

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

**FACT-FINDING PROCEEDING
06-MED-08-0832**

**Fraternal Order of Police, Oakwood Lodge 107,
Employee Organization**

and

**City of Oakwood,
Employer**

STATE EMPLOYMENT
RELATIONS BOARD
2006 NOV 21 P 12: 28

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
DANIEL N. KOSANOVICH
ISSUED: November 22, 2006**

Appearances:

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REPORT AND RECOMMENDATIONS

I. Background

The City of Oakwood is located in Montgomery County, Ohio. It has a population of 9, 200 residents and covers an area of less than three (3) square miles. It is located immediately adjacent to Dayton, Ohio.

The City employs approximately 92 employees in its various departments. The second largest department in the city is the Public Safety Department which is structured in a unique fashion. The City has predominantly residential character and years ago it was determined that given its small size, the Public Safety Department would be organized in such a fashion as to allow individuals to serve as police officers, fire fighters, and paramedics or emergency medical technicians.

The City of Oakwood is one of less than forty departments nationwide that have the same officers who perform all three (3) of these safety functions. There are 25 public safety officers in the Public Safety Department in the City of Oakwood. The bargaining unit, as defined in Section 3.02 of the present collective bargaining agreement, consists of "all full-time Public Safety Officers employed by the City." FOP Lodge 107 has been recognized as the exclusive bargaining representative for said employees since the 1960's and under the collective bargaining act was therefore grandfathered for purposes of exclusive bargaining.

All but one Public Safety Officer works a 24 hour shift on and has 48 hours off the clock in rotation of three (3) crews. Each individual of each crew works approximately 2600 hours per year. The Public Safety Officers spend eight (8) hours on patrol or performing other police duties, eight (8) hours on "in-house standby" or

sleeping, and the remaining eight (8) hours waiting on “emergency standby” for ambulance or fire calls. Nearly 95% of the Department’s activity is related to the police function.

The parties’ collective bargaining agreement was effective on October 27, 2003 and has an expiration date of October 26, 2006. In September and early October, the parties set out to negotiate a successor agreement to the 2003-2006 contract. The parties met and negotiated on September 12, 2006, September 20, 2006, September 29, 2006, and October 6, 2006.

Unfortunately, the parties were not successful in reaching agreement on all outstanding issues and moved to fact-finding. On or about October 20, 2006, the undersigned was advised that the parties had selected him to serve as the fact-finder. This was confirmed in a letter from Mr. Mullins to Mr. Edward Turner, Administrator, Bureau of Mediation, State Employment Relations Board dated October 20, 2006. Subsequently, Mr. Turner advised all concerned that I was appointed to serve as fact-finder by the State Employment Relations Board pursuant to Ohio Revised code Section 4117.14 (C) (3). The appointment letter was dated October 23, 2006. The fact-finding hearing was scheduled for November 3, 2006 at the Dayton Marriott. In accordance with Rule 4117-9-05 of the Ohio Administrative Code, both parties submitted position statements in support of their respective positions.

At the outset of the hearing, the fact-finder offered to attempt to mediate the outstanding disputes. There were ten (10) items identified as open items stemming from the negotiations. The parties worked diligently collectively to reduce the number of outstanding issues to four (4). Those issues that were settled, compromised, or withdrawn

during the mediation effort are incorporated in this Report by reference. The remaining issues are Article VI – Wages; Article VI – Shift Differential; Article XV – Hospital and Medical Insurance; and new Article – Drug and Alcohol Testing Policy. Finally, the fact-finder was granted until November 22, 2006 to issue his Report and Recommendations.

II. Criteria

In compliance with the Ohio Revised Code, Section 4117.14 (G) (7) in the Ohio Administrative Code 4117-95-05 (J), the fact-finder considered the following criteria in making the recommendations contained in this Report:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees and the bargaining units with those issues related to other public and private employers and comparable work, given consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the normal standards of public service;
4. Lawful authority of the public employer;
5. Stipulations of the parties; and,
6. Such factors not defined to those limited above which are normally and traditionally taken into consideration.

