

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FOR THE STATE OF OHIO

THE CITY OF PORT CLINTON, OHIO

AND

FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL

SERB CASE Nos. 2014-MED-12-1647

2014-MED-12-1648

2014-MED-12-1649

DATE OF FACT-FINDING: July 14, 2015

REVISED

REPORT OF FACT-FINDER JACK E. McCORMICK

JULY 23, 2015

Pursuant to an Appointment letter dated May 22, 2015 from the State Employment Relations Board a fact-finding hearing was held at 10:30 am July 14, 2015 at the offices of the Port Clinton Ohio Police department.

Present at the hearing were the following:

For the Employer: John Krock, Vice President Chief Operating Officer
Clemans -Nelson Associates, Inc.

Robert J. Hickman, Chief of Police, Port Clinton Police Department

Tracy Colston, Safety Service Director, Port Clinton

Cole D. Hatfield, Port Clinton City Auditor

Nick Gerber, Broker, The Ashley Group

For the Employees: Jackie Wegman , Staff Representative, Fraternal Order of
Police, Ohio Labor Council, Inc.

Mark Anderson, Dispatcher Supervisor, Port Clinton Police
Department

Ron Timmons, Patrolman, Port Clinton Police Department

Sgt. David M. Scott “ “ “ “

The parties were fully advised by the Fact-Finder of the applicable law as well as the Rules regarding fact-finding and waived a record hearing.

The Employee organization is the FOP/OLC. The Employer is the City of Port Clinton, Ohio..

Port Clinton is located in Ottawa County in Northwest Ohio. It's major industry is tourism as it is located on the shore line of Lake Erie. The Bargaining Unit is comprised of police officers, sergeants and dispatchers. Currently there are five dispatchers, eight patrolmen and four sergeants. The current contract (the "CBA") expired on March 31, 2015. The CBA under consideration herein would run from April 1, 2015 to March 31, 2017. Bargaining sessions were held on January 26, March 9, and May 4, 2015. These

resulted in the resolutions (by tentative agreements) of all but two issues, those being Article 16 Insurance and Article 22 Wages.*

INSURANCE

The Parties agree that any changes in the current plan cannot take effect until June 1, 2016 as the City has already begun reimbursing employees for any cost of their health insurance since June 1, 2015.

The current plan has a \$2000 deductible for single coverage and a \$4000 deductible for a family plan. The current plan calls for the City's portion of the deductibles to be paid prior to the employees' share.

The effect of this system is that employees have first dollar coverage for the first \$2900 of claims and then they pay up to \$1100 worth of any remaining claims, and they have first dollar coverage of their claims the remainder of the year. The City asserts that the City's costs for health insurance is above the national average largely because of the City paying their deductible prior to the employees. The national average for a single plan, it asserts is \$6,000 and \$16,000 for a family plan. The City's current costs are \$7300 for the single plan and \$21,000 for a family plan, again caused by the City having to pay their deductible first.

The City currently has an HRA health insurance plan with a \$2000 deductible for single plan and a \$4000 deductible for a family plan. After the deductible is paid the insurance pays 100%. It states the employee will be responsible for \$550 of the \$2000 deductible for a single plan and \$1100 of the \$4000 deductible for the family plan. The current CBA calls for the City's portions of the deductible be paid prior to the employees share. The effect is the employees have first dollar coverage for the first \$2900 of claims and then pay the next \$1100 worth of claims.

The City proposal would change the order of the payments of the parties' respective portions of the deductible. The Employees would pay their deductible and then the City their portion. The same as for non-bargaining employees in the City.

UNION PROPOSAL

Effective June 1, 2016:

Employees' deductible is \$1300 for family coverage

Employee is deductible of \$650 for single coverage

City pays its portion of the deductible **prior** to the employees'.

Effective June 1, 2017

Employees' deductible is \$1500 for family coverage

Employees' deductible of \$750 for single coverage

City pays its portion of the deductible **prior** to the Employees' payment.

