

FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

March 17, 1998

In the Matter of :

City of Bedford Heights)	
)	
and)	Case No. 97-MED-09-0920
)	
Fraternal Order of Police, Lodge #67,)	
Bedford Heights Division)	

APPEARANCES

For the City:

Marc Bloch, Counsel
Mark Cegelka, Director of Finance

For the Union:

Robert M. Phillips, Advocate
Michael A Bobniz, Patrolman
Craig R. Sirna, Patrolman
Raymond V. Sorace Jr., Patrolman

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Bedford Heights and the Fraternal Order of Police, Lodge # 67, Bedford Heights Division. Negotiations for an agreement to replace the one due to expire on December 31, 1997 began during the fall of 1997. No agreement was reached and the Factfinder was appointed on December 1, 1997.

The Factfinder met with the parties on three occasions. On December 8, 1997 and January 23, 1998 the Factfinder attempted to resolve the dispute through mediation. When these efforts failed, a hearing was conducted on February 11, 1998.

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties presented 16 issues to the Factfinder. For each issue the Factfinder will describe the current contract provision, set forth the positions of the parties,

summarize the arguments and evidence offered by the parties, offer his analysis of the issue, and where appropriate supply suggested contract language.

1) Article III - FOP Membership, Meetings and Dues, Section 8 - Union Business - The current contract provides for 40 hours per year for union business. The city agreed to the union's demand to increase the allotment of hours to 60 hours.

Recommendation - The Factfinder recommends that the number of hours for union business be increased from 40 to 60 hours.

2) Article 6 - Hours of Work and Overtime, Section 5 - Compensatory Time - The current contract provides for a compensatory time bank of 100 hours. The union accepted the city's proposal to increase the bank to 150 hours.

Recommendation - The Factfinder recommends that the compensatory time bank be increased from 100 to 150 hours.

3) Article 6 - Hours of Work and Overtime, Section 7 Court Time - The current contract allows two hours minimum pay for appearing at the Bedford Municipal Court. The union seeks an increase to three hours. The city rejects any increase in the time allowance.

Union Position - The union argues that the allowance for appearing in the local court ought to be increased. It contends that three hours more accurately reflects the time interruption for an officer to get dressed, appear in court, return home, and resume his or her "day off" activities.

City Position - The city objects to the union's demand. It states that the 170 overtime hours it paid last year to officers appearing in Bedford Municipal Court would

increase significantly if the union's proposal were implemented. The city complains that the union provided no rationale to justify its proposal.

Analysis - The Factfinder recommends that the union's demand be granted. He agrees with the union that three hours is more reasonable compensation for appearing in the local court. The cost to the city will be small.

Recommendation - The Factfinder recommends that the minimum time for appearing in Bedford Municipal Court be increased from two to three hours.

4) Article VII - Salaries and Other Compensation, Section 1 - Annual Base Pay - The current contract provides for a base salary of \$42,864. The union demands a 4% increase effective January 1, 1998 and 3.5% increases effective January 1, 1999 and January 1, 2000. The city offers 3% increases effective January 1 of 1998, 1999, and 2000.

Union Position - The union argues that its wage proposal reflects a desire to maintain its competitive position with surrounding communities. It points out that wages in nearby communities are as follows:

Maple Heights	\$ 43,745
Warrensville Heights	42,034
Garfield Heights	39,189
Solon	44,267
Independence	46,284
Bedford	42,114

The union indicates that a 4% wage increase in 1998 would result in a salary of \$44,578 which would place it right in the middle.

The union contends that the increases it seeks are similar to increases being granted in other cities. It states that settlements in police departments in Cuyahoga

County are running between 3.5% and 4% in 1998 and 1999. The union claims that increases of 4%, 3.5%, and 3.5% would maintain the status quo.

The union maintains that its position is also supported by wage increases granted to non-bargaining unit city employees. It points out that in 1995 members of city council received a 25% pay increase which was followed by further increases in 1996 and 1997. The union asserts that non-bargaining unit members received average wage increases of 8.82% in 1997-98 and 4.81% increases in 1998-99 and 4.82% in 1999-2000.

