STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the matter of Fact Finding between: CITY OF HUBER HEIGHTS, OHIO, Public Employer, and FRATERNAL ORDER OF POLICE/ OHIO LABOR COUNCIL Employee Organization.	Case No. 06-MED-05-0672 Hearing: November 20, 2006 at Huber Heights, Ohio Date of Report: December 8, 2006

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg,	Appointed Fact Finder

For the City:

Pete B. Lowe,	Consultant, Clemans-Nelson & Assoc., Inc.
Robert Mauch,	Finance Director
James Borland,	Chief of Police
Robert Schemmer,	Deputy Chief of Police
James N. Bowers,	Human Resources Director
Catherine Armocida,	City Manager

For the FOP/OLC:

Thomas J. Fehr,	Staff Representative
Steve DiIullo,	Blue Unit Chairperson
Mike Noll,	Detective
Tamara Shoemaker,	Officer
Michael Reckner,	Officer
Michael Rotterman,	Officer
Mark Scranton,	Staff Representative

I. Introduction and Background.

SERB appointed the undersigned as the Fact Finder for this public employment dispute on October 17, 2006. The parties agreed that the matter would be heard on November 20, 2006, and that the Report would be issued on December 8, 2006. The parties presented testimonial evidence and submitted documentary exhibits. All issues that were unopened from the expired agreement or raised during negotiations and temporarily agreed upon between the parties are hereby adopted herein for purposes of this report, and are otherwise incorporated herein.

There are five other bargaining units representing City employees. FOP/ OLC represents all the dispatchers, records clerks and the command unit in separate units. AFSME, Ohio Council 8 represents the public works employees, and the IAFF represents fire fighters and lieutenants in the Fire Department.

This bargaining unit consists of approximately 41 full-time police officers below the rank of Sergeant. They include patrol officers, detectives and corporals. They are referred to as the "blue unit." The parties met in contract negotiations throughout August and September. A SERB mediator conducted a mediation session on September 28.

The following constitutes the unresolved issues: (1) Article 19, Compensation, (2) Article 22, Medical and Life Insurance and (3) Article 30, Duration. The sub-issues under Article 19 include Section 19.2, Call-In Pay, Section 19.3, Court Time Overtime, Section 19.5, Officer-In-Charge, Section 19.9, Shift Differential and Section 19.10, Longevity Pay. The applicable provisions of the Revised Code and SERB's guidelines were considered and followed in making the following recommendations.

II. Economic Evidence.

The parties submitted an abundance of economic evidence in support of their respective positions. The City is a vibrant community located northeast of downtown Dayton in Montgomery County. It has experienced continued growth and development due to its unique location near downtown Dayton, the regional airport and the Wright Patterson Air Force Base. It has suffered the loss of manufacturing jobs like other mid-western cities, but it still has grown in terms of small businesses, and in industrial and commercial development. In 2005, the City's total assets from governmental and business- type activities were nearly 2.5 million dollars. Its 2006 budget has nearly 10.5 million in estimated revenues and 5.5 million in estimated expenditures. Its estimated ending fund balance for 2006 is approximately 1.79 million.

The revenue was substantially enhanced with the passing of a tax levy. Voters approved a .03% public safety tax. This revenue permitted the City to increase the number of safety officers after police and fire budgets were decreased in 2004 and 2005. The funds were earmarked to increase the safety budget, and officials pledged voters that 81% of the tax revenue raised by the levy would go to police and fire divisions and 19% would go to the general fund to maintain public safety support services. The first priority was to maintain current services and mitigate the prior budget cuts, second to restore vehicles and equipment and fill vacant positions, and third to make improvements to the safety forces.

Accordingly, while the City strives to keep its expenditures in line with its revenue to balance its budget, and to maintain reasonable reserves and an ending balance, it does not assert that it is unable to pay for the economic proposals from the FOP. Notwithstanding its ability to pay, however, it must constantly attempt to maintain control of its expenditures in terms of priorities.

One of the major problems facing the City is the runaway medical insurance cost. The City experienced a 9% increase in 2005 after receiving a 6.5% reduction in its costs in 2004. But, the costs increased 22% in 2006 because of higher claims experience, and it expects its costs to increase 29% for 2007. The City has attempted to address these concerns by adopting uniform plan changes for all of its employees. The inevitable consequence of these changes results in higher deductibles and co-payments, less benefits in some cases, and higher premium contributions for employees.

