

I. BACKGROUND

In Case No. 06-MED-12-1441, the Fact Finder was appointed by the State Employment Relations Board (SERB) on November 6, 2007, pursuant to Ohio Revised Code Section 4117.14(C)(3). In Case No. 06-MED-12-1439, the previous Fact Finder withdrew and this Fact Finder was appointed by SERB on November 16, 2007. The parties mutually agreed to extend the fact-finding period until December 20, 2007. At the hearing, the parties mutually agreed to extend the fact-finding period until December 28, 2007. The parties are the Ohio Patrolmen's Benevolent Association (Union), representing full time Sergeants and Patrol Officers of the City's Police Department, and the City of Munroe Falls (City). Munroe Falls is located in eastern Summit County, northeast of Akron. It encompasses an area of approximately three (3) square miles and has a population of five thousand three hundred fourteen (5,314) according to the 2000 Census. It is a suburb of Akron and primarily a bedroom community.

The fact-finding involves two (2) bargaining units of the Police Department of the City. The first contains full time Sergeants, which currently has one (1) employee. The second unit is full time Patrol Officers. This unit is comprised of six (6) employees. Both units are represented by the Ohio Patrolmen's Benevolent Association. The parties have had a collective bargaining relationship for a number of years spanning several collective bargaining agreements.

The City has a bargaining unit in its Department of Roads and Utilities represented by the International Brotherhood of Teamsters Local 436. This unit successfully concluded negotiations with the City prior to this fact finding.

II. THE HEARING

The fact-finding hearing was held on Friday, December 14, 2006 at the Munroe Falls City Hall, 43 Munroe Falls Avenue, Munroe Falls, Ohio. Each party provided a pre-hearing statement. The hearing began at 1:00 p.m and adjourned at approximately 5:00 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties jointly introduced the following exhibit into evidence:

1. Agreement between Ohio PBA and the City of Munroe Falls, Effective April 1, 2004 to March 31, 2007 (Sergeants Agreement).
2. Agreement between Ohio PBA and the City of Munroe Falls, Effective April 1, 2004 to March 31, 2007 (Patrol Officers Agreement).

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. SERB Clearinghouse Benefits Report, December 5, 2007 of Summit and Contiguous Counties, Cities with Populations under 25,000.
2. Agreement between the City of Fairlawn and the Fraternal Order of Police, Ohio Labor Council, Inc. (Patrol Officers), January 1, 2005 through December 31, 2007.
3. SERB Clearinghouse Benchmark Report, December 5, 2007, Police Officers and Sergeants.
4. Wage Comparison in Summit and Contiguous Counties for all Cities under 10,000 Population (Patrol Officers).
5. Wage Comparison in Summit County for all Cities under 10,000 Population (Patrol Officers).
6. Wage Comparison in Summit County for all Cities under 25,000 Population (Patrol Officers).
7. Wage Comparison in Summit and Contiguous Counties for all Cities under 10,000 Population (Sergeants).
8. Wage Comparison in Summit County for all Cities under 10,000

Population (Sergeants).

9. Wage Comparison in Summit County for all Cities under 25,000 Population (Sergeants).
10. SERB Wage Increase Report, December 5, 2007, Summit and Contiguous Counties, Cities with Populations under 25,000.
11. Known Wage Increases for Police in Cities in Summit and Contiguous Counties with Population under 25,000.
12. SERB Annual Wage Settlement Report.
13. Agreement between the International Brotherhood of Teamsters Local 436 and the City of Munroe Falls, Effective April 1, 2007 to March 31, 2010, Department of Roads and Utilities.
14. Longevity Comparison in Summit and Contiguous Counties for all Cities under 10,000 Population.
15. Longevity Comparison in Summit County for all Cities under 10,000 Population.
16. May 14, 2007 letter from SERB Research and Training Section re errors in the 2006: Report on Health Insurance Costs in Ohio's Public Sector publication.
17. Page 20 of Munroe Falls Employee Handbook re hospitalization.

City Exhibits

- A. Agreement between Ohio Patrolmen's Benevolent Association and the City of Norton, Ohio, effective: January 1, 2006, expires: December 31, 2008.
- B. Fact Finding Report of Marc A. Winters in Case Nos. 06-MED-10-1159 and 1161.

