

STATE EMPLOYMENT LAW
REVISIONS

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Nov 7 1996 10:00 AM '96

Fact-Finding Proceedings

Case Nos. 96-04-0327 and 96-04-0328

ROBERT C. DEVLIN

FACT-FINDER

In the Matter of:	:	
FRATERNAL ORDER OF POLICE,	:	July 24, 1996
OHIO LABOR COUNCIL, INC.	:	
and	:	October 24, 1996
CITY OF SALEM	:	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

On Behalf of the Union:

Hugh Bennett, Staff Representative
David Casto, President, FOP #88
Patrick A. Mango, Representative-Lieutenants
Robert W. Floor, Representative-Sergeants
William Gray, Representative-Patrolmen

On Behalf of the City:

Richard Gortz, Gortz & Associates
Linda Tawil, Gortz & Associates
Stacey Dahner, Payroll Clerk
Robert A. Tullis, Councilman
James Armini, Councilman
W. David Yerkey, Councilman

PRELIMINARY COMMENTS

The **STATE EMPLOYMENT RELATIONS BOARD** appointed the fact-finder who was duly notified by G. Thomas Worley, Administrator, Bureau of Mediation, by letter on May 31, 1996.

Fact-Finding hearings were scheduled on July 24, 1996 and October 10, 1996 at the City Hall in Salem, Ohio. Actually, these days were spent in mediation and negotiation.

By agreement of the parties, the unresolved issues were handled by submission rather than hearing.

There are six (6) employees in the Supervisors unit, i.e., two (2) Lieutenants and four (4) Sergeants. There are eleven (11) police officers in the Police Officers Unit.

In arriving at the following recommendations, the fact-Finder gave consideration to the criteria provided by statute and administrative rule.

ISSUES AND RECOMMENDATIONS

ARTICLE VIII-CALL BACK (Section B)

ISSUE: This issue, proposed by the Union, seeks to amend the last sentence of section B to read as follows:

A vacancy shall be considered to exist when less than three (3) officers, at least

two (2) of which are regular full-time officers, and one (1) dispatcher are on duty.”

POSITION OF THE UNION: It is the position of the Union that added personnel is required not only because of added activity but also due to the growth of youth gangs and also for safety concerns for the personnel and the public.

POSITION OF THE CITY: It is the position of the City that the current contractual provision that two (2) regular full-time officers be on duty presents scheduling and overtime problems. The City has indicated that if the Union did not insist on at least two (2) regular full-time officers that some accommodation might be made to increase staffing.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the safety of personnel and the public mitigate against the reduction of the regular full-time officers on duty. However, it is also the opinion of the Fact-Finder that manning limits are clearly within the scope of Article 1 of the Collective Bargaining Agreement and, therefore, it would require an overwhelming argument to be persuasive in recommending a change in Article VIII, Section B. The City is reserving the right to schedule and staff unless otherwise limited by the Collective Bargaining Agreement. Article VIII currently does have such a limit but we are not persuaded that such limit should be expanded.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder is as follows:

DO NOT CHANGE

ARTICLE XI-SICK LEAVE (Section E)

ISSUE: This issue, proposed by the City, seeks to change the remuneration for unused sick leave upon separation from employment.

POSITION OF THE CITY: It is the position of the City that there is no logical reason for the disparity of treatment between the police and firefighters.

POSITION OF THE UNION: It is the position of the Union that this proposal represents a blatant "take away" and it is unalterably opposed to the change.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that benefits, to the extent possible, should be consistent among the various bargaining units as well as non-bargaining employees. In eliminating incongruities, we always have the problem of whether we adjust upward or adjust downward. In the present case the City is proposing we adjust downward. However, the grandfathering provision softens the impact on the current work force. Furthermore, the remuneration represents compensation for unused sick days rather than personal days or vacation days which might not have been used.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XI, Section E read as follows:

Effective through June 29, 1999, any member of the bargaining unit, upon severance of employment with the City of Salem, or any member who is eligible to receive retirement benefits from the City of Salem, by reason of age and length of service, shall be entitled to remuneration in cash for any and all unused sick leave accumulated by said employee at

fifty percent (50%) of the full amount of the employee's accrued but unused sick leave, and such election shall be deemed to eliminate all requested sick leave credit accrued by said member at that time. Such election must be made on or before the date of retirement or severance.

