

**OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION**

(UNION)

- and -

CITY OF STRUTHERS (OHIO)

(EMPLOYER)

STATE EMPLOYMENT
RELATIONS BOARD

2009 JUL 22 A 10:44

CASE 2008-MED-11-1334

DRAFT

FACT - FINDER'S REPORT

July 20, 2009

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was officially appointed to this role by SERB on May 2, 2007.

I. APPEARANCES

FOR THE UNION:

Kevin Powers of the Ohio Patrolmen's Benevolent Association (OPBA).

FOR THE CITY:

Michael Esposito of Clemens Nelson & Associates for the City.

II. BACKGROUND

This proceeding involves collective bargaining negotiations between the OPBA and the City of Struthers, Ohio. The local was originally represented by the Fraternal Order of Police (FOP) but late last year it decertified the FOP and chose

the OPBA to represent it. The local is comprised of approximately 12 full-time patrolmen.

The current collective bargaining agreement ("Contract") expired on August 31, 2008. Prior to and since expiration, the parties had negotiated and resolved many issues, but were unable to reach agreement on a number of others.

In an attempt to negotiate resolution of the outstanding issues, with the assistance of the Fact-Finder the parties engaged in mediation on May 27, 2009 in the City administration building. During this meeting the Parties were able to settle a number of additional issues. A fact-finding hearing was then scheduled to address the remaining issues.

In advance of the fact-finding hearing, held on July 8, 2009, in Struthers, both parties filed pre-hearing position statements which were duly received and considered by the Fact-Finder. Prior to commencing the hearing, the parties engaged in assisted negotiations again and were able to resolve several more outstanding issues. The fact-finding hearing was then begun. The parties elected not to call witnesses, but to have their cases presented to the Fact-Finder directly by the advocates.

This resulting fact-finding report contains recommendations regarding the outstanding issues not resolved in earlier direct negotiations, or in either mediated session. It should be noted that this report will only deal with those issues still unresolved at the close of the hearing; all other contract language is either carried over unchanged from the existing contract, or as modified as per the parties' mutual agreement in the two mediated discussions.

FACT-FINDER'S REPORT AND RECOMMENDATIONS

ARTICLE 11 REDUCTION IN FORCE

Union

The Union proposes that current contract language remain unchanged.

City

The City proposes standardizing the reduction in force and recall language to make it consistent with its other labor contracts. It suggests that members be

subject to layoff and bumping in accordance with seniority, and that officers subsequently displaced from full-time status be permitted to bump part-time officers. The City also proposes adding a notice provision to further define what laid-off employees must do to exercise their recall rights.

Recommendation

While the City's proposal to permit laying off full-time officers in lieu of part-time officers may be fiscally prudent, it's inconsistent with the idea that full-time employees have a greater "expectation of continued employment" than do part-timers who not only have much less invested with their employer, but may split their time with more than one employer, as well. However, the City's suggested changes regarding recall rights appropriately tightens up contract language that is currently vague. For these reasons, the Fact-Finder recommends that the contract read as follows (with proposed changes in bold):

Section 1. It is the intent of the parties, through this article, to establish an objective procedure by which a reduction in force may be accomplished, should the need arise, and supersede the provisions of ORC 124.321 to 124.328, 124.38, OAC 123: 1-41-01 to 123: 1-41-22, and all local rules and regulations of the City of Struthers Municipal Civil Service Commission governing work force reductions.

Section 2. Notice. Whenever the Employer determines that a lack of funds or lack of work exists, or a reorganization in the operations of the Employer is necessary, a reduction in force shall occur (i.e., layoff or job abolishment). The Employer shall notify the affected employee(s) in writing at least fourteen (14) calendar days prior to the date of the reduction.

Section 3. Procedure. When the Employer determines that a reduction in force or layoff is to be made within the force, it shall occur by total seniority within the affected classification. The member with the least amount of total seniority shall be laid off first.

A bargaining unit member residing in a higher classification/status (i.e., captain) may utilize his total seniority to displace a member with less total seniority residing in a lower classification/status. Total and classification seniority, for the purposes of reduction and recall, is calculated in accordance with Article 5 of this agreement.

Section 4. Recall. A bargaining unit member laid off under this article shall remain on the layoff list for two (2) years. When the Employer determines

that it wishes to recall laid off members of the bargaining unit, the City shall recall from that list in reverse order in which the member was laid off.

