

**STATUTORY IMPASSE  
PROCEEDING UNDER THE AUSPICES OF THE  
STATE EMPLOYMENT RELATIONS BOARD**

~~STATE EMPLOYMENT  
RELATIONS BOARD~~

**IN THE IMPASSE BETWEEN:**

**THE CITY OF MAUMEE, OHIO**

2002 DEC -2 A 8 59

**-AND-**

**THE FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.**

**SERB CASE NOS.:           02-MED-04-0417  
                                  02-MED-04-0418  
                                  02-MED-04-0419**

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**THE FACT-FINDER'S FINDING AND RECOMMENDATION  
FACT-FINDER: DAVID M. PINCUS  
DATE:NOVEMBER 20, 2002**

**APPEARANCES**

**For the City**

John Jekak  
Michael J. Angelo

City Administrator and Safety Director  
Advocate

**For the Union**

Jackie Wegman  
Hugh Bennett

Staff Representative  
Staff Representative

**BACKGROUND OF FACT-FINDING**

The bargaining unit involved in the present dispute consists of: one (1) employee in the classification of Lieutenant, eight (8) employees in the classification of Sergeant, thirty-three (33) employees in the classification of Patrolman, eleven (11) employees in the classification of Telephone and Radio Operators, and one (1) employee in the classification of Animal Control Officer. The parties have engaged in negotiations in accordance with procedures specified in Ohio Revised Code Chapter 4117.

The Collective Bargaining Agreement (Joint Exhibit 1) expired on July 20, 2002. The parties bargained a number of times prior to the fact-finding hearing. Bargaining sessions were held on the following dates: May 7, 2002, June 11, 2002, June 12, 2002, June 18, 2002, June 19, 2002, and July 30, 2002. These sessions proved relatively beneficial. The parties, more specifically, tentatively agreed to the following issues:

1. Article XIV – Sick Leave (Section 14.04)
2. Article XV – Vacation Leave (Section 15.08)
3. Article XXIV – Military Leave (Sections 34.04 and 34.09)
4. Wellness Program – (New Article)
5. Article XXXIV – Overtime Compensation (Sections 34.05 and 34.06)
6. Article XXXVII – Representatives (Section 37.02)
7. Article XLI – Training (Section 41.05)
8. Article LIV – Arbitration Procedure (Section 54.06)
9. Article LVIII – Payroll Year, Pay Periods & Pay Date (Section 58.01)

It was agreed by the parties that all tentative agreements reached prior to the pending dispute were acceptable, mutually agreed to and binding. Per the parties' articulated request, all matters tentatively agreed to are deemed to be formally incorporated into this Fact-Finder's finding and recommendation.

In accordance with Ohio Revised Code §4117.14(c)(3), the parties selected this Fact-Finder to make recommendations, as to unresolved issues in impasse. In accordance with statutory requirements, the parties submitted several issues for consideration.

The matters in impasse were reviewed by this Fact-Finder by employing criteria specified in Ohio Revised Code §4117.14(c)(4)(e), §4117.14(g)(7), and §4117.14(g)(7)(a)-(f). These guidelines include in pertinent part:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those uses related to other

public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

3. The interests and welfare of the public, 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;
4. The lawful authority of the public employer;
5. The stipulation of these parties;
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Each of these above-mentioned factors were considered and given appropriate weight when deemed to be relevant by the Fact-Finder.

A fact-finding hearing was held on September 29, 2002, at the City of Maumee's City Hall. The following reflects the evidence and arguments presented by the parties, and the application of relevant guidelines previously described. The subsequent portions of this report shall summarize each parties' arguments and evidence pertaining to the issues in impasse; followed by this Fact-Finder's conclusions and finding.

### **Article XIII – Hours of Work**

#### **Current Language**

#### **ARTICLE XIII**

#### **HOURS OF WORK**

- 13.01 The workweek and hours of work for employees covered by this Agreement shall be such hours of work as prescribed by the Chief of Police provided that the total hours of scheduled duty hours shall equal 2080 hours annually.

#### **The Union's Position**

The Union seeks a change from the status quo. It proposes language that defines the workday and computation of related overtime benefits. The language, moreover, reflects the historical practice agreed to by the parties regarding this matter, and is currently in effect. In terms of comparability, the proposed language, or something relatively similar, is found in virtually all contracts serving as comparables.

