SERB was closed in observance of State Holiday on 1/18/16, processed next business day

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
January 15, 2016

In the Matter of:	)	
The Ohio Patrolmen's Benevolent Association	)	SERB Case No. 15-MED-09-0753
vs.	)	
The City of Youngstown	)	

APPEARANCES

For the Union:

Dan Leffler, Bargaining Representative OPBA
Michael Anderson President of Youngstown Police Association
Seann Carfolo, Trustee Youngstown Police Association
Randall Miller, Sergeant at Arms, Youngstown Police Association
Douglas Pesa, Secretary Treasurer, Youngstown Police Association
George Wallace, Grievance Officer Youngstown Police Association

For the City of Youngstown:

Sandy Conley: Clemans, Nelson and Associates; Employer Advocate
Michael Esposito, Clemans, Nelson and Associates
Martin Hume, Law Director, City of Youngstown
Brian Butler, Chief's Designee Youngstown Police Department
Rebecca Gerson, Deputy Law Director, City of Youngstown
Melissa Fusco, Senior Consultant to the City of Youngstown
Kyle Miasek, Deputy Finance Director, City of Youngstown

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the members of the Youngstown Police Association (YPA) represented by the Ohio Patrolman's Benevolent Association (Union/OPBA) and the City of Youngstown (Employer/City). The bargaining unit consists of one hundred and thirteen (113) patrol officers. Prior to the Fact Finding Hearing, the parties engaged in two (2) negotiating sessions and one (1) mediation session. The parties were able to reach agreement on one (1) issue, Sick Leave, but eighteen (18) issues remain on the table. The open articles are: 1) Discipline, 2) Extra Duty Assignments, 3) Part Time (Auxiliary) Officers, 4) Scheduling, 5) Hours of Work/Overtime, 6) Court Time, 7) Salary and Wages, 8) Insurance Benefits, 9) Vacations, 10) Injured on Duty Leave, and 11) Termination of the Contract.[1]

Because the parties were unable to reach an agreement on these issues, they scheduled a Fact Finding Hearing. The Hearing commenced at 10:00 A.M. on December 11, 2015 at the Youngstown City Hall. The hearing ended at approximately 5:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

(1) Past collectively bargained agreements, if any.
(2) 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.
(3) 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 standards of public service.
(4) The lawful authority of the public employer.
(5) Any stipulations of the parties.

[1] A number of articles have two demands on different sections of the same article.

(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 private employment.

Introduction:

This dispute centers on economic issues even though the City is proposing a number of language changes that the Union believes are unnecessary in a mature contract. The main difference in the parties' positions is their different views on the City financial condition. The Union believes that its members are deserving of a significant wage increase and that the City can afford to fund that increase. Conversely, the City is asking for concessions on Health Insurance and other economic issues, and it wants to freeze wages for the life of the contract. The Union believes that the City's positions are unreasonable, and the City believes that the Union's demands are unrealistic for a city facing a financial abyss. Consequently, some discussion of the City's financial condition is necessary before an analysis of the specific issues is proffered.

The City of Youngstown's financial condition is similar to the finances of other municipalities in the Mahoning Valley. The City saw a collapse of its economy when the steel industry abandoned the area in the 1980's and 1990's. The City began a gradual comeback over the next few decades and began to build a new economic base consisting of mostly of service, commercial, and light manufacturing industries. Over the last few years, the shale oil boom hit Western Pennsylvania and Eastern Ohio, and Youngstown saw an increase in economic activity; and correspondingly, tax receipts rose. Unfortunately events half a world away in Saudi Arabia, have changed the economic landscape in all oil producing countries including the United States. The collapse of oil

prices has led to an economic downturn in states and areas that were involved in the shale (fracking) industry. This change in the domestic oil industry has subsequently led to budgetary problems in Youngstown.

Youngstown and every other area involved in the oil and gas revolution in the United States made plans and budgeted based on the assumption that revenues would grow in the coming years. As a result, Youngstown "borrowed against future income" by giving tax abatements and accelerating property tax payments from new industries. This allowed the City to maintain services and avoid layoffs. However, the collapse of the shale industry made all of the rosy assumptions about future revenue and employment growth outdated. Currently, the rate of unemployment in the energy sector is increasing, and new infrastructure construction is being scaled back.

Moreover, the City's ability to raise new revenue from existing sources is limited. Youngstown currently has the third highest income tax rate (2.75%) in Ohio. In addition, both population and employment losses continue at remarkably high rates. Therefore, the City is in a situation where expenditures have risen faster than revenues and the forecast is for that trend to continue. Consequently, the City maintains that it must cut expenditures because it does not have the ability to raise substantial amounts of new revenue. The City has run a deficit in its budget for a number of years, and it estimates that this will lead to a situation where its General Fund will be in a deficit by 2017. The City believes that it is in financial distress.