DISCUSSION

The City argues that the health insurance costs are far above the national average. The costs to the City under the current CBA are \$7,300 per year for a single plan and \$21,000 for the family plan. The national average they assert is \$6,000 for a single plan and \$16,000 for a family plan. The City believes the additional cost is largely because, under the current scheme, the City pays their deductible prior to the employee.

The Union asserts that the City's proposal is drastic in nature, in that it requires the employees to pay their deductible prior to the City's paying its deductible. Also the Union notes it is counter-proposing an increase in the amount of the network deductible responsibility of the employees each year of the agreement.

The City counters that under the current plan, or the Union's proposed plan, it will be taxed forty percent (40%) as both plans will be classified as "Cadillac Plans" under the Affordable Care Act.

There is no argument that health care costs have been rising and throughout the state. And governmental agencies are struggling to hold them down.

However, in the instant case this employer is attempting to abolish a key provision in the current CBA which was fairly **bargained for** in past negotiations.

As to the possibility that the current plan, as well as the proposed plan could be classified as “Cadillac Plans” under the ACA, it must be noted that the current plan was negotiated four years after the ACA become law.

FINDING OF FACT

THERE ARE INSUFFICIENT FACTS TO SUPPORT THE CITY OF PORT CLINTON’S PROPOSED HEALTHCARE PLAN IN THAT IT WAS FAIRLY BARGAINED FOR. THERE ARE SUFFICIENT FACTS TO SUPPORT THE PROPOSAL OF THE UNION IN ARTICLE 16, A, B AND C.

WAGES

The parties are far apart on this issue also. The Union proposes 3% raises for the bargaining unit each year of the 2015-2017 contract beginning April 1, 2015. The City proposes 0% in 2015 and wage reopeners for the last two years.

The main point of contention here is the ability to fund. The City asserts it has no ability to fund any wage increases at this time, but is willing to revisit the issue in the future.

The Union asserts that Chapter 4117 of the revised code mandates “fair wages”. Of course, what is “fair is in the eye of the beholder”

The City asserts that it has operated at a deficit five of the last six years. It would have considered wage increases if the Union would agree to accept the City’s insurance plan (above).

The City estimates that the Union wage proposal would cost the City \$112,182.88 over three years, not counting overtime, which cost \$85,000 in 2015.

The Union counters that argument by their presentation of Union Exhibit #2. This is a document titled City of Port Clinton Financials and known as the CAFR. At Table 5 of the CAFR it is noted that the police department as a component of the General Fund made up 9.4% less for the previous three years. In 2013 expenditures came in at \$40,000 less than budgeted. The City notes that the Police expenditures are over 55.31 % of the City's budget, climbing from \$1,695,328 in 2009 to \$1,801,053 in 2014. However, that is only an increase of \$105,725 over six years. Meanwhile the City's income tax revenue rose by \$137,000 in the same period.

However, there can be no doubt the City has experienced a drastic fall in revenue from a high of \$3,456,281 in 2011 to \$3,119,600 in 2014. Furthermore its General fund Carryover Balance has fallen from \$567,432 in 2009 to \$307,458 in 2014.

The appropriation for the police department in 2015 is \$1,817,800 of which \$938,867,000 (56.65%) has been spent through June 30, 2015.

On the revenue side the City expects to realize \$3,169,560 in its GRF in 2015 of which as of June 30, 2015 they have received \$1,494,851, or 47.16%.

It would appear on the face of it that police expenditures are running slightly ahead of its appropriation as of June 30, 2015. Meanwhile, revenue realized is running slightly behind expectations and the City's bond rating was downgraded to A3.

As noted above the Union's proposal of 3% wage increases each year of the contract is estimated by the parties to cost the City \$112,182.88, not counting overtime. Assuming overtime at \$90,000 per year, it alone would cost an additional \$2,700, plus 24.7% in rollups compounded over three years.