III. Findings and Recommendations

Issue 1 – Article VI – Wages

FOP's Position:

The Union proposes a 5 ½ % across the board wage increase at each premium base step from October 27, 2006 to October 26, 2007; a 5 ½ % across the board wage increase at each premium base step from October 27, 2007 to October 26, 2008; and a 5 ½ % across the board wage increase at each premium base step from October 27, 2008 to October 26, 2009, with the appropriate commensurate changes in the annual aggregate compensation and average uniform bi-weekly pay reflecting the increases across the board for each step for all three (3) years.

To quote the FOP: “The FOP is proposing a 5 ½ % across the board wage increase for each of the contract years. The average raise for the FOP for the past 25 years has been approximately 5.5% per year. FOP members still have a relatively low wage per hour worked (2600 hours per year), and other safety departments in the area perform only single safety functions, and work fewer hours. The City saves untold thousands of dollars by combining these safety functions. Moreover, since 2003, the members’ functions have increased and intensified dramatically. This is all in the context of the significant cost-of-living increase of well over 4% this year. All these factors dictate that no valid wage comparison can be made with any other safety departments. These factors have been specifically cited in past fact-finding and conciliation decision.

The City’s position is an embarrassing ‘low ball’ in view of its reserves which has been multiplied over the past ten (10) years. The building of a new 7 million dollar City Building and other purchases make it not even a fender dent in such reserves. The City

has long underestimated its receipts by hundreds of thousands of dollars. With its 'horn of plenty,' the unique and compelling nature of the skills and duties of the bargaining unit, the increase duties, the cost savings to the City with the full reversion to the 24-48 hour schedule, a past history of raises and a high cost of living, a 5 ½ % wage increase is fair by any standard used."

City's Position:

The City proposes a 3% wage increase at each step for each year of the 3-year collective bargaining agreement. It was the City's strategy in the early 90's to focus on the goal of providing one of the best wage and benefit packages in the area in order to attract the best talent. As a result, from 1990-96, the City provided its employees with wage increases which were above the norm in an effort to obtain preeminence in the area.

The City's focus shifted in the mid-1990's from the strategy of providing one of the best wage and benefit packages to maintaining preeminence without expanding the gap between City employees and other similarly situated employees in other jurisdictions. Generally, from 1996-2003, there was a decline in annual increases for City employees. These increases were, in the City's view, reflective of types of increases being negotiated or awarded in comparable jurisdictions. In fact, increases for public safety officers dropped steadily from 4.8% per year to 4.7% per year to 4.6% per year and finally to 4.0% per year between 1996 and 2002.

However, in 2003, the public safety officers wage increases spiked upward as a result of an award issued by Conciliator Frank Keenan. Conciliator Keenan awarded PSO's a 5% wage increase in 2003, 2004, and 2005. In his decision, Mr. Keenan compared the City's request for the first time health insurance contributions for PSO's to

a Union request for the first time for fair share fee provision. Then, he (Keenan) held that if the City wanted to achieve its goal, it had to pay a price – i.e. the 5% annual increase. It is the City's position that in 2003, the internal and external comparables for Oakwood had dipped well below 3.5% increases and at best, its PSO's were going to be entitled to a 4% annual increase for 2004, 2005, and 2006. In the City's view, Conciliator Keenan awarded PSOs a conditional 1% pay increase in exchange for an unprecedented contribution from the PSOs on health insurance premiums.

It is significant to note at this point that the additional 1% increase more than covered the health insurance premium contribution. In fact, the award fixed the health insurance premium contribution at \$40.50/month or \$486.00/year each year of the agreement. The top PSO realized \$626 in 2004 as the 1% wage increase. "Clearly under Conciliator Keenan's award, the City was not just buying the \$40.50/month contribution, it was buying the right to introduce the concept of premium sharing into its collective bargaining agreement with PSOs" (City's Pre-Hearing Statement, p.8).

