STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS

REPORT & RECOMMENDATION OF THE FACTFINDER

AS ISSUED

GREGORY JAMES VAN PELT

November 4, 2006

IN THE MATTER OF:

Warren Township *(Employer)*	)	
-and-	)	
Ohio Patrolmen's Benevolent Association *(Union)*	)	SERB Case No.: 05-MED-11-1356/57

STATE EMPLOYMENT RELATIONS BOARD
2006 NOV -6 P 1:33

APPEARANCES:

On Behalf of the Employer:

John N. Barkan, Jr.	Labor Relations Consultant
Cheryl Zaben	Trustee

On Behalf of the Union:

Jeff Perry	OPBA Bargaining Agent
Edward Airhart	Bargaining Committee - Investigator
Edward Anthony	Bargaining Committee - Sergeant

Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until December 31, 2005. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Factfinder attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on July 11, 2006 at the Warren Township Administration Building in Leavittsburg, Ohio. Mediation resulted in the withdrawal or settlement of a number of proposals at impasse between the Parties, but failed to resolve the remaining issues below. Accordingly, an evidentiary hearing was held on September 29, 2006, in Leavittsburg, Ohio, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 19 – Vacations**
2. **Article 20 – Sick Leave**
3. **Article 25 - Compensation**

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

4117-9-05(K)(1)	Past Collectively bargained agreements, if any, between the parties;
4117-9-05(K)(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 classification involved;
4117-9-05(K)(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;
4117-9-05(K)(4)	The lawful authority of the public employer;
4117-9-05(K)(5)	Any stipulations of the parties;
4117-9-05(K)(6)	Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND DISCUSSION OF STATUTORY CONSIDERATIONS

Located in Trumbull County, and bordering the City of Warren, the Employer in these proceedings, Warren Township, has a population of 7,817 according to the 2000 US Census. (The Township points out that this figure is somewhat inflated, due to a City of Warren corrections facility within the Township.) The bargaining units represented by the OPBA include the Township's two fulltime Sergeants in one unit, and its four Police Patrol Officers in another.

As with many jurisdictions in the Mahoning Valley, Warren Township's revenues have been subject to fluctuations resulting from the area's tenuous manufacturing base. In 2003 WCI Steel, Inc., the Township's largest employer, filed for reorganization under

Chapter 11's bankruptcy provisions. As a result of that filing, the Township suffered a reduction in revenue requiring transfer of some $140,000 from the General Fund to subsidize Police Department operations. The Trustees advanced an additional $40,000 to the Police Department in 2004. While the Trustees intended that both sums be returned to the General Fund from the Police budget, only the second $40,000 was repaid. In addition, increases in operating expenses, including, most notably, health care costs and fluctuating fuel prices have also impacted the Township's financial position.

However, the Township's general financial situation does not rise to the level of inability to pay the OPBA's proposals under the provisions of 4117-9-05(K)(3). WCI's reorganization plan was approved by the Federal Bankruptcy Court in the Spring of 2006. Moreover, a police levy was placed on the Township ballot, and overwhelmingly passed by the electorate. Notwithstanding the levy's passage, evidence indicates that the amount of this levy was based on existing Police Department operating expenses, and failed to include reasonable and predictable increases in both operating and capital expenses.

The Township's General Fund has been prudently managed and remains sound. Indeed, the Trustees have found sufficient resources to enable them to purchase various real property throughout the Township, including a former school. While the school was purchased with the possibility of a future community center in mind, no specific plans exist for that use, or the use of other properties owned by the Township.

The Parties here disagree as to appropriate peer communities with which to compare the Township's compensation and benefits, as well as the specific compensation to be the basis for comparison. The Employer presents information regarding the top hourly wage, vacation carryover and cash-out, and sick leave benefits for some thirteen neighboring communities. The Union urges the Factfinder to consider total compensation rather than hourly wage rate alone for townships within Trumbull County.

