

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2008 APR -2 A 11: 17

In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
OHIO PATROLMEN'S BENEVOLENT	*	AND
ASSOCIATION	*	RECOMMENDATIONS
	*	
	*	2007-MED-01-0023
	*	
and	*	Anna DuVal Smith
	*	Fact-Finder
CITY OF CLEVELAND	*	
	*	

Appearances

For the Ohio Patrolmen's Benevolent Association:

Jeff Perry, Business Agent
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For the City of Cleveland:

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I. SUBMISSION

The Ohio Patrolmen's Benevolent Association represents approximately 55 full-time correctional officers at the House of Corrections, approximately 85 corrections officers in the district jails and 18 full and part-time guards. Their previous collective bargaining agreement expired on March 31, 2007. When negotiations for a successor agreement stalled in the summer of 2007, the parties mutually agreed to directly appoint the undersigned directly as fact-finder pursuant to Chapter 4117 O.R.C. Mediation by the Fact-Finder on the numerous unresolved issues occurred on July 31 and August 1. A third mediation session on August 22 produced a tentative agreement on or withdrawal of all previously unresolved issues. The bargaining unit, however, rejected the tentative agreement and so the parties proceeded to hearing at 10:00 a.m. on February 19, 2008, on seven unresolved issues: Overtime, Holiday Pay, Uniforms, Staffing, Hazardous Duty Injury, Wages, and Corporals. The parties' agreements on all other issues previously unresolved are incorporated herein as if written at length and recommended by the Fact-Finder. Present at the hearing on behalf of the Ohio Patrolmen's Benevolent Association ("OPBA" or "Union") in addition to Mr. Perry were Kim Dennard-Colon, Wintis Gibson, Barbara Griffin, Marilyn Kirksey and Deborah Turner. Present for the City of Cleveland ("City") in addition to Mr. Dileno were Debra Barfield, Sharon Dumas, William M. Menzalora, Ami Patel, Joseph Tottner and Robert Taskey. Both parties were afforded a complete opportunity to examine witnesses, to present evidence, and to argue their respective positions. The oral hearing concluded at 2:00 p.m. on February 19, 2008, whereupon the record was closed.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) 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;
- (3) The interest 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;
- (4) The lawful authority of the public employer;

- (5) 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

II. BACKGROUND

The City of Cleveland is among Ohio's largest cities, now serving a population of approximately half a million. For many years the City, in common with other steel-belt cities, has struggled to cope with the post-industrial economy and changing demographics.

Of particular note in these negotiations was the budget crisis in 2004 when the City made massive layoffs to cope with a \$60 million deficit. While there have been some recalls since then, the City continues to struggle as evidenced by the need each year to freeze non-essential expenditures and cease filling vacancies in order to maintain a 2-5% carryover. Employees paid out of the General Fund are 1,000 fewer than in 2003. While non-safety employees have borne the brunt of the reduced numbers, the safety forces have also been affected. Then, as the current round of citywide negotiations began, the subprime loan scandal and resultant housing market crisis and stock market decline placed additional challenges on the City and its employees. Nevertheless, by the time this case came for hearing, six of the thirty other labor organizations representing City employees had satisfactorily concluded their negotiations fixing the terms and conditions of employment for 2,000 of the City's 6,000 organized employees.

III. ISSUES

Section 130. Overtime

The City proposes to cease counting paid sick leave as hours worked for the purpose of calculating overtime. It argues that sick leave is abused to get paid time off instead of for its intended purpose to maintain an income stream when ill. The Fair Labor Standards Act, it points out, does not treat time off as hours worked for the purpose of overtime. If granted, its proposal will reduce the use of sick leave thus reducing overtime costs. It points out that all other bargaining units which have settled have agreed to this provision and five others already have it.