The issues remaining at impasse for fact-finding included:

1. Grievance Procedure.
2. Health and Safety.
3. Sick Leave.
4. Vacations.
5. Holidays.

6. Duty Hours.
7. Compensation.
8. Insurance.
9. Insurance Committee.
10. Duration.
11. Shift Schedule.
12. Past Practices.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (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 interests 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder

would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

The two (2) collective bargaining agreements at issue here are virtually identical. The main differences are in compensation. Most of the proposals and agreements involve identical language in each agreement. Unless specified, the language set forth below applies to both agreements.

The parties engaged in bargaining and reached tentative agreements with negotiating teams for both units. The tentative agreements, however, were rejected by the rank and file.

Issues Resolved during the Hearing

The parties agreed to several items at the hearing. The Fact Finder recommends the following changes to both collective bargaining agreements.

1. Article 8, Grievance Procedure:

Section 2. While this Agreement is in effect, the grievance and arbitration procedure contained herein shall be the sole and exclusive remedy for disputes which arise under this Agreement to the exclusion of any rights or remedies provided for under Civil Service, which are expressly hereby waived.

2. Article 19, Sick Leave:

Section 2. An employee may accumulate an unlimited amount of sick leave. Upon retirement, the first two thousand (2000) hours shall be compensated at fifty percent (50%) and all hours over two thousand (2000) shall be compensated at twenty-five percent (25%).

Section 6. The Employer reserves the right to assign mandatory light duty to any employee off work due to a work related disability to the extent that the employee can safely perform said light duty. The light duty hours are from 8:30 a.m. to 4:30 p.m., Monday through Friday.

3. Article 20, Vacations:

Section 3. Employees shall be permitted to have a maximum of two hundred (200) hours per year vacation carry over. Employees shall be required to reduce vacation banks to the above levels or shall forfeit said vacation hours.

4. Article 21, Holidays:

Bargaining unit members shall be entitled to 12 paid selected holidays equaling ninety-six (96) hours per year. These holidays shall be celebrated at a time selected by each bargaining unit member with the prior approval of the Chief of Police. If any selected holiday remains unused or not selected at the end of a calendar year, that selected holiday shall be extinguished and shall not be carried forward to any succeeding year. The Chief of Police shall have the final decision regarding the approval of the selection of an individual's selected holidays.

Unresolved Issues

Issue: Article 13, Health and Safety

City Position: The City proposes adding an annual physical fitness examination.

Union Position: The Union objects to physical fitness testing.

Findings: The City proposes to add a new provision permitting it to require new employees hired after April 1, 2007 to undergo an annual physical examination. The examination will follow Ohio Peace Officers Training Academy (OPOTA) standards. Should the employee fail the examination, he or she will be given a one hundred eighty (180) day remediation period. Failure to pass the examination after the remediation period can result in disciplinary action.

The City sees this as a management right that it could institute by rule. Physical fitness examinations are common, so this is not a new concept. Finally, this was agreed upon in the tentative agreements for each contract.

The Union counters that, while the City could unilaterally implement fitness for duty

examinations, this is not fitness for duty. On the contrary, this is an annual physical fitness exam that the City could not unilaterally implement. While it does not object to fitness for duty examinations, it does object to physical fitness testing. As to the tentative agreement, this was part of the entire package and the Union agreed to it in exchange for other concessions by the City. The tentative agreement is irrelevant now.

Although the City contends that physical fitness testing is common, no comparables were introduced. The Union's evidence showed that fitness standards were not common. On the other hand, it is well known that a police officer's job can be stressful and physically demanding. The Union does not object to fitness for duty examinations, but it is accepted practice that an officer does not return to work until his or her doctor, the employer's doctor, or both has cleared him or her. In that sense, there is little need for fitness for duty examinations.

When hiring an employee for a stressful and physically demanding job, it would be helpful to know that the individual is physically capable of handling the job. A police officer must be able to apprehend suspects, chasing them on foot and physically subduing them at times. Officers also respond to stressful emergency situations. Requiring a fitness examination would ensure that employees can handle the rigors of the job. Additionally, the standards proposed by the City would be those that applied during OPOTA training. Employees would not have to meet standards they have not already met. The Fact Finder concludes this is a reasonable requirement.

