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STATE EMPLOYMENT
RELATIONS BOARD

2007 SEP -6 A 11: 49.

PURSUANT TO O.R.C. 4117.14(C)
UNDER THE AUSPICES OF THE
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN)	
)	
CITY OF VERMILION)	
)	FACTFINDER'S REPORT
and)	
)	SERB CASE NOS.
FRATERNAL ORDER OF POLICE)	06-MED-10-1250/1251/1252
OHIO LABOR COUNCIL, INC.)	

This Factfinding arises pursuant to Ohio Revised Code Section 4117.14(C). The Parties, the City of Vermilion ("the City") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("the FOP"), selected Susan Grody Ruben to serve as sole, impartial Factfinder, whose Recommendations are issued below.

Hearing was held July 27, 2007 in Vermilion, Ohio. The Parties were afforded full opportunity for the presentation of positions and evidence. Pre-hearing submissions were received from both parties.

APPEARANCES:

for the City:

**Patrick A. Hire and Catherine Kouns Born,
Clemans-Nelson & Associates, Inc., 417 North
West St., Lima, OH 45801.**

for the FOP:

**Jackie Wegman, 4854 Waterbury Lane, Maumee,
OH 43537.**

FACTFINDER'S RECOMMENDATIONS

Statutory Criteria

In reaching Recommendations on the open issues, the Factfinder has reviewed the parties' pre-hearing submissions, the evidence and positions presented at the Factfinding Hearing, and the evidence and positions authorized by the Factfinder to be received after the Factfinding Hearing as part of the record. The Factfinder has analyzed this information in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):

- a) Past collectively bargained agreements ...
between the parties;**
- b) Comparison of the issues submitted to final
offer settlement relative to the employees
in the bargaining unit involved 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 interests and welfare of the public, 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; and**
- f) **Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

Bargaining Unit

The 3 bargaining units consist of 4 full-time dispatchers, 4 part-time dispatchers, and 7 part-time patrol officers.

Incorporated Articles

The Factfinder hereby incorporates into her Recommendations the following articles, with the changes agreed to by the Parties at the Factfinding Hearing:

Article 11 - Discipline

Article 14 - Interpretation of Chapter – Effect of Past Practices

Article 25 - Sick Leave

Article 29 - On-Duty Injuries

Article 33 - Extension of Health Care and Life Insurance Benefits

New Article - Waiver of Civil Service and Related Laws

The Factfinder also incorporates those articles agreed to by the Parties before the Factfinding Hearing.

Issues

1. Article 15 - General Compensation for Full-Time Personnel

City's Proposal

Effective October 1, 2007: 1.5%

Effective January 1, 2008: 2.0%

Effective January 1, 2009: 2.0%

The FOP's contention that 4.5% increases are necessary to maintain the employees' current standard of living is faulty, given that the cost-of-living increase for the past 12 months is 2.7%.

The City's general revenue fund, the only fund from which the employees can be compensated, had a 2006 ending balance of only \$53,000, despite the City having made over \$200,000 in budgetary cuts in 2006. The FOP's contention that funds are available in the City budget to support its proposed increases is faulty; in a 2005 audit, the City was cited for improperly moving money from one fund to another.

The bargaining units' wages are comparable, indeed above average, to comparable communities.

City revenues are trending down due to the local Ford Motor Company Plant closing, the election defeat of a proposal to rezone some residential property to industrial property, and 8 election defeats of a proposal to increase the municipal income tax. The City has to live within its means.

FOP's Proposal

Effective January 1, 2007: 4.5%

Effective January 1, 2008: 4.5%

Effective January 1, 2009: 4.5%

These increases are necessary to permit the employees to maintain their current standard of living. It would compensate them for the higher health care deductibles and co-pays of the last 3 years.

The City has sufficient funds to support the proposed increases. The Councilman/Chairperson of the Special Finance Committee said at a March 26, 2007 Council meeting there was \$400,000 left unappropriated in the general fund. The City does not have an inability to pay, rather it has an unwillingness to pay.

The City agreed to a 3% increase effective January 1, 2007 and a \$250 signing bonus for the bargaining unit members of Laborers' International Union, Local 860.

Factfinder's Recommendation

Given that the cost of living has risen 2.7% in the last 12 months, the Factfinder recommends:

Effective January 1, 2007: 3%

Effective January 1, 2008: 3%

Effective January 1, 2009: 3%

2. Article 16 - General Compensation for Part-Time Personnel

City's Proposal

Status quo.