The Union presented its own analysis of the City's financial health. Mary Schultz of Sargent & Associates testified about the City's financial health for the Union. Essentially, Ms. Schultz testified that the City's finances were as bad as the City

contended. However, Ms. Schultz did not agree with the City's contention that it could not afford to fund the Union's wage and benefit demands. She stated that the City had made some decisions that have led to the problems appearing worse than they are. She stated that there were five million ($5,000,000.00) of spending identified by a consultant, PFM Group, which could be saved by changing the way that various City Departments were staffed and operated. She stated that those funds could be used to pay for wage and benefit improvement for the City's labor force including the YPA (Union Exhibit Book, TAB 2).

The Fact Finder is aware that some financial decisions made by the City based on the belief that the shale oil boom would substantially increase revenues did not work out. However, when those decisions were made, the economic outlook for the Mahoning Valley was full of promise. In hindsight, some of those financial decisions appear unwarranted. However, hindsight is never wrong. Based on the information available at the time, Youngstown took calculated risks with its budget based on a widely held belief that the oil industry boom would last for years. The Fact Finder heard no evidence that convinced him that the City's financial decisions were either reckless or unwarranted.

Consequently, the Fact Finder believes that the evidence in the record shows that the city of Youngstown faces severe financial problems. There is little prospect of a significant increase in revenues, which means that the City must find ways to curtail expenditures or it will face a situation where it must institute layoffs.[2]

[2] Both parties supplied voluminous documentation on the City's financial condition. The City's analysis is in Exhibits C through E in its Exhibit Book and the Union presented its financial analysis in Exhibits 2 through 8 and Exhibit 24 in its Exhibit Book.

Issue: Article 11 (2)

City Position: The City demands to add the phrase "unsatisfactory performance" to the language of Article 11 (2).

Union Position: The Union rejects the City's demand and counters with current contract language.

Discussion: The City's suggested addition is found as an amendment to ORC 124.34. The language of Article 11 (2) follows but is not an exact duplicate of ORC 124.34. The language in question reads:

> Section 2: Incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, absence without leave, substance abuse, failure of good behavior, any conduct unbecoming a representative of the Employer, violations of City of department work rules, policies, procedures, or any other acts of misfeasance or malfeasance or nonfeasance, shall be cause for disciplinary action.

This language essentially covers the entire gamut of possible reasons for discipline because of the mis, mal, or nonfeasance language. The addition of the words "unsatisfactory performance" may add some clarity to the fact that some individuals simply do not perform their job duties adequately even though they are neither incompetent nor inefficient. However, the Fact Finder believes that the current language would cover "unsatisfactory performance."

In any event, any action that leads to a disciplinary action above a written reprimand; especially a suspension, demotion or discharge will almost always be grieved and an arbitrator will hear the grievance. Therefore, the Neutral will decide if there is "unsatisfactory performance." Consequently, the Fact Finder is not recommending the inclusion of the words "unsatisfactory performance" into Article 11 (2).

Finding of Fact: The Employer did not prove that there was a need to change the language of Article 11 (2) even though Section 124.34 of the ORC has been amended.

Suggested Language: Current contract Language.

Issue: Article 11 (6) Discipline

City Position: The City desires to add the phrase "provided that there has been no other intervening discipline" to the language of Article 11 (6).

Union Position: The Union rejects the City's position and counters with current contract language.

Discussion: The Union argues that the inclusion of the City's suggested language would allow the Employer to continue to hold a minor disciplinary infraction over a patrolman's head indefinitely, and would curtail the "just cause" standard. The City argues that it is standard language in all other City contracts and is found in most labor agreements throughout Ohio and the Nation.

The Union presented evidence that the Employer had attempted to add the same language to the contract a number of times in the past and that Conciliator Knowles had rejected an identical demand in 2014. Reading Knowles' decision is not especially illuminating. However, he seems to take the position that "if it ain't broke, don't fix it." That is, he states the Employer submitted no evidence that the current language has ever caused any problems. Moreover, he noted that written reprimands cannot be arbitrated, and he found this fact to be persuasive. He also stated that the Union contended that close to the expiration date (24 months after discipline was imposed) of a disciplinary

event, a new reprimand was often issued. Given all of the facts in the record, Knowles decided to award the Union's position on this issue.

The Fact Finder is in a similar situation. The City contends that all other City bargaining units have its suggested language in their contracts and that internal and external comparability should apply. However, there was no evidence that the current language had ever caused any problems between the parties. Therefore, believing that the moving party should prove that there is some reason for its suggested language, the Fact Finder believes that the City did not prove that there was any reason to change the current language.

Finding of Fact: The City did not prove that there had ever been any problems with the current language.

Suggested Language: Current Contract Language

Issue: Article 16 Special Duty Assignments

City Position: The City rejects the Union's demand and counters with current contract language.

Union Position: The Union demands that a sentence be added to the current language that states that a patrolman *must* (emphasis added) fill all extra duty assignments that fall under the job description of a patrolman.

Discussion: The language in question reads:

> When the duties of the extra duty assignment normally fall within the classification of patrol officer (e.g., traffic patrol, traffic control, crowd control, etc.), the assignment should be made to persons occupying the classification of patrol officer. All details may include one or more supervisors.