Recommendation: The Fact Finder recommends that a new Section 3 be added to Article 13 as follows:

Employer reserves the right to require all employees hired after April 1, 2007

to submit to an annual physical fitness examination. Any employee who fails to pass said examination will be given a 180 day remediation period. The failure to pass said examination following the remediation period may result in disciplinary action. The physical fitness examination shall follow the OPOTA physical fitness standards.

Issue: Article 25, Duty Hours

Union Position: The Union seeks to add the words "sick leave" to Section 2 to clarify that sick leave is to be counted as time worked for the purpose of calculating overtime. It also proposes a second paragraph be added to Section 2 as follows:

Employees earning overtime pay pursuant to this Article may elect to take said pay in the form of earned compensatory leave. Compensatory leave shall be earned at the rate of one and one-half (1-½) for each hour worked. Employees may accrue a maximum bank of eighty (80) hours of compensatory leave in a revolving bank and any overtime earned after the employee has reached the maximum bank amount shall be paid to the employee. The revolving bank permits an employee to use compensatory leave accrued in the bank and then re-earn compensatory leave up to an eighty (80) hour maximum. (Example – Employee has 80 hours of compensatory leave accrued and then uses 10 hours; the employee has reduced his bank to 70 hours and then may accrue up to an additional 10 hours of compensatory leave.)

The Union also proposes a new Section 6 as follows:

Full-time bargaining unit members shall have the right of first refusal on available overtime shifts and any Service Department direct work or contracted work within the City.

City Position: The City seeks to clarify Section 3 so that employees subpoenaed to appear in court receive overtime pay only when they are not on regular duty. The City rejects the Union's proposals as to the compensatory leave bank and the right of first refusal on Service Department work.

Findings: The Union had no response to the City's proposal regarding paid time for being subpoenaed to appear in court and the City agreed to add sick leave as work time for

calculating overtime. These provisions are recommended by the Fact Finder.

As to the compensatory leave bank, the Union argues that the comparables show that most cities have such a provision. In Union Exhibit 1, thirty-two (32) out of forty-one (41) cities have a compensatory leave bank, with an average bank of one hundred forty-eight (148) hours. The Union points to Fairlawn as a city of similar size in Summit County. The bank that the Union proposes permits only eighty (80) hours maximum. The Union would accept language that permits the Chief to deny the use of compensatory leave if it causes overtime to be earned by another officer.

The City responds that it has looked at such a bank, but it is cost prohibitive. When an officer takes compensatory time, the officer filling in typically earns overtime because of the size of the bargaining unit. With only six (6) patrol officers, it is difficult to staff to cover time off without another officer earning overtime. The City contends that Fairlawn is not comparable. It is a wealthy suburb of Akron. It has many office buildings and a shopping mall where many people work and pay income taxes. The City does not have such a tax base. It has few businesses that pay income tax and has almost exclusively residential housing.

As to adding Section 6, the Union submits that there is often overtime work to be done within the City when, for example, ODOT does street work. In such a situation, the Union believes that ODOT contacts the City to arrange for police officers to direct traffic and so forth. It seeks the right of first refusal on such work. Currently, the parties have a letter of understanding that the unit has the right of first refusal on any such work done by the Water Department.

The City objects to this proposal for two (2) reasons. First, cost is an issue. If an

officer were to take such overtime work and then is unable to work his or her regular shift for any reason, it would result in overtime under the Union's proposal and would cost the City money. Second, the City has auxiliary officers and part time officers who will do the work for little money or need the hours. The City believes it would be unfair for full time officers to do this work and deprive auxiliary and part time officers of the hours. It would also not be fiscally responsible to pay a full time officer time and one-half when the work can be done for less by auxiliaries and part timers.

The Fact Finder recommends against the compensatory leave bank. The evidence was that, with such a small bargaining unit, granting compensatory leave almost always results in overtime by the officer filling in. Allowing a leave bank would only exacerbate the problem. The Union's suggestion of language allowing the Chief to deny leave if it results in overtime may be of some help. However, if leave almost always results in overtime, then the purpose of the language is defeated. Use of the leave may be denied almost every time. On this record, the Fact Finder concludes that such a provision would likely be ineffective and may cause the parties more difficulties than it solves.

As to the right of first refusal on any work that comes through the Service Department, the Fact Finder recommends against it. The City does not control this work and it is unclear exactly how such a provision would work. The City introduced evidence that outside parties such as ODOT do not contact the City to arrange such work, that one of its officers is contacted. This officer then contacts others to see who is interested in such outside work. Since the City does not appear to be involved, the Fact Finder cannot direct the actions of parties outside the bargaining relationship.

