

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT FINDING BETWEEN
THE CITY OF WHITEHALL
AND
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

(Full-time Dispatchers)
2013-MED-09-1089
SERB CASE # ~~12-MED-09-0903~~

Date of Hearing: February 13, 2014

E. William Lewis, Fact Finder

Fact Findings and Recommendations

Appearances:

Marc A. Fishel, Esq.
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Joel D. Glasser, Esq.
FOP/OLC
222 East Town Street
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AUTHORITY

In the matter brought before Fact Finder E. William Lewis, in keeping with applicable provisions of Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particular those that apply to Safety Forces and the mutual directives of the parties.

In attendance:

For the City:

Marc Fishel, Esq.	City Advocate
Ms. Kim Maggard	Mayor
Ms. Lynn McNabb	Human Resources Director
Mr. Michael Shannon	City Attorney
Mr. Richard Zitzke	Chief of Police

For the FOP:

Joel Glasser, Esq.	Union Advocate
Mr. Marc Licht	Dispatcher
Ms. Cheryl Mumper	Dispatcher

BACKGROUND:

The City of Whitehall, hereinafter known as the Employer/City, provides municipal and safety services to the citizens of Whitehall. The Fraternal Order of Police, Ohio Labor Council hereinafter known as Union/FOP, represents a bargaining unit of seven employees. This bargaining unit is one of a number of units within the City. The bargaining unit employees provide essential dispatching services the City's safety forces.

The parties had two bargaining sessions in November 2013. During those

meetings a tentative agreement was reached. This tentative agreement was taken to the membership for ratification. However, the agreement was rejected by the membership. Thus a request for Fact Finding was submitted to SERB. On December 13, 2013, this Fact Finder was appointed. By mutual agreement, the Fact Finding session was scheduled for February 13, 2014.

In accordance with Ohio Revised Code 4117.14(C)(4)(e), in making recommendations, the Fact Finder takes into consideration the following factors:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining 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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard 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 in private employment.

Fact Finding Hearing:

At the Fact Finding Hearing the following issues were identified as unresolved:

ARTICLE 17 WAGES, Section 17.1
Section 17.5

ARTICLE 20 HOURS OF WORK AND OVERTIME

Section 20.2-Paid Status

Section 20.3-Overtime Defined

Section 20.4-Compensatory time

ARTICLE 28 INSURANCE

Section 28.1

At the commencement of the Hearing the Fact Finder reviewed the open issues with the parties. Their positions on the unresolved issues as identified by their Pre-submittals, did not reflect their tentative agreements on them. Both parties had reverted to positions held prior to any agreements reached through negotiations. ORC 4117 encourages the Fact Finder to suggest mediation, before the necessity of conducting a Formal Hearing. Both the City and the FOP agreed to participate in a mediation session with the Fact Finder. At the conclusion of the mediation session positive results were achieved. However, it was agreed to open a Fact Finding Hearing and the parties would submit documents addressing the open issues. This Fact Finding Report will reflect the Pre-submittal positions of the parties. It was also agreed between the parties and the fact finder that in making my recommendations the results of the mediation discussions would be considered. The positions of the parties will be followed by a Fact Finder discussion and my recommendations.

Article 17 Wages,

Section 17.1—Pay Plan

CITY POSITION:

Effective January 1, 2014- 1.5% increase

Effective January 1, 2015- 1.5% increase

Effective January 1, 2016- 1.5% increase

UNION POSITION:

Effective January 1, 2014- 3.0% increase

Effective January 1, 2015- 3.0% increase

Effective January 1, 2016- 3.0% increase

DISCUSSION:

This bargaining unit is very competitive with area wage earners in similar classifications, per submitted documents. Also submitted available SERB data does not reflect that the tentative agreement reached between the parties of two percent/ year is substandard.

RECOMMENDATION:

Effective January 1, 2014- 2% increase

Effective January 1, 2015- 2% increase

Effective January 1, 2016- 2% increase

Section 17.5 Shift Differential:

CITY POSITION:

Current Language.