The FOP objects to these reductions in plan benefits. It has negotiated hard in past years to obtain the existing levels of benefits and to maintain its level of premium contributions. It believes that the City should make up for any loss in economic benefits under the medical plans by providing the FOP members with increased benefits in other areas. The FOP is willing to join with the other employees in accepting the new health plans, but in return, it proposes that the City make up for these losses by paying higher wages, and other types of compensation. The City believes that the FOP's proposals are too costly and would soon wipe out its ending annual fund balance and ultimately produce deficits that would unfairly require budget cuts in other needed areas. The following recommendations attempt to resolve the parties' conflicting objectives.

III. Unresolved Issues.

(1) Article 19, Compensation, Section 19.1, Wages.

The FOP is proposing a 4% across the board wage increase for each year of a three-year agreement. These increases are in line with across the board raises in neighboring areas for 2005, 2006 and 2007. Beavercreek is paying 3%, 3.5% and 3.5% in each of these years. Englewood is paying 4% and 8.5% for 2005 and 2006. Kettering is paying 3% in each year for 2006, 2007 and 2008. Lebanon is paying 4%, 3.5% and 3% for 2005, 2006 and 2007. Mason is paying 4%, 4% and 3.75%. Piqua is paying 3.5% and 3.5% for 2005 and 2006. Vandalia, West Carrollton and Troy are paying 3.5% for 2006. Fairborn is at 3%, 3% and 3% for 2005, 2006 and 2007. The FOP believes that its proposal is within the range paid in these comparable communities, and that payment at the 4% range will help compensate its members for the increased expenses they must bear under the new medical and health plans.

The City believes that the FOP members must reasonably share in the increased medical insurance costs. All of the other employees are willing to address this concern and accept the new plans. The City proposes that FOP accept across the board increases that are somewhat less than those paid to other employees and in other contracts if they will not address and share in the burden of assuming increased medical costs. The City believes that its proposal of 1.5%, 2.5% and 2.5% will maintain the FOP's above average wages compared to the average wages paid in surrounding jurisdictions, and provide for an indirect contribution toward the skyrocketing medical costs facing the City. Using SERB statistics, the City presently pays officers $3,900 over the average maximum wage rate paid for officers in Region 5. The FOP members already are paid 7.6% above their counterparts in Region 5 (Dayton area).

Moreover, the City pays for certain types of compensation that are not uniformly paid by their neighbors. These include educational pay, and performance incentive pay. The City's cost for one officer at current pay with no insurance cost increase is $85, 510.30. Under the City's proposals, the cost will increase to $96, 791.00 at the end of this contract. The FOP's proposal will substantially increase this cost, even without considering the increase in medical insurance costs. The four other bargaining units have accepted the City's economic package including the new health insurance plan.

Recommendation. Effective the first pay period after August 14, 2006, the City shall pay across the board wage increases of 2% for 2006, 3.5% for 2007 and 3.5% for 2008.

(2) Article 19, Compensation, Section 19.2, Call-In Pay.

The City proposes a language change that presently provides for payment of four hours at time and one-half when an employee receives a call to report for work but the call is canceled before the employee arrives at work. The City believes that this additional pay is unnecessary and unreasonable. The FOP, however, wants to make sure that employees are reasonably compensated when they are notified of the cancellation after they leave, but before they arrive at the call-in location.

Recommendation. Section 19.2 shall read as follows:

> The City agrees to pay employees for a minimum of four (4) hours at one and one-half (1-1/2) times the employee's rate of pay if the officer is called-out for duty, as determined by a supervisor, at a time other than that for which the employee has been scheduled, thus necessitating additional travel to and from work. If the employee is notified that the call-in is cancelled before arriving at the location, the employee shall be paid for a minimum of two hours at one and one-half (1-1/2) times the employee's rate of pay.

(3) Article 19, Compensation, Section 19.3 Court Time/Overtime.

The City proposes to change existing language that presently pays employees premium pay for court time for 3 1/2 hours when they report for court immediately after the end of their regular shift and the case is settled or dismissed soon after they arrive for court. The FOP recognizes this situation and is willing to address it, but it wants to maintain fair compensation for court time that extends beyond the regular work schedule. Most police contracts contain this provision for extra pay.

