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**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 23, 1998**

In the Matter of:)
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The City of Macedonia)
)
)
and)
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)
Fraternal Order of Police)
Ohio Labor Council)
)

97-MED-10-1039

APPEARANCES

For the Union:

**Pat Daugherty, FOP/OLC Representative
Gary Ennis, Patrol Officer**

For the City:

**Joseph Miglorini, Mayor of Macedonia
Scott Coghlan, Esq., Negotiator for the City of Macedonia
Thomas Delano, Finance Director, City of Macedonia**

Fact Finder: Dennis M. Byrne

Background

The Fact Finding process involves the City of Macedonia and the police patrol officers. The parties engaged in numerous negotiating sessions and were able to agree to most issues. However, there were still four issues separating the parties; 1) wages, 2) holiday pay, 3) bereavement leave, and 4) longevity pay. Before the hearing the parties engaged in mediation and settled the bereavement leave and longevity pay issues. As a result, there are only two outstanding issues that separate the two sides: 1) wages, and 2) holiday pay.

The Mediation/Fact Finding was conducted on March 9, 1998 at the Macedonia City Building. The Hearing commenced at 10:00 A.M. and was adjourned at 1:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making his recommendations. The criteria are set forth in Rule 4117-9-05.

The criteria are:

- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding or other

impasse resolution procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

INTRODUCTION:

The two issues presented by the parties at the Fact Finding Hearing are bread and butter issues related to the officers' take home pay. The City believes that its positions represent reasonable offers based on its understanding of the labor market for police officers in northern Summit and southern Cuyahoga counties. Additionally, the City believes that it adequately recompenses its officers for the work they perform. Macedonia argues that it should pay comparable wages and benefits when compared to other jurisdictions, and contends that it does. The City's position is that its patrol officers should be neither the best paid nor the worst paid police officers in the area. The City administration argued that the total compensation paid to the patrol officers is reasonable for the job performed.

The Union believes that the police officers should be among the best paid officers in the area. The Union bases its argument on the fact that Macedonia has undergone explosive population and business growth during the last decade. The Union points out that the number of patrol officers did not change

during the same period. Therefore, the Union believes that the City should pay its officers very well, i.e., at the top of any comparables list, to recompense the officers for the work load increase that economic prosperity has engendered. Essentially, the Union argues that the officers work more and they should be paid accordingly.

In many ways the positions of the parties turn on what each side believes is the situation in comparable jurisdictions. Therefore, some general statements about the place of comparables in negotiations is needed. ORC 4117 requires that a Neutral consider comparability with other jurisdictions performing the same or similar work when making a recommendation. Therefore, both management and the union have become increasingly sophisticated when presenting data on "comparable jurisdictions." However, the parties often (usually) present a different lists of the jurisdictions which are considered comparable. The result is that the Neutral is often left to determine which jurisdictions he/she believes are comparable. The parties then argue, based on their own comparables, that the officers are (are not) paid as much as other jurisdictions.

In addition, there is always an argument that pay scales should reflect the pay of comparable jurisdictions. The Union often argues that pay should, at a minimum, be equal to the rate paid in the average department on its comparables list. A variation on the theme is that the Union sometimes argues that the officers should be paid a rate comparable to the best paid departments on the list. Regardless of which argument is advanced the issue is presented as

a matter of equity. That is, the argument is that, "we deserve this", which is an abuse of the conceptual basis of comparability.

Comparables can give a snapshot of the state of the relationship, as measured by a contract, at one point in time. The data can illustrate how well (poorly) the officers are paid, etc. In other words, the data can show whether or not a jurisdiction is outside the accepted parameters, as defined by other jurisdictions' contracts, on a particular issue. For example, data from comparables may show that officers in jurisdiction X are paid 20% less than other officers performing similar duties. This is compelling evidence of an inequity, one which needs to be addressed.

On the other hand, assume the data show that surrounding jurisdictions pay between \$39,000.00 and \$42,000.00, with a mean of \$40,500.00. In addition, jurisdiction X pays \$39,800.00. These data actually show that the officers in jurisdiction X are not underpaid with respect to other jurisdictions. The data show that jurisdiction X pays somewhat less than the average wage paid in other jurisdictions, but it pays well within the range of wages set by comparable areas. For the Union to argue that the officers must be brought up to \$42,500.00 as a matter of equity because they are underpaid is inappropriate.