This finding seems obvious, and hardly arguable, when one realizes the import placed on this provision by the bargaining unit. Incorporating this proposed language allows for stability in an employee's work-life by mandating a consistent work schedule.

The Employer has never been able to rebut properly the Union's proposed changes. If the status quo remains unchanged, the Employer will be able to continue its arbitrary and inconsistent scheduling regime.

### **The City's Position**

The Employer wishes to retain the status quo. Current language provides the Chief of Police with maximum flexibility in terms of scheduling, and nothing proposed supports the drastic departure from the status quo. The existing language has been in place since the onset of collective bargaining. As such, there is no urgent need to change the current language.

### **The Fact-Finder's Finding and Recommendation**

The following language is recommended for incorporation by the parties:

#### **Article XIII – Hours of Work**

13.01 Employees of the Maumee Police Division shall work 2080 hours annually of scheduled duty. The Employer shall maintain the current practice of scheduling road patrol working 4 days on/2 days off, and dispatchers working 4 days on/2 days off.

The proposed language reflects a reasonable compromise based on the existing language and the Union's attempt to realize a drastic change from the status quo. It provides some semblance of a schedule which cannot be arbitrarily altered, and allows the parties an opportunity to plan. The bargaining unit is better able to adjust family and personal considerations knowing the scheduling parameters in existence. Also, the City's manning requirements can be anticipated without causing a disruption in services provided by the department.

The record clearly supports the claim regarding the parties' custom and practice. As such, formalizing this condition should not result in any undue hardship. By modifying the existing practice, the bargaining unit, for the first time, achieves an initial justifiable objective. It realizes a certain negotiated outcome shared by other comparable units.

**ARTICLE XXXI HOSPITALIZATION, PHYSICIAN'S SERVICES, MAJOR MEDICAL INSURANCE**

Several provisions contained in this Article are in dispute. The parties' positions will be reviewed on a section-by-section basis.

**Current Language**

31.03 The City shall make payments of such premiums for the group health plan described in Section 31.01 above, up to the maximums set forth below:

	<b>FAMILY PLAN</b>	<b>SINGLE PLAN</b>
1999	\$475.00	\$220.00
2000	\$500.00	\$230.00
2001	\$525.00	\$240.00
2002	\$550.00	\$250.00

However, should such monthly premium costs exceed the maximums set forth above, the City and the employee shall share equally the cost of the amount over the maximums.

### **The Union's Position**

As described in the current language, the Employer presently makes the entire payment unless the monthly premium costs exceed the specified limits. Any amount over the specified maximums is shared equally by the parties.

The Union has agreed to the proposed premium percentages offered by the City. That is, the City shall pay 90% and bargaining unit members shall pay 10% of the premium through automatic payable deductions.

The Union, however, wishes to cap bargaining unit members' contributions for each year of the agreement. It proposes the following caps, which represent the potential maximum employee contribution per year:

- \$100 per month for the first year of the Agreement
- \$125 per month for the second year of the Agreement
- \$150 per month for the third year of the Agreement

The proposed cap is viewed as essential to avoid potential erosion of any negotiated wage increase. Erosion is quite possible considering the volatility in the healthcare environment. Presently, the employees contribute \$120.00, which exceeds the state average for single (\$30.86) and family (\$87.36) coverage.

The City's reliance on other negotiated outcomes appears misplaced. AFSCME negotiations with the City are meaningless to the present cycle of negotiations. There is no evidence that caps were proposed by AFSCME during its negotiations with the City. Also, attempts to force pattern bargaining should be limited by the Fact-Finder.

### **The City's Position**

The City does not support a cap on premiums. It maintains the new formula agreed to by the parties will result in a reduced monthly payment from what is presently being paid by employees. This saving more than offsets the need for any cap. Also, any cap would result in a benefit not realized by the AFSCME bargaining unit. Historically, healthcare benefits have been applied consistently across all bargaining units. There is no justified reason to deviate from this pattern.

### **The Fact-Finder's Finding and Recommendation**

The following contract language is recommended for inclusion in the newly negotiated agreement:

31.03 The City shall make payments of such premiums for the group health plan described in Sections 31.01 above, to the extent of ninety percent (90%) and the employee shall pay the remaining ten percent (10%) through automatic payroll deduction. In no event, shall the employee contribute more than \$150 per month during the life of this Agreement.