It should be noted that the language that the City cites to buttress its arguments is found in the Ranking Officers contract, not in the Patrolman's contract (City Exhibit Book, TAB 5-A). Therefore, the Fact Finder believes that because this Fact Finding and this problem are between the City and the Patrolmen, the Ranking Officers' contract has limited relevance. The language in the current YPA agreement already states that if the assignments fall within the classification of a patrol officer that the assignment should go to a patrol officer. The difference is the Union wants to replace the word 'should' with the word 'must'. That is, the Union's demand is that the current language be enforced. The language also states that one (1) or more supervisors may be included in the detail.

This is an issue where the parties have a basic disagreement over the facts. In any police department there are a number of extra details. These are scheduled in advance, and the patrolmen can sign up for the duty. However, the language also states that the details may include one (1) or more supervisors. The patrolmen believe that most of these assignments are going to officers. The City disagrees and believes that the Union is misrepresenting the meaning of Youngstown Police Department General Order 2 that states that there must be one (1) supervisor per twelve (12) patrolmen. The City contends that this does not mean that there must be a strict ratio of one (1) to twelve (12), butthat there must be at least one (1) supervisor per twelve (12) patrolmen. Consequently, the City testified that more than one supervisor might be assigned to any special detail. The City believes that the scheduling practice is fair. The parties discussed this issue at length, but could not find any common ground.

The question here is factual. That is, are patrolmen being assigned to special duty details in reasonable numbers and are they getting the opportunity to do job duties that

would fall under the job description of a patrolman? The Union says no. The Union claims that an unusually high number of supervisors work these extra details and that the patrolmen are not scheduled in reasonable numbers.

The City claims that supervisors can and do work these extra duty details. The Union agrees that some supervisors can be scheduled to work an extra duty detail, but contends that patrolmen should also have the opportunity to work the jobs that are within their classification. The patrolmen argue that the scheduling process often precludes them from doing work that they are trained to do and that they wish to do. The question really is, "How many officers (patrolmen) work these extra shifts. That data should be available, but neither side seems to know the officer/patrolman ratio. However, if patrolmen do not get the opportunity to work a detail that requires duties usually performed by patrolmen, then the parties must decide what is happening and find a remedy. If, on the other hand, patrolmen are working details in positions and numbers that seem reasonable given the jobs in question, then there would not seem to be any scheduling problems.

This is a situation that seems to reflect the underlying differences in the YPA and YPRO (Ranking Officer) contracts. The patrolmen's contract gives the patrolmen certain rights, and the language in the YPRO contract cannot negate these rights. That is, patrolmen have the right to perform duties in their job classification. Only in the case where no patrolmen are available to work or no patrolmen wish to work, can these details be offered to the supervisors. That does not mean that supervisors cannot work these shifts. They can, because of language found in the YPA contract. However, the ratio of patrolmen to supervisors must be reasonable; that is, there should be more patrolmen than

supervisors, if the extra duty is covered under the job description of a patrolman according to the language of Article 16 (2) of the City's contract with the patrolmen.

At the present time, the patrolmen are convinced that they do not get a fair chance to work extra duty details. Their belief is either correct or incorrect. However, at the current time, the parties do not have enough data to determine what is actually happening. Therefore, the Fact Finder does not have enough data to make a recommendation on this issue. This is a classic case of an issue that should be discussed in a Labor/Management setting. If a problem exists when the scheduling data is analyzed, it should be documented, discussed, and a resolution found.

Note: However, the Fact Finder understands that there is some nontrivial possibility that there will be no movement on this issue. That is, data on the scheduling of special details will not be collected and analyzed. Therefore, the Fact Finder will maintain control of this issue and recommend contract language on this issue if the parties state that this is their preference.

Finding of Fact: Without some information on the Special Detail scheduling practice, the Fact Finder cannot make an informed recommendation on this issue.

Recommendation: This issue should be researched, discussed, and a solution found for any scheduling problem that is uncovered in the Labor/Management Committee.

Issue: Article 19 (2) Part Time Employees

City Position: The City proposal is that the minimum number of full time employees that must be on the payroll in order to utilize part time officers be changed from one hundred and twenty-five (125) to one hundred and seven (107). Furthermore, for every

additional five (5) full time hires, the Employer may utilize up to five (5) more part time officers.

Union Position: The Union rejects the City's demand and counters with Current Contract Language.

Discussion: The City's demand is for the right to use part time officers rather than hiring new full time patrolmen. The reason is economic. The Youngstown Police Department considers one hundred and twenty five (125) officers as the necessary number of officers needed to provide police services to the citizens of Youngstown. However, the current compliment of patrolmen is one hundred and thirteen (113), and a number of these officers were hired on a grant. The City agrees that it needs more police officers, but states that it cannot afford to hire more full time members.

The Union sees this as an example of the City attempting to get away from a full time professional Department by bringing in less qualified and less motivated part timers. The City disagrees with this analysis and claims that it has no other way to put the necessary number of patrolmen on the streets. The Employer argues that Youngstown needs more patrol officers and that any realistic plan to increase the number of officers on the streets must include part time officers. In a nutshell, the City stressed that it did not have the money to increase the full time complement of officers. The Union argued that the Department should prioritize its expenditures in order to make funds available to hire more police officers.

