

**IN THE MATTER
OF
INTEREST ARBITRATION
FACT FINDING
OPINION & AWARD**

STATE EMPLOYMENT
RELATIONS BOARD

2009 OCT -5 A 10: 12

<p style="text-align: center;">The</p> <p>Fraternal Order of Police, Ohio</p> <p style="text-align: center;">Labor Council, Inc.</p> <p style="text-align: center;">V</p> <p style="text-align: center;">City of Mount Vernon</p> <p style="text-align: center;">Ohio</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>)CASE NO.: SERB 08-MED-08-0798</p> <p>)FACT FINDER: JOHN S. WEISHEIT</p> <p>)DATE OF HEARING: July 22, 2009,</p> <p>)Location: Mt. Vernon City Hall</p> <p>)DATE OF AWARD: October 2, 2009</p>
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REPRESENTATION

<u>Employer Representatives</u>	<u>Union Representatives</u>
<p>Michael J. Underwood, Esq. Porter, Wright, Morris and Arthur LLP 41 S. High St., Suite 2800-3200</p> <p>Terry Scott, City Auditor Jennifer E. Edwards, Esq. Attorney for the City</p>	<p>Mark E. Drum FOP Representative FOP, OLC, Inc 222 E. Town St.</p> <p>Jeff Jacobs, BU Member Roger Moore, BU Member</p>

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC §4117 and rules and regulations of the Ohio State Employment Relations Board.

BACKGROUND

The City of Mt. Vernon, hereinafter referred to as the AEmployer@ and/or ASheriff@, has engaged in collective bargaining with the Fraternal Order of Police, Ohio Labor Council, Inc, hereinafter referred to as the AUnion@ and/or AFOP@, for the purpose of negotiating a successor Collective Bargaining Agreement (CBA) for certain employees of the City in the Police Department. In particular, one bargaining unit consists of the Police Officers/Corporals while the second unit consists of the five Police Sergeants. The Union bargaining units mentioned engaged in multi-unit bargaining with the City and reached tentative agreement on a successor (CBA).

The Union and other parties to the multi-unit bargaining, reached tentative agreement on all issues to a successor contract. All bargaining units, except the Police Sergeant's unit, ratified the CBA for the successor agreement. While the Union engaged in abbreviated talks, no resolution was reached.

The Union moved the matter to Fact Finding for the Sergeant's Unit in keeping with provisions of the ORC 4117. The Fact Finding Hearing was convened on July 22, 2009, at the City Council Chamber, Mt. Vernon, Ohio. The parties timely submitted the pre-hearing Report. The Hearing was closed after each party affirmed they had no further evidence or testimony to put before the Fact Finder and affirmed that they were extended a fair and ample time to present such evidence and testimony considered relevant, the Hearing was closed.

The determination and recommendations entered in the Opinion and Award is made based on the information submitted by the parties at the Fact Finding Hearing, specific issues required for consideration under ORC 4117 and other generally accepted principles and practices in labor interest and rights arbitration.

SUMMARY OF RESPECTIVE PARTY'S

ISSUES AT IMPASSE

The parties mutually confirmed that all terms for a successor agreement were tentatively agreed to, except for all or part of four Articles remaining unresolved.

ISSUES AT IMPASSE

SUMMARY OF UNION'S POSITION	ISSUE	SUMMARY OF EMPLOYER'S POSITION
<p>The FOP proposes the current vacation accrual is after the 1 – 6 – 13 – 20 – 25th year of employment. It proposes said steps be increased after the 1 – 5 – 10 – 15 – 20 and 30th year of employment.</p> <p>The Sergeant's contend that they should either get a wage increase to increase the rank differential between the patrol officers and sergeants or additional vacation time. The later issue, they contend should be granted due to their contention that the fire fighters get more vacation time than the Sergeants. Further, the Union alleges that there is no justification for this claimed disparity.</p>	<p>ARTICLE 23 VACATION</p>	<p>The City proposed that the vacation allowance schedule remain the same as that in the expiring agreement. It proposes that the Vacation Article be modified in keeping with terms reached in the course of multi-unit bargaining.</p> <p>It argues that the Union has offered no justification for expediting the vacation accrual process.</p>
<p>The FOP proposes a wage increase of 3%</p>	<p>ARTICLE 33</p>	<p>The City proposes a 2.5% wage increase to take</p>

<p>effective January 1, 2009, and annually for the next two years. The Union argues this is the same increase offered the patrol officers bargaining unit and additional two other City bargaining units.</p>	<p>WAGES</p>	<p>effect in the first full payroll period that begins no less than 30 days after the fact-finding decision is approved by the both parties. It further proposes a 2.5% increase in each of the following two years. The first to be effective January 1, 2010, and the second to be effective January 1, 2011.</p>
<p>The Union contends this is a recently created position in which one sergeant is assigned by and performs various jobs as assigned by the chief. It notes that the parties agreed to a \$0.75 cents per hour for any sergeant assigned to this position in the course of negotiations.</p>	<p>ADMIN SARG. STIPEND</p>	<p>The Employer proposes a \$0.75 per hour stipend to the normal hourly wage for the Administrative Sergeant to take effect in the first full payroll period that begins no less than 30 days after the fact finding decision is approved by both parties.</p>
<p>The Union seeks a one cent (\$.01) hourly supplement per hour for each year of service.</p> <p>It contends that this amount was previously agreed to during the negotiations process. The Union denotes that the same amount was agreed to between the Employer and Patrol officers in its negotiations.</p>	<p>ARTICLE 34 LONGEVITY</p>	<p>The City proposes that the hourly longevity supplement increase by one cent, from \$0.03-\$0.04, taking effect in the first full payroll period that begins no less than 30 days after the fact-finding decision and award is approved by both parties.</p>

FACT FINDERS DETERMINATION AND RECOMMENDATIONS

The fact that the Sergeants rejected an Agreement after its authorized bargaining agents were parties to a final tentative agreement raises serious consequences. While such rejection is authorized under ORC 4117, the terms in the tentative agreement entered into by the bargaining team are negated and creditability, integrity, and good character are open to question. As a general rule and practice, the rejection of a tentatively agreed to agreement should only occur under conditions that are based on the most serious infractions, omissions, or misleading situations.

