

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD
REPORT OF FACT FINDER**

STATE EMPLOYMENT
RELATIONS BOARD

2011 JUN 17 P 2: 22

IN THE MATTER OF:

CITY OF FOSTORIA

AND

**OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION**

SERB CASE NO. 10-MED-10-1461 (PATROL OFFICERS/DETECTIVES)

AND

SERB CASE NO. 10-MED-10-1462 (CAPTAINS/SERGEANTS)

DATE OF HEARING: May 20, 2011

PLACE OF HEARING: Fostoria, Ohio

FACT FINDER: Charles W. Kohler

DATE OF REPORT: June 16, 2011

INTRODUCTION

On January 19, 2011, the SERB appointed the undersigned as fact finder under Ohio Revised Code Section 4117.14 (c) (3) for Case Numbers 10-MED-10-1461 and 10-MED-10-1462. The parties in both cases are the City of Fostoria, Ohio ("City" or "Employer") and the Ohio Patrolmen's Benevolent Association ("OPBA" or "Union").

Case No.10-MED-10-1461 involves the negotiation of a successor agreement between the City and the OPBA for a bargaining unit consisting of "regular full-time patrol officers and detectives." Case No. 10-MED-10-4162 involves the negotiation of a successor agreement covering "sworn personnel in the classification of Police Sergeant and Captain." The Employer assented to the Union's request to engage in multi-unit bargaining.

The prior agreements between the parties covered the period from January 1, 2008, until December 31, 2010. The parties have continued to operate pursuant to the terms of the 2008-2010 agreements until such time as a successor agreement is executed.

The chief negotiator for the City is John J. Krock of Clemans, Nelson and Associates, Inc. The Union's chief negotiator is Mark J. Volcheck, Attorney at Law. Both chief negotiators represented their respective clients at the May 20, 2011, fact finding hearing.

The bargaining unit currently consists of 20 employees (15 Patrol Officers, three Sergeants, and two Captains.) The full staffing level is 25. Since 2008, the number of officers has decreased. The reduction has

been done through attrition. There are currently no employees on layoff status.

Three of the current patrol officer positions are funded by sources other than the City. The expense of two patrol officers is paid by the local school district. The cost of one patrol officer is funded by a grant.

The parties begin negotiations in late November 2010. The parties continued to negotiate through December 2010. The parties resolved numerous issues through the negotiating process. However, the parties are currently at impasse on various issues.

At the hearing before the undersigned on May 20, 2011, both parties presented their respective positions on the unresolved issues. In addition, the parties presented testimony from various witnesses, and also submitted documents. In this report, the fact finder will review the unresolved issues on an issue by issue basis.

MULTI-UNIT BARGAINING CONSIDERATIONS

Many of the provisions in the two collective bargaining agreements are identical. However, except for Article 4, the issues at impasse are covered in different articles in the two contracts.

The fact finder will attempt to note areas where there are differences in the contract. However, it should be noted that certain proposals only apply to one unit and, therefore, statements made in regard to that issue are only applicable to that particular agreement.

BACKGROUND

The financial condition of the City is germane to all of the unresolved issues. It is undisputed that the national economic downturn that began in 2008 continues to have a striking effect on the geographic area that the bargaining unit members serve.

Further, the City has historically received a substantial financial contribution from the State of Ohio. However, due to budget problems, the state has reduced its payments to all local governments. Therefore, the financial difficulties of the state government have had a significant effect upon the City's overall financial condition.

Although the parties disagree on the precise figures, both parties are in agreement that the financial position of the City has deteriorated since 2008. In 2010, the City decided that it needed to lay off two patrol officers in order to reduce expenditures. In order to avoid the layoffs, the Union and the City entered into in a Memorandum of Understanding (MOU). The MOU was signed on June 25, 2010.

The terms of the MOU provided for a temporary reduction in wages for the period from July 1, 2010, to December 8, 2010. The City agreed to rescind the layoff notices for the two patrol officers. The MOU also contained a provision requiring the City to have at least three bargaining unit members on duty at all times during the period of the wage reduction. On December 9, 2010, following the expiration of the MOU, the wages of bargaining unit members returned to the rates set forth in the collective bargaining agreement.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117 9 05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, 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. 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 determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

TENTATIVE AGREEMENTS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the last agreement,

or the parties have tentatively agreed to a change, the fact finder recommends that the language of the last agreement be retained.

PRELIMINARY STATEMENT

The Union correctly notes that many of the City's proposals would reduce benefits that were previously negotiated. The Union argues that the type of reductions proposed by the City should only be implemented if the Employer agrees to make concessions to the Union in exchange. Further, the Union notes that the proposals of the City would change language that has been in successive collective bargaining agreements between the parties covering a long period of time. It argues that the Employer is trying to get "something for nothing."