The Fact Finder is aware of the problems that hiring part time employees often bring to any organization. However, both parties agree that the City needs more patrolmen to provide the necessary safety services to the citizens of Youngstown. In this

instance the City's financial condition precludes hiring more full time police officers. Therefore, since both parties agree that there is a need for services and there is no money to pay for more full time employees, the Fact Finder agrees with the City's position on this issue.

Finding of Fact: The City of Youngstown has a need for more police officers and does not have the money to hire new full-time employees. Part time employees are a way to stretch the budget.

Suggested Language: Article 17 (2)

> The parties agree that in order to utilize part-time/auxiliary personnel, the employer must maintain a minimum of one hundred seven (107) bargaining unit members. Once one hundred seven (107) bargaining unit members are maintained, five (5) part-time/auxiliary officers may be hired and utilized. Thereafter, for each additional five (5) bargaining unit members that are hired (e.g. 112, 117, etc.), the Employer may hire and utilize an additional five (5) part-time/auxiliary officers, subject to the parties' Memorandum of Understanding appended to this Agreement.

Issue: Article 23 (2) Shift Bidding

City Position: The Employer rejects the Union's demand to add the "Prisoner Conveyance Unit" as a shift that can be bid.

Union Position: The Union demands that the "Prisoner Conveyance Unit" be added as a shift that can be bid.

Discussion: The Union argued that many of its members wanted the ability to bid for the Prisoner Conveyance unit because of the hours that the Shift Conveyance personnel work. Essentially it is a "9 to 5" job with very few or no weekend shifts. This is unusual in a police department. The Union argues that its members can do the work and that they should have a chance to bid for the job. The City disagrees. The City recognizes the

there are some "perks" to the job, but argues that at least one officer must be female because of the number of females that are transported. The City argues that this is a special shift and that it needs the right to appoint the officers who have the proper skills and temperament to perform the job. The Union believes that many of its members could do the work and argues that the bidding process would have female applicants. Again, the Union believes that the job is performed in all police departments and that its membership should be able to bid for the position.

The Fact Finder understands both parties' positions on this issue. The two individuals who have been involved with the Prisoner Conveyance Unit are close to retirement, and the Union has members who would like to bid on the positions. However, the question of insuring that there is always a female on duty for the shift is paramount because the Prisoner Conveyance Unit personnel work in close contact with female as well as male prisoners. Again, the Union stated that there are females who will bid for the position.

There are actually two different situations involved in this question. First, should the job be open for bid when the positions in the Prisoner Conveyance Unit are open? The second question is how will the positions be filled when the regular members of the unit are not available for duty. The Fact Finder believes that the permanent positions should be open for bid (with the proviso that a female must be part of the unit); and if no qualified female officer bids for the position, the Employer has the right to appoint an officer.

Second, if for any reason there is a situation where the members of the unit are not available to work, then the Employer will have the right to appoint someone to fill the

position until it is open for bid. Again, there must be a female present in the unit, and if no females bid for the position or if more senior males bid, then the Employer has the right to assign a female officer to the unit.

Finding of Fact: The Prisoner Conveyance Unit is a regular position in the Department and should be open for bid, with the proviso that one (1) member of the Unit must be a female. The Employer has the right to assign a member to the Unit in the event that one or both of the permanent members are unavailable to work until the next bid period.

Suggested Language: Section 2 (a): New

> The parties agree that patrolmen shall be permitted to bid on positions in the Prisoner Conveyance Unit and the position will be awarded based on bargaining unit seniority with the proviso that one member of the unit must be the most senior female bidding for the position. If no female officer bids for the position, then the Employer has the right to appoint an officer to fill the position. If one or both members of the unit are unavailable to work, the Employer has the right to assign an officer to fill the vacancy until the next bid cycle.

Issue: Article 23 (4) Car Assignment Bidding

City Position: The City demand is for factors other than seniority to be added to the list of factors considered when Car Assignments are made.

Union Position: The Union rejects the City's demand and counters with Current Contract Language.

Discussion: This issue generated as much discussion as any issue discussed at the hearing. Factually, the officers bid for their shifts based on seniority, but the Employer may alter shift assignments base on operational necessity. If the Employer determines to change the assignments on a particular shift, officers are allowed to volunteer to change shifts. If no officer volunteers to change his/her shift, then the Employer can make an

involuntary transfer. Once the shift assignments are settled, the officers can bid on their car assignments. The car assignments are the same as an area assignment; and once the car bidding is completed all of the officers know what their patrol area will be. The car assignments are based on seniority.

The Union argues that this system is consistent with the City's emphasis on Community Policing because the same officers patrol the same area and get to know the residents of their assigned patrol area. The Union also argues that this system was part of a quid-pro-quo for tradeoffs made in a prior negotiation. The Union believes that this system has worked and there is no reason to change it.

The Employer disagrees. The Employer states that the sole criterion for selecting a car is seniority, and the Employer argues that this system has led to concentration of experience in certain areas of the City and less (very little) experience in other parts of the City. The Employer argues that the system has never worked well since it was added to the contract and that some other factors beside seniority must be considered when making car assignments. The Employer stated that prior to the system of bidding for car assignments, that the City used a number of different criteria for assigning patrol areas. The factors included performance history, experience, training needs, compatibility of the officers, and specific requests for certain patrol areas and partners (TAB 9 in the Employer's Exhibit Book).

