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**FACT-FINDING PROCEEDING**

**IN THE MATTER OF:**

**CITY OF ROSSFORD**

**- AND -**

**THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**

**CASE NOS.: 06-MED-09-1118 (COMMAND OFFICERS) AND  
06-MED-09-1119 (PATROL OFFICERS)**

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**FACT FINDING REPORT AND RECOMMENDATION  
FACT-FINDER: DAVID M. PINCUS  
DATE: MARCH 21, 2008**

**For the City**

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## **PROCEDURAL CASE HISTORY**

The disputed matter was formally argued on November 27, 2007 before David M. Pincus, Fact-Finder, pursuant to Ohio Revised Code Section 4117.14 and Ohio Administrative Code Section 4117-9-05. The fact-finding hearing involved the City of Rossford (hereinafter referred to as the City or Employer) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the Union) and was held at city hall.

The dispute involves two (2) bargaining units. One unit, the Patrol Unit, consists of nine (9) full-time patrol officers. The second unit, the Command Unit, consists of three (3) full-time command officers.

The parties were able to reach tentative agreements on a number of issues prior to the fact-finding hearing. In accordance with the parties' mutual request, the Fact-Finder incorporates into this Report and Recommendation, by reference, all tentative agreements and resolved issues.

Some issues remain at impasse. They include the following issues:

1. Wages
2. Meal Allowance
3. Minimum Manpower
4. Severance Payment
5. Funeral Leave
6. Uniform Allowance
7. Residency

Each remaining issue shall be dealt with in a subsequent portion of this Report.

## **FACT-FINDING GUIDELINES**

The following portion of this Report and Recommendation shall identify each issue in this dispute, review the parties' articulated arguments and conclude with the Fact-Finder's recommendations. The recommendations which follow, moreover, are based on evidence and testimony presented at the hearing, and the parties' respective position statements and submissions. The recommendations contained herein were also derived by relying on applicable criteria required by Ohio Revised Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a-f), and Ohio Administrative code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Administrative code Section 4117-9-05(K) as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and 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 adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;

- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

**ARTICLE 8, WAGES (PO UNIT)**

**ARTICLE 9, WAGES (CO UNIT)**

**The City's Position**

The City seeks a wage bargain with several components. The first component deals with wage increases consisting of:

<u>Effective Date:</u>	
1/1/07	1%
1/1/08	1%
1/1/09	1%

These percentage increases would apply to the Patrol Officer and Command Officer units. It also wishes to elongate both wage schedules with the Patrol Officer schedule elongated from three (3) to six (6) years, and the Command Officer schedule elongated from three (3) to five (5) years. By adding steps, the City hopes to reduce these wage related personnel expenses.

The City's fiscal history has been relatively dismal. In 2004, a series of drastic reduction measures were implemented. The collective bargaining agreement in effect called for a 4% wage increase, but the bargaining units aided the City by accepting a freeze on wages. The City, moreover, adopted a

\$9 per month per single family dwelling refuse collection fee. In November of 2005, city residents approved a 3.5 mill, 5-year operating levy. This event coincided with the expiration of the refuse collection fee.

As a consequence of the previously mentioned conditions, the City requested a performance audit by the Auditor of State. The assessment yielded a report which was issued on December 28, 2006. Many of the recommendations resulted in proposals tendered by the City. Several peer city police officer contracts were identified in the Report, and used as comparables. The following locations were identified as "peers": Napoleon Police Department, Upper Sandusky Police Department and Wauseon Police Department. These jurisdictions were selected as "peers" based on best practices, industry standards, and operations in cities of similar size, demographics, income tax and property valuation.

The City initiated a land development project in 1994. It began to acquire farmland around the I-75 and I-80/90 intersection. This area is known by locals as the "golden triangle" or the "Crossroads of America." Other private and public sector partnerships were established, and the non-profit Rossford Area Amphitheater Authority (RAAA) was used to begin overall development.

Matters worsened for the City in November of 1999. Construction was halted because financing could not be obtained. In 2003, the RAAA consented to foreclosure, and in April 2005, the Wood County Treasurer filed for foreclosure of liens for delinquent land taxes.

Litigation and other related tangible matters linger to this day. As of 2006, a deficit was projected and realized. At the present time, the City is not pleading an inability to pay. Economic conditions have somewhat improved but the City still has to realize fiscal control and constraint.

