

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS

REPORT & RECOMMENDATIONS  
OF THE FACT FINDER

AS AMENDED BY THE FACT FINDER  
ON SEPTEMBER 22, 1997

IN THE MATTER OF:

**City of Bedford Heights**

*(Employer)*

*-and-*

**Ohio Patrolmen's Benevolent Association**

Corrections Officers - Officers in Charge

*(Union)*

Case No. **97-MED-03-0329**

HEARING:

As the result of a mediation and evidentiary session held on  
September 2, 1997 at the City of Bedford Heights City Hall  
in Bedford Heights, Ohio.

APPEARANCES:

*On Behalf of the Union:*

Michael Piotrowski  
Richard D. Mauney, Sr.  
Paul J. Vaurek

Counsel  
OPBA Business Agent  
OPBA Director

*On Behalf of the Employer:*

Marc J. Bloch  
Mark A. Cegelka

Counsel  
Director of Finance

**Gregory James Van Pelt**  
Fact Finder  
2203 Murray Hill Road  
Cleveland, Ohio 44106-2640

## **SUBMISSION**

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective August 19, 1997.

Statements of the Parties positions were submitted to the Factfinder prior to the hearing and an attempt was made to mediate issues at impasse between the Parties on September 2, 1997. These attempts proving fruitless, it was determined to present the matter to the Factfinder for his recommendations, pursuant to ORC 4117. Accordingly, the Parties were afforded an opportunity to present evidence and argument in support of their respective positions.

## **ISSUES AT IMPASSE**

The Parties identified seven issues as unresolved:

1. Duration
2. Management Rights
3. Wages
4. Vacation
5. Hospitalization Contribution
6. Uniform Allowance
7. Shift Bidding

## BACKGROUND

In the fall of 1996, the City of Bedford Heights opened a new jail facility, designed to house not only the City's own misdemeanor and felony prisoners but those of surrounding communities and certain Federal and State jurisdictions on a *per diem* basis.

Prior to opening the new jail the City had a minimal facility, administered through the police department and staffed by two long-time City Employees. These Employees were not represented as a bargaining unit, and had no separate collective bargaining relationship or agreement with the City.

To operate its new institution Bedford Heights increased the number of full-time Corrections Officers and Officers in Charge in its employ to eight. In February of 1997, these officers elected to be represented by the Ohio Patrolmen's Benevolent Association, and the bargaining unit was certified by the State Employment Relations Board on March 6, 1997.

In early April of 1997, the Parties began bargaining toward an initial contract. Those attempts having resolved all but the seven issues presented here, and mediation having resulted in no further progress toward an agreement, the Parties have submitted their positions to the Factfinder for his recommendations.

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K). In that regard, it was particularly noted that the bargaining unit is new, and consequently no predecessor agreement controlled the relationship between these Parties.

Evidence submitted indicated that Corrections Officers and Officers in Charge at the Bedford Heights jail ranked below similar employees of comparable surrounding communities in wages and certain benefits. However, it is also evident that not all the comparable jurisdictions operated a regional facility designed specifically to house prisoners on a contract basis.

There is little doubt the new jail provides increased service and security to the people of Bedford Heights. In addition to enjoying the increased efficiency of a more contemporary facility, the community has the potential to derive revenue

through its incarceration of outside prisoners. Moreover, Bedford Heights enjoys a reasonably solid financial base, and makes no argument that Union proposals are fiscally unmanageable.

In consideration of these factors, the Factfinder has assessed the proposals and positions of the Parties in this negotiation, and submits the following recommendations.

## DISCUSSION AND RECOMMENDATIONS

### **1. Duration**

#### ***OPBA's Position:***

The Union proposes a three-year agreement to begin on January 1, 1997 and to expire on December 31, 1999. In this regard, it hopes to avoid revisiting the issue of retroactivity in the negotiation of future agreements.

#### ***City's Position:***

The City likewise proposes a three year agreement, but argues for commencement on ratification of a contract by the bargaining unit. New contractual relationships normally begin from the date of ratification, says the City, and no logical reason would alter that standard in the present case.