The testimony at the hearing was that the younger officers typically desired to work in the more dangerous areas of the City, i.e., the South part of the City, and that no one wanted to patrol the East section of the City. The East part of the City has few people and large swaths of open land. Consequently, the Employer argues that the least

experienced officers often work the most dangerous areas and that it is hard to get officers to patrol the East sector. Again, because cars are bid by seniority there are few senior officers found in the South or East Sectors of the City. The Employer also stated that it was hard to get training officers to patrol in the East Sector. Consequently, the Employer believes that the current system of car bidding has led to a situation where the more experienced officers are concentrated in certain areas of the City. The Employer argues that the more experienced officers should be uniformly distributed throughout the City.

In this context the Employer had Captain Kevin Mercer testify about the productivity measures developed and used by the Department to track the performance of the patrolmen. Mercer did not single out any particular officer, but he did testify that the Department has developed productivity measures that would allow it to assign officers to duties that were commensurate with their skills. The impact of this testimony was to show that there are objective criteria that the Department can use to make car assignments.

The raison' d etre of a police department is to provide police services to the community at large in an efficient way. The newspapers are full of stories about police officers who are accused of violating individuals' civil rights, etc. Therefore, it is imperative for any police department to make sure that its officers are well trained and ready to meet any situation that arises. This means that training and experience are indispensible parts of the job. This implies that the system of car bidding based solely on seniority is not an optimal way to determine car assignments.

That being said, the Fact Finder also believes that seniority should be a consideration in car selection and that the language (agreement) embodied in the parties' contract should be given due deference. Therefore, the Fact Finder is recommending that seniority, training, and operational needs be considered when changing car assignments.

Finding of Fact: The assignment of patrol areas should take into account the characteristics of the assigned patrol area and match the patrolmen with the needs of the citizens based on the patrol officers' seniority, performance history, and the training needs of younger officers.

Suggested Language:

> Section 4: The parties agree to allow for the bidding for patrol car assignments as described herein. The Employer shall determine how many and what respective car assignments are available at all times. Annually, bargaining unit members assigned to the patrol division will be permitted bid their car preference by bargaining unit seniority. *During the course of the year, should the Employer determine that the car assignments utilized on a shift do not adequately meet the operational and/or training needs of the Department, the Employer shall have the authority to change car assignments. Such changes will not be made without consultation with the affected individual and his Union Representative.*
>
> Whenever the Employer determines that a car assignment is not to be utilized on any given shift, the Employer may make an assignment to the member in accordance with its operational needs. In the event that an involuntary transfer occurs, new car assignment are created, or existing car assignment are eliminated, the parties agree to allow members on an affected turn to rebid their car assignment effective until the next annual submission.

Issue: Article 24 (4) Hours of Work/Overtime

City Position: The City wants to define the term "Shift Change" to eliminate double dipping of the overtime payments when the employee is held over to fill a shift.

Union Position: The Union rejects the City's demand and counters with current contract language.

Discussion: The language in question has been part of the contract for years. The contested language reads:

> "However, a police officer who works sixteen (16) hours in a twenty-four (24) hour period, due to a shift change, shall receive eight (8) hours of accumulated time in addition to his/her straight time pay."

The Employer contends that this language means that the officer would rotate or "flip" shifts as part of a regular schedule, i.e., an officer would work sixteen (16) hours within a twenty four (24) hour period due to a shift change. The Employer contends that this language did not apply to holdovers, call-ins, scheduled, unscheduled, and/or mandatory overtime, or other excess hours.

The Employer stated that the YPA membership began to submit OT requests for holdovers, call-ins, etc., and that some of these requests were mistakenly granted. The Employer contends that led to a situation where the same hours were paid twice. That is, under the contract call-ins, etc. are paid at time and one-half under the Fair Labor Standards Act (FLSA). However some officers were also receiving eight (8) hours of Accumulated Time (Compensatory Time) for the same hours. The Employer claims that this was not the intent of the parties when they negotiated the contested language into the contract.

The Union had very little comment on this article except to say that if some clarification was needed, then it should be discussed and added to the agreement. However, the Union rejects the language put forth by the Employer.

The Union's main contention during this negotiation is that the officers, especially the less senior officers, are underpaid. The language in question did not cause any problem between the parties for years, but now it is causing problems. This appears to be

an example of an attempt by the officers to find ways to increase their take-home pay. The Fact Finder understands the Union's position on pay, but according to the information in the record there is a long history of the parties interpreting this language as a situation where an officer is paid for working sixteen (16) hours a day as part of a shift change. In that situation, the officer earns sixteen (16) hours of straight time pay and eight (8) hours of accumulated time (AT). In the situation of a holdover or a call in, the officer receives FLSA overtime. That is, if an officer works more than eight (8) hours a day for call-ins, etc., he/she is paid time and one-half for all hours worked under the definition of overtime in the FLSA. Therefore, conceptually the two situations are different. The difference is that an officer is changing shifts as part of a schedule in one case and in the other case the officer is working overtime without a shift change involved.