The recommended language serves a dual purpose. The City, for the first time, realizes a cost sharing formula, which requires some degree of employee contribution. The Union, in a like fashion, is able to cap these contributions, which serves as a barrier to escalating healthcare costs. Both formula elements, percentage of contribution and caps, are not unusual but quite prevalent in the present benefit environment. Parties have had to negotiate similar arrangements with the ever-present escalation of benefit packages. Also, this finding appears to be in tune with benefit trends negotiated recently by comparable municipalities, and more general trends throughout the State of Ohio and nationally.

### **Current Language**

31.09 The Union recognizes the right of the City in its discretion to secure alternate insurance carriers and to modify coverages which measures may be used to maintain or to lessen premium costs. Prior to any modifications of benefits or coverage, the Union and the City agree to meet and discuss any such modifications. In the event that other employees in the City obtain improved benefits hereunder, such shall be extended under this Agreement.

### **The City's Position**

The City proposes to strike the last sentence in the previously articulated provision. As such, it wishes to eliminate the "Me Too" proviso.

The City argues that this language is superfluous. It has always had the same health plan for all City employees. In the past, when some modification in coverage has taken place, an identical modification has been extended to all other employees.

### **The Union's Position**

The Union proposes new language which includes a "Me Too" proviso. The proposal was articulated in the following manner:

During Year 2 of this agreement the City agrees to shop for alternative insurance carriers (minimum of two) and to provide coverage equal to or superior to the coverage that is currently in effect. Prior to any modification of benefits or changes in carriers, the City agrees to meet and discuss such changes. In the event that other employees in the City obtain improved benefits hereunder, such shall be extended under this Agreement.

With respect to the "Me Too" proviso, the Union opines that should be maintained. The phrase in question has remained in the Agreement over a number of negotiation cycles without amendment. As such, the Employer is obliged to justify the deletion on some rationale basis. Without any plausible explanation, the language should be retained.

An alternative result could lead to an undesirable outcome. The City could create a situation where City employees could be treated differently by receiving disparate benefits.

**The Fact-Finder’s Finding and Recommendation**

The Fact-Finder recommends the City’s position regarding this matter. The Union failed to support the wide-ranging changes it proposed to current language. The record does not support the general overhaul anticipated. Here, the Fact-Finder refers to reference made to “equal or superior” coverage. Nothing in the record supports this modification.

The “Me Too” clause should be deleted; it is superfluous within these circumstances. Documents submitted at the hearing clearly indicate that all employees, union and non-union, have always had the same healthcare plan. It would be economically and administratively impossible for the City to have a multitude of benefit packages. A unified approach with providers will result in the best possible package, at the most reasonable price.

Based on the above analysis, the parties are urged to incorporate the following language:

31.09 The Union recognizes the right of the City in its discretion to secure alternate insurance carriers and to modify coverages which measures may be used to maintain or to lessen premium costs. Prior to any modifications of benefits or coverage, the Union and the City agree to meet and discuss any such modifications.

**Current Language – 31.10**

None Available

### **The City's Position**

The City proposes language which would prorate the amount paid to an employee who waives insurance coverage. The prorated amount would be accomplished per a conversion formula contained in the following proposed contract language:

31.10 Employees who are initially eligible or change plan status during the year may waive insurance coverage according to the above formula and receive the conversion in the amount of one hundred percent (100%), if initially eligible or change status during the first six (6) months of the calendar year, fifty percent (50%), if initially eligible or change status during the seventh (7<sup>th</sup>) through tenth (10<sup>th</sup>) months, and zero percent (0%) if initially eligible or change status during the eleventh (11<sup>th</sup>) and twelfth (12<sup>th</sup>) months. Employees shall only be entitled to receipt of the conversion once annually. Employees who change status more than once annually shall only be entitled to the lowest conversion rate that applies.

The provision, if adopted, will eliminate disputes regarding the amount to be paid after a number of months have elapsed.

### **The Union's Position**

The Union agrees with the general framework proposed by the City. A major concern, however, deals with the "yardstick" used for pro-ration purposes. The Union seeks calculations on a monthly basis, while refusing the City's more macro approach based on elapsed period of time.

