

Received Electronically @ SERB Aug, 9, 2012 3:17pm

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
August 6, 2012

In the Matter of:)	
)	
The City of North Olmstead)	
)	
)	SERB Case Nos.
)	11-MED-09-1099
vs.)	11-MED-09-1100
)	11-MED-09-1101
)	
The Fraternal Order of Police /)	
Ohio Labor Council Lodge No. 25)	

APPEARANCES

For the Union:

Lucy DiNardo, FOP/OLC Bargaining Representative
Mike Kilbane, President North Olmstead FOP/OLC Local 25
Kevin Curtis, Lodge 25 Bargaining Unit Representative
Chuck Floritto, Lodge 25 Bargaining Unit Representative
Robert Flynn, Lodge 25 Bargaining Unit Representative
Dave Huspaska, Lodge 25 Bargaining Unit Representative
Eric Morgan, Lodge 25 Bargaining Unit Representative
Bill Saringer, Lodge 25 Bargaining Unit Representative

For the City of North Olmstead:

Gary Johnson, Attorney for the City of North Olmstead
Carrie Cooper, Director of Finance City of North Olmstead
Cheryl Farver, Director of Human Resources City of North Olmstead
Michael Gareau, Law Director City of North Olmstead

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the membership of the North Olmstead Police Department represented by the Fraternal Order of Police/Ohio Labor Council Lodge 25 (Union) and the City of North Olmstead (Employer). Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions; but they were unable to come to an agreement, and eight issues remained on the table: 1) workweek and scheduled hours; 2) Overtime/Extra Duty and Call Out pay; 3) Wages; 4) Longevity Pay; 5) Sick Leave; 6) Employee Rights; 7) Union Leave; and 8) Duration.¹ The parties requested that the Fact Finder conduct a mediation effort and there were a number of mediation sessions, but the parties could not agree on the terms of the prospective contract. Consequently, a Fact Finding Hearing was scheduled for June 8, 2012 at the North Olmstead City Building. Prior to the Fact Finding Hearing, the parties were able to reach a mediated settlement. The mediation/hearing commenced at 10:00 A.M. and ended at approximately 2:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.

¹ The parties did reach agreement on a number of issues and these agreements are included in the Fact Finder's recommendations by reference. A list of these TA's can be found in Appendix A of this report.

- (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 private employment.

Introduction:

The major reason that the parties had trouble reaching an agreement was a difference of opinion about the state of the City's finances. During the term of the expiring contract, the City asked the Union to accept a number of concessions. The Union agreed to a series of modifications in the contract in an attempt to alleviate some of the financial pressures facing the City. In addition, the City laid-off a number of union and nonunion employees, and took other actions to reduce expenditures. These efforts were successful and the City avoided a financial meltdown.

Consequently, the City had a substantial carryover balance in its budget. The police officers believed that the City had demanded concessions when its financial condition did not warrant concessionary demands. Therefore, the Union argues that it should receive wage and benefit payments to catch up for its prior concessions, and that it should also receive additional wage and benefit increments during the term of the prospective contract. That is, the Union believes that its membership made unnecessary sacrifices based on financial information that was not correct during the term of the expired agreement, and that it should be recompensed for these concessions along with additional wage and benefits enhancements in the prospective agreement.

The City strenuously objects to this view of the events. The City contends that it was necessary for all City employees to make sacrifices during the last few years because of the fall in revenue caused by the severe recession starting in 2007. Furthermore, the

City testified that its financial problems were ongoing, and that its financial outlook remains grim. The City agrees that it ran a substantial carryover balance in its budget during the last budget cycle, but argues that the carryover was the result of the layoffs and concessions made by its labor force. The City argues that it would have been insolvent without these actions. The City also testified that all of the concessions made by the police officers had been rescinded and that the terms of the previous contract were currently back in force.

The preceding paragraphs are meant only to give a background to the current negotiations. The Fact Finder is not making any judgments about the parties' respective positions on the need for concessions and layoffs during the previous contract. However, the parties' inability reach an agreement on the current contract is directly related to their different views on the events of the last few years. The Union is 1) adamant that it will make no further concessions on any issue, and 2) that it should receive wages and benefits payments that compensate its membership for the concessions that they made during the term of the prior agreement along with significant wage and benefit improvements during the term of the new agreement.

