 and all pre-arbitration settlements reached by the City and the Union shall be final, conclusive and binding on the City, the Union and the employee; provided however, that a grievance may be withdrawn by the Union at any time and withdrawal of any grievance shall not be prejudicial to the decisions of the parties as they relate to the grievance or any future grievances.

Section 4. A policy grievance which affects three (3) or more employees, may initially be presented to the Union at Step 2 of the Grievance Procedure.

Section 5. The time limits set forth in the Grievance Procedure shall, unless extended by mutual written agreement of the City and Union, be binding. A business day does not include Saturdays, Sundays, or legal holidays.

Section 6. Attendance by the aggrieved employee at any and all meetings and/or hearings is mandatory unless such attendance is waived in writing by the City, Union and aggrieved employee.

Section 7. Written reprimands shall cease to have force and effect twelve (12) months following their effective date providing there is no intervening subsequent or like offense during that time period. In the event that there is a subsequent or like offense within that time period, then the written reprimands shall cease to have force and effect, twenty-four (24) months following their effective date.

A. Suspensions of three (3) days or less shall cease to have force and effect twenty-four (24) months following their effective date providing there is no intervening disciplinary action taken during that period.

B. Suspensions of more than three days shall cease to have force and effect thirty-six (36) months following their effective date providing there is no intervening disciplinary action taken during that time period.

(The factfinder tried to reproduce above the exact language agreed to by the parties in mediation for Articles 11 and 13. There are two underscored words in Article 13 that the fact-finder thinks are typos that should be corrected. The recommended words do not change the meaning of the sentences. In the first paragraph of Article 13 Section 1 should be “protect” and under Step 3 paragraph 2 the fact finder thinks the underlined word should be “evidence”.)

## FACTFINDING

After mediation on the above issues was concluded, a Fact Finding hearing was held on the one remaining issue.

### OHIO REVISED CODE

The fact finder took into account Ohio Revised Code, Section 4117.14 [C] (4) (E) which establishes the criteria to be considered for fact-finders.

1. Past collective bargaining agreements, if any, between the parties;
2. Comparisons to 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.
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, 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;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

At the opening of the hearing, the Union raised an issue on the timeliness of the City's Position Paper. The Union did not receive the position of the City until the day of the hearing, which is not in accord with the Ohio Revised Code. The fact finder took note of the Union's objection and allowed the City's documents into the record.

## SHIFT SELECTION

The one remaining issue was shift selection.

POSITION OF THE UNION. The Union proposed language that gave value to seniority in the selection of shifts by patrol officers. At the hearing, the Union argued that at one point during negotiations the City and the Union agreed to the language offered below. However, the Police Chief, who was at the negotiating sessions, decided later to encourage the City to oppose the language. The City did not deny this at the hearing.

The language proposed by the Union under Article 7- Section 7.05  
Overtime/Minimum Overtime:

**Shift selection shall be by seniority with the patrol officer having the greatest seniority having the first selection of shifts in a rotation. An officer may select the same shift for two (2) consecutive rotations. However, an officer must select a different shift for the third rotation.**

POSITION OF THE CITY. The City proposes no change in language on this issue, which in the existing contract gives the Chief of Police the authority to assign the patrol officers to shifts.

The City argues that the existing system allows for a mix of senior and junior officers on a shift. That those with little seniority will suffer from low morale if they are assigned to a fixed shift. The City, in particular the Chief of Police, argued that fixed shifts leads to stagnation and corruption. The Chief argued that K-9 Officers (there are 3) need to be on separate shifts. If more than one of the K-9 officers were on the same shift due to seniority shift selection, that would lead to management problems and increased cost in overtime, call out pay, and response time when K-9 officers were needed.

The City argued that sergeants, who are in this bargaining unit, and were permitted by an MOU to go to fixed shifts by seniority have specific shift duties.

The City argued that the patrol officers exposure to various issues and training opportunities are limited if they are on fixed shifts.