City Position - The city asserts that its position is supported by a comparison to the fire fighter's settlement. It indicates that the police and fire unit historically have received the same wage increases. The city reports that under the fire contract fire fighters will receive the same 3% increase in 1998 which it is offering in the instant case.

The city maintains that its position is also supported by the low rate of inflation. It states that in the last three years inflation has been less than 8% while wages have increased 10.5%.

The city observes that its offer is consistent with wage settlements in Ohio. It points out that data from the State Employment Relations Board indicates that in 1997 first year wage settlements averaged 3.60% while the second and third years increases averaged 3.31% and 3.30%.

The city argues that while it did not contend an inability to pay, it is necessary to keep in mind the economic reality facing all cities. It states that although Bedford Heights is still a vibrant economic community, it is no longer a cutting edge suburb. The city asserts that its wage proposal is more consistent with this reality than the union's wage demands.

Analysis - The Factfinder recommends that wages be increased by 3% effective January 1, 1998 and 3.75% effective January 1, 1999 and January 1, 2000. The 3% increase in 1998 is consistent with the wage increase in the third year of the IAFF contract. The overall 10.5% increase is not inconsistent with SERB data regarding wage

increases negotiated in 1997 and should leave the city in approximately the same position compared to the nearby cities. To the extent that the recommended increase exceeds the increase in the cost of living, it will compensate for the increased cost of health insurance to employees which is recommended below.

Recommendation - The Factfinder recommends the following contract language:

Base wages shall be increased 3% effective January 1, 1998; 3.75% effective January 1, 1999; and 3.75% January 1, 2000.

5) Article VII - Salaries and Other Compensation, Section 2 - Adjustment for Longevity - The current contract provides for a cap of \$2700 on longevity payments. The union seeks a cap of \$3000 effective January 1, 1998. The city offers to increase the cap on longevity by \$100 on January 1 of 1998, 1999, and 2000.

Union Position - The union argues that its position ought to be adopted. It indicates that prior to both sides employing outside counsel, the city had tentatively agreed to increase longevity to \$3000 effective January 1, 1998. The union charges that the city's reduction in its offer is punitive.

City Position - The city contends that longevity ought to be increased in \$100 increments in 1998, 1999, and 2000. It points out that this is consistent with the \$100 increase in longevity that fire fighters will receive in 1998. The city notes that this proposal amounts to an 11% increase over three years.

Analysis - The Factfinder recommends that the cap on longevity be increased to \$3000 effective January 1, 1998. He sees no reason to depart from the prior agreement of the parties.

Recommendation - The Factfinder recommends the following contract language:

Effective January 1, 1998 no employee shall receive a longevity bonus greater than \$3000 per year.

6) Article VIII - Vacations and Holidays, Section 1 - The current contract provides for five weeks of vacation after 17 years of service. The union proposes adding one day of vacation beginning in the 21st year and ending with the 25th year. The city opposes any change in vacation entitlement.

Union Position - The union contends that its demand is justified. It maintains that police work is stressful which makes time off very valuable. The union claims that any scheduling problems can be overcome.

The union indicates that its position is consistent with comparable communities. It reveals that amount 34 police department in Cuyahoga County 13 offer six weeks of vacation.

Analysis - The Factfinder cannot recommend the union's position. The comparable data offered by the union indicate that five weeks of vacation after 17 years of service is more than what most department offer. Furthermore, if the union's demand were granted, its members would enjoy more vacation than other city employees.

Recommendation - The Factfinder recommends that the union's demand be denied.

7) Article - Vacation and Holidays, Section 5 - Holidays - The current contract grants 12 paid holidays and does not mention the rate of pay for working on a holiday. The union proposes adding one personal holiday and specifying that an employee who works on a holiday be paid time and one-half. The city opposes any increase in the number of holidays.

Union Position - The union asserts that its demand ought to be recommended. It maintains that an additional personal holiday would be a reflection of the city's concern for police officers' need to attend to weddings, anniversaries, and other special occasions.

