STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

Fraternal Order of Police, Lodge 15	)	06-MED-09-1120 & 1121
-And-	)	
City of Brunswick	)	Fact-Finder: John T. Meredith

REPORT AND RECOMMENDATIONS
ISSUED MARCH 24, 2008

APPEARANCES

Present for the Union:

Robert M. Phillips, Counsel
Sgt. John Page
Ptl. John Fink
Ptl. Robert Safran
Ptl. Steven Hoover
James Deppert, Finance Consultant

Present for the Employer:

James A. Budzik, Counsel
Bob Zienkowski, City Manager
Bill White, Finance Director
Julie Murawski, Admin. Svce. Coord.
Chief Carl Deforest
Dino Sciulli, Insurance Consultant

INTRODUCTION

The parties to this Fact-Finding proceeding are the Fraternal Order of Police, Lodge 15 and the City of Brunswick, OH. Contract provisions for two separate bargaining units are at issue. Case No. 1120 pertains to negotiation of an Agreement to replace the January 1, 2004 – December 31, 2006 Agreement between Brunswick and Lodge 15 for the Sergeants' bargaining unit, which is currently comprised of all 8

Sergeants employed by the City. Case No. 1121 pertains to a separate bargaining unit comprised of Brunswick's 32 sworn patrol officers. Although the current Patrol Officers Agreement extends to December 31, 2008, it has a Re-Opener for negotiation of "wages, longevity pay, and professional pay for the calendar years 2007 and 2008." The Recommendations in this Report cover the three Re-Opener issues for the Patrol Officers' Agreement (Case No. 1121) and all unresolved issues in negotiations for a new Sergeants' Agreement (Case No. 1120).

In late 2006, the parties initiated collective bargaining for the Patrol Officers' Reopener and a new Sergeants' Agreement. On December 12, 2006, the City signed Extension and Retroactivity Agreements with both bargaining units. The State Employment Relations Board, by letter dated April 25, 2007, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. By agreement of the parties, the fact-finding hearing was indefinitely postponed pending further negotiations. On August 28, 2007, Counsel for Lodge 15 sent a letter to the Fact-Finder advising that the parties were at impasse on several negotiations issues. By agreement of all parties, a Mediation session with the Fact-Finder was scheduled for 10:00 a.m. on October 16, 2007. After discussion of open issues, the meeting was adjourned at approximately 2:00 p.m., with the intention of rescheduling additional proceedings after November 8, 2007, when the City electorate would vote on a proposed increase in the City income tax.

The proposed income tax increase was defeated at the November 8, 2007 election, with approximately 83% of the voters voting against it. Thereafter, the parties decided to schedule a formal Fact-Finding hearing rather than another mediation session.

The hearing was held on February 20, 2008, and was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. After brief discussion of possible mediation, the parties presented their evidence, and unresolved issues were submitted to the Fact-Finder at the conclusion of the hearing. These issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder.

In making his recommendations, the Fact-Finder has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

MEDIATION

The parties met with the Fact-Finder on October 16, 2007 to attempt a possible mediated settlement. After discussion of all issues, that meeting was adjourned pending a November vote by the electorate on a proposed income tax increase. When the voters rejected the tax increase, the parties decided to schedule a hearing rather than attempt

another mediation session. The parties and fact-finder also briefly discussed possible mediation on the hearing day, but it did not appear that mediation would resolve the disputed economic issues. Post-hearing, the parties did agree to modify the Family and Medical Leave provision of the Sergeants' Agreement (Article XXVI) and to add a new Injury Leave Article.

BACKGROUND: CITY PROFILE AND FINANCES

Brunswick is a suburban community located in the northwest corner of Medina County, Ohio. The 2000 Census records its population as 33,388, and it has since grown to at least 35,107. (One document presented at the hearing estimates a current population of more than 37,000.) On the north and northeast corner, Brunswick is bordered by the Cuyahoga County suburban communities of Strongsville and North Royalton. Areas immediately to the west, south and east are less populated. The City of Medina is about 7 miles south of Brunswick, and the center of Cleveland is approximately 26 miles north. For emergency response, the City Police Department works with Southwest Cuyahoga County communities in the Southwest Enforcement Bureau ("SEB").

All northern Ohio communities are to some degree impacted by the Rust Belt economy. Nevertheless, Brunswick has fared well compared to Cleveland and some of its close-in suburbs. It has experienced population growth and commercial expansion, and both are expected to continue. Within the next three or four months, the Cleveland Clinic and Southwest Hospital will be opening modest medical facilities, and ground will be broken for construction of a third medical facility later this year. Other commercial development plans are under way for subsequent years, and the City is continuously seeking additional commercial development.