The City also asserts that the Keenan Award has widened the gap in comparables with other jurisdictions. In addition, it has altered the trend with internal comparables by widening that gap as well. The City recommended a 3% wage increase of each year in the three (3) years of the contract. It goes a long way to stemming the tide "conversely, the Union's requested 5.5% increase is exorbitant, out of touch with the local economy, and would significantly exacerbate the current wage differentials" (City's Post-Hearing Brief, p. 10).

"As stated previously, the City is not making the argument that it is unable to pay. At present, the City can still afford to provide pay increases to its employees. That said,

the City must control wage rates so that it does not find itself in the unenviable position shared by many other Ohio jurisdictions, being financially unable to provide a fair compensation to its employees on its own accord. Simply put, in order to avoid this outcome, the error of significantly above-average wage increases must end.” (Id at p. 10).

RECOMMENDATION

One of the most significant factors to be considered by a fact-finder in making recommendations with respect to an unresolved dispute emanating from negotiating is the collective bargaining history between the parties. The FOP, Lodge 107 and the City of Oakwood have a rich bargaining history. As the record demonstrates, the FOP has represented the Safety Officers from the City since the 1960’s predating the enactment of the public bargaining statute for the State of Ohio.

According to the FOP, over the past 25 years, wage increases for the bargaining unit have averaged 5.5% per year. The City’s snapshot of the FOP’s annual wage increases from 1990 to 2006 indicates that the average wage increase was 4.69% per year. Utilizing either the FOP’s average or the City’s snapshot, the conclusion can be drawn that the Public Safety Officers have realized “healthy” average wage increases on an annual basis. Fortunately, the City has had the ability to finance these wage increases.¹

However, the analysis cannot stop there. The City’s strategic endeavor to attract and maintain PSOs who perform the three (3) major safety functions and who possess a unique set of skills must be considered.² One need only to study the chart showing annual wage increases for all employees in the early 1990’s to support this assertion. Having accomplished its task by the mid-1990’s, the City’s strategic focus shifted. From the mid-

¹ The City’s ability to pay will be discussed below.

² The same strategic endeavor was engaged in by the City to attract and maintain other employees.

1990's forward, the City attempted to balance the need to maintain quality employees with the need to contain the growth of labor costs in the form of wage increases, but still compare favorably to competing jurisdictions. Once again, examination of the annual wage increase chart shows that wages tended to be less than in preceding years for all City employees, including PSOs. In the most recent past, it has been a mixed bag for the City employees. But the PSOs have clearly realized the greatest increases. The PSO's received a 5% annual wage increase for the period from 2003, 2004 and 2005.³

In light of this bargaining history alone, it appears that the City's offer of 3% per year as a wage increase is too low to be viable. Based on this one factor, a higher annual wage increase is indicated.

The other significant factor at play here is comparing the proposed wage increases offered by the parties to those of other City employees and those of other jurisdictions who are similarly situated. When making such comparisons, it is incumbent upon the fact-finder to give careful consideration to distinguishing factors.

The PSOs are a very unique group of safety officers. As noted, they serve three(3) basic safety functions of police officer, fire-fighter, and EMT. Although the PSO's spend the vast majority of their time in the police function (estimated to be 95%), the job demands that they be accomplished in each facet of a PSO's job. There are only 40 jurisdictions in the country with such a blend of talent. None is geographically located in this state or area. Thus, it is difficult to draw on external comparisons. The City's comparison to police officers and/or fire-fighters (and EMT's) in the jurisdictions of Beavercreek, Englewood, Fairborn, Huber Heights, Kettering, Miamisburg, Moraine, Vandalia, and West Carrollton is of limited value. Police officers and fire-fighters

³ These increase resulted from a decision issued by Arbitrator Frank Keenan.

(EMT's) in those jurisdictions perform a single safety function.⁴ Although wage increases in those jurisdictions are averaging in the 3.0% - 3.5% range, the wage increase in this case must compensate the PSOs for having and maintaining the unique skill set that allows them to serve the three (3) basic functions combined.