UNION POSITION:

- A. Employees assigned to shifts starting at or after 3:00 p.m. and before 7:00 a.m. shall receive shift differential pay for all hours worked as follows

\$1.00 per hour

- B. Such pay shall be in addition to the regular hourly rate. Shift differential shall not apply to Employees when their shift starts at other times and they work into the above listed hours either on regular assignment or overtime.

DUSCUSSION:

Submitted documents and confirmed through mediation discussions indicated that the rotating shift differential was no longer applicable to the department.

RECOMMENDATION:

Union position as stated above.

ARTICLE 20 - HOURS OF WORK AND OVERTIME

Section 20.2 Paid Status:

UNION POSITION:

For purposes of this Contract, "paid status" shall include hours of actual work as well as all hours on approved paid leave, to include holiday, paid sick time, vacation, injury, funeral, personal, and military leave.

CITY POSITION:

Change current language to reflect that the forty hour threshold be based only on hours actually worked.

DISCUSSION:

The current CBA's language is not unique or substantively different than other comparable CBA's. There was no substantive argument introduced to convince the fact finder a change is in order.

RECOMMENDATION:

Current language.

Section 20.3 Overtime

20.3 A.

UNION POSITION:

Change current language to include sick leave and compensatory time in the overtime computation to all hours in paid status.

CITY POSITION:

Current language.

DISCUSSION:

The parties agreed to current language during their bargaining process, which resulted in a tentative agreement. The fact finder would be “hard pressed” to find the Union’s proposed language throughout comparable agreements.

RECOMMENDATION:

20.3 A. Current language.

20.3 C.

UNION POSITION:

When overtime is necessary, as determined by the City, overtime hours will be offered first to members of the Full-Time Bargaining Unit. Members of the Full-Time Bargaining Unit will not refuse overtime without good reason.

CITY POSITION:

Current language.

DISCUSSION :

The Union's proposal is a clarification, in the fact finder's opinion.

RECOMMENDATION:

Union's position as stated above.

20.3 E.(new)

UNION POSITION:

For the purposes of this agreement, "overtime" shall be defined as all gaps or holes in the schedule created by another employee who has chosen or been forced to use compensatory time, paid sick time, vacation, injury time, funeral time, personal time, military leave, and all other elections of leave not exclusively enumerated in this Agreement."

CITY POSITION:

Current language.

DISCUSSION:

This language was not incorporated into the tentative agreement. These types of concerns have been and should be topics of the joint labor/management committee.

RECOMMENDATION:

Do not incorporate into this Agreement.

Section 20.4 Compensatory Time

UNION POSITION:

Increase accrued limit from one hundred (120) to two hundred(200).

CITY POSITION:

Reduce the amount of compensatory time that can be earned in lieu of paid overtime to sixteen (16) hours.

DISCUSSION:

This was a critical item of discussion during the bargaining process. Time off has become a problem in most mature bargaining units. Vacation time coupled with holidays, sick time, and compensatory time off, creates major scheduling problems for most employers. In small bargaining units the problem seems to be exaggerated, since there are fewer qualified employees to fill in. The party's positions are not realistic, based on information submitted and shared with the fact finder. This issue was part of an overall tentative agreement between the parties. However, in the mediation session with the fact finder a compromise was agreed to, which will be reflected in my recommendation.

RECOMMENDATION:

Section 20.4 Compensatory time: to read as follows:

- A. At the Employee's option, overtime may be accrued as compensatory time at the rate of one and one-half (1.5) hours of compensatory time for each hour of overtime worked.
- B. Upon termination for any reason, all accumulated, but unused compensatory time shall be paid at the then-current rate of compensation to the Employee.
- C. As of January 1, 2014, Employees may only accrue eighty hours (80) of compensatory time in lieu of overtime in a calendar year. Of these eighty (80) hours twenty (20) hours may be carried over into the following year, so long as that Employee's maximum accrual of compensatory time does not exceed a total of eighty (80) hours when combined with compensatory time carried over from the previous year.