Employees shall be given fourteen (14) calendar days advance notice of recall and such notice shall be sent to the employee's last address on record. It shall be the responsibility of the employee(s) to keep the Employer advised of his current address and maintain any required licensure or certification required for their position. Employees who refuse recall shall lose all seniority and recall rights. Employees who fail to remain qualified to perform the duties of their position will lose all seniority and recall rights.

Section 5. All part-time, reserve, or seasonal police officers shall be laid off before instituting any layoff for bargaining unit members.

ARTICLE 20 COMPENSATORY TIME

Union

The Union proposes changes in Section 5, to wit, adding language that requires the City to pay out unused compensatory time, thereby eliminating the possibility that such requests may be denied in the future at the City's discretion. And, it also proposes having pay-outs be at the employee's rate of pay then in effect at the time of the request rather than the ninety-percent (90%) of pay as it currently reads.

City

The City proposes changes in Section 1 the better reflects the way compensatory time is earned, and to make known in Section 5 that the cash out be at the City's discretion based on an ability to pay rather than mandatory.

Recommendation

In recognition of the fact that City has never denied these requests in the past, the Fact-Finder recommends adoption of the Union's proposal which would codify what has been long-standing practice. He further recommends adoption of the Union's proposal for full, rather than 90% payment, for unused compensatory time in that he sees no good reason to dock employees a 10% reduction in pay. However, mindful of the City's budget constraints, it is recommended that "meet and confer" language be added to this article to allow the City and the Union to

mutually discuss the potential staffing ramifications of such payouts. For these reasons, the Fact-Finder recommends that the contract read as follows (with proposed changes in bold):

Section 1. Compensatory Time Generally. ~~Shall be all Compensatory Time are those hours earned in overtime or for other purposes set forth in this Agreement, and such time was that~~ are taken in lieu of paid compensation. ***Except as otherwise specifically restricted by this Agreement, the Employer retains all its rights to manage the administration of compensatory time under Federal Law. All payments made of compensatory time for cash-out, separation, or utilization shall be at the employee's rate of pay at the time such payment is made or time used.***

Section 2. Compensatory Time-Off Requests. Compensatory time off may be requested, by a member, to be taken in one (1) hour segments to the maximum accrual of compensatory time, providing such times are consistent with the efficient and effective operations of the Department. Use shall be subject to the approval of the Chief of Police or his designee, and such approval shall not be unreasonably denied. Compensatory time shall be accumulated to a maximum limit of four hundred and eighty (480) hours.

Section 3. Separation Payments. A bargaining unit member who is permanently separated from the Department and who has unused compensatory time to his credit shall be paid such accrued compensatory time no later than his last regular pay.

Section 4. Payment at Death. When a bargaining unit member dies, any unused compensatory time shall be paid to the surviving spouse or the estate of the deceased member.

Section 5. Cash-out Request Option. Bargaining unit members may request a pre-retirement cash payment for unused compensatory time and such request may be made twice each year of the labor agreement. Payments that are requested for the first pay period in June must be submitted in writing to the Chief of Police no later than May 15th. Payments for the first pay period in December must be submitted in writing to the Chief of Police by November 15th. Each request must not exceed thirty-two (32) hours of pay. Request for cash payment shall be for no less than eight (8) hour increments. Any request of more than thirty-two (32) hours payment, and providing there is an excess of available funds, shall be at the discretion of the City. ***The parties agree that should the cash-out requests of up to thirty-two (32) hours create a situation that may result in a reduction in force, the parties will meet and discuss whether or not such requests will be fulfilled, partially granted, or delayed/suspended temporarily, and what the effect may be.***

~~Payment for pre-retirement cash-out of compensatory time shall be paid at ninety percent (90%) of the rate of pay at the time of request. Payment for~~

~~any pre retirement cash out shall exclude the City and the bargaining unit members' contributions to the Police and Fire Department Retirement Fund.~~

~~**Section 6. Retirement Cash Out.** Any member of the bargaining unit who retires from the Struthers Police Department shall receive one hundred per cent (100%) of paid compensation for all unused compensatory time and such payment shall be at the existing rate of pay at the time of retirement.~~

Section 7.6. Posting. The Chief of Police shall provide an updated list of compensatory time for each bargaining unit member.

ARTICLE 21 SALARIES AND WAGES

Union

The Union proposes 3% per annum increase in base wage rates, using as a reference point the increases recently negotiated by the City's fire-fighter's local.

