

Article

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 11, 2013

In the Matter of:)	
)	
The City of Mansfield)	
)	
)	SERB Case Nos:
vs.)	13-MED-05-0655
)	13-MED-05-0656
The FOP/OLC)	
Patrol and Command Officers)	
)	
)	

APPEARANCES

For the Union:

Chuck Choate, FOP/OLC Bargaining Representative
Stephen Brane, Blue Unit Coordinator

For the City of Mansfield:

Dave Remy, City of Mansfield Human Resources Director
Lori Cope, City of Mansfield Safety/Service Director
Tobie Smith, Assistant Chief of Police City of Mansfield

Fact Finder: Dennis M. Byrne

Background

This fact-finding involves the City of Mansfield (Employer) and the members of the Mansfield Police Department represented by the Fraternal Order of Police/Ohio Labor Council (FOP/Union). The City and the FOP engaged in one set of negotiations for both the patrol officers (Blue Unit) and the command staff (Gold Unit); and therefore, some of the language recommendations may be slightly different for each unit. Nonetheless, the contracts between the parties are almost identical, and there is no issue that is unique to an individual unit. The Blue Unit consists of fifty-five patrol officers, and the Gold Unit represents seventeen command-staff personnel.

The parties engaged in four negotiating sessions in an attempt to agree on a successor agreement for a contract that expired on July 31, 2013; but negotiations broke off, and they scheduled a formal fact finding under the dispute resolution procedures found in ORC 4117. Before the hearing, the Fact Finder conducted a mediation session; and the parties were successful in settling many of the outstanding issues, but were unable to come to a final agreement.

The mediation phase of the Hearing commenced at 10:00 A.M. and ended at 1:00 P.M. At the conclusion of the mediation, there were eight (8) unresolved issues still on the table. These issues are (1) Wages, (2) Sick Leave Incentive Bonus payments, (3) Insurance, (4) Seniority, (5) Uniform Allowance, (6) Field Training Officer Pay, (7) Special Events/Special Details, and 8) Compensation for Travel Time. The formal Fact Finding Hearing commenced at 1:30 P.M. on Friday November 15, 2013 at the Mansfield City Administration Building. The hearing ended at approximately 4:30 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.
- (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.

The outstanding issues will be discussed below after an introduction that will discuss the City's financial situation and the overall philosophy of the parties with regard to the negotiations.

Introduction:

The City of Mansfield is currently in a state of Fiscal Emergency.¹ In order for any local jurisdiction to emerge from a fiscal watch or fiscal emergency, certain conditions must be achieved. The City presented two witnesses from the Auditor's Office, Nita Hendryx and Laura Brown, to discuss the historical and current fiscal state of the City. According to both witnesses, the City's financial condition in 2009 was such that a fiscal watch was put in place followed by a declaration of fiscal emergency. The

¹ ORC 118 contains the statutory authorization for the State Auditor to declare that a jurisdiction is under a fiscal watch or in fiscal emergency. A long discussion of the current situation in Mansfield is not necessary because both parties agree that the City's finances required the State Auditor's Office to declare a fiscal emergency.

witnesses testified that the City's financial condition had improved over the intervening years and that it was close to emerging from the fiscal emergency. Both witnesses believe that the Auditor will find that the City's finances are adequate to meet its obligations sometime shortly after January 1, 2014. At that time the fiscal emergency will end. However at the current time, the City remains in a state of fiscal emergency.

In response to the declaration of fiscal watch/emergency, the City was forced to undertake a number of actions to cut expenditures. All City employees, including the police, had their wages frozen and were forced to make other concessions with regard to "... benefits, and other terms and conditions of employment." In addition, the Police Department went through a series of layoffs and other belt tightening initiatives. The laid off officers were all recalled, but the Department census dropped from over one hundred officers and related personnel to a current staffing level of approximately seventy-four individuals.

The concessions have all expired, and the patrol officer's and command staff's contracts have the same language (wages and benefits) that was contained in the 2009 agreements. Now the Union believes that its members must begin to catch-up for the years where the membership had its wages frozen. In recognition of the fact that the City is in much better financial condition than it was in 2009, but in light of the reality of the ongoing fiscal emergency, the Union demanded a four percent (4%) raise in each year of the prospective contract. The wage demand was essentially the Union's only demand entering into these negotiations.