The union indicates that the number of holidays in nearby cities is all follows:

Maple Heights	13
Warrensville Heights	11
Garfield Heights	12
Solon	10
Independence	10
Bedford	13 + 3

City Position - The city maintains that 12 holidays is well within the county norm.

Analysis - The Factfinder must reject the union's demand for an additional holiday. Twelve holidays compares favorably with the number of holidays in other departments. He does feel that the contract ought to indicate that those who work on a holiday are entitled to time and one-half.

Recommendation - The Factfinder recommends that the following sentence be added to the contract:

Employees who are required to work on a holiday shall be paid one and one-half times their regular rate of pay.

8) Article IX - Hospitalization and Life Insurance, Section 1 - Hospitalization - The current contract provides for fully-paid hospital-surgical insurance with a deductible of \$200 for single coverage and \$400 for family coverage, dental insurance, vision insurance, and prescription insurance with a \$7 co-pay. It allows the city to change carriers provided the benefits are the same or better.

The city seeks to have employees pay 4% of the premium for family coverage and 2% for single coverage in 1998 and 6% for family coverage and 4% for single coverage in 1999 and 2000. It also proposes that it be allowed to change carriers provided the coverage is equivalent to the current coverage.

The union opposes the city demands. It seeks to retain the current health benefits for the duration of the agreement. The union states that at the worst the package should remain as is for 1998 and then the parties should reopen negotiation for health insurance to be effective in 1999 and 2000.

City Position - The city argues that its proposal ought to be adopted. It points out that other city employees share in health care costs. The city notes that non-union employees have participated in the cost of health insurance since January 1, 1998 and that Laborers, Local 1099 and the Ohio Patrolmen's Benevolent Association agreed to what the city proposing. It indicates that it intends to make the same demand of the fire fighters in negotiations next year.

The city claims that it is seeking only minimal cost sharing on a pre-tax basis. It reports that the employee cost per pay for single coverage in 1998 will range from \$1.46 to \$1.79 depending on the plan selected and the employee cost for family coverage will be from \$7.72 to \$9.83 per pay. The city notes that a Factfinder in the OPBA dispute recommended its proposal.

The city contends that its position is supported by SERB's Report on the Cost of Health Insurance in Ohio's Public Sector. It observes that in the Cleveland region the average employee contribution where employees are required to share in the premium cost is \$22.02 per month for single coverage and \$47.67 per month for family coverage. The city reveals that these amounts represent 12.5% of the premium for single coverage and 10.5% for family coverage. The city stresses that these percentages are substantially higher than what it is proposing.

Union Position - The union contends that there is no need for cost sharing. It states that the city's premium costs are in line with other communities and is decreasing. The union complains that the city's health insurance proposal would reduce its overall economic gain by 50%.

The union rejects the argument that the city's proposal should be recommended because other unions have agreed to it. It claims that the city preyed on a weaker union and a union that was negotiating its first agreement. The union notes that even then the cost sharing does not begin until later in 1998. It stresses that the fire fighters are not required to make any contribution in 1998.

The union maintains that a comparison to nearby communities supports its position. It points out that Bedford, Garfield Heights, Maple Heights, Solon, and Warrensville Heights do not require any employee contribution. The union acknowledges that police officers in Independence contribute up to \$50 per month but observes that its maximum salary of \$46, 284 is by far the highest in the area.

Analysis - The Factfinder must recommend that police officers share in the premium costs. First, two of the city's union have already agreed to what the city is proposing. In one case the change in the contract was recommended by a Factfinder. Second, although employees in many of the nearby communities do not share in the cost of health insurance, data from SERB indicate that the practice is very common in the Cleveland region.

The Factfinder, however, believes that the cost sharing should not begin until January 1, 1999. This will result in police officers not being required to pay for health insurance before the city has the opportunity to make the same demand of fire fighters. On January 1, 1999 the premium contribution should be 6% for family coverage and 4% for single coverage -- the same contributions as required of other employees.

The Factfinder also recommends that the city be allowed to change carriers provided the benefits are equivalent to the current program. The current requirement that the benefits be the same is too restrictive. It is mutually beneficial for the city to be able to pursue the best combination of benefits and premiums. This change should be effective January 1, 1998.

