

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

July 22, 2011

In the Matter of:

City of Lorain	)	
	)	
and	)	Case No. 10-MED-11-1699
	)	
Ohio Patrolmen's Benevolent Association	)	

APPEARANCES

For the City:

Jon Dileno, Attorney  
Philip Dore, Safety Director  
Ron Mantini, Auditor

For the Union:

Jeff Perry, OPBA Business Agent  
Tina Trifiletti, Union Director  
LeeAnne Failing, Union Member

Fact Finder:

Nels E. Nelson

## BACKGROUND

The instant dispute involves the City of Lorain and the Ohio Patrolmen's Benevolent Association. The city is located in Lorain County and has a population of 68,652. The union represents approximately 12 dispatchers and clerks in the police department.

The parties are attempting to reach an agreement on a successor agreement to the one that expired on December 31, 2010. They met on two occasions but when they were unable to reach an agreement, impasse was declared. The Fact Finder was notified of his selection on June 9, 2011.

The fact-finding hearing was held on July 15, 2011. When efforts to reach a mediated settlement were unsuccessful, the Fact Finder prepared this report containing his recommendations for the resolution of the issues in dispute.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues

submitted to mutually agreed upon dispute procedures in the public service or in private employment.

### Financial Status and the Ability to Pay

One of the key statutory criteria is the ability to pay. In the city, most of the members of the bargaining unit are paid out of the General Fund which is supported by an income tax of 1.25%. However, the city also has a .25% income tax which goes to the Police Levy Fund where it is currently used to pay the wages of two dispatchers and a number of police officers. A city ordinance requires any money in the Police Levy Fund that is unspent at the end of the year be transferred to the Police Special Revenue Fund where it is used to purchase equipment for dispatchers and police officers.

It is clear that the city faces a severe financial crisis. The record indicates that from 2002 to 2009 it has had general fund deficits ranging from \$1.3 million to \$2.9 million on a budget of approximately \$30 million. The city has been on the state's fiscal watch list since 2002 and it remains on the list along with four other cities.

The city's situation was made worse by the severe recession that began with the decline in economic activity in December 2007. The downturn resulted in the city laying off approximately 45 employees and abolishing additional jobs through attrition. However, despite these cuts, the city ended 2009 with a \$2.56 million deficit.

The city responded to the deficit in a number of ways. First, it issued Health-Claims bonds which generated approximately \$2.0 million for the general fund in 2010. Second, the city won a \$483,000 grant from the Northeast Ohio Public Energy Council. Third, it secured a \$305,000 advance from the county against its property and estate tax collections. Fourth, the city negotiated agreements with four of its five unions to defer

one week of pay resulting in savings of \$275,000. Fifth, it passed an ordinance reducing residents' income tax credit from 100% to 50% which was budgeted to produce \$1.5 million in additional revenue. Sixth, the city laid off seven firefighters and abolished an additional 30 positions through attrition.

The city's actions resulted in the city ending the year with a carryover balance of \$390,000. While this was the first positive balance in a number of years, it amounted to only 1.3% of the general fund budget. Most cities would consider this amount to be too inadequate to begin a new year.

The record indicates that the city will also end 2011 with a positive balance. The \$1.0 million carryover will be the result of the remaining money from the sale of the Health-Claims bonds, \$275,00 for the deferment of an additional week's pay, and \$1.5 million from the reduction in the income tax credit.

The city faces a dramatically different situation in 2012. First, the reduction in the income tax credit was repealed by the voters in November 2010, which results in a \$1.5 million reduction in revenue. Second, Local Government Fund payments from the state will be reduced by \$1.6 million from 2010 and \$600,000 from 2011. Third, Health-Claims bond revenue will be reduced by \$500,000 from the previous year. Finally, no further payroll deferments results in \$275,000 less revenue than in the two prior years. These factors result in a \$3.9 million reduction in general fund revenue.

