

**IN THE MATTER OF FACT-FINDING
BETWEEN**

CITY OF MUNROE FALLS)	CASE NOS. 12-MED-11-1371
)	12-MED-11-1372
)	13-MED-07-0838
AND)	
)	
)	<u>FINDINGS</u>
OHIO PATROLMEN'S BENEVOLENT)	AND
ASSOCIATION)	<u>RECOMMENDATIONS</u>

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

**Michael J. Hostler
Attorney at Law**

FOR THE CITY

**Jack Morrison, Jr.
Law Director**

SUBMISSION

This matter concerns fact-finding proceedings between the City of Munroe Falls (hereinafter referred to as the City or Employer) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the Union or OPBA). The undersigned was appointed by SERB as fact-finder in this matter. The fact-finding proceedings were held on September 6, 2013 at the Munroe Falls City Hall.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

There are three bargaining units involved in this fact-finding proceeding. This would include all full-time police officers, part-time officers, and the sergeant unit. There are currently four full-time police officers, twelve part-time officers, and one sergeant.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

1. WAGES

The Union proposes that members of all three bargaining units receive a wage adjustment of \$0.52 added to the hourly wage, plus a 2.5% increase in the hourly wage in the first year of the Agreement retroactive to April 1, 2013. The OPBA further proposes that all units receive an additional 2.5% increase in their hourly wage effective April 1, 2014, with an additional 2.5% increase on April 1, 2015.

The City proposes wage increases of 2% on April 1, 2013, 1% on April 1, 2014, and an additional 1% increase on April 1, 2015.

The City contends that its wage proposal is fair and reasonable. It notes that out of its total operational expenditures of about 1.8 million dollars, the police department budget accounts for almost one-half of that amount. The City maintains that it is projecting that it will have about \$100,000 deficit in the General Fund this year. For that reason, the City has proposed modest increases in wages over the term of the Contract.

The City further submits that the wages for the bargaining unit are competitive with other comparable jurisdictions. It cites the wages for full-time and part-time patrolmen in Reminderville, Rittman, Silver Lake and Canal Fulton, all of which have populations that are similar in size to that of Munroe Falls.

The Union contends that the officers here are not only paid an hourly wage that is lower than comparable departments, but they also do not receive several monetary incentives and benefits found in these other departments. The Union cites comparable wages and benefits in other jurisdictions in the area including some which have larger

populations, and others similar in size to Munroe Falls. According to the Union's comparison, the Munroe Falls patrol officers' top pay is about 89% of the average in these jurisdictions. Moreover when other forms of compensation such as uniform allowance and longevity are considered, the Munroe Falls officers only receive about 88% of the average of the comparable jurisdictions.

The Union argues that the City's General Fund had a beginning balance for 2013 of about 1.6 million dollars. The Union notes that this exceeds the amount budgeted for wages for the police department. It is the Union's position that the City can well afford the additional cost of the wage increases which it has proposed here.

ANALYSIS - Based on the careful review of the evidence presented, this fact-finder would recommend that members of all three bargaining units receive a wage increase of 2.5% effective April 1, 2013, 2% effective on April 1, 2014, and an additional 2% on April 1, 2015. Such wage increases will allow members of the bargaining units to remain competitive with wages paid to other police officers in the region. It is also evident that the City has the ability to fund these wage increases out of currently available resources.

This fact-finder does not recommend the adoption of the Union's request for an additional \$.52 wage adjustment in the first year of the Agreement. As indicated by the Union, this wage adjustment was intended to make up for the loss in income which the bargaining units incurred over the last three years when they agreed that there would be no wage increases. However, this fact-finder finds that there was insufficient basis

established for such an additional wage adjustment as requested by the Union. As discussed below, the wages here are comparable to those received by police officers in the area. The 2.5% wage increase recommended in the first year of the Agreement as well as the additional 2% increases in the second and third years of the Contract will serve to allow the bargaining units to maintain their current relative standing on wages in comparison to these other jurisdictions.

This fact-finder finds that the first year 2.5% wage adjustment is warranted for several reasons. First, it should be noted that the City itself as part of its wage package proposed a 2% wage increase effective April 1, 2013. It was estimated that the cost for a 1% increase in wages for the bargaining units would be approximately \$8,000 to \$10,000. It is apparent that the City has the ability to fund the 2.5% increase recommended herein. The City had a beginning balance in its General Fund for the current year of about \$1,630,000. It is projecting that its General Fund beginning balance will actually increase for 2014. This substantial balance in the General Fund shows that the City has the ability to finance the cost of the recommended 2.5% increase. Based on a review of the financial data submitted, this fact-finder cannot agree with the City that it does not have the ability to fund the kind of pay increases recommended herein for the bargaining units.