Recommendation: The Fact Finder recommends that the second sentence of Article 25,

Section 2 read "Paid vacation, sick leave, and holiday leave shall be considered as time worked for the purpose of calculating overtime." Section 3 is to read as follows:

Employees subpoenaed or requested to appear in court outside of their regular duty hours shall be provided a minimum of three (3) hours of pay at one and one-half (1½) times their regular rate of pay.

Issue: Article 27, Compensation

Union Position: The Union proposes wage increases of eight percent (8%), five percent (5%), and five percent (5%) over the life of the Agreement. It also seeks an increase of five cents (5¢) at each level of the longevity pay provision and seventy-five dollars (\$75.00) for the uniform allowance. Additionally, the Union offers a new Section 5 in each Agreement as follows:

Field Training Officer (FTO) Pay. An employee shall not perform the functions of an FTO unless that employee has received training and certification as an FTO. When a trained and certified employee is required to perform the functions of an FTO that employee shall receive one (1) additional hour of base pay or, if the employee elects, one (1) hour of compensatory leave, for every eight (8) hours the employee is required to act as an FTO.

In the Sergeants Agreement, the Union proposes a new Section 6 as follows:

Acting Chief Pay. Whenever the Chief of Police is unavailable and a Sergeant is required to act in the place of the Chief, that Sergeant shall receive double time his regular salary for all hours he is required to act in the place of the Chief. Such designation of "Acting Chief" shall be ordered by the Chief or his designee before the increased pay rate shall take effect. In the absence of such designation, no Sergeant shall be required to perform additional duties in the absence of the Chief of Police.

In the Police Officers Agreement, the Union proposes a new Section 6 as follows:

Officer-in-Charge (OIC) Pay. Whenever two (2) or more employees are on duty in the absence of an officer of rank (Sergeant or Chief), the senior employee shall be designated as the OIC. An employee acting as the OIC shall receive an additional \$1.00 per hour for each hour the employee is required to act as the OIC.

City Position: The City rejects the increases in longevity and the uniform allowance. It also rejects the new sections as to Field Training Officer, Acting Chief Pay, and Officer-in-Charge Pay. As to a wage increase, it counters with a two percent (2%) increase each year, with another one-half percent ($\frac{1}{2}$ %) increase in the event the employee has no more than eight (8) unexcused absences during the preceding one (1) year period.

Findings: The Union contends that both units are well under the average pay in other communities. Even with the increases the Union requests, the units would remain underpaid. The Union introduced comparables showing that the average increase is approximately three percent (3%). Even receiving three percent (3%), the units would essentially be losing ground on a dollar for dollar basis. The Union believes the City is in a financial position to pay more than two and one-half percent ($2 \frac{1}{2}$ %). The Union also objects to tying the use of sick leave to pay.

The City counters that it is a bedroom community with little industry. There is no land for an industrial park. Seventy-five percent (75%) of its residents work outside the City and pay taxes elsewhere. In short, there is little opportunity to increase revenue. The Police Department budget is the largest percentage of the City's budget, so any increases to the former have a large effect on the latter. The City recently negotiated the collective bargaining agreement with its Service Department and settled on two and one-half percent ($2 \frac{1}{2}$ %) increases for three (3) years with the one-half percent ($\frac{1}{2}$ %) reduction with more than eight (8) unexcused absences. While the City agrees that three percent (3%) is the norm – indeed, it introduced the City of Norton agreement with the Union covering police lieutenants, sergeants, police officers, and dispatchers which provides for three percent

(3%) increases – it claims that parity within the City requires less than three percent (3%).

The Union responds that the Service Department contract is not relevant because it is not a similar unit. Further, abuse of sick leave is a disciplinary issue. The City introduced no evidence that it has tried discipline and it failed. The contract between the City and the Service Department has a “me too” clause, giving the City an incentive to argue that parity requires less than three percent (3%). However, if more is granted this unit, the Service Department will receive it, also, and parity will continue. Finally, the city of Norton pays the entire cost of insurance for its employees. Any increase to its employees is not offset by insurance costs.

The City opposes any increase in longevity and the uniform allowance. Longevity is established by ordinance. Currently, all employees have parity. If the Police Officers and Sergeants get an increase, there will no longer be parity. Further, longevity is different than salary. An employee is paid for his or her tenure with the City. It matters not what job the employee has.