The City made a significant number of demands. The City's position is that it is still in a fiscal emergency and that it must be very judicious about how it operates over

the coming years. Therefore, the City offered no base wage increase over the term of the prospective contract. However, the City did offer a lump-sum payment over the first two years of the agreement and a wage reopener provision. In addition, the City demanded changes in many other articles of the parties' contract. Some of these demands are for concessions, and the Union rejected them out of hand. In addition, the City also made other demands that it claims simply "clean up" the existing language and do not have any real impact on the substance of the agreement.

There is some truth to both of these assertions. The City is attempting to clean up some clauses that are outdated. However, it is also asking for concessions on a number of other issues. The result of the City's negotiating strategy has been to make the Union's bargaining team question the City's desire to reach a reasonable settlement. This interpretation of events has made the Union reject most (all) of the City's demands, and this has hampered the parties' attempts to find an agreement.

The City has also proposed major changes in its health insurance plan. All non-unionized employees are on the new plan, and every other bargaining unit has agreed to the plan. However, the police bargaining unit had numerous questions and concerns over the proposed plan. During the fact-finding hearing, the Union pointed out that the health insurance plan had been rewritten during negotiations for the 2009 contract, and the Union does not believe that there is any reason to change that language (plan). The result is that the parties did not make much progress in discussions on this issue.

One final fact must also be mentioned. The specter of the financial emergency is ever present. In its plan to end the fiscal emergency, the City put a quarter percent (1/4%) income tax increase on the ballot, and it passed. However, the tax increase was

not a permanent increase and must be renewed in three years (City Exhibit at Blue Tab #8 in the City's Fact Finding Binder). The tax will generate significant income for all of the City's safety forces.² The City wants to spend the funds for capital projects, etc. On the other hand, the Union believes that the City has a new source of revenue that can be used to pay for its wage demand. This difference of opinion leads the City to claim that it must not overspend and put itself into a financial bind in the coming years. The Union believes that the overall financial position of the City has brightened enough that it can afford a reasonable wage settlement. It must also be noted at this point that the Union believes that its demand(s) are very reasonable and that they take into account the City's need to keep its finances in order.

Issue: Article 14: Seniority

City Position: The City demands that the language of Article 14 (4) be changed to make the School Resource Officer, U.S. Marshall's Fugitive Task Force, Sex Crimes Detective, Financial Crimes Detective, and Field Training Officer(s) appointed positions in addition to already appointed S.W.A.T. and Hostage Negotiation Team members.

Union Position: The Union rejects the City's demand.

Discussion: The City argues that each of the positions listed above requires special skills and that seniority should not be the criterion that determines which officers fill these positions. The Union contends that the most senior officer who bids for the position(s) has always filled any vacancies, and that there has been no problem filling the slots with

² The Mansfield Safety Forces consist of the Police Department, Fire Department, Communications Department, Parking Meter Department, and the Police Lab. The Employer testified that the Communications Department's equipment had to be upgraded because the Department's equipment was outdated and did not meet current standards.

qualified applicants. The Union believes that the City's position opens the selection process to possible favoritism. Consequently, the Union rejects the City's position.

The discussion on the issue shed some light on the current process. The Union agreed with the City's contention that most of the positions listed above require special skills and/or training. To use one example, the Financial Crimes Detective: the Union agrees that the job requires computer skills, an attention to detail, and a willingness to spend hours in front of a computer. The Union contends that this is not the kind of work that many senior police officers desire, i.e., there is a self-selection process that insures that only officers with the needed skills bid on the position. Consequently, the Union believes that the current contract language meets both parties' needs.

The discussion on the School Resource Officer was somewhat different. This discussion proved that working in high schools required a certain personality and skill set to successfully interact with preteens and teenagers. In addition, there was a discussion of the problems that School Resource Officers often faced and anecdotal evidence that some officers performed poorly. After this discussion, the Union agreed that the Chief of Police should appoint the School Resource Office.

