

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

In the matter of	*	13-MED-09-1052
	*	
Fact-finding between:	*	
	*	Martin R. Fitts
The City of Middletown	*	Fact-finder
	*	
and	*	
	*	
Fraternal Order of Police, Ohio Labor Council	*	July 11, 2014
(Dispatchers)	*	
	*	

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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the City of Middletown (the Employer):

Leslie S. Landen, Law Director  
 Noah Powers, Human Resources Manager  
 David VanArsdale, Chief of Police  
 Major Rodney Muterspaw, Deputy Chief of Police  
 Michele Greis, Finance Director

For the Fraternal Order of Police, Ohio Labor Council Inc. (the Union):

Thomas J. Fehr, Senior Staff Representative, FOP/OLC, Inc.  
 Diane Green, Dispatcher Representative  
 Kathy Pierce, Dispatcher Representative

## **PRELIMINARY COMMENTS**

The bargaining unit has approximately eleven (11) members and consists of all full-time Dispatchers.

The last Collective Bargaining Agreement expired on December 31, 2013. The Employer and Union participated in nine negotiating sessions from October, 2, 2013 through April 4, 2014. Two tentative agreements were reached during this period, each of which was ultimately rejected by the bargaining unit.

This Fact-finder was appointed by SERB on April 22, 2014 and a Fact-finding Hearing was held on June 18, 2014. Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective positions.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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 standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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 in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the June 18, 2014 hearing.

## **ISSUES AND RECOMMENDATIONS**

### **Issue: Article 22 - Wages**

#### **Positions of the Parties**

The Union proposed an increase in wages of three percent (3%) effective January 1, 2014 and an additional increase in wages effective January 1, 2015. The Union proposed an additional three and one half percent (3.5%) wage increase effective January 1, 2016. The Union also proposed to increase shift differential by five cents for each affected shift.

The Union argued that the City has taken the position all through the negotiation process that it can't give this unit a wage increase because no other bargaining unit or non-union employees have gotten a wage increase and that city council will not vote for any wage increases of any kind. While pattern bargaining is a strategy, the Union argued it can't be the sole reason for not negotiating wages.

The Union conceded that the City was been hit hard during the recession, however it believes that things are now turning around economically. The Union noted that not once did the City raise an inability to pay defense. The Union noted that this bargaining unit has also been hit hard, as there 14 dispatchers when the Union and City were in fact-finding in 2010, and there are only 11. The Union argued that this reduction has taken a toll on morale as well as caused massive overtime.

Lastly, the Union argued that there looms a real possibility that the City will eliminate the dispatch center and outsource those services. The stress of that possibility, plus the stress of the overtime now worked due to a reduced number of dispatchers, makes the its wage increase reasonable, the Union argued.

No separate argument was made by the Union in support of its proposal for an increase in the shift differential currently provided for in the collective bargaining agreement.

In concert with its proposal for a two-year agreement, the Employer proposed a one percent (1%) wage reduction effective January 1, 2014 and an additional one percent (1%) wage reduction effective January 1, 2015.

The Employer presented considerable evidence of its recent and current financial condition. The City of Middletown has experienced a significant reduction in several important income streams. The housing crisis caused property values in the City of Middletown to fall significantly. From 2009 to 2012 property values in Butler County fell 4.3%, on average, while in Middletown, however, property values fell a full 8%, the highest valuation decrease in the county. The ultimate result of this property devaluation has been that the City's property tax receipts have fallen from \$3,985,749 in 2007 to \$2,545,172 in 2013.

During the same 2007 to 2013 timeline the City also saw a reduction of income tax receipts designated for general fund use from \$11,960,000 to \$11,083,517, a nearly 8% reduction. The City's financial condition deteriorated further with large reductions to the State of Ohio's Local Government Fund, resulting in approximately a million dollars in lost revenue in 2011. Additional losses were sustained by the State's elimination of the inheritance tax, which resulted had brought in \$1,543, 309 to the City in 2011-2013.

The net result of these sustained losses has been that the City has reduced its stated reserve fund targets from 25% to 15% in an effort to utilize deficit spending to stabilize the City's condition. The Finance Department conducted an analysis to determine whether increased income tax rates would be sufficient to stabilize the City's financial condition. Currently, Middletown holds a 1.5% income tax rate and .25% public safety levy. Any additional increase in tax rates would require voter approval. That analysis found that at current income tax rates and with planned expenditure reductions the City would face a negative net balance in the general fund by the end of 2015. Further, this study found that a quarter percent income tax increase would not alleviate the City's deficit spending position without further expenditure reductions.

In July 2013, the City received a ratings downgrade from Moody's Investor Services. Moody's downgrade, combined with property devaluations, means that the City now has a limited ability to issue new general obligation debt.

In summary, the Employer argued that the City remains in a precarious financial situation. Personnel cuts have been implemented over the last several years. Absent financial accountability, the City faces declining balances in its limited reserves. The Employer argued that balancing the budget must be the primary goal of the City.