Comparable wage data provides further support for the recommended wage increases. Both parties submitted their version of the comparable jurisdictions which they believe are relevant to comparing wages here with those in the region. Basically,

those comparisons show that the wages in Munroe Falls fall about in the middle of the pay range for police officers in these other jurisdictions. For example, the top pay for a ten year patrolman in Munroe Falls currently is about \$53,774. In nearby Tallmadge, the top pay is \$61,973 and in Mogadore it is \$56,724. While most of the jurisdictions in the county pay more than Munroe Falls, there are a few who pay less. As the Union comparison shows, the Munroe Falls wage is about 90% of the average in the area. It should also be noted that the officers in Munroe Falls do not receive several monetary incentives and benefits found in other departments such as firearms proficiency allowances and physical fitness bonuses. This fact-finder recognizes that some of the jurisdictions cited have a much larger tax base than Munroe Falls and that this does make for some difficulty in using the wages in these other jurisdictions for comparison purposes. However, it does appear that the wages in Munroe Falls for patrolmen are about average for comparable jurisdictions in the area. It would be reasonable therefore to provide the kind of wage increases found elsewhere to the bargaining units so that the employees in the three bargaining units can retain their relative standing on wages.

RECOMMENDATION

It is the recommendation of this fact-finder that that there be wage increases as more fully set below:

WAGES

Effective April 1, 2013 - Two and one-half percent (2.5%) wage increase for all three bargaining units.

Effective April 1, 2014 - Two percent (2%) wage increase for all three bargaining units.

Effective April 1, 2015 - Two percent (2%) wage increase for all three bargaining units.

This fact-finder does not recommend the \$.52 wage adjustment proposed by the Union.

2. HOLIDAYS

The Union proposes the return of two holidays which the bargaining unit employees agreed to forego during the term of the prior Agreement. The City proposes to retain the current ten paid holidays.

The Union maintains that it would only be fair and reasonable to return back to the twelve holidays previously provided to bargaining unit employees. The City has been able to come out of the so-called great recession with a substantial carry-over balance in its General Fund. The Union voluntarily gave up two holidays in order to help the City during the recession. With the recovery from the recession, the Union now proposes the return of those two holidays.

The City points out that all employees currently receive ten holidays. It would be unfair to these other employees to provide only the police units with twelve holidays. Moreover, the City has limited resources and adding on two additional holidays would not be appropriate at the current time. Again, the City notes that it is projecting a deficit for the current year of about \$100,000. Due to the limited resources, adding additional holidays would be too costly.

ANALYSIS - This fact-finder has determined that it would be appropriate to return the two holidays which the full-time officers agreed to give up during the previous contract. This fact-finder would recommend that effective on January 1, 2014 full-time patrol officers shall be provided with twelve paid selected holidays equaling 96 hours per year. The contract language found under the Holiday Provision, Article 21 should be the

same except for the addition of two more holidays. This fact-finder would like to note that the sergeant contract should also include the recommended two additional holiday language.

There was comparable data submitted that shows that the current allotment of ten holidays for bargaining unit members falls well below that in comparable jurisdictions. For example, it has been established that Kent has thirteen holidays, Hudson has fourteen, Sagamore Hills has fifteen, Mogadore has twelve, and Copley has eleven holidays. Again, the bargaining unit here gave up two holidays during the last contract in order to assist the City during the Great Recession. However, it is apparent from the financial data submitted that the City has done quite well during the intervening years. It was established that although the City projects a deficit for the current year of about \$100,000, its carry-over balance at the beginning of the year was \$1,630,000. Even the carry-over balance for 2014 is estimated at being 1.8 million dollars. The City is obviously in good financial condition and can afford to fund the additional two paid holidays for the bargaining units here out of currently available resources.

This fact-finder recognizes that the City has passed an ordinance which provides for ten holidays for all City employees. However, it is clear from the comparable evidence presented as well as an analysis of the City's finances that returning two paid holidays to the police bargaining units would be fair and reasonable. However in light of the fact that we are most of the way through the 2013 fiscal year, this fact-finder would recommend that the two additional paid holidays for the bargaining units begin in year

2014. This will allow the City sufficient time to include the cost of the two additional paid holidays in its 2014 budget.

RECOMMENDATION

It is the recommendation of this fact-finder that there be two additional paid holidays provided to the bargaining units as more fully set forth below beginning in 2014:

"HOLIDAYS: ARTICLE 21

Effective January 1, 2014:

Section 1: Bargaining unit members shall be entitled to 12 paid selected holidays equaling ninety-six (96) hours per year. These holidays shall be celebrated at a time selected by each bargaining unit member with the prior approval of the Chief of Police. If any selected holiday remains unused or not selected at the end of a calendar year, that selected holiday shall be extinguished and shall not be carried forward to any succeeding year. The Chief of Police shall have the final decision regarding the approval of the selection of an individual's selected holidays.

Section 2: Current language.