The Union is correct as to the ordinary give and take process in contract negotiations. Although fact finding is part of the negotiating process, the role of the fact finder differs from that of a negotiator. As a neutral, the fact finder must give consideration to all the relevant factors and circumstances, and make recommendations that provide a fair and equitable answer to issues that the parties have been unable to resolve themselves through negotiations. (See *How Arbitration Works*, Elkouri and Elkouri, 6th Edition, Page 1358.)

Not surprisingly, the parties disagree on the City's current financial ability to fund wages and benefits of the officers. The Union asserts that the City has adequate funds available to fund the Union proposals. Thus, the Union states that the concessionary proposals of the Employer are unnecessary.

The City argues that the police officers have been given generous wages and benefits during prior years when finances were substantially better. At the current spending pace, the City estimates that the police department will be over budget by \$134,000 at the end of the year. The City contends that, if costs are not reduced in the collective bargaining agreement, it will be necessary to reduce manpower. The City asserts that Fostoria is a relatively small city of approximately 13,000 residents. However, according to the Employer, the wages and benefits of bargaining unit members are more favorable than many larger cities.

For many years, the Union has done an excellent job in representing its members. Evidence submitted by both parties shows that the officers have wages and benefits that are superior to most comparable jurisdictions.

DISCUSSION OF OUTSTANDING ISSUES

Article 4

Recognition

Position of the City

The City proposes to add a provision that would allow it to hire part-time, non bargaining unit court officers. The City asserts that the court officers would be used exclusively to transport prisoners to and from jails. The City asserts that these part-time employees would be sworn police officers, but would have no duties other than the transportation of prisoners.

The City argues that it is unnecessary and inefficient to use full-time police officers to transport prisoners. Further, according to the City, this proposal would save money by using lower paid employees to perform work that ordinarily does not require the exercise of professional police judgment. This City asserts that the proposal would allow bargaining unit members to devote more time to actual law enforcement duties.

Position of the Union

The Union opposes the City's proposal. It contends that the current language should be maintained in Article 4. It argues that the City's proposal would diminish the bargaining unit, and transfer work out of the bargaining unit. The Union points out that the City's proposal does not place any limits on the number of part-time court officers, nor does it limit the number of hours they can work.

Discussion and Recommendations

Fostoria is unusual because it lies in three different counties. Each county has its own county jail. Prisoners must be transported between Fostoria and three different county jails.

The collective bargaining agreement currently allows the use of part-time non-bargaining unit employees to perform jail checks. There was no evidence presented that suggests that this arrangement has been problematic. It apparently was included in the contract for many of the same reasons that the City now wishes to be permitted to use part-time court officers.

The fact finder believes that the proposal could potentially save money. In addition, it would provide additional safety and security to the residents of the City. Transporting prisoners to three different county jails requires officers to regularly travel outside of the City limits. By transferring some routine duties to part-time officers, the amount of time that patrol officers can engage in true law enforcement work will be increased.

However, the Union's point that some limitations be included is meritorious. The fact finder recommends that language be added to the City's proposal specifying that no more than two court officers will be employed. In addition, language should be added providing that no court officer will work in excess of twenty hours in any calendar week.

The fact finder recommends that Section 4.4 of both agreements provide as follows:

The City shall have the right to hire part-time help to do jail checks as required by state law. The City shall also have the right to hire a maximum of two part-time non-bargaining unit court officers. No court officer shall be employed more than twenty hours in any calendar week.

Article 11 (Patrol and Detectives)

Wages

Position of the City

In its proposal, the City proposes a return to the temporary wages that were in effect from July 1, 2010, to December 8, 2010. The wage scale proposed by the City represents a reduction ranging from \$.77 to \$1.00 an hour from the contractual rates that went into effect on January

1, 2010. In its presentation, the City argued that the current finances of the City prevent it from providing any increase in pay to bargaining unit members. Further, the City asserts that the financial situation requires a reduction in wage rates.

The City asserts that revenue in 2011 has decreased three percent from the same period in 2010. It therefore emphasizes the continuing need to achieve additional savings in all departments, including the police department.

Bargaining unit members received annual wage increases of three percent during 2008, 2009 and 2010. The City points out that, during the same three year period, non-bargaining unit City employees received a total wage increase of only two percent.

The City has presented some data on cities that it deems to be comparable to Fostoria. These include: Marion, Norwalk, Fremont, Sandusky, Findlay, Defiance, Tiffin, Ashland, Bucyrus, and Galion. According to the City, the top wage rate for a Fostoria police officer is currently \$3.35 above the average rate for a top step patrol officer in the comparable cities. The City's data shows that the current hourly wage of \$26.62 is the highest of the comparable cities. The City's data shows that the top Sergeant rate is about \$3.00 an hour higher than the average among comparable cities. The comparable data for Sergeants does not include Marion, Bucyrus, or Galion, presumably because they have no comparable classification to the City's police Sergeants.