Effective June 30, 1999, any member of the bargaining unit, upon severance of employment with the City of Salem, or any member who is eligible to receive retirement benefits from the City of Salem, by reason of age and length of service, shall be entitled to remuneration in cash for any or all unused sick leave accumulated by said employee at twenty-five percent (25%) of the full amount of the employee's accrued but unused sick leave, up to an accumulated maximum of 1280 hours, and such election shall be deemed to eliminate all of the requested sick leave credit accrued by said member at the same time. Bargaining unit members who have over 1,000 hours of accumulated sick leave as of July 1, 1996 shall be grandfathered for the remainder of their employment at a remunerated cash rate of fifty percent (50%) of all unused accumulated sick leave.

ARTICLE XII-HOSPITAL AND MEDICAL INSURANCE (Section D)

ISSUE: The issue , proposed by the Union, seeks a fully paid dental and vision plan. The City countered with a plan similar to the firefighters.

POSITION OF THE UNION: It is the position of the Union that it wishes to keep in line with comparable units in comparable communities.

POSITION OF THE CITY: It is the position of the City that it is willing to make a change. However, again it wishes to be consistent with the firefighters. Such a change would reduce the dental coverage but would add vision coverage.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XII, Section D read as follows:

1. The City agrees to provide vision insurance for each member of the bargaining unit, with coverage equal or comparable to the Vision Service Plan, Plan B, as per Appendix ____.
2. The City shall pay Thirty Dollars (\$30.00) per month, per member of the bargaining unit, towards dental coverage (see Appendix ____). Any remaining sum of the members' premiums, which is due, shall be divided equally among those members whose monthly premium exceeds Thirty Dollars (\$30.00).

ARTICLE XV-HOLIDAYS (Section D) (New)

ISSUE: This issue, proposed by the union, seeks compensation at the rate of one and one half (1 ½) times their base rate of pay for those members of the bargaining unit working on the following holidays:

YEAR OF IMPLEMENTATION

1996	Labor Day
1996	Thanksgiving Day
1996	Christmas Day
1997	New Year's Day

1997	Easter Day
1997	Memorial Day
1998	President's Day
1998	Independence Day

The City has countered with a proposal that it would pay one and one half (1 ½) times the basic rate of pay for those members who work the following holidays:

Christmas Day
Independence Day
Thanksgiving Day

POSITION OF THE UNION: It is the position of the Union that the cost would not be excessive. It is also the position of the Union that employees would be more willing to work the holidays if this proposal would be adopted.

POSITION OF THE CITY: It is the position of the City that this proposal represents a major departure from current practice. It is also skeptical concerning the contention that the adoption of this proposal would necessarily have a favorable effect on scheduling problems.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-Finder that the proposal of the City is more reasonable. The cost is uncertain because of manning requirements. The Union itself has suggested that manning is inadequate (See comments on Article VIII). If employees are reluctant to work a holiday for straight time plus holiday pay, we cannot be certain that the additional compensation (i.e., one half (1/2) time will be as attractive as the Union anticipates. In other words, the costs will increase but the scheduling problems may not decrease.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XV, Section D (New) read as follows:

Section D. Members of the bargaining unit working Christmas Day, Independence Day and Thanksgiving Day shall be compensated at the rate of one and one half (1 ½) times their base rate of pay.

ARTICLE XXIII-WAGES (Section A)

ISSUE: The Union has proposed a six percent (6%) increase in each year of the collective bargaining agreement. The City has countered with an offer of two percent (2%) increase in each year of the collective bargaining agreement. However, the City has indicated a willingness to increase its offer contingent upon the acceptance of its proposal on Article XI.

