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**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FEBRUARY 22, 2000**

In the Matter of:

The City of Sidney

and

Communications Technicians,  
FOP, OLC

99-MED-09-0802

APPEARANCES

For the Employer:

Dan Rosenthal, Attorney  
Jon Crusey, City of Sidney  
Tom Judy, City of Sidney  
Steve Wearly, Chief of Police  
Mike Lundy, Police Department  
Chris Mantor, Payroll Coordinator

For the Union:

Robert E. Malone, Staff Representative FOP/OLC  
Debi Sniffen, Union Representative  
Melissa Lange, Union Representative

**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

Fact Finder: Tobie Braverman

## INTRODUCTION

The Fact Finding involved here is between the City of Sidney, Ohio and the Communications Technicians, FOP, OLC. The bargaining unit consists of nine (9) employees who are employed as full-time emergency dispatchers by the City of Sidney. The parties' prior three year Agreement expired on December 31, 1999. The parties met for three negotiation sessions and one mediation session prior to proceeding to fact finding on February 7, 2000. The parties again on that date attempted to reach a mediated settlement of the outstanding issues upon which agreement has not been reached, but were unsuccessful in doing so.

The City and FOP have reached tentative agreement on a number of issues which are attached hereto as Exhibit A. The following issues remain unresolved: wages, sick leave, insurance, attendance and insurance bonuses, discipline, uniform allowance, longevity pay, court time, and contract duration.<sup>1</sup> The criteria pursuant to which these issues are to be analyzed are set forth in Ohio Administrative Code §4117-9-05. The criteria are as follows:

1. Past collectively bargained agreements between the parties.

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<sup>1</sup> The parties stipulated that the issue of military leave which was originally in dispute would be withdrawn from fact-finding based upon a tentative agreement reached by the parties on February 7 to the effect that the military leave language would remain the same as in the current agreement pending resolution of litigation which the FOP intends to commence against the City of Sidney on behalf of the police bargaining unit concerning the issue of the proper payment for military leave. The parties agreed that the language of the Agreement would conform to any final decision of the court in that litigation.

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, 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.

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.

#### DISCUSSION AND RECOMMENDATIONS

1. Article III - Wages.

The Union has proposed increases of 4% in each year of an Agreement of three years' duration retroactive to January 1, 2000. The City has proposed increases of 3.15%, 3.1% and 2.0% in each of the respective years of the Agreement, with the third year being increased to 3% contingent upon the elimination of compensatory time. Both parties presented comparable wage comparisons. The City has not raised inability to pay as an issue.

Finding of Fact

Pursuant to both sets of comparable data presented, the City of Sidney's dispatchers are generally on a par with comparable employees in other locales. Other bargaining units and non organized groups have already received a 3.15% increase for the current year.

Suggested Language

Increases of 3.15% in each year of the Agreement, retroactive to January 1, 2000.

2. Article XIV - Compensatory Time.

By far the most difficult item in dispute between the parties is that of compensatory time. After spending some time attempting to mediate an agreement between the parties, it became clear to the Fact-finder that both the City and the Union view the issue of compensatory time as one of great import.

The City has proposed the removal of all compensatory time from the Collective Bargaining Agreement. The City contends that it has made an effort in all employee groups to either reduce or eliminate compensatory time. Compensatory time, which is payment for overtime by time off at time and one-half in lieu of monetary payment for overtime worked, when taken together with sick leave, personal days and vacation, creates far too much employee time off for employees creating a strain in terms of manpower. The City simply desires that employees be present more at work and be paid for their overtime work.

The Union's proposal with regard to compensatory time is to increase the available accumulation of compensatory time from 80 hours to 120, which is the same number of accumulated hours permitted by the police Collective Bargaining Agreement and to further allow compensatory time to be carried over year to year. The operation of the police emergency dispatch is obviously a 24

hour per day 7 day per week operation. Its employees are scheduled on a 6 days on 2 days off schedule. As a result, they often work week-ends and holidays in the normal course of their work. The unit is also made up primarily of women who often utilize compensatory time off to attend children's functions at school or other activities. Compensatory time off, rather than payment for overtime, is viewed as a benefit of great value which allows employees to spend time with their families in lieu of missed week-ends and holidays.