While the city did not offer projections for 2013, a significant improvement in its financial situation seems unlikely. First, while the recession officially ended with the increase in gross domestic product in the second quarter of 2009, economic activity and employment remain substantially below pre-recession levels. The most optimistic

projections call for a slow growth in employment and GDP while less optimistic forecasters express concerns about a double-dip recession. Second, concerns in Columbus and Washington about budget deficits make any meaningful increase in state or federal funding unlikely. Third, the city's success in attracting some new jobs is a hopeful development but it does not begin to make up for the loss of major employers it has suffered in the past.

## ISSUES

The parties submitted nine issues to the Fact Finder. For each of the issues, he will set forth the positions of the parties with respect to the issue and summarize the arguments and evidence they presented in support of their demand. The Fact Finder will then offer his analysis of the issue, followed by his recommendation.

1) Article 10 - Bill of Rights, Section 10.3 Investigations - The current contract requires the city to inform employees of the nature of any investigation before they are questioned, that the questioners be given access to all written reports prepared by employees, and that employees be given the opportunity to produce or review additional material. The union proposes adding a requirement that employees be notified immediately of internal investigations, that the city be required to conduct a pre-disciplinary conference within 30 days, and that pre-disciplinary hearings be held in abeyance until all criminal charges are adjudicated. The city opposes the union's demand.

Union Position - The union argues that it is not reasonable for the city to wait months prior to bringing charges against an employee. It states that the dispatch unit is

very busy and handles more serious calls than many dispatch centers so that the likelihood of recalling the details of a call months later is minimal. The union adds that “any complaint received by the department can be investigated fairly easily [because] almost everything the dispatchers do is recorded [and] anybody that needs to be interviewed most likely works for the City.” (Union Pre-Hearing Statement, page 4)

City Position - The city argues that the union’s demand ought to be denied. It claims that the union’s demand is problematic because some complaints take more time than others to investigate. The city claims that it needs flexibility in conducting investigations and scheduling pre-disciplinary hearings.

Analysis - The Fact Finder cannot recommend the union’s proposal. The current contract provides a significant degree of protection to employees facing charges but provides the city with the flexibility needed to investigate the variety of complaints it receives. In addition, the Fact Finder believes that without a thorough discussion of the issue, he cannot recommend a change in the language which the parties have lived with for a number of years.

Recommendation - The Fact Finder recommends the current contract language be retained.

2) Article 13 - Hours of Work and Overtime, Sections 13.1 – Paid Lunch and Section 13.6 – Overtime Computation - The current contract establishes a one-hour paid lunch and counts sick leave as time worked for purposes of calculating eligibility for overtime. The city wishes to eliminate these provisions. The union wishes to retain the current contract provisions.

City Position - The city argues that its proposal ought to be recommended. It claims that most casual observers would deem the current arrangements to be “excessive” or “irresponsible.” The city asserts that “under the current financial environment, [the] Fact Finder should readily rid this contract of these excesses.” (City Pre-Hearing Statement, page 3)

Union Position - The union argues that there is no valid reason for recommending the changes sought by the city. It indicates that the language at issue was awarded in fact finding and conciliation. The union claims that the city has failed to demonstrate a problem with the current language and that it makes little sense to change the contract. It adds that “little if any financial benefit would result from the changes [sought by the city].” (Union Pre-Hearing Brief, page 7)

Analysis - The Fact Finder cannot recommend the changes sought by the city. He is recommending very significant sacrifices by the employees in the face of the severe financial challenges facing the city. Given the other sacrifices employees are expected to make, there is no justification for whittling away some of the benefits the union has won over the years.

Recommendation - The Fact Finder recommends the current contract language be retained.

3) Article 17 - Longevity, Section 17.1 - Longevity Schedule - The current contract offers longevity payments beginning with \$600 after three years of service and reaching a maximum of \$4000 after 20 years of service. The union seeks to

add five steps to the schedule bringing the maximum longevity payment to \$5000 after 25 years of service. The city opposes the union's demand.

Union Position - The union argues that its demand should be recommended. It characterizes its proposal as "quite modest." The union points out that its proposal increases the most senior dispatchers' longevity by \$200 per year for five years but notes that most dispatchers will not receive any increase during the life of the agreement. It states "that most longevity packages continue to increase until an employee's twenty-fifth (25) year of service." (Union Pre-Hearing Statement, page 9)

City Position - The city charges that given its fiscal crisis, the union's demand cannot be justified.

