

**HAND DELIVERED**

STATE EMPLOYMENT  
RELATIONS BOARD

2005 DEC 22 P 1: 53

CITY OF WAPAKONETA  
AND

CASE NO. 05-MED-08-0777 & 0778-

OHIO PATROLMEN'S  
BENEVOLENT ASSOCIATION

JERRY HETRICK  
FACT-FINDER

FACT-FINDING REPORT  
AND  
RECOMMENDATIONS

APPEARANCES

FOR THE CITY  
PATRICK HIRE, ATTORNEY  
REX KATTERHEINRICH, DIRECTOR  
FRED LORD, SR. CONSULTANT

FOR THE UNION  
MATTHEW BAKER, ATTORNEY  
REX PACK, PATROLMEN REP.  
GREG LONG, LT. REP.  
BARRY TRUESDALE, LT. CHAIR

DATED: DECEMBER 18, 2005

## **BACKGROUND**

This matter came up for hearing on December 2, 2005 before Jerry Hetrick, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted between the City of Wapakoneta and the Ohio Patrolmen's Benevolent Association. Two bargaining units, Patrol Officers (10) and Lieutenants (3), coordinated bargaining efforts.

The fact finder incorporates into the successor agreement all tentative agreements and unchanged provisions. The unresolved issues set forth in the respective briefs are as follows:

- A. Wages
- B. Longevity
- C. Shift Differential
- D. Call In/Court Time/Canine Unit
- E. Hours of Work & Overtime
- F. Officer In Charge Pay
- G. Holidays
- H. Sick Leave
- I. Injury Leave
- J. Insurance
- K. Duration
- L. Residency

## **FACT-FINDING CRITERIA**

In the determination of facts and recommendations, the fact-finder considered the applicable criteria required by the Ohio Rev. Code Section 4117.14 © (4) (e) as follows:

- (1) Past collective bargaining agreements, if any, between the parties.
- (2) 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 classifications involved.
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effects 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, 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.

## **FINDINGS OF FACT AND FINAL RECOMMENDATIONS**

### **ISSUE-WAGES**

The City does not raise ability to pay as a determining factor in the fact-finder's recommendation. It does not argue that it cannot meet the Union's wage proposal. It argues that it is out pacing the growth of revenue sources and taxpayers have twice rejected proposals to increase revenues. In its position paper, the City argues that in view of declining revenues all city employees were granted a three (3) percent wage increase for 2005. Bargaining with the Utility Workers resulted in a three-year agreement with three (3) percent wage increases in 2005, 2006 and 2007. It notes that law enforcement officers are paid "very comparable" to other local, similarly situated jurisdictions. It cites as comparables: Celina, Kenton, St. Mary's, Bryan, Van Wert, Napoleon, Wauseon, Bellevue, Delphos, Upper Sandusky and Galion. A wage proposal of two and one half (2 ½) ranks third among the city's comparables at the entry level and fourth at the top level. On that basis the City offers law enforcement officers a two and one-half (2 ½) percent wage increase effective on signing the agreement: one year after signing the agreement a second two and one half (2 ½) percent wage increase and two years after signing the agreement a two and one half (2 ½) percent wage increase for a total three year wage proposal of seven and one half (7 ½) per cent.

The Union seeks a four percent wage increase in each of three years as well as an additional fifty cents (50) per hour increase for detectives.

Usually in collective bargaining both parties look to the labor market as well as internal comparisons. The Union seeks to be paid favorably in comparison with other similarly situated police units as there are occupational factors that makes law enforcement unique, particularly in comparison with the City's non represented work force and Utility Workers. Patrol officers make life and death decisions as well as a denial of freedom that