The Unions proposed wage increase for Patrol Officers in the first year ranges from 7.7-9.2 percent. Similar percentages are reflected in the Command Officer unit. A Command Officer with two years of service would realize a 7.3 percent increase the first year, while a Command Officer with three years of service would realize an increase of 7.2 percent.

A variety of comparables require dismissal of the Union's demands. The State Employment Relations Board (SERB) Annual Wage Settlement Report for 2006 discloses a statewide average of 3.01 percent, while the Bureau of National Affairs (BNA) survey indicates a 3 percent increase for state/local governments for 2006 and the first half of 2007.

Peer comparisons conducted by the State of Ohio Performance Audit disclose significant divergent outcomes. The Patrol Officers' entry level wage rate is 23 percent higher than the peer group entry level wage, while at the top rate the Patrol Officers' wage rate is 20 percent higher. The Command Officers' wage rates evidence an even greater percentage difference. The entry wage rate is 34 percent higher, while the top rate is 27 percent higher.

An internal comparison shows a similar disparity. The UAW recently negotiated an agreement with the City for the period 2007-2009 involving a maintenance and clerical bargaining unit. The parties negotiated a wage bargain of 2 percent for each of the three years.

### **The Union's Position**

The Union proposes a one percent equity increase (one dollar (\$1.00) per hour) followed by a 3 percent wage increase for 2007, 2008, and a 4 percent increase in 2009. It should be noted the Union wished to "bake-in" the one dollar (\$1.00) per hour equity adjustment into the 2005 wage rates, and then use these wage rates as the starting point for subsequent increases. A "me too" clause is also tendered by the Union. It would allow the bargaining units in this matter to realize a higher rate of pay if any other unionized bargaining unit receives "pay increases of a higher percentage rate."

The Cities financial condition has improved dramatically when one reviews the trends in unencumbered balances and amended balances. These trends strongly support the equity adjustment and wage rate proposals. The bargaining units, moreover, have realized considerable hardship because of prior lack of funds. They, in fact, chose to freeze their wages in 2005, and agreed to extend the Agreement one year as a way to help the city balance its budget. The 4 percent increase took effect January 1, 2006.

The comparable jurisdictions selected for review are within 15.2 miles of the City. They include the following jurisdictions: Lake Twp., Northwood, Toledo, Perrysburg Twp., Sylvania Twp., Perrysburg City, Sylvania City, Oregon and Maumee City. Other than Lake Twp., the City paid less in wages for Patrol Officers.

The Command Officers proposal referenced the following comparable jurisdictions: Lake Twp., Perrysburg Twp., Sylvania Twp., Perrysburg City and Maumee city. Again, Lake Township ranked the lowest in terms of pay followed by the City.

### **THE FACT-FINDERS RECOMMENDATION**

#### **ARTICLE 8, WAGES (PO UNIT)**

#### **ARTICLE 9, WAGES (CO UNIT)**

The Fact-Finder recommends a compromise regarding this benefit. The Employer's proposals and Union's proposals are inadequate for a number of reasons.

A discussion regarding the comparables utilized by the parties appears in order. The municipalities used by the Performance Audit as comparables and accepted by the City, are inappropriate in this instance. They fail to reflect comparable labor market conditions which are of primary importance.

This characteristic more than any other drives any legitimate comparison. Indexes used by the auditing body are more susceptible to other intervening factors which muddy any comparison attempts.

Nothing in the record supports the City's proposed wage percentage increases. The City's economic condition has improved; a partial result of the wage freeze and the Union's acquiescence. Acceptance of the Employer's position would fail to acknowledge the financial hardships realized by the membership during the volatile recent past. Also, the record fails to support the elongation of wage schedule proposals. Granted such a modification of additional steps would reduce labor costs, but this justification itself, is unpersuasive in light of this desired major adjustment. Normally a major change of this sort needs to be "purchased" with some form of economic benefit. Obviously, a one percent wage proposal fails to achieve this standard.

The Fact-Finder, moreover, does not believe the equity adjustment proposed by the Union is adequately supported. The four percent wage increase was eventually implemented which made the Union's wage package "somewhat" whole. To implement, and then incorporate, this percentage increase into the existing wage schedule would lead to an unsupported windfall.

The percentage increases proposed by the Union for the third year of the contract appears excessive without properly documented support. Finally, Union submissions identified a "me too" proposal. This proposal requires any percentage wage increases realized by other bargaining units, in excess of the wage bargain negotiated by the Union, to be immediately applied to the bargaining unit's hourly rate of pay. The record fails to identify any rationale for

this proposal. Nothing in the record provides any significant justification such as a practice in support of this proposal. Historic bargaining outcomes exposing divergent and unjustified wage bargains could have resulted in differing recommendations based on the previous analysis.