Currently, the part-time patrol and dispatchers receive 85% of the full-time rate, though they perform half the duties of a full-time employee. Two labor agreements ago, the FOP asked the City to lock the part-time employees into an automatic percentage of their full-time equivalents. The FOP has given no justification for raising the percentage. There is no comparability issue, as SERB reports no part-time patrol officers' wages or benefits.

FOP's Proposal

Part-time patrol officers to receive same hourly wage as full-time police officers, retroactive to January 1, 2007.

The 85% formula no longer works because the full-time police officers belong to another union.

The City saves money by using part-timers: lower benefit costs and less overtime. Part-timers have the same responsibilities and face the same dangers as full-time police officers.

The City of Amherst employs part-time patrol officers. They are represented, and they receive the same hourly wage as full-time police officers.

Factfinder's Recommendation

The City's contention that part-time patrol officers do half the work of full-time police officers is not accurate on an hour-for-hour basis. Given that the part-time patrol officers can face the same dangers as full-time police officers, and the part-time patrol officers do not receive benefits, the Factfinder recommends part-time patrol officers' hourly wage be raised to 90% of full-time police officers' rates.

3. Article 19 - Longevity Benefits

City's Proposal

Convert the percentage longevity benefit to a lump-sum longevity benefit. The current calculation method leads to spiraling costs and pyramiding of wages. The City needs to cap the longevity benefit in order to be able to afford a wage increase.

FOP's Proposal

Status quo. This benefit applies to only 4 full-time dispatchers. There is a value in keeping long-term employees.

Factfinder's Recommendation

The Factfinder agrees there is a value in retaining experienced employees. However, the Factfinder also is conscious of the ever-increasing cost of longevity benefits when they are calculated on a percentage basis. Accordingly, the Factfinder recommends the longevity benefit be converted to a lump-sum longevity benefit. The Factfinder incorporates by reference the specific dollar amounts set out in the City's proposal.

4. Article 20 - Uniform Allowances

City's Proposal

Status quo. There is no justification for an increase in the uniform and maintenance allowances. The FOP's list of uniform prices come from only 1 store, and reflect only dispatcher uniforms. The current allowances are sufficient for full-time dispatchers to purchase 4 uniforms.

Many comparable communities have lower uniform and maintenance allowances.

Part-time employees do not need increased allowances because they wear their uniforms less than full-time employees.

The City provides the initial uniform, and provides any required equipment. If the City determines a need for additional or new uniforms/equipment, the Agreement requires the City to provide these to employees at no cost.

FOP's Proposal

Uniform allowance:

Part-time patrol officer - increase from \$350 to \$500

Full-time dispatchers - increase from \$325 to \$500

Part-time dispatchers - increase from \$200 to \$350

Maintenance allowance:

Part-time patrol officer - increase from \$100 to \$200

Full-time dispatchers - increase from \$260 to \$360

Part-time dispatchers - increase from \$75 to \$125

The cost of uniforms has risen. Shirts are \$53.99, summer pants are \$47.99, and winter pants are \$68.99.

The uniform and maintenance allowances should be paid 50% in July and 50% in December, to correlate with summer and winter uniforms.

Factfinder's Recommendation

Uniform Allowance

The City calculates a uniform costs a full-time dispatcher approximately \$66 ($\$263.95 = 4 \text{ shirts and } 2 \text{ pants} = 4 \text{ uniforms}$). The FOP presented invoices showing a uniform costs a full-time dispatcher

approximately \$78 (summer; shirt worn once, pants worn twice) and approximately \$ 88 (winter).

The Factfinder finds it reasonable for a full-time dispatcher to wear the same pair of pants twice a week (the FOP's premise), rather than 4 times a week (the City's premise). Thus, the cost for a full-time dispatcher to have 4 uniforms (4 shirts/2 summer pants/2 winter pants) is, according to the only invoices in the record, \$332. Accordingly, the Factfinder recommends the uniform allowance for full-time dispatchers be increased to \$350.

As for the part-time dispatchers and patrol officers, it is reasonable to increase their uniform allowances by half of the \$25 increase recommended for full-time dispatchers (i.e., \$12.50). Accordingly, the Factfinder recommends the uniform allowance for part-time dispatchers be increased to \$212.50, and the uniform allowance for part-time patrol officers be increased to \$362.50.

The Factfinder also recommends uniform allowances be paid 50% in July and 50% in December, as this is a practical and logical approach. In furtherance of practicality, the increases in uniform allowances shall become effective December 1, 2007, i.e., eligible employees will receive 50% of the increased total in December 2007.

