

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

.....	:	
In The Matter Of	:	
	:	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION.	:	
(The Employee Organization)	:	03-MED-10-1772:
	:	Findings of Fact/
and	:	Recommendation
	:	Fact Finder:
THE CITY OF WARREN, OH	:	EDWARD A. PERELES
(The Public Employer)	:	
.....	:	

JURISDICTION AND BACKGROUND

The City of Warren, Ohio (City or Employer) and the Ohio Patrolmen's Benevolent Association (OPBA, Association or Union), the exclusive bargaining representative for the Dispatchers, commenced negotiations with regard to the above bargaining unit in early 2004, "a bit late," due to the City's Mayoral election and the existence that two (2) Police units, the Fraternal Order of Police's Ranking Officers Unit (Gold Unit) and the OPBA's Patrol Officers Unit (Blue Unit) were engaged in collective bargaining for a successor agreement and Fact Finding. Fact Finding Reports were issued December 23, 2003 and September 2, 2004, respectively. Conciliators were appointed for each since the Reports had been rejected by City Council. A Conciliation Award was issued on May 18, 2004 for the Rank (Gold) unit. The City and the Patrol (Blue) unit reached an agreement without a Conciliator's Award being issued.

These negotiations, however, were conducted in a manner not inconsistent with the Ohio Public Employees Bargaining Statute. The bargaining unit consists of all Communications Coordinators "Dispatchers . . ." (currently twelve (12)) working for the Public Employer's Police Department (See Article 1, Preamble). The Dispatchers continue to work

under a collective bargaining agreement (CBA or the Agreement) that expired on December 31, 2003. Hereafter, either the OPBA or the City may be referred to as a Party and together, as the Parties.

The Parties negotiated for a period of months. They were able to resolve a number of issues. However they reached impasse on four (4) issues. They elected to request a Fact-Finder under procedures of division (C)(2) to (C)(6) of Section 4117.14 of the Ohio Revised Code. The undersigned was appointed as the Fact-Finder on December 1, 2003.

Throughout the period of Fact Finding, the City's Principal Representative was Gary C. Cicero, Director of Human Resources and the Principal Representation of the OPBA was Mark J. Volcheck, Esquire, an OPBA Special Counselor. Pre-Hearing Statements were submitted to the Fact-Finder (and exchanged between the Parties in a manner deemed consistent with Ohio Administrative Rules 4117-9-05(F)). These Statements identified the contractual issues in dispute.

The period of Fact-Finding was extended by the Parties with apparent notice to the Bureau of Mediation pursuant to Ohio Administrative Code Rule 4117-9-05(G). The extension was not meant to establish, and did not establish, a Mutually Agreed-upon Dispute (MAD) settlement procedure arising under Ohio Administrative Code Rule 4117-9-03; but rather the extension was agreed to to allow the Parties the greatest latitude in bargaining while being cognizant of the date when the Recommendations of the Fact-Finder would have to be considered; and to provide sufficient time, if necessary, to invoke Conciliation, if necessary.

The Fact Finding hearing was to take place beginning at 10:00 a.m., November 3, 2004, but did not start later because the Parties were in the process of resolving two (2) of the remaining four (4) issues in dispute, both language issues. Their agreement was introduced on the

record and confirmed by letter (after the Fact Finding Hearing was declared closed). The Parties also agreed that a number of issues that had been tentatively agreed to were to be incorporated into the successor agreement (See OPBA Pre-Hearing Statement at 3 citing Exhibit B). There was no objection by the City.

At the Hearing Mr. Volcheck as was assisted by Sandy Frazeskof and Lynda Briach, members of the bargaining unit while Mr. Cicero was assisted by Brian Massucci, Personnel Supervisor and Thomas Gaffney, Tax Administrator.