3. EMPLOYEE RIGHTS/CORRECTIVE ACTION - ARTICLE 7, SECTION 6

The City proposes a modification to the current Garrity Warning language found under this section. The Union proposes retaining current language.

The City contends that the current provision fails to address that questioning of an employee must be in line with a non-criminal nature of an investigation. Moreover, the Contract uses the word "interrogation" and states that the employee is entitled to Union representation. The City maintains that an employee is never required to submit to an interrogation because in law enforcement the term refers to a line of questioning having to do with a criminal offense. This would be a violation of a person's Fifth Amendment Rights.

The Union contends that the current provision is entirely appropriate. It states that if an employee refuses to participate in an investigation, they could be subjected to disciplinary action. Moreover, the Union points out that the provision rightfully provides an employee is to be apprised of his right to have a Union Representative present.

ANALYSIS - This fact-finder has reviewed the current Article 7, Section 6 of the parties' Agreement. In all respects the provision is clear in that it warns an employee who refuses to answer questions during an investigation that he could be subjected to disciplinary action. It also properly provides that an employee required to submit to an interrogation is to be apprised of his right to have a Union Representative present. Article 7, Section 6 appears to contain relatively common language for such a provision.

This fact-finder does not find that there was sufficient basis established by the City for its proposed changes to Article 7, Section 6 of the Agreement. It does not appear as the City suggests that the provision as written could technically be construed to violate Miranda. Likewise, there does not seem to be any problem with using the term "interrogation" in this provision as the City contends. There simply was no basis established for any of the changes to Article 7, Section 6 proposed by the City. As such, this fact-finder recommends that current language be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that with respect to Employee Rights/Corrective Action, Article 7, Section 6 of the Agreement that there be no change in the provision.

EMPLOYEE RIGHTS/CORRECTIVE ACTION - Article 7, Section 6

Current language, no change.

4. EMPLOYEE RIGHTS/CORRECTIVE ACTION - ARTICLE 7, SECTION 7

The City proposes that there be a look-back period of two years on records of disciplinary action. The Union proposes to retain the current language which provides for one year look-back period for records of disciplinary action.

The City argues that the look-back period of one year is insufficient. A long term pattern of misbehavior may be necessary to establish cause for more severe disciplinary measures.

The Union contends that the current provision has not caused any problems for the City in disciplining employees. In that there have been no problems with the existing language, the Union requests that it be retained.

ANALYSIS - This fact-finder has determined that the current one year look-back provision should be retained without any change. There was no indication that the current one year look-back has created any problems for the City in disciplining employees. Moreover, there was a statement made that this particular provision has been in the parties' Agreement for some time. Again, there was simply insufficient basis established for changing the look-back period to two years. For that reason, this fact-finder recommends that the existing language found under Article 7, Section 7 be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that with respect to Employee Rights/Corrective Action - Article 7, Section 7 that there be no change in the current one year look-back period for disciplinary actions.

EMPLOYEE RIGHTS/CORRECTIVE ACTION - Article 7, Section 7

Current language, no change.

5. OPBA BUSINESS - ARTICLE 10, SECTION 2

The City proposes a modification to the provision that states that the investigation and writing of grievances shall be on non-duty time. The City's proposal is that they want to make it clear that writing of grievances by the grievant shall be on non-duty time. The City wants to distinguish grievances filed by the employee grievant and those by their representative.

The Union takes the position that the current language should be retained with no change.

ANALYSIS - This fact-finder has read the current Article 10, Section 2 provision and finds that it is clear and does not need any change. From the wording set forth in Section 2, it is apparent that an employee initiating a grievance must do so on non-duty time. There is no need to change the language as suggested by the City to state that writing of grievances by the grievant should be done on non-duty time.

RECOMMENDATION

This fact-finder recommends that there be no change in the current OPBA Business Provision, Article 10, Section 2 as proposed by the City.

OPBA BUSINESS - ARTICLE 10, SECTION 2

Current language, no change.

6. PROBATIONARY PERIODS, PART-TIME PATROL OFFICERS-ARTICLE 23

The City proposes to change the current 180 day probationary period for part-time employees to two years. The Union proposes to retain current language with no change.

The current provision for part-time patrol officers is that they must successfully complete Field Training Officer program training and that the length of their probationary period is to be 180 days after that training. The City's proposal is to provide that the part-time employees completing the Field Training Officer program training be given a probationary period of two years.

ANALYSIS - This fact-finder has reviewed the current part-time patrol officers probationary period language. That provision clearly states that these part-time candidates must successfully complete Field Training Officer program training. The provision goes on to state that the length of the probationary period shall be "180 days thereafter." The City failed to clearly establish any basis for changing this current probationary period provision. As the Union pointed out, each part-time candidate must spend approximately three months in training with a field training officer. Moreover, there were no problems cited to justify a change in the probationary period for part-time officers to two years. Therefore, this fact-finder is compelled to find that the current 180 day probationary period should be retained for part-time officers.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Part-Time Patrol Officer Probationary Provision found in Article 3 be retained with no change.