The Union proposes new Sections 5 and 6 for Field Training Officer and Acting Chief or Officer-in-Charge pay. It argues that an officer charged with training a new officer takes on certain responsibilities. The officer is essentially responsible for the trainee forever and must evaluate him or her. Field training is an important duty and should be compensated. The City should want officers who want to train others. For Acting Chief pay, the Chief has to appoint the Sergeant before he would receive additional pay, so the additional pay may not be required each time the Chief is absent. As to Officer-in-Charge pay, a senior officer is expected to direct less senior officers and should be paid for it.

The City replies that an officer's duties include training others. It is simply part of

the job and should not require additional pay. The same goes with Officer-in-Charge pay. It is part of a senior officer's job. As to Acting Chief pay, the Sergeant is paid more because the job includes being a supervisor when the Chief is away.

The evidence established that, recently, three percent (3%) has been the norm for wage increases. The comparables and the annual wage settlement report provide that the average wage increase is approximately three (3%). The City agreed. There is also no dispute that the units involved here are at the low end of the scale. The Union introduced ample evidence to prove this point. Simply put, there is sufficient evidence to justify increases of at least three percent (3%).

On the other hand, the City introduced evidence that containing costs is vital. It is a bedroom community with little industry or commercial establishments. Most of its residents work and pay income tax elsewhere. The Police Department budget is the largest component of its budget. Additionally, the economy has apparently entered a period of slower growth. The Union's evidence indicated that, in the last year or two, wage increases have been decreasing somewhat. This lends credence to the City's contention that two and one-half percent (2 ½%) increases are justified.

Where these units fall compared to other police units must be given weight in this case. It is clear that the units are near or at the bottom when it comes to wages compared to other cities. This is particularly so when looking at Summit County cities with similar populations. While the City's argument that some of these cities are not comparable has merit, overall the evidence is clear that the pay of these units is near the bottom. Granting an increase of less than three percent (3%) would cause them to fall even farther behind. While three percent (3%) will not enable them to catch up, it will keep their wages from

eroding further. Given the City's financial arguments and the current economy, the Fact Finder concludes that three percent (3%) is appropriate.

The City's position that internal parity requires two and one-half percent (2 ½%) does not overcome the above evidence. When the evidence establishes that a unit is within the average compared to others, internal parity is a strong basis for finding that the unit should receive the same increases. However, where, as here, the evidence proves that a unit is well behind the average, internal parity is less strong. Additionally, the City's contention that there should be a reduction when unexcused absences reach more than eight (8) does not persuade the Fact Finder. As the Union pointed out, abuse of sick leave is a disciplinary issue. The City introduced little evidence that sick leave abuse was a problem. There was no evidence that it has tried to curb the abuse through the disciplinary procedure and failed. While fact finders are reluctant to tie wage increases to something such as sick leave, they are even more reluctant when there is little evidence to show the need to tie the two.

The Union desires an increase in the uniform allowance of seventy-five dollars (\$75.00) per year, contending that costs have increased. However, it offered no evidence of increases in the cost of uniforms. While there is no question the cost of living has increased, there was no evidence to justify the increase proposed. The Fact Finder also finds merit to the City's position on longevity. Longevity rewards an employee for service to the City. In this regard, it is different from wages. The Fact Finder concludes that, on this record, internal parity carries more weight than external parity. Service with the City remains the same no matter the job. Granting the increase sought by the Union would provide greater longevity and upset parity within the City. Additionally, the parties

tentatively agreed that the uniform allowance and longevity would remain the same.

Turning to the Field Training Officer, Acting Chief, and Officer-in-Charge pay proposals, the Fact Finder finds merit to the City's arguments. Training other officers, having the Sergeant take the place of the Chief, and directing less senior officers are all part of a Police Officer's or Sergeant's duties. While there may be good reasons to implement these proposals, the Union did not prove a need for them. There was no evidence introduced that training of new officers was lacking or a problem because of a lack of officers willing to train. Nor was there evidence of any problems when a more senior officer needed to direct a less senior one. Finally, there was no evidence that the absence of the Chief caused any difficulties. While it is natural for employees to seek additional income, particularly where an employee may view taking on responsibility as extra work, it is not clear that is the case here. The City contends that these responsibilities are part of the job and should not require additional compensation. Without further proof for the need for these provisions, the Fact Finder recommends against them.