The provisions of OAC 4117-9-05(K)(2), require the Factfinder to consider "other public and private employees doing comparable work". This provision has come to mean a comparison of current proposed compensation, and other terms and conditions of employment, with those of peer communities. However, the identification of directly comparable communities, even based on SERB Benchmark data, is often problematic. In many instances, directly comparable jurisdictions simply do not exist. Rather, it would seem,

the intent of §4117-9-05(K)(2) is to urge the Factfinder to determine the range of compensation available within a labor market, and, when possible, particularly in situations such as that presented by Warren Township, to assess means and averages as more indicative of area market compensation than attempt to find several directly comparable communities.

So it is that in the present negotiations, of the communities submitted for the Factfinder's consideration, the Parties agree on eight Trumbull County jurisdictions. These include, *inter alia* cities, such as Warren with its population of almost 50,000 as well as townships such as Liberty, with more than three times the population of Warren Township. In instances in which no directly comparable peer jurisdiction is available, it is reasonable to consider wage and other compensation rates prevailing within the local labor market generally. It is within this market that employers compete to attract and retain qualified employees. Additionally, it is necessary to consider total compensation, including such items as pension pickup, uniform allowances, longevity, shift differential and other factors comprising total compensation.

Thus, examination of the evidence indicates that the average total compensation for the submitted Trumbull County police departments is somewhat more than $46,000. By contrast, Warren Township's total compensation for Patrol Officers is $40,000, or only slightly in excess of 87% of the average. The rate for Sergeants in Warren Township is even less competitive within the Trumbull County labor market: at $42,000, Township Sergeants receive only 83% of the almost $51,000 average.

An additional consideration in these negotiations is that in the next approximately six years a number of the more senior of the Department's Sergeants and Officers will retire. These impending, if not imminent, retirements influence two of the Union's proposals at impasse here, Vacation and Sick Leave accrual and cash-out. Moreover, the need to attract qualified new officers must be considered.

In consideration of the factors discussed above, the following findings of fact and recommendations are respectfully submitted.

FINDINGS AND RECOMMENDATIONS

1. Article 19 – Vacations

Union Proposal:

The OPBA proposes alteration of the language of Article 19, § 3 to allow bargaining unit members to accrue – or "bank" –a maximum of nine weeks of vacation time from year-to-year. Further, the Union proposes that member Employees be permitted to sell back or cash out any vacation time earned in each of the years prior to retirement, as a means of increasing a retiring bargaining unit member's pensionable income.

This proposal, according to the OPBA, provides a positive outcome for both Parties. The opportunity for Employees to carry over vacation time from year-to-year permits bargaining unit members to accrue vacation time in anticipation of extended needs or retirement. The arrangement also permits the Township to delay payment for accrued vacation time until it is used, a temporary financial benefit to the Township, according to the Union. Increased wage rates that may exist at the time of use would be offset by the "float", i.e., the Township's ability to use or invest the vacation pay in the interim.

Employer's Position:

The Employer opposes both of the OPBA's proposals with regard to Article 19. The Union's proposal to permit accrual, or banking, of vacation time would create an adverse economic impact by providing for vacation entitlements that increased with wage rates in each successive year, the Township argues. In the past, the Township was required to withdraw General Fund monies in order to supplement the Police Department budget. Such increasing liabilities with regard to Police vacation carryover would militate against fiscal controls and create indeterminable future concerns. Moreover, the Township asserts that the nature of police work is such that officers require time off in order to relieve the stress of their duties.

Findings & Recommendations:

Testimony at hearing indicated that bargaining unit members and other Township employees currently enjoy a *de facto* carryover of one week's vacation time from year to year. Review of comparable peer communities – including those submitted by the Township

- indicates that almost all contractually provide for carryover of from one week to an unlimited amount of unused vacation time. However, the OPBA's proposal to permit banking of nine weeks of vacation time by bargaining unit members is beyond the norm of comparable jurisdictions, and cannot be recommended. Rather, it is recommended that bargaining unit members be permitted to carry over two (2) weeks of vacation entitlement from one year to the next.