Finding of Fact: The payment of FLSA mandated overtime plus eight hours of AT constitutes paying twice for the same hours of work (double dipping).

Suggested Language: Employer's suggested Language.

Issue: Article 24 (4) Hours of Work

City Position: The City rejects the Union's suggested language and counters with Current Contract Language.

Union Position: The Union demands that all employees be paid at the highest patrolman's rate for all hours of overtime worked.

Discussion: This is another example of the Union trying to find ways to increase the take-home pay of the less senior officers. However, paying the top rate to all officers for any OT worked is not reasonable. The Fact Finder is unaware of any contract in either

the private or public sectors that has the same or similar language. The FLSA mandates time and one-half paid at the employee's rate of pay, not the highest rate for an entire classification.

Finding of Fact: The Employer pays overtime according to the FLSA, and that is the way that all other Employers pay for OT.

Suggested Language: Current Contract Language

Issue: Article 26 (4) Non-FLSA Accumulated Time

City Position: The City demands that language be inserted into the Article that define Court Sessions as Morning Session 8:00 AM to 1 PM; Afternoon Session as 1:00 PM to five PM; and evening session as anything after 5:00 PM.

Union Position: The Union wants to define the morning Session as 8:00 AM to 12 PM; the afternoon session as 1:00 P.M. to 4:00 PM; and the evening session as any start time after 4:00 PM.

Discussion: This is another issue that relates to pay for time worked. Currently, the language reads;

> Court A/T. Officers earn accumulated time for City required court appearance(s) at a minimum rate of four (4) hours for appearing in morning, afternoon, or evening court; or time and one-half (1 ½) for those hours actually spent in court, whichever is greater. The four (4) hour minimum is meant to compensate officers for all court appearances occurring during the respective court session (i.e., morning court, afternoon court, etc.) *An officer that is held over from one court session to the next shall receive a four (4) hour minimum for each session.*

The disagreement comes because of the last sentence. According to the way that the contract reads, if an officer is held over for even one (1) minute, then he/she receives an extra four (4) hours of pay. The City claims that this is both costly and not the intended

meaning of the court time provision. The City claims the comparables data prove that the Court Time provision in Youngstown is by far the most generous provision when compared to other jurisdictions (City Exhibit Book TAB 11 (A)). The Union did not present comparables' data on this issue.

The problem from the City's point of view is that a short run over in a Court Session is not unusual. Therefore, the officers are often eligible for four (4) hours of pay because, for example, the morning court session runs over by 1, 5, or 10 minutes. The City presented evidence that it claims shows that the officers often claim excess time for a few minutes worked (Employer Exhibit TAB 11 (A, B, C).

This is a situation where the Fact Finder would, under normal circumstances, recommend Current Contract Language. The Fact Finder recognizes the City's argument, but the language in question has been in the contract for years and has undoubtedly been the subject of negotiations. Having a clause in a contract that is unusually generous when compared to other jurisdictions is not unusual. Often that clause is balanced out by other clauses. However, in this instance, the Fact Finder believes that the City is facing a severe financial problem and that it must find ways to control its expenditures. It is that fact that drives the Fact Finder's recommendation on this issue.

The Fact Finder is convinced, based on the data presented by the City, that there are a number of situations where an officer is held over for thirty (30) minutes or fewer. There are also a number of situations where the Officer is held over for more than thirty (30) minutes. The Fact Finder is recommending that if an officer is held over less that thirty-one (31) minutes that he she be paid for the one (1) session. If an officer is held

over for more than thirty (30) minutes, he/she shall be paid for the extra court session, i.e., time worked or four (4) hours under the interpretation of the existing language.

Finding of Fact: The interpretation of the Court Time language found in the YPA/City of Youngstown contract is overly generous for a City facing severe financial problems when compared to other comparable jurisdictions.

Suggested Language:

> Court A/T: Officers earn accumulated time for City required court appearance(s) at a minimum rate of four (4) hours for appearing in morning, afternoon, or evening court, or time and one-half (1 ½) for those hours actually spent in court, whichever is greater. The four (4) hour minimum is meant to compensate officers for all appearances occurring during the respective court session (i.e., morning court, afternoon court, etc.) For purposes of this article the Morning Court Session shall run from 8:00 A.M. – 12:30 P.M. Afternoon Court shall run from 1:00 P.M. – 4:30 P.M. Evening Court shall start at 5:00 P.M.

Issue: Article 27: Salary and Wages

City Position: The City demands a wage freeze for the life of the contract.

Union Position: The Union demands three percent (3.0%) for each year of the prospective contract.

Discussion: The City bases its position on its financial condition, although it also argues that at the top end of the salary scale the YPA members are among the highest paid officers in the Mahoning Valley Area (City Exhibit Book TAB 13, (B, C). This is true, but the same data show that the Youngstown Officers are the worst paid at the bottom of the scale. That is the Union's position. The Union claims that the City can afford to pay three percent (3.0%) per year and that the YPA members, especially the least senior members, deserve a pay increase (Union Exhibit book TABS 11, 12,13).

