

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

July 5, 2016

In the Matter of:

City of Parma	)	
	)	Case No. 2015-MED-05-0565
and	)	Corrections Officers
	)	
Fraternal Order of Police, Lodge 15	)	

APPEARANCES

For the City:

Pat Hoban, Advocate  
Andrew Cleves, Advocate  
Tom Weinreich, Human Resources Director  
Brian Day Auditor  
Mark Prok, Deputy Auditor

For the Union:

Robert M. Phillips, Advocate  
Keith Baon, Class II Corrections Officer  
Joseph Florczk, Class II Corrections Officer  
Mollee Jarvis, Class II Corrections Officer

Factfinder:

Nels E. Nelson

## BACKGROUND

The instant case involves the City of Parma and the Fraternal Order of Police, Lodge 15. The city has a population of approximately 80,000 and has approximately 514 full-time employees. The union represents 15 corrections officers, excluding part-time and supervisory corrections officers. Until May 7, 2015, the correction officers were represented by the Ohio Patrolmen's Benevolent Association

The parties are negotiating the successor agreement to the one that expired on December 31, 2014. The parties held three bargaining sessions between November 5, 2015, and April 25, 2016. Despite the negotiating sessions and multiple communications between the parties' representatives, no agreement was reached.

At that point, the dispute was submitted to fact-finding. The Fact Finder was notified of his appointment on April 6, 2016. The fact-finding hearing was held on June 7, 2016. When the Factfinder's efforts to reach a mediated settlement failed, this report was prepared.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

## ISSUES

The parties submitted seven issues to the Factfinder. For each issue the Factfinder will state the positions of the parties, summarize the arguments and evidence they offered in support of their positions, present a discussion of the issue, and provide his recommendation for the resolution of the issue, including the recommended contract language.

1) Article 20 - Sick Leave Bonus, Section 20.01 - Sick Leave Bonus - The current contract states that employees who do not use sick leave during any quarter of the year have 12 hours of compensatory time added to their comp time bank. The city proposes that “employees shall not receive compensatory time under this Section for the calendar year 2016.” (City Pre-Hearing Statement, page 1) The union opposes the city’s demand.

City Position - The city argues that its demand should be recommended. It points out that the projected 2016 General Fund carryover balance of \$1.5 million, or 3.2% of General Fund expenditures, requires it to conserve cash to get through the year. (City Exhibit 4, page 1)

Union Position - The union opposes the city’s demand. It acknowledges that the city’s 2015 General Fund carryover balance of \$1.3 million was a decrease from the previous year but reports that “it does not include the household refuse fee started in 2016 which should significantly enhance the General Fund.” (Union Pre-Hearing Statement, page 3) It adds that the

Capital Fund had a \$2.8 million or 24% carryover and that City Council could increase the 78% of income tax revenue going to the General Fund. (Union Pre-Hearing Statement, pages 3-4)

Analysis - The Factfinder does not recommend the city's demand. In the conciliation for patrolmen with Susan Grody Ruben and the fact-finding for the firefighters with James Mancini, the city did not demand either group give up its sick leave bonus for 2016. There is no reason for the corrections officers to accept a concession not sought from the patrolmen or the firefighters.

This conclusion is not changed by the fact that Robert Stein recommended in fact-finding that the AFSCME city hall and police records units give up their sick leave bonus for 2016. In that fact-finding, the city had proposed the elimination of the sick leave bonus so that Stein's recommendation to suspend it for one year appeared to be a reasonable compromise. In addition, Stein's recommended two additional personal holidays to be used in 2016.

Recommendation - The Factfinder recommends the current contract language be retained.

## 2) Article 20 - Sick Leave Bonus, Section 20.03 - Sick Leave Conversion -

The current contract allows correction officers to convert sick leave to cash at the rate of two hours of sick leave for one hour of pay. The sick leave must be cashed out during the calendar year it was earned and the pay-out is limited to 40 hours of pay per calendar year. The city seeks to suspend the conversion for 2016. The union opposes the city's demand.

City Position - See the discussion of the city's position for Article 20, Section 20.01.

Union Position - See the discussion of the union's position for Article 20, Section 20.01.

Analysis - The Factfinder recommends that the city's proposal be accepted. Rubin indicates that after the conciliation hearing for the patrolmen, a tentative agreement was reached to increase wages by 1% in 2016 and 2% in 2017, which she incorporated in her award. (City Exhibit 20, page 3) She later explained that she was awarding the city's demand to suspend conversion of sick leave to cash for 2016 because "it would give the City a bit of financial breathing room." (Ibid., page 7) Her position was adopted by Mancini in the dispute with firefighters.<sup>1</sup> (Mancini Decision, page 4) The same trade-off should be applied in the instant case.