If the comparables data show that a jurisdiction is within the range of acceptable outcomes on all scales, the data can do no more. There is nothing in law or logic that dictates that all jurisdictions should offer the same percentage pay increase or have the same number of holidays. If comparables are used in this way, there is no need for bargaining. Either party could simply walk in and

present data and prove their point. This is not the meaning of collective bargaining codified in ORC 4117. Collective bargaining is a celebration of uniqueness. Each jurisdiction is different, therefore each contract should be different. To sum up: comparables data can only be used to illustrate a range of possible outcomes. The data can show inequities, but comparability cannot be the sole justification for a demand unless the comparison shows that a department is so deficient in an area that an inequity exists under any possible definition of the term "inequity." However, in general there should be a range of possible outcomes on each and every issue. Collective bargaining demands that negotiators craft a contract that meets the unique needs of the parties to that contract.

With the preceding paragraphs as a background, the parties' positions on the issues can be addressed.

Issue: Article 24: Wages

Union Position: The Union demands a 4% pay raise in each year of the contract.

City Position: The City has offered 4% in the first year, 3.5% in the second year, and 3.0% in the third year of the prospective contract.

Discussion: The difference between the parties is 1.5% spread over three years. This works out to be slightly over \$800.00 for the entire period. Consequently, the difference in the positions is not that great.

The Union bases its demand on two facts. First, the Union points out that the City has grown rapidly over the past decade, but the number of patrol officers is essentially unchanged. The result is that the officers' work load has increased. The Union believes that the increased work load is a justification for its wage demand. In addition, the Union argued that over the past years, the base wage of the Macedonia officers had been brought up to rough parity with surrounding departments. However, the Union believes that the Macedonia officers will begin to fall behind if the agreed upon wage increase is less than 4% per year.

The City agrees that currently its patrol officers are paid comparably with other jurisdictions. The City never argued that its officers are paid exactly the average wage of comparable jurisdictions, rather the City contended that it pays a wage that falls within the range of wages paid in comparable jurisdictions. The City based its arguments on data from SERB and from the results of a phone poll conducted by the finance director. In addition, the City presented evidence that the growth in the officers' wages had outstripped the inflation rate throughout the nineties. Therefore, the City argues that the evidence does shows that the Macedonia patrol officers are well compensated for the work performed.

The City also argued that the evidence shows that a 10.5% pay increase over three years is within the range of settlements currently being negotiated in Ohio. The City does not dispute that some jurisdictions are agreeing to

settlements in excess of 10.5%, rather the City argues that the proposed settlement is not deficient.

The Fact Finder agrees with the City's position on this issue. At the current time the evidence shows that the pay scale in Macedonia is not significantly different than the wage scale in comparable jurisdictions. In addition, while both sides agree that the City is growing, there was little evidence presented that the officers' workloads had increased to the point where a pay adjustment was needed to compensate the police force for the increased effort.

The Fact Finder is sympathetic to the Union's argument that the police force has not experienced a significant increase in manpower, and, therefore, workloads are growing because the City is growing. However, at this time the Union's position is simply an assertion. There was no evidence presented showing the officers are overworked. The City for its part testified that the workloads of the officers are not materially different today than they were in the past. Absent evidence to prove the point, the Fact Finder cannot agree with the Union's assertion.

The difference in the parties' positions is based on their evaluation of the evidence. The City believes that its officers are well paid, and that a 10.5% increase will keep wages growing faster than inflation. Additionally, the City believes that the 10.5% raise is within the range of wage settlements throughout Northeast Ohio. The Union wants a larger wage increase and believes that the officers deserve at least 4%/year. The Fact Finder believes that the evidence on this issue supports the City's position. A 10.5% increase will not make the

Macedonia officers the best paid officers in the area, but there is no evidence that the officers will be underpaid in any meaningful sense.

Finding of Fact: The City proved its position that a 10.5% wage increase is reasonable given all the facts of the situation.

Suggested Language: The wages scales in Article 24 shall be amended to show a 4% increase for 1998, a 3.5% increase for 1999, and a 3.0% increase for 2000.

Issue: Article 19 Holiday Pay

Union Position: The Union demand is for premium payment for all time actually worked on a holiday.

City Position: The City has offered to increase the number of premium pay holidays from two to four.