The question is whether the City can afford to pay the Union's demand. The parties presented evidence and testimony on this issue (City Exhibit Book TAB 13 (C, D, and E) (Union Exhibit Book TABS 2 through 9). The Fact Finder is convinced that the City faces severe financial constraints. That finding is based on three (3) factors. First, is the testimony of the City's Deputy Finance Director, Kyle Miasek, who testified that the City's revenues would not cover its projected expenditures. He also stated that the City's revenue stream had still not returned to its prerecession level and that the City had borrowed against future income streams. Finally, he testified that the State's cut in the Local Government Fund payments, the end of the Inheritance tax, etc., all led to a position where the City's General Fund was in danger of going into a deficit.

Second is the Union's witness, Mary Schultz, who basically agreed with Miasek's analysis. She stated that the City could save money by following all of the policies set out by a Consultant's Report on the City's finances.[3] However, she did not disagree that the City had a continuing shortfall of revenues relative to expenditures.

Finally is the Fact Finder's own analysis of the financial data presented by the parties which show that the City has severe revenue problems, especially with the collapse of the oil industry. That collapse has led to a situation where the largest new business in the City has gone from investing in new plant and equipment based on projections of sales and profit growth to laying off staff. Consequently, the Fact Finder does not believe that the City has the ability to pay the Union's wage demand: especially because that would lead to a ripple effect on wages throughout the City.

---

[3] PFM Inc. The consultant said the City could save over five million dollars by following its recommendations. The City testified that it had implemented some, not all, of the consultant's recommendations.

The Fact Finder also notes that every other City bargaining unit in the City has received three and one half percent (3½%) over the last few years (Employer Exhibit 13-B). The YPA membership has received only two and one-half percent (2 ½%) over the same period. Therefore, the Fact Finder is recommending a one percent (1.0%) raise for the YPA membership in the first year of the prospective contract. This is based both on the size of the recommendation and equity considerations.

The Fact Finder understands the Union's position on this issue. The wage scale is very low at the bottom end. However, there are step increases for the first ten (10) years of the contract, and the step increases are over three percent (3.0%) in every year. (Union Exhibit Book last page of TAB 12 and Union Exhibit 25)[4] This is a significant raise over the period for continuing officers. The Union also contends that the low starting wage is affecting the City's ability to attract new officers. The City disagrees. The evidence presented on this topic shows that the absolute number of applicants has fallen over the last few years, but the City testified that it has no trouble filling open positions. The data, such as it is, does not convince the Fact Finder that the City cannot find qualified applicants for openings in the Police Department.

The result is that the Fact Finder is recommending the City's position on this issue. This recommendation is based on the City's financial condition. If the City's finances were different, the recommendation might be different. The Fact Finder believes that the starting wage of the patrolmen is substandard when compared to the starting wage of other similarly situated employees throughout the region and the state.

[4] The City presented similar data under TAB 13 (E) in its submission.

However, the Fact Finder does not believe that the City can afford to significantly increase the pay of the patrolmen at this point in time.

Finding of Fact: The City cannot afford to fund the Union's wage demand.

Suggested Language: Current Contract Language with the addition of one percent (1.0%) added to the wage scale.

Issue: Article 27 Salary and Wages

City Position: The City rejects the Union's demand to compress the salary schedule.

Union Position: The Union demands that the number of steps in the salary schedule be compressed to raise the pay of the lowest steps.

Discussion: The discussion on this issue mirrors the discussion above. The Fact Finder does not believe that the City has the money to compress the schedule. That finding leads to a recommendation that the salary schedule remain unchanged for the life of this contract. Again, if the City were in better financial condition, the Fact Finder might make a different recommendation.

Finding of Fact: The City's finances preclude it from collapsing the Contract's salary scale.

Suggested Language: Current Contract Language

Issue: Article 28 (4): Insurance Waiver

City Position: The City demands that language be added to the contract stating that employees are ineligible for the insurance waiver payment if a spouse or parent also works for the City.

Union Position: The Union rejects the City's demand.

Discussion: This is an issue of first impression. The City pays $168.00/mo. to any employee who has access to other insurance and who opts out of the City's insurance plan. The opt-out payment is approximately $2,000.00 per year. This is a very generous opt-out payment. The City presented evidence on this issue and proved that the opt-out language that it is demanding is standard among comparable jurisdictions, found in all other City contracts, and that all other nonunionized City employees are all covered by the same language (City Exhibit Book TAB 15). Consequently, the City is demanding that the YPA also agree to this language.

The Union objects to the demand. The Union believes that it is being "nickeled and dimed" by the City. The Union stated that it only had four (4) members that were affected and it claimed that taking away the opt-out payment would cause problems for these individuals.

The Fact Finder believes that there is no justification for allowing the YPA members to enjoy a benefit that no one else in the City enjoys. Moreover, many of the other employees had the same benefit as the four (4) members of the YPA bargaining unit, but acceded to the City's demand. The reason probably is that these other individuals recognized that it is unrealistic for an Employee of the City to be covered by the City's insurance and to be paid by the City for not using the insurance at the same time. Consequently, the Fact Finder is recommending the City's position on this issue.

Finding of Fact: To be paid by the City for opting out of its insurance plan at the same time being covered by the plan is unreasonable.

