

II. BACKGROUND

This proceeding involves collective bargaining negotiations between the Ohio Patrolmen's Benevolent Association, Police Officer Bargaining Unit, and the City of Barberton, Ohio. This local has approximately 34 members and is comprised of all full-time police patrol officers working for the City of Barberton. The parties have had a collective bargaining relationship for a number of years.

The contract expired on December 31, 2001. Prior to this hearing, the parties had negotiated numerous times and reached a tentative agreement on most items. On December 7, 2001 the parties requested, and received, an extension of the statutory hearing and recommendation period; further, the parties also agreed that rates of compensation and other issues with cost implications may be effective in 2002 and thereafter.

Some open items were resolved during the hearing and have been incorporated into this Report in the form of a consent recommendation. Others, primarily the issue of wages, remained unresolved and the Fact-Finder has made recommendations on those in the body of his Report, *infra*.

In advance of this hearing, both parties chose to file pre-hearing position statements which were duly received and considered by the Fact-Finder in advance of swearing in of the witnesses.

On February 26, 2002, the Fact-finder held a hearing in the Barberton City Hall. With the concurrence of the parties, the Fact-Finder periodically entered into mediation with the parties during the hearing in an attempt to mutually resolve some of the remaining open issues. During the course of the mediation process, the parties reached tentative agreement on some but not all of open issues. At the conclusion of the hearing, the parties jointly requested that the Fact-Finder adopt in his Report all of the agreements reached by the parties. This Fact-Finder agreed to do so.

And, the Fact-finder wishes to take a moment to commend the counsel for the City and the OPBA for the admirable and professional job they did in preparing for and presenting their respective positions.

III. FACT-FINDER'S REPORT AND RECOMMENDATIONS

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors which the State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.
2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In accordance with the statute and rules and regulations of SERB, in the preparation of this Report and Recommendations the Fact-Finder did in fact consider these six (6) factors.

This Report and Recommendation also hereby adopts and incorporates by reference both any current contract language that has not been amended by previously negotiated and agreed to changes to this contract and, any negotiated changes that occurred prior to the commencement of this hearing.

This Report and Recommendations sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although it

is recognized that acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

IV. OPENING STATEMENTS

Both parties took the opportunity to make opening statements.

The Union opened the hearing by stating that the current terms of the contract, except those open items upon which the parties could not agree, should be maintained. The Union stated that its objective was to achieve parity in wages, benefits and terms and conditions of employment with the other locals in the City, as well as patrol officers in comparable municipalities. As pertains to wages, the Union contended that over the past three years, this unit had fallen behind comparable units in other cities, particularly in regards to starting rates. Therefore, in order to achieve parity, it desired wage increases of 4.5% in the first year, 4.5% in the second, and 4.5% in the third year of the contract.

The City, which emphasized that it believed its wage offer to be fair, offered pay increases of 3%-3%-3% over three years. It primarily based its wage offer on the following "inability to pay", equity and pattern-settlement basis:

1. During contract negotiations, it had already agreed to grant Union employees significant economic improvements for 2002, primarily in the area of dental and orthodontia insurance coverage.
2. Bargaining unit members already receive a generous \$1,000 uniform allowance which they may spend as they see fit.
3. The City, an aging industrial metropolitan area, has been in recession for a while and faces a very difficult time balancing its 2002 budget.
4. An interest in a "pattern" settlement, i.e., the City had already provided 2002 pay increases of 3% for its non-bargaining unit employees; further, it was presently in negotiations with the firefighter's local and hoped to settle at 3-3-3% in those negotiations as well.

V. FACT-FINDER'S REPORT AND RECOMMENDATIONS

Article 16 – Wage Rates and Compensation.

Union

The Union proposed annual wages increases of 4½-4½-4½%. This request was predicated on presentation of various surrounding municipal police department wage schedules as comparables. Specifically, the Union presented data from the cities of Stow, Cuyahoga Falls, Wadsworth, Tallmadge, Norton, Fairlawn, Twinsburg and Barberton, Ohio. Also, the Union took issue with the City's contention that its finances left it with an inability to pay increases of this magnitude over the life of the contract. It believed that the City could tap into and count on grants from the Barberton City Foundation to help fund any wage increases. In support of its position that the City could afford its proposed increases, it offered an "Amended Official Certificate of Estimated Resources for the City of Barberton".