**DISCUSSION.** Some of the arguments by the City against shift selection by seniority have merit. This fact finder does take exception to the proposition put forward by the Chief that fixed shifts leads to corruption. That may have been the case in one incident but that is certainly not found in police management textbooks as a general proposition. There are many police departments in Ohio that have fixed shifts determined by seniority. The comparables offered by the City show that some of the police contracts of surrounding municipalities treat shift assignment as a management prerogative. The Ohio State Patrol does recognize seniority in shift assignment.

The fact that the Union and the City have an MOU that grants Sergeants, who are in the bargaining unit, the opportunity to select fixed shifts based on seniority, bolsters the position of the Union that the other members of the bargaining unit should enjoy a similar benefit.

This is not a contract item that has any direct costs to the taxpayers. Seniority is recognized as having value in many work settings. It is one way to recognize and reward long and valuable service to an employer and a community.

There is merit to the City's argument that there will be significant management problems if more than one (1) K-9 unit officer(s) are permitted to pick the same shift, should the Union's proposed language be adopted.

**RECOMMENDATION:** The Union's proposed language is recommended with added language addressing the K-9 unit issue:

It is recommended that Article 7 – Section 7.05 Overtime/Maintenance should read:

Section 7.05 An 84-day rotation schedule rotating days off forward and long weekends. This schedule would encompass all officers in the patrol division below the rank of Lieutenant.

The shifts would be comprised of platoons as designated by the Chief of Police or his designee, and each platoon would rotate shifts every 84 days.

The scheduling of the department involves a voluntary schedule change and does not constitute overtime pay caused by schedules of six or more consecutive days and schedule changes due to rotating shifts/days off shall not fall within the overtime provision of this agreement for affected employees.

**Shift selection shall be by seniority with the patrol officer, having the greatest seniority, having the first selection of shifts in a rotation. An officer may select the same shift for two (2) consecutive rotations. However, an officer must select a different shift for the third rotation.**

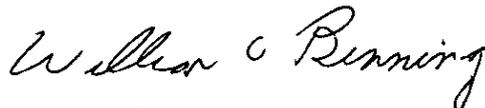
**There is to be a separate shift selection exclusively for the three (3) K-9 officers. K-9 officer shift selection shall be by seniority within the ranks of the K-9 officer corp. The K-9 officer, having the greatest seniority, has the first selection of shifts in a rotation. A K-9 officer may select the same shift for two (2) consecutive rotations. However, a K-9 officer must select a different shift for the third rotation. There is to be one K-9 officer per shift.**

Nothing in this article shall prevent the Chief of Police or his designee from making changes in an individuals shift or hours upon providing such employee with five days notice, nor shall this section prevent the Chief of Police from ordering an employee to work a modified shift (e.g. 7:00 pm to 3:00 am) upon providing such employee a five day notice in accordance with Article 31 of this agreement. No employee shall be required under this paragraph to work more than 4 consecutive work weeks on a modified shift or a shift different than scheduled in paragraph (1) above.

## **TENTATIVE AGREEMENTS**

During negotiations and mediation the parties reached tentative agreements on a number of issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 17 of January 2007 in Mahoning County, Ohio.

A handwritten signature in cursive script that reads "William C. Binning".

William C. Binning, Fact Finder

**BINNING ARBITRATION SERVICES**

2893 Algonquin Dr.  
Poland, Ohio 44514

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January 17, 2007

**TO: Rick Grochowski, FOP  
Lori B. Lamer, City of Conneaut**

**From: William Binning, Factfinder for SERB**

✓ Enclosed is my Factfinding report for Case No. 06-MED-09-1043: FOP City of Conneaut. – Heard on January 10, 2007.

Also enclosed is my invoice.

If you have any questions about my report please contact me. I will take questions only from the two advocates.

I enjoyed working with both of you.

Sincerely Yours,

William C. Binning Ph.D.  
Factfinder

cc: Edward Turner, SERB