

FACTFINDING REPORT 2009 NOV 12 P 12: 22

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

November 10, 2009

In the Matter of:

City of Alliance	)	
	)	
and	)	Case No. 09-MED-05-0566
	)	
Fraternal Order of Police	)	
Ohio Labor Council, Inc.	)	

APPEARANCES

For the City:

Robert J. Tscholl, Attorney  
John Blaser, Safety-Service Director  
Kevin Knowles, Treasurer

For the Union:

Hugh Bennett, Staff Representative  
Sandra Snodgrass, Union Representative

Fact Finder:

Nels E. Nelson

## BACKGROUND

The instant dispute involves the City of Alliance and the Fraternal Order of Police, Ohio Labor Council, Inc. The city is located in Stark County and has a population of approximately 23,000. The union represents four employees in the police department -- the Chief's Secretary, the Chief's coordinator, and two Stenographer IIs. They were previously represented by Teamsters Local 96.

The contract between the city and the Teamsters expired December 31, 2008. The city and the FOP engaged in bargaining on May 8, 2009, and August 7, 2009. When no agreement was reached, the Fact Finder was appointed on August 26, 2009. The fact-finding hearing was held on October 12, 2009.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. 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 seven issues to the Fact Finder. For each issue, the Fact Finder will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. He will then offer his analysis for each issue, followed by his recommendation.

1) Article 13 - Wages & Longevity, Section 1 - Hourly Wages - The union proposes 2% wage increases for all members of the bargaining unit effective January 1 of 2009, 2010, and 2011. The city offers no wage increase for the duration of the collective bargaining agreement.

Union Position - The union argues that its demand ought to be granted. It points out that its demand is consistent with the wage increases granted to other units in the police department except for part-time patrolmen who received 1% wage increases. The city notes that the firefighters also received 2% wage increases.

The union acknowledges that the city was upfront regarding its position. It indicates that at the first bargaining session, the city stated that it intended to give 2% wages increases to the units which could go to conciliation and wage freezes to the other units. The union asserts that even though the bargaining unit at issue is a strike unit without access to conciliation, in order to maintain consistency it should be granted the same wage increases as the other units in the police department.

The union maintains that the cost of its proposal is modest. It calculates the cost of the 2% wage increases for the four bargaining unit members to be \$7007 over the three years of the proposed contract. The union adds that even with the 19% roll-up the cost will be only \$8338.

The union contends that the city has the ability to pay its wage demand. It states that during negotiations the city did not argue that it could not pay its demand. The union reports that the city's Comprehensive Annual Financial Report shows that between 2007 and 2008 total income tax revenues increased from \$8,669,591 to \$9,284,375 and that the share of income tax receipts allocated to the general fund declined from 86% to 79%.

City Position - The city argues that its position ought to be adopted. It points out that AFSCME agreed to a two-year contract with a wage freeze in both years and that the unrepresented employees also received no wage increases. The city emphasizes that only the bargaining units with access to conciliation received 2% wage increases.

The city contends that the cost of the wage increases received by the firefighters and police officers was offset by changes in their health insurance. It indicates that those bargaining units saw their premium contributions, office visit and prescription drug co-pays, deductibles, and out-of-pocket maximums increase. The city stresses that the other bargaining units were not asked to bear these extra expenses.

The city maintains that it has attempted to lower its expenses. It states that it has reduced its workforce through attrition. The city notes that while some nearby cities have furloughed workers, it has been able to avoid doing so.

The city claims that it faces a difficult financial situation. It points out that in 2004 the mayor formed a blue ribbon committee that recommended a tax rate increase. The city notes that the income tax rate was increased by one-quarter of one percent but reports that this simply eliminated a \$1 million deficit.

The city acknowledges that it changed the allocation of income tax revenue. It reports that in the past it reduced the revenue going into the general fund from 86% to

79%. The city states, however, that in the prior year it had borrowed from other funds to shore up the general fund.

The city stresses that it faces a deteriorating financial situation. It points out that expenditures are projected to exceed revenue in 2009, 2010, and 2011. The city claims that based on a projected 2% increase in expenditures and no growth in revenue, it will have a negative carryover balance by the end of 2010.

