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STATE EMPLOYMENT
RELATIONS BOARD

2009 JUL 17 P 1:32

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July 15, 2009

Gerald B. Chattman, Esq.
Buckingham, Doolittle & Burroughs, LLP
1375 East Ninth Street, #1700
Inc. Cleveland, OH 44114-1790

Mr. Rick Grochowski
Staff Representative
F.O.P Ohio Labor Council,
807 Falls Avenue
Cuyahoga Falls, OH 44221

Re: In the Matter of Fact-Finding Between the Fraternal Order of Police, Ohio Labor
Council, Inc., Lodge #90 and City of Painesville, OH.
09-MED-01-0013.

Gentlemen:

With this letter I am pleased to enclose the Report and Recommendations of the
Fact Finder in the above captioned matter.

The statement for my services is also enclosed, along with an executed W-9.
Kindly send payment for the portion owed by each party to me at the above address.

It has been a pleasure to assist you in this matter, and I look forward to the
opportunity to be of service in the future.

Very truly yours,

Michael D. McDowell
Fact Finder

Encl: 2

✓ CC: Ms. Mary Laurent
Administrative Assistant, Bureau of Mediation
Ohio SERB

In the Matter of Fact-Finding Between City of Painesville and F.O.P. Ohio Labor Council, Inc. and Lodge #90 (Patrolmen)
Case No. 09-MED-01-0013.

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

2009 JUL 17 P 1:32

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between	:	
	:	
CITY OF PAINESVILLE,	:	
	:	
Employer	:	Case No: 09-MED-01-0013
	:	
	:	
F.O.P. OHIO LABOR COUNCIL	:	
And LODGE #90 (PATROLMEN)	:	
	:	
Union	:	
	:	
	:	

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Michael D. McDowell, Esq., Fact-Finder
Report Dated: July 15, 2009

APPEARANCES

For the City of Painesville:

Gerald B. Chattman, Esq.
Ryan J. Morley, Esq.
Buckingham, Doolittle & Burroughs
1375 East Ninth Street, Suite 1700
Cleveland, OH 44114

For the F.O.P. Ohio Labor Council, Inc. and Lodge #90 (Patrolmen):

Mr. Rick Grochowski
Staff Representative
F.O.P. Ohio Labor Council, Inc.
807 Falls Avenue
Cuyahoga Falls, OH 44221

In the Matter of Fact-Finding Between City of Painesville and F.O.P. Ohio Labor
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Case No. 09-MED-01-0013.

SUBMISSION

The undersigned was selected by the parties as Fact-Finder in this dispute pursuant to written notice to the Fact Finder dated March 10, 2009. A Collective Bargaining Agreement is in full force and effect between the City of Painesville, Ohio ("City" or "Employer") and the F.O.P. Ohio Labor Council, Inc. and Lodge #90 (Patrolmen) ("Union"), and is hereinafter referred to as the "CBA." The three (3) year CBA became effective April 1, 2006, and the express term of the CBA was to end on March 31, 2009. The CBA has been continued pursuant to Article XXXIX of the CBA which states that the CBA "shall continue to remain in full force and effect until a succeeding Agreement has been negotiated."

The bargaining unit consists of approximately thirty-eight (38) full time Patrolmen who are charged with providing total law enforcement duties within the City of Painesville. The services rendered include, but are not limited to crime prevention, crime detection, criminal investigations and general law enforcement duties, as well as the custody and transportation of prisoners, and process services.

The parties commenced bargaining for a successor CBA on February 15, 2009. The parties met on multiple occasions and were able to voluntarily agree on many articles and provisions, but were at impasse on two (2) issues.