The Fact-Finder recommends that wages shall be increased three percent (3%) in 2007, three percent (3%) in 2008 and three percent (3%) in 2009. This recommendation, moreover, shall be retroactive to the ending date of the previous Agreement.

## **MEAL ALLOWANCE**

### **SECTION 9.9**

#### **The Employer's Position**

The Employer seeks to eliminate the meal allowance contained in the Agreement. Presently, employees are compensated a seven dollar and fifty cent (\$7.50) meal allowance when they have worked ten (10) continuous hours. An additional equivalent meal allowance is paid for each continuous four (4) hours after that.

The Employer views this contract language as outdated, and follows the auditor's opinion to delete this language. The majority of peer municipalities fail to provide a similar benefit.

### **The Union's Position**

The Union proposes to retain the current language. The disputed provision has been unchanged for approximately twenty (20) years. In fact, it only became an issue once the auditors recommended its' elimination from the Agreement.

## **THE FACT-FINDER'S RECOMMENDATION**

### **MEAL ALLOWANCE**

#### **SECTION 9.9**

The Fact-Finder recommends the Employer's position. The Union failed to provide a persuasive argument in support of retaining the current language. Inclusion of a provision after an extended period of acquiescence, by itself, cannot overcome a comparability defect. Neither the Employer's nor the Union's comparables evidence an equivalent benefit in other jurisdictions.

### **MINIMUM MANPOWER**

#### **SECTION 10.3**

### **The Employer's Position**

The Employer wishes to modify the current contract language dealing with minimum manpower. Present contract language defines minimum manpower as two (2) police patrol officers or one (1) police patrol officer and one (1) command officer. It should be noted that the Chief of Police is excluded from the previously stated calculation.

Again, the City wishes to modify the definition by adding those officers assigned to special duties and the Chief of Police. These individuals can readily respond to emergencies or other necessary calls, and thus, should be added to the minimum staffing calculation.

Other "peer" jurisdictions do not include any minimum staffing requirements. Selection of the Employer's proposal, within the context of this small municipality, would increase service requirements and the safety of bargaining unit members and the community.

Section 9.10 reflects special assignments based on forty (40) hour flexible work schedules. The Employer desires to retain the status quo regarding this provision. It serves the community's interest and does not unduly restrict minimum manning concerns.

### **The Union's Position**

The Union proposes several interlocked contractual changes. It wishes to retain the existing language in Section 10.3 which excludes the Chief of Police from minimum manpower calculations. It desires, however, to modify Section 9.10 by precluding officers assigned to special duties, and not part of the road patrol, from being counted as minimal manpower for purposes of scheduling.

Response times and related safety concerns were raised as justifications for the proposed changes. Those individuals performing special duty assignments were identified as potential scheduling problems if included in the

minimum manning schedules. Their response time is somewhat limited if required to respond to a road patrol incident while engaged in a special duty assignment. This condition is especially restrictive when one is performing special duties in Lucas County. Immediate availability and response time are virtually eliminated under these conditions.

Folding the Police Chief into the desired calculation further complicates matters. Section 10.1 requires the rotation of overtime opportunities among qualified full-time employees who normally perform the work. Obviously, the Police Chief is fully accredited and qualified, yet he does not normally perform this work and his inclusion could thwart overtime opportunities for bargaining unit members.

## **THE FACT-FINDER'S RECOMMENDATION**

### **MINIMUM MANPOWER**

#### **SECTIONS 10.3 AND 9.10**

The Fact-Finder is acutely aware of the Employer's prior economic condition and is sensitive to these concerns. Yet the Employer needs to be equally aware of its service responsibilities where coverage by a relatively small bargaining unit is essential for public safety purposes.

Factoring the Police Chief into the minimum staffing equation appears to the Fact-Finder as a method to erode potential overtime opportunities. And thus, the Fact-Finder recommends the current language contained in Section 10.3.

Nothing in the Agreement precludes the Police Chief from assisting bargaining unit members under any circumstance he deems appropriate. Obviously he is qualified and certified to perform duties as needed. Such an understanding, however, differs dramatically from factoring this individual for scheduling purposes. It also poses another dilemma by muddying bargaining unit work with managerial responsibilities. Granted, "peer" comparisons fail to expose any minimum manpower scheduling, but this option was never proposed by the Employer. Both sides merely wished to tweak the existing arrangement.