City

Through documentation, and the testimony of the City Auditor, the City produced evidence of a more likely than not impending budget shortfall. As a consequence, it proposes to freeze wages, that is maintain the current wage structure and scale, for the remainder of 2009. However, in 2010, the City proposes to move to an expanded wage step system while grandfathering in current employees. And, in the second and third years of the agreement, once the current economic crisis abates, and the City's finances come clearer into focus, the City proposes that the Union have the option of requesting a wage reopener.

Recommendation

The City made a compelling case regarding its current budgetary uncertainty. And, while the Fact-Finder recognizes that the fire-fighter's local did negotiate a general wage increase in its last contract with the City, it must be noted that it was voted on prior to the precipitous collapse of the U.S. banking and finance system in late fall 2008. It must be further pointed out that increases in the cost-of-living over the past year have remained modest and are expected to remain so, and comparables do not establish that this unit is substantially underpaid relative to other departments. Lastly, the City has done an admirable job of moderating past

wage increases in such a way that unlike many other police departments around the state, this unit has to date not had to experience layoffs in an effort to balance the budget.

For these reasons, and in recognition of the fact that all other City employees have agreed to a wage freeze for the duration of 2009 (absent the fire-fighters for the reason mentioned), the Fact-Finder recommends that the City's proposed language be adopted, and the contract read as follows (with proposed changes in bold):

Section 1. Base Salaries and Wages. The following reflects the base rates of pay for bargaining unit members during the course of this agreement.

Effective upon execution, bargaining unit member rates of pay shall be as follows:

<u>Classification</u>	<u>Annual Salary</u>	<u>Hourly Rate</u>
Probationary Rate	\$34,819.20	\$16.74
Patrolman	\$41,184.00	\$19.80

Effective January 1, 2010 and continuing to the expiration of the Agreement, bargaining unit members hired after the execution date of the Agreement shall be paid as follows. Members hired prior to the execution date of the Agreement, shall not suffer a reduction in pay as a result of the implementation of the step system and shall advance to the top rate at their next anniversary date.

<u>Classification-Patrolman</u>	<u>Annual Salary</u>	<u>Hourly Rate</u>
Probationary Rate	\$34,819.20	\$16.74
<i>After 1 year full-time service</i>	<i>\$36,410.39</i>	<i>\$17.50</i>
<i>After 2 years full-time service</i>	<i>\$38,001.58</i>	<i>\$18.27</i>
<i>After 3 years full-time service</i>	<i>\$39,592.77</i>	<i>\$19.03</i>
<i>After 4 years full-time service</i>	<i>\$41,184.00</i>	<i>\$19.80</i>

Section 2. Supervisor's Wages. Only the senior officer on the appropriate turn shall be permitted to perform the supervisor's duties if the supervisor is absent. When the senior officer performs the duties of the supervisor for a single shift or more, he shall be paid the supervisor's hourly rate, less five cents (\$.05) per hour.

In addition, the Fact-Finder further recommends adoption of the following side letter of agreement:

SIDE LETTER
CONTRACT RE-OPENER

Section 1. Notwithstanding the language in Article 21 Wages, Section 1, the parties agree that effective January 1, 2010, the union may file to re-open negotiations. The re-opener will be limited to wages and hazardous duty pay.

Section 2. The parties agree that the re-opener will be conducted pursuant to R.C. 4117 and that should the parties proceed to conciliation, the conciliator appointed for this re-opener will have the authority to award on matters with cost implications in the year of his appointment.

ARTICLE 22
LONGEVITY

Union

The Union proposes that each employee who has completed five (5) years of service receive longevity pay in the amount of \$100 per every year of completed service, with such pay made in the pay period following the employee's anniversary date with the City.

City

In light of its current budgetary concerns, the City proposes maintaining the current longevity schedule for 2009, with a move to a schedule similar to that agreed to by the fire-fighter's local for 2010.

Recommendation

In recognition of the current state of the City's finances, it is recommended that current longevity pay schedule be maintained for 2009. Then, for purposes of inter-bargaining unit consistency, it is recommended that the longevity schedule be amended going forward to be consistent with that of the fire-fighters.

For these reasons, the Fact-Finder recommends that the City' proposed language be adopted, and the contract read as follows (with proposed changes in bold):

Section 1. Service Credit. Each bargaining unit member shall receive, in addition to other pay required under this agreement, an annual service credit payment after his first five (5) years of service, and commencing with the first month of the sixth year of service, the following amounts commencing the first month of the 6th year. ***Bargaining unit members shall continue to***

receive longevity payments at their current rate until January 1, 2010. Effective January 1, 2010, Longevity shall be based on the schedule set forth below. Service credit is calculated in the same manner as Total Seniority Credit in Article _____, Seniority.

