STATE EMPLOYMENT RELATIONS BOARD
2006 MAR 20 A 11: 24

IN THE MATTER

OF

FACTFINDING

BETWEEN

CITY OF CIRCLEVILLE

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Date of Hearing:	February 21, 2006
Location:	City of Circleville Administrative Offices
Case No.:	05-MED-10-1112; and 1113
Date of Award:	March 17, 2006
Finding:	Each recommendation is specifically addressed below.

Union Representative:

Joseph Hegedus
OPBA
555 Metro Park Place North, Suite 100
Dublin, Ohio 43017
(614) 791-3244 Fax

City Representative:

Marc Fishel
Downes, Hurst & Fishel
400 South Fifth, #200
Columbus, Ohio 43215
(614) 221-8769 Fax

OPINION AND AWARD

Michael Paolucci
Factfinder

Administration

By telephone call of February 15, 2006, from Joe Hegedus, the attorney representing the union, the undersigned was informed of his designation to serve as Factfinder in a procedure as mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(C)(3). On February 21, 2006, a hearing went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of final arguments and the matter is now ready for factfinding recommendations.

Unresolved Issues presented

The following five (5) issues were presented for factfinding:

1. Wages;
2. Shift Differential;
3. Uniform Allowance;
4. Pension pick-up;
5. Duration (Re-opener)

* * *

Under R.C. 4117.14(E) & (G)(7), a Factfinder is required to give consideration to certain factors in choosing between the Parties' proposals, on an issue-by-issue basis. That statute reads as follows:

> (e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.
>
> * * *
>
> (G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

(a) Past collectively bargained agreements, if any, between the parties;
(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
(c) 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;
(d) The lawful authority of the public employer;
(e) The stipulations of the parties;
(f) 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.

* * *

The remaining unresolved issues are addressed giving consideration to all of the necessary statutory elements.

Factual Background

The Employer is the City of Circleville; its approximately thirty (30) Sergeants, Lieutenants, Patrol Officers, and Dispatchers are represented by the Union in two (2) separate bargaining units. Both Agreements for the two (2) different bargaining units were submitted hereunder.

The City is located about one-half (1/2) hour south of Columbus and is surrounded by a mostly rural area. It has suffered through recent financial problems due to several employers moving out of the area. Because of the financial problems, it has been able to convince its bargaining units, including these two (2) to accept zero percent (0%) wage increases in the last year (2005). Because of some good decision-making, it is able to afford a wage increase this year, but it is small and the future is of serious concern. This brief financial background is given as a way to set forth the conditions against which the recommendations made herein have been made.

Contentions of the Parties And Recommendations of the Factfinder

The following issues were presented at the hearing:

1. Wages;
2. Shift Differential;
3. Uniform Allowance;
4. Pension pick-up;
5. Duration (Re-opener)

Union Position

In calendar year 2005, both bargaining units accepted a wage freeze in recognition of the City's alleged difficult financial condition. Thus, neither bargaining unit has received a wage increase since January 1, 2004.

During that same time period, the Employee's share for the monthly premium for family plan health insurance has risen from $163.68 per month to $230.28 per month – an increase of nearly 41%. Moreover, the annual increase in the cost of health insurance of nearly $800 is the equivalent of nearly 2% of the base wage, on average, across all bargaining unit members.

A review of the available data indicates that the average public sector wage increase for calendar year 2005 was slightly in excess of three percent (3%). Consequently, bargaining unit members need at least a five percent (5%) increase simply to make up for the loss of any wage increase in 2005, coupled with the increased cost of health insurance, before even considering comparables and other statutory factors which contribute to the analysis of what constitutes a fair wage increase for the remainder of the contract.

The comparable data gathered by the Union indicates that law enforcement employees in comparable jurisdictions such as county seat cities in nearby counties have a total compensation package which is richer than Circleville's total compensation package by anywhere from 6.75% to 13.6% depending on the classification of employee. Accordingly, the Union asserts that the wage freeze in 2005; the increase in the cost of health insurance to the employee and the relatively poor position of the bargaining units in comparison to similarly situated law enforcement agencies in geographically proximate locations leads to the conclusion that the Union's wage position of 5% increases in each year is the more reasonable under all of the circumstances.