Analysis – The Fact Finder cannot recommend the union's demand. While it may be true that most longevity schedules provide for increases in longevity for service beyond 20 years, the current financial situation in the city prevents the Fact Finder from recommending the adoption of the union's demand.

Recommendation - The Fact Finder recommends that the current contract language be retained.

4) Article 18 - Vacation, Section 18.1- Vacation Schedule - The current contract calls for two to four weeks of vacation. The union proposes changing the schedule so that employees qualify for additional vacation one or two years sooner and by adding a fifth week of vacation for 20 or more years of service. The city opposes the union's demand.

Union Position - The union argues that its proposal is reasonable and should be adopted. It claims that “the amount of vacation time the dispatchers presently are to take off is shockingly low, particularly in light of the stressful situation they are working in.” (Union Pre-Hearing Statement, page 11) The union indicates that most cities offer vacation schedules which are superior to what it is proposing.

City Position - The city argues that the union’s demand must be rejected. It claims that its financial crisis precludes granting additional vacation.

Analysis – The Fact Finder cannot recommend the union’s demand. While the current schedule may grant less vacation than some other cities, it is not out of the mainstream. Any improvement in the vacation schedule must be postponed until the city’s financial situation improves and the other needs of employees are addressed.

Recommendation - The Fact Finder recommends that the current contract language be retained.

5) Article 19 – Holidays, Section 19.3 – Work on a Holiday and Section 19.4 – Stress Days - The current contract requires time and one-half for work on a holiday and allows the chief to grant a day off for stress. The city seeks to eliminate stress days and the requirement for time and one-half on holidays. The union opposes the city’s demand.

City Position - The city argues that paying time and one-half for work on a holiday and granting stress days cannot be justified given its financial situation.

Union Position - The union argues that the city’s demand should be denied. It states that the holiday rate of pay is “fairly standard” in the area and that some

jurisdictions offer a higher premium. The union acknowledges that stress days are unique to Lorain but claims that they are “one of the few perks of being an employee of the City of Lorain.” (Union Pre-Hearing Statement, page 13)

Analysis – The Fact Finder must deny the city’s demands. In other parts of his report he is recommending significant sacrifices by the employees and feels that he cannot justify further reductions in the benefits employees have received in the past.

Recommendation - The Fact Finder recommends that the current contract language be retained.

6) Article 20 - Insurance, Section 20.1 - Premium Contributions and Appendix A - Insurance Plan - The current contract requires employees to pay \$40 per month for single coverage and \$80 per month for family coverage; has \$15 co-pays for office visits; includes annual deductibles of \$300 and \$600 in-network and out-of-network; specifies 20% co-insurance in-network and 40% out-of-network; and limits out of pocket costs to \$1000 and \$2000 in-network and \$2000 and \$4000 out-of-network, excluding deductibles and co-pays. The city proposes requiring employees to pay 12% of the premiums; increasing the annual deductibles to \$500 and \$1000 for in-network care and \$750 and \$1500 for out-of-network care; and raising increase the out of pocket maximums to \$1500 and \$3000 in-network and \$2500 and \$5000 out-of-network.<sup>1</sup> The union opposes the city’s demand but offers to increase the employee premium

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<sup>1</sup> City Exhibit 18 indicates that a 12% premium contribution would result in 2011 employee contributions, including dental insurance, of \$50.79 per month for single coverage and \$135.88 for family coverage.

contribution to 1.5% of an employee's wage for single coverage and 3% for family coverage effective January 1, 2012.<sup>2</sup>

City Position - The city argues that its demand is justified. It indicates that employee contributions are “well below the average paid in the public sector and not in the same universe as premiums in the private section.” (City Pre-Hearing Statement, page 3) The city adds that the plan design changes it seeks are consistent with plan designs in the public sector.