Section 2. Payment Schedule. Payment for service credit shall be made in the following amounts on May 1st of each year, following the completion of five (5) consecutive years of service.

Year	Annual	Year	Annual
6 th year	176.00	17 th year	\$563.20
7 th year	211.20	18 th year	\$598.40
8 th year	246.40	19 th year	\$633.60
9 th year	281.60	20 th year	\$668.80
10 th year	316.80	21 st year	\$704.00
11 th year	352.00	22 nd year	\$739.20
12 th year	387.20	23 rd year	\$774.40
13 th year	422.40	24 th year	\$809.60
14 th year	457.60	25 th year	\$844.80
15 th year	492.80	26 th year	\$880.00
16 th year	528.00		

Section 3. Service in Excess of Twenty-Six (26) Years. For each year of service beyond twenty-six (26) years, bargaining unit members will receive an increase in longevity payments in the amount of the increment between the 25th and 26th year of the schedule.

**ARTICLE 23
HEALTH INSURANCE**

Union

The Union proposes deleting the first two indented paragraphs in Section 4 of this article, Premium Costs/Employee Contribution, and leaving the remainder of the language unchanged.

City

Again, for purposes of consistency, the City proposes to maintain the current insurance structure for 2009, but adopting the same insurance contribution structure as the fire-fighters in 2010. And, in light of the current uncertain fate of its budget, it also proposes adding language that would permit it to offer alternative health insurance plans that employees could elect to opt in or out of.

Again, in recognition of the current condition of the City's finances, it is recommended that the City's proposal to freeze current contributions for the duration of 2009 be adopted, amend the contract in 2010 to be consistent with the fire-fighters' insurance contribution schedule, and add language attesting to the City's flexibility to offer alternative plans.

For these reasons, the Fact-Finder recommends that the City' proposed language be adopted, and the contract read as follows (with proposed changes in bold):

Section 1. The City agrees to provide major medical/health care/hospitalization and ancillary coverage(s) (i.e., dental, vision, etc.) for all bargaining unit members in accordance with the terms and conditions of this article.

Section 2. Insurance Committee. There is hereby established a City Health Insurance Committee whose purpose is to select coverage(s), establish and adjust benefit levels during the term of the agreement, evaluate and select providers, and otherwise set the terms and conditions of insurance coverage within the maximum costs set forth in this article. Actions of the Insurance Committee shall be approved and implemented through majority vote.

Section 3. Committee Composition. The committee shall consist of the Mayor, the Finance Chairman of City Council, the Auditor, and the employee representative from each of the following known employee groups: **OPBA Sworn Personnel**, the IAFF, the **OPBA Dispatch**, the street department, the wastewater treatment department, and the non-classified employees department.

Section 4. Premium Costs/Employee Contribution. During the term of this agreement, bargaining unit members shall agree to implement cost containment measures, through the committee structure, that will ensure that the City's total family premium cost does not exceed the yearly maximums set forth below:

For the year 2010 and during the remaining term of the agreement, bargaining unit members shall contribute fifty dollars (\$50.00) **per employee** toward the cost of their insurance coverage Should the total family insurance premium cost fall between one thousand dollars (\$1,000.00) and one thousand one hundred dollars (\$1,100.00), bargaining unit members will contribute **fifty dollars (\$50) or six percent (6%) of the premium cost, not to exceed sixty-five dollars (\$65.00), whichever is greater.** Should the total family insurance premium cost fall between one thousand one hundred dollars (\$1,100.00), and one thousand two hundred dollars (\$1,200.00), bargaining unit members will contribute **fifty dollars (\$50) or seven**

percent (7%) of the premium cost, not to exceed **eighty-five** dollars (\$85.00). The insurance committee will institute measures to ensure that the total family insurance premium cost does not exceed one thousand two hundred dollars (\$1,200.00).

~~**Section 5. Alternative Coverage. The Employer agrees that all City employees, with the exception of those working in the Municipal Court, will be required to participate in insurance under the same terms and conditions as bargaining unit members. Notwithstanding the provisions above, which provide for health care coverage, the Union agrees that the Employer may offer alternative health care coverage programs during the term of the agreement. The terms and conditions of such alternative programs shall be determined by the Employer. The cost and/or the terms and conditions of said programs shall be at the discretion of the Employer and may be subject to change. In the event of changes in the cost and/or terms and conditions of such alternative programs, affected employees may withdraw from said program and shall be entitled to the benefits described in the sections above.**~~

ARTICLE 27 UNIFORM ALLOWANCE AND HAZARDOUS DUTY

Union

For each year of the agreement, the Union proposes an increase of \$50 in the current \$1,000 per annum uniform allowance.