Suggested Language: Section 4 Paragraph two (new)

> A bargaining unit employee whose spouse or parent works for the City shall not be eligible for this incentive. Employees and the City shall abide by all COBRA rules and regulations. Should the City policy regarding the payment of employees whose spouse or parent works for the City change, this change shall be incorporated as a part of the collective bargaining agreement.

Issue: Article 28 (5) Insurance Benefits

City Position: The City demands that the cap on insurance contributions by the Union member be removed and that the affected employees shall pay ten percent (10%) of the premium starting on May 1, 2016 and eleven percent (11%) of the premium starting on May 1, 2018.

Union Position: The Union rejects the City's demand and counters with Current Contract Language.

Discussion: The City makes two arguments in support of it position. First, the City claims that its financial condition means that it must have some contribution from its employees in order to continue to offer the insurance. Second, the City argues that internal comparability necessitates that the patrolmen pay for their insurance because all other City employees already pay the uncapped amount that the City is demanding.

The Union presented evidence that the cost of removing the cap from the insurance plan, and increasing the premium share to eleven percent (11%) would make the employees worse off. That is, the combination of a one percent (1%) wage increase plus the increased insurance cost would cause the patrolmen's take home income to fall. The Union presented evidence based on an assumed four percent (4%) increase in insurance premiums per year and that analysis showed that removing the cap on

premiums would cost a family approximately $1,200.00 per year in the second contract year; this number is on top of the capped amount already paid by the employee. Consequently, the Union argues that its membership cannot afford to meet the City's demand.

The Fact Finder is aware of the impact on the employees. However, the SERB data found in the 23rd Annual Report on the Cost of Health Insurance based on 2014 data shows that the average premium share for Cities was approximately 10% and the amount was $207 dollars. It must be assumed that next year's report based on 2015 data will show that these numbers have increased. In the same SERB report there are tables that show that average monthly premiums have risen faster than wages since 1997 (The SERB Report was introduced into the record by both parties).

The Employer also presented pages from all other City contracts showing that the other organized employees of Youngstown have all agreed to lift the cap, i.e., their premium contribution is ten percent (10%) of the plan's cost. The Union presented a Conciliation Report from the last negotiation; and in that Report the Conciliator did not award the City's position that the employees pay a ten percent (10%) uncapped premium share. However, the Conciliator noted that only one other bargaining unit had accepted the proposal for an uncapped premium, and that it was unlikely that the cap would be exceeded during the life of the last agreement. Unfortunately for all concerned, the ten percent (10%) cap has been exceeded, and all other bargaining units have agreed to remove the cap. While the Fact Finder understands the Union's position, the change in the cost of medical insurance coupled with the City's financial condition and internal

parity considerations mean that the City's proposal is reasonable when all of the evidence is considered.[5]

Finding of Fact: The evidence in the record proves that an uncapped ten percent (10%) premium share is standard in the Youngstown/Mahoning Valley area.

Suggested Language: Section 5:

> **Employee Contribution:** Effective July 1, 2016, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage.

Issue: Article 41: Vacations

City Position: The City demands that the sixth week of vacation be deleted from the vacation schedule.

Union Position: The Union rejects the City's demand and counters with Current Contract Language.

Discussion: This is an issue of first impression. The City argued that the vacation schedule was overly generous. In addition, the City argued that the Mayor believed that this was an important issue and that he believed that the sixth week should be deleted. However, five or six weeks of vacation is standard at the top end of the vacation schedule around Ohio and the Nation. In that sense, the current vacation schedule in Youngstown is not unusual. Therefore, the Fact Finder does not believe that the City presented evidence that the schedule should be amended. That is, there was no evidence to support the City's position on this issue.

Finding of Fact: The vacation schedule in Youngstown topping out at six (6) weeks is not unusual in Ohio or the Nation.

---

[5] Neither party presented evidence from comparable jurisdictions. They both relied on the SERB data.

Suggested Language: Current Contract Language.

Issue: Article 43: Injured on Duty

City Position: The City demands that the phrase, "provided the employee has not been disability separated" be added to the current language.

Union Position: The Union rejects the City's demand and counters with Current Contract Language.

Discussion: This is an issue that has little effect at the present time. That is, there was no testimony that the situation of a disability separation has ever occurred. The Employer's reasoning is that the language was included into one other contract and that its proposed language has been applied in other injury cases. The Fact Finder is not convinced that there is any reason to change the language. If the current language causes a problem, then there may be reason to change it. However in this particular negotiation, there was no reason put forth to change the current language.

Finding of Fact: The Employer did not prove that there was any reason to change the current language.

Suggested Language: Current Contract Language

Issue: Article 54: Termination of the Contract

Finding of Fact: The parties agree that the contract term shall be from the date of ratification to midnight on November 30, 2018.[6]

Note: All other tentative agreements are included in this report by reference.

---

[6] If the contract is settled via Conciliation, the contract will run from the date of the Conciliation Award until November 30, 2018.

Signed this 18th day of January 2016, at Munroe Falls, Ohio.

/*Dennis M Byrne/*

Dennis M. Byrne, Fact Finder