The Union is opposed to the City's proposal and, in fact, wants to eliminate the "holiday hours, paid sick leave hours, and paid vacation" modifier (so that the paragraph will read "All paid hours shall be counted for the purpose of computing overtime") against the day that this bargaining unit gets a compensatory time bank. The Union admits that there are those who would abuse sick leave, but many do not use it at all. It contends that the best way to prevent abuse is to provide an incentive for not using the leave except for its intended purpose. As to the City's goal to get its proposal adopted citywide, the Union says it does not see the City's unions lining up for it. Finally, the Union claims the tentative agreement on this issue in favor of the City was a chief reason the tentative agreement on all issues was rejected by the bargaining unit.

Findings and Recommendation of the Fact-Finder: The original intent of paid sick leave was to provide an income stream when an employee was too sick to work and to protect healthy workers from infection. When employees abuse sick leave, the burden falls on those who come to work and have to pick up the slack created by co-workers out for reasons unrelated to health. What the City proposes is not novel as it mirrors the FLSA and other City contracts. Moreover, reform here will free up dollars that could be used for the benefit of the entire unit, not just those abusing this benefit. The Fact-Finder therefore recommends the City's proposal:

Section 130. All paid holiday hours and paid vacation hours shall be counted as hours worked for the purpose of computing overtime.

Section 137. Holiday Pay

Positions of the Parties: Under the current provision, an employee must work a full eight hour day on the scheduled work days prior to and immediately after the holiday in order to receive pay for the holiday. The Union wants to be treated as most other City employees are, qualifying if they are paid for the preceding and following work days even if they do not work those days. In fact, it says, this was the practice until someone decided the provision did not say "paid status." As it is now applied, employees are forced to come in when ill, exposing fellow employees and inmates and driving up sick leave. The City wants to keep the provision as it is, saying that employees who abuse sick leave tend to do so in conjunction with holidays.

Although a number of units do not have this provision, the City is moving more in this direction. Six of the seven units that have already settled in this round have agreed to it except CARE which got it through an arbitrator's award.

Findings and Recommendation of the Fact-Finder: While many other City bargaining units do not have the requirement of working their scheduled days abutting a holiday, the Union's proposal of eliminating it is counter to the trend (seven other units so far in this round of bargaining). Additionally, the effect of the Union's proposal on those employees who do come to work as scheduled on these days would likely be negative from the lower attendance encouraged by the absence of the penalty. The Fact-Finder accordingly recommends no change to this section.

Section 146 and 147. Uniforms and Uniform Maintenance Allowances

The Union seeks an increase in the annual uniform allowance from \$325 to \$500 and an increase in the maintenance allowance from \$275 to \$500. It presents data showing that many other jurisdictions in Cuyahoga County have higher allowances. The Utilities Police get \$1,000 and they carry the same commission as these officers. Working conditions in the jail—filth and fights—damage and prematurely age the uniforms. The last increase was \$100, but that did not fully offset additional expenses, especially for over half of the unit that had mandated changes. Now more changes are coming and the promised discounted police pricing never came. The Union also opposes the City's voucher system because of the potential for mishandling.

The City opposes increases in these allowances as it would add \$180,000 to costs over the life of the contract. It offers a voucher system which, it says, would allow piggybacking onto the police order and result in lower prices. Thus, the unit's uniform allowance dollar would go further.

Findings and Recommendation of the Fact-Finder: The Union rightly points to more generous allowances in other jurisdictions in northeast Ohio and working conditions detrimental to the life of the officers' uniforms. However, the City's allowances are also not the lowest

around. Some improvement is warranted but the City cannot afford what the Union seeks. Moreover the City offers a cost-saving plan which will stretch the dollar allowance further. The Fact-Finder accordingly recommends the City's proposal for Section 146 (Uniform Allowance) that there be no change in the uniform allowance itself but that the City provide a voucher system so that the officers can obtain what is needed at lower cost. As for Section 147, the uniform maintenance allowance should be raised by \$100 (to \$375) for 2007 and an additional \$50 (to \$425) effective March 2009.

