



## **BACKGROUND**

This Fact-Finding involves the City of Newton Falls, (hereafter referred to as the "Employer") and three (3) bargaining units of the Fraternal Order of Police, Ohio Labor Council, (hereafter referred to as the "Union"). The first Union bargaining unit is comprised of all full-time Patrol Officers. The second bargaining unit is comprised of all full-time Sergeants. And, the third unit is comprised of all full-time Dispatchers and Dispatch/Clerks. These Bargaining Units are consistent with and in accordance to SERB rules. Each Unit has their own Collective Bargaining Agreement.

In a letter, dated November 27, 2007, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement expired on December 31, 2007. The parties have met on numerous occasions to negotiate a successor agreement. *Although successful in resolving most issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.*

The parties have been working and negotiating under an extension agreement which contains a retroactivity agreement allowing for cost implications in the current fiscal year to be awarded by the Fact-Finder/Conciliator back to January 1, 2008.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Fact-Finding Hearing was held on June 27, 2008, beginning at approximately 9:00 A.M.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given 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 issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report, that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement.

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the parties proposals.

The following seven (7) issues are the issues that were considered during the Fact-Finding Hearing on June 27, 2008.

ISSUE NO. 1,	ARTICLE 17, SECTION 2, OVERTIME
ISSUE NO. 2,	ARTICLE 17, SECTION 4, OVERTIME
ISSUE NO. 3,	ARTICLE 17, SECTION 5, OVERTIME
ISSUE NO. 4,	ARTICLE 17, SECTION 6, OVERTIME
ISSUE NO. 5,	ARTICLE 21, WAGES
ISSUE NO. 6,	ARTICLE 29, SECTION 8, TRAINING
ISSUE NO. 7,	NEW ARTICLE , PENSION PICK-UP

### RECOMMENDATIONS

ISSUE NO. 1,           ARTICLE 17, SECTION 2, OVERTIME

UNION POSITION:

The Union is requesting a change in Section 2, whereby hours worked shall be defined, for overtime pay purposes, as "Hours worked shall include all hours in paid status."

The Union contends that if an employee works overtime in the same period they have a vacation or compensatory time the overtime would only be paid at the straight time rate since now holiday time, vacation time and compensatory time is not included as hours worked for computing overtime pay.

**EMPLOYER POSITION:**

The Employer is requesting the status quo, contending that they are not interested in the employees trying to double dip by one employee reporting off another who is off comes in and works the overtime while already on a paid day off status.

**DISCUSSION AND RECOMMENDATION:**

The current language as it reads has the potential to reduce overtime exposure along with the time off provisions. Usually in a 24/7 operation such as the parties have here while taking into consideration the industry standard, along with internal/external comparables, the Union's proposal is more the norm.

It is therefore the recommendation that the third sentence of Section 2, be change to read:

*Hours worked shall include all hours in a paid status.*

**ISSUE NO. 2,           ARTICLE 17, SECTION 4, OVERTIME**

**EMPLOYER POSITION:**

The Employer is proposing language that states:

*Any additional extra duty or detail which is not a scheduled department shift shall be offered first to full time personnel within classification.*

The Employer wants to be able to schedule their civilian safety force after first offering the assignment to the Employer's full time employees.

Currently the civilian safety force is used to supplement the full-time officers for events such as car shows, bike shows, Memorial Day parade, the Fourth of July, Labor Day run, Halloween, Hometown Christmas and if needed as storm spotters.

**UNION POSITION:**

The Union seeks to maintain current language fearful that the City is attempting to replace work done by City Police Officers. The Union further contends that this issue has been decided, in the past, by both arbitration and before SERB.

**DISCUSSION AND RECOMMENDATION:**

The current language in all three unit's Collective Bargaining Agreements are similar and the last sentence in all three reads as follows:

In the Patrol Unit and the Dispatcher Agreement.

“Any additional detail shall first be offered to full time patrol officers or full time dispatchers, except in emergencies.”

In the Sergeant's Agreement.

“Any additional detail shall first be offered to full time sergeant's, patrol officers or full time dispatchers, except in emergencies.”