Analysis - The Fact Finder must recommend the union's position. First, Paragraph f of Section 4117-9-05(K) of the OAC indicates that among the criteria governing Fact Finders' recommendations are "such other factors ... which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute resolution procedures in the public service or in private employment."

One of these factors is pattern bargaining. It is a very well-established practice in Ohio public sector bargaining. Public employers in the state who negotiate multiple collective bargaining agreements have made it the custom to reach an agreement with one union regarding the major employer-wide issues, such as wages and health insurance, and then to extend that settlement to other bargaining units. In many instances, the pattern is established in fact finding or conciliation.

The practice of pattern bargaining has been accepted by both employers and unions. This claim is supported by the fact that in many fact finding and conciliation cases, the issue is the attempt of one side or the other to "break " the pattern. Neutrals have generally required the party wishing to depart from the pattern to have a strong justification for doing so.

In the instant case the application of this principle is clear. On February 12, 2009, Fact Finder Gregory Szuter issued his report in the dispute between the city and the IAFF. He recommended 2% wage increases in 2009, 2010, and 2011. He also recommended a number of changes in health insurance that would partially offset the increases in wages. When the city and the union failed to reject Szuter's recommendations, they were deemed accepted by the State Employment Relations Board.

The agreement with the IAFF set the pattern for subsequent bargaining by the city. First, it was extended to the police patrolmen, who are represented by the Ohio Patrolmen's Benevolent Association. The pattern was also followed in bargaining with the ranking officers, who are represented by the same union as the four clerical employees at issue in the instant case.

The city's agreement with the police dispatchers, who are also represented by the union in the instant case, generally followed the pattern. They received 2% wage increases in 2009, 2010, and 2011. However, the dispatchers were not required to pay the higher costs for health insurance faced by the other unions.

The city explained the departure from the pattern. It pointed out that in connection with a proposal for county-wide dispatching, the county determined that the wages of its dispatchers were 25% to 32% below other dispatchers in the county. The city indicated that it felt that if it went to fact finding and/or conciliation, the dispatchers would have had a compelling case for a significant wage adjustment so it agreed not to increase their health insurance costs as it had for the patrolmen and supervisors.

When the city faced AFSCME and three independent unions, it abandoned the wage pattern. Instead of agreeing to grant the 2% wage increases, it insisted on a wage freeze for the duration of their contracts. However, in order to reduce the impact of the

wage freezes on the employees, it agreed not to impose the higher health insurance costs, which were part of the pattern, on members of those bargaining units.

The city offered a single reason for abandoning the wage pattern. It observed that AFSCME and the independent unions were strike units without access to conciliation. The city was convinced that these unions could not mount a credible strike threat and, not unexpectedly, the unions agreed to the wage freeze with the stipulation that health insurance costs would not be increased.

The Fact Finder does not believe that there is any legitimate reason that the pattern settlement should not apply in the instant case. First, while the case for a city-wide pattern is may be strong, it is even stronger within a single department. The clerical employees at issue work with the patrolmen, supervisors, and dispatchers. For three of the groups to enjoy a 6% wage increase over three years while one group is forced to take a wage freeze would appear to employees to be unfair and might result in poor morale or even worse.

Second, the fact that the clerical employees do not have access to conciliation is not a determining factor with respect to their wages. The OAC lists the criteria for fact finding but the list does not include the lack of access to conciliation. This is not to say the Fact Finder does not recognize that the non-strike units with access to conciliation do not enjoy more bargaining power; however, in the fact-finding process, the recommendations of the neutral are supposed to be based on the criteria in the OAC rather than the relative bargaining power of the parties.

The employer's ability to pay is another important criterion. While the Fact Finder understands that the city faces a challenging financial situation, it can afford to grant the union's wage demand. First, the city had a general fund balance of \$1.4 million

in 2008 compared to expenditures of \$10.8 million and projects a \$608,171 balance for 2009. Its projection of negative balances in 2010 and 2011 is based on very conservative assumptions. It suggests that expenditures for 2010 and 2011 will increase by 2% while expenditures grew by an average of less than 1% between 2005 and 2008 and fell by 1.1% in 2009. In addition, the city's projections assume that general fund revenue will not increase in 2010 or 2011.