Recommendation: The Fact Finder recommends wage increases of three percent (3%) in each year of the contract. He recommends against the remaining proposals.

Issue: Article 28, Insurance

City Position: The City proposes that bargaining unit members pay twenty-five percent (25%) of the periodic premium for medical insurance.

Union Position: The Union seeks no change in the current amounts paid by bargaining unit members. It also wants to increase the cash amount paid by the City to employees in lieu of medical insurance coverage to fifty percent (50%).

Findings: There is no dispute that health care costs continue to be an important factor in collective bargaining. Indeed, health care is often more difficult to resolve than even wages. Costs continue to rise at percentages greater than the inflation rate. It is no wonder that employers seek to have employees share a greater portion of the burden and employees seek to hold the line on any increases.

The City submits that SERB reports that health care costs represent the single largest increase in budgetary needs of municipalities and these costs will continue to rise. As noted above, there is no dispute about this. The City points to the city of Tallmadge, where employees in 2006 agreed to share thirty-five percent (35%) of health care costs. The City wants employees to pay twenty-five percent (25%). It also proposes to pay a ten percent (10%) cash payment in lieu of medical insurance.

The Union responds that twenty-five percent (25%) is too great and clearly out of the norm. SERB's 2006 Report on Health Insurance Costs indicates that, statewide, the average monthly employee contribution is approximately eight percent (8%). For cities in general and those under twenty-five thousand population in particular, the percentage is less, approximately seven percent (7%). In the Akron/Canton region, the percentage is even smaller, approximately five percent (5%). Finally, the Union submits that the city of Tallmadge provides better health care coverage than Munroe Falls. Thus, even though employees pay a higher percentage, they receive better coverage.

Currently, the Agreement provides that employees pay a minimum of two hundred dollars (\$200.00) per year for single coverage, four hundred dollars (\$400.00) per year for two person coverage, and six hundred dollars (\$600.00) per year for family coverage, plus twenty percent (20%) of any annual increase incurred in each year. There was no

evidence presented as to the current costs to the bargaining units. The Agreement contains the costs for 2004, upon which the above rates are based, so a rough estimate could be made. It appears to the Fact Finder that perhaps it is time for the parties to negotiate a straight percentage of the cost of insurance.

However, the twenty-five percent (25%) proposed by the City is simply too great. As the evidence shows, it is clearly above the norm. SERB's Health Insurance Cost Report for 2006 shows that the percentages vary quite a bit, but none are near twenty-five percent (25%). Employees of the State of Ohio pay fifteen percent (15%) and employees in counties with less than fifty thousand (50,000) population pay just over fifteen percent (15%) for family coverage. Townships of all sizes pay the least, from two to three percent (2-3%). This comports with the Fact Finder's experience, which is that employees contribute roughly ten percent (10%) of premiums. Requiring the units to pay twenty-five percent (25%) of the coverage would be excessive based on this evidence. Moreover, it would likely eat up a large portion of the three percent (3%) increase the Fact Finder recommends.

The Fact Finder believes it would be simpler to provide a straight percentage of premium for each employee to pay. The Fact Finder recommends that employees pay ten percent (10%). This is based on several factors. First, it comports with the Fact Finder's experience. Second, it is roughly equivalent to the Union's evidence. According to the 2006 SERB Health Care Cost Report, employees pay approximately eight percent (8%). This has undoubtedly increased some over the last year or two. Finally, the parties agreed to ten percent (10%) during negotiations.

As to the cash payment in lieu of medical insurance coverage, the Fact Finder

concludes that ten percent (10%) is the appropriate amount. The cash payment was instituted as an incentive for employees who could obtain coverage elsewhere. If the employee were able to obtain coverage through a spouse, the City would pay the employee. The City would have one less employee to cover, while the employee would then have coverage and cash as a bonus. Employees have the choice, so it is only paid when it is to the employee's advantage. Given these facts, ten percent (10%) is reasonable. Additionally, employees should provide some proof that they have coverage elsewhere.

Recommendation: Article 28 is to be amended as follows:

Section 1: Effective January 1, 2008, employees shall pay a portion of their medical insurance costs equal to ten percent (10%) of the periodic premium charged to the Employer for said coverage.