### **The Fact-Finder's Finding and Recommendation**

The Fact-Finder suggests and recommends the inclusion of the City's proposal. Obviously, the parties agree a mechanism needs to be incorporated. A monthly-based conversion formula, however, would be unmanageable for payment purposes. The Fact-Finder believes the more micro approach could possibly engender more disputes regarding conversions. The recommended proposal, moreover, would cause

employees to make decisions to waive coverage at an earlier time in the process. More timely decisions would hasten administrative decisions and reduce errors.

**Current Language – 31.11 (Old 31.10)**

31.10 The Employer agrees to initiate an employee information committee on healthcare benefits, consisting of not more than one (1) member of each bargaining unit and ordinance defined employee unit, Citywide, under the auspices and direction of the Finance Department.

**The City's Position**

The City seeks to incorporate the following contract language:

31.11 Not less than 90 days prior to the date of the renewal of the City health insurance, the City will meet with one (1) member of each bargaining unit to review the insurance and discuss economically feasible alternatives. This committee shall have no authority to bind the City, but upon consensus shall make such recommendation to the City Administrator for presentation to City Council. The committee meeting shall occur during the normal workday of the committee participants.

Proposed changes to this provision were accepted by the AFSCME bargaining unit. It expands clearly the rights of bargaining unit members in this very critical benefit area.

**The Union's Position**

The Union argues the current language should be retained without modification. The committee's impact on any health care decision is virtually non-existent. More extensive language changes would have to be enacted before any functional participation arrangement can be realized.

**The Fact-Finder's Finding and Recommendation**

The Fact-Finder recommends the City's position. The proposed provision enhances conditions in the current provision. It establishes a date certain for any future meeting. It also allows forwarding of recommendations to City Council via the City Administrator. None of these conditions were previously negotiated, and they

characterize a more participatory approach. The recommended process might not be the most participatory approach, but it is far from the “toothless tiger” identified by the Union.

**ARTICLE XXXII LONGEVITY PAY**

**Current Language**

32.01 Longevity pay shall be calculated in accordance with the following:

- (1) All full-time employees hired on or before January 9, 1983, shall be entitled to longevity pay in the following amount: three-eighths of one percent (0.375%) for each full calendar year of service calculated at the annual base salary as of December 31<sup>st</sup>; provided however, that no such longevity pay shall be made until the employee has completed a minimum of six (6) calendar years of service.
- (2) All full-time employees covered by this Agreement hired after January 9, 1983, who have completed five (5) full calendar years of continuous service with the City, shall be entitled to annual longevity payments according to the following schedule:

<b><u>COMPLETED CALENDAR YEARS OF SERVICE</u></b>	<b><u>AMOUNT</u></b>
	<b><u>1999</u></b>
Five (5) Years Through (9) Years	\$ 400.00
Ten (10) Years through Fourteen (14) Years	\$ 700.00
Fifteen (15) Years Through Nineteen (19) Years	\$ 1,000.00
Twenty (20) Years Through Twenty-Four (24) Years	\$ 1,300.00
Twenty-Five (25) Years or More	\$ 1,600.00

32.02 All such longevity pay to which an employee is entitled shall be paid as a lump sum in January of each calendar year.

## **The Union's Position**

The Union is proposing a dramatic departure from the status quo. It urges the adoption of the following language:

### **ARTICLE XXXII LONGEVITY PAY**

#### **Section 32.01-32.01 (1) As Is**

- (3) All full-time employees covered by this Agreement hired after January 9, 1983, who have completed five (5) full calendar years of continued service with the City, shall be entitled to annual longevity payments according to the following schedule:

One Hundred dollars (\$100.00) for every full calendar year after 5 years of service until retirement.

Current language reflects a two-tiered system which generates disparities in benefit payment amounts. Bargaining unit members with identical time and grade do not receive the same longevity pay if their date of hire is different.

This disparate and unjust arrangement can be minimized by adjusting the existing calculation for all full-time employees covered by the agreement hired after January 9, 1983. The Union proposes to substitute an amount solely based on years of service with the Employer. The inequity perpetuated by the existing language will never be eradicated, but acceptance of the proposal language will reduce some of the disparity.