It appears that the City of Brunswick has maintained a control of spending. The Union submitted data, prepared by Cleveland State University for a neighboring city, which compared per capita public spending in several mid-size cities. At $506.92/capita, Brunswick trailed the neighboring cities of Brook Park ($1,187.67/capita), Strongsville ($719.41/capita), and Parma Heights ($649.37).

The Police Department also appears to be "running lean." A chart presented by the Union, and apparently based on 2003 statistics, shows that 41 Brunswick police officers (including the Chief) cover 12.5 square miles with a population of at least 36,000. By comparison, Brook Park had 42 officers for 21,218 people and 7.5 square miles; North Royalton had 41 officers for 28,648 people and 21.3 square miles; Parma Heights had 34 officers for 21,659 people and 4.2 square miles; Middleburgh Heights had 38 officers for 17,000 people and 8.12 square miles; and Medina had 38 officers for 25,139 people and 11.1 square miles. Moreover, in 2006, the Brunswick Police Department handled 105 emergency calls per officer, compared to 75 per officer in North Royalton, 61 per officer in Medina and 59 per officer in Strongsville.

Brunswick's principal source of operating revenue is its income tax. Other sources include property tax, interest income, state funding and fines and fees collected by the Building and Police Departments. The City's current income tax rate is 1.35%, very slightly higher than the City of Medina's rate, but materially lower than the tax rates of neighboring Cuyahoga County communities. (Compare Berea, 2%; Brook Park, 2%; Broadview Heights, 2%; Middleburgh Heights, 2%; Parma Heights, 3%; Strongsville, 2%.) A portion of the 1.35% tax rate was separately voted in 1996 specifically for police services.

At least until recently, this rate, combined with residential and commercial growth, met the City's needs. From 2001 to 2005, beginning balances in the City's operating funds remained relatively constant, and the beginning balance increased in 2006 due primarily to a one-time cash infusion from the sale of Water Department assets in 2005. However, the beginning balance declined from $7,337,603 on 1/1/2007 to $5,924,701 on 1/1/2008. Even with no general wage increase, it is projected to decline again to $3,626,197 on 1/1/2009. By 12/31/2010, projections show a year-end deficit in the operating funds, which is not permitted under Ohio law. A modest wage increase extended to all City employees would reduce but not eliminate the unrestricted surplus at the beginning of 2009. With or without a wage increase, the City will have to reduce expenses (and most likely the level of service) and/or find additional revenue to avoid a potential deficit at the end of 2010.

These projections do appear to be somewhat conservative. From 2001 to 2007, City revenues increased approximately $4 million (19.5%), but the projections estimate an increase of only about $1.13 million (4.6%) from 2007 to 2013. A portion, but not all, of this disparity may be attributable to a decline in interest rate income due to declining rates being applied to progressively lower balances. On the expenditure side, expenditures increased about $4.27 million from 2001 to 2007 (19.7%), and are projected to increase $3.76 million (14.5%) from 2007 to 2013. The modest reduction in expense increase ($4.27 million to $3.76 million) may be attributable to the fact that the City has not budgeted any general wage increases for six years. The City Finance Director acknowledged that these projections are "conservative" but also testified that they are "realistic."

In addition to wages, areas in which City expenses have been increasing significantly include employee medical expense, employee pension expense, and workers compensation expenses. (The Injury Leave provision to which the parties agreed is intended to address the workers compensation cost issue.) The City also has several capital projects in progress, but, with one exception, these are financed by grants, debt and/or earmarked funds that could not be used to pay police wages. (The exception is the "Applewood Phase IV" - 28% of the $372,992 needed to complete that project will come from City cash not earmarked for any specific purpose.)

The City attempted to address its financial issues by proposing to increase the income tax by .80 from the current 1.35% to 2.15%. This increase was calculated to insure future financial well-being for quite a few years, and to permit hiring additional police and fire personnel, improving road maintenance, establishing reserves, and completing several projects. However, the voters rejected the proposed tax increase by a wide margin (17% for, 83% against) in November 2007. The City did not inform the Fact-Finder as to whether it intends to place a proposed income tax increase of the same or a lesser amount on the ballot in the future. Any tax increase passed by the voters in 2008 would be levied in 2009 and collected primarily in 2010 and thereafter.

ABILITY TO PAY

Because the City justifies most of its positions on unresolved issues by reference to its economic condition, it is appropriate to discuss the City's ability to pay argument at the outset, as background for discussion of each separate bargaining issue.

