

Fact Finding Report
State of Ohio
State Employment Relations Board

Dates of Hearing: November 22, 2019 and April 20, 2021

Report and Recommendation of Fact-Finder
John F. Buettner

Case #: 2017-MED-04-0472

In the Matter of:

***Ohio Patrolmen's Benevolent Association,
Employee Organization***

and

***Board of Education of the Cleveland Metropolitan
School District***

Union Representative:

Jeff Perry
10147 Royalton Road, Suite J
P.O. Box 338003
North Royalton, Ohio 44133

Employer Representative:

W. Michael Hanna, Esq.
SquirePattonBoggs
127 Public Square
Cleveland, Ohio 44144

APPEARANCES

For the Union:

Jeff Perry	OPBA, Principal Representative
David A. Cameron	OPBA
Rickey Darden	OPBA
Heather O'Neill	OPBA
Martin Carreon	OPBA
Lanise Binns	OPBA

For the Employer:

Dennis S. Hill	CMUSD, Chief of Security and Safety
Jonathan Decker	CMUSD
W. Michael Hanna, Esquire	CMUSD, Squire Patton Boggs

UNION EXHIBITS

2. Union Audit of the District, Sargent and Associates
3. May 2020 Schedule of Revenues for June 30, 2017, 2018, and 2019
4. Fiscal Year 2021, Financial Status Report
5. May 2020 Schedule of Revenues for June 30, 2017, 2018, and 2019
6. Five Year Forecast, November 4, 2020
7. CMUSD Five Year Forecast, May 12, 2020
8. Fiscal Year 2020-21 Budget
9. CMUSD Back Tax Award
10. Ohio Department of Education Financials
11. Federal Job Growth and Unemployment Rate (March 5, 2021)

12. Federal Job Growth and Unemployment Rate (April 6, 2021)
13. Bureau of Labor Statistics CPI
14. OFS Employment Status for Ohio
15. Article: Tax Growth or Ohio Schools
16. Article: Columbus Safety and Security Costs
17. SERB Wage Settlement Report 2020
18. SERB Clearinghouse Report
19. Union Comparisons
20. School Comparisons 2020-2021
21. Discussion: Examples of Salary Calculations – H. O’Neill, OPBA
22. American Rescue Plan Act of 2021

EMPLOYER EXHIBITS

- A. The Board of Education’s October 9, 2018 Five Year Forecast
- B. A letter dated February 8, 2019 from the Ohio Department of Education
- C. The Board of Education’s April 9, 2019 Five Year Forecast
- D. Impact of CMSD/CTU settlement on April, 2019 Five Year Forecast
- E. ORC 5705.412 statute
- F. The Board of Education’s October 8, 2019 Five Year Forecast
- G. The Board of Education’s May 12, 2020 Five Year Forecast
- H. CTU 2019 tentative agreement
- I. Local 1199 2019 tentative agreement
- J. Cleveland Building Trades 2019 tentative agreement
- K. Teamsters Local 407 2019 tentative agreement
- L. Teamsters Local 436 tentative agreement
- M. Local 77 tentative agreement
- N. Safety and Security supply list

INTRODUCTION

The Employer, the Cleveland Metropolitan School District (CMSD), is located in Cuyahoga County. The city's 2020 population is estimated at 376,599 people making it the second largest city in Ohio. The average household income is \$46,137 which is lower than both the county and state averages. The poverty rate is 32.65% which is significantly higher than the county and state averages.

CMSD serves approximately 37,000 students across 93 schools. It is the second largest urban district in the state of Ohio and the only "municipal" school district established under Ohio Revised Code (ORC) §3311.71. As such, it is controlled by the Mayor of Cleveland who is authorized to appoint a nine-member Board. The Board appointed Chief Executive Officer (CEO) is responsible for appointing an executive team whose employment is also governed by ORC §3311.71. The District employs about 6,500 employees, of which approximately 5500 are paid from the General Fund while the remainder are paid from Federal Grant monies. There are around 1,100 non-teaching employees represented by nine (9) separate bargaining units including the Ohio Patrolmen's Benevolent Association (OPBA).

The bargaining unit, OPBA, is the sole representative of a unit comprised of all full-time and part-time Security Personnel including Investigator Counselors, Security Officers, Mobile Response Officers, Safety Dispatchers, Gang Task Force, School Resource Officers, Flex Team Officer, Mobile Patrol Officers, Central Station Operators, In-Charge Officers and Corporals. There were approximately two hundred (200) employees in this bargaining unit when the parties started to negotiate this contract. There were approximately one hundred seventy (170) employees when they first met on November 22, 2020, for a fact-finding. Currently, there are one hundred and fifty (150) employees in the bargaining unit.