Without going into a full discussion of each job title, the Fact Finder believes that member of the U.S. Marshall's Fugitive Task Force should also be an appointed position. The Fugitive Task Force is made up of individuals from various law enforcement agencies along with members of local police departments. This is a position that requires not only investigative skills, but also the ability to act as a representative of the City of Mansfield. Consequently, the Fact Finder believes that the City should have the ability to select the officer that it believes has the requisite police and diplomatic skills for the task.

Finding of Fact: The positions of School Resource Officer and member of the U.S. Marshall's Fugitive Task Force are often in highly visible positions where the officer is often the public face of the City. In these circumstances the City should have a right to select the best applicant for the position.

Suggested Language: Section 14 (4), Filling Positions

... "Assignment" as used herein is a group of specialized job duties performed by employees appointed to a division team or unit authorized to perform such specialized task, as assigned by the Chief of Police, which currently are as follows: S.W.A.T., Hostage Negotiation Team, School Resource Office, and U.S. Marshall's Fugitive Task Force and such other assignments as determined by the Chief of Police. ...

Issue: Article 17: Uniforms

City Position: The City demands that the Uniform Allowance be used to cover all damage to an officer's uniform.

Union Position: The Union rejected the City's demand and countered with current contract language.

Discussion: The Union claims that there have never been any problems with the current contract language and that the City is attempting to fix a problem that does not exist. The City originally demanded a quartermaster system, but changed its demand in face of the problems and costs associated with setting up such a system. The discussion proved that the City has two issues with the current system. First, it does not want to pay too much for uniforms. Second, the City believes that the current system requires it to replace uniform items damaged while an officer is on duty. The City argued that it pays an allowance and that allowance should cover all repairs and replacement of damaged uniforms.

Conceptually, a uniform allowance allows an officer to dress in a manner that reflects professionalism. Uniforms must be clean, pressed, and look like new. This is required by all jurisdictions. Uniform maintenance is expensive, and a uniform allowance is the way that almost all jurisdictions compensate their officers for the costs of uniform maintenance. The uniform allowance paid in Mansfield is not unusually high. In addition, the current language caps the City's contribution for replacing items lost in the line of duty to actual cost of replacement with exceptions for personal items, e.g., watches, etc. This system is standard throughout Ohio.

There was no evidence presented that the officers abuse the system or that the current system is causing a problem for the City. Given all of the facts, the Fact Finder does not believe that the City proved that there is any reason to change the current system.

Finding of Fact: There was no testimony that the current system is causing any problems.

Suggested Language: Current Language

Issue: Article 17 (6) Field Training Officer Pay

City Position: (Issue applies to the Blue Unit) The City demands that the Field Training Officer (FTO) pay provision be changed to a flat rate provision that pays an FTO one thousand dollars (\$1,000.00) per training segment. This would cut the current pay of an FTO by approximately fifty percent (50%).

Union Position: The Union rejects the City's proposal and counters with current language.

Discussion: Currently, the City pays a FTO time and one-half times his/her base rate (1.5 x base rate) for every hour worked as a FTO. This amounts to approximately two thousand and forty-four dollars (\$2,044.00) per training segment. The City contends that this amount is excessive especially given the City's financial condition. The City believes that a FTO performs a vital function, but the pay is too high considering the job duties.

The Union repeatedly stated that the City's bargaining positions were unreasonable. The Union claimed that this was just another example of proposed language that was unnecessary and was intended to cut the patrol officers' pay even though the City's financial condition is improving. The Union argued that the current system works and should not be changed.

The Union also had Carolyn Young testify on this issue. Young stated that the City's negotiators did not fully understand the FTO's job. She stated that because a new officer was being trained during on-duty hours, that the experienced patrol officer usually had to complete paper work on the trainee's progress at home after a scheduled shift. She further stated that the demands of the position weighed on the FTO and created stress. She went on to testify that she would not work as an FTO if the City's proposal became part of the contract.

Officer Young's testimony put the job of the FTO in perspective. She is not only responsible for training a new officer, but she is also expected to perform her everyday assignments. Moreover, there are routine administrative tasks that must be completed. If the workload cannot be completed during an FTO's shift, then the work is done at home. The conclusion is inescapable that on some, if not most, days the officer is still working

when he/she is off duty. The quid quo pro for undertaking the FTO position is an agreement that the FTO will be compensated for his/her efforts.