As the Union suggests, the proposal to permit selling back or cashing out earned vacation time rather than taking the time off benefits both Parties. Obviously bargaining unit members benefit from the option to receive cash rather than taking time off work. Conversely, the Township avoids the need to pay overtime or incur other expense in covering the vacationing bargaining unit members' shifts. While the Factfinder recommends that Union members' right to an annual cash-out be limited to two weeks in order to comport with comparable neighboring jurisdictions, it is difficult to believe, given the advantages to the Township, that it would desire to so limit the buy-back.

> *Section 3.* ~~*All vacation leave awarded shall be scheduled and used by the employee in the calendar year awarded. There shall be no carryover of vacation time awarded and not used. Also no unused vacation leave shall be cashed out by the employee at any time.~~ ***Employees shall be allowed to carry over vacation time from year to year with a maximum bank of two (2) weeks. Employees may cash out two (2) weeks of vacation time in the year earned, rather than taking the time off work.***

2. Article 20 – Sick Leave

Union Proposal:

The OPBA proposes changes to sick leave provisions contained in Sections 2, and 8 of Article 20.

Specifically, the Union proposes that the provision for sick leave accrual contained in §2 be amended to effectively increase the sick leave accumulation to 300 hours, and to permit bargaining unit members to sell back unused sick leave in excess of that amount at the rate of 2:1 or 50% of their regular rate of pay.

This system would save the Township money, as well, the Union argues. Looking forward to the benefits of conserving sick leave, bargaining unit members would be less likely to utilize sick time, thus saving the Employer the possible need to utilize overtime to fill positions left vacant by Employees on sick leave.

At §8, the OPBA proposes an increase in the retirement buy-back from the current ninety (90) to one hundred and twenty (120) days. The 90-day bank currently enjoyed by Township Police personnel is low, according to the Union, giving Employees little incentive to come to work.

The effect and intent of this proposal is to increase the pensionable income of bargaining unit members on retirement. Sick leave that is cashed out is declared income in the year in which it is earned. Consequently the OPBA argues that its proposal would result in an extra seven and one-half days of income averaged into a retiring Employee's pensionable base.

Employer's Position:

The Township argues that sick leave provisions constitute insurance against income lost when Employees find themselves too ill to come to work; sick leave is not, says the Employer, an entitlement which is either used or banked. Accordingly, it rejects the Union's proposal to alter the provisions of §2 or any provision for annual cash out of sick leave time, and urges retention of current contract language. Likewise, the Employer opposes increases in the annual cap.

Findings & Recommendations:

As the Township argues, sick leave is provided largely to insure employees against injury or illness, not as a specific entitlement to paid leave. Nor is there evidence that the current maximum accrual of 200 sick leave days is inadequate. Accordingly, current contract language with regard to §2 is recommended.

However, the OPBA's proposal to enhance the retirement compensation of bargaining unit members by increasing the current maximum buy-back provided in §8 from 90 days to 120 days is recommended.

> *Section 2. Current Contract language recommended.*
> * * *
> *Section 8. ". . . number of days to be paid shall not exceed ~~ninety (90)~~* ***one hundred and twenty (120)*** *days.*

3. Article 25 – Compensation

Union Proposal:

The OPBA presents a list of comparable communities, including County jurisdictions,

indicating that the compensation afforded Patrol Officers and Sergeants in the Warren Township Police Department are only at 87.3% and 83.26% of the respective average pay rates. Brookfield Township, formerly the lowest paid Police Department among peer communities in Trumbull County received increases of 4% in its last Agreement, raising its Patrol Officers of ten year's experience to approximately $130. above the compensation enjoyed by Warren Township Patrol Officers, according to Union documents. Moreover, the OPBA points out that the rank differential between Sergeants and Patrol Officers is slightly over 5%, as compared to a state average of 11%. Although not supported by comparables, as the position is unique to Warren Township, the Union argues further that Investigators have greater responsibility than Sergeants within the Department, but until the predecessor Agreement received only $.25 per hour additional for the position.