#### ***Discussion:***

Significantly, ORC 4117.09(E) provides that no agreement shall extend more than three years beyond the date of execution, but is silent as to agreements of lesser duration. Having therefore retained discretion as to the appropriateness of more limited contracts, the State has left such decisions to the Factfinder, based on the circumstances of each individual situation.

In negotiation of successor agreements, the issue of retroactivity is normally resolved by the Parties at the fact finding level, frequently in exchange for extension of the negotiating period, during which the Union becomes vulnerable to certain internal and external threats to the bargaining unit. As

such *quid pro quo* arrangements are normal to the collective bargaining process, there seems no reasonable need to require the Parties to utilize resources in a bargaining process aimed at an agreement enduring for less than the statutory three years, beyond the appeal of a contract that expires with the millennium.

***Recommendation:***

It is recommended the collective bargaining agreement between these Parties commence with ratification by the bargaining unit and obtain for three years from that date.

**2. Management Rights**

***City's Position:***

Bedford Heights proposes a management rights clause consisting of but not limited to twelve specifically delineated areas. In dispute is the language of Section J, dealing with the City's right to subcontract or privatize services necessary to the operation of its jail facility. In exchange for that right, the City includes language providing for conferral with the Union regarding such subcontracting, and allowing the OPBA opportunity to offer a competitive alternative.

***OPBA's Position:***

The Union proposes inclusion of the management rights clause provided in the City's contract with its Police Officers. However, it rejects only Section J of the City's proposal, and would accept the remainder of that provision.

***Discussion:***

Inherent in the right to subcontract or privatize work presently within the jurisdiction of the bargaining unit is the ability to reduce or eliminate the Union and the livelihood of its members. Consequently, compelling reasons for such language must be demonstrated by the Employer.

In the present case, Bedford Heights cites the competitive nature of incarceration services as requiring an ability to subcontract such work, based on

the exigencies of the market. However, the City's venture into the business was presumably based on extensive study of the opportunities and risks involved. Given this analysis, it is not reasonable that Bedford Heights hedge its investment with the employment security of these bargaining unit members.

Neither does the City's offer of conferral with the OPBA in such circumstances offset the potential for destruction or elimination of the bargaining unit. Union members are not management consultants, trained and experienced in the operation of jail facilities. While the City would seem well served by soliciting the suggestions of OPBA members in the efficient operation of its jail, to require the Union to provide a competitive alternative or face extinction is potentially stifling to the development of the embryonic relationship between these Parties.

***Recommendation:***

The following contract language is recommended:

**Management Rights**

*Except as specifically limited by explicit provisions of this Agreement, the City reserves and retains, solely, exclusively and without recourse to negotiations, all rights powers and authority, including the right to determine and fulfill the mission of the Division of Police of the Department of Public Safety, determine staffing policy, and in all other respects to plan, manage, evaluate, administer, govern, control, and direct its personnel and operations. Such exclusive rights include, but are not limited to, the following:*

- A. *To determine matters of inherent managerial policies which include policy areas of discretion such as the functions and programs of the City, standards of service, overall budget, utilization of technology and organizational structure;*
- B. *To establish, modify and enforce reasonable policies, rules, regulations and standards for employee performance (the City shall supply these in printed form to the OPBA and each employee, and any changes shall be communicated in advance to the Officers of the OPBA);*
- C. *To determine the size, composition and adequacy of the workforce;*
- D. *To establish and determine job qualifications and duties and to establish the education and training requirements for the Department;*
- E. *To establish or modify job classifications;*

- F. *To hire, evaluate, assign, transfer, schedule, supervise, direct, promote, demote, discipline, suspend and discharge employees for just cause;*
- G. *To lay off employees;*
- H. *To determine overall methods, processes and means by which operations are to be efficiently and effectively conducted;*
- I. *To determine location of facilities and to introduce new and/or improved equipment and methods;*
- J. *To determine the financial policies and procedures of the City, including exclusive right to allocate and expend all funds of the City;*
- K. *To do all things appropriate and incidental to any of its rights, powers, prerogatives, responsibilities and authority; and in all respects to carry out the ordinary and customary functions of the administration.*

### **3. Wages**

#### ***City's Position:***

The City proposes wage increases for OPBA members amounting to what it contends is in excess of 35% over the duration of the agreement. By contrast, the City maintains, the Union's proposal would amount to an increase of some 60% over the same period. In support of its position, the City presents a Bureau of National Affairs Bulletin of July 31, 1997, indicating an average wage and salary increase for all state and local government workers of some 2.7% for the previous year.