## **The City's Position**

The City does not propose any major structure or process related changes to the current language. Rather, it seeks to retain Section 32.01(1), but modify benefit amounts articulated in Section 32.01(2). Under the City's proposal, the longevity payment amounts would read as follows:

<u>COMPLETED CALENDAR YEARS OF SERVICE</u>	<u>AMOUNT</u>
	<u>2002</u>
Five (5) Years Through (9) Years	\$ 500.00
Ten (10) Years through Fourteen (14) Years	\$ 800.00
Fifteen (15) Years Through Nineteen (19) Years	\$ 1,100.00
Twenty (20) Years Through Twenty-Four (24) Years	\$ 1,400.00
Twenty-Five (25) Years or Moreland Hills, OH 44022	\$ 1,700.00

The previously described proposed benefit levels reflect an increase of \$100 at each of the existing levels.

**The Fact-Finder's Finding and Recommendation**

The Fact-Finder must recommend the City's proposal. The Union had to provide more substantial evidence to change the status quo in terms of process and structure. This finding is especially true considering it acquiesced to the current language last negotiation cycle. Arguments need to be supported with evidence regarding circumstance specific changes or comparables involving similarly situated surrounding bargaining units.

The two-tiered approach is not a unique structure in the public sector. In terms of distribution methodology, comparables indicate a tendency for multiple incremental steps with sufficient time in between steps. The Union failed to provide any other comparable structure with longevity payments increased on a yearly basis. Also, the \$100 improvement for each incremental step seems in line with benefits realized by comparable bargaining units.

**ARTICLE XXXIII – EMPLOYEE BILL OF RIGHTS**  
**(New Provision)**

**Current Language**

Not Available

**The Union's Position**

The Union does not wish to modify any of the existing language contained in Sections 33.01 to 33.17, rather it desires to add new language which states:

(An employee) will be notified of any internal investigation upon written or oral complaint.

The proposed language is purposely ambiguous. It does not require any notification other than some expression that a complaint has been received about a member of the bargaining unit. Specifically regarding the complaint is not a particular being requested by the Union.

Adoption of this proposal will eliminate the cloak of secrecy surrounding most complaints. As the City initiates an investigation regarding a bargaining unit member, the member's identity slowly surfaces which tends to tarnish prematurely his/her reputation. The probability of a member taking advantage of a notice opportunity to the detriment of the complainant or the process is minimal.

**The City's Position**

The City is opposed to any additional language regarding this provision. Notification needs to take place after an investigation has been completed and the validity of any complaint has been determined. Otherwise, an employee might be tempted to somehow taint the investigation process.

### **The Fact-Finder's Recommendation and Finding**

The status quo should be maintained without any addition to the current language. The requested insertion seems superfluous in light of existing contract language regarding the disciplinary process and contractually required notice particulars. If discipline is to be initiated, an employee's version of contested events is required. Whether an investigation has been initially triggered by a written or verbal citizen-based complaint or some other event is immaterial. The City is subject to due process arguments under both scenarios regardless of the triggering event.

### **ARTICLE XXXVIII – REPRESENTATIVES**

#### **Current Language – Article XXXVIII, Section 38.03**

38.03 The parties recognize that it may be necessary for an employee representative of the OLC to leave a normal work assignment while acting in the capacity of representative. The OLC recognizes the operational needs of the Employer, and will cooperate to keep to a minimum the time lost from work by representatives. Before leaving an assignment pursuant to this Section, the representative must obtain approval from the officer in charge of the shift. If the representative is the officer in charge of the shift, he must obtain approval from the Chief of Police, or his designee.

#### **The Union's Position**

The Union desires to add language to the existing provision. The proposed language creates a pool of ten (10) workdays per year for the FOP/OLC delegate to attend FOP or FOP/OLC functions. Functions are defined as: conferences, conventions and educational meetings. The days in question are operationalized as days of paid leave of absence.

Benefits accrue by allowing attendance at these functions. Both the City and employee benefit from training seminars, which allow the subsequent transfer of newly

acquired information. Networking also takes place at these meetings leading to additional information transfer opportunities.

### **The City's Position**

The City strongly opposes any change to the current language. The City is opposed to any paid time off. Other leave balances need to be applied if employees wish to attend these functions. This particular proposed benefit has never been attained by any other bargaining unit member.