Section 2: The employee's share shall be collected from the employee through payroll deduction.

Section 4: Effective July 1, 2007, the Employer will provide a cash payment to employees in lieu of medical insurance coverage in an amount equal to ten percent (10%) of the periodic premium for single coverage insurance. Acceptance of said cash amount in lieu of medical insurance is at the discretion of the employee, except that such employee must provide satisfactory evidence to the Employer that the employee has other medical insurance coverage. Thereafter, if the employee wishes to re-enroll in the insurance program, the employee shall be subject to the re-enrollment requirements of the insurance carrier.

Issue: Article 29, Insurance Committee

City Position: The City wants to reduce the amount of hours the Agreement provides for an insurance committee from forty (40) to eight (8).

Union Position: The Union objects to reducing the hours. It also desires to add a sentence at the end of Section 2 that the Chief's approval of hours that may result in

overtime will not be unreasonably withheld.

Findings: The Agreement provides that a member of the bargaining unit can serve on an insurance committee to research cost containment and benefit levels. This individual was granted up to forty (40) hours of compensated time for this purpose. The City contends that the parties realized that forty (40) hours was not needed and the research could be done in much less time. Often no committee was formed or appointed. Additionally, because of recent privacy laws, the committee was unable to obtain the necessary information. Insurance companies would provide the information to the City only. The City would then share it with the committee to review. Thus, less time was needed by the committee to analyze the information and provide input on the proposed plans.

The Union wishes to see the committee utilized to its fullest. While the committee recently has only reviewed proposals given to the City by various insurance companies, the Union believes the committee can still serve its intended purpose. It believes the committee should serve more of an advisory role to the City regarding plan provisions that employees might want, how to obtain cost savings, and so forth.

The Fact Finder agrees that a committee has the potential to serve a useful role for the City. Obviously, recent privacy laws set up hurdles to this role. The City believes the committee best serves its role at this time in reviewing the proposals it has obtained. It certainly is more aware than the Fact Finder of the limitations the law places upon the current system. On this record, the Fact Finder is reluctant to force a different role on the parties.

The Fact Finder also agrees that a sentence should be added to Section 2 regarding the Chief's approval of overtime. Eight (8) hours of time should not present any scheduling

difficulties requiring overtime. Any overtime must have the Chief's approval. However, that approval should not be unreasonably withheld.

Recommendation: The number of hours specified in Section 1 of Article 29 is to be reduced from forty (40) to eight (8). The following sentence is to be added at the end of Section 2. "Such approval shall not be unreasonably denied."

Issue: Article 30, Duration of Agreement

Union Position: The Union proposes that the successor agreement and any wage increases be effective on April 1, 2007.

City Position: The City counters that any wage increases be effective January 1, 2008.

Findings: Prior to the hearing, the parties agreed to extend the fact finding deadline. The City also agreed to waive the limitation of the conciliator's powers as provided in O.R.C. §4117.(G)(11) and agreed that any wage increases and other economic benefits could take effect as of January 1, 2008, unless otherwise agreed by the parties. The Fact Finder is aware that the law may impose limitations upon the ability of a conciliator to grant increases retroactive to a prior year. As the Fact Finder understands it, that issue is not settled.

In this case, the collective bargaining process has been going on for a year. The parties filed with SERB in December of 2006 and engaged in negotiations. In the Fact Finder's experience, it is likely that one of the parties will reject this Report and want to conciliate. By the time an increase is awarded, more than a year will have passed. The City agrees to retroactivity to January 1, 2008, but the employees would then forfeit three-fourths ($\frac{3}{4}$) of a year's pay. While the Fact Finder understands this is sometimes how the

process works, it seems unfair that employees forego increases spanning almost one-third ($\frac{1}{3}$) of the contract period.

Recommendation: The Fact Finder recommends that the wage increases recommended be retroactive to April 1, 2007.

Issue: Shift Schedule

City Position: The City wishes to remove the shift schedule the parties have agreed upon as a memorandum of understanding attached to the Agreement.

Union Position: The Union objects to eliminating the shift schedule.

Findings: According to the City, the shift schedule serves two functions. First, it identifies all the shifts covered by the Agreement. Second, it designates certain shifts for part time officers only. The City argues that it is the only such schedule of any police department in Ohio and is inefficient and ineffective. By scheduling part time officers to weekend shifts, the most experienced officers are not on duty during times of highest risk of criminal activity. Simply put, it ensures that full time officers only work weekday shifts. The City would like to be able to schedule part time officers during the week and full time officers on weekends to better use their experience.