Prior to the commencement of the Hearing, the Fact-Finder asked the Advocates to review with him their positions and evidence in the light of the statutory criteria, reminding each of them that what might pass as excellent negotiating strategy might not meet the statutory criteria. Furthermore, he reminded the Parties that the proposer of the modification or addition to the Agreement had the initial burden of persuasion and, and only if, the Fact Finder was persuaded by one of the Parties, would there be a recommendation to modify or add to the Agreement.

After a brief discussion, the Parties agreed that the following two (2) issues were the only remaining issues in dispute:

- 1) Term (Duration) of Agreement
- 2) Pay Provisions (Article 24, Pay Rates).

The Hearing was conducted with a full and complete opportunity for each Party to present its relevant evidence and make its argument on the open items as well as to question the other Party's presentation. The Hearing was held via conference call. During the initial state of the Hearing, the Fact Finder attempted to assist the Parties in further narrowing their differences and encouraging them to resolve the remaining open items. While the Parties were willing to look at alternatives, they were unable to resolve the open items.

The argument of the Union can be summarized by saying that it believes that it has demonstrated that the members of the bargaining unit should receive "moderate and reasonable" increases in pay to match the comparable communities. Perhaps even more importantly, the increases should recognize the pattern (even if the bargaining unit would be at the "low" end of such a pattern) and to achieve "internal parity."

The Association argued that there is no evidence that the City cannot afford its proposed increases, although it was informed that the City believes that even with a "renewal" city personal income tax and net profits tax increase, it will still fall short of the projected income side of the budget.

The argument of the City can be summarized by saying it's offer is both fair and reasonable considering it has provided a substantial pension pick up which this bargaining unit has enjoyed since 1992 and that the level of wages and benefits offered are comparable to other Cities used for comparison purposes and to the percentage increases of comparable bargaining units in the area.

However, the City argued that the recent renewal tax increase did not improve tax revenues (and it did not expect it would), it was projecting about a \$1,000,000 shortfall (plus/minus \$200,000) in this tax area in each of the next three (3) years. It argued that this shortfall would not be offset even if the tax collections improved because two (2) large employers and many jobs (and citizens) have left the Mahoning Valley and the City of Warren.

After carefully considering the testimony and supporting documentation that the Parties offered, those factors set forth at Section 4117-9-05 (K) (1)-(6) and the Pre-Hearing Statements and arguments made by the Parties' Advocates, and the post hearing letter agreement, setting for that the Fact-Finder should consider only the issues set forth above and

tentative agreements concerning non-pay modifications to Article 24 as well as Article 42 were to included in the agreement. Changes to these two articles are attached to the Fact Finder's Report.

After receipt of the letter agreement on November 8, 2004, the Fact Finder declared the Hearing and Record closed. The Fact-Finder makes the following Findings and Recommendations on the two issues remaining.

#### FINDINGS OF FACT and RECOMMENDATIONS

##### (1) Term (Duration) of Agreement

Findings of Fact: There was no disagreement as to duration. Each Party presented three (3) year proposals, each proposal commencing January 1, 2004 and each proposal ending December 31, 2006. In other words, their proposals were for calendar years 2004, 2005, and 2006.

Recommendation: While there was no agreement on duration, there was no disagreement either. My recommendation is for Three (3) Years, commencing at 12:00:01 a.m. on January 1, 2004, and ending at at 11:59:59 p.m. December 31, 2006. Furthermore, the provisions of the agreement shall remain in effect until terminated as hereinafter expressly provided.

##### (2) Pay Rates (Article 24, Section 1 (hourly pay rate)

Position of the OPBA: Pay increases of 4.0% each year, for 2004, 2005 and 2006.

Position of the City: Pay increases of 3.5% for 2004, 3.5% for 2005 and 2.0% for 2006.

Discussion: The Parties agree that the difference between proposed pay rates over three (3) years would amount to \$22,410 (The difference between the OBPA's proposed costs of \$150,455 and the City's proposed costs of \$128,045).