- D. Any compensatory time in excess of eighty (80) hours shall be paid out upon execution of this Agreement, at the Employee's then-current hourly rate.
- E. Employees may, at the end of the calendar year, choose to sell back their compensatory time to the City in lieu of carrying over compensatory time to the following year.

ARTICLE 28 INSURANCE

Section 28.1 Hospitalization, Surgical, Major Medical

CITY POSITION:

The City has proposed multiple changes to the Health Insurance Plan, both in premium sharing and Plan design. These changes would require the employees to share in more of the health insurance expenses.

UNION POSITION:

The Union in their Pre-submittal document also recognizes the problems with health care costs in this country. However, their position for employee premium contributions in years two and three differ from the City's for single contribution, by six dollars and eighteen dollars respectively. Single plus one coverage for premium contributions, in years two and three differs by fifteen dollars and twenty eight dollars respectively. In network and out of network deductibles, co-insurance and out of pocket employee expenses are also less than the Employer's position.

DISCUSSION:

This issue was extensively bargained between the Employer and the Union.

Health care costs have been an issue at bargaining tables since the early eighties. The tentative agreement reached between the parties in this bargaining process, is in the fact finder’s opinion, commensurate with similar agreements reached by other bargaining units within the City, and with other similar bargaining units external to the City. There is no substantive reason for the fact finder to recommend anything other than the tentative agreement reached between the City and Union.

RECOMMENDATION:

Section 28.1 Hospitalization, Surgical, Major Medical—to read as follows:

The City will maintain the current comprehensive hospitalization, surgical, major medical, physician services coverage and prescription drug coverage for all Employees as listed in the booklet of coverage distributed to the Employees with the following amendments, to begin January 1, 2011.

A. Premiums

Employees will pay monthly premiums of:

	2014	2015	2016
Single coverage	\$70.00	\$86.00	\$108.00
Single plus one coverage	\$88.00	\$110.00	\$138.00
Family(a)(up to four*) coverage	\$100.00	\$125.00	\$160.00
Family(b)(greater than four*) coverage	Family (a) Rate + \$15.00/ additional dependent		

*total includes employee

The payments will be deducted from the Employee’s pay.

B. Network Costs
In Network

Deductibles:	Individual	\$250.00
	Single plus one	\$500.00
	Family	\$700.00
Co-insurance:	Individual	\$700.00
	Single plus one	\$750.00
	Family	\$800.00
Out-of-Pocket:	Individual	\$950.00
	Single plus one	\$1250.00
	Family	\$1500.00

Out-of-Network

Deductibles:	Individual	\$800.00
	Single plus one	\$1600.00
	Family	\$2000.00
Co-insurance:	Individual	\$2200.00
	Single plus one	\$3400.00
	Family	\$4000.00
Out-of-Pocket	Individual	\$3000.00
	Single plus one	\$5000.00
	Family	\$6000.00

C. Co-Payments

Office visit:	\$20.00
Urgent Care:	\$30.00
Emergency Room:	\$50.00

Prescription:

Generic	\$10.00
Formulary	\$35.00
Non-Formulary	\$75.00
Specialty	\$200.00

Mail order Prescription: (90 days)

Generic	\$20.00
Formulary	\$70.00
Non-Formulary	\$150.00

CONCLUSION

The Fact Finding recommendations contained herein were arrived at after giving consideration to the positions and arguments of the parties, the prior tentative agreement, our mediation discussions, and the Criteria enumerated in ORC 4117.14(C)(4)(e). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations, or in mediation, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

Respectfully submitted this 28th day of February 2014.

/s/E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finding Report was served by e-mail and by regular U. S. mail, upon Marc A. Fishel, Esq., for the City of Whitehall at Fishel Hass Kim Albright, 400 South Fifth Street, Columbus, Ohio 43215, and Joel D. Glasser, Esq. Fraternal Order of Police, Ohio Labor Council, 222 East Town Street, Columbus, Ohio 43215, and by e-mail upon The State Employment Relations Board, this 28th day of February 2014.

/s/E. William Lewis
Fact Finder