"Ability to pay" is included in third of the six factors listed in RC 4117.14(G)(7) and OAC 4117-09-05(K) which the Fact-Finder is required to consider in making recommendations:

> 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.

Neither statute nor administrative rule further defines this concept.

This language does not require the Fact-Finder to give Union economic demands priority over all other areas of public expenditure in determining ability to pay, as "public welfare" and impact on the "normal standard of service" also must be considered. On the other hand, it does not suggest that Union economic demands should have a lower priority than other expenditures, either. Rather, this will depend on assessment of other factors listed in RC 4117.14(G)(7) and OAC 4117-09-05(K)

In weighing arguments based on alleged inability to pay, fact-finders have considered various factors. These include: 1) The need to avoid a deficit at year end. 2) The desirability of beginning the year with an unrestricted surplus in the operating funds of a least 5% (and preferably 10%) of projected expenditures in order to maintain or improve the City's rating with credit agencies. (The higher the rating, the better the rate the City can get when it issues bonds to finance projects.) 3) Whether any projected increase in revenues creates a prospect of alleviating a financial crunch. 4) The overall economic condition of the area – is the City in a growing area, with the capacity to generate additional revenues through residential and/or commercial development, or is it contracting, as is the case with some inner-ring suburbs? 5) Whether the City's spending in other areas is consistent with its ability to pay thesis: Has it implemented layoffs?

Reduced by attrition? Given wage increases to other employees? Reduced services? (None of these actions are required, but usually a city will not limit its economies to the wages of one particular group in an "ability to pay" situation.) 6) Certainty and immediacy: Is the City in a current fiscal crisis, or is it merely projecting the possibility that financial problems will develop, based on assumptions about future revenues and expenditures? (See for example, the opinion of Fact-Finder Alan Miles Rubin in The City of Defiance and IAFF, Local 918, SERB Case No. 03-MED-10-1241, submitted by the City at the hearing. Fact-Finder Rubin recommended a wage freeze in a case where the City, even after implementing layoffs and other cutbacks, had an insufficient current year balance to fund a modest wage increase, at least if the increase was extended to all employee groups.)

In this case, the City made a good and thorough economic presentation which shows that a true "ability to pay" situation may develop in the near future. Financial projections, while admittedly conservative, appear to be well grounded and supported. Its actions are consistent with its projections. The City overall appears to be "running lean." It has not given wage increases to administrators and other non-union employees, and it has reduced some administrative positions by attrition. There have not, however, been layoffs or significant service cutbacks.

What the City's case lacks at this point are the elements of certainty and immediacy. For example, the City may still be able to avoid financial issues by addressing the revenue side of the equation. City government has worked, and continues to work diligently, to attract new business to the community, and it is having some success. Such development can of course generate some additional tax revenue, as it has

in the past. There is also time, if the City chooses, to again address taxation issues, which could avoid financial problems in 2010 and thereafter.

These are not birds in hand. However, the two-year wage freeze proposed by the City is a very aggressive proposal. Employees have financial needs too, which must be taken into account. The City's finances do not yet justify the wage freeze it proposes. On the other hand, the City is not in a position to commit to wage and benefit levels beyond 2008.

The recommendations, detailed below, are intended to permit employees to remain competitive with police in comparable neighboring communities through 2008, while at the same time permitting the City to deal with financial issues that may become more critical in 2009 and 2010.

UNRESOLVED ISSUES

9. Wages – Article XVIII (Both Units)

Union Position: The Union proposes annual wage scale increases of 3.75% The Union notes that its employees have patiently delayed negotiations (and thus a pay increase) for more than a year while the City attempted to pass an income tax increase. This delay, the Union points out, was partially in reliance on an agreement which would permit a fact-finder or conciliator to ultimately award retroactive pay for 2007. The proposed increases are justified by comparability. Traditionally, the City has compared itself to the following neighboring SEB communities: Berea, Broadview Heights, Brook Park, Middleburgh Heights, North Royalton, Parma Heights, and Strongsville. Brunswick's current base wage ($54,204) is significantly lower than the wage paid in these neighboring cities. Although Brunswick "picks up" an additional 10% of the wage

to cover pension costs, this amount has no effect on overtime, and other roll-up items, nor is it included in average salary when determining an employee's annual pension. Average increase in 2007 for public employees in Ohio exceeded 3%. Similarly, increases approved to date for 2007 and 2008 for other area police departments equal or exceed 3%.

