

STATE EMPLOYMENT
RELATIONS BOARD

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FRATERNAL ORDER OF POLICE) FACT-FINDING REPORT
OHIO LABOR COUNCIL, INC.)
And) STANLEY B. WIENER,
CITY OF AVON LAKE) FACT-FINDER
AUGUST 14, 1996

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Fact-finding hearings were held on June 4, 1996, and at June 25, 1996, at the "Old Fire Station" in Avon Lake, Ohio 44012. The hearing on June 4th, at the request of both sides, was limited to mediation. The hearing on June 25th was for the purpose of fact-finding. Both hearings were before STANLEY B. WIENER, Fact-Finder.

Representing the FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC. ("Union") was HUGH C. BENNETT, Staff Representative. Appearing on behalf of the Union were MOLLY HENDERSON, CINDY RICE, PATTY SCHROER, dispatchers; and JULIE COSENZA, secretary.

Representing the CITY OF AVON LAKE ("City") was ROBERT J. TSCHOLL, Attorney at Law. Also appearing for the City were VINCENT M. URBIN, Mayor and GEOFFREY R. SMITH, Director of Law.

I. PAST NEGOTIATIONS AND MEDIATION

The bargaining unit certified in the fall of 1995 consists of three (3) full-time Dispatchers and a Secretary Records Clerk. This is an initial contract. Numerous meetings were held between

the parties commencing February, 1996.

Mediation was attempted at both meetings. With cooperation from both sides several issues were resolved and are herein identified for the record:

- A. Lay-off and restoration
- B. Injured on duty time
- C. On duty injury leave
- D. Grievance Procedure
- E. Education incentive

II. ISSUES AT IMPASSE

After mediation the following issues remained at impasse:

- A. DURATION OF CONTRACT
- B. MANAGEMENT RIGHTS
- C. UNION RIGHTS
- D. WORK WEEK - SCHEDULED HOURS
- E. WAGES
- F. HOLIDAY PAY
- G. CLOTHING ALLOWANCE
- H. UNION BILL OF RIGHTS
- I. HEALTH AND SAFETY COMMITTEE
- J. HOSPITAL INSURANCE
- K. COMPENSATORY TIME
- L. TOTAL AGREEMENT

III. POSITIONS, FINDINGS AND RECOMMENDATIONS

As a Fact-Finder I am required to take into consideration the factors set forth in Ohio Revised Code, Section 4117.14 (g) 7(a) to 7 (f). I have done this for the issues discussed below. I also acknowledge the extensive preparation and assistance of the parties.

A. DURATION OF CONTRACT:

UNION: July 1, 1996, through December 31, 1998.

CITY: July 1, 1996, through December 31, 1996. Contracts of all unions expire December 31, 1996. The City would like to coordinate the contract for this unit with the contracts of the other unions.

FINDINGS: I understand the City's desire to have all contracts expire on the same date. However, I find it unreasonable to conduct two (2) hearings and issue a report for a six (6) month contract.

RECOMMENDATION: The duration of this contract shall be two and one-half (2-1/2) years, commencing July 1, 1996 and terminating December 31, 1998.

B. MANAGEMENT RIGHTS:

UNION: The Union requests the Management Rights provision of the Police Officers and Sergeants and Lieutenants contracts. Article III, Section m is as follows: "To set standards of service and determine the procedures and standards of selection for employment." To this section the City wants to add; "of full and part-time dispatchers and record clerks."

SERB recognition for the Union does not include part-time employees. A part-time secretary records clerk was hired subsequent to the initiation of contract negotiations. It is the

Union position that part-time employees have no place in the bargaining unit, and that the City must negotiate the effects of hiring part-time employees such as effect in overtime hours, layoff, etc. The City has failed to negotiate. This is a mandatory subject of bargaining under the law.

CITY: Hiring part-time employees is a permissive subject of bargaining, not mandatory. The City has the right to control overtime costs by utilizing part-time, non-bargaining unit employees. The City is not replacing full-time employees as was done in Lorain City Bd. of Edu. v. State Emp. Relations Bd. (1988) 400 Ohio St 3d 257.

The City, during the hearing, did propose that part-time employees shall be laid off before any full time employees are laid off, or have their hours reduced below 40 per week.