### **The Fact-Finder's Recommendation and Finding**

The Fact-Finder accepts the City's position by rejecting any change in the current language. Nothing in the record supports the suggested change. Neither internal nor external comparables suggest a modification is in order.

## **ARTICLE XLVI – UNIFORMS**

### **Current Language – Article XLVI – Uniforms**

46.01 Sworn officers in the Division of Police shall receive a general uniform issue, as recommended by the Chief of Police and authorized by Council, at the time of employment. Items of general uniform issue shall be replaced as needed, subject to the approval for such replacement by the Chief of Police and Director of Public Safety.

46.02 Reimbursement for the purchase of footwear shall be limited to one hundred twenty dollars (\$120) per year for purchases of approved footwear. Required repairs to approved footwear shall be reimbursed. The color and style of footwear, as well as authorization for reimbursement for approved footwear replacement or repair, shall be subject to prior approval by the Chief of Police. All requests for authorized reimbursements, as herein provided, shall be accompanied with the receipt for the repair or replacement.

46.03 Non-uniformed police officers shall be entitled to reimbursement for not more than two hundred fifty dollars (\$250) per year of the contract for wearing apparel, upon presentation of receipts as approved by the Chief of Police.

46.04 Dispatchers shall receive a uniform issue as recommended by the Chief of Police. Such uniform shall readily identify a Dispatcher as such. Items of the

uniform issue shall be replaced as needed, subject to the approval of the Chief of Police and the Director of Public Safety.

46.05 Animal Control Officer shall receive a uniform issue as recommended by the Chief of Police. Such uniform shall readily identify the Animal Control Officer as such. Such uniform shall be replaced as needed, subject to the approval of the Chief of Police and the Director of Public Safety.

46.06 An annual uniform maintenance allowance in the amount of one hundred dollars (\$100) shall be paid to an employee for the care of the general uniform issue. Such payment shall be made on the pay date for the pay period beginning immediately after the execution of this Agreement and each year thereafter for the life of the Agreement. The Employer agrees to provide uniform cleaning for employees' uniforms where employees come in contact with hazardous or contaminated materials.

46.07 Any uniform inspection shall be conducted on City time.

### **The Union's Position**

The Union proposes the following changes in this Article:

#### **ARTICLE XLVI - UNIFORMS**

Section 46.01 AS IS

Section 46.02 Increase value to \$180.00, language remains AS IS

Section 46.03 Increase value to \$400.00, language remains AS IS

Section 46.04-46.05 AS IS

Section 46.06 Increase value to \$300.00, language remains AS IS

Section 46.07 AS IS

Section 46.02 needs to have the allowance increased. The present allowance has been the same for a number of years. As such, it has not kept pace with the market cost of purchasing a new pair of shoes.

Similar arguments were proposed regarding Section 46.03 improvements. Once again, this particular allowance has not changed for a number of years. Non-uniformed

officers are required to buy civilian clothing. The proposed increase would allow these individuals to slightly upgrade their work-related attire. It would allow bargaining unit members to better represent the Department while performing duties while in public.

Section 46.06 concerns the uniform maintenance allowance which permits the professional cleaning of uniforms and repairs resulting from wear and tear of uniforms. Again, this allowance has remained the same for a number of years and has not kept pace with inflation.

### **The City's Position**

The following reflects the City's position on the various sections in dispute:

#### **ARTICLE XLVI - UNIFORMS**

Section 46.01	Current Language
Section 46.02	Increase allowance to \$140.00 per year. Language remains as is.
Section 46.03	Increase total allowance to \$400.00 by increasing allowance by \$50.00 in each year of the agreement. Language remains as is.
Section 46.04-46.05	Current Language
Section 46.06	Increase total allowance to \$175.00 by increasing allowance by \$25.00 per year in each year of the agreement. Language remains as is.

The articulated increases are equitable and supported by the record. Most of the comparables do not have the detailed allowances presently engaged by the bargaining unit. Rather, they are absorbed in more general allowance categories. Also, proposed allowance levels fall in line with those negotiated by comparable external bargaining units.

## **The Fact-Finder's Recommendation and Finding**

The Fact-Finder recommends retention of current language and allowance levels. As such, I reject both parties' proposals regarding these various sections. Presently articulated allowances are not significantly out of line when comparable department outcomes are analyzed. Also, granting either proposed benefit package would impact the Fact-Finder's Article 56 recommendation, which will be discussed in a subsequent portion of this report.