City Position: The City proposes a two-year wage freeze for both Patrol Officers and Sergeants. For Sergeants, it proposes a wage re-opener for 2009. (2009 wages are not at issue for the Patrol Officers.) The City relies primarily on its "ability to pay" thesis to justify the two-year wage freeze. In addition, it maintains that wages would remain competitive even without an increase. Although the stated base salary - $54,204 – is relatively low, the City's "pick-up" of the employee's 10% pension contribution must be added in. The resulting salary - $59,626 – is competitive with surrounding communities. In its list of comparables, the City includes the cities on the Union's list plus the following Medina and Ashland County communities to the south: Medina, Ashland, Wadsworth, Medina County Sheriff, Brunswick Hills Township. When the pension pick-up, professional pay, and longevity pay are added to the base wage, the City points out that the current Brunswick compensation, even without an increase, would keep Brunswick officers and Sergeants in the middle of this group.

RECOMMENDATION: The Fact-Finder recommends a 2.0% increase effective January 1, 2007 and a 3.0% increase effective January 1, 2008. Retroactivity for 2007 and the first portion of 2008 payable on or before the last payroll in May, 2008. There will be a re-opener for Sergeants' 2009 wage compensation. Contract language implementing this recommendation in the

Sergeants' Agreement is set forth in Appendix A to this Report. Language implementing this recommendation for the Patrol Officers is set forth in Appendix B to this Report.

Rationale: According the SERB statistics, the average wage increases negotiated in Ohio public employee contracts in for 2007 was 2.98% (all employees); 3.19% (all City employees); 3.22% (police contracts); and 3.06% (all contracts in Region 3, which includes Medina and Cuyahoga Counties). In neighboring communities, wage increases already negotiated for 2007 and 2008 range from 3.0% to 4.0%.

With the addition of the City of Medina, the Fact-Finder accepts the list of comparables submitted by the Union. Other cities offered by the City are either too distant or significantly smaller, and thus less suitable for comparison. The Fact-Finder agrees that the pension pick-up is worth a little less than 100 cents on the dollar of wages due to the absence of roll-up. Accordingly, in making comparisons, the Fact-Finder has reduced the pick-up amount by 10%.

The 2.0%/3.0% recommended increases would bring Brunswick officers at the top of the Patrol Officer wage schedule to $56,947 for 2008. With 10% pension pick-up of $5695 and the current $500 in professional premium, the effective wage compensation becomes $63,142. Assigning a 90% weighting to the pension pick-up to allow for lack of roll-up, the effective wage compensation (excluding longevity) would be $62,572. Sergeants compensation would increase proportionally, as it is set at 14% above the patrol officers' base wage, and Sergeants also receive the same 10% pension pick-up.

The following chart compares wage compensation of Brunswick patrol officers, as recommended in this Report, with the compensation of patrol officers in neighboring cities for 2008. (Data for other cities was supplied by the City and Union at the hearing.)

City	Base	Prof. Pay	Pension	Adj. Salary	Longevity
Berea	$57,969	$4203	0	$62,172	$595
Broadview	$60,725	$2300	0	$63,025	$540
Brook Park	$60,735	$2415	0	$62,790	$600
N. Royalton	$60,590	$1650	0	$62,240	$1000
Parma Hts.	$59,546	$3573	0	$63,118	$500
Strongsville	$61,437	$1500	0	$62,937	$1000
Medina	$51,894	0	$5189	$57,083	$578
Brunswick 1	$56,947	$500	$5695	$63,142	$600
Brunswick 2	$56,947	$500	$5125 (90%)	$62,572	$600

NOTES: Brook Park is the 2007 wage. Other cities are the 2008 wage. Brunswick is the recommended 2008 wage, and includes the increases recommended by the Fact-Finder in this Report. "Brunswick 1" includes the full dollar amount of the pension pick-up. "Brunswick 2" gives a 90% weighting to the pension pick-up. Longevity at 10th year.

The Fact-Finder is aware that the 5% wage increase over two years is a bit below the median two-year increase for Ohio public employees in general and police officers in particular. Nevertheless, some weight must be given to the City's financial projections, and the comparability data, summarized in the above chart, shows that the 2%/3% increase is sufficient to assure a fair, competitive wage. .

9. Longevity – Article XVII (Both Units)

Union Position: The Union seeks to increase longevity pay to "$100 per year of service commencing in the 5th year ($500) and capped in the 25th year ($2,500)." This is a substantial increase, as 5th year patrol officers now receive $138.78 and 25-year officers are capped at $1,804.09.

