

THE CITY OF MANSFIELD : SERB File No. 03-MED-05-0635
and : Date of Fact-Finding:
FRATERNAL ORDER OF POLICE : November 17, 2003
OHIO LABOR COUNCIL, INC. :
MANSFIELD POLICE DEPARTMENT - : Date of Report:
POLICE OFFICERS : November 26, 2003
: Jack E. McCormick
: Fact-Finder
:

STATE EMPLOYMENT
RELATIONS BOARD
2003 NOV 28 A 10:37

APPEARANCES:

For the Employer, The City of Mansfield:

Jeff Fogt
Director of Human Resources
City of Mansfield, Ohio
30 North Diamond Street
Mansfield, Ohio 44902

For the Employees: Fraternal Order of Police Ohio Labor
Council, Inc., Mansfield Police Department - Command Officers

Hugh C. Bennett
Fraternal Order of Police
Ohio Labor Council, Inc.
3076 Hillside Trail
Stow, Ohio 44224-4791

Fact-Finder:

Jack E. McCormick
Attorney at Law
500 City Park Avenue
Columbus, Ohio 43215
(614)221-2718
(614)221-2719 (fax)

REPORT OF MEDIATOR/FACT-FINDER JACK E. MCCORMICK

A mediation/fact-finding was held on Monday, November 17, 2003, at the Lahm Airport in Mansfield, Ohio. Present were the following:

For the Employer -

Jim Boyer, Assistant Chief of Police
Dave Remy, Law Director, City of Mansfield
Ron Kruter, Safety Director, City of Mansfield
Jeff Fogt, Human Resources Director, City of Mansfield
Sandy Converse, Financial Director, City of Mansfield
Michael Schwanberg, Assistant Finance Director, City of Mansfield

For the Employees -

Hugh Bennett - F.O.P. Ohio Labor Council
Brett Snavely - Mansfield PD
John Martincin - Mansfield PD
Brian Cassidy - Mansfield PD
Mike Yankovich - Mansfield PD
Steve Blust - Mansfield PD

The bargaining unit is comprised of approximately eighty-eight line police officers. The members are responsible for protecting life, health, and property; preventing crimes and preserving the public peace; protecting the rights of all citizens; and assisting citizens in problem identification and resolution; and such other duties as they may be called upon to enhance the public safety of the City.

The parties have met at least six times and have been engaged in bargaining since June 26, 2003.

The current Agreement became effective on September 2, 2000 and ran through September 1, 2003.

All parties present were advised of the appropriate guidelines for mediation and fact-finding by the Fact-Finder prior to commencement of the hearing. Following this the hearing formally began at approximately 10:00 a.m., November 17, 2003.

By mutual agreement the parties have agreed that the following issues were to be the subject of the fact-finding:

1. Article 10, Section 10.10, Hours of Work and Overtime;
2. Article 14, Section 14.4(C), Awarding of Position;
3. Article 15, Section 15.1(I), Sick Leave Conversion Upon Retirement or Disability;
4. Article 15, Section 15.2(D)(10), Paid Leaves of Absence;
5. Article 17, Section 17.1, Wages and Fringe Benefits;
6. Article 17, Section 17.5, Vacations;
7. Article 19, Tuition Reimbursement.

During the hearing the parties successfully mediated a new section to the Agreement at Article 21, Section 21.7, Jury Duty. The parties, as well as the Fact-Finder, signed this Agreement and it is attached hereto as Fact-Finder's Exhibit 1.

Attempts at mediation on all remaining issues were unsuccessful.

Article 10, Section 10.10, Hours of Work and Overtime

The Union is proposing the removal of this section from the current language. The existing section permits the Employer to utilize the Fair Labor Standards Act, Section 207(k), to avoid paying the regular rate for overtime. The language says the Employer will pay overtime in accordance with the language in this Article. This amounts to time and one-half for all overtime. The "regular rate" includes other forms of payment such as longevity, special pays, educational bonuses, and other types of compensation. Therefore the overtime rate can be as much as fifty cents more per hour.

The language in the existing contract permits the Employer to use the 207(k) Section to delete sick time and vacation for any hours over 171 in a twenty-eight day period and therefore not pay the "regular rate" on those hours. In their presentation, the Union said it was "really not possible to calculate the cost to the Employer or the benefit to the Union of this proposal."