Union Position - The city argues that its offer should be adopted. It acknowledges that employees in Ohio are paying a larger portion of the cost of their health insurance premiums but contends that the way employees contribute should be changed. The union maintains that “it makes no sense for employees who make two or three times as much as the dispatchers to pay the same amount” and that “a payment based on a percentage of wages is much more equitable.” (Union Pre-Hearing Statement, page 21)

Analysis – The Fact Finder must reject the changes sought by the city. While the State Employment Relations Board's 18<sup>th</sup> Annual Report on the Cost of Health Insurance in Ohio's Public Sector and the Kaiser Family Foundation's 2010 Annual Survey of Employer Health Benefits establish that the dispatchers enjoy health insurance that is generally superior to other employees in the public sector as well as those in the private sector, he cannot recommend the changes proposed by the city given his recommendation for a three-year wage freeze. While locking in the current employee premium contributions and the co-pays, deductibles, and out of pocket maximums for

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<sup>2</sup> The Fact Finder calculated that the union's proposal would require dispatchers with three or more years of service to contribute \$43.05 per month for single coverage and \$86.10 per month for family coverage.

three years is a very significant benefit for employees and likely represents a considerable cost to the city, it is justified by the Fact Finder's other recommendations.

The Fact Finder must reject the union's proposal to set employee premium contributions as a percentage of their earnings. It is not the usual approach for sharing the cost of health insurance premiums and is one that should be adopted by the parties rather than imposed by a neutral.

Recommendation - The Fact Finder recommends that the current contract language be retained.

7) Article 20 - Insurance, Section 20.6 – Dental Insurance - The current contract requires the city to provide dispatchers with dental insurance which is equal to the insurance provided to the police officers. The city demands the elimination of dental insurance. The union rejects the city's demand.

City Position - The city argues that the Fact Finder should recommend its position. It points out that the dispatchers and police officers are the only city employees with dental coverage. The city claims that "it is time for this preferential treatment to end." (City Pre-Hearing Statement, page 3)

Union Position - The union argues that the city's proposal should be rejected.

Analysis – The Fact Finder recommends that the city's demand be adopted.

While he would be receptive to seeing dental coverage extended to all employees, the city's financial position makes this very unlikely. That being the case, he sees no reason for the dispatchers to continue to enjoy a benefit not available to other city employees.

The Fact Finder recognizes that an abrupt end to dental coverage could create a hardship for the dispatchers. Some of them may have dental appointments scheduled after the cancelation of their coverage and others may have been slow to schedule dental work. For these reasons, he recommends that dental insurance be continued through August 31, 2011.

The Fact Finder must attach an additional condition to his recommendation. Since the rationale for his recommendation is that other city employees do not have dental insurance, he will require the city to promptly reinstate the dispatchers' coverage if the city negotiates an agreement with the union that represents police officers which continues their dental insurance. This protection would not apply to a recommendation by a Fact Finder or an award by a Conciliator.

Recommendation - The Fact Finder recommends The following contract language:

Dental insurance coverage shall end on August 31, 2011, except that it shall be continued or reinstated should the city agree in negotiations for the 2011-2013 contract to continue dental insurance coverage for the police officers. The requirement to continue or reinstate dental insurance coverage shall not apply to action taken as a result of a Fact Finder's recommendation or a Conciliator's award.

7) Article 26 - Shift Differential, Section 26.2 - Weekend Work - The current contract has a premium of 40 cents per hour for work on the afternoon shift and 45 cents per hour for night shift work. The union wishes to add a 35-cent per hour premium for weekend work.

Union Position - The union argues that its demand is justified. It claims that despite the stress of the dispatchers' jobs, they are paid less than any other city

employees. The union contends that a weekend differential is one way to reward employees who are required to work at other than normal times. It states that a weekend differential is a small price for the city to pay for the work it receives from the dispatchers.

City Position - The city argues that the union's demand increases its costs and ought to be denied.

Analysis – The Fact Finder must reject the union's demand. First, the union did not show that a weekend differential is normally paid to dispatchers. Second, the city's financial situation makes it difficult to recommend adding any cost to the city's already strained budget.

Recommendation - The Fact Finder recommends that the current contract language be retained.

8) Article 27 - Wages, Section 28.1 – Wage Adjustment - The current contract has a wage schedule with three annual steps starting at \$29,847.15 and reaching \$34,439.12. The union demands that wages be increased 3% effective January 1 of 2011, 2012, and 2013. The city seeks a three-year wage freeze.