City Position: The City opposes an increase in longevity pay. In addition to relying on its ability to pay thesis, it asserts that current longevity pay provision is within the range of longevity provisions offered by neighboring communities.

RECOMMENDATION: The current Patrol Agreement Longevity provision should remain in effect for 2007 and be increased 5% for 2008. Amounts rounded so that the first level is $150 and each subsequent level represents a $150 increase over the prior level. Sergeants shall be paid on the same longevity scale as the patrol officers. Also, for Sergeants, longevity shall be included in the Compensation and Insurance Re-opener for 2009. Implementing language is set forth in Appendices A and B to this Report

Rationale: Comparability data indicates that Brunswick's current longevity provision is somewhere in the middle of longevity pay offered in neighboring communities. (See Chart, page 13 of this Report) Comparisons will yield different results depending on the level of seniority in the comparison, and each community seems to have a different way of computing longevity pay. However, though they get there by different routes, at the 10-year level most neighboring communities are paying between $500 and $600. (The notable exceptions are North Royalton and Strongsville, both of which pay $1000.) Recent practice in Brunswick appears to be to increase longevity pay amounts by the same percentage as increases in base wages. The recommended second year increase is consistent with this pattern.

9. Professional Premium – Article XLVII (Patrol), Article XLIX (Sergeants)

Union Position: The Union proposes substantial increases in Professional Pay, as follows: 2007 – retain current $500 professional/administrative services pay provisions.

2008 – increase professional pay to $1000. 2009 – increase professional pay to $1500. It notes that several neighboring cities – specifically Broadview, Strongsville, Berea and North Royalton – pay much more generous professional pay than Brunswick.

City Position: The City relies on its "ability to pay" thesis, and notes that at least three neighboring communities – Middleburg Heights, Brook Park and Medina – do not have professional pay provisions.

RECOMMENDATION: The current $500 "Professional Premium" for Patrol Officers, and the current $500 Administrative Services Premium for Sergeants, should be retained without change, provided that the Premium for Sergeants may be included in the Compensation and Insurance Re-Opener for 2009. (Re-Opener language included in Appendix A to this Report.)

Rationale: Professional and Administrative Services pay are essentially wages under a different name. In awarding wage increases in 2007 and 2008, the Fact-Finder compared Brunswick wages, adjusted for professional pay, longevity, and pension pick-up, with wages paid by other cities. The other cities' wages also were adjusted to include professional pay, longevity pay and (if applicable) pension pick-up. Based on these comparisons, it appears that the recommended increase in the wage scale will be sufficient for Brunswick officers to maintain their relative position in the rankings without an additional boost in professional pay compensation.

9. Rank Differential – Article XVIII (Sergeants Only)

Union Position: The Union proposes to increase the rank differential between the top patrol officer wage and the sergeants wage from 14% to 14.5% effective January 1, 2008 and 15% effective January 1, 2009.

City Position: In addition to its "ability to pay" thesis, the City asserts that comparability data does not support an increase in the rank differential. Broadview Heights, Strongsville and Brook Park, like Brunswick, have a 14% rank differential. (Berea's rank differential is 15%, while Medina's is 13%.)

RECOMMENDATION: The current 14% rank differential should be retained, provided that rank differential should be included in the Compensation and Insurance Re-Opener for 2009. Language for the Re-Opener, and new language for Article XVIII of the Sergeants Agreement (which covers wages and rank differential) is included in Appendix A to this Report.

Rationale: The 14% rank differential is supported by comparability data. No change, therefore, is warranted.

9. Stress Days – Article XL (Sergeants Only)

Union Position: The Union proposes to increase the number of "Stress Days" from 7 to 9, effective 2008.

City Position: The City opposes increasing the number of Stress Days. Brunswick officers have seven holidays and seven Stress Days for a total of fourteen (14). This is better than most neighboring communities. Specifically, the sum of holidays and stress or personal days for officers in Brook Park an Broadview Heights is 12, and in Medina and Middleburg Heights is 13. North Royalton has 14 days like Brunswick. Only Berea (15 days) and Strongsville (14.75 days) have more than Brunswick. Comparability data thus does not support the Union's proposal.

RECOMMENDATION: The number of Stress Days should not be increased. Retain current provision.

Rationale: The current provision is consistent with comparability data. No compelling countervailing argument was presented.