Position of the Union

The Union proposes wage increases of two percent effective January 1, 2011; an additional two percent effective January 1, 2012; and an additional two percent effective January 11, 2013.

The Union points out that the expenditure levels presented by the City include transfers from sources other than the general fund. It argues that it is improper to compare general fund revenue to expenses that are not paid from the general fund.

The OPBA uses the cities of Bowling Green, Findlay, Maumee, Oregon, Norwalk, Perrysburg, Sylvania, Tiffin, and Fremont for comparison purposes. According to the data presented to the fact finder, the average top pay for a Fostoria officer is \$55,370, compared with an average of \$55,400 for the comparable cities. The OPBA information also shows that, when the uniform allowance, shift differential, longevity and certain other payments are included, the average compensation for Fostoria Officers is \$58,900. This compares with an average total compensation of \$57,850 in the comparable cities.

The OPBA also notes that the Maumee officers will receive a 2 percent wage increase in 2011; Norwalk officers will receive a wage increase of 3 percent in 2011; and Sylvania officers will receive a wage increase of 3.5 percent in 2011.

The Union's statistics also show that the average top Sergeant pay is \$62,000 in Fostoria, compared with a \$62,900 average among the comparables. Total compensation for a Sergeant in Fostoria is \$65,800, compared with an average of \$65,440.

The OPBA argues that officers are concerned because of recent increases in the cost of living. The Union has presented information showing that the Consumer Price Index increased at a 3.2 percent annual rate in April 2011.

Discussion and Recommendations

In determining fair and financially responsible wages and benefits, a fact finder must consider many factors. The parameters that a fact finder must consider include the general economic condition of the jurisdiction, the wages and benefits of bargaining unit members in comparison with other similarly situated public employees, as well as the effect of proposals on the general public.

The wage proposals of both parties are for patrol officers and detectives. The parties have agreed that the actual wage rates for the Sergeant and Captain agreement will be based upon the wages of patrol officers and Sergeants. The parties agree that the Sergeant pay rate will be twelve percent above the top patrol officer rate. In addition, they agree that the Captain pay rate will be twelve percent above the top Sergeant pay rate. Therefore, it is unnecessary to have any discussion concerning the wage rates of the Sergeants and Captains.

A factor often considered by fact finders in making recommendations is the various decisions that management has made with respect to other employees of the jurisdiction. In determining the most equitable pay rate, a fact finder must also give some consideration to prior wage increases received by bargaining unit members.

Since most collective bargaining agreements in the Ohio public sector are of three years' duration, decisions must be made based on projections that may not turn out to be accurate. The necessity of making projections as to the future can have varying effects. For example, an assumption that turns out to be overly optimistic concerning finances may result in wages that are higher than the wages that would have been established as part of the annual budgeting process. On the other hand, unexpected increases in the cost of living may cause employees to lose purchasing power in the later years of the contract. Of course, this is the inherent nature of collective bargaining, or any other contract negotiation that spans a multi-year period of time.

The City's exhibit at Tab 6B is titled Wage Increase History. The Union did not challenge the accuracy of the information in the exhibit. The exhibit shows a comparison between the wage increases of bargaining unit members and non-bargaining unit City employees during the term of the 2008-2010 agreement. In 2008, non-bargaining unit City employees received a wage increase of two percent, while the wages of bargaining unit members were increased by three percent. In both 2009 and 2010 (except for the period when the MOU was in effect), bargaining unit members received an additional three percent increase. This represents a total wage increase of nine percent over a three year period, compared with the two percent increase for City employees not covered by a labor agreement. The City also represents that it will not increase the wages of non-bargaining unit employees in 2011.

According to SERB statistics, the statewide average wage increase for represented city employees was 3.19 percent in 2008, 2.26 percent in 2009, and 1.39 percent in 2010. Thus the bargaining unit members have fared relatively well during the period from 2008 to 2010. The statistics also show a step decline in statewide wage increases from 2008 to 2010.

The Union argues that the 2010 revenue in the City's Exhibit E-1 is less than the estimated revenue shown in the Amended Official Certificate of Estimated Resources that the City filed on May 4, 2010, with the State of Ohio. Indeed, the certificate shows anticipated 2010 revenue of \$7.2 million compared with the City's exhibit, which shows revenue of \$6.8 million. However, since the estimate was prepared in May 2010, it is reasonable to conclude that the actual revenue was less than the estimate.

