

STATE EMPLOYMENT
RELATIONS BOARD
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FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

January 12, 2000

In the Matter of:

City of Mentor)
)
 and)
)
Ohio Patrolmen's Benevolent Association)

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Case No. 99-MED-01-0078
(Sergeants and Lieutenants)

APPEARANCES

For the Employer:

Gary C. Johnson, Attorney
Gina Kuhlman, Attorney
Dan Graybill, Assistant City Manager
Richard Ammiot, Chief of Police

For the Union:

S. Randall Weltman, Attorney
Leroy Stanton, President
David Gaffney, Vice President

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Mentor and the Ohio Patrolmen's Benevolent Association. The bargaining unit consists of approximately eight sergeants and three lieutenants.

The collective bargaining agreement between the parties expired on April 11, 1999. The Factfinder was appointed on March 12, 1999. The Factfinder conducted mediation sessions on October 6, 1999 and November 1, 1999. Although a number of issues were resolved, no overall settlement was reached. As a result, a factfinding hearing was held on November 19, 1999.

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 submitted six issues to the Factfinder. For each issue, the Factfinder will summarize the positions of the parties, present a brief discussion of the issue, and

offer his recommendation. Where appropriate, the Factfinder will supply the recommended contract language.

1) Article VIII - Rates of Pay, Section 8.01- Bi-Weekly and Annual

Pay - The current contract indicates that the top annual salary for sergeants is \$52,026 and \$58,032 for lieutenants. These salaries imply a rank differential of 9.8% for sergeants and 11.5% for lieutenants. The union demands a rank differential of 11% for both sergeants and lieutenants. The city opposes placing a rank differential in the contract. It offers a 3.5% wage increase for sergeants and lieutenants that would leave the rank differentials unchanged.

Union Position - The union argues that its demand is justified. It points out that rank differentials in comparable departments are as follows:

	<u>Sergeant</u>	<u>Lieutenant</u>
Eastlake	11.00%	11.00%
Euclid	12.00	12.00
Painesville	10.25	10.25
Wickliffe	10.00	10.00
Willoughby	10.00	10.00
Willowick	10.00	10.00

The union further contends that the ratio of patrolmen to sergeants and lieutenants is higher in Mentor than in the comparable departments.

City Position - The city opposes specifying a rank differential in the contract. It states that it does not want to tie the unit's wages to wages in another unit. The city charges that the union never proposed a rank differential in negotiations.

The city contends that data for comparable cities support its proposal. It indicates that in Ohio cities with populations from 25,00 to 50,00 the average salary for sergeants

is \$47,815 and \$51,549 for lieutenants compared to \$52,026 and \$58,032 in Mentor. The city notes that its salaries also exceed the averages for cities with populations greater than 50,000.

The city maintains that salaries compare favorably with nearby jurisdictions. It reports that salaries for sergeants and lieutenants in Lake County are as follows:

	<u>Sergeant</u>	<u>Lieutenant</u>
Eastlake	\$49,982	NA
Lake County Sheriff	47,008	53,560
Madison	45,885	NA
Mentor-on-the-Lake	46,363	NA
Painesville	51,020	56,251
Wickliffe	52,832	58,136
Willoughby	57,241	62,962
Willoughby Hills	49,129	NA
Willowick	53,227	58,321

The city indicates that the similar results are obtained using total compensation.

The city claims that its rank differentials are consistent with the nearby departments. It cites the following rank differentials:

	<u>Sergeant</u>	<u>Lieutenant</u>
Eastlake	6.00%	6.00%
Lake County Sheriff	11.00	13.00
Madison	11.00	NA
Mentor-on-the-Lake	13.00	NA
Painesville	10.00	10.00
Wickliffe	10.00	10.00
Willoughby	10.00	9.00
Willoughby Hills	10.00	NA

Willowick	10.00	9.00
AVERAGE	10.11	9.50

The city stresses that while the rank differential for its sergeants is slightly less than other departments, its rank differential for lieutenants is more.

Analysis - The Factfinder believes that salaries should be increased to reflect an 11% rank differential for sergeants and lieutenants. He notes that while the average differential in nearby jurisdictions is approximately 10.5% for both sergeants and lieutenants, the departments are one-half as large as Mentor or smaller. In the only large department -- Euclid -- the differential for sergeants and lieutenants is 12%.

The Factfinder feels that the heavier supervisory workload in Mentor supports the union's demand for greater rank differentials. In Painesville, Wickliffe, Willoughby, and Willowick, where the rank differentials average 10.1%, the average ratio of patrolmen to officers is 2.6. In Euclid, where the ratio of officers to patrolmen is 5.9, the differential for both sergeants and lieutenants is 12%. Mentor's 5.5 ratio of patrolmen to officers is much closer to Euclid's ratio than the ratios for the smaller departments.

The Factfinder cannot recommend that the contract specify rank differentials. Prior contracts have simply listed the salaries for sergeants and lieutenants rather than specifying rank differentials. Furthermore, the city complained that the union never raised the issue of rank differentials prior to factfinding.

