

SEP 23 3 11 PM '99

**Factfinding Report and Recommendations**

**in the Matter of Factfinding**

**Between**

**the City of Athens**

**and**

**The Fraternal Order Police/Ohio Labor Council**

SERB Case No. 98-MED-09-0861

MARCUS HART SANDVER, Ph.D. Factfinder

Hearing Date: August 26, 1999

Recommendations Issued: September 15, 1999

Representing the FOP:  
Mr. Melvin C. Walcutt  
FOP Staff Representative  
FOP/Ohio Labor Council  
Columbus, OH

Representing the City of Athens:  
Mr. Garry Hunter  
Law Director  
City of Athens  
Athens, OH

## I. Background

This case arises out of a collective bargaining dispute between the City of Athens (the employer) and the FOP/Ohio Labor Council (the FOP or the Union). The parties met 10 times between November 4, 1998 and July 20, 1999 to resolve the dispute. A tentative agreement was reached at the bargaining table but the members of the Athens Police Department did not ratify the agreement. On November 19, 1998 Marcus Hart Sandver was chosen through mutual agreement as the factfinder to the dispute. With the contract rejection, the factfinding provisions of ORC 4117 were employed. Through mutual agreement of the parties, August 26, 1999 was chosen as the date for factfinding.

## II. The Hearing

The hearing was convened by the factfinder at 8:30 a.m. in the City of Athens municipal building. In attendance at the hearing for the City were:

1. Garry Hunter            City Law Director
2. Rick Mayer            Chief of Police
3. Beverly Henderson   Personnel Director
4. Wayne Key            Service/Safety Director

In attendance for the FOP were:

1. Melvin Walcutt       FOP Staff Representative
2. David R. Olexa       Officer
3. Durward Stotts       Officer

The parties were asked to introduce exhibits into the record. The following were introduced as joint exhibits:

1. Joint exhibit #1 Agreement between the City of Athens and the Fraternal Order of Police. Effective December 24, 1995 to December 19, 1998
2. Joint exhibit #2 Items tentatively agreed to between the City of Athens and the FOP. Various dates

The following were offered as City exhibits:

1. City exhibit #1 Tentative agreement between the City of Athens and the FOP/OLC
2. City exhibit #2 City of Athens proposal #1. Patrol Officers. Dated January 5, 1999

The following were offered as FOP exhibits:

1. FOP exhibit #1 FOP Prehearing statement. Dated August 23, 1999

The parties were informed by the factfinder that the hearing would be conducted in accordance with the rules for factfinding as found in ORC 4117 and associated administrative rules as promulgated by the State Employment Relations Board. The parties were invited by the factfinder to make opening statements. The parties waived opening statements and proceeded to a discussion of the issues.

### III. The Issues

#### A. Issue One. Article 2.1 Recognition

##### 1. FOP Position

The FOP position on this issue is that probationary employees should be included in the bargaining unit. In support of its position, the FOP cites SERB Case 87-020 (decided 10/8/87) which found that probationary employees are "public employees" within the meaning of ORC 4117.01.

1. City Position

The City position on this issue is that probationary employees are not now included in the bargaining agreement and have not been included in the bargaining unit since 1977.

3. Discussion

Probationary employees may be included in the bargaining unit under SERB rules. Of course, they may be excluded from the bargaining unit as well and commonly are. The employer cites past collective bargaining agreements back to 1977 in support of its position. The union discussion on this issue was not persuasive enough to recommend a change from past agreements.

4. Recommendation

No change be made to this article.

- B. Issue Two. Article 12.1(F) Investigation

1. FOP Position

The FOP position on this issue is that two extensions to the timeline of the investigation shall be allowed. These extensions are not to exceed 30 days each.

2. City Position

The City position on this issue is that 2 extensions to the timeline be allowed not to exceed 60 days in total.

3. Discussion

The language of the tentative agreement allowing 2 extensions not to exceed 60 days in total appears to me to give the City more flexibility than the two 30 days

extensions. The officers' interests in either event will be protected in that the extensions will not exceed 60 days in total.

4. Recommendation

The language in the tentative agreement (City position) is recommended for this issue.

C. Issue Three. Personnel Records. Article 13.

1. FOP Position

The FOP position on this issue is to maintain current contract language. Presently, the contract requires that oral and written reprimands be removed from personnel files after 12 months.

2. City Position

The city position on this issue is that oral reprimands be removed after 12 months and that records of written reprimands be removed after 18 months. The city cited one instance during the term of the present agreement where it was limited in its ability to discipline an officer appropriately due to the 12 month limitation.

3. Discussion

Twelve months does seem to be a bit short for retention of written disciplinary records. Although the past agreement does provide for a 12 month limit, the city persuasively argues that the 18 month limit for written reprimands would lead to more efficient operation within the department and for more appropriate disciplinary action.