In order to accelerate when an officer could arrive at the top of the wage scale, the Union also proposed collapsing steps 3 & 5 of the scale, which would result in an effective wage increase for officers at step 3 of approximately 15%.

City

Asserting that it was in a recession, the City offered wage increases of 3-3-3%. Relying on data from the police pay of the cities of Stowe, Alliance and Macedonia, it pointed out that, except at the first step, since the wage scale of officers in Barberton already compared very favorably, the 3-3-3 adjustment was appropriate.

Finding and Recommendation

The Fact-Finder finds that while the City is facing difficult economic times, even with no guaranteed income stream from the Barberton City

Foundation its current condition does not rise to the level of "an inability to pay". In fact, a reduction in the City's beautification fund budget line item alone could pay for any projected salary increase under a new contract. Having said that, however, a consideration of the wage comparables presented by both parties showed that the Barberton officers wages at *all but the entry level* by and large compare favorably with those of surrounding municipal police forces. Further, no measurable data was provided by the Union to support the position that the dangerousness, difficulty or work load of Barberton's police force was greater than that of comparable departments and so any wage increase should reflect that. Further, it is no surprise that police wage adjustments over the past ten years in Ohio were relatively generous given it was largely a decade of steady economic expansion.

In light of the City's ability to pay, the competitiveness of the current wage scale with comparable police departments (except at the bottom), the economic improvements already provided in dental and orthodontia coverage, inflation currently running at less than 2%, the department's relatively generous uniform allowance, the potential economic recovery projected for next year, the proposal for random drug testing (infra), the recognition that municipal settlements in Ohio in the past year have hovered closer to 3% than 4%, and the wage increases already granted to the City's non-union personnel, the Fact-Finder recommends, retroactive to the expiration of the current agreement, that the following wage adjustments be adopted for wage *steps two and above*:

- Year one: 3%
- Year two: 3½%
- Year three: 3½%

For step one of the wage scale, which currently lags most comparable departments, the Fact-finder finds the need for catch-up and so recommends adoption, again retroactively, of the following wage adjustments:

- Year one: 4%

Year two: 3¾%

Year three: 3½%

Further, the Fact-finder does not find evidentiary support either for economic or equity reasons for the need to collapse steps 3 and 4 of the wage scale. Accordingly, the Fact-finder recommends no changes in the number of steps of the salary schedule at this time.

Article 18 – Overtime and Court Time.

Union

The Union proposed to increase the allowed accumulated compensatory time from the current 120 hours/year to 480 hours/year, and the addition of new language that would pay employees double time for employees who are called in to work on their days off.

City

The City proposed the elimination of accumulated mandatory overtime and the payment of time and ½ for employees ordered to work on their scheduled days off.

Finding and Recommendation

During the course of the hearing, the parties mutually agreed to changes in the existing language of this article. Accordingly, reflecting the agreement of the parties, the Fact-finder recommends adoption of the same (see attached Article 18).

Article 24 – Life Insurance.

Union

The Union proposed increasing the life insurance coverage under the contract from \$10,000 to \$50,000.

City

The City proposed leaving the current insurance coverage unchanged.

Finding and Recommendation

During the course of the hearing, the parties mutually agreed to changes in the existing language of this article, i.e., increasing existing coverage from \$10,000 to \$25,000. Accordingly, reflecting the agreement of the parties, the Fact-finder recommends adoption of the same.

Article 28 – Sick, Personal and Funeral Leave.

Union

The Union proposed exchanging the current restricted personal day for two unrestricted personal days.

City

The City proposed no changes in the existing language.

Finding and Recommendation:

During the course of the hearing, the Union withdrew its proposed changes. Accordingly, the Fact-finder recommends no change to the existing contract language.

Article 29 – Injury Leave.

Union

The Union disputed the need for any changes in the existing contract language.

City

City proposed three changes to this article.

