

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASES NOS. 2013-MED-10-1464, 1465 AND 1466**

FRATERNAL ORDER OF POLICE/ OHIO LABOR COUNCIL, INC.

and

THE CITY OF WILLARD

FACT FINDING REPORT

**Submitted by John F. Lenehan
April 30, 2014**

TO:

VIA E-MAIL

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FINDING AND RECOMMENDATION

I BACKGROUND

On January 8, 2014, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of the Fraternal Order of Police/ Ohio Labor Council and the City of Willard (Case Nos. 2013-MED- 10- 1464, 1465 and 1466). A Fact Finding Hearing was held on April 4, 2014, 10:00 a.m., at the Willard City Hall, Council Chambers, 631 Myrtle Avenue, Willard, Ohio 44890. The Fraternal Order of Police/Ohio Labor Council, Inc. (“Union” or “FOP”) was representative by Jackie Wegman, Staff Representative, and the City of Willard (“Employer” or “City”) was represented by David B. Harwood, Law Director. In attendance on behalf of the Union were representatives from the three bargaining units. They were: Teresa Cupp, Dispatchers’ Representative; Ryan Gilmore and Shannon Chaffins, Sergeants’ Representatives; and, Ed Tackett Police Officers’ Representative. Appearing on behalf of the Employer were Brian Humphress, City Manager, and Mark Holden, Chief of Police.

During the hearing the parties attempted to mediate the outstanding issues. Unfortunately, the parties were unable to reach an agreement. The following report is the Finding and Recommendation of the Fact Finder regarding the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties’ representatives and SERB on April 30, 2014.

A. Description of the Parties and Bargaining Units

The parties are the Fraternal Order of Police/Ohio Labor Council, Inc., and the City of Willard, Ohio. The City has recognized the Union as the exclusive representative for the employees of its police department’s three (3) bargaining units, which are: Sergeants, consisting of four (4) employees; Police Officers consisting of eight (8) employees; and, Dispatchers, consisting of three (3) employees.

Willard is located in Huron County in North Central Ohio with a population of approximately 6,236 according to the 2010 U.S. Census, and a per capita income of \$17,939 and a median household income of \$40,896.

B. History of Bargaining

Historically, all three bargaining units have bargained together. The current Collective Bargaining Agreement (“CBA”) effective from December 13, 2011 through December 12, 2014, covers the employees in the three bargaining units. The CBA provided for no general wage increase during the term of the agreement. On October 12, 2011, the parties executed two Memoranda of Understanding.

One Memorandum provided that on October 1, 2013 the parties would reopen the CBA to discuss and negotiate the subject of wages under Article XXI. The other Memorandum provided for the suspension for the first two years of the CBA, commencing December 25, 2011, of the provision of Article XVII, Section 2 (e) of the CBA providing that sick leave, holidays and vacation leave will be included in the calculation of overtime. In addition, this Memorandum provided that on October 1, 2013, the CBA would be reopened to discuss and negotiate the continuance of the abeyance or suspension of including sick leave, holidays and vacation leaves in the calculation of overtime pay for the remaining term of the CBA.

Pursuant to the aforementioned memoranda, the parties met on October 18, and November 14, 2013 and negotiated on both reopeners without success. As a result, they agreed to proceed to fact finding.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,

- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

ARTICLE XXI WAGES

SECTION 1. There shall be no general wage increase during the life of this agreement.

MEMORANDUM OF UNDERSTANDING (WAGE REOPENER)

It is understood and agreed by both parties that on October 1, 2013, this Agreement will be re-opened to discuss and negotiate the subject of Article XXI, Wages. (December 12, 2011)

AND

ARTICLE XVII OVERTIME

SECTION 2. (e) Sick Leave, holidays, vacation, injury in the line of duty, and court time will be included for the calculation of overtime.

MEMORANDUM OF UNDERSTANDING (OVERTIME)

It is understood and agreed by both parties that the provisions of Article XVII, Section 2 (e) of this Agreement that mandate that sick leave, holidays, and vacation leave will be included into the calculation of overtime shall not be in effect for the first two years of this Agreement, beginning on December 25, 2011. Further, it is agreed by both parties that on October 1, 2013, this Agreement will be re-opened to discuss and negotiate the continuance of this abeyance for the remaining term of this Agreement. (December 12, 2011)

The foregoing provisions of the CBA and Memoranda of Understanding are the only issues before the Fact Finder for determination. All other provisions of the CBA are to remain in effect.

Employer's Position

On the reopener for wages the City proposed no increase for the third year of the CBA and on the reopener for overtime it proposed a renewal of the Memorandum of Understanding regarding the calculation of overtime for the third year of the CBA. It argued that given its economic circumstances it would be fiscally irresponsible to grant a wage increase and not to renew the Memorandum of Understanding regarding the calculation of overtime for the last year of the CBA.

According to the City, the FOP during negotiations proposed a 1% wage increase and no renewal of the Memorandum of Understanding regarding the calculation of over time for the third year of the CBA. The City calculated that the cost of the 1% wage increase to be \$11,600.00 and the nonrenewal of the Memorandum of Understanding to be approximately \$36,000.00.