FINDING OF FACT

THE CITY OF PORT CLINTON DOES NOT HAVE THE ABILITY TO FUND THE WAGE INCREASES PROPOSED BY THE UNION

Now the question becomes: if merited, does the City have the ability to fund any wage increases?

All governmental units have what is referred to as “restricted funds”, e.g. fire levies, federal grants, water and sewer funds, etc.. These funds are not available for anything other than their mandated purpose. However, any and all of a general revenue fund may be used at a legislative body’s discretion. That is, GRF funds may be moved from one appropriation to another. However, no fact-finder, nor conciliator, has the authority to mandate any specific transfer. A neutral may, however point out what he/she sees as potential sources for transfer. However, in the final analysis it is entirely up to the legislative body to make any such transfers.

The Fact-finder notes in the City document titled “Expense Comparison” that through June 30, 2015 the City has used 46.3% of its GRF appropriation.

He notes that within the GRF the following:

Budgeted percentages used through June 30, 2015:

Recreation Department – 41.92%

Parking Lot-Lot expenses – 36.56%

Auditor- 48.1%

Treasurer – 45.86%

O.C.D. - 45.87%

Admin. Expenses – 33.49%

Civil Service – 0%

Safety Services – 45.55%

Cemetery – 45.7%

This Fact-finder does not presume to suggest that any particular appropriation(s) above should be used to transfer funds to the police department, but only to demonstrate that there are GRF monies that could be used to fund minimal wage increases to the police department.

FINDING OF FACT

THE CITY OF PORT CLINTON HAS AVAILABLE FUNDS TO PAY FOR WAGE INCREASES TO THE CITY’S POLICE DEPARTMENT.

The next question is: are any wage increases merited and if so, in what amount? This bargaining unit received wage increases of 0% in 2012, 2% in 2013 and 2% in 2014. As stated above the City is proposing 0% for 2015 and a wage re-opener for the 2016 and 2017. The Union proposes 3% raises each of the three years.

COMPARABLES

The City notes that the City dispatchers now earn from \$16.44 per hour to \$19.41. This compares to the average of \$14.81 up to \$18.95 for their comparable cities (Clyde, Norwalk, Bucyrus, Shelby, Tiffin and Galion). Only Clyde tops out at a greater hourly rate than Port Clinton. Tiffin is the lowest with a range of \$13.61 to \$17.83.

The Union chose Fremont which ranges from \$39,353 per year to \$42,036 and Clyde with a range of \$31,075 per year to \$44,512. Port Clinton dispatchers range from \$34,195 per year to 40,372.

As to patrolmen, the City used the same cities it used above, but added Sandusky. Here the average hourly wages ranged from \$19.06 to \$24.57 compared to Port Clinton's \$17.55 hourly wage range to \$24.53. Port Clinton's beginning wage is \$1.51 below the average, but its top rate is about average.

The Union used Fremont, Clyde, Sandusky and Huron. Using average yearly salary Port Clinton patrolmen receive \$36,504 up to \$51,022. This compares to Fremont with a range of \$42,785 to \$59,196 with ten steps. Clyde ranges from \$42,057 to \$54,038. Sandusky patrolmen wages range from \$40,707 to \$56,447 with ten steps. Huron ranges from \$36,212 to \$67,483 in three years.

As to Sergeants, the City used the maximum salaries in Fremont, Fostoria, Clyde, Sandusky, Tiffin, Norwalk and Shelby. The average for these cities is \$28.48 compared to Port Clinton's hourly rate of \$25.81, or \$2.67 below average. The Union using annual salary for Sergeants notes that its Sergeants range between \$52,915 and \$53,684. They note that the low salary in its comparisons (Sandusky, Clyde and Huron) are all above the City of Port Clinton. Clyde starts their Sergeants at \$62,108 per year, Huron at \$61,568, and Sandusky at \$61,332. The only city with a lower starting salary is Fremont at \$52,024. In addition the top salaries in Fremont and Huron are \$67,483 and \$67,620, respectively.