Second, the cost of the union's wage demand is low. The union calculates the cost for the three years to be \$7007 or \$8338 when a 19% roll-up is added. Compared to projected expenditures of \$10.7 million to \$11.2 million, this is inconsequential.<sup>1</sup>

Third, as will be discussed below, the Fact Finder is also recommending the changes in health insurance which constitute the rest of the patterns set by the agreement with the IAFF and the police patrolmen and supervisors. The city explained that the increase in the employee premium contributions and the co-pays for office visits and prescription drugs will offset approximately one-half of the wage increase. It acknowledges that there will be additional, harder-to-estimate savings from increases in the annual deductibles and the out-of-pocket maximums.

Recommendation - The Fact Finder recommends that the union's position be adopted. He recommends the following contract language:

Effective January 1 of 2009, 2010, and 2011 bargaining unit employees shall receive 2% wage increases.

## 2) Article 13 - Wages & Longevity, New Section - Wage Progression

- The current contract has four levels of wages for the Chief's Secretary, the Chief's

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<sup>1</sup> The Fact Finder recognizes that the 2% wage increases would cost significantly more if granted to the other strike units; however, as discussed below, the cost would be partially offset by the changes in health insurance, which are part of the pattern settlement.

coordinator, Typist IIs, and Stenographer IIs. The union seeks to require the city to automatically advance employees one level each year so that employees would reach level IV at the beginning of their fourth year. The city opposes the union's demand.

Union Position - The union argues that its demand ought to be adopted. It points out that at the present time members of the bargaining unit do not automatically move to the next step in the wage matrix and complains that there is no timetable given for when an increase will be granted. The union acknowledges that it first made its demand for annual wage steps in its pre-hearing statement so that the city has not had an opportunity to comment on it.

City Position - The city did not address the union's proposal except to say that it was opposed to it.

Analysis - The Fact Finder cannot recommend the union's proposal. First, the union acknowledges that it was a demand first made in its pre-hearing statement submitted just prior to the fact-finding hearing. The Fact Finder does not believe that he should recommend changing an existing practice without the parties having an opportunity to discuss it.

Second, the union offered no evidence in support of its demand except a claim that on one occasion city council refused to approve an advancement to a higher level that was recommended by the chief. The Fact Finder would be interested in knowing, for example, if other city employees, particularly other clerical employees, have automatic wage progressions. If so, that would provide significant support for the union's demand.

Third, the Fact Finder does not believe that there is any particular urgency in the union's request. Three of the four employees in the bargaining unit are already at the level IV so they would not be affected by the union's proposal. Furthermore, since the

current agreement will be effective on January 1, 2009, the parties will have an opportunity to address the issue in the near future.

Recommendation - The Fact Finder recommends that the union's demand be denied and the current contract language be retained.

3) Article 14- Hours of Work & Overtime, Section 1 - Hours of Work and Prior Approval - The prior contract establishes a 35-hour workweek. The union seeks to increase it to 40 hours. The city rejects the union's demand.

Union Position - The union argues that the workweek should be increased to 40 hours. It points out that increasing the length of the workweek will increase employees' take-home pay. The union suggests that fairness also dictates that employees in the bargaining unit work 40 hours because they pay the same amount for their health insurance as those who work 40 hours.

The union maintains that there is sufficient work for employees to work 40 hours per week. It reports that two employees already work 37 ½ hours per week on an alternating basis. The union complains that employees do not receive overtime when they work more than their regular hours.

The union rejects the city's claim that it is not required to negotiate hours of work. It contends that hours of work is a mandatory subject for bargaining under Section 4117.08(A) of the Ohio Revised Code. The union indicates that if the city unilaterally changed hours, it would file an unfair labor practice charge.

City Position - The city opposes the union's demand. It argues that the determination of hours of work is a management right pursuant to Section 4117.08(C) of the ORC. It acknowledges that it is required to negotiate the effects should it decide to

change hours. The city stresses that is not going to convert a non-mandatory subject of bargaining to a mandatory subject by bargaining over the union's demand.