6. Insurance – Article XVI (Sergeants Only)

City Position: The City proposes to modify the current insurance provision effective January 1, 2009. The current City plan offers three Medical Mutual of Ohio (MMO) options plus a Kaiser alternative. One of the Options is a $50 deductible, $50 maximum out-of-pocket plan, which is very unusual. Employees pay a fixed dollar amount of the premium. The City's proposal would reduce the MMO options from three to two, and retain the Kaiser Option. (The $50 option would be eliminated.) Employees would be required to pay 10% of the premium on all but the high deductible MMO option. The City proposal also would affect co-pays and deductibles.

To support it's proposal, the City states that it must get insurance costs under control. It notes that its premiums are increased 40% over four years, and trends would predict continuing increases of 10% to 14% per year in the future. The City's proposed low deductible plan ($200/$400) is a common option for Ohio public sector employees. The proposed premium contributions are not out of line with premium contributions paid by other Ohio public sector employees, as indicated in SERB's 2006 Report on Health Insurance Costs in the Public Sector. The comparability data is compelling and supports the City proposal.

Union Position: The Union opposes the City's insurance proposal. First, it notes that, in paragraph 14 of the Negotiations Ground Rules, signed by the parties on 12/12/2006, the parties agreed not to raise a new subject matter for bargaining after the third meeting. It states that it did not see the specific proposal advanced by the City at

Fact-Finding until the day before the hearing, and thus has not had an opportunity to effectively prepare a response. Further, it states that the proposed changes are unjustified and would be a burden to the employees.

RECOMMENDATION: The current insurance provision should be retained without change, provided that insurance for the Sergeants should be included in the Compensation and Insurance Re-Opener for 2009. (Re-Opener language included in Appendix A to this Report.)

Rationale: Paragraph 14 of the Negotiations Ground Rules states that, "in order to have orderly negotiations, neither party may submit proposals on new matters after the third (3d) meeting in regards to negotiations, unless otherwise mutually agreed." However, once an issue has been raised, it further states that each party shall be free to make proposals so long as the proposals "contain the same or similar subject matter as the original proposals." The Fact-Finder has examined the negotiations proposals submitted at the hearing. It appears that the City's proposal of January 16, 2007 raises the insurance issue, and specifically discusses replacing or modifying the current plans, including modification of deductibles and co-insurance, and changing carriers or coverage. This proposal, is sufficient to raise the subject of insurance and permit exchange of further proposals on that subject. Therefore, the subject of insurance is properly before the Fact-Finder.

However, it is true that the Union did not have a reasonable opportunity to review and evaluate the City's specific plan prior to the hearing. Insurance is an important and sometimes complex subject, which generally benefits from full discussion of details of proposed plan changes by representatives of employees who will be affected. Because of

this, and because the City's proposed changes would not take effect until 2009 in any event, resolution of the insurance issue should be deferred and the subject should be included in the economic re-opener for 2009.

9. Grievance Procedure – Article XXXIII (H) (Sergeants Only)

Union Position: The Union proposes to delete Article XXXIII (H) of the current Agreement. That section excludes "discharge and discipline dispute" from the grievance procedure, thus leaving them within the purview of the Civil Service Commission, subject to appeal to the Court of Common Pleas. The Union notes that grievance arbitration has replaced civil service commission proceedings as the method for resolving discipline and discharge claims under the vast majority of public sector contracts in Ohio. Deleting Section H thus would put discharge and discipline claims in the Grievance/Arbitration procedure, consistent with the practice in other municipalities.

City Position: The City objects to discussing this item on grounds it was not raised in negotiations. It relies on paragraph 14 of the Negotiations Ground Rules, signed by the parties on 12/12/2006, in which they agreed not to raise a new subject matter after the third meeting. Further, the City states that the current system has worked for the Sergeants, who have not had any discipline or discharge matters arise.

RECOMMENDATION: The Fact-Finder recommends no change in Article XXXIII (H) of the current Sergeants Agreement.

Rationale: The Fact-finder has reviewed the proposals submitted by both parties at the hearing. He finds no reference to the grievance procedure until the February 2008 Union Position Statement, long after the third meeting was held. Therefore, it would be

inappropriate to grant the Union's belated request to modify this section, even though it is supported by comparability data.

9. Retention of Current Language, Tentative Agreements

The Fact-Finder makes the following recommendation as to retention of provisions from the 2004-2006 Sergeants' Agreement:

RECOMMENDATION: Recommendations of this Report, and the agreements reached by the parties during negotiations, should be incorporated in the new Agreement. Except as otherwise recommended in this Report or as otherwise agreed by the parties in negotiations, the provisions of the 2004-2006 Sergeants' Agreement should be retained in the new Sergeants' Agreement.