The City points out that the SERB Wage Settlement Breakdown from 2004-2013 shows that in 2013 the average wage increases for police was 1.66%. The SERB June 26, 2015 Benchmark Report, using cities of populations similar to Port Clinton puts them in the low middle range.

The problem always is that a neutral seldom has access to the CBA's of the parties' comparables. Nevertheless, one can draw conclusions about a party's proposal. In this case the City's proposal for no wage increase in 2015 and a re-opener for 2016 and 2017 is not adequate, as it does not even take into consideration inflation. For the sake of argument the Fact-finder will assume a minimum annual inflation rate of 1.5%.

FINDING OF FACT

THERE ARE SUFFICIENT FACTS TO SUPPORT WAGE INCREASES OF ONE AND ONE HALF (1.5%) BEGINNING APRIL 1, 2015 AND SIMILAR INCREASES FOR EACH OF YEAR OF THE CONTRACT BETWEEN THE CITY OF PORT CLINTON, OHIO AND THE MEMBERS OF THE BARGAINING UNIT OF THE CITY OF PORT CLINTON POLICE DEPARTMENT.

The Fact-finder calculates the cost of the above as follows and believes that the City has the ability to fund the same:

| | |
|------------------------------|------------------|
| Base wage increase in 2015 - | \$18,147* |
| 2016 - | \$18,419* |
| <u>2017 -</u> | <u>\$18,696*</u> |
| Total - | \$55,262* |

Assuming annual overtime of \$90,000:

Costs - \$1,683 x 3 = \$5,050*

Grand Total - \$60,312* for 2015-2017

* includes 24.7% roll-ups

All figures rounded to the nearest dollar

 7/23/15

Jack E. McCormick, Fact-finder
State Employment Relations Board

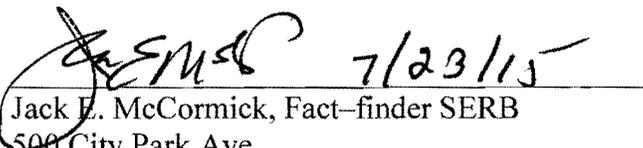
CERTIFICATE OF SERVICE

The foregoing was served upon the following via email pdf. format on the 23rd day of July 2015:

John J. Krock, Vice President, Chief Operations Officer
Clemans Nelson Associates, Inc
Jkrock@clemansnelson.com

Jackie Wegman, Staff Representative Fraternal Order of Police
Ohio Labor Counsel, Inc.
jackiewegmanfop@gmail.com

Ohio Labor Employment Relations Board
MED@serb.state.oh.us



Jack E. McCormick, Fact-finder SERB
500 City Park Ave
Columbus, OH 43215-5707
614-221-2718
614-221-5295 fax
jack.mccormick@att.net.

**Request for Taxpayer
Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
JACK E. MCCORMICK, Attorney

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
 Individual/sole proprietor
 C Corporation
 S Corporation
 Partnership
 Trust/estate
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 Other (see instructions) ▶ _____

Exemptions (see instructions):
 Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)
500 City Park Ave.

City, state, and ZIP code
Columbus, OH 43215-5707

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

| | | |
|--|--|--|
| | | |
|--|--|--|

Employer identification number

| | | |
|----|-----------|--|
| 31 | - 1410950 | |
|----|-----------|--|

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ *J. McCormick* Date ▶ **7/22/15**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