The parties met in Painesville, Ohio on June 24, 2009, and participated in a Fact Finding Hearing. In addition to the representatives of the parties and the Fact-Finder, the following individuals were present at the Fact Finding Hearing:

For the City:

Ms. Rita C. McMahan, City Manager

Mr. Andrew A. Unetic, City Director of Finance

For the Union:

City Patrolman Michael T. Bailey, Union Negotiating Committee

City Patrolman Michael J. DeCaro, Union Negotiating Committee

At the June 24, 2009, Fact Finding Hearing, the parties advised that they have entered tentative agreements on all but two (2) issues. The Fact-Finder then heard testimony, argument and admitted evidence submitted by the parties on the first issue proposed by the Union involving whether, and to what extent, a new Article – Shift Differential - should be added to the Agreement, and the second issue proposed by the Union that the economic changes set forth in the tentative agreements and this Report and Recommendations of the Fact Finder be made retroactive.

The parties agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder as provided under the Ohio Administrative Code Rule 4117.260. The parties also agreed to waive overnight delivery of the Report

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and Recommendations of the Fact Finder and agreed to delivery by electronic mail and regular U.S. Mail.

In presenting this recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, 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.

ISSUES

The parties did, through their negotiation, enter into tentative agreements on all but two (2) issues, the Union's proposed Article on Shift Differential and the Union's proposed retroactivity of economic changes. These tentative agreements are incorporated into this Fact Finding and Recommendation as if fully rewritten herein. The remaining issues for Fact Finding is as follows:

New Article – Shift Differential

Union Position: The Union proposes a new Article be added to the CBA to address shift differential. The Patrolmen currently work on a three-shift basis. The first shift is 11:00 pm to 7:00 a.m.; the second shift is 7:00 a.m. to 3:00 p.m., and the third shift is 3:00 p.m. to 11:00 p.m. The Patrolmen have not been paid any increase for working the first or third shift even though those shifts are different from the regular workweek and cause sacrifices to be made by the bargaining unit members because of the disruptions inherent in working other than the normal shift.

In support of its position, the Union demonstrated that certain of the City's other Union Agreements, concerning City employees represented by the International Union of Operating Engineers and the International Union of Electrical Workers, contain the language and amount of shift differential proposed by the Union in this case. The Union

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argues that the City should provide a shift differential which provides parity with these other Union Agreements entered into by the City.

The Union also presented, as comparables, evidence of shift differentials paid to Patrolmen in other Cities. The Union points out that Patrolmen who work the afternoon and evening shifts are paid a shift differential of forty five (\$0.45) cents per hour in the nearby City of Ashtabula and fifty (\$0.50) cents per hour in the nearby City of Geneva. The Union also demonstrated that the nearby Cities of Eastlake and Wickliffe pay Patrolmen a shift differential of thirty (\$0.30) cents per hour for the afternoon shift and fifty (\$0.50) cents per hour for the night shift. In addition, the Union pointed out that the City of Mentor pays Patrolmen a shift differential of sixty (\$0.60) cents per hour for the afternoon shift and eighty-five (\$0.85) cents per hour for the night shift, which are the same amounts requested by the Union's proposal in this case.

The Union produced evidence that the City has an unencumbered General Fund Reserve, that was carried over from 2008 to 2009, of approximately \$2.9 M.

The Union proposes that the bargaining unit employees working the third shift (3:00 p.m. to 11:00 p.m.) be paid a shift differential of sixty-five (\$0.65) cents per hour for hours actually worked during the regularly scheduled third shift. The Union also proposes that the bargaining unit employees working the first shift (11:00 p.m. to 7:00 a.m.) be paid a shift differential of eighty (\$0.80) cents per hour for hours actually worked during the regularly scheduled first shift.

The Union proposes that the shift differential not be paid on "double back" situations nor paid on hours compensated (either worked or not worked) during emergency call out. The Union also proposes that the shift differential in effect at the start of the regularly scheduled shift will continue to be the differential paid as the result of the overtime worked into another shift-differential-eligible shift.

City's Position: The City argues that the current Collective Bargaining Agreement should remain unchanged in this regard with no shift differential being paid to the Patrolmen.