Recommendation - The Factfinder recommends the following contract language:

Employees shall have the option of converting accumulated sick leave into pay at the rate of two (2) accumulated sick leave hours for one (1) hour of pay. The maximum pay available shall be forty (40) hours per calendar year. The conversion applies only to sick leave earned within the calendar year and must be requested in writing by the employee on or before November 30. The payment shall be made in the first pay period in December. Employees may not convert accrued but unused sick leave to cash payment for the calendar year 2016.

### 3) Article 24 - Overtime, Section 24.04 - Compensatory Time Conversion -

The current contract allows employees to convert accumulated comp time to cash. The city proposes suspending the conversion for 2016. The union opposes the city's demand.

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<sup>1</sup> Mancini's report was rejected by the union and a conciliation hearing has been scheduled.

City Position - See the discussion of the city's position for Article 20, Section 20.01.

Union Position - See the discussion of the union's position for Article 20, Section 20.01.

Analysis - The Factfinder recommends the city's position be denied. While the city's demand was recommended by Stein and accepted by the two AFSCME units, it was not among the city's demands in the conciliation for patrolmen. There is no basis to ask the corrections officers to give up the right to convert comp time to cash in 2016 while the patrolmen were not asked to do it.

Recommendation - The Factfinder recommends the current contract language be retained.

4) Article 25 - Longevity, Section 25.01 - Schedule - The current contract provides for a longevity payment of \$400 after five years of service which increases every five years by \$400, reaching a maximum of \$2000 after 25 years of service. The city proposes suspending longevity for 2016. The union opposes the city's demand.

City Position - The city argues that its proposal is motivated by "pure economic necessity." It states that without relief, it "runs the risk of a financial crisis by year-end 2017." (City Pre-Hearing Statement, page 18) The city indicates that the justification of the suspension of longevity for 2016 "is that [its] civilian groups have given more in concessions over the years than [its] safety force employees." (City Pre-Hearing Statement, pages 18-19)

Union Position - The union opposes the city's demand.

Analysis - The Factfinder rejects the city's demand. First, longevity is a significant part of the corrections officers' compensation. Suspending longevity pay would have a severe impact, especially on the more senior corrections officers. Second, since none of the city's other unions had their longevity payments suspended in 2016, there is no reason to demand that this union do so.

Recommendation - The Factfinder recommends that the current contract language be retained.

5) Article 26 - Uniform Maintenance Allowance, Section 26.02 - Non-Probationary Employees - The current contract establishes a \$650 cash uniform allowance for non-probationary employees, which is payable in a separate check by May 15 of each year. The city proposes suspending the uniform allowance for 2017. The union opposes the city's demand.

City Position - The city argues that its demand should be recommended. It points out that it is in a "financial crisis." The city notes that its General Fund carryover balance is significantly less than its goal of 5% of General Fund expenditures. The city emphasizes that it is projecting a no carryover balance in 2017.

The city contends that it agreed to grant the patrolmen wage increases in 2016 and 2017 with the expectation that Ruben would provide financial relief in other areas. It states that a key element was a one-year suspension of the patrolmen's \$1400 uniform allowance.

The city maintains that the corrections officers should forfeit one year's uniform allowance. It observes that they are receiving the same wage increases in 2016 and 2017 as the patrolmen and the Service Workers, both of which gave up their 2016 uniform allowances. The city claims that since the corrections officers' collective bargaining agreement required it to pay them their 2016 uniform allowances by May 15, 2016, fairness demands that they forfeit their 2017 uniform allowance.

Union Position - The union opposes the city's demand. It characterizes the city's demand that the corrections officers forfeit their 2017 uniform allowance as "the most unsettling aspect of [the] negotiations." (Union Pre-Hearing Statement, page 4) It states that it is "almost laughable" because the corrections officers receive the lowest uniform allowance of any of the safety forces. The union claims that "given their job of fighting with inmates who also throw garbage at the officers, they, more than anyone need to have a stipend to maintain their uniforms." (Ibid.)

The union rejects the city's claim that its demand to suspend the uniform maintenance allowance is supported by pattern bargaining. It observes that pattern was broken because the firefighters received their uniform allowances in 2016. The union insists that the city's demand that it forfeit its 2017 uniform allowance "does not conform to the pattern." (Ibid.)

Analysis - The Factfinder recommends that the city's proposal be adopted. First, the city faces a challenging economic and financial situation. Its population has fallen continuously since at least 1990 and the percentage of individuals living below the poverty line has increased. (City Exhibit 1)

The impact of the Great Recession resulted in falling incomes and income tax receipts. While the recession has ended, the recovery has been slow and some of the effects linger.

To make matters worse, there have been substantial cuts in state aid. The Local Government Fund was cut by 50%, the Tangible Personal Property Tax was eliminated, Commercial Activity Tax reimbursements were nearly eliminated, and the Estate Tax was repealed. As a result, state aid fell from \$5 million in 2011 to \$2.0 million in 2015.