Recommendation - The Factfinder recommends the following contract

language:

Section 1. (A) The City will make available group insurance benefits with an up-front deductible of \$200 for single coverage and \$400 for family coverage provided through United Health Care, Medical Mutual, Kaiser, or equivalent benefits provided by another carrier. Effective January 1, 1999 Employees shall be required to pay 4% of the premium for single coverage and 6% for family coverage.

9) Article IX - Hospitalization and Life Insurance, Section 2 - Life

Insurance - The current contract requires the city to provide \$15,000 of term life insurance. The union seeks an increase to \$20,000. The city accepts the union's demand.

Recommendation - The Factfinder recommends the amount of life insurance be increased from \$15,000 to \$20,000.

10) Article X - Sick Leave, Section New - The current contract does not

include a bonus for not using sick leave. The union proposes that an officer who does not use any sick time in any six consecutive month period be granted four hours of compensatory time. The city opposes the union's demand.

Union Position - The union maintains that its demand is justified. It reports that promoted officers enjoy this benefit by virtue of their "arms length" negotiations with the city. The union believes that the "trickle down theory" should apply to this benefit.

City Position - The city contends that the union's demand does not make sense. It states that the union is asking the Factfinder to recommend that patrolmen who do not use sick be awarded more sick leave. The city admits that the proposal might make sense if there were a problem with sick leave abuse but it indicates that it does not make sense where there is no such problem.

Analysis - The Factfinder feels that the current sick leave program is satisfactory. The fact that the promoted officers enjoy a sick leave bonus does not justify its recommendation.

Recommendation - The Factfinder recommends that the union's demand be denied.

11) Article XI - Absence Due to Injury Received in the Course of Employment - The current contract provides for compensation for employees injured on duty. The city proposes a number of changes in the program. The union objects to a number of the details of the program.

Analysis - The Factfinder recommends that the injury on duty provision sought by the city but believes that many of the changes sought by the union ought to be adopted. He is convinced that the new provision will be beneficial to both parties.

Recommendation - The Factfinder recommends the following contract language:

Section 1. Whenever a full-time police employee during the lawful performance of assigned duties, including training, as a direct result of a "high risk" situation or circumstance, suffers injuries causing total disability for more than three (3) full work days, "high risk" sick leave may be granted in lieu of regular sick leave beginning with the fourth work day taken for sick leave during such total disability, not to exceed ninety (90) calendar days. If, at the end of such ninety (90) day period, the employee is still totally disabled and unable to report for work, the "high risk" leave may, at the City's sole discretion, be extended for additional ninety (90) calendar day periods. "High risk" sick leave shall not be deducted from the employee's accumulated sick leave account.

Section 2. "Total disability" shall mean the physical inability of an employee to perform regularly assigned duties at the station and/or otherwise engage in any other gainful employment.

Section 3. In order to qualify for "high risk" sick leave, the following criteria shall be certified by the Chief of the Division and approved by the Safety Director and the Mayor:

- (1) The injuries are the direct result of:

- (a) An accident occurring when lights and sirens are being used pursuant to Division rules and regulations;
- (b) A non-chargeable automobile accident occurring during the scope and course of employment;
- (c) A fight, effecting an arrest or controlling a domestic violence situation, or during a SWAT team call-out for any critical incident;
- (d) The use of a firearm, knife, chemical agent, impact weapon, or other dangerous weapon; or
- (e) An injury which occurs while on the street as a result of directing traffic violation, a traffic accident, a citizen's complaint, or an alarm.

(2) The illness is the direct result of or is caused by performing in an emergency situation and results in contagious or infectious diseases classified pursuant to 3701.24(B) O.R.C. which are contracted or as a direct result of employment-related activities, provided, however, the City retains the right to determine, through separate medical examination, whether or not said disease was employment related.

(3) The event herein described must be duly logged and a written report submitted to the Chief's Office during the shift in which it occurs or a soon thereafter as practicable.

(4) Medical evidence has been provided within a reasonable period of time (no more than fourteen (14) days) from the employee's treating physician and/or the City physician, establishing the cause, nature and extent of the injuries; the likelihood of the term of disability; and the medical probability of full recovery and eventual return to work.