The City of Painesville is a City of approximately 18,000 residents with, according to the 2000 U.S. Census, a medium income of approximately \$37, 000.00, compared to the County average of \$54,000.00 and the State average of \$40,000.00+. Almost fifty percent (50%) of the City downtown real estate, which is the core of the City and normally has the highest property value, is off the property tax rolls as the property is exempt from taxes because of ownership by Lake County (the City is the County Seat), a hospital system, a college and churches.

The City proved that the Police expenses of the City are paid out of the City's General Fund, which constitute expenses constitute 31% of the expenses paid from the General Fund. The City described its General Fund Revenues as decreasing this year and for the next one (1) to two (2) years. The major sources of revenue for the General fund are

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income taxes, property taxes and interest income. A major impact on income taxes will be the closing of the hospital in October, which would reduce revenues collected from the City income tax by up to \$500,000. The City has been advised by the County that property assessments may decrease as much as 10% in the next year, diminishing the revenues the City would receive from that source. Interest revenues have been plummeting from \$1.7 million in 2007 to a projected \$500,000.00 in 2010. The City expects a shortfall on this year's budget of \$200,000 to \$400,000.

Further, the City proved that it has seven (7) different Union Agreements. Approximately two hundred fifty (250) of the City's approximately three hundred (300) employees are represented by Unions. The City points out that every Bargaining Unit in the City whose contract expired on March 31, 2009¹, including the FOP (Sergeants and Lieutenants), IAFF, Operating Engineers, UAW and AFSCME, agreed to a two percent (2%) wage increase for each year of the contract with no additional significant economic items. The Patrolmen and the City have entered a tentative agreement to the same (2%) wage increase for each year of the contract. The City argues that allowing the Patrolmen to also receive the shift differential proposed by the Union will result in an additional two percent (2%) increase in the salary of the Patrolmen receiving the shift differential.

With respect to the information presented by the Union as comparables, the City represented that it is the fourth (4th) largest municipality in Lake County, Ohio, of the twenty-three (23) municipalities in Lake County. Of these twenty-three (23) municipalities, only three (3) currently pay Patrolmen a shift differential. They are Mentor, Eastlake and Wickliffe, and these Cities are all wealthier than the City of Painesville, as the City demonstrated through the following information:

Location	Median Value of Owner Occupied Housing Units, 200	Median Household Income '99	Per Capita Money Income '99
Painesville, OH	\$91,500.00	\$34,842.00	\$15,391.00
Eastlake, OH	\$110,100.00	\$43,297.00	\$19,905.00
Wickliffe, OH	\$114,300.00	\$43,500.00	\$21,194.00
Mentor, OH	\$147,400.00	\$57,230.00	\$24,592.00

Further, the City represented that the Cities of Ashtabula and Geneva, included with the Union's presentation, are not appropriate comparables as they are not located in Lake County, OH.

¹ Six Union Agreements expired on March 31, 2009. The Electrical Workers Union Agreement is the only Union Agreement on a different cycle.

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In response to the Union's request for parity with other City Union Agreements, the City points out that of approximately 300 employees, only eleven (11) employees are now paid a shift differential for performing certain functions in the water and electrical plants. The current City AFSCME Union Agreement merely parallels the Operating Engineers Union Agreement which includes a shift differential, but no City AFSCME employee is being paid a shift differential.

With respect to the Union's proof of the General Fund Reserve of \$2.9 M, the City demonstrated that this is less than the recommended reserve amount of three (3) to four (4) months of City expenses for unbudgeted emergencies. The City described examples in the recent past of unbudgeted expenses which were paid from the General Fund Reserve. In 2006, there was flooding which cost the City over \$650,000.00 which was paid from the General Fund Reserve and only \$325,000.00 of this amount was reimbursed by the Federal Government years later. In 2007 there was a train derailment which cost the City \$150,000.00 from the General Fund Reserve, until most was reimbursed nine (9) months later. In 2008 there was a major snowstorm which cost the City over \$40,000.00 from the General Fund Reserve, and a transformer problem at the electrical plant cost the City \$500,000.00 from the General Fund Reserve. In addition, a potential shortfall in revenues, which is projected this year, will reduce the General Fund Reserve this year.