Finding and Recommendation

During the course of the hearing, the parties mutually agreed to changes in the existing language of this article. Accordingly, reflecting the agreement of the parties, the Fact-finder recommends adoption of the same (see attached Article 29).

New Article – Drug Testing.

Union

The Union saw no need to propose a new article dealing with random drug testing, believing that the previously negotiated “reasonable suspicion” arrangement is sufficient.

City

The City proposes to institute a random drug testing policy for all City employees, including police. It bases this proposal on a projected \$62,000 annual savings in its workers’ compensation premiums that its carrier has promised provided all City employees are included. The City proposes to use the savings from this program to help offset its already announced penalty-rated premium increases.

Finding and Recommendation

During the course of the hearing, both parties acknowledged that some modification in the current reasonable suspicion policy may be warranted.

However, the Union was reluctant to agree to further changes to a more intrusive policy without some movement off the City's 3-3-3 wage adjustment proposal.

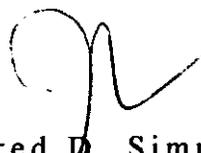
The Fact-finder finds that a unified drug testing policy applied equitably and consistently to all City employees does better serve the public interest, particularly for that group of employees statutorily charged with both upholding the law and exercising potential deadly force in the discharge of their duties. Further, the annual premium savings for asuch an approach apparently would be substantial. And, since the annual testing only has to be random for all City employees *in the aggregate*, statistically, a police officer's chance of actually being randomly tested under the proposed policy is less than 1 in 8.

The Fact-finder recognizes that all City employees, not just police, must be in the random testing population; therefore is those bargaining unit employees who have not agreed to be included opt out, the savings will not be realized.

Accordingly, the Fact-finder rather than recommending a blanket inclusion of police officers in the new testing program, the Fact-finder recommends that the City and this Union agree to modify their existing policy to include random drug testing of police officers *contingent upon* the participation of all other City employees.

Issued: March 7, 2002

Respectfully submitted,



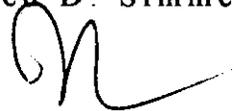
Jared D. Simmer, Esq.
Fact-Finder

Attach.

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Consent Report and Recommendations were served upon the following parties, to wit, the City of Barberton, Ohio (via its attorney Gary W. Spring, Esq.) and the OPBA (via its attorney S. Randall Weltman, Esq.) by United States Post Office overnight mail service, and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediaion) by first class mail, this day of March 7, 2001.

Jared D. Simmer, Esq.



Fact-Finder

Put in report

**ARTICLE 18
OVERTIME AND COURT TIME**

Section 18.1. Holdover Pay. All employees held over past the time for the end of their regularly scheduled shift on other than a Sunday or holiday shall be paid one and one-half (1 1/2) times the regular hourly rate of pay. For the purposes of this agreement, any reference to the time period referred to as a Sunday commences at the start of the third shift on Saturday and ends at the start of the third shift on Sunday. The time period referred to as a holiday commences at the start of the third shift on the day preceding the holiday and ends at the start of the third shift on the date of the actual holiday. All employees held over past the time for the end of their regularly scheduled shift on a Sunday or holiday shall be paid two (2) times the regular hourly rate of pay.

Section 18.2. Call-in Pay. A call-in occurs when the employee is required to report to work prior to the scheduled time for the start of the employee's scheduled shift or when an employee is required to report back to work after completion of the employee's scheduled shift. All employees called in to work additional hours on a weekday, Saturday or non-holiday shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for a minimum of three (3) hours. All employees called in to work additional hours on a Sunday or holiday shall be paid two (2) times the regular hourly rate of pay for a minimum of three (3) hours.

Section 18.3. Compensatory Time. Compensatory time earned as a result of overtime hours worked shall not be confused or combined with holiday compensatory time. Compensatory time shall be accumulated to a maximum accumulation of ~~one hundred twenty (120) hours~~ and may be utilized by taking four (4) continuous days off of scheduled duty days. After accumulation of ~~one hundred twenty (120) hours~~ of accumulated compensatory time, all hours worked shall be paid in cash at current rate of overtime and holiday pay rates. ~~Accumulated compensatory time, not to exceed one hundred twenty (120) hours, other than holiday compensatory time, shall be paid in cash on the death or separation from employment.~~ Any employee desiring to use such hours shall request the approval of supervision of such time off. The request shall be granted if supervision determines it is reasonable to do so in relation to the staffing requirements. However, with at least five (5) days notice, no more than ~~two (2)~~ employees shall be permitted to take compensatory time, regardless of whether it creates an overtime situation.