FINDING: The certification for the Union was for all full time dispatchers and secretary records clerks. Subsequent to the beginning of negotiations the City hired a part-time secretary records clerk. Whether the hiring of a part-time employee is a mandatory or permissive subject of bargaining under the facts in this case is up to SERB and/or the Courts, should the Union file an unfair labor practice charge.

It is my opinion that until this matter is decided by the parties or by higher authority, I should maintain the status quo so that neither side will be adversely affected. I therefore make the following recommendations.

RECOMMENDATION:

1. The City's proposal to amend Article III, Section m is rejected. Said section to read: "To set standards of service and determine the procedures and standards of selection for employment."
2. The part-time employee hired by the City, although not part of the bargaining unit, shall be permitted to work, subject, however, to the following provision which is to be part of the contract:

3. "No full time bargaining unit employee shall have his/her hours reduced below 40 per week, or be laid off until after the City has eliminated all hours of work for part-time non-bargaining unit employees."

C. UNION RIGHTS:

UNION: The Union requests that the contract should provide up to sixteen (16) hours paid leave per year for the attendance of Union officials at Fraternal Order of Police functions. The Police Officer's contract allows up to sixty-four (64) hours paid leave per year.

CITY: To pay employees for time spent attending union functions is an unfair labor practice in violation of Ohio Revised Code, 4117.11 (A) (2). (Unfair labor practice for a public employer to contribute financial support to an employee organization).

FINDING: Attorney Tscholl raises a unique argument against this provision. Whether it has been raised previously I don't know. But I find many contracts, both in the public and private sectors which contain the provision requested by the Union, including the Police Officer's contract of Avon Lake.

Taking into consideration the size of this unit, I find that the number of hours requested is excessive.

RECOMMENDATION: Effective January 1, 1997, Article VI, Section 6 shall read as follows:

"The Union shall be allowed up to eight (8) hours paid leave per year, for the attendance of Union officials at Fraternal Order of Police functions, subject to the approval of the Chief of Police and existing policy on request for time-off."

D. WORK WEEK/SCHEDULED HOURS:

UNION: The Union requests language which

replicates that found in the contracts between the City and the Police Officers and Sergeants and Lieutenants. The current policy with the Union is as follows:

"SECTION 1. For the purpose of this Agreement, a work day shall consist of eight (8) regularly scheduled consecutive hours during a twenty-four (24) hour period of time. A twenty-four (24) hour period commences at the beginning of a regularly scheduled shift. Furthermore, the normal work week, for full-time members of the bargaining unit, shall consist of forty (40) scheduled hours.

"SECTION 2. Compensation, for regular scheduled eight (8) hour days, shall be at a straight time rate of pay. All hours worked in excess of the normal tour of duty shall be considered overtime"

CITY: The City proposes a new Article IX which gives it more flexibility in scheduling. The proposal calls for a work week of forty (40) hours in a seven (7) consecutive day period.

FINDING: The City proposal limits overtime to hours worked in excess of forty (40) per week. The present policy for the entire Police Department requires overtime pay for hours in excess of eight (8) hours in any twenty-four (24) hour period. I find that at least with this unit the City has not been adversely affected by the present policy. I further find that my recommendation in "B" above (Management Rights) partially addresses the City's problem regarding overtime.

RECOMMENDATION: I recommend that the Work Week/Schedule Hours provisions proposed by the Union be included in this contract.

"ARTICLE IX"

"SECTION 1. For the purpose of this Agreement, a work day shall consist of eight (8) regularly scheduled consecutive hours during a twenty-four (24) hour period of time. A twenty-four (24) hour period commences at the beginning of a regularly scheduled shift.

Furthermore, the normal work week, for full-time members of the bargaining unit, shall consist of forty (40) scheduled hours.

"SECTION 2. Compensation, for regular scheduled eight (8) hour days, shall be at a straight time rate of pay. All hours worked in excess of the normal tour of duty shall be considered overtime"

E. WAGES:

UNION: The Union requests a pay classification readjustment for 1996; four percent (4%) increase 1997; four percent (4%) increase 1998.