This is especially true in light of the fact that the City's current financial position is not nearly as dire as it has consistently claimed. Specifically the City's general fund cash position as of December 31, 2005 indicated that it has an unreserved, undesignated fund balance of $1,293.565.84. Additionally, at the same time the City's Safety Fund carryover exhibited a healthy balance of

$702,028.75. Either or both of those funds is available to fund a fair wage increase to the Employees here.

Lastly, with respect to the Wage Article, the Union asserts that current language should be maintained as it relates to the payment of shift differential. The change proposed by the City results in further erosion of the wage package and the potential savings to the City is *de minimis*, at best.

With respect to the topic of Pension Pick-up, the Union opposes the City's position to limit the contribution for civilian employees to 8.5%. The City has been paying 10% toward the pension of the sworn members for a number of years. For reasons of fairness alone, the City should pick up the additional one-half percent for the civilian members. This is especially true given that only six (6) employees are affected and the cost to the City would be collectively less than one thousand dollars per year.

Finally, with respect to the issue of uniforms, the City proposes to change from the funding of an account by the City in a quasi-quartermaster system to an annual dollar amount to be paid in two installments each calendar year. This change at the current dollar amounts referenced in the contract would be a detriment to the membership because a cash payment directly to the employees under these circumstances is considered taxable income. Thus, the employees would be receiving less value, unless the amount of allowance is increased to offset the tax implications.

Moreover, the employees can purchase uniforms through the current system by utilizing the City's sales tax exempt status. The loss of the use of the City's tax exempt status will further erode the value of the amount of money provided to the employees for uniform and equipment purchases. Further, by utilizing group purchasing within the current system, certain vendors offer discounts to the City for bulk purchases that may not be available to the individual employee. Finally, the costs

of uniforms and equipment and the cost of clothing purchased by the plain-clothes officers continues to rise annually.

Thus, before this Factfinder could reasonably consider a change to the current system, all of the above-factors should be addressed in a meaningful way.

City Position

The City of Circleville predicates its presentation on its current financial condition. The City has experienced significant problems concerning its revenue sources. The primary funds available for police department expenses have not seen revenue maintain pace with expenditures, due to an actual reduction in those revenues.

Beginning in 2002 and continuing in later years, the City began experiencing revenue problems due to layoffs and plant shut downs. Thomson Consumer Electronics was one of the City's largest employers. In June 2003, Thomson had 700 employees in the Circleville plant. In the latter part of 2003, Thomson began laying off 40% of this workforce. Between 1999 and 2003, Thomson employees accounted for over $700,000 of income tax per year. In 2003, this figure was $795,089 and represented 17.7% of the entire income tax revenue. The 2003 income tax was not impacted because of payouts made to the laid off employees. With the layoffs, tax revenues were reduced by more than $300,000. The local General Electric plant also reduced its workforce by 85 employees. This reduction resulted in the loss of $52,600 in 2004. Between these two companies, the City lost approximately 8.3% of its income tax revenue in 2004. The problem was exacerbated in 2004 when Thompson closed its Circleville plant. Between 1998 and 2004, there have been fifteen major layoff events in Pickaway County.

The City made efforts to reduce expenditures without impacting employees or services. Ultimately, the City had to reduce its work force through layoffs and attrition. The number of City employees has been reduced from 149 to 127. The police department is down 6 ½ employees and the City has eliminated the Parks and Recreation Department along with the operations of its pool. Despite these cuts, the City's expenditures continue to outpace revenue due primarily to expenses outside of its control such as the increase in health insurance costs.

In addition to cutting expenditures, the City has made efforts to increase revenue. The City has a 1.5% income tax. In 2005, City Council voted to reduce the 100% credit given to City residents who work in another municipality by one-half. As a result, these residents would have to pay a .75% income tax. It is anticipated that this reduction in the credit would have generated $300,000 in 2006 and between $500,000 and $600,000 per year thereafter. It should be noted that these amounts would not even replace the income tax received from the former Thomson Electronics Plant. Although these amounts would not solve the City's financial problems, it would have placed it in a better position. This legislation has not gone into effect as expected because it has been placed on the ballot as a result of a referendum petition. Therefore, the City's residents will vote on this change in November 2006. The City cannot collect on this amount until after the vote.

The City has also attempted to cut expenditures through its negotiation of wage freezes for 2005 with police and fire bargaining units. It has made efforts to increase its revenue through EMS charges and raising building inspection fees. Despite these efforts, the City has and will continue to struggle to makes ends meet and provide necessary services to the public. In fact, these circumstances have led the State to designate Circleville as a situational distressed area.