The rejecting party assumes the burden of proof to establish the basis for the rejection. The violation was flagrant abuse of the bargaining process; the issue(s) at impasse were not given due and proper consideration or other good and sustained reason.

ISSUE BY ISSUE CONSIDERATION

<p>ARTICLE 23 VACATION</p> <p>Determination</p>	<p>The Union contends it should receive either/or a wage increase or additional vacation time. The testimony and evidence reflect this matter was discussed in the course of the negotiations process. No sustaining facts or premise is found to challenge the inclusion of the City's proposed revision. Based on a review of the evidence the following recommendation is made.</p> <p>It is recommended that the terms set forth by the City be included in the Agreement.</p>
<p>ARTICLE 33 WAGES</p> <p>Determination</p>	<p>The Union contends its proposal of a 3% increase is the same as the patrol officers and two other bargaining units.</p> <p>The argument does not reflect total cost of benefits and wages offered and does not sustain its burden in producing the same facts regarding the alleged wage and benefits offered other bargaining units.</p> <p>It is determined that the Union has failed in its burden of proof in this case. It is recommended that the Union be granted a wage increase of 2.5% effective the date of the parties ratification of this Fact Finding Award. It is further recommended that effective January 1, 2010, a 2.5% increase be made, and effective January 1, 2011, a 2.5% increase be made.</p>
<p>ARTICLE 34 LONGEVITY</p>	<p>The longevity proposal is the same, \$0.01 increase by both the City and the Union.</p> <p>It is recommended that the \$0.01 increase be effective within 30 days after the ratification of this Opinion and Award.</p>

TOTALITY OF AGREEMENT

- X This will affirm the foregoing report, includes the findings, determinations, and recommendation of the unresolved issues put before the Fact Finder in this matter.
- X The Agreement is recommended to include all terms tentatively agreed to by the parties prior to Fact Finding, the recommendations of the Fact Finder regarding issues at impasse and all terms of the successor agreement not a subject of bargaining or lacking action of the parties to remove from continued force and effect in the Agreement.

To the best of my knowledge, said Report and the included recommendations comply with applicable provisions of the Contract between the parties, applicable Sections of ORC 4117 and related SERB Rules and Regulations.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of September 30, 2009.

John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

Case No:)	SERB 08-MED-08-0798
Parties)	FOP, OLC, INC.
)	V
Issue:)	CITY OF MT. VERNON
Location)	FACT FINDING
)	OH

This will affirm that the a copy of the enclosed information related to the above cite case has been submitted to the following agents/representatives of record:

For the Employer	For the Union	For SERB
Michael J. Underwood, Esq. Porter, Wright, Morris and Arthur LLP 41 S. High St., Suite 2800-3200	Mark E. Drum FOP Rep. FOP, OLC, Inc 222 E. Town St.	Mary Laurent, Mediation Dr. STATE EMPLOYMENT RELATIONS BOARD 65 E. State St., 12 th Flr. Columbus, OH 43215-4213

I affirm, to the best of my knowledge, said documents were mailed via **FIRST CLASS MAIL**, USPS, on the date affixed below, and that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.


John S. Weisheit, Fact Finder

Date: October 2, 2009

**WEISHEIT
ARBITRATION**

jackweisheit@columbus.rr.com

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STATE EMPLOYMENT
RELATIONS BOARD

440 Portland Way S. • Galion, OH 44833

2009 OCT -5 A 10:12

October 2, 2009

Michael J. Underwood, Esq.
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41 S. High St., Suite 2800-3200

Mark E. Drum FOP Representative
FOP, OLC, Inc
222 E. Town St.

Case no(s):)	CASE NO.: SERB 08-MED-08-0798
)	FACT FINDER: JOHN S. WEISHEIT
Parties:)	DATE OF HEARING: July 22, 2009,
)	Location: Mt. Vernon City Hall
Issue:)	DATE OF AWARD: October 2, 2009
Site:)	
)	

Messrs.. Underwood & Drum:

Enclosed is the Opinion and Award in the above cited case. Also included find the Invoice for professional services and related expenses. This is submitted in keeping with the terms of the Contract and understandings at the Hearing.

Also enclosed find a signed Form W-9.

If there are questions or additional information is needed, do not hesitate to contact me.

From time to time, I am asked to submit recent awards for publication in professional journals such as CCH and BNA for educational use and reference by labor dispute resolution advocates and neutrals. I make such submissions only with the consent of both parties. If you do not object to this award being submitted no response is necessary. If you do not wish the award published for any reason, just notify me within thirty days of the date of this letter.

Thank you for the opportunity to be of service.

Sincerely,


John S. (Jack) Weisheit
JSW:jw
enc. *SE 1013*