The Fact Finder understands the City's position regarding its finances. However, The City presented no evidence that the FTO pay scale was out of line with other jurisdictions or is unreasonable. In addition, the City's financial outlook is improving. Moreover, it is incumbent on the City to make sure that all new hires have the best training possible. Therefore, given all of the evidence in the record, the Fact Finder does not believe that the City proved that there is a need to change the FTO pay at this time.

Finding of Fact: The current FTO system, including the pay scale, is working well at this time. Absent evidence that there is a need to change the system, the Fact Finder does not believe that the City proved its position should be recommended.

Suggested Language: Current contract language.

Issue: Article 20 D (6) Special Events, Details and Auxiliary Police

City Position: The City demands that the words '*In case of a special event ... for said special event*' be added to Section 20 D (6).

Union Position: The Union rejects the City's demand and counters with current language.

Note: The City made numerous proposed changes to this article, and this is the only issue that remained unresolved.

Discussion: The genesis of this dispute is an arbitration decision (not included in the parties' submissions) that seems to have been decided narrowly on the current language of Article 20. According to the testimony, the arbitrator found that the language of

Article 20 did not delineate the difference between a special event and a special detail. In his/her award, the Arbitrator also stated that the parties should settle their disagreement in the free give and take of negotiations. The City is attempting to change the language in Article 20 in light of that award.

All jurisdictions have situations and events that require a police presence for crowd and/or traffic control, public safety, etc. Current contract language lumps all of these types of situations together and there is no language that delineates the reasons that police personnel are required. Mansfield supplies police officers for two different types of event. First, Mansfield has a series of events that it calls 'special events'. These are parades, civic events, etc. These events are listed in Article 20.1, and there seems to be no disagreement between the parties about staffing these events.

The City also has a need for police officers for special details. A special detail is a time when an outside contractor needs a police officer for some reason. For example, a contractor working on a road project wants a cruiser and a police officer present to insure that traffic follows posted signs in a work zone for the safety of the contractor's employees.

The City also differentiates between an internal detail and an external detail. An internal detail is a situation where another City Department contracts with the Police Department to provide police services. An example is a Street Department crew filling potholes as part of their job. The Street Department contracts with the Police Department to provide traffic control. There is also an external detail where a non-City contractor asks the City to provide services. Therefore, the difference between an internal and external detail is based on whether the contractor does or does not work for the City.

The problem has arisen because the current language of Article 20 does not clearly state the difference between a special event and a special detail. Given that the officer who provides the service is paid one and one-half times his or her hourly rate, that lack of specificity apparently caused a situation whereby the Police Department was found to have violated the contract because of the way an external special detail was filled. The City believes that its suggested language clears up any ambiguity. The parties agreed to most of the City's suggested language changes to Article 20, and the new language should take care of most problems that could arise.

This dispute is over the language in Section 20 D (6). The City stated that any officer up to and including the Captains could bid for a special detail and be paid one and one-half times their hourly rate for performing tasks that could be performed by a rookie patrolman. The City believes that this is unreasonable. Therefore, the City's suggested language restricts the bidding for special details and allows it to use auxiliary officers for some of these details. That is, the City does not have to use full-time Police Department Personnel for at least seventy percent (70%) of the manpower needed for special details.

This is a situation where both sides have legitimate positions. The Arbitrator said that the parties should solve their problems during negotiations. In this instance, the entire article has been reworked, and the only remaining area of concern is 20 D (6). This proposed change deletes the requirement that at least 70% of the officers who work special details be full-time members of the Police Department. The City believes that this will save money, but the Union sees it as a further attack on the ability of full-time police officers to supplement their earnings.

The Fact Finder understands that both parties have legitimate arguments in support of their positions. However, with the exception of the arbitration mentioned earlier there was no evidence supplied on the scope of the problem. How often do Police Captains sign up for special traffic details? Do the other language changes agreed to by the parties lessen any problems? Will the suggested change cause further problems? Consequently, the Fact Finder believes that the parties should live under the revised Article 20 for the term of this contract and, if further problems arise, then the next round of negotiations is the place to address any problems.

This is not meant to imply that the City's position is unreasonable. However, with all of the existing language changes in Article 20, and with a lack of data on the size and scope of the problem, the Fact Finder does not believe that the City proved a need for its suggested change at this point in time. This is especially true given the Union's rejection of the City's proposal.