The Employer's information shows that revenues were \$6.8 million in 2010, compared with \$8.6 million in 2008. The City notes that it has reduced expenses as a method of dealing with the reduction in revenue. In 2008, expenditures were \$9 million compared with \$7.3 million in 2010.

The Union disagrees with the exact numbers, but does not dispute the fact that the City has experienced a substantial decline in revenue. The City represented that it has lost 1,000 jobs since 2008. Since the income tax is the primary source of revenue for the City, a loss of jobs means a loss of revenue for the City. Furthermore, unless the City attracts new employers, the loss in revenue will be permanent.

Certainly, the bargaining unit members have recognized the deterioration of the City's financial position. As noted previously, the

parties agreed to the MOU that reduced wages from July to December of 2010. In April 2011, officers assigned to road patrol agreed to change work shifts from 8 hours to 12 hours. The parties both anticipate that this measure will result in a reduction in expenditures. It is anticipated that overtime costs can be significantly reduced by the use of the 12 hour work shifts.

The fact finder is reluctant to recommend a wage rate that would result in a reduction in regular wages. Employees customarily incur obligations based upon a rational belief that wages will remain at least at the level that they were when an obligation is incurred. Therefore, the fact finder does not believe that it would be prudent to reduce the hourly wage rates of bargaining unit members from the rates previously agreed to for 2010.

However, the fact finder does not believe that an immediate wage increase would be a prudent financial step for the City to undertake at this time. As previously noted, bargaining unit members have received a substantially higher wage increase than non-bargaining unit members during the term of the 2008-2010 collective bargaining agreement. In addition, none of the comparables presented to the fact finder demonstrate an urgent need for a pay increase. The future financial condition of the City is unknown at this point.

Although the Union makes a valid argument concerning recent increases in the cost of living, the future inflation rate is difficult to predict. For example, it is difficult to predict whether the recent increases in the cost of food and fuel are temporary, or are a long term phenomenon.

In reviewing the 2010 MOU, it is apparent that the bargaining unit members desire to avoid having any officers laid off. At the fact finding hearing, the officers adamantly stated that they want to maintain the current practice of having at least three officers on duty at all times. A wage increase may cause the Employer to reduce the workforce.

The fact finder is of the opinion that the best solution is to maintain current wage rates for 2011. However, a modest increase should be implemented in the second and third years of the agreement. If the report of the fact finder is accepted by both parties, the officers will potentially face higher costs if they incur medical expenses, beginning in 2012.

The fact finder will recommend a 1.5 percent (1.5%) wage increase, effective January 1, 2012; and an additional 1.5 percent (1.5%) wage increase, effective January 1, 2013. The delay in implementing a pay raise, plus the cost saving measures recommended by the fact finder, should assist the City in funding the increase.

Wage rates for 2011 will remain the same as the rates that were in effect on December 31, 2010. Wages shall be increased by 1.5 percent (1.5%), effective January 1, 2012; and an additional 1.5 percent (1.5%), effective January 1, 2013.

Article 10 (Patrol and Detectives) Article 12 (Sergeants and Captains)

Overtime

Position of the City

The City proposes multiple changes to the overtime articles in both agreements. Primarily, these changes would eliminate the payment of overtime at double the regular rate of pay. The City asserts that it is the only jurisdiction among comparable cities that pays double time after only

ten hours of work. Of eleven comparable cities, five do not pay double time at all. Of the six cities that pay double time for overtime, an employee is required to work either twelve or fourteen hours before becoming eligible for double time compensation.

The City also proposes a reduction in call-in pay. The provision for call-in pay is included in the overtime articles. Currently, employees receive a minimum of 4.5 hours of pay whenever they are called in. This is based upon a 3 hour minimum at one and one-half times the regular rate.

The Employer proposes a change to a 2 hour minimum at one and one-half times the regular rate. Thus, under the City's proposal, a bargaining unit member would receive 3.5 hours pay at their regular rate as a minimum payment for a call-in.

Position of the Union

The Union proposes that no changes be made to overtime compensation. It notes that the current overtime and call-in pay language has been in the contract since 1987. It points out that the AFSCME bargaining unit has a provision in its contract that allows for double time pay after sixteen hours of work.

Discussion and Recommendations

The fact finder believes that it would be unwise to change the overtime language at this time. Certainly, in law enforcement work, some overtime work cannot be prevented. For instance, an officer may encounter a situation near the end of the work shift. The officer cannot

simply walk off the job at the end of the shift. Instead, the officer must remain on duty for a time extending beyond the scheduled shift.

However, to a large degree, management has control over the amount of work performed at the overtime rate. Traditionally, overtime is a penalty to discourage management from creating situations where employees must work beyond their regularly scheduled hours. Overtime compensation is an area where management can take steps to reduce cost.