The Union's demands are likewise out of line with agreements reached with the City's other bargaining units, it says; wages for which ranged from 3% to 10.5% over the three year contractual period.

#### ***OPBA's Position:***

The Union contends members of its bargaining unit are well below similar employees in comparable surrounding communities. In support of this assertion, the OPBA presents evidence to indicate salary ranges of around the present \$9.00 per hour for new hires to in excess of \$12.00 per hour for employees with five years experience or more.

In addition to the wage considerations it asks, the OPBA seeks that the 1997 wages recommended for its members be retroactive to January 1, 1997, in order to compensate employees for the period in which their wages were below those of comparable employees in surrounding communities.

***Discussion:***

There is no question that the Corrections Officers and Officers in Charge in Bedford Heights are payed on a scale significantly below that of comparable workers in the area. Aside from the apparent inequity in that situation, to successfully operate its jail as a revenue-generating regional facility Bedford Heights must attract and retain qualified, competent corrections personnel. Thus, there is no question that the compensation provided OPBA members should sufficiently exceed inflationary increases to enable City employees to move toward parity with their colleagues in other communities.

Although the Employer makes no argument of financial inability, immediately raising the wage rates of current bargaining unit members, most of whom have less than two years experience, might prove to be a burden, even for a community with the relative affluence of Bedford Heights. Consequently, a wage scale slightly beyond that proposed by the City, but less than requested by the Union would serve to balance the acknowledged low rate payed bargaining unit members with the financial responsibility sought by the City.

Because their comparatively low wages have endured since the opening of the jail, the OPBA's arguments that wage increases should be retroactive to January 1, 1997 have some merit. However, on that date the present bargaining unit did not exist. Consequently, the Factfinder advises the payment of applicable recommended 1997 wage increases retroactive to the March 6, 1997 certification of the bargaining unit, as a bonus.

**Recommendation:**

**1. Annual Base Pay.**

*Employees covered by this Agreement, shall receive the following hourly compensation, based upon the date they began full-time employment in the Department of Corrections, which shall be known as "Base Pay":*

0-1 year      1 - 2 years      2 - 3 yrs      3 - 4 yrs      4 - 5 yrs      5+yrs

**1997 Bonus**

*Retroactive to March 6, 1997*

<i>Officer in Charge</i>	\$11.00	\$11.50	\$12.00	\$12.50	\$12.75	\$13.00
<i>Corrections Officer</i>	9.75	10.25	10.75	11.25	11.50	11.75

**First Contract Year**

<i>Officer in Charge</i>	\$11.00	\$11.50	\$12.00	\$12.50	\$12.75	\$13.25
<i>Corrections Officer</i>	9.75	10.25	10.75	11.25	11.50	11.75

**Second Contract Year**

<i>Officer in Charge</i>	\$11.00	\$11.50	\$12.00	\$13.00	\$13.50	\$13.75
<i>Corrections Officer</i>	9.75	10.25	10.75	11.25	\$11.75	12.25

**Third Contract Year**

<i>Officer in Charge</i>	\$11.00	\$11.50	\$12.00	\$13.25	\$13.75	\$14.25
<i>Corrections Officer</i>	9.75	10.25	10.75	11.25	12.00	12.75

**4. Vacation**

***City's Position:***

Bedford Heights proposes two weeks of vacation following one year of continuous service; three weeks after six years; four weeks after twelve years of service; and five weeks following seventeen years of continuous service. This, says the City, is the same vacation schedule observed

City-wide. Moreover, the City contends no present Employee would be impacted by the OPBA's proposed schedule until after the expiration of this agreement.