9. Duration/Re-Opener

The parties appear to agree that the Sergeants' agreement should remain in effect through December 31, 2009. However, the City proposed a compensation re-opener for 2009, as it is not prepared to offer 2009 wages at this time. The Union proposed wages for 2009, but it was clear at the hearing that the Union would accept a compensation re-opener if the Fact-Finder does not recommend a 2009 wage increase. For reasons discussed in preceding sections of this Report, the Fact-Finder has concluded that all wage and insurance matters for 2009 should be left for consideration in a re-opener.

RECOMMENDATION: Article 32 of the Sergeants' Agreement should be amended to provide for expiration of the Agreement on December 31, 2009, and a paragraph should be added to provide for a Compensation and Insurance Re-Opener for wages, longevity, rank differential, proficiency/administrative services

premium and insurance in 2009. Language to implement this Recommendation is set forth in Appendix A to this Report.

SUMMARY OF RECOMMENDATIONS

1. Wages – Article XVII (Both Units)

RECOMMENDATION: The Fact-Finder recommends a 2.0% increase effective January 1, 2007 and a 3.0% increase effective January 1, 2008. Retroactivity for 2007 and the first portion of 2008 payable on or before the last payroll in May, 2008. There will be a re-opener for Sergeants' 2009 wage compensation. Contract language implementing this recommendation in the Sergeants' Agreement is set forth in Appendix A to this Report. Language implementing this recommendation for the Patrol Officers is set forth in Appendix B to this Report.

2. Longevity – Article XVII (Both Units)

RECOMMENDATION: The current Patrol Agreement Longevity provision should remain in effect for 2007 and be increased 5% for 2008. Amounts rounded so that the first level is $150 and each subsequent level represents a $150 increase over the prior level. Sergeants shall be paid on the same longevity scale as the patrol officers. Also, for Sergeants, longevity shall be included in the Compensation and Insurance Re-opener for 2009. Implementing language is set forth in Appendices A and B to this Report.

3. Professional Premium – Article XLVII (patrol) , Article XLIX (Sergeants)

RECOMMENDATION: The current $500 "Professional Premium" for Patrol Officers, and the current $500 Administrative Services Premium for Sergeants, should be retained without change, provided that the Premium for Sergeants may be included in the Compensation and Insurance Re-Opener for 2009. (Re-Opener language included in Appendix A to this Report.)

4. Rank Differential – Article XVIII (Sergeants Only)

RECOMMENDATION: The current 14% rank differential should be retained, provided that rank differential should be included in the Compensation and Insurance Re-Opener for 2009. Language for the Re-Opener, and new language for Article XVIII of the Sergeants Agreement (which covers wages and rank differential) is included in Appendix A to this Report.

5. Stress Days – Article XL (Sergeants Only)

RECOMMENDATION: The number of Stress Days should not be increased. Retain current provision.

6. Insurance – Article XVI (Sergeants Only)

RECOMMENDATION: The current insurance provision should be retained without change, provided that insurance for the Sergeants should be included in the Compensation and Insurance Re-Opener for 2009. (Re-Opener language included in Appendix A to this Report.)

7. Grievance Procedure – Article XXXIII (H) (Sergeants Only)

RECOMMENDATION: The Fact-Finder recommends no change in Article XXXIII (H) of the current Sergeants Agreement.

8. Retention of Current Language, Tentative Agreements

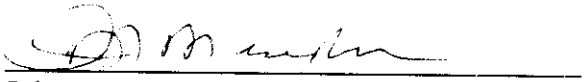
RECOMMENDATION: Recommendations of this Report, and the agreements reached by the parties during negotiations, should be incorporated in the new Agreement. Except as otherwise recommended in this Report or as otherwise agreed by the parties in negotiations, the provisions of the 2004-2006 Sergeants' Agreement should be retained in the new Sergeants' Agreement.

9. Duration/Reopener

RECOMMENDATION: Article 32 of the Sergeants' Agreement should be amended to provide for expiration of the Agreement on December 31, 2009, and a paragraph should be added to provide for a Compensation and Insurance Re-Opener for wages, longevity, rank differential, proficiency/administrative services premium and insurance in 2009. Language to implement this Recommendation is set forth in Appendix A to this Report.