The Union counters that the shift schedule is the benefit of the bargain. When the parties negotiated this in 1999, the units gave up something of benefit to them. Additionally, the City presented no evidence of criminal activity and when it is highest. Further, in the City, part time and full time officers are on equal standing. The Chief was promoted from a part time position. Sergeant Smith is in charge of scheduling and has encountered no problems necessitating a change. He testified that the schedule works

well, currently there are no problems with it, and that it ensures that part timers get work and do not quit to go elsewhere. Many part time officers have full time jobs during the week and are only available on weekends. At least some of the part timers are experienced officers. For example, one part timer works as a full time police officer elsewhere and has twenty (20) years experience. Another has seventeen (17) years of experience and can only work on weekends. Finally, the Union argues that the City gave this up in the tentative agreement and it should not be taken away without substantive evidence that the schedule is a problem.

The City replies that it agreed to keep the schedule as part of the total package of the tentative agreement. Additionally, there have been problems with the conduct of some of the part time officers. They are simply not as qualified as the full time officers and it wants to incorporate the part timers into the full time schedule. It has also necessitated using full time officers on weekends at overtime. The Chief testified that the reason the schedule was adopted was that the prior mayor would negotiate a wage increase and then cut shifts to pay for the increase. The schedule ensured that shifts would not be cut. Finally, the City submits that current coverage is satisfactory, but designating shifts as part time or full time does not make sense. It wants the flexibility in scheduling.

As a City proposal, it has the burden to convince the Fact Finder that there is good reason to get rid of the shift schedule. There is no question that the City has presented good reasons. However, the Union has also put forward persuasive reasons to keep it. While mixing part time and full time officers on shifts would benefit lesser experienced officers, there was evidence that at least some part time officers were as experienced, if not more so, than full time officers. The City posited that weekends were times of higher

crime, but no evidence was presented to establish it. The City introduced evidence that it has had problems with some of the part timers. It is not clear, though, that combining part time and full time officers on the same shift would solve all of them. Conduct problems in particular may need to be handled through the discipline process, not scheduling. The City also contends that the reason the shift schedule was negotiated, to ensure shifts, no longer exists. Sergeant Smith's testimony that it ensures work for part time officers who are available only on weekends seems to refute this. Simply put, on this record, the Fact Finder is not persuaded that the shift schedule should be eliminated.

Recommendation: The Fact Finder recommends the shift schedule be retained.

Issue: Article 4, Management Rights, Past Practices

City Position: The City offers a new provision to be added to Article 4 as follows:

This Agreement supercedes and cancels all previous Agreements, verbal or written, or based upon alleged past practices, between the parties hereto and constitutes the entire Agreement between the parties. Any amendment or Agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties to this Agreement.

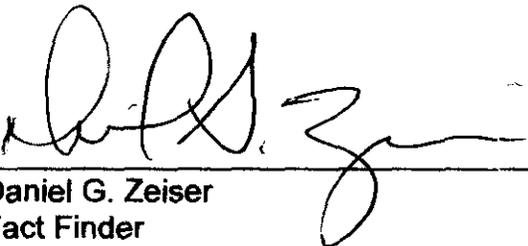
Union Position: The Union objects to adding this provision.

Findings: The City wants to eliminate anything that is not expressed in the contract, particularly all past practices. A new administration has been elected and apparently is concerned by alleged past practices the bargaining unit claims exist. The City claims that past practices cause more grievances than any other factor. The Union responds that past practices fill in those areas of the Agreement that go unexpressed and give guidance to the parties. If they are eliminated, the parties must start over to fill in where the language does not.

The City makes a radical request here. Past practices are a staple of the collective bargaining relationship. Parties cannot anticipate and write language to cover every possibility. Past practices are the way they deal with new situations as they arise. There is a tremendous body of law dealing with past practices and how they are created, interpreted, and terminated. The Fact Finder was presented with little evidence on any past practices, problems they have created, and so forth. On this record, the Fact Finder is reluctant to take such a radical step.

Recommendation: The Fact Finder recommends against including the new language.

Dated: December 28, 2007



Daniel G. Zeiser
Fact Finder