POSITION OF THE UNION: It is the position of the Union that comparables indicate that the current wage structure is low.

The Union also points to the fact that the City has not made any claim that it did not have the ability to pay.

POSITION OF THE CITY: It is the position of the City that it recognizes some adjustment is in order. It does not rely on inability to pay but feels that it should not increase its offer without some concession by the Union.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that inasmuch as the concession that the City is seeking is its proposal on Article XI and the Fact-Finder has recommended that proposal, then the Fact-Finder is constrained to make a recommendation in excess of the City offer.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that the Union be granted an increase of three and one-quarter percent (3.25%) in each year of the collective bargaining agreement. The calculations of the hourly schedule will be left to the parties. The recommended adjustment is in line with both the bargaining and non-bargaining units of the City.

ARTICLE XVII-LONGEVITY

ISSUE: This issue, proposed by the Union, seeks to increase the monthly increment at the various steps in the schedule from Twenty-four Dollars (\$24.00) to thirty-five Dollars (\$35.00).

POSITION OF THE UNION: It is the position of the Union that its proposal is consistent with comparables. It is also the position of the Union that its proposal is modest.

POSITION OF THE CITY: It is the position of the City that it cannot perceive any justification for increasing the longevity schedule.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder, as was stated in the comments on Article XI and applied in Article XII, that benefits, to the extent possible, should be consistent among the various bargaining units. In this instance we should strive to eliminate the disparity in the safety forces.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XVII, read as follows:

YEARS OF CONTINUOUS SERVICE	BI-WEEKLY PAYMENT	YEARS OF CONTINUOUS SERVICE	BI-WEEKLY PAYMENT
<5 years	\$0.00	15 years	\$34.85
5 years	\$11.62	16 years	\$37.17
6 years	\$13.94	17 years	\$39.49
7 years	\$16.26	18 years	\$41.82
8 years	\$18.59	19 years	\$44.14
9 years	\$20.91	20 years	\$46.46
10 years	\$23.23	21 years	\$48.79
11 years	\$25.55	22 years	\$51.11
12 years	\$27.88	23 years	\$53.43
13 years	\$30.20	24 years	\$55.76
14 years	\$32.52	25 years	\$58.08

- A. Each member of the Union shall be entitled to remuneration in addition to that otherwise provided in accordance with the following schedule:
- B. For 26 years and each additional year thereafter, add Two and 32/100 Dollars (\$2.32) bi-weekly per year.
- C. Payment shall begin on the first pay in the first month succeeding the month in which the continuous service time requirements are met.

ARTICLE XIX-UNIFORMS (Section A)

ISSUE: This issue, proposed by the Union, seeks to increase the uniform allowance from Four Hundred Fifty Dollars (\$450.00) to Five Hundred Seventy-five Dollars (\$575.00) per year.

POSITION OF THE UNION: It is the position of the Union that not only the cost of the uniforms but also the cost of maintenance of such uniforms has risen. It is also the position of the Union that this proposal is in line with comparables.

POSITION OF THE CITY: It is the position of the City that some increase in the allowance is warranted but that the proposal of the Union is excessive.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that a twenty seven percent (27%) increase is not immediately justified. It is also the opinion of the Fact-Finder that a substantial increase over the length of the collective bargaining agreement is in order.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XIX, Section A read as follows:

Section A. Each member of the bargaining unit shall receive an annual clothing allowance in accordance with the following schedule:

1996 - \$500.00

1997 - \$525.00

1998 - \$550.00

REMARKS

The Above recommendations were made after two (2) days of mediation and/or negotiations. The Fact-Finder feels that these recommendations plus the issues settled will result in a mutually acceptable collective bargaining agreement. It is my understanding that retroactivity is contingent upon agreement of the parties rather than a collective bargaining agreement imposed by a conciliator.



ROBERT C. DEVLIN
Fact-Finder

Date 11/5/96