The Employer noted that during the last contract period the Dispatch unit received annual wage increases. They were one of only two bargaining units to receive a pay increase in all three years of their contract. Recent agreements with the FOP units representing uniformed officers, an IAFF unit, and an AFSCME unit resulted in contracts with no pay increases. The Employer argued that this demonstrates that this bargaining unit has continued to make gains while non-organized employees and the majority of other organized employees have made shared sacrifices with the City.

Lastly, the Employer argued that its proposal allows the City to improve internal wage equity between these union employees and other City employees. Additionally, the Employer argued that the City's proposal would bring Middletown more into line with similarly situated distressed communities, and that, therefore, the City's wage proposal should be accepted.

## **Discussion**

The Employer did not make an argument that it had an inability to pay the Union's requested wage increase. Rather, it acknowledged that this is a small unit and that the Union's proposal would not result in a large expenditure relative to the City's total budget. The Fact-finder concurs with the City's arguments, however, that there must be a reasonable conformity within a municipality relative to its employee groups, whether they are union represented or non-bargaining employees.

Clearly the City's financial future is not without major concerns. Income tax revenue, the primary source of general revenue, may have stabilized over the last year or two, but even at that represents a reduced source of income from that of six or seven years ago. The City's

Unencumbered Ending Balance has been used to balance the City's budget, but at the current rate of use to cover deficits that balance has an inevitable end, possibly within the life of this proposed collective bargaining agreement. Absent the City making additional spending cuts or finding significant revenue increases, the City will simply run through its entire carry-over balance.

That being said, there was no evidence of other City employees taking a reduction in wages, whether covered by other collective bargaining agreements or un-represented. The mere fact that these bargaining unit employees make slightly more than the dispatchers in some of the City's proposed comparable communities is not compelling enough to persuade this Fact-finder that a reduction is necessary, especially considering the City's own admission that the dollars involved here are not great.

There was evidence that the City has reached agreements with other bargaining units for 0%/0%/0% wage increases, and also for 0%/0%/wage re-openers. The Union offered no compelling argument that this bargaining unit should be treated differently than the City's own internal comparables. Additionally, there was evidence that the City and this bargaining unit had reached a tentative agreement for a new contract providing for 0%/0%/wage re-opener over a three-year agreement. While this was rejected by the bargaining unit, it nevertheless remains a reasonable resolution to the instant impasse, one that is fair to the bargaining unit members, fair to the City, and most importantly fair to the taxpayers of the City of Middletown.

### **Findings and Recommendation**

The Fact-finder finds compelling the argument that this bargaining unit should be treated similarly as the City's other bargaining units and employees. A wage freeze for two years, with a wage re-opener in the third, accomplishes this.

Additionally, the Fact-finder does not find compelling evidence that an increase in the shift differential is warranted.

Therefore the Fact-finder recommends that Article 22 be amended to provide for a zero percent (0%) effective January 1, 2014 and an additional zero percent (0%) increase in wages effective January 1, 2015.

Additionally, the Fact-finder recommends that Article 22 be amended to provide for a wage re-opener in the third year of the agreement.

Lastly, the Fact-finder recommends the retention of current contract language in Article 22 regarding the shift differential.

### **Issue: Article 30 - Termination**

#### **Positions of the Parties**

The Union proposed a three year agreement effective January 1, 2014-December 31, 2016. It argued that all of the contracts between the parties have been for a three year period and any less time for this new agreement would have the parties negotiating year round. It also argued that the possibility of outsourcing is not a valid reason to lessen the length of a contract.

The Employer proposed two-year contract duration, and called the Union's proposal for three years untenable, as the future operation of the Middletown dispatch center is in question. The City has held informal communications with area dispatch centers to determine whether dispatching service may be better offered through a sub-contracting agreement. The City expects to make a decision with regard to the future of the dispatch center within two years. Therefore, the City maintains, this is an inappropriate time to create a contract with a term longer than two years.

#### **Discussion**

The Employer acknowledged that it normally prefers three-year agreements, only offered the contracting-out possibility as a reason why a two year agreement is preferable at this time. There was no other argument offered for changing the contract to a two year term.

The possibility that the City might contract out dispatching services within two years simply has no bearing on the length of this agreement. There was no evidence that a contract of three years' duration would be any kind of impediment to the City's contracting out efforts.

**Findings and Recommendation**

The Fact-finder finds that there is simply a lack of any compelling evidence for the duration of this agreement to be reduced from its usual 3-year term to a two-year term.

Therefore the Fact-finder recommends that duration of the agreement be from January 1, 2014 through December 31, 2016.

**The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.**



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Martin R. Fitts  
Fact-finder  
July 11, 2014

**Certificate of Service**

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: FOP/OLC Staff Representative Thomas J. Fehr (fopolctom@cinci.rr.com); City of Middletown Law Director Leslie S. Landen (lesl@cityofmiddletown.org); and the Bureau of Mediation, State Employment Relations Board (med@serb.state.oh.us).



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Martin R. Fitts  
Fact-finder  
July 11, 2014