In April 2011, the parties agreed to twelve hour shifts. One reason for the change from eight hour shifts is an attempt to reduce overtime. Statements were made at the fact finding hearing to the effect that the twelve hour shifts appear to be significantly reducing overtime. Since the twelve hour shifts began only recently, additional time is necessary to determine if the change is successful in reducing overtime costs. In the interim, it would not be prudent to make adjustments to the overtime provisions of the agreement.

The City has not established that the change in the call-in pay provision would result in any significant savings. The call-in pay provision in the 2008-2010 contracts appears to be consistent with the majority of the cities that the Employer uses as comparisons. The fact finder notes that, of the Employer's ten comparable cities, eight receive the same three hours of overtime pay for call-ins. One city has a 2.5 hour call-in pay provision, and two cities have a two hour call-in pay provision.

The fact finder recommends that the current language be maintained in the overtime articles.

Article 13 (Patrol and Detectives) Article 11 (Sergeants and Captains)

Sick Leave

Position of the City

Currently, the contract requires the City to provide fifteen days of sick leave per year. Once an employee has accumulated 120 days of sick leave, the employee is entitled to an annual payout of 100 percent of the excess sick leave over 120 days. The City notes that the annual payout can be as much as 120 hours at the employee's wage rate. The Employer proposes reducing the payout to fifty percent of the amount of sick leave that is accumulated in excess of 120 days.

In addition, at the time of retirement, employees can receive up to 960 hours of accumulated sick leave. The Employer proposes reducing that amount to a maximum of 480 hours.

Only two other cities of the ten comparables presented by the City allow any annual payout. The other two cities strictly limit the amount of the payout, as compared to the Employer.

For retirement payout, the City notes that all of the comparable jurisdictions pay retiring employees only a percentage of the number of accumulated sick leave hours. The percentage ranges from 33 percent to 66 percent. The City argues that the provisions in the current contract are substantially more generous than comparable jurisdictions.

Position of the Union

The OPBA proposes that the current sick leave payouts remain in place. It also proposes the elimination of a provision in the contract

providing that employees hired after January 1, 2005, will receive a payout based upon Ohio Revised Code Section 124.39.

The OPBA notes that the cash out provisions have been in place since 1987. Thus, employees hired on or before January 1, 2005, have depended upon the current contract provisions. The OPBA points out that the firefighters receive annual sick leave payout without regard to the date of hire, and also receive payment of 100 percent of accrued sick leave upon retirement without regard to the date of hire.

The AFSCME agreement provides for an annual sick leave payout. It also includes a payout of 100 percent of accrued sick leave upon retirement for employees hired prior to May 1, 1999. Employees hired after this date receive 50 percent of unused sick leave to a maximum of 960 hours or 480 hours of pay.

Discussion and Recommendation

The Employer asserts that it desires to implement measures that will have an immediate impact on the current ability of the City to meet its financial obligations. The fact finder does not believe that the proposal of the City on sick leave payout at retirement would have a significant impact on the current financial situation. It appears that most of the bargaining unit members are many years away from retirement. In any case, very few employees retire in any particular contractual period. Thus, the reduction in retirement pay out would not have a significant impact. It involves only individual employees receiving a one-time lump sum payment.

In order for an employee to be eligible for the annual payout, the employee must accumulate at least eight years of sick leave. In other words, an employee must work the equivalent of eight years without using any sick leave. Undoubtedly, the provision was negotiated to discourage employees from using sick leave for frivolous reasons. If the provision is changed, some employees might be more likely to use sick leave. This, in turn, would require more overtime work. As a result, there is no guarantee that the proposal reducing the annual payout would save the City a substantial amount of money.

The parties previously struck a deal reducing sick leave payout for employees hired in 2005 and after. As a result, the City is now saving money. The fact finder notes that only six of the current bargaining unit members were hired on or before January 1, 2005. Thus, the vast majority of bargaining unit members would not be affected by the proposals of the City, unless the Union's proposal to delete the provision was also accepted.

The fact finder believes that the parties, in previous negotiations, have already satisfactorily dealt with the issue of sick leave payout. There is no need revisit the issue.

The fact finder will recommend that the current language be retained for the sick leave articles in the respective contract. The Employer's proposals would not result in any substantial savings. The Union's proposal would change a provision which has been in the last two contracts. In addition, the comparable data submitted by the Union did not show that its proposal can be justified.

The fact finder recommends that the current language be maintained in the sick leave articles.

Article 15 (Patrol and Detectives) Article 17 (Sergeants and Captains)

Insurance

Background

Employees of the City are now covered by two health insurance plans. One plan is called either the "80/20 Plan" or "Option One." The other plan is known as the "90/10 Plan." (The numbers refer to the percentage of out-of-pocket medical expenses paid by the insurance company and the employee, respectively.) Non-bargaining unit employees, as well as bargaining unit members in the fire department, are covered under the 80/20 plan.