PROBATIONARY PERIODS, PART-TIME PATROL OFFICERS
ARTICLE 23

Current language, no change.

7. MEMORANDUM OF AGREEMENT - SHIFTS

The City has proposed that there be three primary shifts established for both full-time and part-time patrol officers. The Union proposes to retain current shift language. That current provision provides that full-time officers basically work the day shifts from Monday through Friday, with the part-time officers working the other shifts and on weekends.

ANALYSIS - This fact-finder would recommend that the current shift language be retained. There was every indication that both full-time as well as part-time patrol officers like the way the shifts are scheduled at the current time. There was insufficient basis established by the City for making any change in the current provision. There was no evidence to support the City's claim that the current shift arrangement has created an environment where there is a lack of communication between the officers. As a result, this fact-finder must find that there simply was no basis established for a change in the current Memorandum of Agreement pertaining to shifts.

RECOMMENDATION

This fact-finder recommends that the current Memorandum of Agreement pertaining to shifts be retained with no change.

MEMORANDUM OF AGREEMENT - SHIFTS

Current language, no change.

8. HEALTH AND SAFETY - ARTICLE 13, SECTION 3

The OPBA proposes the deletion of Section 3 of Article 13. The City proposes to retain Section 3 which basically provides that the Employer reserves the right to require all employees hired after April 1, 2007 to submit to an annual physical fitness examination. The provision further states that any employee who fails to pass the examination will be given a 180 day remediation period. It then states that the failure to pass examination following the remediation period may result in disciplinary action.

ANALYSIS - This fact-finder has reviewed the language in question and finds that it is fair and reasonable. Apparently, this provision was inserted into the 2010 Contract specifically to address an individual officer who appeared unfit to perform his duties. However, there was no evidence that the Section 3 provision has been used to unfairly discipline any officer for failing to pass the physical fitness examination. There was also no showing made that it would be unreasonable to require a physical fitness examination based upon the OPOTA physical fitness standards. There simply was no basis established for the deletion of Section 3 of Article 13.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Article 13, Section 3 - Health and Safety Provision as proposed by the Union.

HEALTH AND SAFETY - ARTICLE 13, SECTION 3

Current language, no change.

9. COMPENSATION FOR FIELD TRAINING OFFICER

The Union proposes new language which would provide that any officer acting as a field training officer be compensated with an additional one dollar per hour while engaged in the training of an officer. The City objects to the inclusion of any such new language for field training officers.

The Union contends that its proposal is reasonable given the fact that a field training officer must have certain expertise in order to train new officers. It also involves a lot of extra work for the field training officer involved. The Union believes that its proposal for an additional one dollar per hour while an officer is engaged in the training of another officer is fair and reasonable.

The City objects to any additional compensation for a field training officer. The City points out that it has never provided field training officers with additional compensation. The City notes that there have been no comparables submitted by the Union to support its position. In addition, the City argues that it simply does not have the revenues available to provide for such an additional compensation for field training officers.

ANALYSIS - This fact-finder has determined that there was no basis established for an additional one dollar per hour for field training officers while they are engaged in the training of another officer. There was insufficient basis established for any new FTO pay. The City has never had FTO pay. There were no comparables cited indicating how many other jurisdictions in the area provide additional compensation for field training

officers. In the absence of any such evidence, this fact-finder must find that no justification has been shown for a new FTO pay provision.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new provision for compensation for field training officers as proposed by the Union.

COMPENSATION FOR FIELD TRAINING OFFICER - No new provision

CONCLUSION

In conclusion, this fact-finder hereby submits the above recommendations on the outstanding issues presented. Further, this fact-finder incorporates into his recommendations herein all tentative agreements previously reached by the parties.

OCTOBER 10, 2013

James M. Mancini /s/

James M. Mancini, Fact-Finder

JAMES M. MANCINI

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October 10, 2013

IN THE MATTER OF FACT-FINDING BETWEEN:

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ASSOCIATION)	

FEE STATEMENT:

Hearing (1 day).....	\$ 950.00
Study & Preparation of Report (3½ days).....	\$ 3,325.00
Scheduling & Review of Pre-Hearing Statements (½ day).....	\$ 475.00
Expenses:	
Transportation (56 miles x \$.55/mile).....	\$ 30.80
Meals (1).....	\$ 8.64
TOTAL.....	\$ 4,789.44

PAYABLE BY THE CITY (½)..... \$ 2,394.72

PAYABLE BY THE UNION (½)..... \$ 2,394.72

James M. Mancini /s/

James M. Mancini, Fact-Finder
Federal ID # 84-1661482