Based on these factors, the City proposes a wage freeze for 2006 along with a cap of the

City's pick-up of the employee's share of the pension contribution at the 2005 level.

With regard to uniform allowance, the City's proposal is financial and operational in nature. The City currently has a quarter master system for uniform replacement and maintenance. The current system takes a significant amount of time to administer. As a result, the City proposes an annual stipend for each employee for their uniform allowance. The employees would then be responsible for their own uniform purchases and maintenance. If this system is implemented, the City would work with employees to make sure they can use the City's tax exempt number and continue to receive discounts from various entities.

The City proposes to modify the circumstances under which shift differential is paid. The City proposes to limit payment to those employees who are assigned to second or third shift. The City does not propose changes to the amount of shift differential.

Recommendations

After giving careful consideration to each of the Parties' arguments, it is recommended that the following changes be made:

1. Wages- A 3% increase for all bargaining unit employees effective January 1, 2006
2. Shift Differential- Current language;
3. Uniform Allowance- Employer proposal;
4. Pension pick-up- No change;
5. Duration- Wage re-opener which will include the issue of pension pick-up for increases, if any, in 2007 and 2008 with an expiration of December 31, 2008.

As it pertains to the Pension Pickup issues, there were representations that outstanding issues have yet to be resolved on the method of calculating the appropriate rate. This recommendation includes a finding that the current percentage remain (8.5%) in effect for those contributing to PERS;

but that the issue with regard to the appropriateness of the method of calculating the correct rate should remain open for discussion during the re-opener. The *status quo* must not be interpreted as a waiver of the outstanding issues during either subsequent bargaining or during a subsequent Grievance.

Attached to this report is an Exhibit A showing the contract language that should be included in the new Agreement.

Remaining Unaddressed Issues

All other issues not specifically addressed are ordered to be the Tentative Agreement.

Award

The recommendations are hereby as more specifically set forth above.

March 17, 2006
Cincinnati, Ohio

Michael Paolucci

EXHIBIT A

ARTICLE XXVII UNIFORM ALLOWANCE

Employees of the rank of Patrol Officer shall be provided a uniform allowance of ~~$800~~ **$950** per calendar year effective January 1, ~~2005~~ **2006,** prorated to the nearest month of service for those who retire. Employees of the rank of Dispatcher shall be provided a uniform allowance of ~~$600~~ **$750** per calendar year effective January 1, ~~2005~~ **2006**, prorated to the nearest month of service for those who retire. The uniform allowance for the Parking Enforcement officer shall be ~~$700~~ **$850**per year. ~~Annual uniform allowance shall be available from November 15 to November 14 of each calendar year~~. **The Employer shall pay one-half of the uniform allowance on or about April 1 of each year for service in the first six months of the year. The Employer shall pay the additional one-half of the uniform allowance on or about October 1 of each year for service in the second six months of the year. These payments shall be full reimbursement for uniform replacement and maintenance.**

In addition to the above amount, employees who are permanently **assigned to the position of detective/investigator shall be entitled to an annual payment of** ~~**three hundred fifty dollars ($350)**~~ five hundred dollars ($500), payable in the same manner as uniform allowance.

27.02 Items authorized to be purchased with the allowance shall be determined by the Chief and/or Safety Director. The City may maintain uniform standards and require replacement of uniform items which shall include long underwear and socks for the use with the police officer's uniform. The Chief or his designee shall have the authority to order when uniform items are to be replaced. Officers are responsible for periodic replacement.

~~27.03 Up to Two Hundred Dollars ($200) of an employee's authorized uniform allowance may be used for cleaning uniforms if the employee desires to use it for that purpose. The Employer reserves the right to designate where uniforms will be cleaned if the uniform allowance is used for cleaning.~~

~~27.04 If at the last pay period at the end of the year, the employee is overdrawn on the uniform allowance, the City shall withhold the balance due the City from the employee's last pay of the payroll year.~~

~~27.05 In the event that the uniform allowance for the calendar year is not used entirely, up to $50.00 will be applied to the next calendar year's uniform allowance (not to be carried over for more than 1 (one) calendar year).~~

27.06 The City shall pay one half of the replacement cost for uniform items for which the department mandates a change by a specific date. Uniform items changed by the department that are phased in through wear and tear replacements shall be paid by the employees uniform allowance. The City will pay all initial issue uniform requirements.