Section 183. Staffing

The existing language provides a limited number of bid positions at the House of Corrections:

Ambulance	Two (2) employees
Van	Two (2) employees
Post #1	One (1) employee
New Annex	Two (2) employees
Hospital Security	One (1) employee
Intake	Two (2) employees
Master Control	Two (2) employees, first (1 st) shift
	Two (2) employees, second (2 nd) shift
	One (1) employee, third (3 rd) shift

The Union proposes to add Bookers, Store Room and Business Office, and to increase the number bid out in each of the existing bid positions:

The following positions are subject to bid at all correctional facilities for all shifts as needed to provide adequate coverage:

Ambulance	Two (2) employees for each
Van	Two (2) employees for each
Post #1	One (1) employee each shift as needed
Annex	Two (2) employees each shift
Hospital Security	Two (2) employees for each
Intake/property	Three (3) employees, first shift
	Two (2) employees, second shift
	Two (2) employees, third shift
Bookers	Three (3) employees each shift
Store Room	One employee
Business Office	One (1) ad hoc
	Three (3) at CPU

In support of its position, the Union argues that the numbers have traditionally been adjusted over the years as manning requirements have changed. Moreover, since the City has determined to combine the two jail systems into one, they should be treated the same. As to comparables,

the Union points out that other City contracts allow bidding on all jobs, positions, promotions and vacancies.

The City generally opposes filling assignments based strictly on seniority as it requires management to completely ignore skill ability and work records. However, it is willing to expand bidding rights to areas where specialized skill and performance are not particularly critical. Thus, it is prepared to live with what was mutually agreed to as a compromise position in mediation:

Medical Van Transport (House of Corrections)	Two (2) employees
Van (House of Corrections)	Two (2) employees
Annex (House of Corrections)	Two (2) employees per shift
Infirmery (House of Corrections)	One (1) employee per shift
Intake (House of Corrections)	Three (3) employees
Master Control	Two (2) employees, 1st shift
	Two (2) employees, 2nd shift
	One (1) employee, 3rd shift
Booker (Jail)	One (1) employee per shift
Store Room (House of Corrections)	One (1) employee
Property (Jail)	Two (2) employees

The City reserves the right to transfer employees out of these positions for just cause. Corrections officers transferring from one location to another (Jails to the House of Corrections and vice-versa) will be precluded from bidding on the assignments for one year.

Findings and Recommendation of the Fact-Finder: The Fact-Finder agrees with the City that ability and work habits are relevant factors in making some job assignments. She therefore recommends that the City's proposal, which was a mediated City concession to expand bid positions, be adopted:

Medical Van Transport (House of Corrections)	Two (2) employees
Van (House of Corrections)	Two (2) employees
Annex (House of Corrections)	Two (2) employees per shift
Infirmery (House of Corrections)	One (1) employee per shift
Intake (House of Corrections)	Three (3) employees
Master Control	Two (2) employees, 1st shift
	Two (2) employees, 2nd shift
	One (1) employee, 3rd shift
Booker (Jail)	One (1) employee per shift
Store Room (House of Corrections)	One (1) employee
Property (Jail)	Two (2) employees

The City reserves the right to transfer employees out of these positions for just cause. Corrections officers transferring from one location to another (Jails to the House of Corrections and vice-versa) will be precluded from bidding on the assignments for one year.

Sections 198 (200)-199 (201). Hazardous Duty Injury

The City submits that the present language, which is also in the police and fire contracts, provides a more lucrative Hazardous Duty Injury (“HDI”) benefit than virtually every other union contract in the State of Ohio. In fact, it is so rich that it provides no incentive to return to work and even encourages employees to feign and extend injuries. It therefore proposes to cap HDI for one year per incident (with a one-year extension at the discretion of the City) and prohibit employees from accruing sick leave while on HDI. In addition, it would cap the length of time an employee may remain on HDI after applying for disability retirement to six months and would rescind the leave if the employee does not comply with prescribed rehabilitation requirements. The City submits that this is a reasonable proposal and would still leave the OPBA with one of the most lucrative HDI provisions in Ohio. Even the City’s paramedic contract has a shorter HDI benefit.