### **ARTICLE LVI – SALARY/COMPENSATION** **Sections 56.01, 56.02, 56.03, and 56.04**

#### **The Union's Position**

The Union is proposing to increase the base wage by \$1,000.00; which it considers a pay classification readjustment. In addition, it proposes an additional increase of 4% per year for each year of the contract, retroactive to the first pay period of July 2002.

The Union bases this demand on comparable wages received by other bargaining unit members working for surrounding departments. The data indicate that City employees are significantly underpaid, regardless of job classification, with other similarly situated bargaining units.

The City is well aware of the disparity and must, therefore, attempt to reduce the pay inequity. An adjustment is deemed essential for recruitment and retention purposes. By narrowing this obvious gap, competitive balance should be restored allowing the City to attract and retain the most qualified employees.

### **The City's Position**

The City views the Union's proposal as excessive. It counters by offering to increase the existing base wage by 4% in each year of the agreement without any retroactivity element. The proposed wage increase shall become effective upon the execution of the agreement.

This proposed wage increase is viewed as justified for a number of reasons. It is obviously reasonable as a consequence of current economic conditions. The economic environment is extremely uncertain with revenue streams in flux and State of Ohio contributions undefined and probably declining. The proposed wage increase narrows the existing gap relative to counterpart bargaining units, and yet retains the bargaining unit is high and favorable ranking in terms of total compensation.

### **The Fact-Finder's Recommendation and Finding**

The Fact-Finder wishes to recommend a compromise outcome by selecting principles articulated in each proposal, while adding a few other elements supported by the record. These elements include: pay classification readjustments, base pay issues, and timing of such payments.

Both parties acknowledge a continuing gap in rates of pay when compared against wages received by comparable bargaining units. The economic conditions, however, do not support a sweeping \$1,000.00 pay classification readjustment. The Fact-Finder, therefore, proposes a \$300.00 pay classification readjustment retroactive to the first pay period in October, 2002.

The readjustment amount (\$300.00), however, shall not be applied identically throughout steps A through H. Last negotiation cycle, a similar pay readjustment

classification was negotiated. It was initially administered with Step A receiving the entire readjustment amount, while all other steps received three percent increases on each subsequent step (i.e. Step A – \$300 or 100%, Step B - \$309 or 103%). Here, I propose a similar arrangement, but starting the distribution at Step H at 100% and reducing the readjustment amount (\$300.00) by 3% each subsequent step in the grid (i.e. Step H - \$300 or 100%, Step G - \$291 or 97%).

The proposed structure and process is especially reasonable for a number of reasons. For whatever reason, the process of distributing readjustment amounts has been dealt with in a similar fashion in the past. As such, that format is consistently applied here.

The retroactive element has not been previously negotiated by the parties. This element serves as a negotiated inroad, and partially compensates for the size of the classification readjustment. The previous contract initiated newly negotiated rates upon execution of the agreement. Here, the Fact-Finder's recommendation amounts to some added increase as a function of the retroactivity component.

The parties are in agreement regarding the percentage increase to be added to the existing base and pay classification readjustment. Both agree to a 4% yearly increase, which the Fact-Finder concurs with. Each of these yearly 4% increases shall be effective the first pay period in July 2003 and July 2004.

The 4% increases, classification readjustments, and retroactive components of this package reflect significant compensatory gains. They far exceed the negotiated statewide average, which approaches approximately 3.2%. Also, these wage improvements coupled with the negotiated health care benefits are bargaining

outcomes rarely seen this bargaining cycle. Many municipalities are negotiating reopeners on wages and health care the second and third years of their contracts. These outcomes have been engendered by uncertainties in the economic environment.

**NEW ARTICLE**

**PAST PRACTICE/PREVAILING RIGHTS**

**The Union's Position**

The Union proposes the following new provision for inclusion in the successor agreement:

**NEW ARTICLE**

**Past Practices/Prevailing Rights**

**Section 1** All rights, privileges, and working conditions enjoyed by the Bargaining Unit Members at the present time, which are not included in this Agreement shall remain in full force, unchanged and unaffected in any manner, during the term of this Agreement unless changed by mutual consent.