In its prehearing statement and at the fact finding hearing the City made the following arguments and submitted testimonial and documentary evidence in support of its position.

First, the City stated that its General fund is used to fund the general operations of the City, including the Police Department. Most of the City's total income tax revenues go into the General Fund. Income tax collection collections have decreased 9% for the period from 2011 to 2013.

Second, for the period from 2011 to 2013, the City has seen substantial reductions in other sources of revenue: 1) 43% in state and local funds; 2) 35% in county local government funds; 3) elimination of Commercial Activity Tax; and 4) elimination of the estate tax.

Third, while the City's revenues have been decreasing, its expenditures have not. In three of the last five years, the total expenditures exceeded its revenue. The projected deficit spending in 2014 would decrease the City's reserves to an estimated \$824,000.00.

Fourth, the City's health insurance costs for all of its employees have increased dramatically. From 2012 to and including 2014 family coverage increased more than 28% and single coverage increased nearly 27%.

Fifth, the overall economy of the community reflects the City's financial difficulties. The unemployment rate for Huron County is 12.4%. The per capita income is a mere \$17,939 and the median household income is \$40,896. 27.6% of the City's population, and 21% of its families, have income in the past twelve months that place them below the poverty level. Since the year 2000, the City has lost 9.2% of its population.

Sixth, as to internal comparables, the city has made an effort to grant the same pay increase to all employees. During the years 2012, 2013 and 2014, there was no general wage increase granted to non-union employees. Part time employees received an increase when the minimum was increase. In 2012, all department heads and the City Manager took a 2% wage cut, and in 2012 most non-union employees were subject to reduced hours.

However, the City did grant wage increases to its three firefighters. They received a lump sum of \$250.00 in the initial year of their previous CBA (July 1, 2010 through June 30), 2013), 2% in the second year, effective July 1, 2011, and 2% in the third year, effective January

1, 2013. The current CBA (July 1, 2013 through June 30, 2016) for firefighters grants no wage increase in the first year, a lump sum of \$350 in the second year and a wage increase of 2% in the third year.

Seventh, as to the calculation of overtime pay for non-union employees, it is calculated on hours worked, not hours paid. However, employees who work holidays are paid straight time for the holiday, plus time and one-half for hours worked. Likewise, the calculation of overtime for City firefighters is based on hours worked. The firefighters CBA provides overtime pay at time and one-half for all hours worked in excess of 190 hours over the course of 28 day work period. They do not receive time and one-half for hours worked on a holiday, unless they would otherwise qualify by working in excess of the 190 hours over the 28 day work period.

In summary, the Employer contends that due to its loss of revenue, its increasing costs, and the compensation paid to its other employees, the city believes that the wage freeze should be continued for the third year of the Agreement, and also that during the third year, overtime should be calculated on the basis of hours actually worked.

In support of its position, the Employer through testimony of Brian Humphress, Willard City Manager, submitted the following documents into evidence.

- Exhibit #1 Health Insurance Premiums from 2008 through 2014
- Exhibit #2 Huron County Unemployment Rate from the *Norwalk Reflector*
- Exhibit #3 U.S. Census Quick Facts
- Exhibit #4 U.S. Census Fact Finder – Selected Economic Characteristics
- Exhibit #5 U.S. Census Fact Finder – Poverty Status in Past 12 Months
- Exhibit #6 U.S. Census Fact Finder – Selected Housing Characteristics
- Exhibit #7 U.S. Census Fact Finder – 2000 Profile
- Exhibit #8 IAFF Collective Bargaining Agreement July 1, 2010 – June 30, 2013
- Exhibit #9 IAFF Collective bargaining Agreement July 1, 2013 – June 30, 2016
- Exhibit #10 Section 167.04 Codified Ordinances – Overtime
- Exhibit #11 Section 167.06 Codified Ordinances – Holidays
- Exhibit #12A City of Willard Appropriation Budget 2014
- Exhibit#12B City of Willard Finance Department 2013 Annual Report

Union's Position

The FOP in its prehearing statement proposed a wage increase of two percent (2%) effective January 1, 2014 and that the Memorandum of Understanding suspending the provisions of Article XVII, Section 2(e) relating to the calculation of overtime not be extended.

The Union argues that the Employer has the ability to pay a wage increase. The Employer has consistently underestimated revenues and overestimated expenses in its appropriation budgets. It also has sufficient reserves to cover the cost of the increase proposed by the FOP. The city has obtained additional revenue and increased its assets through the sale of land and other assets.

Further, the Union states the employees in the FOP bargaining units have had no increase in wages for four years and the cost of living has increase during that period, especially the cost of health insurance premiums. This fact, alone, according to the FOP would warrant an increase in compensation.

Finally the FOP argues that an examination of both internal and external comparables justifies a pay increase. The City's firefighters have received pay increases and lump sum payments over the last four years, and the employees in the FOP bargaining units have not. The starting salary for the City's sergeants when compared to seven other governmental entities in the North Central Ohio is the lowest. The highest salary for the City's sergeants when compared to those same entities is in bottom fifty percent. For the City's Patrol Officers the starting salaries are in the middle range when compared to the seven other governmental entities. Their top salaries, however, are in the bottom half. The dispatchers starting salaries are the highest when compared to five other police agencies. Their top salaries are in the upper half.

