

Susan Grody Ruben, Esq.  
Arbitrator, Mediator, Factfinder  
30799 Pinetree Road, No. 226  
Cleveland, OH 44124  
SusanGrodyRuben@att.net

**PURSUANT TO O.R.C. 4117.14(C)  
UNDER THE AUSPICES OF THE  
STATE EMPLOYMENT RELATIONS BOARD**

<b>IN THE MATTER BETWEEN</b>	)	
	)	
<b>CITY OF MASSILLON</b>	)	
	)	<b>FACTFINDING REPORT</b>
<b>and</b>	)	<b>SERB CASE NOS.</b>
	)	<b>2015-MED-03-0203</b>
<b>FRATERNAL ORDER OF POLICE,</b>	)	<b>2015-MED-03-0204</b>
<b>OHIO LABOR COUNCIL, INC. AND</b>	)	
<b>MASSILLON POLICE UNITS</b>	)	

**This Factfinding arises pursuant to Ohio Revised Code Section 4117.14(C). The Parties, City of Massillon (“the City”) and Fraternal Order of Police, Ohio Labor Council, Inc., and Massillon Police Units, (“the Union”), selected Susan Grody Ruben to serve as sole, impartial Factfinder, whose Recommendations are issued below.**

**Hearing was held June 16, 2016 in Massillon, Ohio. The Parties were represented by advocates and were afforded the opportunity for the presentation of positions and evidence. The Parties agreed this Report would be due on July 14, 2016.**

**APPEARANCES:**

**for the City:**

**Leslie Iams Kuntz, Esq., Krugliak, Wilkins,  
Griffiths & Dougherty Co., L.P.A., Canton, OH**

**for the Union:**

**Charles L. Wilson, Senior Staff Representative,  
FOP/OLC, Inc., Akron, OH**

**FACTFINDER'S RECOMMENDATIONS**

**Statutory Criteria**

**In reaching Recommendations on the open issues, the Factfinder has reviewed the parties' submissions, and the evidence and positions presented at the Factfinding Hearing. The Factfinder has analyzed this information in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):**

- a) Past collectively bargained agreements ... between the parties;**
- b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;**
- c) The interests and welfare of the public, 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;**
- d) The lawful authority of the public employer;**
- e) The stipulations of the parties; and**

- f) **Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

### **Bargaining Unit**

**There are two bargaining units. In the “blue” unit are 30 Patrol Officers. In the “gold” unit are 6 Sergeants and 4 Lieutenants. Collectively, the 40 blue and gold employees will be referred to as “Police Officers” in this Factfinding Report.**

### **Incorporated Articles**

**The Factfinder hereby incorporates into her Recommendations all Articles that were not addressed in negotiations by either Party, as well as the following resolved articles, with the changes, if any, tentatively agreed to by the Parties:**

**Article 1 – Agreement/Purpose**

**Article 2 – Conflict with Law and Separability\**

**Article 3 – Non-Discrimination**

**Article 4 – Recognition**

**Article 5 – Union Security**

**Article 6 – Union Representation**

**Article 7 – Management Responsibilities**

**Article 8 – Bargaining Unit Member Rights**

**Article 9 – Discipline**

**Article 10 – Grievance Procedure**

**Article 11 – Labor Management and Safety Committee**

**Article 12 – Seniority**

**Article 14 – Anti-Nepotism**

**Article 16 – Layoff and Recall**

**Article 18 – Hours of Work and Overtime**

**Article 21 – Police Memorial and Funeral Services**

**Article 24 – Injury on Duty/Disability Act**

**Article 25 – Death Benefits**

**Article 26 – Insurances and Health Coverage**

**Article 27 – Leaves of Absence**

**Article 28 – Sick Leave**

**Article 29 – FOP Days**

**Article 30 – Jury Duty Leave**

**Article 31 – Trauma Leave/Critical Incidents**

**Article 32 – Compensatory Time Off**

**Article 33 – Holivac**

**Article 34 – Vacation**

**Article 35 – Police Olympics**

**Article 36 – Education Allowance**

**Article 37 – Uniform Maintenance Allowance/Protective Clothing**

**Article 38 – Severability**

**Article 39 – Working Out of Classification**

**Article 40 – Family and Medical Leave**

**Article 41 – Substance Abuse**

**Article 42 – Waiver in Case of Emergency**

**Article 43 -- Promotions**

**Unresolved Issues**

**1. Article 15 – Minimum Manpower**

**Union Proposal**

The Union proposes status quo. First, the language has been in the contract for over 20 years. With the City in fiscal emergency, and thereby unwilling to respond to economic proposals from the Union, this is not the time to be making language changes. Second, once language is in the contract, the City can no longer stake its claim on it being a permissive subject of bargaining. Third, though by ordinance, City Council has committed to having a police force of at least 44, ordinances can be repealed and therefore the language needs to stay in the contract.

**City Proposal**

The City proposes eliminating this Article. The City contends that as a permissive subject of bargaining, it should not be required to maintain minimum manning. It further contends many other cities have eliminated minimum manning, including Mansfield, which also was in fiscal emergency. According to the City, minimum manning causes unnecessary overtime costs.

### **Factfinder's Recommendation**

The Factfinder recognizes that minimum manning has been in the contract for a long time. The Factfinder agrees with the Union that once language is in a contract, an employer cannot primarily rely in factfinding that the subject of the language is only a permissible subject of bargaining.

The trend in police departments, however, is to give management more staffing flexibility to meet the needs of the municipality. This becomes even more compelling during fiscal emergency.