FACTUAL BACKGROUND

The undersigned was duly appointed by SERB to serve as Fact-Finder in the matter of the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "Union") and the Board of Education of the Cleveland Metropolitan School District (hereinafter referred to as "Employer") pursuant to OAC 4117-9-5(D). The Parties are bargaining for the 2019-2020 school year.

As a result of phone conversations and email exchanges, the Parties mutually agreed to hold a fact-finding hearing on November 22, 2019. The fact-finding hearing was held at the offices of Squire, Patton, Boggs in Cleveland, Ohio. The Parties had already engaged in multiple negotiation sessions. This Fact-Finder attempted to first mediate the situation on November 22, 2019, but there was no final resolution. The Parties had reached an understanding on an economic package which included a 1% increase in salary. There was some question concerning uniform allowances around an additional annual \$100 for uniform items. The Union presented this package for a vote of the membership but it was rejected.

In mid-March, the Parties again reached out to this Fact-Finder. After several emails and phone conversations, the Parties agreed to a joint meeting on April 20, 2021. The meeting was held in the office of Mike Hanna, Esquire, at Squire, Patton, Boggs in Cleveland, Ohio.

For the purpose of this fact-finding, the Parties stated that there were two (2) mutual issues which need to be addressed:

Article 5.18: District Issued Uniforms and Equipment

Article 9: Salary Schedule and Increments

The Parties agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service via email.

All tentative agreements made between the parties, with the exception of the above-mentioned articles, are deemed to have been incorporated herein and are adopted as part of the Parties' final agreement.

This Fact Finder must take into consideration the following, pursuant to the Ohio Revised Code, Section 4117.14 (C)(4)(e), which establishes the criteria that is to be used by a Fact-Finder in making a recommendation. The criteria are:

- Past collectively bargained agreements, if any, between the parties;
- 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;
- The interest and welfare of the public, the ability of the public employer to finance and administer the issue proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the public employer;
- Any stipulations of the parties;
- 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 private employment.

UNRESOLVED ISSUES

ARTICLE 5: WORKING CONDITIONS

5.17 District Issued Uniforms & Equipment

Union Position:

A. Uniforms: Subject to funding availability, the The District shall provide all new hires with a full uniforms. Once a new hire successfully completes her/his probationary period, the District will provide the and maintain an additional two (2) pairs of pants, and two (2) of each type of uniform shirts (long sleeve, short sleeve and polo) and a coat with a removable liner. All present employees shall also receive the coat and any worn items shall be replaced in a timely manner.

A one hundred dollar (\$100) three hundred dollar (\$300) footwear and/or maintenance allowance shall be provided to all non-probationary employees annually in September of each year to those members who have been with the district for more than one (1) year. The District will not discipline any employee for failure to maintain his/her uniform as long as the employee has not negligently damaged his/her uniform.

B. CCL

C. CCL

Union Rationale:

The Union's proposal is an effort to ensure that all employees receive the same numbers of uniforms and that the provision is not based on "funding availability" but guaranteed to all. It increases the number of uniforms to a total of three (3) which allows members time to wash and clean them in between wearing. It also adds a coat to the list of items an employee would receive. Uniforms are required and the Union believes these pieces are

needed in order for members to maintain the required dress and to look professional. The additional \$300 would be for a footwear allowance or to be used as a maintenance allowance to maintain their uniforms.

Employer Position:

Maintain current contact language which reads as follows:

A. Uniforms: Subject to funding availability, the District shall provide all new hires with uniforms. Once a new hire successfully completes her/his probationary period, the District will provide the uniform. The District will not discipline an employee for failure to maintain his/her uniform as long as the employee has not negligently damaged his /her uniform.

Employer Rationale:

The Employer rejects OPBA's proposal, feeling that the District already has a system in place to provide uniforms to members, a "Quartermaster" system. They are provided with an initial uniform consisting of two pairs of pants, one Class A Uniform Pant, two short-sleeved shirts with the arm patch, two long-sleeved shirts with the arm patch as well as other items that were not in contention. These items are listed on the Uniform Approval form (Employer Exhibit N). Also, a system exists to replace lost, stolen, or worn-out clothing. As for the shoe allowance, the Employer believes it is an added expense that it cannot currently fund. Additionally, there would need to be footwear standards, the footwear may not need to be replaced every year yet the stipend is yearly, and this has never been an identified issue in the past.

