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IN THE MATTER

OF

FACTFINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE/  
OHIO LABOR COUNCIL, INC.  
LODGE NO. 166

AND

CITY OF FAIRFIELD, OHIO

Hearing: April 16, 1999  
SERB Case Nos.: 98-MED-08-0701  
Date of Report: April 26, 1999  
Issue: Factfinding

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REPORT AND RECOMMENDATIONS

Michael Paolucci  
Factfinder

### Administration

By letter dated March 1, 1999, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On April 16, 1998, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on December 16, 1998, and is now ready for a factfinding report.

### Factual Background

The City is located in Butler County Ohio, approximately twenty five (25) miles north of Cincinnati, Ohio; the Union represents approximately thirty two (32) Patrol Officers below the rank of sergeant.

Prior to the beginning of the hearing, mediation was attempted by the undersigned, but was unsuccessful. A hearing was held and four (4) issues were presented. Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (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, 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;

- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (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 in private employment. (emphasis added)

The following issues will be addressed giving consideration to all of the required factors:

1. Article VI, Section 3 - Sunday Premium Pay;
2. Article IV, Section 1 - Four days on/Two days off, 8 ½ hour day;
3. Article VI - Effect of 8 ½ hour day on Sick/Personal/Vacation;
4. Appendix A, B, & C - Wages.

Each issue will be handled separately below. It is important to note that the issues at impasse were based on the City's proposal that the employees go to a 8 ½ hour day from the current 8 hour day. It is the affect on other benefits that this change will have that generated most of the Union's positions on the issues.

**1. ARTICLE VI, SECTION 3 - SUNDAY PREMIUM PAY**

Currently, employees who work on Sunday receive pay at 1 ½ times their regular rate. This is entitled "Sunday Premium Pay" in the contract. For purposes of this provision, the bargaining unit can be split into two (2) groups - those who typically work Sundays and those who do not. Generally speaking, patrol officers on a 4 days on, 2 days off schedule, hereinafter "4/2," will work approximately thirty four (34) Sundays per year. Other officers, who generally do not work on patrol

will have much less Sunday Premium Pay, if any. The City provided evidence that the benefit is worth approximately \$2,500.00 to \$3,000.00 per year. The Union provided evidence that, based on the top step of the wage rate, the benefit is worth \$2,519.00 per year.

Due to the unfairness to those officers who do not work Sundays, and because the issue has caused some divisiveness within the unit, the Employer proposes eliminating Sunday Premium Pay and, in consideration for losing this benefit, it proposes giving all employees a 5.25% wage increase. The Union proposes the status quo, but, in the alternative, if the City insists on eliminating the Sunday Premium Pay, it proposes a general wage increase of 6.7%

#### CITY POSITION

The City argues that the proposal is justified since officers have little incentive to bid for positions in non-Sunday positions due to the loss in pay. It contends that its proposal fairly compensates the employees for the loss of the benefit and, over the first year, will result in more money for almost every employee who worked Sundays.

#### UNION POSITION

The Union proposes a different percentage increase due to a different method of calculating the proper wage increase. It argues that the Sunday hours comprise 136 additional hours and, at the top step that dollar amount equals \$2,519.00. It argues that if \$2,519.00 is added to the current base wage rate, then the new base wage rate should be \$41,040.00. To get to that yearly wage rate without the Sunday Pay the wage increase would have to be 6.7%. Thus, it proposes that to maintain the value of the Sunday Pay Premium, then the percentage increase should be 6.7%.

The Union argues that the benefit has been in the contract for thirteen (13) years and was done in an effort to settle an earlier contract. Since there is a history of the benefit, then the Union argues that the benefit should be paid for if eliminated.

### RECOMMENDATION

The Union's calculation has a weakness. It fails to consider that each employee received a different amount for the benefit. Since both Parties agree that some benefit is necessary to offset the loss of the Sunday Premium Pay, then the question becomes what was the value worth to those who worked it. Using the numbers provided by the City, the mean (average) of pay received from all employees who regularly worked Sundays is \$2,337.80 per year (\$56,107 total benefit/24 employees who regularly worked it). The mean gross salary of those same employees is \$52,996.46 (\$1,271,915/24 employees). When expressed as a percentage, Sunday Premium Pay is approximately 4.4% of gross and, as the City claimed, only 4.7% of adjusted gross income when other benefits are removed. When these numbers are considered, the benefit proposed by the City at 5.25% is fair.

However, it also must be considered how the loss of the benefit will affect those employees who worked much more than others. As the City provided, approximately five (5) employees worked at or above the 5.25% rate of Sunday Premium Pay as compared to Adjusted Gross Pay. These officers, or 16% of the work force, will either break even or lose some benefit. Those employees can not be ignored. In order to facilitate the Parties reaching agreement, and to provide compensation to these employees, it is recommended that the increase be a 5.5% general wage increase.

## **2. ARTICLE VI, SECTION 1 - FOUR DAYS ON/TWO DAYS OFF, 8 ½ HOUR DAY**

The City proposes increasing the work day from eight (8) hours to eight and one-half (8 ½) hours. In exchange, the City also proposes a 6.25% general wage increase over the first two (2) years of a three (3) year contract. It proposes that the first (1<sup>st</sup>) year contain a 4.25% wage increase and that the second (2<sup>nd</sup>) year contain a 2.0% wage increase for the increase in hours worked per day.

The Union does not like the change, but allows that the City has the right to make the change. However, it requests that the wage increase be made all in the first (1<sup>st</sup>) year.