The Factfinder's calculation of the recommended salaries for sergeants and lieutenants is straightforward. In conciliation the top patrolmen's salary was set at \$49,057 in 1999, \$50,774 in 2000, and \$52,551 in 2001. Thus, the recommended top salary for sergeants is 11 % higher than those amounts and the top salaries for lieutenants are 11% above the sergeants' salaries. The step one salaries reflect the same reduction from the top salaries as in the current contract.

Recommendation - The Factfinder recommends the following contract language:

a) Effective April 12, 1999, the annual salaries shall be:

	<u>Step 1</u>	<u>Step 2</u>
Sergeants	\$52,085	\$54,453
Lieutenant	57,329	60,443

b) Effective April 12, 2000, the annual salaries shall be:

	<u>Step 1</u>	<u>Step 2</u>
Sergeants	\$53,908	\$56,359
Lieutenant	59,336	62,559

c) Effective April 12, 2001, the annual salaries shall be:

	<u>Step 1</u>	<u>Step 2</u>
Sergeants	\$55,795	\$58,331
Lieutenant	61,412	64,748

2) Article VIII - Rates of Pay, Section 8.13 - Administrative Pay - The current contract establishes administrative pay of \$225 per year. The union wishes to increase the payment to \$450 in 1999, \$675 in 2000, and \$900 in 2001. The city opposes any increase.

Union Position - The union contends that its demand is justified. It claims that members of the bargaining unit have a heavy workload because the city is short of supervisors. The union maintains that the ranking officers have historically done better than other employees and that the vehicle for this has been administrative pay.

City Position - The city argues that there is no justification for the union's demand. It points out that none of the comparable jurisdictions have administrative pay. The city asserts that in previous bargaining the union got administrative pay in lieu of an increase in the rank differential so that if the rank differential is increased, administrative pay ought to be eliminated.

Analysis - The Factfinder recommends that the union's demand be denied. He has recommended a significant increase in the rank differentials on top of the 3.5% increases received by the patrolmen. This results in a substantial increase in salaries in a city where salaries are already high.

Recommendation - The Factfinder recommends the current contract language.

3) Article IX - Hours of Work and Overtime, Section 9.6 -

Compensatory Time - The current contract establishes a comp time bank of 80 hours for those with less than 20 years of seniority and 100 hours for those with more than 20 years of seniority and includes no provision for annual cashing out of accumulated time. The union seeks to increase the comp time bank to 120 hours for all employees. It also wishes to allow employees to cash out up to 40 hours of comp time upon three days notice. The city rejects both of the union's demands.

Union Position - The union argues that comparisons to other departments support its demand to increase the comp time bank. It points out that among the comparable departments, one has an unlimited bank and the average for the five remaining department is 168 hours. The union notes that the increase in the bank will benefit those who are close to the current maximum.

The union contends that comparisons also support its demand for a cash-out. It reports that four of its six comparable jurisdictions allow employees to cash out their entire bank annually and one jurisdiction limits the cash-out. The union observes that only one department does not permit a cash-out.

The union asserts that its proposal is advantageous to the city. It observes that if an employee does not take payment for comp time in the same time period that it was earned, it is not pensionable. The union indicates that this means that an increase in the comp time bank and a cash-out option will produce considerable savings for the city.

City Position - The city opposes any change in comp time. It reports that the Factfinder recommended that the comp time bank for patrolmen be increased from 80 to 100 hours but rejected a cash-out. The city indicates that in nearby jurisdictions comp time banks and cash-outs are subject to a number of limitations. The city stresses that it does not want to become a loan company.

Analysis - The Factfinder recommends that the comp time bank be increased to 100 hours for all members of the bargaining unit. He sees no reason for a greater increase since only two of the eleven members of the bargaining unit have accumulated more than 75 hours of comp time.

The Factfinder also must oppose the union's demand for a cash-out option. The city negotiated a number of changes in the contract focusing on the payment of various allowances and extra compensation with an eye to simplifying the payroll process. Creating a cash-out option is contrary to the other changes accepted by the union.

Recommendation - The Factfinder recommends the following contract language:

- a. Employees who have earned overtime at either time and one-half (1 1/2) the regular base hourly rate of pay or at the regular base hourly rate of pay may credit such overtime to compensatory time off up to a maximum of one hundred (100) hours. Upon being credited with one hundred hours of compensatory time off, the employee must take compensatory time off before any additional overtime may be accumulated and credited as earned compensatory time off.
- b. Insert current section c.

4) Article XIV - Sick Leave, Section 14.9 - Retirement Buy-Out - The current contract provides that upon retirement employees are entitled to pay for 1/3 of their accumulated sick leave on 1680 hours with a maximum pay-out of 560 hours. The union seeks to increase the payout rate to 1/2 and raise the maximum hours to 2240 with

a maximum payout of 1120 hours. The city opposes any change in the terms of the sick leave cash-out.