Fact-Finder's Recommendation:

This Fact-Finder agrees with the Union's proposal to eliminate the language that "subject to availability new hires will be provided uniforms" that is stated in Section 5.17 A. All members should have access to uniforms and to be

able to dress professionally. If the District does not have the funds for a new uniform, it most likely does not have the funds for a new employee. There should be no discrepancies in the number and nature of the articles of clothing that each member receives. These items should be spelled out in the contract and formalized on Management Exhibit N, Uniform Approval. Additionally, an extra polo shirt should be included as well as a coat with a removable lining. A coat is a piece of clothing that can be regulated and can be collected if an employee leaves the district. It is certainly an item that is needed by all and helps to identify the members as professional employees of CMSD. Thus, a “complete uniform” will include the following:

- (2) pants
- (1) Class A Uniform Pant
- (2) Short Sleeve Shirt (w/Arm Patch)
- (2) long Sleeve Shirt (w/Arm Patch)
- Tie
- Silver Name Bar
- (2) Polo
- Badge
- Gun Belt (Mobile)
- 8-Point Hat
- Sweater
- Coat
- Skirt (Dispatch)

Once a new hire successfully completes her/his probationary period, the District will provide them with a complete uniform as listed above. This is 2 pairs of pants, excluding the Class A Uniform pants, and six (6) shirts which should be sufficient to alternate out in between cleaning. A system is already in place for the replacement of lost, worn-out, or damaged items so members can always request what is needed.

This Fact-Finder can see the difficulties in having and maintaining a shoe

allowance which the Employer pointed out. However, a Maintenance Allowance would provide a means to purchase additional items as needed and to clean and maintain the given uniforms that members are required to wear. The Union pointed out that other jurisdictions provide such allowances and that this idea originally came from the Employer. This Fact-Finder recommends a \$150 maintenance allowance be provided to all non-probationary employees annually in September of each year to those members who have been with the district for more than one (1) year. This would be effective September 1, 2021.

ARTICLE 9: SALARY SCHEDULE AND INCREMENTS

Section 9.1

Union Proposal:

Increase wages, vacation, longevity, differentials etc. across the board by 10% annually. All salaries shall be converted to hourly based upon the top pay in each classification. The top pay for each classification shall be reached at the start of their fifth (5th) year of service and shall start at eighty (80%) of the top rate and increase to eighty-five, ninety, ninety-five and one hundred (85, 90 ,95 and 100%) percent respectfully. Retroactive payments shall be used to compensate ten month employees during the transition from salary to hourly.

The senior officer in any building, even one officer buildings, shall be the lead/in-charge officer until or unless the Chief assigns the lead position to another officer. If additional officers are assigned to a building, even temporarily, they shall be included in the manpower for computing the

amount of lead officer pay they receive for that pay period.

Appendix A: In-Charge Rate

The lead/in-charge officer in each school building shall receive an additional twenty-five (\$.25) cents an hour for each officer assigned to their building. For example, one officer buildings would pay the officer an additional twenty-five (\$.25) cents an hour while two (2) officer building would pay the lead/in-charge officer an additional fifty (\$.50) cents per hour.

The Gang unit officers shall be paid ~~\$102.75~~ \$.25 higher than the applicable the highest lead officer/in-charge rate in the district.in charge rate. The Corporal rate shall be \$0.25 higher than a Gang Unit officer. There shall be a minimum of eight (8) gang unit officers and twelve (12) corporals at any given time.

All Mobile Patrol Officers and Mobile Deputies shall progress to School Resource Officer one (1) year after reaching the top of their pay scales.

All employees other than the twelve-month employees shall work the same number of days, two hundred and five (205) and have the same number of paid holidays, fifteen (15) each year.

Union Rationale:

The Union contends that their members are underpaid. Due to the low salaries, members are quitting at a high rate, there are issues retaining members, and the safety

and security workforce has decreased by about 30% over the last three (3) years. The remaining members are overworked, and unsafe situations at schools may be a result. Thus, a 10% salary increase is needed to provide competitive wages in order to attract and retain workers.

Further, the Union noted that the District’s fiscal position has dramatically improved since the submission of this information in November of 2019. A levy was passed that replaced a \$15 million levy with a \$20 million levy. The District has received Federal and State funds due to the COVID-19 pandemic. Additionally, they received \$13.7 million from the Ohio Department of Education from a 2005-2007 case. CMSD’s current financial position more than supports their salary proposal.