***OPBA's Position:***

The Union contends its members' vacation benefits are below those enjoyed by colleagues in comparable communities.

***Discussion:***

Evidence indicates the proposed vacation schedule presented by Bedford Heights is essentially identical to that of other City employees. Moreover, there is little to suggest bargaining unit members enjoy substantially less vacation time than comparable colleagues in other jurisdictions. Consequently, the Employer's proposed vacation schedule will be recommended.

***Recommendation:***

*Employees shall be eligible for vacation leave with pay after one (1) year of full-time service with the City. Vacation time shall be earned annually as follows:*

*After one (1) year continuous full-time service - - - - - two weeks*

*After six (6) years' continuous full-time service - - - - - three weeks*

*After twelve (12) years' continuous full-time service - - - - - four weeks*

*After seventeen (17) years' continuous full-time service - - - - five weeks*

**5. Hospitalization**

***City's Position:***

Bedford Heights proposes that OPBA members make a contribution to their health insurance costs amounting to 3% of the cost for a family plan in 1998 and 6% in 1999. Single employees would contribute 2% in 1998 and 4% in 1999.

The City argues that employee contributions are necessary to the control of its health care costs, which it says have risen 15% for family plans and 11.5% for single coverage since 1995. Moreover, the Employer says, its contract with its Public Works employees provides for employee contributions, and the City is in the process of adopting a similar plan for its administrative personnel.

**OPBA's Position:**

The Union opposes any employee contribution. Its members are below the wage scale of similar employees, and any contribution to health care would further diminish the useable incomes of employees. In support of this position, the Union presents evidence indicating colleagues in several comparable communities do not make any contribution to their health care plans.

**Discussion:**

While the Factfinder is reluctant to recommend a contributory health care plan, it is undeniable that such provisions are omnipresent in both the private and public sectors as the cost of hospitalization continues to escalate. Indeed, three of the five comparable communities presented by the Union contain some provision for employee contributions.

However, to require Employees to pay a percentage of the cost of health care would be to subject bargaining unit members to conceivably limitless increases, and would offer the City less incentive to restrict costs by other means. Therefore, a contribution specifically limited as to amount would seem to best balance the needs of both Parties, and is recommended.

**Recommendation:**

**Section 1.** (A) *The City will make available group insurance benefits with an up-front deductible of \$200.00 for single and \$400.00 for family coverage provided through QualChoice, or benefits of the same overall level or greater, provided by another carrier. In addition, the City will make available group insurance benefits with no deductible for single and family coverage provided through Kaiser Permanente HMO.*

*Effective one year from ratification of this agreement, all employees shall contribute three percent (3%) of the premium for family health insurance and two percent (2%) of the premium for single health insurance, not to exceed fifteen dollars (\$15.) per pay period for single coverage or twenty-five dollars (\$25.) Per pay period for family coverage.*

*Effective two years from ratification of this agreement, all employees shall contribute six percent (6%) of the premium for family health insurance and four percent (4%) of the premium for single health insurance, not to exceed twenty dollars (\$20.) per pay period for single coverage or thirty dollars (\$30.) Per pay period for family coverage. The City shall institute a Section 125 plan which will permit the City to make these contributions on a pre-tax basis. A summary of benefits for each plan is attached.*

(B) *Newly hired employees will be provided group insurance benefits upon completion of their insurance enrollment period or a period of three (3) months of continuous active service, whichever comes first.*

(C) *The City will provide to all eligible employees the Health Care Benefit Plans, Dental and Vision Care benefits with employee contributions as noted above, including a \$7.00 deductible prescription drug plan. If generic drugs or a prescription maintenance plan is used, the deductible will be \$3.00.*

## **6. Uniform Allowance**

### ***OPBA'S Position:***

The Union proposes a clothing allowance for bargaining unit members of \$450. Per year, with an annual maintenance allowance of \$300. This amount, says the Union, is necessary to allow bargaining unit members to purchase and maintain in good condition uniforms and equipment required by the City.