The City opposes this change and requests the Fact-Finder to find that the current language remains. The City's position is that this current language was the result of litigation in a settlement agreement and is identical for other bargaining units within the City.

Previous to the settlement referred to herein above, the City was paying overtime illegally, but settled that matter and corrected their calculations by inserting the current language. The City estimates the cost of the Union's proposed language to be

approximately \$52,000 per annum and the Union representative did not disagree.

The Union alleges that the Employer's previous bargaining team "renege" on a signed tentative agreement on this same issue, and in a subsequent fact-finding of May 8, 2001, the Fact-Finder, which ruled in favor of the current language, failed to address the issue of the signed tentative agreement. This Fact-Finder declines to consider the tentative agreement as it was never voted upon by the parties. The allegations that the Employer may have "renege" on a signed tentative agreement may, or may not, be subject of an unfair labor practices action, but that is beyond the scope of this report.

The current language is consistent with other bargaining units and with the agreed settlement previously made with this Union. In addition, the costs of the proposed change are prohibitive based on the current fiscal situation in the City of Mansfield, which will be discussed in more detail later in this report.

Accordingly, the Fact-Finder makes the following recommendation:

Language contained in the current contract be retained.

Article 14, Section 14.4(C), Awarding of Position

Under the current language at Section 14.4(C), the awarding of positions, the language reads:

The appointments to new or open positions shall be awarded to the eligible bidder with the most seniority (as defined herein).

The Union has proposed to eliminate the word "eligible" in this section. The Union feels that in filling positions for police officers the only eligibility that should be required is that the member applying for the position has completed his/her probationary period. Once the probationary period has been completed, all police officers should be equally qualified to fill such a position.

There have been no grievances filed that have progressed to arbitration, but there have been several disagreements during the term of the Agreement. The Union feels that by removing the word "eligible" a source of tension would be eliminated.

The Employer has also proposed a change in this section. It would add language that would set up a committee to determine who would be chosen to fill a position. This language is a hybrid of language that existed in the Command Agreement until the last set of negotiations. The language did not work in the Command Agreement and caused dissension and grievances.

It is the Fact-Finder's understanding that in filling positions, whether new or open, an applicant would necessarily need to be "eligible" to fill the position.

The removal of the word "eligible", as proposed by the Union, would necessarily imply that eligibility is no longer to be considered.

On the other hand, the City's proposed language change merely adds a new layer of bureaucracy and does nothing to ensure greater objectivity.

If objectivity is a desired goal in this Article, then the existing language seems, at least on its face, to be as objective as any language could be. It merely mandates that new or open positions will go to the most senior applicant who meets the eligibility requirements for the new or open position.

In addition the Fact-Finder takes into account that there have been no grievances filed in this matter, and makes his finding based on his philosophy that "if its not broke, don't fix it."

Accordingly, the Fact-Finder makes the following recommendation:

Language in the current contract be retained.

Article 15, Section 15.1(I), Sick Leave Conversion Upon Retirement
or Disability

The Union has proposed to modify the current matrix as follows:

In the left-hand column of the chart set forth at page 24 of the current contract, they would change the word "Seniority" to read "Service as defined by the Ohio Police and Fire Pension System".

In the right-hand column of the chart where it refers to over five years to twenty-five years, they would change the language to read: "one hour for every one hour accrued up to a maximum of fifteen hundred hours accrued."

In the left-hand column where it refers to twenty-four years to thirty years, the Union proposes to eliminate "thirty years" so the language would read: "over twenty-four years."

In the right-hand column where the language reads: "one hour for every hour accrued up to a maximum of 1,500 hours accrued", the Union proposes to delete: "up to a maximum of 1,500 hours accrued", and insert: "with unlimited accumulation".

Apparently there was a misunderstanding concerning the issue as to what seniority would mean in previous negotiations. The Union understood that they had an Agreement with a previous Human Resources Director to include service with other governmental agencies as to be applied to seniority. Realizing that was not the case when it was applied to the Command Unit, this unit made a proposal to amend the language so it could be correctly interpreted.

