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STATE EMPLOYMENT
RELATIONS BOARD

2008 NOV 18 A 8:33

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

IN THE MATTER BETWEEN)	
)	
CITY OF SALEM)	
)	FACTFINDER'S REPORT
and)	
)	SERB CASE NOS.
FRATERNAL ORDER OF POLICE)	08-MED-04-0486/0487
OHIO LABOR COUNCIL, INC.)	

This Factfinding arises pursuant to Ohio Revised Code Section 4117.14(C). The Parties, the City of Salem ("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 September 23, 2008 in Salem, Ohio. The Parties were afforded full opportunity for the presentation of positions and evidence. Pre-hearing submissions were received from both Parties. It was agreed to by the Parties that the Factfinder's Report would be issued in mid-November 2008.

APPEARANCES:

for the City:

**Martin A. Bramlett, Clemans-Nelson & Associates,
Inc., 2351 South Arlington Road, Suite A, Akron,
OH 44319.**

for the FOP:

**Charles L. Wilson, FOP/OLC, Inc., 2721
Manchester Road, Akron, OH 44319.**

FACTFINDER'S RECOMMENDATIONS

Statutory Criteria

In reaching Recommendations on the open issues, the Factfinder has reviewed the parties' pre-hearing submissions, and the evidence and positions presented at the Factfinding Hearing. 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

There are 2 bargaining units. The patrol officers unit consists of approximately 15 full-time police officers. The sergeants and lieutenants consists of approximately 6 full-time police officers.

Incorporated Articles

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

Article 1	Agreement, Purpose and Recognition
Article 2	Non-Discrimination
Article 3	Conflict and Amendment
Article 4	Dues Deduction
New Article	Fair Share Fee
Article 5	Hours of Work
Article 7	Court Leave
Article 9	Stand-By Pay
Article 10	Use of Personal Vehicle
Article 13	Disability Leave
Article 14	Insurance
Article 17	Longevity
Article 18	Leave Without Pay
Article 19	Uniforms, Clothing and Equipment
Article 20	Educational Certificate Bonus
Article 21	Hazardous Duty Pay
Article 22	Discipline
Article 26	Seniority Rights
Article 27	Personnel Files and Records
Article 28	Shift Scheduling
Article 29	Paid Administrative Leave
Article 31	Family and Medical Leave
Article 33	Sick Leave Donations
Article 34	Bereavement Leave
Appendix B	Dental Rider
Appendix C	Optical Insurance

Issues

1. Article 6 Overtime

City's Proposal

The City proposes making a distinction between contractual and statutory overtime by adding a Paragraph D as follows:

For purposes of compliance with the Fair Labor Standards Act, the City shall pay overtime for all hours actually worked over one hundred seventy-one (171) in any twenty-eight (28) day period in accordance with the Act. For purposes of compliance with the Agreement, the City shall pay overtime in accordance with this Article.

FOP's Proposal

The FOP rejects the proposed language on the basis such language has caused confusion and grievances in another municipality.

Factfinder's Recommendation

The Factfinder recommends not adding the proposed language on the basis of the FOP's rationale.

2. Article 8 Call Back

City's Proposal

a. Minimum Manning

The City proposes deleting minimum manning from the Agreement on the basis it is a permissive subject of bargaining the City no longer wishes to have in the Agreement. If the Factfinder maintains minimum manning in the Agreement, the City rejects the Union's proposal to delete

the last sentence of Paragraph C, which provides a needed exception if minimum manning is maintained.

b. **Missed Overtime Opportunity**

The City proposes limiting the remedy for a mistakenly missed opportunity by adding the following language to Paragraph E:

In the event a mistake is made and an employee is not properly offered an overtime opportunity, the sole remedy shall be that the next overtime opportunity will be offered to the employee who was missed.

FOP's Proposal

a. **Minimum Manning**

The FOP proposes maintaining minimum manning in the Agreement on the basis that: 1) it is a safety issue; and 2) whether it is a permissive subject of bargaining is a matter for SERB. In support of minimum manning, the FOP proposes deleting the last sentence of Paragraph C, which reads:

In the event of staff reductions due to layoff, death, or retirement, this provision shall be null and void until staffing levels are restored.

b. **Missed Overtime Opportunity**

The FOP rejects the proposed added language on the basis there is no need for an exclusive remedy. Rather, the regular grievance process can handle missed overtime opportunities.

Factfinder's Recommendation

a. Minimum Manning

The Factfinder agrees the bargaining status of minimum manning is a matter for SERB. Accordingly, the Factfinder recommends maintaining minimum manning in the Agreement, at least until SERB addresses whether minimum manning is a permissive subject of bargaining.

