

**IN THE MATTER  
OF  
INTEREST ARBITRATION  
FACT FINDING  
OPINION & AWARD**

STATE EMPLOYMENT  
RELATIONS BOARD

2008 AUG 15 A 11:41

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<b>BETWEEN</b>	<b>CASE NO: 07-MED 08-0777</b>
<b>CITY OF MEDINA</b>	<b>Police Sgts.</b>
<b>V</b>	<b>FACT FINDER: JOHN S. WEISHEIT</b>
<b>OHIO PATROLMAN'S BENEVOLENT ASSOCIATION</b>	<b>HEARING DATE(S): June 30, 2008</b>
	<b>AWARD ISSUED: August 14, 2008</b>

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**REPRESENTATION  
by**

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<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
Jon Dileno, Esq. Greg Mason, Lt.	Mark Volcheck, Esq. David Birckbichler, Sgt.

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**AUTHORITY**

The City of Medina, Ohio, hereinafter called the "City" and/or the "Employer", recognizes the Ohio Patrolmen's Benevolent Association, hereinafter called the "OPBA" and/or the "Union", as the collective bargaining agent for the Sergeants.

**BACKGROUND**

This matter was brought before Fact Finder John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC 4117 and rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a

timely manner with all procedural filings. The matters before the Fact Finder are for consideration and determination, based on merit and fact according to terms of the labor agreement and provisions of ORC 4117. The following Articles include terms at impasse between the parties:<sup>1</sup>

Article 25 - Healthcare

Article 26 - Wages

In addition to the verbal presentations, the Union and Employer offered additional written documentation regarding their respective position on the issues remaining at impasse. The Hearing was adjourned after the parties indicated they had nothing additional to submit on behalf of their position regarding the remaining unresolved issues.

This Fact Finding Report is based on facts provided in document and testimony introduced at the Fact Finding Hearing. In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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;

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<sup>1</sup>Impasse is limited to the specific terms addressed below reflecting the position of each party at the time impasse was declared. All other terms of the Article are tentatively agreed to.

4. The lawful authority of the public Employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

**SUMMARY OF PARTY POSITIONS  
ON ISSUES AT IMPASSE**

**1) Article 25 Group Hospitalization**

**Union Position at impasse:**

Accept the Group Hospitalization as set forth in the expiring contract, except for the following change:

**Effective August 1, 2008, the City shall pay ninety-three and one-half percent (93.5% ) of the premium costs.**

**Employer Position at impasse:**

**The City proposes:**

**Section 1.**

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**Effective August 1, 2008, increase employees' premium contributions from 5% to 6.5%. \*\*\*\*\***

**Section 2.** The City retains the right, in its sole discretion, to change insurance carriers, and/or plan designs provided the benefits and coverages under the modified policy remain ~~policy with the new carrier are comparable substantially similar to or better than the benefits and coverages provided to bargaining unit employees as of the effective date of this Agreement.~~ The City agrees to negotiate in good faith with the Union prior to implementing any change in benefit levels.

## **2) Article 26 Wages**

### **Union Position at impasse:**

Maintain the six percent (6%) spread for Sergeants, above the top Patrol pay, for the first year of service as Sergeant.

For Sergeants with one or more year(s) of service, Effective January 1, 2008, increase the spread from thirteen percent (13%) to fourteen percent (14%).

### **Employer Position at impasse**

Effective the first year of the Agreement, increase the rate of pay by three and one-quarter percent (3.25%); The second year of the Agreement, increase the rate of pay three percent (3%); and the third year of the Agreement, increase the rate of pay three percent (3%).

## **DISCUSSION & RECOMMENDATION**

### **GENERAL**

The fact pattern put forward by the Union and the City reflects an understanding of how and why the parties argue for inclusion of the last offer made prior to the impasse. Each demonstrates an understanding of the premise for the other party's position and reflects rationale for accepting some terms while rejecting others.

The issue of ability (inability) to pay is not argued in this case. Reflected is a position by each party that their positions arise from what is considered appropriate and consistent with the respective bargaining objective.

It is a general principle in matters of interest arbitration that any issue reflecting an economic cost is to relate such issues as a “wage” issue for the duration of the term of the Agreement. The wage and health benefit positions offered by the City and the Union include such an issue. The Union’s positions reflect a wage increase element while the City seeks a larger contribution toward health care premiums from the Sergeants.

The parties’ use of internal and external comparables primarily to, understandably, support their respective bargaining positions. The positions of the parties regarding the share of the respective party’s insurance contribution is the same. The 6.5% contribution amount was offered in the Patrol’s Fact Finding. That fact finding was used by the parties to a significant degree in the course of the Sergeants bargaining. It is noted that neither party offered evidence or testimony indicating that the Fact Finder granted or made any additional economic or similar wage recommendation for Patrol Officers.