The City contends that its finances are still tenuous and that it cannot afford to meet the Union's demands. In addition, the City argues that it faces further fiscal problems because of the phasing out of the inheritance tax and the continuing cutbacks in State Local Government fund payments that affect all local governments including North Olmstead. The City believes that it must continue to restrict its expenditures in the near to intermediate future. In other words, the City does not believe that its financial condition will be significantly better during the term of the prospective agreement.

Therefore, the parties' difference of opinion about what happened in the past and a further difference of agreement on what will happen from the present into the future with respect to the City's financial condition made the negotiations between them long and arduous.

There was another factor that affected these negotiations. There are three separate units involved in the negotiations. The North Olmstead Police Department consists of a gold unit, a blue unit, and a corrections unit. All three units bargain as a coalition. This makes negotiations time consuming because some issues are more important to one unit than the other two units. Consequently, there is much give and take between members of the Union negotiating committee. Coalition bargaining is not necessarily bad strategy, and it may lead to less total time spent in negotiations because the parties are negotiating all of their contracts at one time. However, the Union committee must often come to an agreement over an issue internally before it can negotiate with the Employer, and this process tends to take time and slow down the overall pace of negotiations.

The following paragraphs will outline the parties' positions on the issues and recommend the language that the parties agreed to. It should be noted that the Fact Finder believes that the settlement is reasonable. Moreover, most of the agreements are very similar to language that the Fact Finder would have recommended in the absence of a settlement.

Issue: Article V – Work Week/Scheduled Hours

City Position: The City demanded to change the definition of a shift double back.

Union Position: The Union rejected the City’s demand.

Discussion: The Union believed that the City’s demand would be a concession from the current contract language. After much discussion over the City’s proposal, the parties agree to maintain the status quo for the life of the new agreement. The only change in the article was the deletion of Section 5.03. This language was related to the concessions made by the union membership during the last agreement and is no longer in force. Therefore, the parties agreed to delete Section 5.03.

Finding of Fact: The status quo shall remain in effect with respect to Article V.

Suggested Language: Section 5.03 shall be deleted from the contract.

Issue: Article VI – Overtime/Extra Duty/Call Out

City Position: The City demanded a change in the way that hours of work are calculated for overtime payments by deleting sick leave hours from the definition of hours worked. In addition, the City demanded that overtime be paid after 40 hours of work in a week, rather than overtime calculated as working more than 8 hours per day.

Union Position: The Union rejected the City’s demand. In addition, the Union demanded that the payment be increased for an officer working out of his/her classification.

Discussion: The City’s demand regarding payment of overtime after 40 hours per week replacing the current language that mandates overtime after an officer works 8 hours per day is in accord with the Fair Labor Standards Act but is unusual in most comparable

jurisdictions throughout Northeast Ohio. The City was unable to convince the Union that the change was necessary. In a similar manner, the definition of hours worked often contains sick leave hours in many comparable jurisdictions. Consequently, the City reluctantly withdrew these proposals in an attempt to reach an agreement on the proposed contract.

The change sought by the Union requires the City to pay an officer who temporarily works out of classification at the rate of pay for the position. That is, if a patrol officer works as a sergeant, then he/she is paid the sergeant's rate for the hours actually worked. This provision is standard within comparable jurisdictions, and therefore the Fact Finder recommends its inclusion into the contract.

Finding of Fact: The parties' positions on these issues are similar to contract provisions found in many police contracts throughout Northeastern Ohio.

Suggested Language: Article VI

6.03 Any time an employee below the rank of sergeant is required to temporarily take charge of a shift command, such employee shall be paid the sergeant's rate of pay for each hour worked in that capacity. Any employee assigned as the Acting Chief of Police in the Chief's absence and in the absence of the Captain, shall be paid Captain's pay.

Issue: Article VII – Wages

Note: The issue of wages was tied to the longevity payment and, therefore the two issues will be discussed together.

City Position: The City offered a 2.0% wage increment in 2012 and 2013. In addition, the City demanded to change the way that longevity payments were calculated.