However, there is a theoretical difference between the Parties' proposals even though both speak in terms of parity, etc. This difference relates to the City's pension pick up for this bargaining unit in 1992 (see Article 25); the City argues other bargaining units have had pension pick ups substantially later. The pension pick ups result in increased yearly costs to the City and yearly increased cash availability for the members of this bargaining unit.

The Conciliation Award for the Blue Unit provides "effective" wage increases of 3.5%, 6.5% and 6.5% for years 2004, 2005 and 2006, respectively. Wage increases are 3.5% each year but a 3% pension pick up in 2005 and another 3% in 2006. The Fact Finder's report for the Gold Unit provides pay increases of 3.5% each year, for three years (2004-2006).

The OBPA argues that there is no evidence that the City cannot fund the increases demanded by the OPBA for the Dispatchers, especially since the City passed a tax levy, one-half of which is earmarked for the safety forces (the tax levy is for years 2004-2007 and continued a similar tax levy which had been in effect).

There is a further disparity in comparables. The City cites both fewer municipalities as comparables and more City of Warren administrative categories to advance its argument. OPBA cites more municipalities (and more that have been used in the past) and argues that (1) the City Wage Comparables include a "0.00%" for Lakewood (which skews the average reached downward and improperly) and (2) the pay percentage increases for the Mayor and Department Heads over weight their percentage increases and when added into the average, lower the internal comparables improperly (bargaining unit verses non-bargaining unit salaries).

Over the past several years inflation has been mild. Many economists now predict somewhat higher inflation over the next few years.

While there was little testimony on this arcane subject, it is one which the Fact Finder must consider.

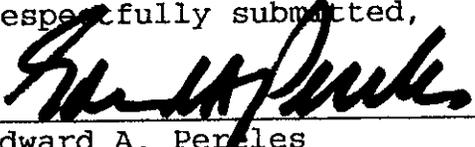
Findings of Fact: The Fact Finder acknowledges the City's position that this bargaining unit received a pension pick up in 1992 and has benefited from that time to this, and will continue to benefit into the future as do other bargaining unit. However, the City's third year proposal (for 2006) simply does not measure up to the statutory considerations as set forth above, especially in the light of the conciliators' Awards for the Blue and Gold units. On the other hand, the bargaining unit must recognize that enjoying the pension pick up twelve (12) years ago does allow the Fact Finder to either bury the 1992 pension pick up nor actual current wages.

Thus, while each proposal has merit, each is less than complete. Nevertheless, each Party has made important contributions to the Fact Finder's analysis

Recommendation: Pay increases of 3.5% for each year, 2004, 2005 and 2006.

Additional Recommendation: In addition to those items which are attached, the items tentatively agreed to during negotiation prior to the date of the fact finding hearing, referred to above, shall be incorporated into the agreement by reference.

Respectfully submitted,

  
\_\_\_\_\_  
Edward A. Perles  
Fact-Finder

Issued: November 17, 2004, sent by Overnight Courier to the Parties and by Priority Mail to SERB

CERTIFICATE OF SERVICE

Originals of this Fact Finding Report were served upon Mark J. Volcheck, Esquire, Special Counselor and Principal Representative of the Ohio Patrolmen's Benevolent Association, at 10147 Royalton Road, Suite J, North Royalton, OH 44133 and Gary C. Cicero, Director of Human Resources and Principal Representative for the City of Warren, at 391 Mahoning Avenue, N.W., Warren Ohio, by overnight courier and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, OH 43215-4213, by priority mail, this 17th day of November, 2004.