Employer’s Position:

The base wage and annual increments shall be increased by 1% effective beginning with the December 28, 201 to the 9 through January 10, 2020 work period, which has a corresponding pay date of January 24, 2020. The compensation schedule is as follows:

**Classified Salaried/Hourly Schedule 2019-2020
Ohio Patrolmen Benevolent Association**

Job Profile	2019-2020			2019-2020		
	Effective July 1 st , 2019			Effective 13 th pay of SY*		
	Minimum	Maximum	Annual Increment	Minimum	Maximum	Annual Increment
Security Officer (12 month)	\$34,368.16	\$36,979.22	\$763.00	\$34,711.84	\$37,349.01	\$771.00
Security Officer (10 month)	\$25,379.56	\$27,307.73		\$25,633.36	\$27,580.81	
Hourly Part-Time Security Officer		\$14.37			\$14.51	
Gang Task Force (12 months)	\$34,368.16	\$36,979.22	\$763.00	\$34,711.84	\$37,349.01	\$771.00
Gang Task Force (10 months)	\$25,379.56	\$27,307.73		\$25,633.36	\$27,580.81	
Investigative Counselor (12 months)	\$43,959.09	\$50,495.32	\$763.00	\$44,398.68	\$51,000.27	\$771.00
Investigative Counselor (10 months)	\$32,462.10	\$37,288.85		\$32,786.72	\$38,661.74	
Dispatcher	\$39,193.23			\$39,585.16		
Dispatcher (10 months)	\$28,942.69			\$29,232.12		
Central Monitoring Station Operator	\$35,014.28	\$37,625.35	\$763.00	\$35,364.42	\$38,001.60	\$771.00
Mobile Patrol Officer (12 months)	35,001.13	\$37,259.28	\$763.00	\$35,351.14	\$37,631.87	\$771.00
School Resource Officer	\$25.04			25.29		

*Effective beginning the December 28, 2019 through January 10, 2020 work period, which has a corresponding pay date of January 24, 2020 for the 2019-2020 school year.

Based on 192 days. Days may vary based on the calendar.

Job Profile	2019-2020 Effective July 1 st , 2019				2019-2020 Effective 13 th pay of SY*			
	Start	Step 1	Step 2	Step 3	Start	Step 1	Step 2	Step 3
Mobile Deputy (12 month)	\$35,120.45	\$37,195.74	\$38,312.15	\$39,461.54	\$35,471.65	\$37,567.70	\$38,695.27	\$39,856.16

*Effective beginning the December 28, 2019 through January 10, 2020 work period, which has a corresponding pay date of January 24, 2020 for the 2019-2020 school year.

A Mobile Deputy will move to the next step on July 1 with the exception of the probationary period. After completion of the probationary period, the employee will move to Step 1 rate. Annual increments based upon 12-month salaries.

Ten-month assignments are prorated.

Employees scheduled to work less than 260 days will be compensated for the number of days scheduled to be worked times the rate of pay for his/her classification.

Daily rate divided by 8 = supplemental rate.

Daily rate may be increased beyond maximum by longevity and/or vacation payout depending upon the employee's hire date.

Daily rate times the number of scheduled days for the given school = the employee's salary.

Salary divided by the number of pays in the school year = employee's regular gross pay check.

Gross pay divided by 80 = hourly pay rate for normal hours of work

The remainder of Section 9.01 would remain as current contract language.

Appendix A: In-charge Rate

In-Charge Rate

When three (3) or more security officers are assigned to a building, the Chief of Safety and Security is to designate an in-charge person who will receive a differential as follows:

- a. When there are four (4) or more Security Officers in the building, \$1233.00 per school year;
- b. When there are three (3) Security Officers in the building, \$976.00 per school year;
- c. The corporal rate shall be \$102.75 higher than the applicable charge rate.

General Provisions Regarding Differentials – Applicable all S&S Classifications

1. An afternoon and nighttime shift increment of \$.69 per hour shall be received by second shift (afternoon) and third shift (evening) employees.
2. A weekend increment of \$.69 per hour shall be paid for all hours worked between Friday midnight and Sunday midnight.
3. No employee is to receive both an afternoon or night shift differential and weekend differential, i.e., no pyramiding will be permitted.