Since it is not the City's intent to erode the bargaining unit or deny the full time employees an overtime opportunity by the use of the civilian safety force, it appears that the current scheduling practices and current language still accomplishes what both the City and the Union want.

To make a language change as proposed by the Employer might lead to a confusion with respect to scheduling the civilian safety force.

The recommendation is therefore the current language or the status quo.

**ISSUE NO. 3, ARTICLE 17, SECTION 5, OVERTIME**

**UNION POSITION:**

The Union is proposing to compensate employees who are mandated to work in an emergency by paying them at two and one-half (2 1/2) times their hourly rate for all hours worked.

The Union contends that when an emergency occurs, full time members are ordered to work or fill vacancies, often at very short notice. The Union is seeking an overtime adjustment to offset this hardship.

**EMPLOYER POSITION:**

The City cites the mandated overtime happened only three to four times last year and that half the employees forced were unable to work for various reasons.

**DISCUSSION AND RECOMMENDATION:**

It appears that the City should develop a plan to use part time officers for such emergency use. However, with that said, the frequency of the mandated overtime for emergencies doesn't, at least for this term of the Agreement, warrant adjusting the overtime compensation.

The recommendation is for the current language or the status quo.

**ISSUE NO. 4, ARTICLE 17, SECTION 6, OVERTIME**

**UNION POSITION:**

The Union is seeking to strike language from the comp time language whereby the Employer may elect to cash out any and all unscheduled comp time of the employees. The decision to cash out should only belong to the employee.

**EMPLOYER POSITION:**

The Employer wishes to maintain the current language contending that there is not a problem and that the Union's complaint only happened once in the last three years.

**DISCUSSION AND RECOMMENDATION:**

Although it doesn't appear to be a big problem now, the Union's argument is correct. Should the Employer decide to cash out the comp time of the employees against their wishes, such, would only result in changing the intent of what comp time is actually negotiated for. A review of the Employer's AFSCME Agreement shows that language can not be found there to suggest that the Employer can unilaterally cash out an employees comp time.

It is the recommendation that the Union's position be accepted and Section 6, will be revised to exclude the Employer from the unilateral cash out of employees comp time.

**ISSUE NO. 5, ARTICLE 21, WAGES**

**UNION POSITION:**

The Union is proposing a 4% increase for each year of the Agreement for all Patrol Officers.

The Union cites wages from 35 County, City and Township police departments, some contiguous, some from the same County and some from neighboring or nearby Counties, to show that the Newton Falls Patrol Officers fall drastically behind in the wages they receive within the above list of comparables.

The Union is proposing that the base rank differential for the Sergeant's be increased from 8% to 11%.

The Union contends that looking at Sergeant's pay on the average in Ohio falls around 13.2% and a 11% rank differential would be more reflective of the Sergeant's duties.

And;

The Union is proposing that the Dispatch unit's wages be increased by 4% in each year of the Agreement and in addition the Union is asking that the various roll up amounts for work at Newton Twp, the Fire District and for the Courts be rolled into the actual wage rate.

The Union cites wages from 17 other Dispatch units to show that the Newton Falls Dispatchers also are behind in their wages with like comparables.

#### EMPLOYER POSITION:

The City is offering a 2.75% increase for each year of the Agreement to all three bargaining units.

The City cites that their AFSCME Unit just settled for the same 2.75% and they would like these units to be compensated the same.

With respect to the Dispatch Unit, the City contends that they need the flexibility with respect to how the Dispatchers are compensated for the work in Newton Twp., the Fire District and the Courts. The Flexibility is needed in case that additional work may come or if one group would drop out.

#### DISCUSSION AND RECOMMENDATION:

Very little discussion took place regarding the wage increase and the City's finances did not come into play.

It is clear from what discussions took place that the City is not citing an inability to pay. The City would like to keep the wage increase given to the FOP units similar to their AFSCME unit.

The City argues that the parties have already agreed on a Healthcare package the same as the AFSCME unit. The FOP units were brought up to a better healthcare package therefore the total compensation package should be taken into consideration.

It is also clear that the Patrol Officers lag significantly behind in comparison to the other 34 police units cited. Newton Falls comes in around 32 in the list of 35. What these comparisons don't show is the size of the community, the size of the police force and the finances of the respective governmental employees.