Union Position - The union argues that its demand is justified. It claims that while the economy has not completely recovered from the recession, "there are consistent signs of improvement worldwide." (Union Pre-Hearing Statement, page 23) The union states that private sector profits have been increasing since the fall of 2009 and that many public employers have had increased revenues for the last three to 12 months. It adds that while "strange things" have been coming out of Columbus and that the situation may

not end for a few years, “there are certain filters that may prove effective in the coming months.” (Union Pre-Hearing Statement, page 24)

The union acknowledges that the city has been in poor financial shape for a long time but asserts that it currently has some “extra money.” It states that since the city’s dispatchers are the lowest paid dispatchers in the county and the lowest paid employees in the city, some of the money should be used to adjust their wages. The union complains that “the city has always managed to find money for the Police when there was little or no money for the dispatchers.” (Ibid.)

The union maintains that it has attempted to help the city in the past. It indicates that despite the concessions it offered, it has been hit hard with layoffs. The union claims that “it will simply reject any attempt to reduce the present contractual level of benefits [and] would rather see the size of the various bargaining units reduced.” (Union Pre-Hearing Statement, page 25)

City Position - The city argues that the union’s demand must be rejected. It claims that it would be “wholly irresponsible” to recommend any increase in wages. The city asserts that “the OPBA is serving as the lead union in this round of negotiations [so that] its contract would have a devastating snowball effect for the City in its remaining negotiations.” (City Pre-Hearing Statement, page 3)

Analysis – The Fact Finder must reluctantly recommend the city’s proposal. It has suffered significant financial problems for nearly a decade due in great part to the loss of a number of major employers. In the last few years, it has faced a “perfect storm” created by the most severe recession since the Great Depression, the loss of state funds, and the voters’ repeal of city council’s reduction of the income tax credit. If the Fact

Finder were to recommend a wage increase, he would be ignoring one of the important statutory criteria governing the fact-finding process.

The Fact Finder must reject the union's suggestion to grant a wage increase and force the city to lay off employees. This suggestion fails to recognize that the city has already laid off a significant number of employees and has further reduced employment through attrition. The union must also understand that the work done by dispatchers and many other city employees is essential for the safety and welfare of the public making it difficult to further reduce their numbers.

Despite the recommendation for a wage freeze, the Fact Finder believes that his report should not be rejected. He has denied the city's attempt to eliminate many of the benefits currently enjoyed by members of the bargaining unit. Most importantly, his recommendations protect the dispatchers' health insurance plan and their modest premium contributions and prevent the city from imposing wage cuts as has been done by an increasing number of public employers.

Recommendation - The Fact Finder recommends the following contract language:

The wage schedule shall be frozen for the duration of the agreement.  
However, any employee eligible for a step wage increase shall receive the scheduled increase.

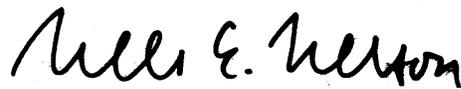
9) Article 30 - Present Benefits and Past Practices, Section 30.1 - Past Practices - The current contract requires the city to continue benefits and practices not in conflict with the agreement. The city seeks to delete this provision from the contract. The union wishes to retain it.

City Position - The city argues that the provision at issue should be dropped from the contract. It contends that locking in practices in perpetuity takes a substantial amount of flexibility out of its hands while the severe economic times require it to maintain some level of management rights. The city complains that the IAFF used nearly identical language to thwart a change in payroll practices it had attempted to implement.

Union Position - The union argues that the city's demand must be rejected. It indicates that the language at issue has been in the contract since it has represented the dispatchers and that it is included in the city's agreements with its other bargaining units. The union charges that the city has not provided an adequate reason for eliminating the provision.

Analysis - The Fact Finder recommends that the city's demand be denied. The language has been in the contract for many years and similar provisions are found in many collective bargaining agreements. The Fact Finder believes that the city's current financial difficulties may make the language at issue an important protection for employees.

Recommendation - The Fact Finder recommends that the current contract language be retained.



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Nels E. Nelson  
Fact Finder

July 22, 2011  
Russell Township  
Geauga County, Ohio