FACT-FINDING

ARTICLE 24 - PAY RATES

Section 1: The following hourly pay rate will be in effect as so indicated:

<u>Classification</u>	Prevail. Rate/Hr. <u>01/01/04</u>	Prevail. Rate/Hr. <u>01/01/05</u>	Prevail. Rate/Hr. <u>01/01/06</u>
Communication Coordinator Supervisor			
Communication Coordinator			
Communication Coordinator (TAC)			
<b>Communication Coordinator (Assistant TAC)</b>			

TO FACT-FINDING

The supervisor position when vacant, shall be given to the most qualified, senior Communication Coordinator who requests the position within five (5) days of the vacancy. **The supervisor may elect to vacate their position during the bidding of schedules to become a Communication Coordinator.**

The Communication Coordinator Leads Terminal Agency Coordinator (TAC) "Add-On" shall be given to the most qualified senior Communication Coordinator who requests the position within five (5) days of the vacancy. If qualifications are relatively equal, the TAC position will be awarded to the senior Communication Coordinator. The TAC will be paid seventy-five cents (75¢) per hour in addition to the regular rate of pay for all straight time hours. If no requests are made, the City shall mandate the assignment to any Communication Coordinator. The scheduling of the TAC shall be flexible but mainly day turn. The TAC shall not be scheduled on the regular Communication Coordinator's shift.

**An Assistant TAC shall be designated and assigned in the same manner as the TAC. The Assistant TAC will be paid forty cents (40¢) per hour in addition to the regular rate of pay for all straight time hours. The Assistant TAC shall assist the TAC in all daily TAC duties.**

Agreed to by the Union: Mueller  
 City: [Signature]  
 Date: 11/3/2004

## ARTICLE 42

### DRUG AND ALCOHOL TESTING

#### **I. PURPOSE:**

To develop a clear policy and procedure for a safe, secure and healthful work environment for all bargaining unit members in shaping the alcohol and drug policy to assure a DRUG FREE WORKPLACE, and

To address the issue of the trend and perception of increased substance abuse by City employees, and

To assure that the policy is (1) formulated in accordance with workplace needs, (2) implemented in conjunction with the Ohio Bureau of Workers' Compensation Drug-Free Workplace Program and the OPBA Contract, and (3) employs systematic, reliable, and confidential methods.

#### **II. POLICY:**

The following provisions are being established to ensure and maintain that the bargaining unit members remain free from drug and alcohol abuse:

- A. Provide for periodic random drug screening and alcohol testing for bargaining unit members.
- B. Provide for the Director of Public Service and Safety or his/her designee to order a drug screen and/or alcohol breathalyzer tests immediately when there is reasonable suspicion that an employee has been using unauthorized drugs or alcohol. Reasonable suspicion shall include any on the job injury requiring medical treatment.
- C. Chemical or mechanical testing may be administered to any bargaining unit member to determine their fitness for duty, or when there is reasonable suspicion to believe the employee may be unfit for duty.
- D. The procedure shall mirror that required by the Ohio Bureau of Workers' Compensation Drug-Free Workplace Program.

### III. DEFINITIONS:

The following definitions apply to this established program:

- A. ALCOHOL BREATHALYZER TEST – A breath test used to measure blood alcohol level in accordance with Ohio Revised Code § 4511.19.
- B. COMPUTERIZED RANDOM SELECTION – refers to an uncontrolled system of selection resulting from a computerized program.
- C. DRUG SCREENING TESTS (Forensic Urine Drug Screen – 4) – A urinalysis test administered under approved conditions and procedures to detect any of the following: Amphetamines\Methamphetamines, Barbiturates (Phenobarbital, Secobarbital, Bupalbital), Benzodiazepines (Valium, Serax, Librium), cannabinoids (Marihuana), Cocaine Metabolites (Benzoylcegonine, Ecgonine), Methadone (Dolophine), Opiates (Morphine, Codeine, Hydrocodone), Phencyclidine (PCP), Propoxyphene (Darvon).
- D. EMPLOYEE(S) – (All) bargaining unit members.
- E. POSITIVE TEST –When (1) a drug screening test indicates the presence of a controlled substance identified in C, (2) a alcohol breathalyzer test indicates a blood alcohol level of .08 or greater, (3) an employee refuses to submit to a drug and alcohol test, (4) an employee engages in any conduct that clearly obstructs the testing process or (5) an employee adulterates the urine sample.
- F. RANDOM – As prescribed by law, refers to all employees being exposed to the same “lottery” system of selection with no criteria being used for such process.
- G. REASONABLE SUSPICION - An apparent state of facts, circumstances or information, which exists from an inquiry by a supervisor trained in the detection of alcohol and drug use, which would induce a reasonably intelligent and prudent person to believe the employee was under the influence of using drugs and/or alcohol. Reasonable suspicion shall include any on the job injury requiring medical treatment.
- H. REFUSAL TO SUBMIT (TO AN ALCOHOL OR CONTROLLED SUBSTANCES TEST) – An employee 1) fails to provide adequate breath for testing without a valid medical explanation after an employee has received notice of the requirement for breath testing in accordance with the provisions of this policy, 2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after an employee has received notice of the requirement for urine testing in accordance with the provisions of this policy, or 3) engages in conduct that clearly obstructs the testing process.