The 2008-2010 collective bargaining agreement provided that members could continue the plan that they were covered under on the effective date of the agreement. This resulted in the bargaining unit members being covered under the 90/10 plan for the term of the 2008-2010 agreement. As a result of the June 2010 MOU, bargaining unit members were temporarily covered by the 80/20 plan. However, they returned to the 90/10 plan when the MOU expired in December 2010.

Position of the City

The City proposes that bargaining unit members be included in the 80/20 plan. The City asserts that its goal is to eventually have all employees on the same health insurance plan. The City contends that its costs would be reduced if all City employees were on the same plan. In

addition, the 80/20 plan is less costly to the City than the 90/10 plan that bargaining unit members are currently on.

The City also proposes that language be added requiring that bargaining unit members make the same premium contribution as non-bargaining unit members. The 2008-2010 agreement requires bargaining unit members to pay ten percent of the premium cost. This is the same amount that non-bargaining unit employees currently pay. However, the City wishes to have the flexibility to increase the employee contribution for bargaining unit members if it increases the contribution for non-represented employees.

The City points out that the premium for the 80/20 plan is less than that of the 90/10. Therefore its proposal would lower the employee premium contribution. Currently, employees in the 90/10 plan pay a bi-weekly premium of \$56.09. The family premium under the 80/20 plan is currently \$48.33 bi-weekly.

Proposal of the Union

The Union proposes the continuation of the current plan that bargaining unit members are covered under, i.e., the 90/10 plan. To assist the Employer in reducing expenses, the Union has agreed that, as of January 1, 2012, employees will participate in the 80/20 plan.

The Union also proposes that employees who do not elect insurance coverage receive an "opt out payment" equal to thirty-five percent of the City's share of the premium cost for major medical

insurance for family or single coverage, whichever is applicable. This provision is in the City's agreement with the IAFF.

Discussion and Recommendation

The fact finder notes that the 90/10 plan provides for lower out of pocket expenditures for healthcare needs. For example, the 90/10 plan has no deductible. The 80/20 plan has an annual deductible of \$200.00 per individual or \$400.00 per family member. Various other out of pocket expenses are higher in the 80/20 plan

Considering that this fact finder has recommended that there be a wage freeze during the first year of the contract, it would be inappropriate to place employees in a situation where they would be required to immediately pay more for healthcare services. Therefore, the Employer's proposal must be rejected.

The Union's proposal for an "opt-out" payment would increase expenditures for the City. Considering the City's current financial situation, this would only impose an additional burden on the City treasury.

The fact finder will recommend that the current language be retained for 2011, and that, in accordance with the Union's agreement, bargaining unit members will be transferred to the 80/20 plan in 2012. Since out-of-pocket expenses will be higher, the fact finder does not consider it proper to expose the employees to an increase in the percentage of premium payment. Thus, the premium payment of ten percent will remain as in the 2008-2010 agreement.

The fact finder recommends that bargaining unit members remain on the 90/10 plan until January 1, 2012. At that time will be covered under the 80/20 plan. All other language will remain as in the 2008-2010 collective bargaining agreement.

Article 18 (Patrol and Detectives) Article 16 (Sergeants and Captains)

Holidays

Position of the City

The Employer proposes the elimination of the Good Friday and Easter holidays. It also proposes that the current provision requiring double time pay for working on a holiday be changed to time and one-half for holiday work. The City asserts that it is more generous in providing holidays than comparable jurisdictions. Employees currently have 13 holidays plus their birthday. They also receive two personal leave days.

The City also proposes to eliminate a provision that allows an employee the option of receiving eight hours compensatory time when he or she works on a holiday in lieu of eight hours holiday pay. It asserts that there is not sufficient manpower to allow additional compensatory time. In addition, compensatory time often requires the Employer to schedule an employee to work on an overtime basis.

Position of the Union

The Union notes that the parties have mutually agreed to delete the last paragraph of Article 16.1 and 18.1. The OPBA proposes that all other language be retained.

Discussion and Recommendations

Currently, bargaining unit members are paid at double their regular pay rate for some holidays, and at time and one-half for others. Double time is paid for working on ten of the holidays. Employees are paid at time and one-half for working on Martin Luther King Day, Veterans Day, and the day after Thanksgiving.

It appears that, at one time, the Employer paid double time for all holiday work. However, in prior negotiations, the parties agreed to change the payment to time and one-half for the specified holidays.

Currently, an employee who does not work on a holiday is paid eight hours of pay at his or her regular rate. Employees who work on a holiday receive either time and one-half or double time, plus eight hours of holiday pay at their regular rate. Under the 2008-2010 agreement, employees who work on a holiday have the option of receiving eight hours of compensatory time instead of the eight hours of holiday pay.