In a similar fashion, the Fact-Finder recommends the Union's position regarding exclusion of those engaged in special duty assignments from being factored into minimum manpower scheduling. Speed of response is of utmost import for any community safety force. The status quo might result in an unwarranted catastrophe because of distance or duty constraints. An unwelcome possibility leading to administration embarrassment, public outcry, and unanticipated fatalities.

The Fact-Finder is unwilling to recommend the Union's proposal to add flex-time in lieu of compensatory time to Section 9.10. The record was deficient in support of this modification.

**ARTICLE 14, SICK LEAVE (PO UNIT)**

**ARTICLE 15, SICK LEAVE (CO UNIT)**

**The Employer's Position**

The Employer wishes to modify current language in several particular ways. Currently, ten (10) years of service serves as the standard for the triggering retirement event. The proposed change, however, would require ten (10) years of service with the City. The current language, moreover, does not place a cap in the number of hours to be converted in to cash, while the City proposes a potential payment not to exceed 320 hours. Under the predecessor Agreement, a beneficiary shall be paid "the same sick leave cash conversion benefit at the time of death of the employee." The proposed change modifies this language by allowing beneficiaries to "receive payment for one hundred percent (100%) of the deceased employees' accrued but unused sick leave." Finally, an additional qualifying exception is proposed which is not presently required. Per the City's proposal, an employee separating from active service will only qualify for such payment if he/she qualifies for retirement under the rules of the Police and Firefighters Disability Pension Fund.

The service with the city proviso seems reasonable in light of the benefit in dispute. Working for another jurisdiction should not be a factor when determining proper standing for this benefit. The benefit, itself, only accrues

once gainful employment commences with the City. Prior service with another jurisdiction, even if used as a recruitment inducement, should not play a role in sick leave conversion calculations.

Retirement sick leave payouts are substantial resulting in significant financial burdens. As such, the benefit needs to be limited and in line with benefits provided by other comparable jurisdictions. Severance payments offered by peer jurisdictions indicate two (2) other jurisdictions with unlimited or uncapped maximum payments. Only two(2) other jurisdictions, moreover, have a 50% conversion rate.

### **The Union's Position**

The Union wishes to retain the status quo. It strongly opposes the deletion of previous full-time service as an accredited peace officer. Article 8, Section 8.1 provides for credit at the time of hire of up to three (3) years at the discretion of the Chief. The City never proposed to modify this provision. If the Chief allows for some form of credit at the time an employee is hired, it makes no sense to change or modify any credit for benefit disbursement purposes.

Modifying this benefit at this point in time would detrimentally impact current employees. Many employees have planned for their retirement by considering the ramifications of current contract language. Other employees have used personal days in lieu of sick days because they have anticipated

future accrual payments. The Employer, moreover, has realized certain benefits as the use of sick leave by employees has been positively impacted through the years.

## **THE FACT-FINDER'S RECOMMENDATION**

### **ARTICLE 14, SICK LEAVE (PO UNIT)**

### **ARTICLE 15, SICK LEAVE (CO UNIT)**

The Fact-Finder recommends retaining the status quo, which is the Union's position. The dramatic changes proposed by the Employer remain, in this Fact-Finder's view, unsupported. The critical proposed modifications require substantial support when deviations of this sort are requested.

Nothing in the record indicates that other jurisdictions accept a crediting arrangement at time of hire, but then refuse to factor these credits when determining benefit accrual distributions. Once factored in for seniority credit purposes, these credits become critical conditions of employment used as inducements during recruitment. Interestingly, language contained in Article 8 allows the Employer to accomplish its "crediting" goal by allowing the Chief a great deal of latitude in crediting previous full-time service. By failing to credit prior service, all future service would automatically become service with the City.

Peer jurisdictions and other surrounding jurisdictions fail to serve as proper comparables in this instance. Two other jurisdictions (Bowling Green and Oregon) provide for unlimited maximum payments at the 50% rate. Other

jurisdictions have capped maximum payments with varying percentage rates. None of the proposed comparables, moreover, have negotiated such a low threshold for maximum payment hours.

Retirement under the rules of the Police and Firefighters Disability Pension Fund does not appear to be a prevalent theme. Only Northwood requires such standing as a condition of payment.