One of the several factors that a fact-finder must consider, by law, is how an issue is treated by similar bargaining units. The most similar bargaining unit to the Patrol Officers are the Command Officers. Furthermore, the Fact-Finder can find no rationale to differentiate between Command and Patrol Officers on this particular issue.

Accordingly, the Fact-Finder makes the following recommendation:

That Article 15, Section 15.1(I), be modified by adopting verbatim the language and matrix agreed to by the parties in their tentative agreement concerning this particular issue in the Agreement with the Command Officers and as set forth therein.

Article 15, Section 15.2(D)(10), Paid Leaves of Absences

The Union has proposed to delete this section which reads as follows:

Regardless of the above conditions, wage continuation benefits shall terminate when an employee is on wage continuation for one thousand five hundred and sixty (1,560) hours as a result of each incident of compensable injury or illness or reagravation of same.

This current language was bargained for and was contained in the previous two contracts between these parties. Furthermore, all the other Agreements with the City, including AFSCME, the Fire Fighters and the Command Unit contained the same 1,560 or 195 day limitation.

The Union alleges that when the wage continuation ceases, the member is forced to go on FMLA or unpaid leave.

There is no doubt that a line officer is constantly concerned that he might be injured in his line of duty and that such injury might require extended time off work. Furthermore, injuries sustained while performing his duties should not cause him to use

his sick leave or vacation or any other time off. However, the Union was unable to point to any problem that this limitation has caused over the last two contract periods. This fact, along with the fact that all other bargaining units within the City have the same limitation, forces this Fact-Finder to find that there is no factual justification for changing the current language.

Accordingly, the Fact-Finder makes the following recommendation:

Language contained in the current contract be retained.

Article 17, Section 17.1, Wages and Fringe Benefits

The Union proposes wage increases over the three years of the contract in the amount of four percent (4%) the first year, four percent (4%) the second year, five percent (5%) the third year for cumulative and compound total of approximately 13.7%. The parties have acknowledged that any and all wage increases given to the Patrol Unit will result in a similar raise for the Command Unit and combined cost for a one percent (1%) increase in wages would be approximately \$57,000 per year without the compounding factor.

At this point in time a detailed examination of the City's finances was undertaken and a thorough examination of the City's Finance Director was conducted by the Fact-Finder. Realizing that the ability to pay is always an argument made by employers this

Fact-Finder placed a heavy burden on the Employer to prove why it could not pay at least inflation increases to these two units.

The City has two legal restrictions that are relevant to this discussion. First, it, like all other units of government in the State of Ohio, cannot deficit spend. Secondly, it cannot use surplus funds from a restricted (or dedicated) account to subsidize another account. The applicable law as to this matter is contained in O.R.C. 743.05.

Because of falling revenues and rising health care costs, the City did in fact, however, advance \$800,000 from the Water and Sewer Funds to the Health Insurance Fund to pay the cost of employee health coverage through the end of December. To comply with the law, that had to be repaid before the end of the year in 2002. The City has, at the risk of a state auditor finding, made such advances from the Water and Sewer Fund since 1986, and in the year 2000 advanced \$900,000 to the Health Insurance and Safety Fund from the Water and Sewer Fund, which necessarily will have to be repaid.

All fact-finders are restrained in making economic recommendations by SERB Rule 4117-9-05(K)(3) in that they must certify as to the ability of the public employer to finance and administer the issues proposed. An additional restraint is placed on this particular Fact-Finder in that the Union representative indicated that he did not know where there were available funds to implement the Union's proposal.

This Fact-Finder, after having conducted a thorough examination of the City's Finance Director and spending a considerable amount of time pouring over the financial records that were provided at the hearing, must state to any future conciliator or arbitrator that he cannot find any facts that this Employer has the ability to pay for any raises for these units.

This is an especially bitter pill for the employees in that it would appear that there will be a surplus in the 2003 Safety Fund in excess of \$101,000. However, this is a "zero sum" situation. Inasmuch as the City's overall budget appears to be in a projected deficit of between \$475,000 and \$600,000 for the year 2003, this "surplus" will necessarily have to go to covering the overall deficit. However, it should be noted that the pain is being suffered equally. Both the Fire Fighters and the AFSCME bargaining units are currently under a similar wage freeze. Further complicating the issue is the fact that both of them have a "me too" clause in their current contracts that indicate that should any other bargaining unit receive a raise during this period of time, they must receive a similar wage increase. Accordingly, any raises given to these bargaining units would further exacerbate an already existing crisis.