The same holds true for the Dispatch unit. They fall in the bottom third out of the list of 18 dispatch units used for comparison purposes. Once again, the size and the finances of the communities they work for are not provided.

To illustrate other comparisons, this Fact-Finder uses SERB's annual wage settlement report for 2007.

Statewide the average settlement is \$2.98. The Warren/Youngstown area falls in at \$2.68. For all Cities the average is \$3.19. For all Police the average is \$3.22. And for the first year of an agreement, the average is \$3.03.

The City is attempting to do pattern bargaining with their units. They now have the same healthcare and the City would like the wage increases to also be the same. While pattern bargaining is common and makes sense for any Employer to do, it is easier to accomplish with respect to benefit items. Although you always have to consider the total compensation package, sometimes wages may not be as easy to pattern bargain. Different job types may command a different value. Past wage increases and past compensation always comes into play. Use of internal comparables is one way to justify a wage increase. However, an Employer must also be cognizant of external comparables as well.

Taking into account the total compensation package, past bargaining and the fact that these FOP units lag behind other like units, this Fact-Finder's recommendation on wage increases are as follows:

Effective January 1, 2008, all three units will receive a 3% wage increase.

Effective January 1, 2009, all three units will receive a 3% wage increase.

Effective January 1, 2010, all three units will receive a 3% wage increase.

The roll over language in Section 2, for the Dispatchers will remain unchanged for this Collective Bargaining Agreement.

ISSUE NO. 6,           ARTICLE 29, SECTION 8, TRAINING

UNION POSITION:

The Union is seeking a new section for a training bonus. The Union is requesting that the Employer provide a minimum of \$500.00 to be used for police related training and to be used by all bargaining unit members. The Union is requesting that this amount is in addition to the amount outlined in Section 5.

**EMPLOYER POSITION:**

The Employer is proposing, in Section 5, to provide a minimum of \$500.00 total per employee for training subject to pre-approval by the Chief and City Manager, therefore eliminating the need for a new Section 8.

**DISCUSSION AND RECOMMENDATION:**

The need for police units to continually undergo training is without question. It appears that the parties are looking for the same results. However, to have two Sections requiring \$500 per employee is too costly when taking into consideration the entire economic package.

The recommendation, by this Fact-Finder is to revise Section 5, to read as follows:

Section 5. The Employer will provide a minimum of \$500.00 per employee, annually, for training subject to pre-approval by the Chief and City Manager. Police related training will not be unreasonably denied.

**ISSUE NO. 7, NEW ARTICLE , PENSION PICK-UP**

**UNION POSITION:**

The Union is seeking a pension pick-up that allows for a 2% pick-up in 2008, a 4% pick-up in 2009 and a 6% pick-up in 2010.

The Union argues that the Employer currently has a full pension pick-up for their AFSCME members.

**EMPLOYER POSITION:**

The Employer proposes no change stating that the FOP units' salaries were adjusted at the time their pension pick-up was changed.

The Employer further contends that it is their goal in the next round of bargaining to eliminate the pick-up from the AFSCME contract as well.

**DISCUSSION AND RECOMMENDATION:**

The Employer, with the healthcare package and wage increases, has attempted to do pattern bargaining with its collective bargaining units. Although, there has been a deviation when it comes to the pension pick-up. The FOP units' pension pick-up was changed a couple of contracts earlier in the 1999-2003 Collective Bargaining Agreement. The FOP wages were adjusted and the FOP were told the Employer would do the same with the AFSCME group. The AFSCME unit just signed a new three year agreement with full pension pick-up. That wage adjustment, however, was not enough to keep them in par with other like jurisdictions.

The proposed Union pension pick-up along with the recommended 3% wage increase would add to the FOP units not lagging so far behind other police and dispatcher units and would be a fair resolve for the parties taking in account the whole financial package.

This Fact-Finder's recommendation is that the Union's proposal, as written, be accepted.

A handwritten signature in black ink, appearing to read "Marc A. Winters", with a long horizontal flourish extending to the right.

Marc A. Winters