### **CITY POSITION**

The City argued that the other departments in the area all have the 8 ½ hour schedule. It contends that the City needs more hours out of its patrol officers so that the beginning and end of shifts are better covered. It argues that its offer of 6.25% is fair compensation for the extra work it is requiring.

### **UNION POSITION**

The Union argues that it is underpaid when compared to the other units in the area. It argues that, as a result, the increase as proposed by the City should be all made in the first year of the Agreement.

### **RECOMMENDATION**

Based on the increase recommended in the Sunday Premium Pay, it is fair that this increase be paid over two (2) years. It is recommended that the increase be 4.5% in the first (1<sup>st</sup>) year and 1.75% in the second (2<sup>nd</sup>) year.

### 3. ARTICLE VI - EFFECT OF 8 ½ HOUR DAY ON SICK/PERSONAL/VACATION

Sick Days - currently the officers receive twelve (12) sick days.

Personal Days - currently the officers receive three (3) personal days.

Vacation Days - currently the officers receive the following vacation days:

1 year seniority - eighty (80) hours vacation;  
7 years seniority - one hundred twenty (120) hours vacation;  
14 years seniority - one hundred sixty (160) hours vacation;  
24 years seniority - two hundred (200) hours vacation.  
Forty (40) hours of additional vacation for each additional five (5) years.

#### CITY POSITION

The City proposes maintaining the same benefits even though the length of a day has been increased to 8 ½ hours. It understands that employees may need to take a day off (whether it be sick or vacation) but may not want to lose all 8 ½ hours from the bank of hours. It proposes including language that would give each employee the option of being docked either 8 or 8 ½ hours, whichever is their option.

The City argues that since these benefits were based on 2080 hours worked per year, and since these employees never worked that many hours due to their unique schedule, then there is no reason to change the number of hours for any of the three (3) benefits. It argues that these employees are not losing anything. It contends that if any of these benefits were increased, it would be personal days.

#### UNION POSITION

The Union argued that no one works 2080 hours per year due to the numerous benefits people

receive that prohibits them from working that many hours. It contends that days should be counted as days, and not on an hourly basis. It argues that if the vacation hours do not go up, then a two week vacation will result in the loss of 6 ½ hours of pay from that regularly scheduled.

### RECOMMENDATION

Since both sick days and personal days are defined in Article IX, Section 5 and Article VI, respectively, as “days,” and since “days” will be re-defined as an 8 ½ hour day, then it is expected that both Personal and Sick Days will now be paid at 8 ½ hours per “day” as defined in the Agreement. Since both types of leave benefit are expressed in terms of days, then the City will be bound to pay both on a “day” or 8 ½ hour basis. Indeed, even if these definitions were not expressly contained in the Agreement, they would be recommended to be defined as such following this sort of modification. The Parties bargained for these benefits as “days” and the modification of a work day should not affect the method an employee is compensated for using a “day” off.

Vacation benefits are a tougher call. The Parties have provided for a vacation benefit in Article VII as an “hourly” benefit based on years worked and based on the prior eight (8) hour work day. The modification of a work day will, potentially, cause employees to use more vacation time than previously since each day off will be an 8.5 deduction from their vacation pool. Even so, the City persuasively argued that the unit has historically worked less than other units in the area and have benefitted from the City’s unusual work schedule.

In an effort to provide the employees with some compensation for the loss of vacation time, it is necessary to recognize that a loss has occurred. However, increasing the vacation hours at the rate of a ½ hour per work day is not justified. Some in between value is better justified. In that vein,

it is recommended that the vacation benefit be increased by two (2) hours per step in the vacation leave earned.

4. **APPENDIX A, B & C - WAGES.**

The City proposes a 3%, 3.25% and 3.5% wage increase in each year of a three (3) year agreement. The City also proposes paying a one-time 1.9% "Pay Period Adjustment" due to the change it needs to make in the time in which the paychecks are issued.

The Union proposes a 4%, 4% and 4% wage increase in each year of a three (3) year agreement.

**CITY POSITION**

The City emphasizes that the other Union's in its employ have agreed to this wage increase. It contends that the offer, when it includes the other increases the Employer has proposed, amounts to a 14.4% wage increase in the first year and a 5.25% wage increase in the second year — both increases being very large. The City also offered evidence that the wage compensation package, as a whole, provides a much higher gross salary for the employees due to hidden benefits. It contends that the wages actually received by these employees compares favorably with units in the surrounding area and thus, are reasonable.

**UNION POSITION**

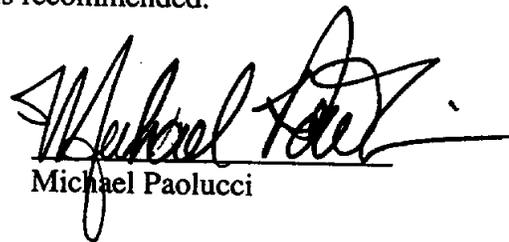
The Union argues that this unit is underpaid when compared to other units in the area. It asserts that those other units also receive benefits other than wages and thus the gross salary based

on other benefits should carry no weight. It contends that this unit has consistently fallen behind other units each year and with each percentage change, the gap widens.

RECOMMENDATION

The City's proposal is recommended. In light of the remainder of the recommendations, and based on the fact that the remainder of the unions, including the sergeants and lieutenants' contract contains the City's proposal, then those numbers have persuasive value. The City's recommendation, along with the Pay Period Adjustment is recommended.

April 23, 1999  
Cincinnati, Ohio



Michael Paolucci