(5) The Employee shall have applied for and have been found eligible to receive coverage under Workers' Compensation of Ohio and the Employee signs a waiver and assignment to the Employer for amounts payable under such Workers' Compensation for temporary total disability benefits, and for any other Employer-paid insurance benefits.

(6) The Employer shall have the right at any time during the process to request medical verification of the Employee's injury from his doctor. In addition, the Employer shall have the right, at its expense, to send the employee to a doctor of its own choosing for medical verification. In the event there is a dispute between the employee's physician and the City's doctor, the parties agree to send the employee to a third, neutral doctor, whose decision regarding the process will be final.

Section 4. In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief.

12) Article 13 - Leaves of Absence, Section 1 - Military Leave - The current contract requires the city to grant leaves of absence for military duty in accord with federal and state law. The union proposes adding that in the case of a declared war the city will pay the difference between an employee's city pay and his or her military pay. The city offered no opposition to the union's demand.

Recommendation - The Factfinder recommends the following contract language:

Employees shall be granted leaves of absence for military duty in accordance with federal and state law. In the case of a declared war the city shall pay the difference between the employee's pay with the city and his or her military pay.

13) Article XIV - Clothing Allowance and Uniform Maintenance Allowance, Section 1 - Clothing Allowance - The current contract establishes a \$450 per year clothing allowance plus a \$395 per year maintenance allowance. The city offers to increase the clothing allowance from \$450 to \$475 per year and the maintenance allowance from \$395 to \$425 per year. The union agreed to the city's proposal.

Recommendation - The Factfinder recommends that the clothing allowance be increased from \$450 to \$475 per year and the maintenance allowance increased from \$395 to \$425 per year.

14) Article XXI - Miscellaneous, Section 2 - Residency - The current contract states that all new employees hired must live within a 15-mile radius of the city. The union seeks to allow employees to live in any contiguous county. The city opposes any change in the current contract.

Union Position - The union argues that its demand ought to be recommended. It points out that police officers can respond to any call-out quickly using freeways. The union stresses that its proposal is consistent with the fire fighters' contract.

City Position - The city opposes the union's demand. It points out that the voters recently passed a charter amendment which permits employees to live in any community which has a border 15 miles from city hall.

Analysis - The Factfinder does not feel he should recommend the union's demand. The city's voters recently passed a charter amendment governing residency. It provides sufficient housing options.

Recommendation - The Factfinder recommends that the union's demand be denied.

15) Article XXV - Duration - The parties agree that the term of the agreement should be three years.

Recommendation - The Factfinder recommends that the contract be effective January 1, 1998 through December 31, 2000.

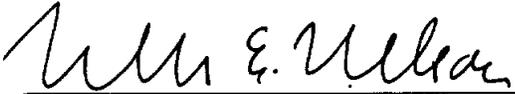
16) Article New - Physical Proficiency Pay - The union proposes a new article which would create a physical proficiency allowance. Bargaining unit members who pass an annual physical proficiency test would receive \$300 in 1998, \$400 in 1999, and \$500 in 2000. In 1998 and 1999 the test would consist of the physical agility test given to applicants for positions as police officers. The test in 2000 would be devised by a joint city-union physical standards board. The city rejects the union's demand.

Union Position - The union contends that its proposal has merit. It points out that physical fitness is important for police officers and believes that its program would encourage officers to remain fit. The union maintains that all parties would benefit from the adoption of the fitness program.

City Position - The city rejects the proposal. It notes that only a few communities have adopted what the union is proposing. The city indicates that it is just another device to get money into the hands of patrolmen.

Analysis - The Factfinder cannot recommend the union's demand. While he understands the importance of physical fitness for police officers, it would appear to be a requirement for the job rather than something meriting additional compensation. This is not to say, however, that the union's proposal ought not to be considered by the parties in future negotiation as a part of an overall settlement.

Recommendation - The Factfinder recommends that the union's demand be denied.



Nels E. Nelson
Factfinder

March 17, 1998
Russell Township
Geauga County, Ohio