Recommendation. Section 19.3 shall read as follows:

> In instances where an officer is required to work scheduled overtime, including court time, the City agrees to pay employees for a minimum of three and one-half (3 1/2) hours at one and one-half (1-1/2) times the employee's hourly rate of pay. Court time on an employee's scheduled day off shall be a minimum of four (4) hours

> at one and one-half (1-1/2) times the employee's hourly rate of pay. If the scheduled overtime, as outlined above, overlaps the officer's regularly scheduled duty time, the employee will only be eligible for overtime compensation for that time not on duty. If the scheduled overtime, as outlined above, begins one-half (1/2) hour or less after the officer's regular shift, the officer shall only be paid for the actual time worked. A Departmental vehicle will be provided for officers attending out of town training sessions. If no vehicle is available, employees will be reimbursed in accordance with the City's travel policy.

(4) <u>Article 19, Compensation, Section 19.5, Officer in Charge.</u>

The City wants to change the compensation arrangements for officers who are assigned the temporary duties of an Officer in Charge ("OIC'). The City wants the contract to permit the Chief to make OIC assignments. It is unnecessary and wasteful to provide OIC pay to an officer every time a sergeant is temporarily absent for only a few hours. The absence does not actually require an officer to perform sergeant duties for each of these short absences. An OIC should be required to work a full shift of 8 hours or more before receiving increased compensation. This change would provide that OICs would more likely perform sergeant duties that are beyond merely officer supervision. The City is not opposed to paying OIC pay when actual sergeant duties are performed requiring serious decisions. The OIC pay was $18, 000 in 2005, a substantial increase over the $12,500 amount paid in 2004.

The FOP understands and recognizes the City's concerns over this issue, but it wants to insure that fair compensation is paid for OIC duties.

Recommendation. Section 19.5 shall read as follows:

> A Police Officer who has been assigned to serve as Officer In Charge by the Chief of Police (or designee) shall receive additional one dollar twenty-five cents ($1.25) per hour, or the lowest sergeants pay, whichever is greater, for each whole or fraction of an hour, the officer is in charge.

(5) Article 19, Compensation, Section 19.9, Shift Differential.

The FOP proposes a payment of $1.00 per hour over the existing hourly rate of pay for any officer who works a shift on or after 1300 hours and ends before or at 0200 hours. An additional payment of $0.65 per hour shall be paid for officers working a shift that starts on or after 2100 hours and ends before or at 0615 hours. Shift differential payments shall be calculated into the overtime rate of pay as required by FLSA.

The City believes that a shift differential payment is unnecessary for the officers in Huber Heights. The officers for the most part select the shifts they prefer to work on based upon their personal circumstances. They may select their shifts through an established bidding process. Shift differentials are usually paid only on those departments where management assigns personnel to shifts on a mandatory basis, which is not the case in Huber Heights.

Under a TA signed in October, bidding is permitted based upon seniority, and the previous requirement of rotating shift changes has been eliminated. Most officers have received their first choice of shifts, and the remainder received their second choice. This situation contradicts the rationale for paying shift differentials, the involuntary assignment of an undesirable work shift. No other City employee is paid a shift differential. Moreover, the cost for this proposal is expensive, $1,350 to $2,000 per year, per employee.

<u>Recommendation.</u> No change.

(6) <u>Article 19, Compensation, Section 19.10, Longevity Pay.</u>

The FOP proposes longevity payments to officers under the following formula: $500 after reaching five years of service within the department, an additional $100 for each year of service thereafter up to a maximum of $2,500 for 25 years of service. Longevity payments should be paid to prevent employee turnover and to reward loyalty and faithful service.

The City believes that the proposal is too costly. Turnover has not been a problem for the City. Moreover, the existing contract rewards longevity in a number of ways. Officers are paid step increases through the pay ranges. Health insurance premium contributions favor senior employees. Long service employees receive additional vacation time. Sick leave cash out upon retirement is another form of compensating long-term employees.

<u>Recommendation.</u> No change.

(7) Article 22, Insurance Coverage.