The Union wants to retain the status quo which it admits is superior to most other contracts. But it points out that this is only one part of a contract that generally does not treat OPBA members as well as the contracts of other City employees do. This is a more hazardous job than the paramedics’ because inmates have nothing to lose by fighting corrections officers. Yet when inmates are injured they are treated more favorably than are the corrections officers, who, though they are paid their salary for two years or more, are still losing other compensation, like overtime, upon which they rely to survive. The Union also objects to the requirement for following prescribed rehabilitation. Medicine is not an exact science. Often one doctor’s advice is at odds with another. What is the officer to do then? Moreover, the City can and does fight these cases which sometimes creates delay lasting beyond a year.

Findings and Recommendation of the Fact-Finder: The OPBA unquestionably has a lucrative provision here, and it is subject to abuse. The OPBA’s objection to halving the two-year cap to one year (with a second year at the discretion of the City) rests primarily on claimed delays by the City and the Bureau of Workers Compensation, yet it cites only one such case. As

the City points out, workers compensation is almost irrelevant in this unit. Accordingly, the Fact-Finder recommends the cap reduction as proposed by the City.

The City's request to eliminate sick leave accrual while the employee is off work is also reasonable and will provide some savings which could be better used to benefit the entire bargaining unit and not just those on HDI. The Fact-Finder therefore recommends the following:

Replace Section 198 with:

An employee may receive hazardous duty injury benefits for a total of one year per incident which may be extended, at the sole discretion of the City, for an additional year. An employee may not accrue sick leave while on hazardous duty injury benefits.
The employee may remain on hazardous duty injury benefits for up to six (6) months after making application for disability retirement pension.

Replace Section 199 with:

Hazardous duty leave may be rescinded if the employee fails to demonstrate compliance with prescribed rehabilitation regimens. If the City's physician and the employee's physician disagree on rehabilitation regimens, a third physician will be consulted to determine the prescribed rehabilitation.

Section 204. Wages

The Union seeks 2% on April 1 of each year of the three-year agreement after a \$2,000 lump sum is rolled into the base. It justifies the request for the lump sum with the firefighters' settlement which also included a reduction of overtime. It points out that the OPBA has already agreed to a number of job changes that could reduce required overtime in this unit. Moreover, the City plans to expand job duties for corrections officers, which would also limit the ability to decrease overtime. Furthermore, the total number of employees has been reduced by attrition and the length of time it takes to fill vacancies. While recognizing the difficulty of finding truly comparable units, the Union submits SERB data showing 3% wage increases in 2006 statewide, in the Cleveland area and for cities only. Police contracts settled higher, at 3.23%. Whether looking just at salaries or taking other cash compensation into account, Cleveland's corrections officers fare poorly compared to other Cuyahoga County cities, top ten Ohio cities with corrections officers, cities with populations over 50,000, counties with populations over 80,000, the counties of Ohio's largest cities, and northeastern Ohio counties. In such an environment, the internal pattern of 2% cannot be imposed on the unit because of its horrible relative position.

The Union commends to the Fact-Finder a fact-finding award from the last round that broke the citywide pattern and urges this fact-finder to do the same.

The City offers 2% per year retroactive to April 1, 2007. It admits the data from comparable units do not support its position, but this is all it can afford and what other units but the firefighters and building trades have accepted. These two are exceptions in that the building trade wages are set by prevailing wage and the firefighters wages were frozen during years of litigation and then they agreed to rule changes reducing overtime. In fifteen years only two neutrals have broken the pattern. The case cited by the Union involved a unit of an enterprise fund which was in a better financial position than the general fund. Even so, the bargaining unit did not get what the neutral recommended. In this round, the City is still suffering the effects of the 2004 budget crisis and the layoffs that ensued. Today it operates with 1,000 fewer employees paid out of the general fund and now has to deal with the housing mark collapse and looming recession while its economy continues to de-industrialize. The City simply cannot afford the one million dollar annual cost of the Union's proposal.