Minimum manning makes it difficult, if not impossible, for the City to deploy Police Officers where they are most needed. The record, for example, shows midnight shift, with minimum manning at 7, sometimes has 2 Police Officers on overtime to meet minimum manning. The record shows those 2 Police Officers are needed more on day shift than on midnight shift.

The Factfinder does not believe the Police Chief will abuse staffing flexibility, and accordingly recommends elimination of minimum manning so that overtime costs will be reduced and operational needs will be better served.

## **2. Article 17 – Vacancies**

### **Union Proposal**

The Union proposes status quo. In particular, the Union sees disputes arising from determining which employee is most qualified for a transfer to a vacant position.

### City Proposal

The City proposes language changes that would:

1. Clarify which positions are exempt from bidding, specifically stating that Special Investigations Units and K-9 officer positions are exempt from bidding
2. Open up the bidding process, specifically adding time and increasing the list of employees to be considered from 4 to 6; seniority would not be the determining factor in selecting the employee; rather the employee who is the most qualified would be selected
3. Create 4-year terms for vacancies, rather than indefinite terms
4. Create a 1-year probationary period for vacancy transfers; if the officer does not successfully complete the probationary period, the officer returns to the prior position

### Factfinder's Recommendation

The Factfinder finds the City's proposal reasonable and useful. It permits more upward mobility for police officers and protects them if a transfer to a vacancy does not work out.

Apparently, annual performance evaluations are not conducted for Police Officers. Thus, the Union rightly sees disputes arising from who is most qualified for a position. This can be cured by conducting annual performance reviews that encompass numerical ratings (e.g., performance in each area is rated 1-5), supported by written explanations of why that rating was chosen.

The Factfinder recommends the City's proposal if the City is willing to commit in the contract to annual performance evaluations. If the City is

not willing to so commit, then the Factfinder recommends the Union's status quo proposal.

3. Article 22 – Wages and Compensation

Union Proposal

The Union proposes:

Effective January 1, 2016	2%
Effective 6 months after the City is released from fiscal oversight	3%
Effective the 1 <sup>st</sup> full pay period in the final month of the contract	4%

City Proposal

The City proposes a wage freeze for the term of the contract based on the fact the City is in fiscal emergency.

Factfinder's Recommendation

The Factfinder recommends:

Effective July 1, 2015	0%
Effective 6 months after the City is released from fiscal oversight	2%

The Factfinder's recommendation accepts the seriousness of the City's fiscal emergency, and provides additional wages once the City is on steadier ground. These additional wages for Police Officers can be funded from cost savings realized from the elimination of minimum manning.

4. **Article 23 – Acting Pay**

**Union Proposal**

The Union proposes status quo. The Parties are facing other enormous challenges; now is not the time to eliminate this language.

**City Proposal**

The City proposes eliminating acting pay. Supervisors already have supervisory responsibilities and do not need to be paid more when they temporarily step up. Moreover, under the current language, acting pay is given to a sergeant who fills in for a lieutenant who calls in sick, but not when a lieutenant is scheduled off, which does not make sense.

**Factfinder’s Recommendation**

The Factfinder recommends the Union’s proposal of status quo. This is a small change that can be dealt with in future negotiations. In any event, if minimum manning is eliminated, the need for acting pay will greatly diminish.

5. **Article 45 – Scheduling Time Off**

**Union Proposal**

The Union proposes status quo.

**City Proposal**

The City proposes adding clarifying language to Article 45.

**Factfinder's Recommendation**

The Parties recently arbitrated the meaning of Article 45 as it related to a May 23, 2014 memorandum from the Police Chief regarding scheduled time off. In 2015, Arbitrator Dissen granted the Union's grievance and nullified the May 23, 2014 memorandum.

The Factfinder recommends the Union's status quo proposal. Article 45 shall be interpreted as set out in Arbitrator Dissen's 2015 Award. First, if minimum manning is eliminated, the City's need for the proposed language is minimized. Second, the additional language is a "permanent" fix to a temporary problem. As the ship is righted at the City, the Parties can address in their next negotiations whether Article 45 needs revisiting.

**6. Article 46 – Duration**

**Union Proposal**

The Union proposes a 3-year contract, effective January 1, 2016 through December 31, 2018.

**City Proposal**

The City proposes a 3-year contract, effective July 1, 2015 through June 30, 2018.

**Factfinder's Recommendation**

The contract currently runs on a mid-year cycle. The Factfinder sees no compelling need to convert the contract to an end-year cycle. Moreover, a mid-year cycle gives the Parties an earlier opportunity to negotiate the following contract, at which time the City presumably will be

out of fiscal emergency. Accordingly, the Factfinder recommends the contract run from July 1, 2015 through June 30, 2018.

DATED: July 14, 2016

*Susan Grody Ruben*  
Susan Grody Ruben, Esq.  
Factfinder

**SUSAN GRODY RUBEN, ESQ.**  
**ARBITRATOR, MEDIATOR, FACTFINDER**  
30799 PINETREE ROAD, No. 226  
CLEVELAND, OHIO 44124  
[SUSANGRODYRUBEN@ATT.NET](mailto:SUSANGRODYRUBEN@ATT.NET)

July 14, 2016

TO: Leslie Iams Kuntz, Esq.  
Charles L. Wilson

RE: Factfinding for FOP and City of Massillon  
SERB Case Nos. 2015-MED-03-0203/0204

**INVOICE**

1 Day of Factfinding	...	\$ 950.00
2 Days of Study and Writing	...	\$ 1900.00
TOTAL	...	<u>\$ 2850.00</u>
<b>½ to be paid by the City</b>	...	<b><u>\$ 1425.00</u></b>
<b>½ to be paid by the Union</b>	...	<b><u>\$ 1425.00</u></b>

Thank you.