The Employer is not without means to elevate bargaining unit members to compensation levels consistent with those of comparable communities, the Union argues. The Township's General Fund has reserves in excess of $1 million, and rather than arguing that it is unable to pay increases to bargaining unit members the Employer instead maintains that it would not be fiscally responsible to do so. The Township's continuing refusal to pay the market rate for police officers could result in its inability to recruit acceptable officers in the future.

Based on these Arguments, the Union proposes that the compensation of Sergeants be increased by 4% in each of the three contract years, while that of Patrol Officers be raised 3.5% in each of the three years. The OPBA also proposes that the Investigator receive increases of 3.75% in 2006, 2007 and 2008, effective January 1st of each year.

Additionally, the Union proposes increase of the shift differential paid for all hours worked by bargaining unit members on afternoon and midnight shifts from the current twenty-five cents ($.25) to thirty-five ($.35) per hour. Finally, an OPBA proposal to require addition of the number of each bargaining unit member's accrued personal days be added to the payroll stub information required at § 5 was withdrawn in favor of discussion between the Parties.

Employer's Position:

The Employer argues that its financial position is not certain. State funds on which it has depended are likely to be reduced or eliminated. The bankruptcy of WCI, the

Township's largest Employer, also resulted in a loss of revenue. Moreover, it argues that its operating costs continue to escalate. Among these costs are fuel, health care and the need for additional capital expenditures for such items as patrol vehicles.

As a result of the reduction in revenue and the increase in operating expenses, the Township points out that it was twice required to draw from its general fund in order to subsidize police operations. Moreover, it must carefully monitor expenditures. not only in the police department, but also in its other operations, in order to avoid deficit spending. Only by such careful control of its expenditures can it maintain any carryover at all in the face of diminished revenue.

Therefore, while the Employer acknowledges that its General Fund had a balance of some $7,000 at the end of its fiscal year in June of 2006, it maintains that the Township's stable financial position is due to prudent management and fiscal responsibility. For the Factfinder to determine that its hard-won stability should result in a recommendation that the Union's wage proposals be sustained would be, in the Employers view, to punish the Board of Trustees for their prudent oversight.

The Township submits the maximum hourly wages paid Patrol Officers and Sergeants in what it maintains are thirteen peer communities in the area. The average hourly rate paid to Patrol Officers in these jurisdictions is $19.47. By contrast, Warren Township Officers receive a maximum hourly rate of $18.66, only slightly below the average, according to the Employer. Patrol Officers also receive a longevity bonus of $500 at the ten year level, increasing to $950 annually after twenty years of service. Sergeants in the Employer's comparable communities average $21.52 per hour, while the highest paid Sergeants in Warren Township receive $19.92 per hour, plus a longevity bonus as above.

Based on the above, the Employer rejects the Union's proposal for a three-tiered wage adjustment, and proposes wage increases equal to 1.5% in each of the contract's three years.

Findings & Recommendations:

There is no question that Patrol Officers and Sergeants in Warren Township receive compensation substantially below the rates paid similar workers in surrounding jurisdictions. Indeed, the Employer's own submission indicates that hourly wages of bargaining unit members are significantly below those of the communities cited, without consideration as to

other compensation.

As has been discussed in the Background above, when other compensation is considered, including, e.g., uniform allowance, shift differential, longevity and pension pick-up, Warren Township Police Officers are significantly underpaid vis-à-vis the prevailing rate for police officers in the Trumbull County labor market.

According to the SERB's Annual Wage Settlement Report, wage increases for Township employees across the state generally averaged 3.25% in 2004 and 3.22% in 2005. By unit type, average wage increases for police officers in Ohio were 2.99% in 2004; 2.98% in 2005. Among area communities submitted, average wage increases for 2006 were 3.15%. In contrast, the Employer's proposed 1.5% would not equal the cost of living increases over the future of the agreement, leaving bargaining unit members farther behind, rather than approaching market wage rates.