The City proposes changes in the FOP's current plan in order to manage the 22% increase in premiums for 2006, and the expected increase of 29% for 2007. It has attempted to reduce the amount of increases by negotiating a modification of the plan coverage with all of the bargaining units. The IAFF, the FOP/OLC Records Clerks, the AFSCME unit and the FOP/OLC Dispatchers have agreed to accept alternative plans with lesser coverage and more contributions from employees. Non-represented employees have also been placed under the new plan. The City's goal is to reduce its premium increases to 15.67%. The FOP police officers are the only employees who still remain under the former plan.

Keeping the old plan in existence for the police officers would lock the City into a guarantee of providing the same level of coverage as existed in 2004 for three additional years until August 2009. The City believes that such a guarantee is unreasonable considering the environment of skyrocketing insurance costs. All employees should join in to address this financial problem.

The inclusion of the officers into the larger group for coverage purposes will assist the City in gaining lower premium rates. Administering four different plans will unreasonably increase the City's administrative costs. The City offers both an HMO and PPO to all groups, making a total of four different plans if the officers are not included under the new plans with the other employees. The insurer will not permit the City to carry more than four plans. If the officers' plan continues, the City will not be permitted to add other types of plans such as those providing health savings accounts. The projected cost for the existing officers plan includes a 29% increase for 2007; the cost increase projected for the plan including the other employees is expected to be in the 20% range. The City believes that keeping the officers under a separate plan with better coverage and lower employee costs will adversely affect employee morale and is inherently unfair to the other employees.

The City believes that the changes are insubstantial. They include: (1) An unchanged provision that requires no upfront deductible; (2) the total out-of-pocket limit for maximum co-payments remains at $1,000 single/$2,000 family for the HMO and increases to $1,500 single/$3,000 family for the new PPO; (3) no co-payments/co-insurance on inpatient and outpatient services (unchanged); (4) office visits are increased by $5.00 and inpatient facility services now have a co-payment of $250 (an increase of $150 over the old PPO and no increase over the old HMO); (5) drug co-payments increase from $8/$15/$25 to $10/$20/30, only a $2 increase if generic drugs are used and only a $4 increase for a 90-day mail order supply; (6) and a new 20% co-pay under the HMO plan for certain specialized services, a provision similar to that which already existed under the PPO plan.

The cost for the PPO family plan under the current plan will increase by $505.41 per month by 2007. The cost of the PPO family plan (B plan) for the other employees will increase by $358.35 per month for the same period. The A plan will increase by

$470.89 per month under the officers plan, while the B plan increases at $324.93 per month.

Employees hired before August 15, 1994 have paid no increases in health insurance costs since the family plan exceeded $650 per month because their cost has been capped at $15 per pay period. Under the new plan the cap would be increased to $40. The cap would be removed after two years and a 5% premium sharing arrangement would kick in.

All other employees will continue to pay 10% or 15% of the premium based upon their dates of hire. Their share of the premium will include their percentage of the cost of dental and vision insurance. New language proposes coverage equal to that provided to the other bargaining units, and coverage that is "substantially" equal to the existing coverage now provided to employees. New language is also added memorializing the health insurance committee that has been established to review and analyze plans and to make recommendations for changes.

The FOP, as stated above, is willing to agree to most of the changes. But, it wants to receive some economic consideration for giving up health insurance benefits that it has obtained through negotiations in past years. Its major objection is the proposed increase in caps to $40 for 2008 and the elimination of caps and the substitution of percentage contributions thereafter. It proposes a $30 cap for 2008 and a $30 cap for 2009.

Recommendation. The City's proposal, attached hereto as Exhibit "A" shall be accepted.

Section 23.6 shall be amended and entitled "Footwear and Miscellaneous Equipment Maintenance Allowance." It shall read as follows:

> The City will, after initial issuance, provide an allowance of $400 annually, with the second check in January, for the officers' footwear, duty bag, flashlight, and flashlight batteries, which the City will no longer purchase as a part of the provided uniform. An additional initial payment of $500 will be paid to each officer after the execution of this contract in accordance with a memorandum of understanding reached between the parties.

(8) Article 30, Duration.

Both parties agree to a three-year contract effective at the expiration of the prior contract; however, the City proposes that the wage increases not become effective until the new agreement is executed. It argues that the officers have unfairly benefited from retaining their existing health insurance coverage since the old contract expired. The FOP proposes complete retroactivity.