Regarding the continuation of the Memorandum of Understanding on the calculation of overtime, the FOP submitted a comparison with seven other police agencies in the North Central Ohio area. Six out of those seven included paid holidays, vacations and sick leave in the calculation of overtime to be paid.

In support of its position the Union has submitted the following documents into evidence.

1. Statement of Management's Discussion and Analysis for the Year Ended December 31, 2011
2. Notes to the Basic Financial Statements for the Year Ended December 31, 2012
3. General Fund (GAAP or Accrual Basis)
4. General Fund (Non-GAAP Budget Basis)

5. Comparable Pay rates for Sergeants in other area police agencies
6. Comparable Pay rates for Patrol Officers/Deputies and Dispatchers in other area police agencies
7. Comparable Pay for Overtime in other area police agencies
8. 2013-2014 Council Minutes
9. Pay Roll Record of an individual police officer
10. Willard Police Department Work Schedule for the period October 6, 2013 thru January 4, 2014

Finding and Opinion

Both parties have done an excellent job in presenting their positions. The Employer's position is more persuasive as to not granting a general wage increase at this time. However, the FOP's position has more merit as to not extending the Memorandum of Understanding regarding the calculation of overtime pay.

Obviously the reopeners set forth in the Memoranda of Understanding in this case were afterthoughts. The parties had reached agreement on the CBA for the period December 13, 2011 through December 12, 2014 and executed same in November 2011. The two Memoranda of Understanding were not executed until December 12, 2011. Neither the reopener on wages nor the suspension of the overtime provision of Article XVII, Section 2 (e) was incorporated in the CBA. Also, it could be inferred that one was consideration for the other.

While the City's financial position may be somewhat desperate, it is not totally hopeless. It probably could meet the Union's proposal for a two percent (2%) wage increase. However, such would not be fiscally responsible considering: 1) that other employees have not received general wage increases for 2014; 2) that this is a reopener and the parties will be at the table in October of this year to negotiate a new contract; and, 3) the City may have to use its reserves or lay off other employees to meet additional pay costs. Unlike, overtime pay a general wage increase is cumulative. A two percent wage increase will, according to the City cost approximately \$22,200.00 plus future pay increases added to the base. Considering these factors, now is not the time to grant a general wage increase.

The Memorandum of Understanding regarding the calculation of overtime pay should not be extended. The FOP gave up its rights under Article XVII, Section 2 (e) of the CBA for two

years, commencing December 25, 2011 in exchange for the right to negotiate a wage reopener. Although the Fact Finder in this case has concluded that an increase in general wages during the last year of the contract should not be granted, it does follow that the Memorandum of Understanding should be extended.

The City claims that the overtime costs for the last year of the CBA would increase by \$36,000.00, if the Memorandum is not extended. Unfortunately, it did not provide us with the specific calculation of how it arrived at this amount. An examination of City's Exhibit 12A pages 24 and 25 indicates that overtime paid for the Police Department during 2011 was \$82,844. During 2012, the overtime paid was \$55,957.00. This was a reduction of \$28,887 from the previous year. Considering that this was the result, solely, of the Memorandum of Understanding the Employer had the benefit over two years of \$56,000.00 to \$60,000.00 in reduced overtime pay. This was a right the FOP and the bargaining unit employees had, and now have, under the CBA that they gave up for two years for the benefit of the City. It is not unreasonable or unfair that they should now receive what they have a right to by contract. The evidence submitted by the City while persuasive in denying a general pay increase during the last year of the contract is insufficient to establish an inability to pay as required by Article XVII, Section (e) of the CBA, or an impossibility of performance.

The internal comparables submitted by the Employer establish that the non-union employees receive overtime pay based upon hours worked, not hours paid. Likewise the firefighters receive overtime based upon hours worked. In this case, the Fact Finder is of the opinion that the external comparables submitted by the Union are to be given greater weight. The Union Exhibit of comparable overtime pay in police departments and sheriff's offices in the North Central Ohio Area establish that paid sick leave, vacation, injury leave and holidays are included in the calculation of overtime pay. Thus, the provision of Article XVII, Section (e) is in accord with overtime pay for similarly situated employees in other police agencies.

In summary, it is the opinion of the Fact Finder that there should be no increase in base pay rates during the last year of the CBA, and the Memorandum of Understanding suspending Article XVII, Section 2 (e) for two years commencing December 25, 2011 should not be extended.

Recommendation

Therefore, it is recommended that there be no change in the language of CBA providing for an increase in base wages during last year of the CBA and that the provisions of Article XVII, Section (e) shall be in effect as of December 25, 2013.

IV
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted April 4, 2014. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

April 30, 2014

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PROOF OF SERVICE

This fact-finding report was electronically transmitted this 30th of April, 2014 to the persons named below.

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/S/ John F. Lenehan
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