The comparable cities used by both parties make it clear that bargaining unit members have more holidays than any of the other jurisdictions. In addition, only one other city, Bucyrus, pays double time for work performed on a holiday. However, Bucyrus only recognizes seven holidays.

The Employer's proposal would result in a holiday benefit for bargaining unit members that would be similar to most of the comparable jurisdictions. In all likelihood, the current holiday benefit was gradually increased during the negotiations of several previous collective bargaining

agreements. The fact finder believes that any reduction in this benefit should also be done gradually. It would be unwise to both reduce the pay rate for holiday work and also reduce the number of holidays, as the City has proposed.

Paying double time for ten holidays is a large expense for the City; it also appears that Fostoria is unique in paying double time for holiday work. Considering the financial situation of the City, the fact finder believes that the payment at two times the employee's regular rate of pay for holiday work should be changed to one and one-half times regular pay for all holidays except for Christmas and Thanksgiving. This will result in an immediate reduction in expense for the City. Even at one and one-half times regular pay, an employee working on a holiday will receive the equivalent of double time and a half, when the eight hours of holiday pay is considered.

Certainly, working on a holiday can disrupt personal and family gatherings. Since most people do not work on holidays, it is a natural time for families and other groups to gather together. However, the fact finder feels that payment of one and one-half times the regular rate plus eight hours of holiday pay is fair and reasonable compensation for the inconvenience of working on holidays.

The fact finder notes that members of the City's AFSCME bargaining unit receive double time if they work on one or more of five specified holidays. However, AFSCME bargaining unit members, for the most part, do not normally work on holidays. Thus, the cost to the City is relatively small.

Obviously, it is a fact of life that police officers must work on holidays. Working on holidays is an integral part of the job for police officers; as it is for firefighters, nurses, doctors and various other employee groups.

The fact finder believes that the number of holidays should not be reduced below the current level. The Employer correctly points out that Easter and Good Friday are religious holidays, and are not recognized by the state or federal government. However, they were included in the agreement for a reason. Thus, the fact finder is reluctant to remove them from the contract.

The Employer has made a valid argument that the use of compensatory time often results in the City incurring overtime costs. Thus, the fact finder will recommend the elimination of the option of taking compensatory time in lieu of holiday pay.

Effective with the signing of this agreement, bargaining unit members will be paid one and one half of their regular pay rate for all work on holidays, except for Thanksgiving and Christmas. Employees who work on these two holidays will be paid double their regular pay rate.

Effective with the signing of this agreement, employees who work on a holiday will be paid eight hours at their regular rate, in addition to the wages paid for working on the holiday. They will not have the option of receiving compensatory time.

The last paragraph of Article 18.1 (Patrol) Article 16.1 (Sergeants and Captains) will be deleted. All other language will be retained in the new collective bargaining agreement.

Article 21 (Patrol and Detectives) Article 19 (Sergeants and Captains)

Longevity

Position of the City

The City proposes that the current longevity pay be changed from a percentage of base salary to an annual lump sum payment. The City proposes a payment of \$50.00 per year of service up to a maximum of twenty-five years. This would be payable at the beginning of each year.

Position of the Union

The Union proposes no change to the longevity articles.

Discussion and Recommendations

The implementation of the City's proposal would reduce the annual compensation for bargaining unit members. This is compensation that employees have depended upon in planning their finances. Although it would, of course, be a cost savings to the City, the fact finder does not believe that any adjustment in longevity should be made at this time. There are many methods of compensating employees for longevity. It is better for the parties to negotiate any changes in longevity so that an agreement can be reached which is satisfactory to both parties. In addition, it is preferable that any changes in longevity be negotiated at the same time that other changes in compensation are being negotiated. This allows for a coordinated effort in making changes in compensation.

The language in the 2008-2010 collective bargaining agreement for longevity will be retained.

Article 19 (Patrol and Detectives) Article 17 (Sergeants and Captains)

Vacation

Position of the City

The City proposes to cap the maximum vacation allowance at five weeks. Currently, employees with twenty-five years of service receive six weeks of vacation. Employees with twenty years of service receive five weeks and two days of vacation. The City argues that all additional time off results in more overtime cost.

Position of the Union

The Union proposes that employees be permitted to take ten of their vacation days in one day increments. The current language allows employees to take a maximum of five days in one day increments. The OPBA points out that most other cities do not have any specific limitation on the number of days of vacation that can be taken in one day increments.

The Union proposes no other changes in vacation. The OPBA notes that six weeks of vacation after 25 years dates back to at least the 1987 collective bargaining agreement.

