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April 11, 2007

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Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213

RE: OPBA and City of Circleville  
06 MED 09-1137, 1138, 1139

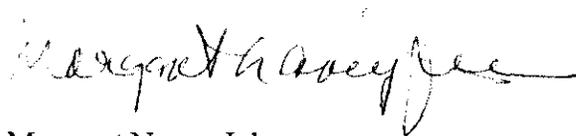
Dear Gentlemen:

Enclosed please find a copy of the Recommendations of the Fact-finder for the above referenced bargaining impasse. Also enclosed for the parties is an invoice for services rendered.

*NO INVOICE - Klr*

Thank you for the opportunity to be of service.

Very truly yours,



Margaret Nancy Johnson

STATE EMPLOYMENT  
RELATIONS BOARD  
2007 APR 13 A 11:54

STATE EMPLOYMENT  
RELATIONS BOARD

2007 APR 13 A 11: 54 STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-finding between:

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION : Case No. 06 MED 09-1137  
06 MED 09-1138  
: 06 MED 09-1139

and : Recommendations  
: Margaret Nancy Johnson  
CITY OF CIRCLEVILLE, OHIO : Fact-finder

Appearances

For OPBA:  
Joseph M. Hegedus, Esq.  
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Columbus, Ohio 43235

For the City:  
Marc A. Fishel, Esq.  
400 S. Fifth Street  
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In compliance with Ohio Revised Code Section 4117.14(C)(3) the State Employment Relations Board appointed Margaret Nancy Johnson to serve as fact-finder in the above referenced bargaining impasse. At issue in this proceeding is not a successor contract but, rather, a wage re-opener, including pension pick-up, pursuant to mutually accepted recommendations issued on March 17, 2006 following fact-finding last year.

Unable to agree upon the terms of the wage re-opener, the parties convened on March 14, 2007 in a conference room at the Administrative Offices in Circleville, Ohio to present evidence and argument on the matters in dispute. Prior to the hearing, both parties submitted position statements for consideration by the fact-finder. Upon a review of the testimony and documentary evidence, the fact-finder now submits her recommendations.

Statement of the Case

The Ohio Patrolmen's Benevolent Association, hereinafter "OPBA" or "Union," and the City of Circleville, hereinafter "City," are parties to two Collective Bargaining Agreements with effective dates of January 1, 2006 through December 31, 2008. One of these Agreements sets forth the wages, terms and conditions of employment for Police Sergeants, Police Lieutenants and Communications Supervisor; the other Agreement is applicable to Police Communications Officers/Jailers, Parking Enforcement Officers and Police Patrol Officers. Approximately thirty employees are included in the two bargaining units.

Terms of the referenced Agreements were the result of recommendations issued by Michael Paolucci, before whom the parties engaged in fact-finding on February 21, 2006. His recommendations included a wage re-opener inclusive of the issue of pension pick-up for contract years 2007 and 2008. Insofar as the parties remained unable to reach agreement on the issue of wages for 2007 and 2008, the matter was again submitted to fact-finding as indicated above.

#### Issue

The sole issue before the fact-finder is the wage re-opener for contract years 2007 and 2008, including a pension pick-up.

#### Criteria

In submitting her recommendations the fact-finder has given consideration to those factors traditionally relied upon by neutrals and those specifically enumerated in Ohio Revised Code, Section 4117.14(G)(7).

#### Positions of the Parties

##### *1. City*

Citing a dire fiscal situation, the City seeks a wage freeze for contract year 2007 and another re-opener for 2008. Evidence for the financial hardships confronting the City includes the loss of a number of companies and a corresponding loss of revenue. Because of the impact of this decline, the City has been required to eliminate services, reduce the number of employees, and it has successfully petitioned for designation as a "Situational Distress Municipal Corporation." While revenues have been declining, City expenditures have been increasing. Since 1999, health insurance costs alone have increased by 125%. The rise in expenditures continues to out pace an increase in revenue.