Moreover, the comparison between the types of top paid safety officers and the top paid PSO must be accomplished by way of comparison and hourly rates as opposed to annual salary in order to get a more accurate assessment. PSOs work on three (3) crews – each crew works a 24-hours on and 48-hours off shift. This arrangement causes the PSOs to work approximately 2600 hours per year as compared a typical safety officer who would work 2080 hours per year. As a result, a PSO's actual hours worked is \$26.13 as compared to a top paid Kettering police officer who for actual hours receives \$29.95 per hour.

It is significant to note that the City of Oakwood realizes a substantial savings by having one person perform all three (3) basic safety functions. In fact, the Union asserts that the City of Oakwood saves approximately 40% of the cost that neighboring communities pay to provide police, fire, and emergency service. According to the Union's statistics, the City of Oakwood saves \$44,000 per employee when compared to an average area community. These external comparables militate for a greater increase than that proposed by the City.

The internal comparables with other City employees is extremely limited, but yield a similar conclusion. Trends can be delineated from the annual wage increase chart provided by the City. However, the PSOs have had such a strong bargaining posture in this City that they have always exceeded the wage increases given to other employees.

⁴ The fact-finder recognizes that with some jurisdictions the fire-fighter performs an EMT function.

The Employer's ability to finance and administer the proposed economic changes is a factor to be considered by the undersigned. The City concedes in its pre-hearing statement that it has the ability to pay for the proposal that was made by the Union.⁵ Given the City's acknowledgement that it can afford to pay all of the Union's demands, it is simply unnecessary to engage in a detailed discussion as to which parties' point of view as to the precise dollar surplus or reserve is most accurate. It is significant to note, however, that a 1% increase for the entire bargaining unit would equal an increase in \$17,500 in labor costs. A 5% increase in labor costs for wages for the entire bargaining unit would result in an increased labor cost of \$84,500 for the City. A three (3) year 5% increase for each of the three (3) years, the result in labor costs would just be slightly over \$250,000. The City's ability to finance and administer the Union's proposal also suggests a recommendation closer to the Union's position.

It must be noted that the Union argues the rate of inflation thus far in 2006 is 4.8%. The CPI for 2005 was 3.5%. According to the Union, this dictates in favor of an award of 5.5% increase across the board. The inflation rate and CPI are significant factors to be considered.

The undersigned would be remiss if I did not comment on the Frank Keenan arbitration award of December 30, 2003. In his decision, Arbitrator Keenan tied the wages and health care issues together. The health care issue, in that case, involved the City's effort to extract from the FOP members' insurance premium contribution for the first time in its bargaining history. Arbitrator Keenan found that the City's wage proposal of 2.75% per year too low (or insufficient) and indicated that the City would have to buy

⁵ The City submitted evidence to suggest that it has 13 million dollars in equity and pooled cash equivalents and 33 million dollars in total assets. The FOP asserts that the City Has 30 million dollars in unencumbered reserves.

the Union members' participation in health care premiums. He likened the situation to a Union attempting to attain a fair share provision. Arbitrator Keenan indicated that the "drastic" change from past pattern of bargaining needs to be introduced gradually and/or incrementally. "Thus, (reasonably assuming all on-going annual increases in healthcare insurance) the Award will in effect freeze, in terms of actual dollars and cents, as opposed to a percentage of the premium, the monthly premium contribution, the bargaining unit winds end up paying in the first year of the Agreement."

Therefore, Arbitrator Keenan awarded 5% per year in each of the three (3) years of the contract as an annual wage increase. He required the PSOs to contribute a set dollar amount in each of the three (3) years of the contract equal to the dollar amount contributed in the first year of the contract.

Based upon the evidence submitted, consideration of the factors identified in the statutes of the Administrative Code, it is recommended that the Public Safety Officers' annual wage increase shall be 5% per year for each year of the contract. Stated differently, the annual wage increase for the Public Safety Officers shall be 5% across the board at each premium base step from October 27, 2006 – October 26, 2007; 5% across the board at each premium base step from October 27, 2007 – October 26, 2008; and 5% across the board at each premium base step from October 27, 2008 – October 26, 2009 with the appropriate commensurate changes in the annual aggregate compensation and average uniform bi-weekly pay reflecting the increases across the board for each step for all three (3) years.