The combination of falling local revenues and declining state aid has created a challenging situation. In 2014, the General Fund carryover was \$1.9 million, or 4.1% of General Fund expenditures, but in 2015 it fell to \$1.3 million, or 2.8%. (City Exhibit 4, page 1) In 2016, as a result of the recently enacted Trash Fee, which is projected to raise \$3.4 million each year beginning in 2016, the carryover is projected to increase to \$1.5 million, or 3.2%. (Ibid.) However, even with the Trash Fee, the city projects a \$100,000 negative balance for 2017. (Ibid.)

The city also faces higher costs. In 2016 the city estimates that the city-wide cost of the 1% wage increase to be \$320,000 and this will be followed by a 2% increase in 2017. (City Pre-Hearing Statement, page 12) In addition, while the parties' joint labor-management health care committee has been successful in restraining increases in health care costs, increases in this area appear to be inevitable.

It is important to note that the one-time revenue sources available in 2015 will not be available in the future. The city sold cell tower leases, a library, and fire equipment and "raided" its "27<sup>th</sup> Pay Fund." The \$2.7 million it obtained by these actions will not be available in the future.

Second, three experienced neutrals awarded or recommended the suspension of uniform maintenance allowance for 2016. On October 13, 2015, Stein recommended that the two AFSCME units forgo their uniform allowances for 2016. His report was accepted by the city and the union. On February 12, 2016, Ruben awarded wage increases of 1% in 2016 and 2% in 2017 and to partially offset the higher wage costs, granted the city's demand that patrolmen forfeit their 2016 uniform allowance. On April 13, 2016, Mancini adopted Ruben's approach and recommended that the firefighters get the same wage increases as the patrolmen and give up their uniform allowance for 2016.<sup>2</sup>

The Factfinder recognizes that the corrections officers are being asked to forfeit their 2017 uniform allowance rather than their 2016 allowance. As the city explained, the reason is that the corrections officers' existing contract required their uniform allowance be paid by May 15, 2016. If the city had not paid by that date, it would have been in violation of the collective bargaining agreement. It appears to make little or no difference that the OPBA and two other unions gave up their uniform allowance in 2016 and the corrections officers are being asked to give up their uniform allowances in 2017.

The Factfinder concludes that the city's finances and the recommendations of three experienced neutrals provide no basis to excuse the corrections officers from sacrificing one year's uniform allowance.

Recommendation - The Factfinder recommends the following contract language:

All non-probationary employees shall receive an annual uniform allowance of \$650 payable by separate check by May 15 of each year. Employees shall not

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<sup>2</sup> When the firefighters rejected Mancini's fact-finding report, the city paid the firefighters their uniform allowances as required by their contract. The city indicated, however, that it would propose at conciliation that the firefighters give up their 2017 uniform allowance.

receive the payment set forth in this article for the calendar year 2017.

6) Article 33 - Labor/Management Meetings, Section 33.01- Labor

Management Committee - The current contract states that the Safety Director and/or an appropriate designee will meet twice per year with not more than four representatives of the union to discuss “pending problems or issues of concern and to promote a more harmonious labor/management relationship.”

The union proposes that the committee consist of two union representatives and two management representatives, including the Jail Administrator and either the Safety Director or the Human Resources Director or their designee and that the committee meet quarterly. The city appeared receptive to the union’s proposal.

Union Position - The union argues that its proposal should be adopted. It states that the current LMC process is not productive. The union insists that the city representation should not be limited to the Jail Administrator but needs to include either the Safety Director or the Human Resources Director.

City Position - The city offered no opposition to the union’s proposal.

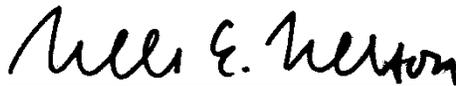
Analysis - The Factfinder recommends the union’s proposal be adopted. During the fact-finding hearing, the union raised a number of issues relating to the operation of the jail. Many of the members’ concerns were difficult to address in negotiations but could be considered by the LMC. The revised structure of the committee should make it more productive.

Recommendation - The Factfinder recommends the union’s proposed contract language:

The city and the union shall form a Labor-Management Committee to discuss matters of mutual concern. The committee shall consist of two corrections officers selected by the union, the Jail Administrator and the Safety Director or Human Resources Director or their designee. The Labor-Management Committee shall meet quarterly and at other mutually agreed upon times.

7) Tentative Agreements - During the course of negotiations, the parties reached a number of tentative agreements.

Recommendation - The Factfinder recommends the adoption of the tentative agreements reached by the parties.



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Nels E. Nelson  
Factfinder

July 5, 2016  
Russell Township  
Geauga County, Ohio