Not only do statutory comparability considerations warrant a recommendation of increases in compensation levels for this bargaining unit, so too does the interest of Warren Township's residents in attracting and retaining qualified officers militate for additional compensation. This is particularly relevant in a bargaining unit that can expect to see a number of its senior officers retire during the course of the next several Agreements. Consequently, wage increases bringing bargaining unit member closer to local market compensation levels will be recommended. Because the disparity between average compensation is greater in Sergeants than in Patrol Officers; and because the position of Investigator is unique to Warren Township, the OPBA' proposal for three separate wage tiers is also recommended.

As discussed in Background above, while the Township is experiencing most of the decreases in revenue combined with increases in operating expenses as are other Ohio jurisdictions, it is not, under the accepted understanding, without ability to pay the increases necessary to elevate its police officers to market averages. The Township, through prudent management, has met its operating expenses with sufficient surplus to enable it to accumulate real property without specific need or intent to develop. While prudent fiscal management is commendable, the Employer's fiscal well-being cannot be borne on the backs of its Police Department.

However, the OPBA also seeks an increase in the current shift differential of twenty-

five cents ($.25) per hour to thirty-five cents ($.35). While some increase in shift differential would seem advisable, the amount sought by the Union is unsupported by evidence that qualified officers are not available to fill afternoon and midnight shifts.

Accordingly, the following wage increases are recommended, effective January 1st of each successive contract year:

Patrol Officers:	*3.25% - 3.25% - 3.25%*
Sergeants:	*3.75% - 3.75% - 3.75%*
Investigator:	*3.5% - 3.5% - 3.5%*

*Section 3. Effective January 1, ~~2003~~ **2006** employees shall receive a "shift differential" of ~~twenty-five cents ($.25)~~ **thirty ($.30)** per hour for all hours worked on afternoon and midnight shifts.*

SUMMARY

FINDINGS AND RECOMMENDATIONS

In consideration of the factors enumerated in OAC 4117-9-05(K), *et seq;* the testimony and evidence proffered by the Parties at hearing; and the issues at impasse resolved through mediation, the Factfinder recommends the following:

1. **Article 19 – Vacations**

   Section 3. ~~*All vacation leave awarded shall be scheduled and used by the employee in the calendar year awarded. There shall be no carryover of vacation time awarded and not used. Also no unused vacation leave shall be cashed out by the employee at any time.*~~ ***Employees shall be allowed to carry over vacation time from year to year with a maximum bank of two (2) weeks. Employees may cash out two (2) weeks of vacation time in the year earned, rather than taking the time off work.***

2. **Article 20 – Sick Leave**

   Section 2. *Current Contract language recommended.*

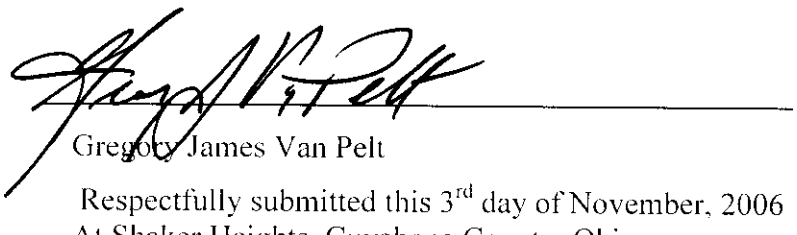
   * * *

   Section 8. *". . . number of days to be paid shall not exceed* ~~*ninety (90)*~~ ***one hundred and twenty (120)*** *days.*

3. **Article 25 – Compensation**

   Patrol Officers: *3.25% - 3.25% - 3.25%*
   Sergeants: *3.75% - 3.75% - 3.75%*
   Investigator: *3.5% - 3.5% - 3.5%*

   Section 3. *Effective January 1,* ~~*2003*~~ ***2006*** *employees shall receive a "shift differential" of* ~~*twenty five cents ($.25)*~~ ***thirty ($.30)*** *per hour for all hours worked on afternoon and midnight shifts.*



Gregory James Van Pelt

Respectfully submitted this 3rd day of November, 2006
At Shaker Heights, Cuyahoga County, Ohio