The city maintains that it determines employees' hours based on its needs. It states that there is currently no need to increase the number of hours worked. The city adds that 51 of its employees work 35 hours per week, including 34 who perform clerical work.

Analysis - The Fact Finder cannot grant the union's demand. While the parties disagree regarding the city's obligation to bargain over a decision to change hours, it is not necessary to address this issue. Apart from any legal questions regarding the obligation to bargain over hours, the union's demand to increase the workweek from 35 to 40 hours would generate a substantial increase in payroll costs. Such an increase in costs is inconsistent with the financial constraints facing the city. Furthermore, an increase in hours for the four employees in this bargaining unit ignores the 47 other employees who work 35 hours per week.

Recommendation - The Fact Finder recommends that the union's demand be denied and the current contract language be retained.

#### 4) Article 17- Health Insurance Benefits, Section 2 - Other Insurance -

The current contract requires the city to provide \$10,000 of life insurance for members of the bargaining unit. The union wishes to increase the amount of insurance to \$25,000. The city rejects the union's demand.

Union Position - The union argues that its demand should be granted. It points out that other city employees have \$25,000 of life insurance coverage. The union

maintains that internal equity dictates that the life insurance coverage for its members should be increased.

City Position - The city argues that the union's demand is not justified. It points out that until 2004 it paid for \$10,000 of life insurance coverage for employees and for one-half of their dental insurance premium. The city reports that in 2004 it agreed to increase the life insurance coverage to \$25,000 and to pay the entire dental insurance premium, which involved a total additional cost of \$400.30. It stresses that the clerical employees in the police department opted to receive a \$400 equity wage adjustment rather than the improvement in insurance benefits.

The city claims that granting the union's demand would raise questions regarding equity. It states that the union would be getting a wage increase plus the insurance enhancements received by other employees. The city indicates that it would be willing to grant the union's request for \$25,000 of life insurance coverage if the union agrees to offset the increased cost on a dollar-for-dollar basis.

Analysis - The Fact Finder cannot grant the union's demand. In 2004 the union traded the insurance improvements for a \$400 equity wage adjustment and is now attempting to recover what it traded away. The city is correct to suggest that this would result in more favorable treatment for this bargaining unit than for other units in the city.

Recommendation - The Fact Finder recommends that the union's demand be denied and the current contract language be retained.

5) Article 17 - Health Insurance Benefits, Section 4 - Major Medical/Hospitalization/Prescription - The current contract requires the city to provide health insurance with a \$10 employee premium contribution for single coverage

and \$20 for family coverage; an office visit co-pay of \$15; prescription drug co-pays of \$8 for generic drugs, \$15 for preferred drugs and \$20 for non-preferred drugs; in-network deductibles of \$250 and \$500 for single and family coverage; and out-of-pocket maximums of \$500 for an individual and \$1,000 for a family. The union wishes to retain the current health insurance provision. The city offers to maintain the current health insurance arrangement but its position is predicated on the acceptance of its demand for a wage freeze.

Union Position - The union argues that there should be no increase in health insurance costs. First, it points out that its employees are required to pay as much as employees who work more than the 35 hours worked by its members. Second, the union notes that while the city's health care costs rose between 2006 and 2007, they decreased in 2008. Third, it reports that the police dispatchers and employees of the Clerk of Courts, who received 2% wage increases, saw no increase in health insurance costs.

City Position - The city observes that health care costs are rising but indicates that it is willing to forgo any change in the bargaining unit's health insurance given its proposed wage freeze.

Analysis - The Fact Finder recommends that the health insurance changes in the contracts of the IAFF and the police patrolmen and supervisors be adopted. Since he has recommended the wage increases those units have been granted, logic dictates that the changes in health insurance, which are an important part of the pattern settlement, must also be recommended.