### ***City's Position:***

The City points out that the uniform required of corrections personnel is not as extensive as that maintained by patrol officers. Accordingly, it proposes an allowance of \$250. Per year, payable semi-annually, with no maintenance allowance.

### ***Discussion:***

It seems axiomatic that an Employer requiring its Employees to obtain and maintain an exclusive work uniform should bear at least a significant amount of that burden. However, it is true that the bargaining unit members here are not required to regularly support the extensive equipment of regular patrol officers. Therefore, it will be recommended that the City provide corrections employees with an adequate initial issue of uniforms, and an allowance to enable regular maintenance and replacement. However, no distinction between compensation for replacement of uniforms and their maintenance will be made.

### ***Recommendation:***

**Section 1. Clothing Allowance.** *Each full-time employee, in addition to his/her regular compensation shall receive an annual allowance toward the purchase of regularly prescribed uniform. Such allowance shall be a maximum of Three Hundred Dollars (\$300.) In any twelve-month period, except that the maximum allowance for all new appointees during their first year of service shall be in such amount as is approved by the Police Chief or his designee to provide sufficient adequate uniforms and equipment, but shall include five long-sleeved shirts, five long-sleeved shirts and five pairs of uniform pants. All such uniforms shall be purchased by the employee who shall present to the Police Chief or his designee a proper receipt of such expenditures. The uniform allowance shall be paid by check issued to the employee and distributed to the Police Chief or his designee in the amount of One Hundred Fifty Dollars (\$150) on April 15<sup>th</sup> and One Hundred Fifty Dollars (\$150) on October 15<sup>th</sup> of each year. Distribution of the checks shall be made by the Police Chief or his designee to the employees upon presentation to the Police Chief or his designee of the above-required receipts. The Police Chief or his designee shall collect all such receipts and forward them to the Director of Finance.*

**Section 2.** *Any employee incurring damage or destruction to any personal equipment, clothing or gear in the performance of his/her official duty, shall be entitled to reimbursement from the City upon presentation of a claim to the Police Chief or his designee, with satisfactory proof thereof.*

**Section 3. Reimbursement of Clothing Allowance.** *Any uniforms or equipment paid for by the City pursuant to this provision shall be and remain the property of the City during an employee's probationary period. Upon receiving a permanent appointment, such uniform or equipment shall become the property of the employee. All probationary employees who do not receive a permanent appointment or who leave the City during the probationary period shall return to the City all uniforms and equipment paid for by the City.*

## **7. Shift Bidding**

### ***OPBA's Position:***

The Union proposes language which would permit bargaining unit members to bid for shifts by seniority.

### ***City's Position:***

The City objects to bidding for shifts, arguing the practice would create the potential for familiarity between Officers in Charge and Corrections Officers who regularly worked the same shift.

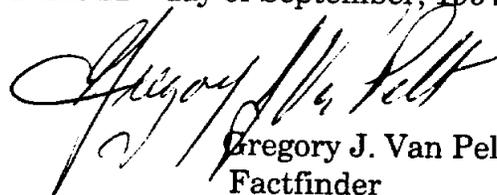
***Discussion:***

There is little doubt that health and domestic problems are created in the workforce by constantly rotating shifts. However, because both Corrections Officers and quasi-supervisory Officers in Charge are members of the same bargaining unit here, the City's argument regarding familiarity cannot be entirely disregarded. Accordingly, it is recommended that Corrections Officers be allowed to bid on shifts based on their relative seniority, while Officers in Charge continue to be assigned at the discretion of the Chief.

***Recommendation:***

*Corrections Officers shall bid on permanent shifts on December 1<sup>st</sup> and May 1<sup>st</sup> of each year. Officers shall bid by seniority. No changes in the schedule shall be made except in the case of an emergency."*

Respectfully submitted,  
this 16<sup>th</sup> day of September, 1997  
and amended this 22<sup>nd</sup> day of September, 1997.

  
Gregory J. Van Pelt  
Factfinder