Finding of Fact: The City did not present any data that proved it was necessary to change the language of Article 20 D (6).

Suggested Language: Current Contract Language

Issue: Article 15.1 (L) Sick Leave Incentive Bonus

City Position: The City did not make a formal demand with regard to this article.

Union Position: The Union demanded that the Sick Leave Incentive Bonus be paid in September rather than in January of each year.

Note: This issue only affects the Gold Unit)

Discussion: The Sick Leave Incentive Bonus is paid to the Gold Unit in the second pay period of January each year. The incentive is paid to the Blue Unit in the second pay period of September. The Gold Unit's demand is to have its bonus paid at the same time as the Blue Unit's bonus is paid, i.e., in September.

In its submission the City stated that it is "indifferent to this proposal." During the hearing the issue was mentioned. At that time the City stated that it believed that it would be a better solution for the City to pay the Blue Unit bonus in January. The reason is that all other City employees are paid their bonus in January. There was no response from the Union, and the issue was not discussed again.

Given this set of facts, the Fact Finder believes that the City acquiesced to the Gold Unit's demand. That is, the City is indifferent to the date on which the bonus is paid. Moreover, it probably makes some sense to pay the bonus to the entire Police Department at the same time. Consequently, the Fact Finder is recommending the Union's position on this issue.

Finding of Fact: The City accepted the Union's demand.

Suggested Language: Article 15.1 (L)

L. ... Such bonus shall be payable in a separate check in the second pay period in September of each year.

Issue: Article 17 (1) Wages

City Position: The City's wage offer is for a wage freeze for all three years of the prospective contract. In addition, the City's proposal includes a Side Letter. In this letter, the City is offering a three hundred and fifty dollar (\$350.00) lump sum payment in

August 2014 and August 2015, and a wage reopener provision for the second and third years of the Agreement.

Union Position: The Union is demanding a four percent (4.0%) wage increase in each year of the prospective agreement.

Discussion: The wage issue is the major issue separating the parties. The Union argues that its membership has not had a wage increase since the time the City was placed on fiscal watch (emergency). The Union further stated that its membership has fallen from approximately one hundred (100) members to a compliment of seventy- four (74) officers and patrolmen, and that the membership also made other concessions during the last four years. The Union believes that the City can afford a four percent (4%) raise and that its demand is very reasonable given all that the membership has been through during the fiscal crisis.

The City did not dispute any of the Union's testimony. However, the City's representative testified that the City is still in a fiscal emergency at the present time. Moreover, all City employees with the exception of the Clerk of Courts Staff and the Court Staff have gone through the same wage freeze, layoffs, etc. as experienced by the Police Department. The only partial exception to these concessions was the Fire Department. Because of a manning clause in their contract, the Fire Department did not suffer the same percentage reduction in personnel as other City Departments.

The City further stated that the citizens of Mansfield had just passed a quarter of a percent (1/4%) increase in the City income tax and one half (1/2) of the tax increase was reserved for the safety forces, i.e., one-eighth percent (1/8%). The City stated that this new revenue stream would help alleviate some of the more pressing problems facing all

safety forces, not only the Police Department. Unfortunately, the tax increase is only for three (3) years and will have to go before the voters again in early 2017. The fate of the levy at that time is unknowable. The City's representative argued that all of the safety forces needed new equipment that could be paid for out of the levy funds. The City again argued that prudence dictated that this new revenue should not be used to fund continuing operations.

ORC 4117-9-05 (2) mandates that a Neutral consider the evidence "... from other employees, public and private, performing comparable work ...". This phrase has led to the use of comparables data to support a Union's (Management's) position on an issue. In this instance, the Union presented data from the cities of Cuyahoga Falls, Euclid, Middletown, and Mentor. In addition, the Union also presented an analysis from a wider range of jurisdictions. This list included Hamilton, Lorain, Middletown, Springfield, Lima, Marion, Findlay, Warren, Lancaster, Elyria, Newark and Mansfield. These are all jurisdictions that the parties have cited as comparable to Mansfield in previous negotiations. Taken as a whole these data show that the Union's wage demand is somewhat high. However the data also shown that every other jurisdiction had some wage increases for the 2008 to 2011 period while Mansfield's wage rate decreased by slightly over one percent (1.06%). The Union contends that this information shows that its wage demand is reasonable based on an analysis of the situation in comparable jurisdictions.