- I. **SUBSTANCE ABUSE PROFESSIONAL** - A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

#### **IV. PROCEDURE:**

- A. **RANDOM DRUG/ALCOHOL SCREENING** - random drug screening and alcohol testing will be conducted periodically in accordance with the following procedures:
  - 1) The employees selected for random drug screening and/or alcohol testing will be determined through a computerized random selection program which has been made available by the Data Processing Department.
  - 2) Employees selected for random drug and alcohol testing shall be tested on their first working day following the random selection.
  - 3) Employees who have been selected, will receive proper verbal and written confirmation from their supervisor. The written notification letter shall contain specific instructions for obtaining the urine specimen.
  - 4) A urine specimen will be acquired in accordance with established procedures. An accredited laboratory will conduct analysis of the urine specimen to determine the levels of any controlled substance.
  - 5) A certified provider, in accordance with established procedures, will administer the alcohol breathalyzer test.

B. DRUG SCREENING OR ALCOHOL TESTING RESULTING FROM REASONABLE SUSPICION INCLUDING POST INJURY/ACCIDENT

1. Drug Screening

- a. The Director or his/her designee shall order a drug screen immediately when there is reasonable suspicion that an employee has been using any drug or narcotic and that this use may present a risk to their safety or that of fellow employees or the public.
- b. A urine specimen will be acquired in accordance with established procedures. An accredited laboratory will conduct analysis of the urine specimen to determine the levels of any controlled substance.

2. Alcohol Breathalyzer Test:

- a. The Director or his/her designee shall order an alcohol breathalyzer test immediately when there is reasonable suspicion that any employee is under the influence of alcohol and that this use may present a risk to their safety and that of fellow employees or the public.
- b. A certified provider, in accordance with established procedures, will administer the alcohol breathalyzer test.

C. Employee Responsibility:

1. All employees shall abide by the terms of this policy.
2. All employees shall immediately notify the Chief or his/her designee if involved in any on the job injury that requires medical treatment.
3. After notifying the Chief or his/her designee, the employee will be directed to report to the appropriate site(s), as determined by the City, for a drug and alcohol test. The Chief or his/her designee will assign a designated driver to transport the employee to the appropriate testing site(s). Depending on the time of injury, an employee may be required to go to multiple sites to receive the required testing.

4. All employees shall notify the Chief or his/her designee immediately if a drug or alcohol test is not administered for any reason at any of the testing site(s).
5. All employees shall take a Injury/Accident Drug and Alcohol Test Verification Form to the testing site(s) for completion and return form to their supervisor.