Employer's Rationale:

The Employer contends that the District was in dire financial straits. (Its conclusions are based on the District's financial conditions as of November of 2019, which was when the original fact-finding took place.) At that time, the Five-Year Forecast (Employer Exhibit F), which was adopted in October 2019, projected a deficit of approximately \$6,800,000 in the 2020-2021 fiscal year and a deficit of approximately \$140,000,000 in the 2021-2022 fiscal year. ORC §5705.412 prohibits the District from assuming the passage of a levy in their financial forecast and mandates that certification be based on the current five-year forecast. If a five-year projection shows a deficit for a given year, the District cannot obtain proper certification under ORC §5705.412 to show it has adequate resources available for that year. Without that certificate, the District cannot lawfully enter into any qualifying contract such as a CBA.

Other factors have contributed to CMSD's financial condition. Student enrollment has been declining with an increasing number of students opting to use school vouchers or enrolling in charter schools. This decline in numbers affects the District's state funding as well as the number of school sites that are needed to serve the students.

CMSD has a history of pattern wage and healthcare agreements with its various unions. It has reached agreement with six of its nine unions for a 1% salary increase and expects to reach agreement with the remaining units without fact-finding and with a 1% salary increase. Thus, the Employer feels that a 1% salary increase for OPBA is justified.

Fact-Finder's Recommendation:

The Union and Management are basing their proposals on competing financials. While it is true the District's position has significantly improved with the passage of the levy and the influx of Federal and State monies, the Employer had to work within the constraints of the projected budget at that time. As a matter of fact, ORC §5705.412 specifically states that a school district cannot enter into a qualifying contract unless there is a certificate stating that there are sufficient funds to cover said contract. The Union was aware of the financial situation and did come to a tentative agreement that included a 1% salary increase. It was, however, rejected by the membership. Based on updated financials, the Union increased its Wage Proposal and Maintenance Allowance requests, arguing that the District now has sufficient monies to fund these.

The Parties are bargaining a CBA for July 1, 2019 to June 30, 2020. This Fact-Finder believes one must take into account the financial status and projections of the District during the time the contract would have been in effect. The Union tentatively agreed to a 1% increase but only changed that figure when new monies for succeeding years became available. As for Federal and State COVID-19 relief funds, those monies are earmarked for specific purposes. They can only be used retroactively to March of 2019 when the pandemic officially began. The current contract, as well as the contracts of the other bargaining units, expires on June 30, 2021. When the Parties begin bargaining for a successor contract, the new financial forecast with the additional monies can then drive the proposals and results.

This Fact-Finder recommends that the base wage and annual increments shall be increased by 1% rounded up to the nearest cent effective beginning with the December 28, 2019 through January 10, 2020 work period, which has a corresponding pay date of January 24, 2020. This is the same language other CMSD unions have agreed to. As stated earlier, this Fact-Finder must consider the criteria specified in ORC when making a recommendation as outlined on page 6. These include looking at past collectively bargained agreements, comparing other bargaining units with related issues, the ability of the employer to finance the proposal, as well as the lawful authority of the employer to make certain decisions. Additionally, this Fact-Finder must consider the pattern

bargaining across the unions which has existed for many decades. It is a well-established practice used for wages and healthcare. One cannot ignore the interconnected relationship between the nine (9) unions. That being said, there have always been allowances for some union specific and work specific issues to be included that may not apply to the other groups. The 1% increase would also be applied in Appendix A, General Provisions Regarding Differentials, to the afternoon, nighttime, and weekend shift increments.

As for Appendix A proposals, this Fact-finder cannot address the Union's proposal of Lead/In-charge officers and Gang Unit officers since these are based on an hourly wage and these are currently salaried positions. (In Appendix A, there is only one hourly rate and that is for hourly part-time security officers). In order to properly address this, it is the Fact-Finder recommendation that the Parties meet to discuss the conversion of Appendix A to an hourly structure. It is recommended that the Parties complete this conversion to be put in place for 2022-2023 school year. Therefore, current contract language will remain in place for In/Charge Rate.

This Fact-Finder rejects the Union's language about moving Mobile Patrol Officers and Mobile Deputies to School Resource Officer after one (1) year. Not enough of a rationale was given for this change. Additionally, the overall personnel by which governmental operations are conducted is a Management right as set forth in Article 4 of the 2017-2019 CBA.

This Fact-Finder rejects the Union's proposal about all employees having the same number of workdays and holidays. Without knowledge of the inner works of the various schools and programs and the logistic and financial implications of this change, a sound recommendation cannot be made.

CERTIFICATE OF SERVICE

The foregoing report was delivered via email on this the

7th day of May, 2021, to

Jeff Perry

jperry@opba.com

and

W. Michael Hanna, Esquire

Mike.hanna@squirepb.com

Jack Buettner

Jack Buettner