Neither party provided the fact-finder with any information concerning what comparable bargaining units provide in terms of compensatory time. While the City made reference to problems with scheduling compensatory time, and its creation of further overtime in the bargaining unit, no evidence was submitted to substantiate that point. Most compensatory time is scheduled on days when three dispatchers are scheduled rather than the normal two. Further, the City retains the right to, and does when deemed necessary, deny the use of compensatory time when operational needs dictate. Compensatory time has historically been included in the dispatch Agreement, and is included in the City's agreements with its police, fire and AFSCME bargaining units. Similarly, the Union did not present any evidence to suggest that the bargaining unit members suffered any hardship created by the current 80 hour limit on the accumulation of compensatory time. The only argument in favor of increasing the permissible accumulation of compensatory time was to create parity with the police unit. Further, there

would appear to be no clear reason to permit a carry-over of compensatory time from year to year since it is accumulated on a rolling year. The only contractual requirement is that compensatory time earned be taken within a year of its being earned. An increase in either the total accumulation or in the time in which it must be used would create additional time off, a result which is antithetical to the City's not unreasonable effort to reduce time off.

Finding of Fact

The elimination of compensatory time is unreasonable and there is no clear basis for an increase in compensatory time.

Suggested Language

Current language.

3. Article XIV - Court Time.

The Union has proposed that new language be added to the Agreement to provide for a minimum guarantee of three hours at time and one half for court time for dispatchers. The City opposes this addition.

The Union argues that this provision would provide parity with police officers who have such a guarantee in their agreement. The minimum guarantee is designed to compensate employees for their lost time off when called upon to testify in the line of duty. The Union acknowledges, however, that police officers are called upon to testify far more often than dispatchers. In fact, dispatchers are called upon to testify only on rare occasions.

Finding of Fact

The occurrence of dispatchers being called upon to testify in the line of duty is so rare that a minimum guarantee of three hours is not justified.

Suggested Language

Current language.

4. Article XV - Longevity Pay.

The Union proposes the reinstatement of longevity pay bonuses for employees hired after January 1, 1998 which were eliminated in the last Agreement negotiated by the parties. The Union argues that all members of the bargaining unit should be afforded the same benefits. Further, police and fire employees all receive the longevity bonus. The City argues that the benefit has been eliminated in the AFSCME bargaining unit as well as in the unrepresented group of employees. Further, longevity pay was eliminated since it was determined to be unnecessary to hire and retain employees.

Finding of Fact

The Union has not provided any evidence of a substantial nature sufficient to justify the reinstatement of the longevity pay which it agreed to grandfather out of the Agreement during the previous contract negotiations.

Suggested Language

Current language.

5. Article XIX - Sick Leave.

Both the City and the Union have proposals with regard to sick leave. The City has proposed a decrease in the number of paid sick days from 18 to 15, while the Union has proposed an increase in the attendance bonus, in the form of payment or time off, for employees who do not use more than one day of sick leave.

The City has presented comparable data demonstrating that 10 communities within a 35 mile radius of Sidney all have sick leave of 15 days. The City also argues that compensatory time when combined with generous sick leave results in great amounts of paid time off for some employees. It also contends that the attendance bonus has not to date achieved the results it is striving for, that is less time off. The Union argues that the current 18 hours of sick leave provides parity with the police and fire units. Further, an increase in the sick leave bonus would serve as incentive not to abuse sick leave.

The generous compensatory time already afforded employees in the bargaining unit together with the current 18 days of available sick leave results in substantial paid time off for the dispatchers. The evidence demonstrated that the City of Sidney is unique in this generous sick leave within a 35 mile radius. Further, an increase in the attendance bonus will not serve as incentive to not take time off from work since compensatory time can still be utilized, thus allowing employees to take substantial time off work and still obtain the bonus. Unless the bonus is tied to both, it will not provide the City with the desired result which

is the purpose of providing the bonus. That is, having employees on the job.

Finding of Fact

Sick leave should be reduced to amounts comparable to that of surrounding communities, but employees should be compensated for the reduction by being given additional incentives not to utilize sick leave.

Suggested language

Sick leave to which employee is entitled for each complete month of service : 10 hours.

Employees who do not use more than one day of either sick leave or compensatory time in a 6 month period (January to June and July to December) shall be paid a bonus equivalent to 8 hours pay or 8 hours time off at the employee's regular hourly rate at the end of each 6 month period.

6. Article XX - Insurance.

Both the City and the Union have made proposals with regard to changes in the insurance provisions of the Agreement. The City's proposal is to include new language in Article XX §6 which provides that: "After consultation with the Health Insurance Committee, the city reserves the right to change the medical-surgical plan to maintain the premiums for coverage at approximately the current 1999 levels or to minimize the amount of increase to those levels."