Section 18.4. Court Time. All employees who are required to appear in court or an administrative agency shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for a minimum of three (3) hours as "court time." An employee who is required to appear at a proceeding in the morning and a different proceeding in the afternoon shall be entitled to a minimum of six (6) hours of court time at the applicable rate. Court time shall be paid only for those proceedings at which the employee is required to attend as a result of the employee's actions as a law enforcement officer no matter when such actions occurred. Court time shall not be paid to employees attending such proceedings during regularly scheduled working hours. If the employee attending such a proceeding

Balances shall be reduced to zero hours as of December 31st annually with the City paying any unused balance in the first pay period of the succeeding year.

03/23/99
Police Officer

Established limit set at least 60 days in advance
During the last 12 months before an employee's retirement from employment, he may accumulate up to 120 hours of Comp. time, other than holiday Comp. time and

that time at his own expense shall be paid cash for

ARTICLE 29
INJURY LEAVE

Section 29.1. Injury Benefit. All bargaining unit members, who are injured or incapacitated in the scope and performance of their duties or work and are entitled to workers' compensation insurance, shall be entitled to ~~the difference between the weekly industrial workers' compensation benefit and the employee's regular rate of~~ compensation without reduction in sick leave status, if and only if said injury or incapacitation is reported to management prior to the completion of the employee's shift or at the first available opportunity. Said injury shall be readily ascertainable and of such a nature to prevent the employee from engaging in the duties of their employment. Said employee shall receive benefits as stated above for a three (3) month period computed on a calendar month basis. *The Employer reserves the right to subrogate against the employee for any payment made by a third party or uninsured/underinsured coverage.* *Such amount shall not be reduced by attorney fees or partial settlement.* Said period shall begin on the date of injury. Said employee shall provide medical certification of the disablement before entitlement. The Finance Director shall be charged with the compliance of the provisions of this regulation.

for compensation for time away from work.

Section 29.2. Benefit Period. Upon the exhaustion of the ~~three (3)~~ ^{six (6)} month period above, the employee shall have the option to use accrued sick leave or of relying solely upon workers' compensation weekly benefits. ~~Should the employee elect to use sick leave, days used shall be reinstated upon return to duty.~~ Should the employee retire under the disability provisions of the PFPDF, such sick days shall be reinstated for the purposes of severance as provided in this agreement. Should an employee rely solely upon workers' compensation weekly benefits, or upon the exhaustion of any accrued sick leave, the employee's continuous service and seniority shall continue. In either case, when an employee receives workers' compensation and sick leave pay, the weekly wage paid by workers' compensation shall be paid back by the employee to the Employer.

language eliminated

Section 29.3. Workers Compensation. On-duty injuries shall be handled in accordance with the present rules and regulations set up under the Ohio workers' compensation laws and provisions of the PFPDF. All employees who are injured or who are involved in an accident during the course of their employment shall file an accident report on a form furnished by the Employer. No matter how slight the incident, all such injuries should be reported to the employee's immediate supervisor and any necessary medical attention shall be arranged by the employer. The Employer shall provide assistance to employees in filling out all necessary forms when requested with copies of accident and physician reports attached.

Section 29.4. Workers Compensation Representation. If an employee-claimant or the employee's designated representative is scheduled to work on a date when (1) a workers' compensation hearing or appeal is scheduled to be heard, or (2) the employee's presence is required before the Bureau of Workers' Compensation or Industrial Commission for the filing or processing of any claim needed to satisfy a time

limit as prescribed by law, and the employee is unable to change either the date of such hearing or time limit, the employee or the employee's representative shall be released from duty to perform same without loss of pay, provided a reasonable effort to reschedule such action off-duty has been made. This provision shall not include any appeal filed by the employee or the employee's representative in a court of law beyond the Ohio Industrial Commission.