Discussion and Recommendations

The fact finder does not believe that the proposal of the City would result in significant immediate cost savings. This is because of the short length of service of the current bargaining unit members. About 80 percent of bargaining unit members will not become eligible for more than five

weeks of vacation for a significant length of time. Thus, the Employer's proposal would have a negligible immediate effect on City expenses.

The proposal of the Union to allow employees to take a maximum of ten days of vacation in one day increments has merit. The Employer has not demonstrated that the use of vacation in one day increments would cause any operational problems. This is a benefit that could be provided for bargaining unit members that will be beneficial to them without any cost to the City. Thus, the fact finder will recommend that the Union's proposal to allow employees to use up to ten days of vacation in one day increments will be recommended.

Employees shall be able to take up to ten days of vacation per year in increments of one day. All other language from the 2008-2010 collective bargaining agreement will be retained.

Article 21 (Sergeants and Captains)

Shift Differential and Assignment

Position of the Union

The Union proposes a change in the manner in which shifts are bid. The Union also proposes a requirement that at least three officers be assigned to road patrol at all times.

Position of the City

The City proposes current language for this Article. It also asserts that minimum manning is a permissive subject of bargaining. The Employer does not agree to engage in bargaining on this issue.

Discussion and Recommendations

At the hearing, there was much discussion about the effect of the Union's proposal to change the bidding procedure. The fact finder believes that there are many unanswered questions as to the effect of the proposal upon police department operations. There is a question as to whether there would be adequate supervision on weekends. This is not a proposal that should be recommended by a fact finder. More negotiation is needed to address the concerns raised at the hearing.

The Union has not shown that there is a need for a minimum manning provision. The Employer has assigned at least three officers at all times for at least the last 16 years. The evidence does not show that the proposal addresses a current problem. Further, minimum manning is a permissive subject of bargaining and the City has exercised its prerogative not to engage in bargaining on this issue.

The fact finder recommends current language for Article 21 (Sergeants and Captains).

Article 31 (Patrol and Detectives)

Work Schedule

Position of the Union

The Union proposes the same minimum manning provision as it proposed for the Sergeants and Captains contract.

Discussion and Recommendations

The parties have agreed to the elimination of superfluous language in Article 13.1. For the reasons stated in the previous discussion, the fact finder will not recommend the minimum manning language.

The words "which shall rotate forward each week" shall be deleted from Article 31.1 (Patrol and Detectives).

Article 34 (Patrol and Detectives) Article 31 (Sergeants and Captains)

Duration

Position of the City

The City proposes a one year collective bargaining agreement. It points out that Ohio Senate Bill 5 will become effective on July 1, 2011, unless it is placed on the November ballot as a result of a successful referendum petition. The City contends that a one year agreement will allow it to more quickly benefit from the cost savings provisions of the legislation.

Position of the Union

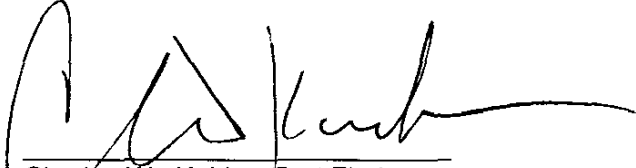
The Union proposes a three year agreement.

Discussion and Recommendations

A three year agreement is the standard length of an Ohio public sector collective bargaining agreement. The City's desire to benefit from Senate Bill 5 is understandable. However, this is not sufficient reason to shorten the agreement by two years. The proposal would require the parties to engage in negotiations later this year. A three year agreement is desirable because it will provide stability to the parties for the maximum period.

The fact finder recommends that the new collective bargaining agreement be effective from January 1, 2011, to December 31, 2013.

The above recommendations are respectfully submitted to the parties for their consideration.

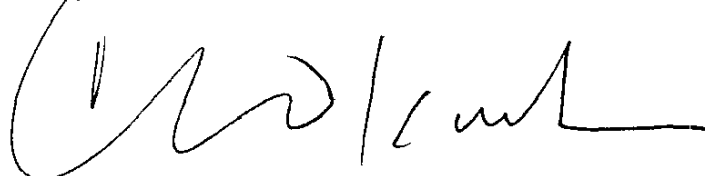


Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 16th day of June 2011, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Mark J. Volcheck, Esq. at markvolcheck@sbcglobal.net; and John J. Krock at Jkrock@clemansnelson.com.

I do hereby certify that on this 16th day of June 2011, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Mark J. Volcheck, Esq., Suite B-2, 92 Northwoods Blvd., Columbus, Ohio 43235; John J. Krock at 6500 Emerald Parkway, Dublin, Ohio 43016; and Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213; each by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder

Kohler, Esq.
ator
us View Blvd.; Suite 250
H 43235



**Bureau of Mediation
State Employment Relations Board
65 East State Street 12th Floor
Columbus, Ohio 43215-4213**