SUBMISSION

This Fact-Finding Report is submitted by:



John T. Meredith, Fact-Finder

Shaker Heights, Ohio
March 24, 2008

CERTIFICATE OF SERVICE

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 24 day of March, 2008:

Robert Phillips, Esq.
Faulkner, Muskovitz & Phillips, LLP
820 West Superior Ave., 9th Floor
Cleveland, OH 44113-1800

Attorney for FOP Lodge 15

James A. Budzik, Esq.
Mansour, Gavin, Gerlack & Manos
55 Public Square, Suite 2150
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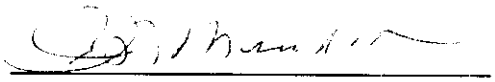
Attorney for the City



John T. Meredith, Fact-Finder

APPENDIX A TO FACT-FINDING REPORT

SERGEANTS' AGREEMENT:
CONTRACT LANGUAGE FOR RECOMMENDATIONS

1. Longevity – Article XVII

Revise Article XVII as follows:

ARTICLE XVII LONGEVITY

17.01 Current contract.

17.02 Employees shall be eligible for Longevity Pay of the amount shown on said schedule on a calendar year basis. Only continuous years of service as an employee for the City shall be used in determining the eligibility for the Longevity Pay. Payments to be made one time annually in the third week in December of each year.

YEARS OF CONTINUOUS SERVICE COMPLETED	LONGEVITY PAY 2007	2008
4-5	$ 142.94	$ 150
6-7	284.75	300
8-9	428.82	450
10-11	570.63	600
12-13	714.70	750
14-15	857.64	900
16-17	1,001.70	1.050
18-19	1,142.39	1,200
20-21	1,286.46	1,350
22	1,429.40	1,500
23	1,573.46	1,650
24	1,714.15	1,800
25 or more	1,858.22	1,950

2. Wages – Article

Revise Article XVII as follows:

ARTICLE XVIII WAGES

18.01 Full-time Sergeants in the Division of Police shall be paid on a four-step (4-step) Merit Rate Schedule, as follows: Step 1 - Starting Rate; Step 2 - Six-Month Rate; Step 3 - One-Year Rate; Step 4 - Two-Year (Maximum) Rate. The spread between each Step

shall be 2.5%. The Maximum Rate (Step 4) shall be established as fourteen percent (14 %) above the highest rate of pay in the City's Merit Pay Scale for Patrolmen.

Year	Start	6 Months	1 Year	2 Years
2007	$28.14	$28.84	$29.56	$30.30
2008	$28.98	$29.71	$30.45	$31.21

18.02 [Current contract]

Delete 18.03, as it has been incorporated into 18.01.
Renumber 18.04 through 18.07 as 18.03 through 18.06 and retain current contract language for each of these provisions.

3. Duration/Re-Opener

Revise Article XXXII as follows:

ARTICLE XXXII DURATION/RE-OPENER

32.01 This Agreement represents a complete and final understanding on all bargainable issues between the City and the Fraternal Order of Police, Lodge #15, and, unless otherwise and elsewhere expressed in this Agreement, shall remain in effect, along with any amendments made and annexed hereto, until midnight, December 31, 2009.

32.02 Notwithstanding the provisions of Section 32.01, and Articles XVI, XVII, and XVIII, this Agreement may be re-opened by either party to negotiate wages, longevity pay, professional/administrative services pay and insurance for calendar year 2009.

APPENDIX B TO FACT-FINDING REPORT

PATROL OFFICERS' AGREEMENT: LANGUAGE FOR MEMORANDUM ATTACHMENT REFLECTING SETTLEMENT OF REOPENER ISSUES

The following changes in Articles XVII – Longevity and XXVII – Wages shall be made to implement Recommendations in the Fact-Finding conducted pursuant to their Re-Opener for "wage, longevity and professional pay increases for calendar years 2007 and 2008." The Fact Finder did not recommend any change in Article XLVII – Professional Pay.

1. Longevity – Article XVII

To Article XVII, add the following chart to cover Longevity Pay for calendar years 2007 and 2008:

YEARS OF CONTINUOUS SERVICE COMPLETED	LONGEVITY PAY 2007	2008
4-5	$ 142.94	$ 150
6-7	284.75	300
8-9	428.82	450
10-11	570.63	600
12-13	714.70	750
14-15	857.64	900
16-17	1,001.70	1.050
18-19	1,142.39	1,200
20-21	1,286.46	1,350
22	1,429.40	1,500
23	1,573.46	1,650
24	1,714.15	1,800
25 or more	1,858.22	1,950

2. Article XVIII - Wages

Add the following two lines to the chart in Section 18.01 to provide for wages in calendar years 2007 and 2008:

Year	Start	6 months	1 Year	2 Year	3 Year	4 Year
2007	$18.53	$19.49	$20.54	$21.59	$24.33	$26.58
2008	$19.08	$20.08	$21.26	$22.24	$25.06	$27.38