Recommendation - The Fact Finder recommends the following contract language:

Section 4 - Effective January 1, 2010, the Employer shall provide a comprehensive Major Medical/Prescription plan as follows:

Major Medical/Hospitalization Coverage  
Aultcare or a Network with Equivalent Coverage

<u>Item</u>	<u>Network</u>	<u>Non-Network</u>
Deductibles	Individual \$300 Family \$600	Individual \$600 Family \$1200
Max. Out-of-Pocket Coinsurance per Calendar Year	Individual \$600 Family \$1200	Individual \$1200 Family \$2400
Hospital Expense	90%	70% of R & C
Outpatient Services	90%	70% of R & C
Physician Services	\$20 Co-Pay	70% After Deductible

Deductibles above are non-integrated with Network & Non-Network Benefits

Prescription Drug Coverage

<u>Prescription Drugs</u>	<u>Retail 30-Day Supply</u>	<u>Mail Order 90-Day Supply</u>
Generic	Co-Pay \$10	Co-Pay \$27
Formulary	Co-Pay \$20	Co-Pay \$48
Non-Formulary	Co-Pay \$30	Co-Pay \$74

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Section 7 - Bargaining unit employee shall contribute per pay, via payroll deduction, the following amounts for the coverage listed:

Family	Effective January 1, 2010	\$35
	Effective January 1, 2011	\$40
Employee Plus One	Effective January 1, 2010	\$30
	Effective January 1, 2011	\$35
Single	Effective January 1, 2010	\$25
	Effective January 1, 2011	\$30

Employee plus one means employee/spouse or employee/dependent coverage. The employer agrees to establish a Section 125 plan in order to make said deduction pre-tax.

6) Article 27 - Term of Agreement - The contract between the city and Teamsters Local 96 expired on December 31, 2008. The parties agree that the new agreement should be effective January 1, 2009. The city proposes a two-year agreement expiring on December 31, 2010. The union seeks a three-year agreement expiring on December 31, 2011.

City Position - The city indicates that it prefers a two-year agreement but adds that it would not be opposed to a three-year contract as long as there are no wage increases in any year of the agreement.

Union Position - The union argues that a three-year agreement ought to be recommended. It points out that the other bargaining units in the police department have signed contracts expiring December 31, 2011, and that a two-year agreement would mean that this bargaining unit would be the only unit in the police department bargaining in 2010. The union states that a four-member, non-conciliation unit should not set the pattern for the other units in the police department. It suggests that the Fact Finder should recommend a three-year agreement regardless of his wage recommendation.

Analysis - The Fact Finder recommends a three-year agreement commencing on January 1, 2009, and expiring on December 31, 2011. Three-year contracts are the norm in Ohio public sector bargaining.

Recommendation - The Fact Finder recommends that the union's demand be granted. He recommends the following contract language:

This Agreement shall be effective for the period from the date of execution through December 31, 2011, and shall continue from year-to-year thereafter

unless written notice of a desire to modify or terminate this Agreement is served by either party upon the other and upon the State Employment Relations Board not less than sixty (60) days prior to the expiration date.

7) New Article - Uniform Allowance - The prior contract included no uniform allowance. The union demands an annual \$800 uniform allowance. The city rejects the union's demand.

Union Position - The union argues that its demand ought to be adopted. It indicates that members of the bargaining unit currently work in civilian clothing but that they want to wear uniforms. The union observes that its members meet and greet members of the public who come to the police department for information and records. It claims that administrators of some other police departments want their office staff to wear uniforms.

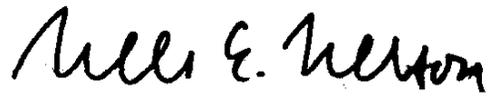
The union contends that a comparison to the dispatchers employed by the city supports its position. It observes that the full-time dispatchers receive a uniform allowance of \$650 and that the part-time dispatchers get a \$250 payment. The union reports that while the initial reason the dispatchers were required to wear uniforms was the contact they had with the public, they now work in a backroom out of sight of the public.

The union maintains that the cost of its proposal is minimal. It points out that an \$800 allowance for each employee would cost the city only \$3200. The union indicates that employees would use the money to purchase uniforms.

City Position - The city rejects the union's demand. It states that the decision whether to have employees wear uniforms is a management decision and not a mandatory subject of bargaining.

Analysis - The Fact Finder must agree with the city that management has the right to determine whether employees should be required to wear uniforms. Until the city makes such a determination, there is no basis for the union's demand for a uniform allowance.

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



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Nels E. Nelson  
Fact Finder

November 10, 2009  
Russell Township  
Geauga County, Ohio