The City argues that this proposal will give it greater flexibility in containing costs for insurance coverage. Since the committee is made up of representatives of all employee groups as

well as City representatives, cost containment efforts for all groups will be uniform. The Union contends that the language gives the City too much free reign to change insurance coverages contrary to committee recommendations.

Finding of Fact

The proposal eliminates the need to bargain over changes in insurance coverages in the interest of cost containment.

Suggested Language

Current language.

The Union's proposal is to amend Article XX §7 so that the annual bonus for employees who opt out of insurance coverage will be paid for new hires on their first year anniversary and thereafter at the time of longevity payments. The Union argues that employees who are hired shortly after the December longevity payment and who opt out of insurance coverage must wait up to 23 months before receiving their annual bonus even though the City has garnered the savings generated for the entire time. The City contends that such an increase would serve to encourage more employees to forego insurance coverage, a result which is not good for the employee who may have no coverage, or for the insured City group which will be reduced in size and thereby be at risk for higher premiums.

The Fact-finder is not convinced that the small annual payment would encourage more employees to go without any coverage. Most employees who opt out of coverage do so because they have coverage through their spouse's employment. This language would have a one time affect on new hires.

Finding of Fact

It is reasonable that new hires be paid the annual insurance bonus on their first anniversary date if they are not employed for 12 months at the time of longevity payments.

Suggested Language

This benefit will be paid to eligible employees on their anniversary date of hire after their first year of employment, and thereafter at the same time as longevity payments are distributed.

7. Article XXII - Uniform Allowance.

The Union proposes an specific uniform allowance in the amount of \$500.00 per year. The union argues that increasing clothing prices make this increase desirable. The City points out that the current language provides that the City will provide uniforms as needed. The City further presented evidence that uniforms for 1999 were provided well within the \$350.00 per employee which the City budgeted for that purpose.

Finding of Fact

An change in the uniform allowance is not necessary at this time.

Suggested Language

Current language.

8. New Article - Corrective Action.

The Union has proposed the inclusion of a new provision in the Agreement which outlines procedures for disciplinary action. The proposed provision is identical to that contained in the police

agreement and provides for progressive discipline and a pre-disciplinary conference. It also provides that the employee will be provided with a copy of all disciplinary action placed in his personnel file. The Union argues that this procedure provides basic due process and fairness. The City argues that the language of the Agreement in the Management Rights provisions which provides for termination only for just cause are sufficient.

The Fact-finder believes that the Union's proposal is a reasonable one. Employees and employers alike benefit when both are aware of the guidelines for disciplinary action. The Agreement as currently written provides for just cause only for termination. It is entirely reasonable to include a just cause requirement for other lesser discipline as well as to incorporate a progressive disciplinary policy and a pre-disciplinary conference.

#### Finding of Fact

The Union's proposal is reasonable and necessary in order to insure protection of the due process rights of employees.

#### Suggested Language

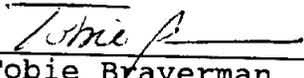
Section 1 - Discipline. Bargaining unit employees shall not be reprimanded, reduced in pay or position, suspended, discharged or removed except for just cause; except where the provisions for probationary employees provide to the contrary. The employer shall give copies of all written disciplinary actions which are placed in his/her personnel file to the affected member.

Section 2 - Procedure. In the event that an employee is to be given disciplinary action for behavior which is of such nature as to call for suspension or removal, a personal pre-disciplinary

conference between the employee, the Police Chief and the Director of Administration will be arranged. This pre-disciplinary conference will take place no earlier than twenty-four (24) hours from the time the employee is notified. If the employee desires the presence of a Labor Council/Lodge representative at the conference, the employee shall notify the Labor Council/Lodge representative. When the nature of the offense is such that immediate disciplinary action is required, the City is not prohibited from taking immediate action by this provision; however, an employee may be conditionally suspended with pay pending a conference on a matter.

Section 3 - Progressive Discipline. The City agrees that the principles of progressive correction action will normally be followed with respect to minor offenses; that is, an oral warning for the first offense, a written reprimand for the second offense. More severe disciplinary action may be taken for subsequent offenses. Mitigating or aggravating circumstances may be considered for each offense. If the offense is of a more serious nature, a different sequence is permitted which is appropriate in light of the nature of the objectional conduct.

Issued this 22nd day of February, 2000

  
Tobie Braverman, Fact-finder