other city employees do not make. The non-probationary lieutenant is compensated at eleven (11) percent above the top base rate of the patrol officer. The Union's comparables differs significantly from the City's. Its comparables ranks Wapakoneta lieutenants seventh of nine compared to sergeants in Auglaize and contiguous counties or seven (7) percent below the average of sergeants. Comparisons of Police Officers top wages using union comparables ranks this unit sixth out of nine units at 4.5% below the average top wage. SERB data indicates St. Mary's patrol officers will receive a 3.5% wage increase in 2005 and 3.5% wage increase in 2006. Sidney patrol officers received a 3.0% increase in 2004 and 3.0% in 2005. Ada City will receive a 3.0% wage increase in 2006-2007-2008. Celina City patrol officers received a 3.0% wage increase in 2005 and 2006 and 4.0% for 2007. Delphos City patrol officers received a 3.23% wage increase in 2005, 3.25% for 2006 and 3.25% for 2007. Greenville City patrol officers received no wage increase for 2005 and a 4.0% wage increase for 2006 and 2007. Kenton City patrol officers received a 3% wage increase in 2004 and 2005 and a 4% wage increase for 2007. Lima City received a 3.5% increase for 2005. All police units received an average of 2.99% for 2004 per SERB Annual Wage Settlement Reports.

Based on traditional factors including what the City has done with its non-represented employees and Utility Worker Union, the City offer of 2.5% is too little while the Union's proposal of 4% is too high. The appropriate resolution based on the other factors statutory criterion is that the Patrol Officers/Lieutenants contract pay an increased premium required of other City employees and the City pay for this increase with its wage increase. The fact-finder recommends Section 17.01 reflect wage increases as follows:

Effective 11-1-05 Wages will be increased by three (3) percent above November 1, 2004 Pay Scale.

Effective 11-1-06 Wages will be increased by three and twenty-five hundredth (3.25%) percent above November 1, 2005 Pay Scale.

Effective 11-1-07 Wages will be increased by three and twenty-five hundredth (3.25%) percent above November 1, 2006 Pay Scale.

**Issue-Longevity**

While the City's proposal is the deletion of the longevity provision, the employer's position statement indicates a willingness to continue the current level of longevity pay. The Union seeks to increase both the initial amount of longevity pay, \$150 to \$250, and bring the Lieutenant's additional compensation after five year's continuous service to \$50 per year of continuous service, placing the Lieutenant on the same longevity pay schedule as the Patrol Officers. At seven years of continuous service, the City's Utility Workers would receive \$210 vs \$250 for the Patrol Officer while the Lieutenants would receive \$210. Non-bargaining unit employees receive \$210 after seven years of continuous service. There is no indication that longevity pay is part of the Fire Fighter's compensation. The City ranks reasonably with comparables provided by both the employer and union. Overwhelming support for a change is lacking. The fact-finder recommends inclusion of the current longevity provisions of both labor agreements without change.

**ISSUE-SHIFT DIFFERENTIAL**

Hours of work that are typically less desirable usually carry with them a premium rate of pay for the inconvenience. Overtime hours attach themselves to the end of the employee's regular shift of work and are not part of the subsequent shift of work. Under the Union's proposal, all hours worked between 4:00 p.m. and 12:00 midnight or 12:00 midnight and 4:00 a.m. would receive the applicable shift premium. An employee regularly assigned to the first shift who works beyond his/her normal shift hours would receive shift differential as well as time and one half. An employee regularly assigned to second shift would receive the third shift premium as well as time and one half. The same shift differential would be applicable where a first shift employee reports prior to the start of his/her regular shift of work and works through his/her regular shift of work. In effect any time an employee works during the hours in which a shift differential is paid shall receive that differential. The fact-finder does not find this method of payment in any of the labor agreements provided by either party nor is it supported by SERB Benefit

Reports. Neither did the Union offer sufficient rationale to support the change. The fact-finder recommends incorporating Article 19 unchanged in the successor collective bargaining agreement.