CORRECTED

Case Number: 2014-MED-12-1647

Case Number: 2014-MED-12-1649

Case Number: _____

Case Number: 1648

Case Number: _____

Fact-finding Report/Conciliation Award

Employer Name: City of Port Clinton County: Ottawa

Neutral: JACK E. MCCORMICK

Employee Organization: FOP/OLC Date Issued: 7/22/15

of Issues 3 Conciliation

For internal entry only BU: _____ Employee Type: _____ Employer Type: _____

| ISSUE | PAGE |
|---|----------------------|
| Assignment/Reassignment. | _____ |
| Attend/Sick Leave Bonus. | _____ |
| Bargaining Unit Work. | _____ |
| Breaks/Meal Time. | _____ |
| Civil Service Reference. | _____ |
| Class Size. | _____ |
| Compensatory Time. | _____ |
| Differential (CIRCLE ONE) | _____ |
| Rank/Shift. | _____ |
| Discipline. | _____ |
| Drug Testing. | _____ |
| Duration. | _____ |
| Education Stipend. | _____ |
| Employee Rights. | _____ |
| EMT/Paramedic Certification. . | _____ |
| Evaluation/Merit Pay. | _____ |
| Fair Share. | _____ |
| FMLA. | _____ |
| Grievance Procedure. | _____ |
| Hazard Pay. | _____ |
| Holidays. | _____ |
| Hours of Work. | _____ |
| Injury Leave. | _____ |
| Insurance. <u>Health</u> | <u>X P. 4</u> |
| Interim Bargaining. | _____ |
| Job/Shift Bidding. | _____ |
| Layoff/Recall. | _____ |
| Leaves. | _____ (Circle below) |
| Funeral, Union, Add'l Holiday, Personal Lv, Court | _____ |
| Licensure/Certification. | _____ |
| Longevity. | _____ |
| MAD. | _____ |
| Management Rights. | _____ |
| Me Too Clause. | _____ |
| Minimum Staffing. | _____ |
| Call-In/Call-out. | _____ |
| Outside Employment. | _____ |
| Overtime. | _____ |
| Paid Time Off (PTO). | _____ |
| Parking. | _____ |
| Pension Pick-up. | _____ |
| Personnel File. | _____ |
| Physical Fitness. | _____ |

| ISSUE | PAGE |
|------------------------------|---------------------------|
| Probationary Period. | _____ |
| Promotion. | _____ |
| Recognition. | _____ |
| Residency. | _____ |
| Retirement Incentive. | _____ |
| Retroactivity. | _____ |
| Reopener Clause. | <u>X Denied see below</u> |
| Rules and Regulations. | _____ |
| Seniority. | _____ |
| Sick Leave. | _____ |
| Sick Leave Severance. | _____ |
| Signing Bonus. | _____ |
| Special Assignment. | _____ |
| Stand-By Pay / On-Call. | _____ |
| Sub-Contracting. | _____ |
| Tool Allowance. | _____ |
| Training/Tuition. | _____ |
| Uniform Allowance. | _____ |
| Vacancies. | _____ |
| Vacation Leave. | _____ |
| Wage. | <u>X PP 8-9</u> |
| Wage/Pay Step. | _____ |
| Working Conditions. | _____ |
| Zipper Clause. | _____ |

| Please list Issues not found above | | Page |
|------------------------------------|-------|-------|
| Issue #1 | _____ | _____ |
| Issue #2 | _____ | _____ |
| Issue #3 | _____ | _____ |
| Issue #4 | _____ | _____ |
| Issue #5 | _____ | _____ |
| Page | _____ | _____ |

| PERCENT WAGE INCREASE PROPOSALS | | Increase Date |
|---------------------------------|-----------------|----------------|
| Employer % WAGE Increase. | <u>0 %</u> | <u>4/01/15</u> |
| Employer % WAGE Increase. | <u>Reopener</u> | _____ |
| Employer % WAGE Increase. | <u>Reopener</u> | _____ |
| Union % Wage Increase. | <u>3 %</u> | <u>4/01/15</u> |
| Union % Wage Increase. | <u>3 %</u> | <u>4/01/16</u> |
| Union % Wage Increase. | <u>3 %</u> | <u>4/01/17</u> |
| Neutral's % wage Increase. | <u>1.5 %</u> | <u>4/01/15</u> |
| Neutral's % wage Increase. | <u>1.5 %</u> | <u>4/01/16</u> |
| Neutral's % wage Increase. | <u>1.5 %</u> | <u>4/01/17</u> |