27.07 During the calendar year in which an employee successfully completes his first anniversary date with the City, such employee shall receive in credit, one-twelfth (1/12) of the total annual uniform allowance for each full month remaining in that calendar year. Credit to such employee shall be made on the next payroll following the completion of the employee's first anniversary period and on the next date of semi-annual uniform allowance credit, if another credit date remains in that calendar year.

27.08 The City shall maintain a list of eligible vendors from which uniforms may be purchased. Additional vendors may be added to the list at the suggestion of the union with the approval of the Chief.

27.09 The City shall repair/replace all uniform and equipment items damaged or destroyed in the line of duty at the Employer's expense, in addition to the uniform allowance set forth in this Article. In the event an employee applies for reimbursement, he shall also apply for restitution through the Court when applicable.

FOR THE UNION:	FOR THE EMPLOYER:
_____	_____
_____	_____
_____	_____

Date Tentatively Agreed:_____

ARTICLE XXVIII WAGE RATES

28.01 All employees shall receive salaries and appropriate overtime work payment in accordance with the following schedule:

That the following wage rates are effective January 1, ~~2005~~ **2006**:

Across the board increase of 3%.

COMMUNICATIONS
OFFICER/JAILER

ANNUALLY	$25,105.60	$27476.80	$30,118.40	$31,699.20
HOURLY	12.07	13.21	14.48	15.24
EMERGENCY O.T.	18.11	19.82	21.72	22.86

Parking Enforcement Officer

ANNUALLY	$22,984.00	$25,001.60	$28,329.60	$29,598.40
HOURLY	11.05	12.02	13.62	14.28
EMERGENCY O.T.	16.58	18.03	20.43	21~~.35~~

28.02 Entry level pay for communications officer/jailer and Parking Enforcement Officer shall be from the date of original appointment to one year of service. Level I pay shall be from one year of service to two years of service. Level II pay shall be from two (2) years of service to three (3) years of service. Level III pay shall be from and beyond three (3) years of service.

28.03 All employees shall receive salaries and appropriate overtime work payment in accordance with the following schedule:

That the following wage rates are effective January 1, ~~2005~~ **2006**:

Across the board increase of 3%

POLICE	ENTRY	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
ANNUALLY	$28,9112.00	$32,115.20	$34,299.20	$36,608.00	$38,459.20
HOURLY	13.90	15.44	16.49	17.60	18.49
EMERGENCY OVERTIME	20.85	23.16	24.74	26.40	27.74

28.04 Entry level pay for Police Officers shall be from the date of original appointment to six month of service. Level I pay shall be from six months of service to one year of service. Level II

pay shall be from one year of service to two (2) years of service. Level III pay shall be from two (2) years of service to three (3) years of service. Level IV pay shall be from and beyond three (3) years of services.

28.05 Effective January 1, 2005, employees shall be paid a shift differential of $.15 per hour for all hours worked between 3:00 p.m. and 7:00 a.m.

FOR THE UNION:	FOR THE EMPLOYER:
_____	_____
_____	_____
_____	_____

Date Tentatively Agreed:_____

ARTICLE XXXII PENSION

32.01 The City agrees to pay the contribution paid by the employees, to the Police and Firemen's Disability and Pension Fund and for Parking Enforcement Officers and Communications/Jailers, the City agrees to pay the PERS contribution currently paid by those employees.

FOR THE UNION:	FOR THE EMPLOYER:
_____	_____
_____	_____
_____	_____

Date Tentatively Agreed:_____

ARTICLE XLI DURATION

41.01 This Agreement shall be effective at 12:01 a.m. January 1, ~~2005~~ **2006** and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December, 31, ~~2005~~ **2008**.