Accordingly, based on the facts presented to the Fact-Finder he is forced to make the following recommendation:

That the language contained at Article 17, Section 17.1, of this Agreement read as follows:

2003/2004 Wages The provisions and wage schedule set forth in Appendix "B" reflect a wage freeze for the 2003-2004 contract year. In the event that any City bargaining unit, unclassified, or classified employee working under the authority of the Mayor should negotiate, receive, or otherwise be awarded a wage increase for the employees fiscal year beginning after January 1, 2004 (except step increases as provided in each City Labor Agreement), employees covered by this Agreement shall receive the same increase, by percentage, negotiated, received, or otherwise awarded to those City employees, which increase shall be retroactive to September 1, 2003 without reopening this Agreement.

(C) The parties hereto agree to an economic reopener sixty (60) days prior to September 1, 2004.

Article 17, Section 17.5, Vacations

Currently the Command and Patrol Officers have the same vacation accumulation schedule. Between one and eight years they accumulate .04615 per hour, between eight and fifteen years they accumulate .06923 per hour, between fifteen and twenty years they accumulate .09231 per hour, and twenty years or more they accumulate .11538.

The Union proposes to keep the earning rates the same, but shorten the period of time of years of service before going into a higher earning rate. The Union would allow the first year to be lowered to one to five years; the second, five to ten years; the third, ten to fifteen years; and would change the maximum years to be accumulated for those with twenty or more years from 240 to 280.

The Union presented several comparables from throughout Ohio and alleges that the increased accumulation rate would not cost additional funds since vacation must be approved, it should never result in any overtime hours being incurred.

While that may be true, the faster rate of accumulation of vacation hours would increase a retiring or terminated officer's payout as well as the officer's time off the street. Currently, this Unit has 102 full-time equivalent positions authorized of which eighty-eight are filled. There have been layoffs of police officers in the immediate past, and fortunately those persons have all been rehired. However, it appears that this department is not anywhere near full strength. Additional time off, whether it come in the form of faster rate of vacation accumulation, additional holidays, or personal days, exacerbates the existing manpower problem. Furthermore, there appears to be no rationale for granting the Patrol Officers a different vacation matrix than the Command Officers. The Fact-Finder believes that a comparison of the Command Officers who are after all a different bargaining unit, but in the same department, is more rational than making comparisons with outside departments.

Accordingly the Fact-Finder makes the following recommendation.

The current language of the contract be retained.

Article 19 - Tuition Reimbursement

The Employer is seeking dramatic changes to this Article. The language in this Article is mature language. The Employer would limit the number of quarter/semester hours taken to eight, and the total number of hours taken to twenty per year. Unfortunately this proposal would not make a differentiation between quarter and semester hours. The Employer further proposes to restrict the educational institutions that would be approved and seeks to limit the reimbursement for credit hour to that amount that is currently charged at The Ohio State University (Columbus campus).

Tuition reimbursement is a worthy goal which benefits not only the employee, but the employer. However, this Fact-Finder finds the current language, as well as the Employer's proposal to be factual deficient. However, it must be balanced so both the employee and the employer receive the appropriate benefit while at the same time being fiscally responsible and predictable. Normally this Fact-Finder does not attempt to fashion his own solution to issues in a fact-finding report, but rather restricts himself to the findings of fact. In this particular Article, this Fact-Finder cannot find sufficient facts to support either party's position.

The Fact-Finder is struck by the fact that in the year 2003 to date, \$18,886.25 has been reimbursed by the City to one officer, who is now seeking an advanced degree at a private college which will eventually cost the city \$30,000. (Why the Chief of Police put a private college on the approved list is perplexing). The parties

have indicated they believe the current language mandates that the city pay for any and all tuition reimbursement for anyone, in any amount, at a approved university. This somewhat limited "blank check" makes no sense given this city's current fiscal situation. No matter how worthy the goal, this Fact-Finder believes it is inappropriate for any police officer (Command or Patrol) to be receiving large amounts of tuition reimbursement while his brother officers and commanders have their wages frozen.