In spite of its economic hardship, the Union has received wage increases greater than those of any other City employee. During recent negotiations with the fire fighters, the parties agreed upon a wage freeze for 2007 and a re-opener for 2008. Similarly, non-uniformed employees agreed to re-openers for 2007 and 2008. This unit should not be granted more than other City employees.

In addition to internal comparables, the external comparables justify the position taken by the City. Taking into account pension pick up and other economic benefits, the members of these units are paid quite well compared to police personnel in similar jurisdictions. Indeed, the employees in consideration receive more than the average paid to their similarly situated counterparts.

Accordingly, a wage freeze in 2007 and the re-opener for 2008 along with current language on pension pick-up as proposed by the City are appropriate and consistent with statutory criteria for wage determinations.

##### *2. Union*

The Union seeks an increase of 4% for each of the remaining two years of this Agreement and an increase in the pension pick-up for dispatchers. A review of the financial documentation submitted by the City establishes it can afford to pay members of this unit a wage enabling them to meet rising living costs. Actual financial figures rather than projections are the dollar amounts that should be used in determining ability

to pay. Indeed, a review of financial data indicates an ending balance in 2006 available to pay for a reasonable wage increase.

The employees of these two units pay more than twice as much as other public employees in Ohio for health insurance. Additionally, they are paid less than employees in comparable jurisdictions for similar services. Having experienced a wage freeze in 2005, this unit should not bear the burden of the fiscal distress of the City. It is appropriate that the bargaining unit be compensated for the hazardous and stressful duties performed on behalf of the City.

Statutory criteria of bargaining history justify the increase proposed by the Union. Moreover, evidence elicited at the hearing establishes that Fire-fighters employed by the City have realized an increase in income for contract year 2007 ranging from 1.5% to 3.3%. Non-uniformed employees have also realized a wage increase in the 2006-2007 contract year.

As to the pension pick-up proposed for Dispatchers, the Union contends the dispute is actually one of interpretation. There is absolutely no contractual reason why Dispatchers should be treated differently from other members of the bargaining unit in terms of the pension pick-up.

The Union proposes a 4% wage increase for each one of the remaining two years of this Agreement and an adjustment in the pension pick-up for Dispatchers.

#### Discussion

As previously noted, this fact-finding has been convened pursuant to a wage re-opener recommended during fact-finding in 2006. While the City now seeks a wage freeze for 2007 and a re-opener for contract year 2008, the Union has countered with a 4% wage increase for each one of the remaining two years of the Agreement. Additionally, the pension pick-up for Dispatchers is in issue.

Presenting its case, the City has focussed on a significant decline in income tax revenues over the past decade. Accounting for approximately 45% of revenues generated by the City (City Exhibit 3), the income tax decline is attributable to a continuing loss of businesses in Circleville and in Pickaway County. Because of plant closings by General Electric and Thomson Consumer Electronics alone, the City lost approximately 8.3% of income tax revenues in 2004.

Although the City has certainly established a substantial loss in tax paying constituents, income tax is not the only revenue source available to the City. In addition to income tax, the City receives monies for its General Fund from government entities, interest income, property and other taxes, and various additional revenue sources. Financial documentation submitted for review indicates increases in interest, property tax, supplemental revenue, and income from other governments. Indeed, total operating revenues in 2006 rose 4.21% from the preceding year (City Exhibit 2). Significantly, Safety Operating Funds also increased in 2006 by 12.31% (City Exhibit 11). In 2006, Safety Funds increased to \$8,294,320.43 from \$7,384,964.08 in 2005. Thus, there is a sufficient ending balance from 2006 available for fiscal year 2007 (Union Exhibits 2, 3).

Moreover, the evidence introduced indicates that through fiscal management the City has reversed a trend in which expenditures exceed revenues. In 2006 General Operating Funds rose 11.93% while expenses rose 9.39%. Reviewing the Safety Operating Funds, revenue of \$8,294,370.43 exceeded expenditures of \$8,211,604 (City Exhibit 11).