The Factfinder also agrees minimum manning is a safety issue. Accordingly, the Factfinder recommends deleting the last sentence of Paragraph C, on the basis of it being an exception that negates the whole.

b. Missed Overtime Opportunity

The Factfinder sees no need for an exclusive remedy for a missed overtime opportunity, and accordingly, does not recommend the added language.

3. Article 11 Sick Leave

City's Proposal

a. Just Cause

The City proposes excluding from sick leave payouts employees who were removed for just cause.

b. Maximum Payout

The City proposes capping the 25% sick leave payout to 25% of 1,280 hours – i.e., 320 hours, consistent with the City's other 3 unions.

FOP's Proposal

a. **Just Cause**

The FOP rejects the City's proposal.

b. **Maximum Payout**

The FOP rejects the City's proposal.

Factfinder's Recommendation

a. **Just Cause**

The Factfinder considers sick leave payouts and just cause terminations to be independent issues that need not be linked. Accordingly, the Factfinder recommends not adding a just cause requirement.

b. **Maximum Payout**

The Factfinder considers it equitable to maintain consistency with the City's other unions on this issue, and therefore recommends the City's proposal to cap sick leave payouts at 25% of 1,280 hours.

4. **Article 12 Hospitalization and Medical Insurance**

City's Proposal

a. **Premium Payments**

The City proposes that it pays \$365.21/month for single coverage, and \$1,276.08/month for family coverage, with the employee paying any additional costs through payroll deductions.

b. Spousal Coverage

The City proposes that spouses of employees who are employed elsewhere shall be required to obtain single coverage from that other employer if coverage is available.

c. Alternative Plans

The City proposes it should be permitted to offer alternative health care plans, with the terms and conditions of those plans determined by the City, and subject to change at the discretion of the City. In the event of any changes in the cost and/or terms and conditions of an alternative plan, an employee would have the option of withdrawing from the alternative plan and returning to the negotiated plan.

FOP's Proposal

a. Premium Payments

Status quo; i.e., maintain 93%/7% split.

b. Spousal Coverage

Status quo; i.e., reject new requirement.

c. Alternative Plans

Status quo; i.e., reject new option.

Factfinder's Recommendation

a. Premium Payments

The Factfinder is well aware of the costs of healthcare insurance, and the City's need to contain healthcare costs. She finds it unrealistic, however, to move the uncertainties of rising healthcare costs solely to

employees. Accordingly, the Factfinder recommends maintaining the 7% employee premium contribution, which is in line with the SERB Health Insurance Report.

b. Spousal Coverage

Instead of a requirement for spouses to obtain health insurance through their employers, the Factfinder finds it more equitable to continue to offer employees the choice between single and family coverage. Accordingly, the Factfinder recommends status quo.

c. Alternative Plans

The Factfinder finds it reasonable to permit the City to offer an alternative plan, with the caveat as proposed by the City that an employee can switch back to the negotiated plan. Accordingly, the Factfinder recommends the City's proposal on Alternative Plans.

5. Article 15 Holidays

City's Proposal

Status quo.

FOP's Proposal

The FOP proposes increasing personal days from 1 per year to 3 per year.

Factfinder's Recommendation

The Factfinder recommends increasing personal days from 1 per year to 2 per year, bringing these units more in line with other City units with regard to total number of holidays.

6. Article 16 Vacations

City's Proposal

Status quo; i.e., accrual is:

1 year	80 hours
7 years	120 hours
12 years	160 hours
16 years	176 hours
20 years	200 hours

FOP's Proposal

Change accrual to:

1 year	80 hours
5 years	120 hours
10 years	160 hours
15 years	200 hours
20 years	240 hours

Factfinder's Recommendation

**Align with the City's non-bargaining unit employees, i.e., change
accrual to:**

1 year	80 hours
5 years	120 hours
12 years	160 hours
17 years	184 hours
20 years	200 hours

7. Article 23 Grievance and Arbitration

City's Proposal

a. Grievance Filing

Add to (A)(4)(a)Step 1:

A grievance must be presented...within 5 working days after it has become known *or should have become known* to the employee.

b. Arbitrator Selection

Add criteria to FMCS panel that it list only National Academy of Arbitrator members, and that each party has the option of requesting a 2nd list at that party's cost.

c. Arbitration Costs and Fees

Switch to "loser pay" for arbitrator fees and room rental.

FOP's Proposal

a. Grievance Filing

Status quo.

b. Arbitrator Selection

Switch from FMCS panel to AMS panel.

c. Arbitration Costs and Fees

Status quo.