Union Position: The Union rejected the City's proposals and demanded a wage increase of 5.0% in the first contract year and 4.0% in the second and third contract years.

Discussion: The wage and longevity issues generated the most discussion and problems for the parties in trying to find an agreement. The City rejected the Union's wage demand as unrealistic. The Union argued that the demand was partially a demand to catch-up for the concessions that it accepted during the term of the prior agreement. The City claimed that it could not afford to pay the demand. During the course of the discussions on the issue, the Union reduced its demand.

The second issue, longevity, also was the source of much debate. Currently, the City pays longevity as a percent of the base rate. The City desires to change this to a flat scale. During the negotiations, the City proposed a longevity/base wage adjustment that would insure that all of an officers' longevity pay would be paid to the officer. That is, the City calculated the total amount of longevity pay currently paid to the union membership and agreed that that same amount of money would still be paid to the officers. Therefore, there is a base rate adjustment for a wage increase and a further adjustment for longevity pay added to the scale.

This second adjustment is necessary because the current percentage longevity scale generates more income to the officers than the new flat rate scale. The City was not asking the officers for a concession on this issue. The fact that the new wage scale proposed by the City insured that every officer received the same amount of longevity pay and wages after the proposed change, ultimately led to the parties agreeing on the new base rate.²

² The parties' calculations of the new wage rates varied by a few cents in the second and third years of the prospective contract because of rounding errors. The City's financial software will calculate the exact figure. However, the Fact Finder and the parties all agree that the final figure will not differ materially from the numbers found in this report.

Finding of Fact: The parties agreed to a new longevity scale and 2.0% wage increase for the second and third year of the proposed contract.

Suggested Language: Article VII Wages

7.01 Effective at the first full payroll period starting January 2012, January 2013, January 2014, all employees shall be paid according to the following scale.

	2012	2013	2014
	Hourly Rate	Hourly Rate	Hourly Rate
Patrolman First Year	22.22	24.10	24.68
Patrolman Second Year	23.99	25.91	26.43
Patrolman Third Year	25.76	27.72	28.27
Patrolman Fourth Year	27.52	29.51	30.10
Patrolman Fifth Year	30.29	32.34	32.99
Sergeant	34.22	36.54	37.27
Lieutenant	37.81	40.37	41.18
Captain	41.80	44.63	45.52

7.02 All Sergeants shall maintain a thirteen (13%) rank differential between their base rate of pay and the base rate of pay of the highest paid patrolman.

7.03 All employees holding the rank of Lieutenant shall maintain a ten and one-half (10.5%) percent rank differential between their base rate of pay and the base rate of pay of the highest paid sergeant.

7.04 All employees holding the rank of Captain shall maintain a ten and one-half (10.5%) percent rank differential between their base rate of pay and the base rate of pay of the highest paid lieutenant.

7.05 Any employee shall, while on duty as a plain clothes Detective of Juvenile Officer, be paid additional annual compensation at the rate of one thousand seven hundred (\$1,700.00) dollars paid bi-weekly and prorated.

7.06 Any employee while on duty as an Evidence Technician and/or Field Training Officer shall be paid additional compensation at the rate of eight hundred (\$800.00) dollars. Compensation shall be paid upon assignment to the position bi-weekly and prorated.

7.07 Any employee who is assigned to the S.W.A.T. and/or Bomb Technician Units shall be paid additional compensation at the rate of three hundred (\$300.00) dollars annually. Compensation shall be paid upon assignment to the position bi-weekly and prorated.

7.08 All employees shall receive a shift differential in the amount of seventy-five (\$.75) cents per hour. Shift Differential shall be paid to employees assigned to the second (1500 to 2300) shift, third (2300 to 0700) shift, and swing (2000 to 0400) shift respectively.

7.09 All forms of compensation shall be paid by electronic deposit to commence at the Employer's convenience, but not less than thirty (30) days after the execution of this Agreement. In the Event an employee is deemed un-bankable, the Employer will meet with the employee to attempt to remedy the situation.