**Section 2** During the term of this Agreement, if negotiations with any other City employee bargaining groups receive financial benefits from the City which are more liberal than those within this Agreement, the City and the FOP shall meet to work out comparable benefits for the Union.

This provision supercedes the zipper clause presently contained in the Management Rights clause and the Total Agreement provisions. It would memorialize past practices established by prior police department administrators and mutually agreed to by the Union.

**The City's Position**

The City is strongly opposed to this newly authored provision. It does not wish to limit existing zipper clause and Totality of Agreement provisions. The proposed language is usually found in initial agreements where the parties are still attempting to

commit to writing all of the past practices, which had been in effect. The instant relationship does not comply with these conditions.

### **The Fact-Finder's Recommendation and Finding**

The Fact-Finder does not recommend the Union's proposal. Nothing in the record supports the need for this newly proposed Article. Any proposal needs some type of rationale and reasons for inclusion. Anticipated problems without current foundation are rarely recommended by fact-finders. Also, Section 2 is another attempt to incorporate a "Me Too" clause into the Agreement. This principle was rejected previously by the Fact-Finder when discussing another provision. I affirm the same recommendation when dealing with the presently disputed matter.

### **NEW ARTICLE**

### **POSTING/BIDDING**

#### **The Union's Position**

The following language represents the Union's desire to delete existing Article 37, Section 06 and replace it with the following language:

**Section 1** Whenever the Employer determines that a position is vacant and is to be filled a notice of such vacancy will be posted for a minimum of ten calendar days, prior to filling the vacancy. All such notices will contain a description of the position to be filled, including job duties, working hours, special qualifications required or desired, name and classification of the supervisor, and other information regarding the position and the closing date of the posting. Any employee desiring the position must submit a written application to the Employer prior to the close of the posting period.

**Section 2** Applications for a vacant position shall be reviewed considering the following criteria: experience, ability to perform the work, physical fitness, records of attendance and discipline, education and training, and any other pertinent qualifications.

**Section 3** Applications for a vacant position will be reviewed by a selection panel consisting of Administrative personnel and a minimum of one appointment made

by the FOP/OLC. The FOP/OLC representative shall be selected from those bargaining unit members holding an assignment in the classification in which the vacancy exists. The selection panel will interview all applicants for the vacant position using a structured interview process in which all applicants are asked the same questions. Based upon the interview and criteria identified in section 2, the selection panel will recommend the name or names of those applicants most qualified. Where two or more applicants are equally qualified considering all other criteria, seniority will be the determining factor.

**Section 4** When a vacancy occurs to which no employee requests assignment, the least senior Officer with the skills necessary to perform the assignment shall be assigned.

Existing language is vague and ambiguous. The proposed language, however, specifies clear selection criteria for competitive assignments. Union participation in conjunction with these criteria will lead to consistent promotion decisions.

### **The City's Position**

The City strongly opposes any change to the existing language. Recommending the Union's view would strip the Chief of Police of any authority to select the best person for the position.

Presently, when new assignments are made, or existing assignments changed, all employees are given the opportunity to submit a showing of interest. These individuals are then interviewed by the Chief or his designee.

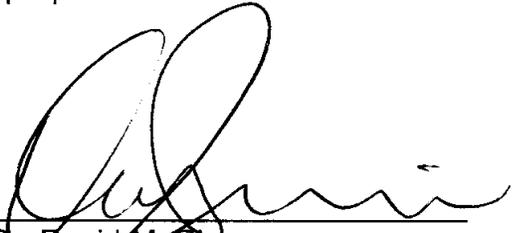
This long-standing procedure is fair and impartial. It has not been abused, and therefore, does not require any adjustment.

### **The Fact-Finder's Recommendation and Finding**

The Fact-Finder does not recommend the inclusion of the Union's language. Again, a change of this magnitude requires support in the form of prior abuse and some showing of a biased decision-making process. Even though the proposed language does reflect a more objective resolution process involving some form of Union

participation, these conditions alone do not justify the uprooting of a long-standing process. Documented complaints, disputes or other improprieties need to be tendered before this right can be eroded.

November 20, 2002  
Moreland Hills, OH 44022



Dr. David M. Pincus  
Fact-Finder