Analyzing the financial data and addressing, first, the ability to pay, the fact-finder has determined that while the financial situation confronting the City is truly difficult, it is not dire. Indeed, apparently much of the monetary evidence presented for review in this proceeding was also introduced last year during fact-finding. Upon the conclusion of that hearing, the fact-finder recommended a three per cent (3%) wage increase for 2006, a wage increase that was granted to Fire-fighters as well, with the exempt supervisor, exempt full time and directors experiencing a five per cent (5%) salary increase.<sup>1</sup> Relying upon actual figures rather than projections conservatively forecast by fiscal officers of the City, the fact-finder observes that even with the referenced wage increases for 2006, end of year finances sustain a limited ability to pay a moderate wage increase for subsequent contract years.

Considering, too, the statutory criteria of bargaining history and comparability, the fact-finder determines that a moderate wage increase for each of the next two years is appropriate. While the fact-finder rejects the suggestion that the unit is "entitled" to a substantial wage increase based upon its bargaining history, she does find that recent increases granted by the City to other employee groups would justify a corresponding wage adjustment in 2007 for the police units. Coming from a 3.5% increase in 2005 when other units had agreed to a wage freeze, the NUEO bargaining unit received a 1% increase for its 2006-2007 contract year. Additionally, for contract year 2007, the Fire-fighters received EMT adjustments having an equivalency of 1.5% to 3.3% of their base rate. Accordingly, the fact-finder recommends a 1.50% increase for the 2007 contract year.

Moreover, she finds that repeated re-openers and renewed contract negotiations tend to thwart the statutory intent to stabilize bargaining relationships. Now into the second year of their three year Agreement, the fact-finder believes the parties should settle the terms of the current contract. When negotiations for the next contract commence, the parties can then evaluate accuracy of forecasts made by the City and make contract decisions accordingly. Current contract terms, however, should be based upon present availability rather than five year projections.

Finally, addressing comparability, the fact-finder notes that declining revenues and rising health care and personnel costs are not unique to this City. On the contrary, throughout the State of Ohio, public employers are confronted with the same scenario. Even so, the evidence indicates recent wage adjustments for police ranging from wage freezes up to three jurisdictions reporting increases in excess of 5%. State Employment Relations Board data for 2006 establish wage modifications for police units average 3.23% (Union Exhibit 12).

Reviewing, specifically, the prevailing wages for police in jurisdictions of similar size, demographics, and geographic characteristics, the hearing officer finds that the units under consideration are paid very comparably to their counterparts considering the entire wage package. In the process of collective bargaining over the years, the parties have established a fair wage for the safety services provided by this unit. During recent negotiations the parties have considered the financial restraints confronting the City when agreeing upon wage adjustments. Other bargaining units have done likewise. As economic evidence indicates an ability to pay an increase but a continuing need to be

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<sup>1</sup> It must also be noted that all employees except the non-uniformed unit experienced a wage freeze for 2005 and that exempt personnel received no increase in 2004, as well.

circumspect in this regard, the fact-finder recommends an increase of 2.75% for contract year 2008.

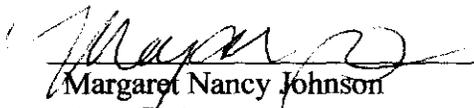
She does not, at this time, recommend adjustments to the pension pick-up for Dispatchers. Simply stated, this is not the right financial environment in which to review pension pick-up.

Conclusions

The Fact-finder recommends:

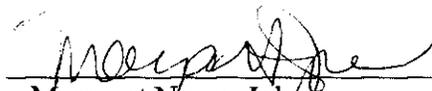
1. 1.5% wage increase for 2007, retroactive to January 1, 2007;
2. 2.75% wage increase for 2008;
3. current contract language in pension pick-up.

Respectfully submitted,

  
Margaret Nancy Johnson  
Fact-finder

Service

A copy of the foregoing Recommendations have been issued by Express Mail this 11<sup>th</sup> day of April, 2007 upon Joseph M. Hegedus, Esq, Ohio Patrolmen's Benevolent Association, 92 Northwoods Suite B-2, Columbus, Ohio 43235; Marc A. Fishel, Esq., Downes, Hurst & Fishel, 400 South Fifth Street, Columbus, Ohio 43215; and by regular mail on Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.

  
Margaret Nancy Johnson