4. Recommendation

The city position on this issue (as found in the tentative agreement) is

recommended.

D. Issue Four. Article 15. Hours and Overtime

1. FOP Position

There are four sub-parts to this issue. The first is Article 15.3 - the FOP position on this issue is to retain the language "eight hours in one day" in the current agreement in computing overtime. The second issue is that the FOP wants a sentence added to Article 15.7B such that part-time/reserve officers will not be used in place of a full-time officer. Third, the FOP wants to insert the word "be" in place of "rotate" in Article 15.7D. Fourth, the FOP wants to provide for the current accumulation or "banking" of compensatory at 42 hours with no limit on the amount of time earned during any one year.

2. City Position

The city position on this issue is first to pay overtime for hours "beyond the scheduled shift" rather than beyond 8 hours. Secondly, the city does not want the FOP language relating to part-time/reserve officers in section 15.7B. Third, the city wants to use the word "rotate" in apportioning overtime among the officers. Finally, the city wants to limit compensatory time to 60 hours per year.

3. Discussion

Each side wants to make changes in the current language of Article 15. No one is proposing keeping Article 15 as is. The question now becomes "whose changes are the most justified?" In my opinion, the City's proposed changes are the most justified. The City points out that not all police officers work an 8 hour shift. The canine unit is an example. The term "scheduled work shift" would accommodate those who don't work an 8 hour shift. The

City argues that the prohibition on hiring part-time employees or using reserve officers would limit their flexibility in meeting scheduling needs thus impairing efficient operations. This agreement is persuasive. The City wants to use the word “rotate” in Article 15.7D because the same concept (rotation of seniority) is used in 15.7A of the current agreement. For uniformity in conveying the concept of rotation of overtime, I feel the word rotate in 15.7D is necessary. Finally, the 60 hour “cap” on compensatory time would limit the City’s liability to the compensatory time “bank” to 60 hours per employee. The City could use this “cap” in limiting compensatory time such that it could be used to control the amount of overtime worked by officers in the City.

The FOP can provide no comparable justification for their proposed changes in Article 15. The FOP in their pre-hearing statement hints darkly of “motives” behind the City’s proposed changes but does not provide anything concrete in support of their position. Thus, the City position on all of the articles in Article 15 is recommended.

4. Recommendation

The City’s proposed changes to Article 15 (as found in the tentative agreement) are recommended.

E. Issue Five. Article 17. Shift Differential.

1. FOP Position

The FOP position on this issue is that shift differential be paid to those who are scheduled to work a majority of his or her hours between the hours of 5 p.m. and 7 a.m., to those officers held over to work after 3 p.m. and those who work between the hours of 3 p.m. and 7 a.m. who are working mandatory or voluntary overtime.

## 2. City Position

The City position on this issue is to pay shift differential to those employees who work a majority of their regularly scheduled hours between 5 p.m. and 7 a.m. Monday through Friday and weekends.

## 3. Discussion

Both parties are proposing a change to the current language of Article 17. The big difference between the two proposals is that the FOP proposal would tie the shift differential to the actual hours worked, while the City proposal ties shift differential to those who are regularly scheduled to work certain shifts. It seems to me that the FOP proposal is the better of the two. Tying shift differential to the actual hours worked and when worked, seems fairer to me than tying shift differential to employees regularly scheduled to work certain shifts. Under the City proposal, some employees would never receive the shift differential regardless of when the hours were worked.

## 4. Recommendation

The FOP proposal on this issue is recommended.

### F. Issue Six. Vacation. Article 20.

#### 1. FOP Position

In negotiations, the FOP agreed to eliminate, over the next two years, the personal days as found in Article 20. In exchange, the employer agreed to accelerate the progressivity of the vacation schedule. In retrospect, upon consultation with its members, the FOP has requested a further steepening of the progressivity of the vacation schedule. For example:

Current Schedule	City Proposal	FOP Proposal
After 1 year - 10 days	1 year - 10 days	1 year - 13 days
After 8 years - 15 days	6 years - 15 days	6 years - 15 days
After 15 years - 20 days	12 years - 20 days	12 years - 20 days
After 25 years - 25 days	18 years - 25 days	15 years - 25 days
	25 years - 30 days	25 years - 30 days

## 2. City Position

The City position is to implement the tentative agreement.

## 3. Discussion

I calculated the total vacation days that would be received by a patrol officer after completing his or her 25<sup>th</sup> year of service under each proposal. Under the current contract, the officer would receive 475 vacation days over his/her career. Under the City proposal the officer would receive 468 days during his/her career. Under the FOP proposal the officer would receive 495 days. With the changes in the progressivity of the schedule the officer would find that in 13 of his/her 25 years he/she would be better off (more days per year) under the City proposal than under the present agreement. In 12 of his/her 25 years of service the officer would be worse off (fewer days of vacation per year) than under the current agreement. Under the FOP proposal, the officer would be "worse off" in 4 years of his/her 25 year career than under the current contract and "better off" 21 years of his/her career.