The City proposal to attain a greater control regarding its unilateral authority to change the health benefit level is considered an appropriate subject of bargaining. However, the evidence and testimony offered is not found persuasive for inclusion by this Fact Finder at this time.

The wage schedule for Sergeants is a percentage amount above the top pay rate for Patrol Officers. As such, it was not addressed in their bargaining. The structure of the Sergeants’ wage components was properly not addressed in the Patrol negotiations. Such a provision is determined to be an integral element subject to being addressed in this arena.

## **DETERMINATION**

### Issue No. 1 Article 25 Group Hospitalization

The City seeks change/modification in two sections of this Article.

- 1) An increase in the employee rate of contribution for health benefits from 5% to 6.5%.
- 2) A language change to expand its right to change terms of the plan.

The language change, as proposed by the City offered, is often referred to as “terms to grieve by”. This results from the subjectivity of the words often results in arbitration due to their ambiguity. Such language is not recommended.

### Issue No. 2 Wages

The Union relies heavily on comparables regarding the wage and other economic issues. Such comparisons are reflected piecemeal and not in total. For instance, it argues that the amount of Sergeant contribution is higher; however the quality of and degree of the local healthcare plan is absent comparability facts nor the concession made in local process. For such reasons the weight given comparables is limited by the degree of the accuracy of the facts applied.

The rationale used by a Fact Finder in making a recommendation does not necessarily carry the same priority or weight as that of the parties.

It is also noted that the Sergeants will receive a wage increase of 9.25% in the three-year period resulting by the piggy-back wage provision in their wage provision and the wage increase.

Based on a review of the information offered in this Opinion and evidence offered in the Hearing, the following recommendations are made.

## **RECOMMENDATION**

### **Issue 1. Group Hospitalization:**

The terms set forth in the expiring Group Hospitalization provision shall be included in the Agreement, except for the following: The terms of Group Hospitalization in the expiring Agreement shall be brought forward into the Agreement with the inclusion of the following change: Effective August 1, 2008, the Sergeants shall pay six and one-half percent (6.5 %) of the monthly premium costs of the group health insurance premiums.

### **Issue 2. Wages:**

The terms in the expiring Wage provision shall remain in effect in the Agreement, with the inclusion of the terms of tentatively agreed to by the parties and the following issue, as set before the Fact Finder. As of the effective date of this Contract, the Sergeant's wage shall be increased by 3.25%.; as of the first date of the second year, the wage shall be increase. 3.0%, and for the third year , the wage shall increase by 3.0%.

## TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **8 pages**, includes the findings and recommendations set forth in this Award are to be made the terms in the Agreement between the parties.

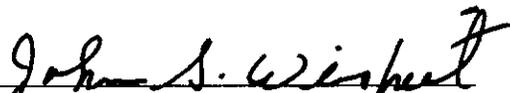
Any matter presented before the Fact Finder and not specifically addressed in this Fact Finding and Award were given due consideration but not determined to be included in the recommendation.

- The Agreement is to include all terms tentatively agreed to by the parties prior to Fact Finding. Terms of the expiring agreement that were not addressed in bargaining by the parties, are recommended to be brought forward in this Agreement

To the best of my knowledge, said Report and the included determinations comply with applicable provisions of the Contract between the parties, applicable Sections of ORC 4117 and SERB Rules and Regulations.

I hereby affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this

date of August 14, 2008

  
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John S. Weisheit, Conciliator

2008 AUG 15 A 11:41

**CERTIFICATE OF SERVICE**

This will affirm the a copy of the attached Opinion and Award has been submitted by USPS Overnight Delivery, as of the date set forth below, to following parties:

For the Employer

For the Union

For SERB

<b>Jon Dileno, Esq.</b> <b>Zashin &amp; Rich Co. LLP</b> <b>55 Public Square, 4<sup>th</sup> Flr.</b> <b>Cleveland, OH 44113</b>	<b>Mark J. Vocek, Esq.</b> <b>OPBA</b> <b>10147 Royalton Rd.,</b> <b>Suite J</b> <b>PO Box 338003</b> <b>N. Royalton, OH 44133</b>	Edward Turner, Administrator STATE EMPLOYMENT RELATIONS BOARD 65 E. State St., 12 <sup>th</sup> Flr. Columbus, OH 43215-4213
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I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.

  
John S. Weisheit, Conciliator

**Date: Aug. 14, 2008**