As stated above, tuition reimbursement is a highly worthy goal, but with a finite amount of funds, all goals must be prioritized.

Accordingly the Fact-Finder presumes to make the following recommendation:

Article 19, Section 19.1(A) and (B) remain as set forth in the current Agreement.

Paragraph (C) shall be deleted. In the place of paragraph (C) shall be inserted the following language:

Subject to paragraphs (A) and (B) herein above, the employee shall be reimbursed for tuition at any accredited educational institution within the State of Ohio. Provided however, that such reimbursement shall be limited to \$5,000.00 per individual in any twelve-month period, and \$25,000.00 per individual in the aggregate. The tuition reimbursement limitations set forth in this paragraph may be waived with the written consent of the Chief of Police and the Safety Director of the City of Mansfield. The tuition reimbursement limitations contained in this paragraph shall not apply to bargaining unit members who have received tuition reimbursement approval prior to the date of the signing of this Agreement.

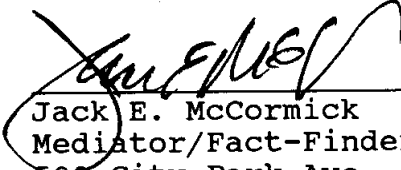
Sections 19.1(D) and (A) will remain as set forth in the current Agreement.

Section 19.2 - Repayment of Education Reimbursement Monies

shall read as follows:

Employees who resign or are terminated from employment for just cause within **four** (4) years after the end of any semester, quarter, or class for which they received reimbursement from the city, shall repay such reimbursement to the city as follows:

Years	Repayment
0 to 1	100%
1 to 2	75%
2 to 3	50%
3 to 4	25%
more than 4	0%



Jack E. McCormick
Mediator/Fact-Finder
500 City Park Ave.
Columbus, OH 43215
telephone 614-221-2718
facsimile 614-221-2719

Additional information regarding 03-MED-05-0635

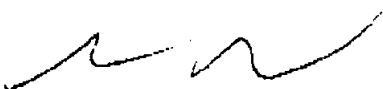
21.7 Jury Duty: Members of the Bargaining Unit who are subpoenaed and actually chosen to serve on a petit or grand jury and are assigned to third shift, shall be detailed to the day shift for the period of time he/she serves on such jury.

Members of the Bargaining Unit who are subpoenaed and actually chosen to serve on a petit or grand jury and are assigned to second shift shall be detailed for that period of said shift that he/she is serving on said jury.

Members of the Bargaining Unit who are subpoenaed and actually chosen to serve on a petit or grand jury and are assigned to first shift, shall be detailed for that period of time that he/she served on said jury.

Any officer released from jury (three or more hours prior to the end of their shift) will return to duty for the remainder of their watch. Officers assigned to second watch will return to duty and work the remainder of their watch, but will be credited for any jury time overlapping their watch.

An officer's day off will not change for the purpose of jury duty. Jury duty that falls on an officer's day off will not be compensated by the City.



CERTIFICATE OF SERVICE

I certify that a copies of the foregoing were served upon the following individuals by U.S. mail, postage prepaid, this 26th day of November, 2003:

Hugh C. Bennett
Staff Representative
Fraternal Order of Police
Ohio Labor Council, Inc.
3076 Hillside Trail
Stow, Ohio 44224-4791

(via overnight mail)

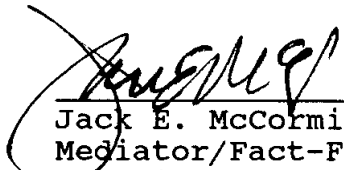
Jeff Fogt
Director of Human Resources
Human Resource Division
City of Mansfield, Ohio
30 North Diamond Street
Mansfield, Ohio 44902

(via overnight mail)

and

Dale A. Zimmer
Administrator Bureau of Mediation
65 East State Street. 12th Floor
Columbus, Ohio 43215-4213

(via ordinary mail)



Jack E. McCormick
Mediator/Fact-Finder
500 City Park Ave.
Columbus, OH 43215
telephone 614-221-2718
facsimile 614-221-2719