Maintenance Allowance

There being no record evidence regarding the costs for uniform maintenance, the Factfinder recommends status quo.

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5. Article 31 - Hospitalization and Medical Insurance; Optical and Dental Care

City's Proposal

Provide eligible bargaining unit employees the same hospitalization and medical plan(s) as provided to the City's non-bargaining unit employees.

Prescription caps for the rest of 2007: \$10/\$20/\$30.

5% premium cost, not to exceed \$40/month.

Establish a health insurance committee.

FOP's Proposal

Reduction in deductibles and prescription co-pays of the current health plan to match the costs paid by non-union employees.

In the prior negotiations, the FOP agreed to increase deductibles and prescription co-pays because the City said its health care costs were overwhelming the City budget, and because the City said the increased costs would be City-wide. What happened, however, was that the increased costs were required only of Police Department employees.

Factfinder's Recommendation

Health care costs continue to rise. As long as all eligible City employees have the same health benefits, that is the best the City can do. Accordingly, the Factfinder recommends:

Section 31.01. Hospitalization, Medical Insurance, Prescriptions, and Premium Costs

The City agrees to provide eligible bargaining unit members the same hospitalization, medical insurance, prescriptions, and premium costs as provided to all other eligible City employees, including management. If at any time during this Agreement, health benefits are not the same for all eligible City employees, the bargaining unit members shall be provided with the highest coverage/lowest out-of-pocket costs plan as is provided to another group of City employees.

Section 31.02. Health Insurance Committee.

The City agrees to establish a joint advisory committee on healthcare benefits which shall include a representative from each bargaining unit. The joint committee will periodically evaluate the benefits and costs and make recommendations to the City for cost containment measures. The City agrees to present any pending changes to the Health Insurance Committee prior to the effective date of any such changes.

6. Article 36 - Applicability of Increases in Wages and Benefits Negotiated by Other Bargaining Units

City's Proposal

Eliminate.

The City is still offering a “me too” clause, but in Article 31.

FOP's Proposal

Status quo. This language has been in the contract for 12 years; there is no need for a change.

Factfinder's Recommendation

The current language providing for parity among the bargaining units has served the Parties well in terms of a largely conflict-free administration of the Agreement. Accordingly, the Factfinder recommends status quo.

7. Article 43 - Duration

City's Proposal

The contract should become effective upon signing/execution and expire on December 31, 2009.

There are issues that are not appropriate for retroactivity, e.g., health insurance. Moreover, the FOP should not be rewarded for its delay in negotiating the contract.

FOP's Proposal

Extensions on bargaining were agreed to by both sides, making retroactivity to January 1, 2007 appropriate. As part of each extension, retroactivity of any wage increase was addressed.

Factfinder's Recommendation

The Factfinder recommended above that wages be retroactive to January 1, 2007. This is in keeping with what was addressed at the

time of bargaining extensions.

Retroactivity of other sections is unnecessary, and in many cases, impractical. Accordingly, the Factfinder recommends the contract become effective upon signing/execution, with the exception of wages, which are recommended to be retroactive to January 1, 2007.

The Factfinder recommends the contract expire at midnight, December 31, 2009.

8. New Article - Waiver in Emergency

City's Proposal

Suspend time limits for grievance processing in cases of declared emergency. This is a foundational article.

FOP's Proposal

Status quo, i.e., no provision on this subject. The new proposal is unnecessary, given the FOP's cooperation during emergencies.

Factfinder's Recommendation

Given the largely conflict-free relationship between the Parties, the Factfinder considers this new proposal unnecessary. If a grievance deadline is ever missed due to a declared emergency, the Parties can agree to waive the timeliness issue; if the Parties cannot agree, an arbitrator can assess whether the time limit should be stayed due to a declared emergency. Accordingly, the Factfinder recommends status quo, i.e., no new provision on this subject.

9. New Articles - Work Rules and Mid-Term Dispute Resolution Procedure

City's Proposal

Specify the City's right to promulgate work rules.

FOP's Proposal

Provide for a mid-term dispute resolution procedure.

Factfinder's Recommendation

There is no need for a separate work rules provision, as the City already has the right to promulgate work rules consistent with the contract. Accordingly, the Factfinder recommends status quo, i.e., no new provision on this subject.

The mid-term dispute resolution procedure is new and complex, and thus better suited to agreement between the Parties, i.e., it can be addressed in the next contract negotiations. Accordingly, the Factfinder recommends status quo, i.e., no new provision on this subject.

DATED: September 4, 2007



**Susan Grody Ruben, Esq.
Factfinder**