### **ISSUE-CALL-IN**

The Union proposes to increase the minimum call in pay from one to two hours at the applicable hourly rate as well as a new provision to require a minimum of two hours at double time for a call in occurring on Thanksgiving Day, Christmas Eve or Christmas Day. A review of SERB Data indicates support for adoption of the Union's position for change:

ADA (2)	2 Hours @applicable rate
Bellefontaine City	3 Hours @ overtime rate
Celina	2 Hours @ applicable rate
Delphos City	1 Hour @ applicable rate
Greenville City	2 Hours @ overtime rate
Kenton City (2)	2 Hours @ applicable rate
Lima City (2)	4 Hours @ applicable rate
St. Marys(2)	2 Hours @ straight time rate
Sidney (2)	3 Hours @ overtime rate

Additionally, it is noted the Utility Workers not on standby duty assignments also receive a two-hour call in benefit at the applicable hourly rate. The labor agreement with the International Association of Fire Fighters provides for a minimum of two hours at time and one half.

The fact Finder recommends modification of Article 22 Section 22.1 as follows: A call in occurs when a supervisor specifically requests an employee to return to work to do unscheduled or emergency work after an employee has left work upon completion of the employee's regular work day or during the employee's regularly scheduled day off. Hours worked contiguous to an employee's regular work shift, which do not require additional travel to and from work shall not qualify as a call-in. An employee qualifying for call-in pay shall receive a minimum of **two (2) hour** of pay at the applicable hourly

rate as provided in Article 23 herein. For purposes of this Section, the call-in shall start at the time the employee is called to report to work.

The fact-finder does not recommend inclusion of the Union proposal to require double time for call-ins, which occur on three (3) holidays.

#### **ISSUE-HOURS & OVERTIME**

The City proposes to change Section 23.2 to provide for a 207(k) overtime schedule permissible under the Fair Labor Standards Act which provides that law enforcement officers are not entitled to overtime until more than 86 hours are worked in a 14 day period. The City notes the IAFF agreement provides for a full 207(k) schedule and Lieutenants have a modified 207(k) schedule to offset additional time for roll calls granted in the 2000 negotiations. The Union makes no proposal for change and has no interest in such schedule change.

Fact-Finders should be reluctant to impose contract language as their role is to supplement rather than supplant the bargaining process. The burden is on the party the present contract language has given rise to a condition that requires change and will not impose an unreasonable burden on the other party. The City simply wishes to make a change to balance the economic increase granted bargaining unit employees. It has not offered the unit a quid pro quo. The City just argues fiscal planning is important where the public has defeated two tax increase proposals. The fact-finder recommends Section 23.2 and 23.3 of the current agreement be incorporated in the successor agreement without change.

#### **ISSUE-OFFICER IN CHARGE**

The current labor agreement provides additional compensation to senior police officers that replace their regular shift lieutenant or lieutenants who function in place of the Police Chief. The replacement for the shift lieutenant receives an additional sixty (60) cents per hour, subject to certain qualifications. Replacements for the Police Chief receive an additional seventy (70) cents per hour. The Union seeks an increase for each to one dollar per hour, subject to certain qualifications. The Union sites the officer in charge compensation differential paid in St. Mary's, Bryan, and Galion.

The City recommends no change in the officer's in charge differential. In support, it is noted that fire fighters who assume higher responsibilities are compensated identically to their police department counterparts. A review of the City's proposed comparables indicates that seven jurisdictions do not provide additional compensation for assuming additional responsibilities, Bellevue, Celina, Napoleon, Upper Sandusky, Van Wert and Wauseon. The fact-finder recommends Article 24, Officer in Charge, be incorporated without change in the successor labor agreement.

### ISSUE-HOLIDAYS

The current agreement provides for seven recognized holidays. Where the employee works one of the recognized holidays, the employee may elect to receive either a floating holiday or holiday pay plus pay for all hours actually worked on the holiday. In addition to holidays, the employee may earn additional personal leave time for unused sick leave.

The Union proposes to add the employee's birthday to the number of recognized holidays, require time and one half where the employee works a recognized holiday and double time where the employee works more than eight hours. The City contends that the employee birthday was granted to Utility Workers in exchange for a guarantee that the City will incur no overtime as a result. By nature of its work, law enforcement officers are unable to provide such assurance. The Fire Fighter's Union, bargained for time and one half on two holidays if scheduled and worked by reducing the value of their overtime by 32.5%.