Issue 2 – Article VI – Shift Differential

Union Proposal:

Increase shift differential from \$.80 per hour to \$1.10 per hour. “The premium for working the undesirable the First Relief (Midnight) Shift was once \$1.00 per hour. The disruption in every employee’s lifestyle and schedule occasioned by recall dictates a movement back towards the \$1.00 per hour and more” (Union’s Pre-Hearing Brief, p. 4).

City’s Proposal:

The City is at a loss to explain the logic behind the Union’s request to increase the shift differential because the Union did not discuss this issue at the bargaining table. In addition, the shift differential was just increased from \$.60 to \$.80 as a result from a previous fact-finding decision. Had the Union wished to explore the possibility of increasing shift differential, it could have done so at the bargaining table. It did not and, accordingly, this is not the appropriate forum to grant this request. Collective bargaining is premised on bargaining, and the Union has failed to attempt such dialog. In any event, there is no reason to increase the shift differential at this time” (City’s Pre-Hearing Statement, p. 11).

RECOMMENDATION:

The Union is seeking an increase in shift differential from \$.80 per hour to \$1.10 per hour. The City argues that there is no logic behind the Union’s request because the Union did not discuss the issue at the bargaining table. I must agree with the City – failing to raise the issue at the bargaining table and not giving the collective bargaining process full play limits what the fact-finder can recommend for it. Further, at the hearing,

the Union provided no evidence that demonstrates any compelling reason to make such a recommendation.

Therefore, the undersigned recommends no change in the shift differential.

Issue 3 – Article XV – Hospital and Medical Insurance

Union's Proposal:

No change. The Union's position as captured in its pre-hearing statement is as follows. "The Union's position that the employees' payment of the monthly health insurance premium remains the same in dollar amount as it is now, consistent with a Final and Binding Award that Fact-finder/Conciliator Keenan [issued] in 2003.

Mr. Keenan recognizing in 2003 that the FOP had never been required to contribute to Health Insurance Premiums carefully and precisely ruled that the FOP would have to pay a limited amount in actual dollars and cents as opposed to a percentage of the premium.

Keenan viewed this as a 'drastic change' which had to be 'introduced gradually or incrementally.' Most significantly for this issue, Keenan assumed ongoing annual increases. This has simply not happened. The two (2) years after 2003 resulted in thousands of dollars reduction in the City's contributions. Despite this, the City has whipsawed the other Unions during negotiations in an unfortunate copycat language regarding employees' Health Insurance Premium payments into an arbitrary increase to 10% when no increase was justified. Now the FOP is being asked to swallow the same bitter pill. Not only is it not justified under past bargaining history, according to the Keenan rationale, it is not justified under any rationale. All previous fact-finders/conciliators, including the instant one, have recognized the difference between

FOP Lodge 107 and the other Unions in the terms of past bargaining history and bargaining unit functions. All of the above factors militate for no change in members insurance payments. If anything, there should be a commensurate reduction” (FOP’s Pre-Hearing Statement, p. 9-10).

City’s Proposal:

“Increase employee contribution from 4.6% to 10% and use the actual percentage sharing similar to other agreements as opposed to a fixed dollar amount. City will change monthly dental premium from 40% to 20%.”

RECOMMENDATION:

As noted above, the City seeks to increase premium contribution for Public Safety Officers from a \$40.50 per month contribution to 10% of the actual premium. The City asserts that this is consistent with what other City employees and employees in surrounding communities are doing. It is supported by the State Employment Relations Board’s 2005 Report on the Cost of Health Insurance in Ohio’s Public Sector. Moreover, the City can only expect annual increases in the neighborhood of 10%-15% in health insurance premium costs.