**ARTICLE 20, FUNERAL LEAVE (PO UNIT)**

**ARTICLE 20, FUNERAL LEAVE (CO UNIT)**

**The Employer's Position**

The Employer proposes to modify this provision by eliminating one additional day of paid funeral leave if the funeral is more than 150 miles from Rossford. The Employer advises that the provision in its entirety is quite Union friendly. It pays more bereavement leave than any other peer or nearby suburban jurisdiction. None of these jurisdictions, however, pay an additional day based on a specified driving distance.

**The Union's Position**

The current contract language should not be modified. The language, itself, was recently negotiated, and members have not had an opportunity to enjoy the fruit of the bargain. As such, the Employer has the burden of proof to support the requested change in contract language. A burden unsupported by the record.

**THE FACT-FINDERS RECOMMENDATION**

**ARTICLE 20, FUNERAL LEAVE (PO UNIT)**

**ARTICLE 20, FUNERAL LEAVE (CO UNIT)**

From the evidence adduced at the hearing, it is this Fact-Finders view that the Employer's position should be adopted by the parties. This particular benefit appears as an outlier and deserves exclusion. The Union failed to properly rebut the Employer contention with any persuasive evidence. It does not appear that any other comparable group enjoys a similar benefit.

**ARTICLE 30, UNIFORM ALLOWANCE (PO UNIT)**

**ARTICLE 30, UNIFORM ALLOWANCE (CO UNIT)**

**The Union's Position**

The Union proposes several major modifications to the current language in the contract. It seeks to modify Section 30.1(B) by increasing the uniform allowance to six-hundred dollars (\$600.00) per year for the purpose of replacing worn items of the prescribed uniform. The Union, moreover, requests an increase in the specified prorated amount to fifty dollars (\$50.00) per month. The Union also sought another revision. It seeks to adjust the existing stipend contained in Section 30.2. Currently, bargaining unit members receive two-hundred and twenty-five dollars (\$225.00) annually for "the normal maintenance

and repair of uniform items, which includes normal dry cleaning and laundry.”

The Union proposes to increase this stipend to three-hundred dollars (\$300.00) annually.

Cost related data indicate the stipends presently distributed fail to cover increased pricing. These provisions have not been modified during the two previous negotiation cycles, while replacement items and related prices, including dry cleaning, have increased dramatically.

### **The Employer's Position**

The Employer seeks to reduce the existing stipend from four-hundred dollars (\$400.00) to three-hundred dollars (\$300.00) annually. Also, the prorated rate as proposed by the Employer would fall to twenty-five (\$25.00) per month. It is, however, unclear what the Employer's position is on Section 30.2. Without a specific proposal, the Fact-Finder can only assume the Employer wishes to retain the status quo.

Reliance on the Performance Audit's finding supports the proposed reduction. A three-hundred dollar (\$300.00) allowance, coupled with the carryover maximum cap, are adequate to allow replacement of uniform related items. Normal wear and tear can be easily covered by the proposed allowance. This argument is especially true since uniforms are not normally exchanged on a yearly basis.

**THE FACT-FINDER'S RECOMMENDATION**

**ARTICLE 30, UNIFORM ALLOWANCE (PO UNIT)**

**ARTICLE 30, UNIFORM ALLOWANCE (CO UNIT)**

The Fact-Finder recommends retaining the current language. Neither party was sufficiently persuasive to support their proposals. Presentation of bona fide comparables, by either party, could have swayed the recommendation in one direction or another.

**THE FACT-FINDER'S RECOMMENDATION**

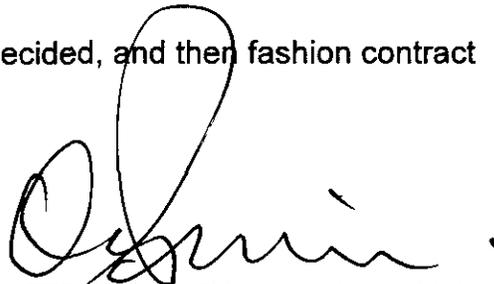
**ARTICLE 37 - MISCELLANEOUS**

**ARTICLE 37.2 - RESIDENCY**

In the Fact-Finder's opinion, it is unnecessary to articulate the various positions proposed by the parties regarding this issue. The status quo appears to be appropriate at this time. This disputed matter is being disputed throughout the State, and will probably be litigated by the Supreme Court of Ohio. As such, the parties should wait until the matter is decided, and then fashion contract language congruent with the finding.

3/4/08

Chagrin Falls, Ohio



Dr. David M. Pincus  
Arbitrator