A review of SERB collective bargaining agreements indicates St. Marys, Celina, Bellefontaine, Delphos, Greenville, Ada, Sidney, and Lima provide time and one half where the employee works a recognized holiday. No support is found for double time after eight hours worked on a holiday. That proposal is not incorporated in the fact-finder's recommendation. A review of Holiday & Personal Days reflects that Wapakoneta is well below the number of Holidays provided external comparisons and the combination of holidays and personal days. The fact-finder recommends adding the employee's birthday as a recognized holiday in Section 25.1 The fact-finder recommends that Article 25 include payment at time and one half for all hours worked on a holiday as follows:

Section 25.2 After completion of one (1) full year of service, a new employee shall be credited with floating holidays, in lieu of payment for the holidays listed in Section 25.1 above, on the employee's first anniversary date of employment. The number of floating holidays credited shall be proportionate to the number of holidays which occurred in the previous calendar year following the employee's date of hire. Thereafter the employee shall be credited with eight floating holidays (eight (8) hours paid leave each) on January 1 of each subsequent calendar year. Any employee required to work on any of the recognized holidays after the employee's first year of employment may elect, in lieu of receiving a floating holiday, to be paid eight (8) hours holiday pay plus receive pay for all hours actually worked at one and one half time the applicable hourly rate as provided in Article 23 herein. Any employee terminating employment prior to completion of one (1) full year of service shall not be entitled to any holiday payment.

#### **ISSUE- SICK LEAVE**

Section 27.6 requires employees absent from work due to an illness or injury to remain at home or at a place administering medical attention and be able to document any absences from home. Section 27.7 requires convalescence in the county unless a patient is obtaining medical treatment in a hospital or institution outside of the county or has prior written approval of the City. The Union would modify Section 27.6 to limit the requirement to be at home to the time the employee was scheduled to work and delete Section 27.7 in its entirety. The Union argues that there is apprehension among members concerning possible discipline. Says the Union, the article literally requires seclusion for compliance and is unreasonable. The Union has shown only apprehension rather than abuse or unreasonable discipline by the City or that the City has withheld prior approval. The fact-finder recommends Section 27.6 and Section 27.7 be incorporated in the successor agreement without change.

#### **ISSUE-INJURY LEAVE**

The Union's proposal arises out of an incident in which a patrol officer was directed to seek medical attention arising out of his employment which prevented the officer from

receiving overtime compensation. The agreement provides for injury leave, provided the employee has accumulated sick leave available. On receipt of worker's compensation, the employee endorses all Workers' Compensation over to the City and the City recredits the employee's sick leave balance proportionate to the amount received for worker's compensation. The Union proposes to delete the requirement to have accumulated sick leave available as well as the requirement to recredit the employee's sick leave balance.

The employer would retain the current process that is in accordance with Ohio Administrative Code concerning Worker's Compensation and a permissive subject of bargaining. The City utilizes the identical reimbursement and recredit process with other City employees and Utility Worker/International Association of Fire Fighter bargaining units.

The purpose of Article 31 is to provide immediate access to compensation for on-the-job injuries where the employee has an accumulated sick leave balance and recredits the sick leave balance upon receipt of worker's compensation benefits. Deletion of this requirement would increase the City's worker's compensation costs. On balance, the employer's proposal to retain the current contract requirements is more reasonable than the Union proposal. The fact finder recommends Article 31 be incorporated in the successor labor agreement without change.