The City presented evidence from Richland County, Newark, Marion, Elyria, Massilon, Lima, Lancaster, Warren, and Wooster. These data show that Mansfield is in

the middle of its comparables list with regard to wages.³ This information was presented because the City believes that the Police Department personnel are not as far behind other jurisdictions in terms of wages as the Union contends.

However, the City did not use the comparables data to justify its wage offer. The City's argument is that internally every other employee is treated exactly the same as the members of the Police Department. That is, the City's position was based on internal comparability. The City believes that the fact that it remains in a Fiscal Emergency makes a comparables analysis meaningless. The City stated that it would like to increase the compensation of all of its employees, but argues that it is unable to do so.

The concept of internal comparability is a well-recognized concept in industrial relations. In general, most employers have a wage scale for their employees, and they pay all of their employees a rate commensurate with their job duties. In the public sector this has often led to public safety forces having similar wages. That is, there is parity between the police and fire departments in terms of wages and benefits.

In this particular instance, the City believes that it is not in position to increase the wages paid to its employees. The City stressed that no city employee other than the individuals who work for the Clerk of Courts and the Court System have received a raise for years. All other city employees are receiving no raises currently. The City argues that it cannot raise the compensation of the police officers and command staff at this time as a matter of both equity and necessity.⁴

³ The comparison was for the top patrolmen's base rate of pay.

⁴ The Employer testified that any employee under the Mayor was not receiving a pay increase. The only exception to this rule is in the case of a promotion. Promoted employees receive higher wages because they are taking on greater responsibility. Technically, they are moving up on the wage scale.

The Union countered this argument with testimony that the City had never raised an inability to pay argument. The Union claimed that this proved that the City had the money to fund its wage demand. The City agreed that the passage of the levy gave it some extra income. However, the City and the State Auditor's representatives both testified that a general wage increase was not built into the models that showed that the City's financial position had improved enough for the Auditor to declare that the Financial Emergency in Mansfield was over.

The Fact Finder believes that the data show that the City's financial condition is improving. Hopefully, as the national and state economies improve, Mansfield's budgetary situation will continue to improve. However, based on all of the evidence in the record, the Fact Finder believes that the City does not have the resources to pay the Union's wage demand. That is not to say that the City could not find the money to pay the Union's demand. However, any wage increase does not affect only one City Department, it affects all City Departments. If the police received a four percent (4.0%) increase, then every other City employee would demand the same increase. Moreover, other necessary capital expenditures would be negatively impacted; and it is possible that the City would be putting itself in a position where another fiscal watch and/or emergency would become much more likely. The Fact Finder recognizes that all city employees are falling behind other municipal employees in terms of wages. This situation will have to be addressed. However, given all of the facts in the record, the Fact Finder believes now is not the time.

That leaves the question of what is a reasonable wage increase at this point in time. The City has offered a lump sum payment of three hundred and fifty dollars

(\$350.00) payable in August 2014 and August 2015 with a wage reopener for the second and/or third year of the proposed contract. The Union's demand is for four percent (4.0%) per year of the proposed agreement.

Given all of the information in the record, the Fact Finder is recommending one percent (1.0%) for each year of the proposed contract. However, the raise will be paid as a lump sum payment for the first two contract years. Given the increased workload faced by the police because of the drop in the number of sworn officers, the wage freeze for the last few years, and other concessions, more than a one percent payment is reasonable. But, given the City's financial condition, the Fact Finder believes that one percent (1.0%) is the most the City can afford at the present time.

If the City's finances continue to improve, it is possible that the City will be able to negotiate more reasonable wage increases with its employees in the coming years. Therefore, in addition to the recommended settlement, the Fact Finder is also recommending a wage reopener provision for the last two years of the prospective contract.

Finding of Fact: The improvement in the City's finances allows the City to pay its police officers a minimal raise of one percent (1.0%) per year. In addition, the same financial recovery may allow the City to negotiate reasonable wage increases to its employees in the coming years. Consequently, the Police Department personnel should have a wage reopener in the second and third years of their contract.