City

The City proposes to freeze the current annual uniform allowance for the duration of the contract, and, effective January 1, 2010, eliminate the hazard duty pay. In support of its proposal, the City points out that not only does no other City unit enjoy hazard duty pay, but police officers, in recognition of the inherent danger in their work, already receive higher pay as a result.

Recommendation

In light of the other recommended changes that would impact this unit financially, this Fact-Finder does not believe it unreasonable to suggest a modest increase in the uniform allowance. Further, the Fact-Finder does not believe now is the time or the place to address the appropriateness of whether or not hazard duty pay is warranted for a police officer unit.

For these reasons, the Fact-Finder recommends that the contract read as follows (with proposed changes in bold):

Section 1. Clothing. All members of the bargaining unit shall receive an annual clothing allowance in the amount of ~~one thousand dollars (\$1,000) in 2006, one thousand twenty five dollars (\$1,025) in 2007, and~~ one thousand fifty dollars (\$1,050) in **each year of this agreement 2008**. The allowance is to be paid, in a separate check, by April 15 of each year of this agreement.

The uniform may be used for any item that is typically a part of the member's uniform and/or equipment, including but not limited to, leather, shoes, guns, handcuffs, flashlight, etc.

Section 2. City Issue. The City shall continue to furnish, and replace, to any member of the bargaining unit who request, body armor, brand, style, and model to be determined by a committee consisting of the Safety Service Director, Chief of Police, and a representative of the ~~Fraternal Order of Police~~ **OPBA**.

Section 3. Hazardous Duty Pay. The City shall provide to all bargaining unit members a hazardous duty pay, in the amount of five hundred dollars (\$500), annually. Payment for the hazardous duty pay shall be made in separate checks.

ARTICLE 31 HOLIDAYS

Union

The Union proposes current language.

City

The City proposes bringing the language of this article in line with its other OPBA bargaining unit language and to add language addressing holiday pay eligibility.

Recommendation

In light of the other recommendations, the Fact-Finder does not feel it warranted to address holiday pay eligibility. Therefore, it is recommended that current contract language remain unchanged.

ARTICLE 42 TERMS OF AGREEMENT AND TERMINATION

Union

The Union proposes that the agreement be effective from 9-1-08 through 8-31-11.

City

The City proposes that the new contract take effect upon ratification and expire three (3) years thereafter.

Recommendation

The Fact-Finder notes that, in support of the City's position, much of the inordinate delay in getting a new contract was at least partially a result of this bargaining unit seeing the need to change representation from the FOP to the OPBA. Therefore, it is more defensible to recommend that the effective date of the new contract be some date certain shortly after expected execution, rather than backdating it to the termination date of the old contract; to do so would result in proposed reopeners, et al, having to take place in just a few short weeks from now.

For these reasons, the Fact-Finder recommends that the contract read as follows (with proposed changes in bold):

Section 1. This Agreement shall be effective ~~November 1, 2005~~, **August 1, 2009** and shall remain in full force and effect through ~~October 31, 2008~~ **July 31, 2012**.

Section 2. It shall be automatically renewed from year to year unless either party notifies the other of its desire to terminate this Agreement and to begin negotiations respecting the terms of a new Agreement. Said notice shall be in writing and presented at least sixty (60) days but no more than ninety (90) days prior to ~~October 31, 2008~~ **expiration**. At the time the request is made for opening negotiations the party requesting the opening of negotiations shall suggest the time and place of the first negotiation session. This Agreement shall remain in full force and effect during the period of negotiations. The parties may mutually agree to extend the terms of this Agreement pending negotiations.

Conclusion

While this Fact-Finder realizes that neither Party will be fully satisfied with these recommendations, this Report does meet the standard of both Parties being equally unhappy but cognizant that this may be the best that can be accomplished under the current economic conditions.

Issued: July 20, 2009



Respectfully submitted,
Jared D. Simmer, Esq.
Fact-Finder

attach.

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Consent Report and Recommendations were served upon the following parties, to wit, the OPBA (via Kevin Powers) and the City of Struthers, Ohio (via Michael Esposito, Esq.) by United States Post Office overnight mail service, and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) by first class mail, this 20th day of July, 2009.



Jared D. Simmer, Esq.

Fact-Finder