7.10 deleted

7.11 deleted

Suggested Language: Article VIII – Longevity

8.01 All full-time sworn employees shall receive longevity pay as additional compensation computed on their annual salary as follows through December 31, 2012.

- 4% after the employee completes 5 years
- 5% after the employee completes 10 years
- 6% after the employee completes 15 years
- 7% after the employee completes 20 years.

For the purpose of this section, the term annual salary is defined as base pay, shift differential, over-time, vacation, and sick pay.

8.02 All full time sworn employees effective January 1, 2013 shall receive longevity pay as additional compensation to their annual salary as follows.

- \$ 500.00 after the employee completes five (5) years
- \$1,000.00 after the employee completes ten (10) years
- \$1,500.00 after the employee completes fifteen (15) years
- \$2,000.00 after the employee completes twenty (20) years
- \$2,500.00 after the employee completes twenty-five (25) years

In computing length of service for the purpose of making payments of longevity increments as herein above set forth, no credit shall be given for part-time service, but such limitation is the only exclusion for the purpose of computing longevity.

Issue: Article XIV- Sick Leave

City Position: The City demanded changes in the sick leave article to 1) reduce the percent payout for accumulated unused sick leave to ½ from the current 5/8 of the total hours; 2) the City demanded that language be inserted into the agreement that reflected an arbitration decision regarding the timing of retirement; and the City also demanded that the contract be amended to change the sick leave bonus provision.

Union Position: The Union rejected that City's demands and countered with current contract language.

Discussion: The major disagreement concerns the sick leave cash-out language. The discussions illuminated the fact that an officer left the City and took another position in Arizona. However after he accepted the new position, the officer attempted to cash out his unused sick leave. The City denied his request and the Union took the matter to arbitration. In this case, the Arbitrator agreed with the City's position and denied the grievance. The City demands that language memorializing the arbitration decision be added to the agreement. The parties ultimately agreed on language that they believed met their divergent needs on the arbitration decision. With regard to its other positions, the City agreed to maintain current language on the percentage paid to a retiring officer. In addition, the parties were able to reach a compromise on the sick leave bonus provision.

Finding of Fact: The parties were able to reach agreement on their differences with regard to Article XIV.

Suggested Language: Article XIV

14.07 All employees shall receive three (3) eight (8) hour days off, or the employee may elect to receive twenty-four (24) hours pay for each six (6) consecutive month of unused sick leave. Unused sick leave days earned may be carried over to a new year with a maximum accumulation of six (6) days (48)

hours. Effective January 1, 2014, such six (6) days shall be reduced to five (5) days and forty (40) hours.

14.08 Accumulated unused sick leave time may be surrendered at the time of retirement, disability retirement, or death of the employee. In order to receive such payment the employee must be eligible to receive a pension from the Pension Fund. The payment for all those who qualify under this section shall be based upon the rate of pay of the employee at the time of his retirement, disability or death, and payment shall amount to five-eighths (5/8) of the unused accumulated sick time. The maximum amount paid for accumulated unused sick leave time and accrued compensation time shall not exceed one thousand five hundred (1500) hours in total.

Issue: Article XXI – Employee Rights

City Position: The City demands a change in the current contract language that states that Employee will be informed of the name of anyone who makes a complaint about him/her.

Union Position: The Union rejects the City's demand and wants to maintain the status quo.

Discussion: The discussions on this issue were philosophical. The City contends that there are numerous reasons why the name of a complainant should be kept secret unless the Employer decides to launch an official investigation into a complaint. The Union argued that an officer should have the right to confront his/her accuser. In this instance the Fact Finder agrees with the City's position. Any officer who is accused of wrong doing that could lead to discipline will be informed on the name of his/her accuser. However, if some unsubstantiated complaint arises and no official investigation is started, then the officer does not need to know who made the complaint.

Police officers deal with the public in high stress incidents everyday. It is unreasonable to think that all the individuals who interact with the police will have a

positive experience. For example, the anger toward a police officer who writes a traffic ticket, may often lead to a complaint that the officer was discourteous. There is no reason to inform the officer of the name of his accuser in this and similar situations.

The question is one of due process. If no investigation is undertaken and there is no official action, then the officer has no need to fear that his/her rights will be violated. Consequently, the Fact Finder believes that the City's position on this issue is reasonable.