Suggested Language: Lump Sum Payment: For the Blue Unit: In August 2014, each bargaining unit member shall receive a five hundred and thirty dollar (\$530.00) lump sum payment. In August 2015, each bargaining unit member shall receive a five hundred and

thirty dollar (\$530.00) lump sum payment. For the Gold Unit: In August 2014 each Sergeant shall receive a six hundred and twenty dollar (\$620.00) lump sum payment. In August of 2015 each Sergeant shall receive a six hundred and twenty dollar (\$620.00) lump sum payment. In August 2014, each Lieutenant shall receive a six hundred and eighty dollar (\$680.00) lump sum payment. In August 2015 each Lieutenant shall receive a six hundred and eighty dollar (\$680.00) lump sum payment. In August 2014, the Captain shall receive a seven hundred and fifty dollar (\$750.00) lump sum payment. In August 2015 the Captain shall receive a seven hundred and fifty dollar (\$750.00) lump sum payment.

The Wage Scale, listed as Appendix A of the contract, shall be amended to show a one percent (1.0%) raise in the third year of the proposed agreement.

Section B: Re-Opener In the event that any other City bargaining unit receives a greater general wage increase (anything added to the base wage rate) for the second and third year of their agreement than is provided for in this agreement, the Union may request to re-open this agreement under Chapter 4117 of the Ohio Revised Code. Such re-opener will be limited to the wage article only, with all other provisions of this agreement remaining in full force and effect.

Issue: Article 13: Insurance

City Position: The City has proposed a new health care plan for all City employees.

Union Position: The Union rejects the City's proposal.

Discussion: The main features of the City's proposal are a 90%/10% premium split with the employees paying forty-five dollars (\$45.00) for a single plan and seventy-five dollars (\$75.00) for a family plan. The City will contribute five hundred and sixty dollars (\$560.00) for the single plan and fourteen hundred and thirty-six dollars (\$1,436.00) for the family plan (all figures are monthly amounts). The above figures work out to be a

yearly employee premium for a single plan of five hundred and forty dollars (\$540.00) and a yearly premium of nine hundred dollars (\$900.00) for a family plan.

If the monthly base cost of the single plan exceeds six hundred and five dollars (\$605.00) and/or if the family plan monthly base cost exceeds fifteen hundred and eleven dollars (\$1,511.00), then the premium amount in excess of the base rates listed above will be split 50%-50% between the City and the employee. The City testified that it was self-insured and that the base amounts exceeded the current premiums. That is, the employee's contributions should remain at forty-five dollars (\$45.00) and seventy-five dollars (\$75.00) for the coming year at least.

Currently, there is a city wide medical insurance committee that is charged with studying and recommending cost containment programs for the health insurance plan (medical care). The committee has the authority to examine all aspects of the City's plan and recommend changes. The language of Article 13.5 states that 1) the City *cannot* (emphasis added) unilaterally change a Committee recommendation, 2) the only time the City can act without a Committee recommendation is if the Committee fails to act, and 3) actions taken by the City to implement the Committee's recommendations cannot be appealed via the grievance procedure.

The above paragraph gives the background for the Union's refusal to agree to the City's proposal. First, the Union claims that insurance is a mandatory item of negotiation and that it will not give up the right to negotiate. Second, the Union is against the language that states the City's actions cannot be grieved. The Union believes that it is giving up the right to protect its members.

The City's proposal to empower a committee made up of employees to make major decisions about the health insurance plan mirrors the actions taken by other jurisdictions. In some ways, this language means that the employees are responsible for their own health insurance plan. This, at a minimum, means that the members of the Health Insurance Committee must be highly motivated individuals who either know or are willing to learn about the intricacies of health insurance. In some jurisdictions this framework has worked well.

Turning to the Union's objections: first, signing this language does not negate the Union's right to negotiate over a mandatory issue. Negotiations take place every three years; and if for any reason the FOP's membership believes that the current system is not working, the Union can raise its issues in subsequent rounds of negotiation. In many ways the current plan gives the employees more control over their insurance, rather than less.