**D. Supervisor's Responsibility:**

1. All supervisors shall abide by the terms of this policy.
2. All supervisors shall be aware of the proper testing sites, as determined by the City, that are available for employees to receive the mandatory drug and alcohol tests.
3. All supervisors shall immediately order an employee to report to the appropriate testing site(s) if an employee is injured and seeks medical treatment. Supervisors shall assign a designated driver to transport the employee.
4. All supervisors shall ensure that employees have a Injury/Accident Drug and Alcohol Test Verification Form to take to the testing site(s) if an employee is injured and requires medical treatment.
5. If a supervisor detects that an employee is under the influence of drugs and/or alcohol, he or she shall complete a signed written record of the observations leading to a controlled substance reasonable suspicion test within twenty-four (24) hours of the observed behavior, or before the results of the controlled substances test are released, whichever is earlier.

**V. ACTION TO BE TAKEN:**

- A. Employees who test positive for the first time to illegal drugs or alcohol shall be referred to a substance abuse professional (SAP) for evaluation. The employee must abide by the rules of the Employee Assistance Program and recommendations of the SAP.
- B. Employees who fail or refuse to cooperatively participate in the rehabilitation program are subject to immediate disciplinary action.
- C. Employees who test positive for the second time to the presence of illegal drugs or alcohol abuse are subject to immediate disciplinary action up to and including discharge.

**VI. ATTACHMENT:**

- A. Notice of Drug and Alcohol Testing Due to Injury/Accident
- B. Injury/Accident Drug and Alcohol Test Verification Form

Agreed to by the Union: Ann Valdez  
City: SC  
Date: 11/3/2004

ATTACHMENT A

TO:

Ref: **NOTICE OF DRUG AND ALCOHOL TESTING DUE TO INJURY/ACCIDENT**

Be advised,

You are required to obtain both a drug screen and alcohol breathalyzer test.

You shall immediately report to the following location(s) for the required tests as soon as possible.

**[Circle the tests for the facility(ies) utilized]**

St. Joseph Health Center-E.R.  
667 Eastland Avenue, S.E.  
(330) 841-4000  
Hours: **Open 24 Hours**  
Testing Available: **Drug Only**

Corporate Care  
1296 Tod Place, N.W.  
(330) 306-5030  
Hours: **7:00 a.m. to 11:00 p.m.**  
Testing Available: **Drug and Alcohol Testing**

Elm Road Immediate Care – Forum Health  
2630 Elm Road, Cortland, Ohio 44410  
(330) 841-3000  
Hours: **9:00 a.m. to 9:00 p.m.**  
Testing Available: **Drug and Alcohol Testing**

Trumbull Memorial Hospital-E.R.  
Forum Health  
1350 East Market Street, Warren, Ohio 44483  
(330) 841-9221  
Hours: **Open 24 Hours**  
Testing Available: **Drug Testing Only**

Warren Police Department  
141 South Street, Warren, Ohio 44483  
(330) 841-2512  
Hours: **Open 24 Hours**  
Testing Available: **Alcohol Testing Only**

Ohio State Patrol Barracks (as coordinated through  
Warren Burton Road the Warren Police Dept.)  
Southington, Ohio  
Hours: **Open 24 Hours**  
Testing Available: **Alcohol Testing Only**

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

**ATTACHMENT B  
INJURY/ACCIDENT DRUG AND ALCOHOL TEST VERIFICATION FORM**

St. Joseph Health Center-E.R.  
*Corporate Care*

Trumbull Memorial Hospital-E.R  
*Warren Police Department*

Elm Road Immediate Care – Forum Health, or Ohio State Patrol Barracks

**[Circle the facility conducting the test(s)]**

\_\_\_\_\_ is required to obtain a drug screen and/or  
NAME

breathalyzer test **[circle the test(s) that apply]** from your facility.

Please complete the following as they apply:

Drug Test sample collected <input type="checkbox"/> yes <input type="checkbox"/> no Date _____ Time _____
Sample collected by _____

Alcohol Test administered <input type="checkbox"/> yes <input type="checkbox"/> no Date _____ Time _____
Sample collected by _____

If the test could not be completed, please explain why? _____
_____
_____
_____ Signature

**\*This form is to be returned by the employee to his/her supervisor.**