Factfinder's Recommendation

a. Grievance Filing

The Factfinder recommends the City's proposal on the basis that ignorance is not bliss when it comes to a grievance.

b. Arbitrator Selection

The Factfinder recommends the FOP proposal on the basis the AMS panel is composed of experienced, diverse arbitrators, and that AMS processes cases more quickly than FMCS.

c. Arbitration Costs and Fees

Status quo.

8. Article 24 Wages

City's Proposal

1.5% increase for each year of the contract, plus lump sum 1.5% of base wages as a "contract incentive" by July 31 of each year of the contract.

FOP's Proposal

4% increase for each year of the contract.

Factfinder's Recommendation

Based on the City's economic status, wages in comparable municipalities, the cost of living index, and the rest of the Agreement, the Factfinder recommends a 2.75% increase for each year of the contract.¹

¹ The Factfinder notes the "me too" provision in the AFSCME contract with the City is not triggered by this Recommendation, given that the Factfinder has granted relief to the City in other sections of the Agreement between the FOP and the City, making the circumstances different between the FOP contracts and the AFSCME contract.

9. **Article 25 Retirement Pick-Up**

City's Proposal

The City proposes reducing pension pick-up from 10% to 8.5% (with the difference to be compensated via the City's Article 24 "contract incentive" proposal).

FOP's Proposal

Status quo.

Factfinder's Recommendation

Given the Factfinder's recommendation against the City's Article 24 "contract incentive" proposal, the Factfinder recommends status quo.

10. **Article 30 Damage to Departmental Vehicles/Property**

City's Proposal

Status quo.

FOP's Proposal

Remove from contract.

Factfinder's Recommendation

The Factfinder recommends removing Article 30 from the contract on the basis that the City maintains automobile and property insurance. If the City finds an employee to have negligently caused automobile or property damage, the City can discipline that employee.

11. Article 32 Layoff and Recall

City's Proposal

The City proposes a layoff notification period of 7 days, a bumping rights deadline of 48 hours, and a new section stating the parties' intention that this layoff and recall article replaces the layoff and recall provisions of the Ohio Revised Code (i.e., Batavia language). The City also proposes clarifying the proposal for the 2 units, i.e., the patrol officers unit has no bumping rights nor is subject to demotions.

FOP's Proposal

Status quo.

Factfinder's Recommendation

The Factfinder recommends, for the sake the clarity, the City's proposal, but for the added Batavia language, which is not necessary.

12. New Article Part-Time Personnel

City's Proposal

The City proposes adding the following:

The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of Salem and maintain the integrity of police department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) or a reduction in regularly scheduled hours of bargaining unit members.

FOP's Proposal

The FOP rejects this proposal.

Factfinder's Recommendation

The Factfinder does not recommend this new article on the basis that part-timers working along full-timers in a police department can be disruptive, given that part-time police officers often are seeking full-time positions and will leave when they have succeeded in doing so.

13. Article 35 Duration

City's Proposal

The City proposes Section B should read:

This Agreement represents the entire agreement between the parties and replaces all prior agreements. The Employer and the Union, for the life of this Agreement, recognize the right of the Employer to exercise its management rights and statutory rights relative to matters not contemplated or addressed specifically herein, provided the exercise of such rights does not conflict with a provision of this Agreement.

FOP's Proposal

Status quo.

Factfinder's Recommendation

The Factfinder recommends the City's language for the first sentence of Section B on the basis the last word, "agreements," is more accurate than the last word in the previous contract, "arrangements." The Factfinder does not recommend the second sentence of the City's

proposed language for Section B as it is superfluous and repetitive of other language in the Agreement.

DATED: November 13, 2008



Susan Grody Ruben, Esq.
Factfinder



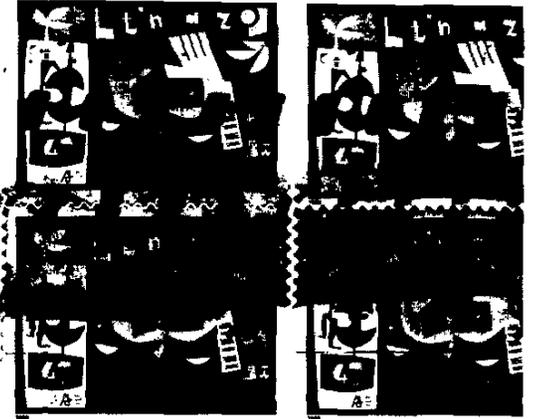
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