The statement that once the Committee makes a decision it is not subject to the grievance procedure is more problematic. This is a way to stop a single person or a small group of employees from making the Committee structure unworkable. In a sense, this statement means that majority rule can work until the next round of negotiations. Without this statement any individual can filibuster the Committee's work. Therefore this statement is necessary for the Committee to do its work.

A second problem with the language that takes the grievance procedure off the table is how it affects the power relationship between the City Administration and all of its bargaining units, including the FOP units. The first line of Section 13.5 says that the City cannot unilaterally change a Committee recommendation. This language also means

the City cannot ignore a committee recommendation. The result is that if the City, for any reason, does not agree with a Committee recommendation that it must convince a majority of the Committee that the recommendation is flawed. If the Committee remains united and does not agree with the City's position, then the employer must implement the Committee's recommendation.

Given the proposed wording of Article 13, the Fact Finder does not believe that the FOP's membership has ceded its right to negotiate or has put itself at risk with the language of Section 13.5. Mansfield and other jurisdictions are allowing their employees to take a central role in designing their own health insurance plan. Everyone concerned with health care is claiming that there must be new ideas offered to control health care costs. Employee Health Committees are one way the public-sector jurisdictions are addressing the problem. Allowing the individuals most affected by health care decisions, the employees, the ability to make decisions that affect them is an idea that deserves to be tested.

Finding of Fact: Employee Health Care Committees are becoming more prevalent in the public sector.

Suggested Language: Employer language submitted under Tab 11 in the Employer's Fact Finding submission.

Issue: Article 18 (2) Holidays/Personal Days

City Position: The City is demanding a change in the language of Article 18.2 to change the Holidays of the Neighbor Impact Section of the Community Services Bureau and have these officers scheduled off on Martin Luther King Day and President's Day. The

City also wants language added to the contract that states that anyone on transitional duty shall not be eligible to work any holiday.

Union Position: The Union rejects the City's demand(s), and counters with current contract language.

Discussion: This is another issue that impacts, to some degree, the take-home pay of some members of the Police Department. The City's rationale for its first demand is that this is a way to save money and the service provided by the officers is unnecessary because most of the citizenry is off from work on those two days, i.e., Martin Luther King Day and President's Day. While these are national holidays many non-governmental employees must work on those days. The latest data shows that public sector employees do not work on these holidays, but only three (3) in ten (1) private sector employees do not work.⁵ That is, the vast majority of private sector employees work those days. The President's Day holiday is quickly becoming a reason for retailers to hold a sale. On the other hand, while Martin Luther King Day is gaining in stature, most employees still must work. Consequently, the Fact Finder does not believe that the current level of police service should be reduced on either Martin Luther King Day or President's Day.

The second part of the City's demand is that any officer on transitional duty, a light duty assignment, will not be scheduled to work the holiday. The City's rationale for this suggested language change is that most officers on transition duty are working in an office environment and these officers should not be working when the office staff is not

⁵ Googling "What percentage of employers observe Martin Luther King Day (President's Day) brings up numerous websites that give the statistics quoted above. The data seems to come from the Bureau of National Affairs and the Bureau of Economic Analysis, i.e., the Labor Department.

working. This is reasonable, especially in light of the fact that the officer still receives the holiday off with pay. This change means the officer does not receive time and one-half his hourly rate on top of the holiday pay.

Finding of Fact: The data do not show that there is no need for the services provided by officers assigned to the Neighborhood Impact Section of the Community Services Bureau on either Martin Luther King Day or President's Day. However, officers working transition assignments work in an office. There is little reason for them to be at work on days when the clerical staff is not present.

Suggested Language: Article 18 (2), The last sentence of paragraph 2 shall read:

... Irrespective of the above, any employee on transitional duty, under The City's Transitional Duty Program, no matter what section he/she is working, shall not be eligible to work any holiday listed in Section 18.1.

Additional Appearances:**For the Union:**

1. Sergeant Jonathan Amles
2. Patrolman Jason Bammann
3. Detective Steve Blust
4. Sergeant Dan Martinczn
5. Lieutenant Joy Stortz
6. Patrolman Carolyn Young

For the City of Mansfield/Auditor's Office:

1. Laura Brown
2. Nita Hendryx

Signed this 2nd day of December 2013, at Munroe Falls, Ohio.

/s/ Dennis M. Byrne

Dennis M. Byrne, Fact Finder