In summary, the City argues that it, like many other cities in Northeast Ohio, is struggling financially. In fact, it is the City's belief that of the twenty three (23) subdivisions in Lake County alone, the City of Painesville ranks 19th or 20th in terms of wealth. Income tax revenues are significantly down, as is investment income. The City asserts that it would be extremely burdensome for the City to have to take on this additional payroll expense. Alternatively, if the Fact Finder were to determine that the Patrolmen should be entitled to a shift differential, the City requests that it be taken out of the first year's wage increase of 2%.

Recommendation of the Fact-Finder:

The Fact Finder is persuaded by the evidence of shift differentials being included in other City Union Agreements, and Agreements concerning Patrolmen in certain other nearby Cities, that the proposal by the Union for a shift differential Article be recommended. However, given the economic concerns presented by the City and given the number of Patrolmen that will be paid the shift differential, it is recommended that the shift differential be in amounts stated below, which are less than proposed by the Union. Finally, the Fact Finder is not persuaded by the City's argument that the amount of the shift differential should be taken out of the tentatively agreed 2% yearly wage increase.

It is recommended that a new Article be added to the new Collective Bargaining Agreement and that new Article is as follows:

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New Article – Shift Differential

A shift differential shall be paid to employees working in positions assigned to the first and third shifts. The third shift (3:00 p.m. to 11:00 p.m.) shift differential shall consist of twenty-five (\$0.25) cents per hour for hours actually worked during the regularly scheduled third shift. The first shift (11:00 p.m. to 7:00 a.m.) shift differential shall consist of forty (\$0.40) cents per hour for hours actually worked during the regularly scheduled first shift.

Shift differential will not be paid on “double back” situations.

The shift differential in effect at the start of the regularly scheduled shift will continue to be the differential paid as the result of the overtime worked into another shift-differential-eligible shift.

Shift differential will not be paid on hours compensated (either worked or not worked) during emergency call-out.

Retroactivity of Economic Changes

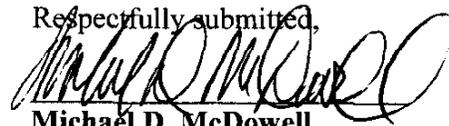
Union Position: The Union requests that all economic changes, including the new Shift Differential Article, be made retroactive to April 1, 2009, the end of the expressed three (3) year term of the CBA.

City Position: The City argues that retroactivity of the economic changes not be awarded based on the evidence presented at the hearing and outlined above in the City’s Position on the shift differential issue. The City requests that all economic issues not be made retroactive but be made effective seven (7) days after the Fact Finder’s Report and Recommendations is issued.

Recommendation of the Fact Finder: The City’s evidence and arguments are persuasive. The record does not support a recommendation that the economic changes tentatively agreed to, or recommended in this report, be made retroactive to April 1, 2009. It is therefore recommended that the economic changes made to the CBA by the tentative agreements and this Report and Recommendations of the Fact Finder be made effective seven (7) days after the Report and Recommendations of Fact Finder is issued.

This concludes the Report and the Recommendation of the Fact Finder.

Pittsburgh, PA
July 15, 2009

Respectfully submitted,

Michael D. McDowell
Fact Finder

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CERTIFICATE OF SERVICE

This is to certify that an executed original of the foregoing was mailed this 15th day of July, 2009, by First Class U.S. Mail to Gerald B. Chattman, Esq. Buckingham, Doolittle & Burroughs, 1375 East Ninth Street, Suite 1700, Cleveland, OH 44114; and Mr. Rick Grochowski, Staff Representative, 807 Falls Avenue, Cuyahoga Falls, OH 44221. This will also certify that an electronic copy in .pdf format of the executed original of the foregoing was emailed this 15th day of July, to Gerald B. Chattman, Esq. at gchattman@bdblaw.com and to Mr. Rick Grochowski at 'rgrochowski@neo.rr.com'.



Michael D. McDowell
Fact-Finder



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