Union Position - The union argues that its demand is strongly supported. It observes that employees in the bargaining unit have an average of 19.81 years of seniority and that several members will be retiring in the near future. The union stresses that the city is “dead last” among comparable departments in sick leave buy-out. It points out the sick leave buy-out provisions in area departments are as follows:

	<u>Hours</u>	<u>Rate</u>
Eastlake	0-960	50%
	960+	20%
Euclid	0-1200	100%
	1200+	\$20/day
Wickliffe	0 -1760	50%
Willoughby	0-960	100%
	960+	30%
Willowick	960	100%

The union claims that the maximum payouts assuming an accumulation of 2000 hours of sick leave upon retirement and the appropriate rates of pay are as follows:

Eastlake	\$27,120
Euclid	27,800
Wickliffe	21,595
Willoughby	34,565
Willowick	23,625
Mentor	14,000

The union asserts that increasing the sick leave buy-out benefits the city. It points out that a number of employees have already accumulated more than 1680 hours so that there is less incentive for them to save sick leave.

City Position - The city opposes the union's demand. It points out that members of the bargaining unit have the same sick leave benefit as other city employees. The city states that it would be very costly to increase the sick leaver buy-out for all city employees. It further contends that is buy-out is not "terribly low" compared to other jurisdictions.

Analysis - The Factfinder appreciates the position of the union with respect to the sick buy-out. A significant proportion of the bargaining unit are either eligible for retirement or will be eligible in a few years. They are aware that in many nearby jurisdictions they would receive a significantly larger sick leave buy-out than in Mentor.

Despite these facts, the Factfinder cannot recommend any change in the sick leave buy-out. First, he recognizes the city's interest in maintaining a uniform policy with respect to the sick leave buy-out. Thus, an increase in this benefit for a unit of eleven employees would result in similar changes for other city employees and a substantial increase in citywide costs.

Second, while the city might not compare favorably with nearby jurisdictions with respect to sick leave buy-out, salary and total compensation exceed comparable departments. The city's higher salary and total compensation make-up for a somewhat lower sick leave buy-out.

Finally, the sergeants and lieutenants are receiving a substantial wage increase. Part of it is a result of the earlier wage settlement with the patrolmen and part of it is a

function of this unit's insistence on increasing the rank differential. The union cannot expect the Factfinder to recommend an increase in the sick leave buy-out on top of the substantial salary increase he has already recommended and the increases in other compensation and benefits the city has agreed to grant to the sergeants and lieutenants.

Recommendation - The Factfinder recommends the current contract language.

5) Article XXX- Promotion Procedure, New Section - The union seeks a new provision placing the civil service rule regarding temporary promotions in the contract. The city rejects the union's demand.

Union Position - The union contends that its demand is appropriate. It claims that the city violated a civil service rule in the appointment of an acting officer but that it was stymied when it attempted to challenge the city's action either in court or the grievance procedure. The union maintains that if the civil service rule is included in the contract, it could challenge any violation of the rule in the grievance procedure.

City Position - The city rejects the union's demand. It claims that civil service rules do not result in prejudice or disparate treatment. The city states that the union's complaint relates to a change from 12-hour to 8-hour shifts. It claims that the union could have challenged the extension of the temporary promotion in court.

Analysis - The Factfinder cannot recommend the union's demand. He does not believe that the situation that led to the dispute over the extension of a temporary appointment is likely to occur in the future. Furthermore, the Factfinder is not convinced that it makes sense to put a single section of the civil service rules in the contract.

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

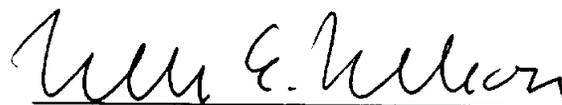
6) Addendum- Supervisory Overtime - The current contract includes an addendum that allows the midnight shift to take off eight shifts per year when it results in overtime. It permits the day and afternoon shifts six shifts per year leading to overtime. The union seeks to allow each member of the bargaining unit (as opposed to each shift) to be off ten shifts per year when overtime is required to fill the vacancy. The city wishes to retain the current addendum.

Union Position - The union argues that it is difficult for members of the bargaining unit to take time off. It claims that there are too few officers and that some officers are off work due to various problems.

City Position - The city opposes the union's demand. It asserts that the union's proposal would create an administrative burden and inflate overtime costs. The city asserts that most cities refuse to grant time off when it creates overtime.

Analysis - The Factfinder cannot recommend the union's demand. Increasing the number of overtime slots to ten per employee would likely result in a significant increase in overtime costs and might create scheduling problems. Furthermore, he is uncertain about the impact of changing the allocation of overtime shifts from a per shift basis to a per officer basis. In denying the union's demand, he would suggest that the parties should explore alternatives to the current system after the conclusion of negotiations.

Recommendation - The Factfinder recommends that the current addendum to the contract be retained.



Nels E. Nelson
Factfinder

January 12, 2000
Russell Township
Geauga County, Ohio