According to the City, the hard cap established in the Keenan Award provides very little incentive to managing healthcare insurance premium increases. As stated by the City during the course of the fact-finding hearing, employees need to have some “skin in the game.” Only if a true percentage of the actual premium is required to be paid as a contribution by the employee, will the healthcare issue be managed in a responsible fashion.

As one might expect, the Union takes a very different view. In support of its position on this issue, the Union points to the Keenan Award and notes that in 2003, the Arbitrator characterized premium contributions by the PSOs as a “drastic” change in the bargaining landscape. Additionally, the Union points out that the Arbitrator was operating on the assumption that premiums for healthcare insurance would increase in the future. Then, the Union’s focus shifts to the chart of Health Insurance Expenditures for 2003 to Sept 25, 2006 which was generated by the City. This chart shows that in 2004, the premium payment by the City was reduced from \$729,224 (2003) to \$677,136 (2004). Correspondingly, the City’s expenses (premium payment minus employee contribution) went from \$728,132 (2003) to \$643,812 (2004). The City’s premium payment rose in 2005 to \$733,359 and in 2006 through September, the premium payments were \$613,162.

The Union argues that this chart demonstrates that the City’s health insurance premium costs have not increased as assumed by Arbitrator Keenan. Therefore, there is no basis upon which to recommend any additional premium contribution payment by PSOs.

It must be noted at this juncture that the \$613,162 figure representing premium payments in 2006 must be adjusted on a pro rata basis. The City paid \$613,162 in premium payments through the end of September 2006. Projecting the premium payments out for the full year, it would suggest that the City’s premium payments would equal or be greater than in 2005. Thus, one must conclude that Arbitrator’s Keenan’s assumption that health insurance costs would increase in the future was a valid one. The City has established a general trend of increasing health insurance premiums.

Arbitrator Keenan recognized PSO's premium contribution as a "drastic" change from past patterns of bargaining. Significantly, Arbitrator Keenan indicated that such changes need to be introduced "gradually and/or incrementally." He took the first step by requiring the PSOs to contribute to the premium cost in the amount of \$40.50 per month or roughly 5% of the first year premium for healthcare. Arbitrator Keenan left to those of us who follow him the task of gradually and incrementally moving the parties along in their efforts to manage health insurance premiums effectively. This fact-finding report represents the second step in the gradual introduction in health insurance premium cost sharing for the PSOs.

Therefore, the undersigned recommends that in year one of the contract, the PSOs contribute 68.88 per month toward the cost of the health insurance premium for family coverage. (According to the City, in 2006, the family premium was \$11,021 annually. 7.5% of that annual premium equals \$826.58. Dividing \$826.58 by 12 yields a monthly amount of \$68.88.) This contribution is in the form of a hard cap, although it was calculated as a percentage of premium. Similarly, PSOs who opt for single coverage shall contribute, in dollars and cents, an amount equal to 7.5% of the annual premium for 2006. This also represents a hard cap.

Further, it is recommended that in year two of the contract, the PSOs contribute \$68.88 toward premium contributions for family coverage and in an amount equal to the first year contribution for single coverage. In year three of the contract, PSOs seeking family coverage will be responsible for paying \$91.84 in premium contributions.⁶ The

⁶ This number was arrived at by using the annualized premium payment of \$11,021, multiplying that by 10%, and then dividing by 12.

PSOs who opt for single coverage shall pay an amount equal to 10% of the 2006 annual premium in the form of a hard cap.

Issue 4 – Article ___ – Drug and Alcohol Policy

Union’s Proposal:

No change. The Union’s position with respect to the Drug and Alcohol Testing policy proposal offered by the City as captured in its pre-hearing statement is as follows.

“This kind of policy has been rejected by Fact-finders/Conciliators in the past. Nothing has happened to warrant such a policy since, which the City has acknowledged in negotiations. No Officers have had any sort of drug or alcohol problem necessitating the enactment of such a policy. Even if any sort of Policy were warranted, the Policy proposed is ambiguous, one-sided, and lacking in basic rehabilitation and due process rudiments” (FOP Pre-Hearing Statement, p. 12).