#### ISSUE-INSURANCE

Article 35 Insurance obligates the City to provide medical and prescription drug plans and pay the monthly premiums for bargaining unit employees up to the following maximums: currently \$150 for individual coverage and \$420 for family coverage. Any monthly premium costs, which exceed the maximums established, shall be paid equally by the Employer and employee. The Union proposes to increase the monthly premium for single coverage from \$150 to:

Individual Coverage		Family Coverage
Effective 11-1-05	\$175	\$435
Effective 11-1-06	\$195	\$455
Effective 11-1-07	\$215	\$475

The City proposes to increase the family premium contribution by ten dollars per year. The City contribution would increase to \$430 vs \$435: To \$440 vs \$455: To \$450 vs \$475 for family coverage. The City contribution would increase to \$155 vs \$175: To \$160 vs \$195: To \$165 vs \$215 for individual coverage.

Additionally the City would increase the out of pocket maximums from \$500 to \$1,000 and \$1500 to \$2000. For family coverage, in the first year of the agreement, seven employees would pay \$60 per year more under the employer's proposal than under the union's. The second year, employees would pay \$180 per year more under the employer's proposal than under the union's. The third year the employer's plan costs the employee \$300 more than under the union's proposal. For two employees, with individual coverage, the difference between the proposals is \$300 in the first year, \$420 in the second year and \$600 in the third year. The City would make its insurance proposal effective February 1, 2006.

The City argues for its proposal on the basis that all city employees have traditionally enjoyed the same health care coverage and paid the same premium costs for a ten years under a health care cost containment committee. The City notes it has reached agreement with two other bargaining units and its non-represented employees. The City believes it must have plan consistency among its employees based on its ten-year history and the fact that for ten years the process required no employee premiums.

The Union argues for its proposal based on the basis of external comparisons from its survey and SERB's Annual Cost of Health Insurance in Ohio Public Sector. Both establish Wapakoneta employees pay significantly more than the majority of public sector employees.

While the Union makes a compelling case with external comparisons, uniformity with respect to health care plans is important to both the Union and Employer. Often there is a cost advantage to small units when combined with other city employees. From the employer standpoint, it is not placed in a whipsaw position where each unit argues for a benefit improvement or premium level because another one has it. For these reasons fact-finders typically give great deference to employer proposals, particularly where other units have agreed to employee contribution levels and any increases are borne equally by the City and employees. In this case the employer proposal is strengthened by the

presence of a health care committee composed of multiple union members and the City's non-represented employees. For these reasons, the fact-finder recommends Section 35.2 provide as follows:

Individual Coverage	Family Coverage
Effective 2-1-06 \$155	\$430
Effective 11-1-06 \$160	\$440
Effective 11-1-07 \$165	\$450

### **ISSUE-DURATION OF AGREEMENT**

The current collective bargaining agreement expired October 31, 2005. Both parties propose a three-year collective bargaining agreement. The City proposes the successor agreement be effective upon signing and expire three years from the date of signing. It contends where negotiations have gone past the expiration date, agreements have been effective on signing. The Union seeks a three-year agreement retroactive to November 1, 2005.

The fact-finder notes an absence of showing that either party protracted negotiations or bargained in bad faith. If the fact-finder adopts the City proposal, the Union is penalized while the City gains an economic benefit. The fact-finder finds the Union proposal reasonable and recommends November 1, 2005 as the effective date of the successor agreement with an expiration date of October 31, 2008.

### **ISSUE-RESIDENCY**

Currently residency requirements for Lieutenants and Patrol Officers are based on a City Ordinance. That ordinance is established by drawing a line from the geographic center of town to the furthest point of corporate limits. As the City grows so will the residency opportunity for the City's law enforcement officers. The Union would provide for a new provision, which would allow law enforcement officers to reside within the County or outside with Mayoral approval. In the Fact-Finder's opinion, the City's residency requirement is reasonable and makes no recommendation for inclusion of the Union's

residency proposal in the successor labor agreement. The residency requirement is to insure a rapid response for law enforcement services to the public. There is a measure of comfort and possibly an ounce of crime prevention when law enforcement officers are residents within the City. If there is to be a change in the residency requirements, it should come through the collective bargaining process rather than fact-finding. The fact-finder's recommendation for a successor agreement does not include the Union Proposal regarding residency requirements.

Respectfully:

 Fact-Finder

Dated: December 18, 2005