41.02 **On or after November 1, 2006, either party may re-open the agreement for purposes of negotiating wages and/or pension pick-up for 2007 and 2008. The re-opener may be commenced by filing a notice to negotiate with the State Employment Relations Board and shall be conducted in accordance with Chapter 4117 of the Ohio Revised Code provided that O.R.C. section 4117.14(G)(11) shall not apply.**

FOR THE UNION:	FOR THE EMPLOYER:
_____	_____
_____	_____
_____	_____

Date Tentatively Agreed:_____

ARTICLE XXVII UNIFORM ALLOWANCE

27.01 Employees of the rank of Sergeant and Lieutenant shall be provided a uniform allowance of ~~$800~~ **$950** per calendar year. effective January 1, ~~2005~~ **2006**~~,~~ prorated to the nearest month of service for those who retire. The uniform allowance for the communications supervisor shall be ~~$600~~ **$750** per year. effective January 1, ~~2005~~ **2006**. Annual uniform allowance shall be available from November 15 to November 14 of each calendar year. **The Employer shall pay one-half of the uniform allowance on or about April 1 of each year for service in the first six months of the year. The Employer shall pay the additional one-half of the uniform allowance on or about October 1 of each year for service in the second six months of the year. These payments shall be full reimbursement for uniform replacement and maintenance.**

In addition to the above amount, employees who are permanently **assigned to the position of detective/investigator shall be entitled to an annual payment of** ~~**three hundred fifty dollars**~~, five hundred ($500) payable in the same manner as uniform allowance.

27.02 Items authorized to be purchased with the allowance shall be determined by the Chief and/or Safety Director. The City may maintain uniform standards and require replacement of uniform items which shall include long underwear and socks for the use with the police officer's uniform. The Chief or his designee shall have the authority to order when uniform items are to be replaced. Officers are responsible for periodic replacement.

~~27.03 Up to Two Hundred Dollars ($200) of an employee's authorized uniform allowance may be used for cleaning uniforms if the employee desires to use it for that purpose. The Employer reserves the right to designate where uniforms will be cleaned if the uniform allowance is used for cleaning.~~

~~27.04 If at the last pay period at the end of the year, the employee is overdrawn on the uniform allowance, the City shall withhold the balance due the City from the employee's last pay of the payroll year.~~

~~27.05 In the event that the uniform allowance for the calendar year is not used entirely, up to $50.00 will be applied to the next calendar year's uniform allowance (not to be carried over for more than 1 (one) calendar year).~~

27.06 The City shall pay one half of the replacement cost for uniform items for which the department mandates a change by a specific date. Uniform items changed by the department that are phased in through wear and tear replacements shall be paid by the employees uniform allowance. The City will pay all initial issue uniform requirements.

27.07 During the calendar year in which an employee successfully completes his first anniversary date with the City, such employee shall receive in credit, one-twelfth (1/12) of the total annual uniform allowance for each full month remaining in that calendar year. Credit to such

employee shall be made on the next payroll following the completion of the employee's first anniversary period and on the next date of semi-annual uniform allowance credit, if another credit date remains in that calendar year.

27.08 The City shall maintain a list of eligible vendors from which uniforms may be purchased. Additional vendors may be added to the list at the suggestion of the union with the approval of the Chief.

27.09 The City shall repair/replace all uniform and equipment items damaged or destroyed in the line of duty at the Employer's expense, in addition to the uniform allowance set forth in this Article. In the event an employee applies for reimbursement, he shall also apply for restitution through the Court when applicable.

FOR THE UNION:	FOR THE EMPLOYER:
_____	_____
_____	_____
_____	_____

Date Tentatively Agreed:_____

ARTICLE XXVIII WAGE RATES

28.01 All employees shall receive salaries and appropriate overtime work payment in accordance with the following schedule:

That the following wage rates are effective January 1, ~~2005~~ **2006**:

Across the board increase of 3%.

SERGEANT	LEVEL I	LEVEL II
ANNUALLY	41,255.60	42,723.20
HOURLY	19.82	20.54
EMERGENCY O.T.	30.35	30.81
LIEUTENANT		
ANNUALLY	43,534.40	47,403.20
HOURLY	20.93	22.79
EMERGENCY O.T.	31.40	34.19

28.02 Level I pay for Sergeants and Lieutenants shall be from the date of original appointment to one year of service. Level II pay shall be from and beyond one year of service.

The Communications Supervisor shall be paid as follows:

Across the board increase of 3%.

	Hourly	Annual	Overtime
January 1, ~~2005~~ **2006**	$16.92	$35,152.00	$25.38

Effective January 1, 2005, employees shall be paid a shift differential of $.15 per hour for all hours worked during shifts that commence between 3:00 p.m. and 7:00 a.m.

FOR THE UNION: FOR THE EMPLOYER:

_____ _____

_____ _____

_____ _____

Date Tentatively Agreed:_____