Recommendation. Article 30 shall read as follows:

> The provisions of this Agreement shall be effective as of August 15, 2006, and shall continue and remain in full force and effect to and including August 14, 2009, and thereafter for successive periods of one (1) year, unless either party shall at least sixty (60) days prior to August 14, 2009, (or sixty [60] days prior to any one [1] year extension) serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change, or amend this Agreement. Such notice shall be sent by certified mail.

Date of Report: December 8, 2006

Mitchell B. Goldberg, Appointed
Fact Finder

CERTIFICATE OF SERVICE

The original of this Report was served upon Edward E. Turner, Administrator, Bureau of Mediation, SERB, 65 East State St., 12th Fl, Columbus, OH 43215-4213, by U.S. mail this 8th day of December 2006. Copies of this Report were mailed to Peter Lowe, Vice President/C.O.O., Clemans, Nelson & Assoc., Inc., 417 North West St., Lima, OH 45801, representative for the City, and Thomas J. Fehr, Staff Representative, FOP/OLC, 5752 Cheviot Rd., Suite D, Cincinnati, OH 45247 on the same date.

Mitchell B. Goldberg

EXHIBIT "A"

ARTICLE 22
INSURANCE COVERAGE

Section 22.1. **Insurance Coverage.** The Employer shall provide to all bargaining unit employees health insurance, including hospitalization, surgical, major medical, ~~and~~ prescription ~~care~~ **drug, dental, and vision insurance coverage.** ~~as set forth in Appendix D*~~ ~~Dental and vision~~ Insurance **coverage** shall be ~~provided on~~ the same ~~basis as such~~ coverage **as** is provided to ~~all~~ **the other groups of Huber Heights** municipal employees.

Section 22.2. **Premium Payments.** Employees hired before August 15, 1994, shall pay five percent (5%) of the premium **allocated, including cost for vision and dental,** ~~(pursuant~~ to the **Police Division budget for health benefits coverage** ~~formula in the Employer's Personnel Manual)~~ not to exceed ~~fifteen dollars ($15.00) per pay.~~ **the following caps per pay:** ~~The City shall pay full cost of dental and vision coverage for employees hired before August 15, 1994.~~

Calendar Year 2006	=	Not to exceed $15.00 per pay.
Calendar Year 2007	=	Not to exceed $20.00 per pay.
Calendar Year 2008	=	Not to exceed $40.00 per pay.
Calendar Year 2009	=	**No cap**

Employees hired between August 15, 1994 and August 15, 2003 shall pay ~~a~~ ten percent (10%) ~~portion~~ of the premium **allocated, including cost for vision and dental,** ~~pursuant~~

INSURANCE COVERAGE (continued)

effect as of the date of this Agreement. Substantially equivalent coverage does not mean identical coverage but does mean that the carriers will be asked to provide quotes on their standard products that most closely resemble the current plan design. The City shall not be required to request custom plan design or to provide an exact match of plans.

Section 22.8. Insurance Committee. The Employer and the Union agree that the union shall designate one representative and one alternate to serve on a city-wide health insurance committee to meet and confer regarding health care coverage and cost.

The committee shall serve as an advisory committee to review and evaluate health insurance options and to make recommendations regarding coverage changes consistent with the other provisions of this article.

(Signature lines on the following page)

<u>INSURANCE COVERAGE</u> (continued)

to the **Police Division budget for health benefits coverage.** ~~formula in the Employer's Personnel Manual with a cap of one hundred forty dollars ($140.00) per month.~~

Employees hired on or after August 15, 2003, shall pay fifteen percent (15%) ~~portion~~ of the premium **allocated, including cost for vision and dental,** ~~pursuant~~ to the **Police Division budget for health benefits coverage.** ~~formula in the Employer's Personnel Manual.~~

<u>Section 22.3</u>. <u>Insurance Carriers</u>. Current Contract Language.

<u>Section 22.4</u>. <u>Life Insurance</u>. Current Contract Language.

<u>Section 22.5</u>. <u>Liability Insurance</u>. Current Contract Language.

<u>Section 22.6</u>. <u>Employee Assistance Program</u>. Current Contract Language.

<u>Section 22.7</u>. <u>Substantially Equivalent Coverage</u>. To the extent possible during the term of this Agreement, the Employer shall make available to bargaining unit employees, a level of health care benefits substantially equivalent to the plan in