The salary structure for the dispatchers and secretary is substantially inferior to wages paid in comparable cities and to salaries paid internally to other secretaries. For example, the Fire Department Dispatcher/Secretary receives approximately \$28,000.00 per year compared to the Police Department Secretary's rate of approximately \$26,700.00. The top rate for Police Department Dispatcher is approximately \$24,000.00. The Dispatchers of this unit should receive the same pay as the Fire Department Dispatcher/Secretary, and the Police Secretary should receive the same rate as the Finance Clerk Trainee (\$28,308.00).

Police Dispatchers work rotating shifts, holidays, and weekends. Fire Dispatcher/Secretary does not. Police Dispatchers also act as Matrons. The Police Dispatchers receive more extensive training and are required to undergo testing, not required by other employees, other than Police Officers.

CITY: Objects to any wage adjustment for 1996 and offers a four percent (4%) increase for 1997 and a four percent (4%) increase for 1998.

Wages paid to the Dispatchers and Secretary are comparable to wages paid in the area. The internal comparison is irrelevant. The Fire Dispatcher/Secretary has been with the City since 1985; while the Unit Dispatchers were hired in 1994.

No adjustment is warranted in this case. All members of the unit received a 3.5% increase in 1996, the same as all other City employees. Between entry level and the top level there are five (5) step increases of five percent (5%) each.

FINDING: I wish to compliment the Union and the City for providing comprehensive exhibits and cogent arguments in support of their positions.

I find it difficult to make internal comparisons. For example, the three (3) police dispatchers were hired in 1994 while the Fire Department Dispatcher was hired in 1985. Both the Police Secretary and the Fire Department Secretary received identical percentage increases at the end of 1995. The Police Dispatcher received increases of 3.5% for 1996.

I have carefully examined the dispatcher rate with those of comparable jurisdictions. I find that the wages paid by the City are comparable. I find only a slight discrepancy which should be remedied by the wage increases recommended below:

RECOMMENDATION: The Union request for a wage adjustment for 1996 is rejected.

I recommend a wage increase of 4.5% effective January 1, 1997. I further recommend an additional wage increase of four percent (4%) effective January 1, 1998, and an additional wage increase of two percent (2%) effective July 1, 1998.

F. HOLIDAYS:

UNION: The Union requests in addition to holiday pay, double time when they work on Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. This request is consistent with the provision contained in the Police Officers contract. Dispatchers should receive the same benefits as others in the Police Department. They work side by side on holidays.

CITY: The City proposes time and one-half the regular rate of pay for all hours worked on any holiday in addition to the regular holiday pay.

FINDING: I find the City proposal is fair and reasonable under the circumstances.

RECOMMENDATION: I recommend that Article XIV proposed by the City be made part of this contract (Fact-Finder Exhibit "A").

G. **CLOTHING ALLOWANCE:**

UNION: The present clothing allowance is \$350.00 per year. The Union requests \$550.00 for 1996; \$600.00 for 1997 and \$650.00 for 1998. The cost of uniforms far exceeds the current allowance. The Police Officers receive an annual allowance of \$700.00, and the Dispatcher for the Fire Department receives \$550.00. The present allowance is substantially below what Dispatchers receive from comparable cities.

CITY: The present allowance is adequate and is not substantially below the allowances given by comparable cities. The City is considering not requiring uniforms for Dispatchers.

FINDING: The present allowance is below that paid by most comparable cities. I take note that the City may not require uniforms.

RECOMMENDATION: The provision for clothing allowance to read as follows:

"Full time employees required to wear uniforms shall receive annual clothing allowances for the purchase and maintenance of regulation uniforms and clothing as follows:

Effective January 1, 1997 \$425.00

Effective January 1, 1998 \$500.00

Such allowance shall be paid in one installment on the scheduled pay day immediately preceding April 1st."

H. BILL OF RIGHTS:

UNION: This unit should have the same "Bill of Rights" as the Police Officers, Sergeants and Lieutenants of the City. The members are in contact with the public on a fairly regular basis. The Dispatchers act as Matrons to female prisoners and also do "Ride Along" training with the Police Officers.

CITY: The "Bill of Rights" is peculiar to Police Officers who are constantly engaged in investigation and in dealing with the public. It has no relevance to a Dispatcher's Unit.

FINDING: This unit is involved with the public. As a result the members are subject to the same problems which can give rise to internal investigations. As a part of the Police Department, the members of this unit should be protected under the same "Bill of Rights" as are the Police Officers.