City’s Position:

Insert a drug and alcohol testing program. The City’s position on this issue as captured in its Pre-Hearing Statement is as follows. “The City proposes to insert a comprehensive Drug and Alcohol Testing Policy into the contract. Currently, the employees in the lieutenant bargaining unit are subject to a random drug and alcohol testing policy. Oakwood’s Public Safety Officers are not subject to testing. Over the course of the last decade, most jurisdictions in Ohio have implemented a Drug and Alcohol Testing Policy. Nearly all of those policies provide for both reasonable suspicion and post-accident testing and they allow jurisdictions to perform random drug testing....

Although the City does not have any reason to believe that there is a drug and alcohol problem in the bargaining unit, there are compelling interests which justify the need for a reasonable drug and alcohol testing program.

The citizens of Oakwood have a right to expect that, at all times, Public Safety Officers are both physically and mentally prepared to perform their duties. Fellow employees have the right to expect that every Safety Officer can be depended upon to perform his/her duties in a professional manner.

In this particular case, the City desires to implement testing for both reasonable suspicion and post-accident drug and alcohol testing. It is not requesting to be allowed to randomly test Public Safety Officers. In addition, testing various substances the Policy requested by the City... provides for employee and supervisor training and proves significant protection for employees with respect to the chain of custody rules, privacy standards and re-testing opportunities in the event of a positive test. In fact, the policy is nearly identical to the model distributed to the Ohio Bureau of Workers Compensation for use with the Bureau's very successful Drug-Free Workplace Program" (City's Post-Hearing Brief, p. 24-25).

RECOMMENDATION:

The City seeks to include a drug and alcohol testing program in the collective bargaining agreement. The proposed policy would subject PSOs to reasonable suspicion testing and post-accident testing. According to the City, most jurisdictions have implemented drug and alcohol testing policies. The City contends that there are compelling interests to justify the need for a reasonable drug and alcohol testing program. The City points to the citizens' right to expect PSOs to be physically and mentally

prepared to perform their duties. In addition, the City points to fellow employees being able to expect every PSO to be dependable and perform his/her duties in a professional manner.

The Union argues that there is no compelling reason to warrant the inclusion of a drug and alcohol testing program in this contract. Moreover, the Union notes that other fact-finders and conciliators have been faced with this issue and rejected the City's proposal.

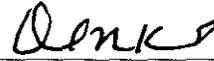
While the citizens do have the right to expect the PSOs to be physically and mentally prepared to perform their duties and fellow employees have the right to expect fellow PSOs to be dependable, there is no evidence that the bargaining unit has had a problem with drug or alcohol usage or abuse. In fact, the City concedes this point in its pre-hearing brief. Furthermore, Conciliator John Weisheit issued an award in the case of FOP Lodge 107 and the City of Oakwood, Case No. 97-MED-8-0797 on February 4, 1998 rejecting the inclusion of such a provision in the collective bargaining agreement.

Therefore, given the lack of compelling evidence to warrant the inclusion of such a program in the contract and indications that others in the past have rejected the same, I recommend that the Union's position be adopted and that the drug and alcohol testing program proposal be rejected.

IV. Certification

The fact-finding Report and Recommendations are based upon the evidence and testimony presented to me at a fact-finding hearing conducted on November 2, 2006. The Recommendations contained herein were developed in conforming to the criteria for fact-

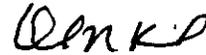
finding found in ORC 4117 (7) (a-f) and associated Administrative Rules developed by S.E.R.B.



Daniel N. Kosanovich, Esq.
Fact-Finder

V. Proof of Service

This fact-finding Report was mailed to Peter J. Rakay, Esq., Rakay & Spicer, 11 West Monument Building, Suite 307, Dayton, Ohio 45402 and Jeffrey A. Mullins, Esq., Taft, Stetinius & Hollister LLP, 110 North Main Street, Suite 900, Dayton, OH 45402-1786 on November 22, 2006. In addition, the Report was transmitted by fax on November 22, 2006 to counsel.



Daniel N. Kosanovich, Esq.
Fact-Finder