Findings and Recommendations of the Fact-Finder: The data from comparable units submitted by the Union cannot be denied. In 2004 this unit's compensation was 93-94% of the others and, though it stood near the bottom, it was not last. By 2007 it had dropped to last or near-last place with its compensation less than 90% of the average. Contracts already in place with a few exceptions (mostly ones catching up) were in the 3-4% (GWI) range.

If this were the end of the story, the Union's request could perhaps be recommended. But the Fact-Finder is bound to give weight to an employer's ability to pay as well as to the compensation of bargaining units doing comparable work in comparable jurisdictions. While the City ended 2007 with a \$26 million (unaudited) general fund balance, it has many competing needs, some because of lack of attention as a result of the 2004 crisis and historical decline and some because of the current housing crisis which only looks to get worse. The City needs to have a reserve to protect its ability to borrow at an acceptable rate of interest, too, and for

unforeseen emergencies. The larger AFSCME unit accepted this reality and this unit should, too. While it is true that the firefighters received lump sums in addition to a general wage increase, their wages were frozen during the lawsuit and then they made overtime concessions. For these reasons the Fact-Finder recommends a 2% wage increase for 2007, 2% in 2008 and 2% in 2009.

New Section 205 (211). Corporal Position

The Union proposes to introduce twenty corporals with a 15% rank differential. Promotion would be by bid and awarded exclusively by seniority. This is justified, it says, by the fact that there is presently too little supervision since the present supervisors are too few and lack effective training. The result is differing expectations and too little time to follow through. The Union argues that this is a win-win situation that the Fact-Finder should adopt.

The City submits that new positions should not be imposed by a third party as the creation of new positions is an inherent management right. Although it agreed to creating six corporal positions in mediation, it did so as a compromise to achieve a complete agreement. It says it has no need for another level of supervision because it already has nonbargaining unit supervisors at the House of Corrections and the jails. It urges the Fact-Finder to reject the Union's request. But if she recommends adding a layer of supervision, twenty is too many and a 6% rank differential is reasonable. The police and fire units both have lower differentials (16%) and CARE's is 6%.

Findings and Recommendation of the Fact-Finder: The Union's proposal to add the position of corporal is a worthy one. If implemented it will provide a rung on a career ladder where officers interested in advancement can be tested and developed, providing a boon to the City as well as to the bargaining unit and the officers selected. The Union's proposal, however, is overly ambitious for an introductory program in a bargaining unit of this size but the compromise agreed to in mediation should be improved upon. The Fact-Finder therefore recommends nine positions with a rank differential comparable to CARE's, i.e., 6%.

CORPORAL POSITION

Effective within thirty (30) days of ratification of the 2007-2010 Agreement, the City shall create nine (9) corporal positions. An employee who is assigned to one of the nine (9) corporal positions shall receive an additional six percent (6%) of the employee's base rate. The Commissioner will assign the most senior, qualified employee who has not received discipline or been on the attendance abuse disciplinary steps in the last year to the corporal position.

The Commissioner reserves the right to remove an employee from a corporal position for just cause.

IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Overtime	Cease counting paid sick leave
Holiday Pay	No change
Uniform Allowance	No increase. Adopt voucher system
Uniform Maintenance Allowance	\$375 effective 2007 \$425 effective 2009
Staffing	Expand bid positions as proposed by City
Hazardous Duty Injury	*Cap at 1 year with City option to extend an additional year *Eliminate sick leave accrual *Cap post-disability-retirement-application at 6 months *Require employee to comply with prescribed rehabilitation program
Wages	2%-2%-2%
Corporal Position	*Create 9 positions with 6% rank differential *Assign by seniority if qualified and discipline-free 1 year *Removal for just cause

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

April 1, 2008
Cuyahoga County, Ohio

ads:tam//07-1249

CERTIFICATE OF SERVICE

I certify that on the 1st day of April 2008, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

Jeff Perry, Business Agent
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P.O. Box 338003
North Royalton, OH 44133

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I further certify that on the 1st day of April 2008, I submitted this Report by express mailing it to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.



Anna DuVal Smith, Ph.D.
Fact Finder