Under the City proposal, most of the "losses" in vacation would come in the first 9 years of employment; most of the gains would come in the last 8 years of employment. Under the FOP proposal there would be no "losses" in the first 7 years of employment, "losses" in years 8-11, and then "gains" in years 12-25.

Thus, the City proposal on vacations results in a net loss of vacation time for the officers of the City, a loss borne mostly by the younger officers. The more senior officers will benefit some from the City proposal (due to the change in the schedule) but the junior officers will lose the lion's share in this net overall decrease. If there was evidence of inability to pay on the part of the City, or if there was comparability data to show excessive vacation benefits in Athens perhaps the City's proposal could be recommended. Without any such data, a proposal to reduce such an important benefit as vacation is difficult to recommend. The FOP proposal would result in a 21 day increase in vacation time over a 25 year career; about a 5% increase. This is a modest increase and will protect the benefits of both the young and older employees.

4. Recommendation

The FOP proposal is recommended.

G. Issue Seven. Article 21.1. Leaves

1. FOP Position

The FOP position on this issue is to maintain current contract language.

2. City Position

The City position on this issue is to add a paragraph to Article 21(D) which states in part that "excessive" tardiness or abuse of sick leave is cause for discipline."

3. Discussion

The FOP position on this issue is that the City already has the power under the contract to discipline employees for the abuse of sick leave and thus this section is unnecessary. The City position on this issue is that it wants to clearly state to employees the seriousness of sick leave abuse.

The subject of sick leave abuse is one I encounter frequently in my work with labor and

management. The employer is certainly justified in wanting to have a clear statement in the agreement that sick leave abuse will be subject to discipline. Many employers, however, have found that the definition of sick leave abuse is difficult to objectify and abuse is even more difficult to prove. Nevertheless, I understand the concern and recommend this language be included in the agreement.

4. Recommendation

The employer proposal on this item is recommended.

H. Issue Eight. Uniforms. Article 22

1. FOP Position

The FOP position on this issue is to raise the uniform allowance to \$525 per year from the current level of \$450.

2. City Position

The City position on this issue is to raise the uniform allowance to \$500 from the current level of \$450.

3. Discussion

There was little discussion of this issue at the hearing. Absent any substantiation for raising the level beyond the \$500 offered by the employer, I will recommend the City's proposal.

4. Recommendation

The City proposal on this issue is recommended.

I. Issue Nine. Insurance. Article 23

1. FOP Position

This issue involves the prescription drug co-payment. The FOP position

on this issue is that if a generic substitute for a name brand drug is not available, then the maximum co-payment should be \$5.00.

2. City Position

The City position on this issue is that the maximum co-payment for a name brand drug should be \$10.00.

3. Discussion

The City Personnel Director, Ms. Henderson, spoke quite persuasively on this issue. After extensive analysis of its prescription drug claims by the benefit provider it has been determined that most of the City's costs for prescription drug claims have come from the use of brand name drugs in the \$5.00-\$10.00 price range. It was the testimony of Ms. Henderson that the City of Athens could achieve significant savings on its health insurance premiums by making this change in the prescription plan.

4. Recommendation

The City position on this issue is recommended.

J. Issue Ten. Canine

1. FOP Position

This has to do with a memorandum of understanding (MOU) which has become appended to the collective bargaining agreement. The FOP proposal on this issue is that the MOU has been in effect since September 1997. There have been two trial periods and the MOU has been extended each time. The FOP proposal is that the MOU can only be changed through mutual agreement between the FOP and the City of Athens.

2. City Position

The City position on this issue is that the Canine Unit MOU is still an

experiment and that the City wants the right to rescind the MOU at the initiative of either party.

3. Discussion

At some point the "experimental" Canine MOU is going to have to acquire some permanence. The FOP is right in stating that the status of the Canine officers is in a state of perpetual limbo until this permanence is achieved. Collective bargaining is the mutual determination of wages, hours and other terms and conditions of employment. In my opinion, the Canine Unit MOU should be changed to reflect the fact that mutual determination is necessary to terminate the Canine Unit's MOU.

4. Recommendation

The FOP proposal on this issue is recommended.

IV. Certification

This factfinding report and recommendations is based upon evidence and testimony presented to me at a factfinding hearing conducted in Athens, Ohio on August 26, 1999. It is intended that all items tentatively agreed to in negotiations, but not included in this report, are recommended by the factfinder.



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MARCUS HART SANDVER  
FACTFINDER  
Dublin, OHIO  
September 15, 1999