Finding of Act: The City's suggested language does not cause any problems for the officers.

Suggested Language: Article XXI

21.03 An employee shall be informed of the names and addresses of all complainants if the Employer initiates any part of the disciplinary process against the employee. Should the complainant be another employee, upon request, the employee may be informed of the name of the employee filing the complaint. The investigation officer of the complaint may be the complainant. No employee of the NOPD shall assume the role and/or name of the original complainant unless he/she is researching (an internal) or criminal investigation. The employee under investigation and the investigator shall not be subjected abusive or threatening language. No promise of reward shall be made.

Issue: Article New – Union Leave

City Position: The City rejects the Union's demand for language allowing Union release time.

Union Position: The Union demanded that no more than two (2) members be allowed to use up to twenty (20) days of union release time per year.

Discussion: The City stated that its financial condition is precarious and that there is a chance that it will have further severe fiscal problem(s) in the coming year. Therefore, the City does not believe that it can afford to allow members of the union to take up to

twenty days off. That is, the City argued that its financial problems preclude any move on this issue at this time.

Finding of Fact: The City's financial condition precludes the inclusion of union release time language into the contract.

Suggested Language: None

Issue: Article XXVII – Duration

City Position: The City desires a one-year contract.

Union Position: The Union desires a three-year contract.

Discussion: The Union argues convincingly that the proposed contract will not be signed until the fall of 2012. Therefore, the City's proposal would mean that the parties would start negotiations for the next contract within six (6) months. The Union believes that this would almost be a situation of continuous negotiations. The City originally stated that its financial condition was so uncertain that it could not agree on a three-year agreement. However, once the wage/longevity issue was settled, the City was more amenable to a longer contract duration. Consequently, the Fact Finder is recommending a three-year duration.

Finding of Fact: The contract shall run for three years.

Suggested Language: Article XXVII

This Agreement shall be effective as of January 1, 2012, and remain in full force and effective until December 31, 2014, and from year to year thereafter, unless at least ninety (90) days prior to that expiration date or any anniversary date thereto either party provides written notice to the other of any intent to modify or terminate this Agreement.

Note: There were numerous grammatical and spelling changes that the parties agree to in the body of this agreement. All of these changes are included by reference in this report.

Appendix A

Tentative Agreements

Article II	Non Discrimination
Article V	Work Week/Scheduled Hours
Article VI	Overtime/Extra Duty Call Out
Article X	Vacations
Article XI	Probationary Period
Article XII	Health Insurance
Article XIII	Clothing Allowance
Article XVII	Discipline
Article XXVII	Firearms Proficiency Benefit
Article XXIX	Communicable Diseases
Article XXX	Military Leave Benefit
Article XXXII	Drug Testing

Appendix B

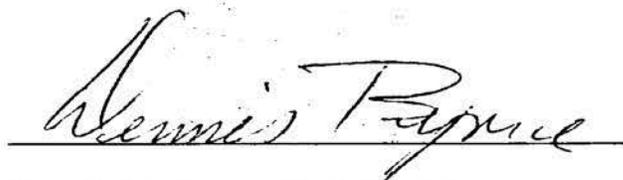
Corrections Officers Wages

	Hourly Wage 2012	Hourly Wage 2013	Hourly Wage 2014
Corrections Year 1	\$15.56	\$15.87	\$16.19
Corrections Year 2	16.79	17.13	17.47
Corrections Year 3	18.03	18.39	18.76
Corrections Year 4	19.27	19.66	20.05
Corrections Year 5	21.21	21.63	22.06

Corrections Officers Longevity

After Employee completes 5 years	\$ 500.00
After Employee completes 10 years	\$1,000.00
After Employee completes 15 years	\$1,500.00
After Employee completes 20 years	\$2,000.00
After Employee completes 25 years	\$2,500.00

Signed this 9th day of August 2012, at Munroe Falls, Ohio.

A handwritten signature in cursive script that reads "Dennis M. Byrne". The signature is written in black ink and is positioned above a horizontal line.

Dennis M. Byrne, Fact Finder