RECOMMENDATION: I recommend that the "Bill of Rights" provisions proposed by the Union be included in this contract. Said provisions are attached to this report as Fact-Finder Exhibit "B".

I. HEALTH INSURANCE:

UNION: Requests that the present insurance program be continued.

CITY: All of the other union contracts with the City expire December 31, 1996. The City expects to negotiate and secure a new insurance program that would cover all City employees at less cost. The City requests that the unit accept whatever health insurance plan that is accepted by the Police Officers, Sergeants and Lieutenants.

FINDING: Health Insurance constitutes one of the most serious problems confronting all employers, employees and the general public. All cities are challenged to cut costs while protecting their employees. In order to meet this challenge it is important that the City be permitted to submit one program for all employees..

RECOMMENDATION: I recommend the following proposal as submitted by the City:

"The City will provide health insurance to the bargaining unit members under the same terms and conditions that health insurance is provided to bargaining unit members in the Police Officers and Sergeants and Lieutenants collective bargaining unit contracts."

Pending institution of the new plan, the present insurance program shall remain in effect.

J. HEALTH AND SAFETY:

UNION: The Union requests the establishment of a Health and Safety Committee as it appears in the Police Officer's Contract. (Said proposal is attached to this Report as Exhibit "C") The Union is willing to reduce its committee to two (2) members.

CITY: It would be burdensome to have a separate committee for this four (4) member unit. The City has no objection for one member of this unit to participate in the Health and Safety Committee presently in existence.

FINDING: I find considerable merit in the City's objection to a separate committee and agree with the City's solution.

RECOMMENDATION: One (1) member of this unit may participate in the Health and Safety committee presently set forth in the Police Officer's contract.

K. COMPENSATORY TIME:

UNION: The Union requests the same compensatory time provisions as given to the rest of the Police Department. That is, a bank of thirty-six (36) hours of compensatory time off for twenty-four (24) hours worked. Employees under this policy may take off for hourly periods rather than for entire days. The provisions are reasonable since the

compensatory time must be used in the year when earned. The City realizes substantial savings when compensatory time is used as opposed to payment of overtime.

CITY: The City proposes the elimination of Compensatory time for the entire Police Department, starting with this unit. Both sides are better off if employees are paid overtime. The City disagrees with the Union's contention that Comp time costs less than overtime pay. Comp time generates substantial bookkeeping.

FINDING: I can appreciate the City's desire to eliminate Compensatory time. I find that the Union contention regarding savings does not take into consideration certain factors raised by the City.

However, I further find that at the present time every police contract which I have examined contains provision for Comp time. As Comp time provisions go, the proposal by the Union is very reasonable.

RECOMMENDATION: I recommend that the Compensatory Time-Off proposal submitted by the Union be included in this contract. (Fact-Finder Exhibit "D").

L. **TOTAL AGREEMENT:**

UNION: The Union requests that the "Total Agreement" clause contained in the Police Officer's contract be included in its contract with the City:

"This Agreement represents the entire agreement between the City and the Union and unless specifically set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued by mutual agreement between the City and the Union."

The language benefits both parties.

CITY: Objects to the proposal because it is conceivable that it may want to change or modify

some long standing policy but will not be able to without the Union's consent. Every rule of the Police Chief if modified could be contested. The City suggests that rules, regulations and practices be subject to change; without mutual consent, but not benefits.

FINDING: Contracts are about equally divided when it comes to the clause proposed by the Union. Many contracts have clauses exactly opposite, to wit: Any matter not included in the written contract may be altered without consent. The City's fears may be unwarranted due to the Management Rights provision.

However, I do find merit in the City's suggestion that "rules, regulations, benefits and practices" not be lumped together as in every other contract.

RECOMMENDATION: "The Total Agreement" clause shall read as follows:

"This Agreement represents the entire agreement between the City and the Union and unless specifically set forth in the express written provisions of this Agreement, all rules, regulations and practices previously and presently in effect may be modified or discontinued by the City upon notification to the Union. All benefits previously and presently in effect may be modified or discontinued by mutual agreement between the City and the Union."

Respectfully submitted,

DATED:

August 14, 1966


STANLEY B. WIENER
Fact Finder