Note: currently, the officers have thirteen paid holidays listed in Article 19. The parties agreed that the Union's demand does not cover the birthday holiday, the personal day, or the day after Thanksgiving. Therefore, the Union is demanding ten holidays be paid at the premium rate. Consequently, the difference between the parties' positions is premium pay for six holidays.

Discussion: The City presented some evidence that premium pay for holidays is not universal throughout Ohio. The City phoned a number of other departments and found that some paid six holidays as premium days, some paid

10, some paid two or three. In addition, one jurisdiction pays time and one quarter rather than time and one half for hours actually worked. As a result, the City contended that premium pay for time worked on holidays is not standard throughout northeast Ohio. In line with its argument on the wage scale, the City contends that it should be competitive with other jurisdictions in terms of holiday pay, but it does not believe that Macedonia should be among the jurisdictions that pay the most generous holiday compensation.

The City also indicated that it understood that an ever increasing number of jurisdictions trend throughout the State pay time and one half for hours actually worked on holidays. However, the City argues that time and one half is not currently the standard for holiday pay. Because of its belief that premium pay is not a standard benefit, the City does not wish to be among the jurisdictions that pay time and one half. When premium pay becomes the standard the City will reevaluate its position. In other words, the City does not think that its offer to increase the number of premium holidays to four is unreasonable.

The City's position is based on its information gathered in the phone survey it conducted. If the survey had proved that all other jurisdictions paid time and one half for hours worked, the City would probably agree to the Union's demand. However, given the current state of affairs, the City is unwilling to agree to premium pay for hours worked on holidays. It must be noted at this juncture, that without information on exactly which jurisdictions were surveyed, the Fact Finder cannot judge the relevance of the City's information.

The Union bases its demand on the fact that premium pay for holidays worked is the standard throughout the State, and there was testimony that a premium pay provision is contained in virtually all contracts negotiated by the FOP. In other words, the Union argues that the City's offer is deficient compared to almost any other jurisdiction.

An examination of the hundreds of contracts in the Fact Finder's possession makes it clear is that premium pay for hours worked on holidays is not a universal benefit throughout Ohio. At the same time, it is apparent that many departments have a premium pay provision in their contracts, and the trend is toward premium pay for holiday work. Therefore, in this instance the Fact Finder believes that the Union's position is the more reasonable when all the evidence is considered. While premium pay is not a universal benefit, it is becoming the standard.

A second, related issue needs to be discussed. The Union demands that all holidays be paid the premium rate starting in 1998, i.e., the first year of the contract. The City obviously opposes that position. The City does not want to make all holidays premium days, but in any event the City would prefer to phase in any changes in Article 19 to reduce the financial impact on Macedonia. Given the fact that premium pay is not universal, this is a reasonable position. Consequently, the Fact Finder believes that four (4) holidays should be premium days in 1998, seven (7) holidays should be premium days in 1999, and ten (10) holidays should be premium days in 2000.

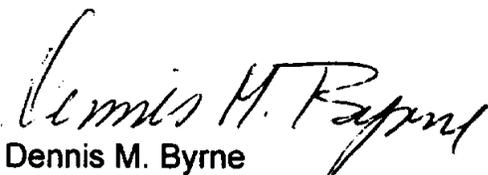
Finding of Fact: Premium pay for hours actually worked on holidays is becoming a standard benefit in contracts throughout the State. Therefore, the evidence from comparable jurisdictions supports the Union's position.

Suggested Language:

Section 04 Working a Holiday

Employees required to work on a holiday as designated in Section 19.01 (with the exception of the Day after Thanksgiving, Employee's Birthday, and the Personal Day), shall be paid at one and one half (1 1/2) times their rate of pay. In addition, the employee shall receive eight (8) hours of holiday compensatory time to be taken at another date. The employee may elect to cash in the compensatory time at the applicable hourly rate, i.e., the employee may receive eight (8) hours of pay in lieu of holiday compensatory time off. Such request shall be granted at the discretion of the employer, but shall not be unreasonably denied.

(The premium paid holidays for 1998 are Thanksgiving Day, Christmas Day, New Year's Day and Independence Day. In 1999 the following holidays will become premium days: Memorial Day, Labor Day, and Martin Luther King Day. In 2000 the following holidays will also become premium days; President's Day, Good Friday, and Columbus Day.)


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