

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

Ohio Patrolmen's Benevolent
Association

-And-

City of Fostoria

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07-MED-10-1059 & 1060

Fact-Finder:
John T. Meredith

**REPORT AND RECOMMENDATIONS
ISSUED FEBRUARY 28, 2008**

APPEARANCES

Present for the Union:

Jospeh Hegedus, Counsel
Cpt. Bill Brenner
Ptl. Kent Reinbolt
Ptl. Matt Noftz
Ptl. Derek Wensinger

Present for the Employer:

David Smigelski, Counsel
Bill Rains, Safety Service Director

INTRODUCTION

The parties to this Fact-Finding proceeding are the Ohio Patrolmen's Benevolent Association and the City of Fostoria, OH. Agreements for two separate bargaining units are at issue. Case No. 1059 pertains to a unit including all Patrol Officers and Detectives (approximately 19 employees). Case No. 1060 pertains to a bargaining unit consisting of

two (2) Captains and three (3) Sergeants. The subject Agreements will be a successors to the January 1, 2005 – December 31, 2007 Agreements between the parties.

The parties engaged in collective bargaining as required by Chapter 4117 and resolved most terms for the successor Agreements. More specifically, they agreed to maintain most language of the 2005-2007 Agreements and further agreed to certain changes in articles concerning Union Business, Discipline, Injury Leave, Grievance Procedure, and Tobacco. However, several issues remained unresolved, and therefore fact-finding proceedings were initiated.

The State Employment Relations Board, by letter dated November 30, 2007, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. By agreement of the parties, the fact-finding hearing was scheduled for 10:00 a.m. February 7, 2008 at the Fostoria Municipal Building. Pursuant to OAC Rule 4117-9-05, the parties further entered into an agreement to extend the deadline for issuance of the Fact-Finding Report, and at the hearing it was further agreed that the Report would be issued on February 28, 2008. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder.

The hearing proceeded as scheduled on February 7, 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.

In making his recommendations, the Fact-Finder gave 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 a SERB Mediator in early January 2008, but issues discussed herein were not resolved. The parties and Fact-Finder also discussed possible mediation on the hearing day, but it did not appear that mediation would resolve the disputed issues.

BACKGROUND: CITY PROFILE

Fostoria is a Northwestern Ohio city with a population of approximately 13,900. Except for administrative personnel, most of its employees are union-represented. Firefighters are represented by the IAFF Local 325, service workers are represented by AFSCME Ohio Council 8, Local 811, and police are represented by the OPBA. Each of these unions has a collective bargaining agreement (or agreements) with the City, though they do not bargain on the same schedule. The IAFF Agreement runs from June 1, 2006 to May 31, 2009, and the AFSCME Agreement runs from May, 2005 to April 30, 2008.

Thus, only the OPBA Agreements at issue in this proceeding are open for renegotiation at this time.

Like many Rust Belt communities, Fostoria's economy has experienced some difficulties in recent years. Tax revenues declined from 2000-2005, and OPBA represented Police Department employees agreed to wage freezes in 2000 and 2004 when the City's finances were particularly tight. Similarly, it appears that AFSCME did without a wage increase from May 2005 to September 2006.

However, at least for the moment, some stability seems to have returned to Fostoria's finances. In April of 2006, Fact-Finder Donald Burkholder determined that finances had recovered sufficiently to support 3.25% increases for OPBA groups effective January 1, 2006 and January 1, 2007. These increases equaled or slightly exceeded the average percentage increases for Ohio police officers in those years. The City's finances remained in reasonably good condition at the end of 2007. City officials reported an increase in income tax collection during 2007, and the City finished the year with unrestricted balances of \$546,838 in the General Fund and \$800,000 in the Contingency Fund for a total of \$1,346,838, an increase of approximately \$245,000 from year-end 2006. (As a reference point, the City's General Fund Disbursements for 2007 were \$8,810,467.)

UNRESOLVED ISSUES

1. Wages – Article 11 (Patrol Officer/Detective), Article 9 (Sergeant/Captain)

City Position: The City's initial proposal was for three annual wage increases of 32 cents per hour at each step of the Patrol Officers' wage schedule. In its Pre-Hearing Statement, the City stated it "would accept a recommendation of the Fact-Finder" for

wage increases on the existing matrix of 42 cents per hour effective January 1, 2008, 43 cents per hour effective January 1, 2009, and 66 cents per hour effective January 1, 2010. These increases amount to 2%, 2% and 3% at the fourth step of the patrol officers' six step schedule. The City further proposed changing the current weekly payroll practice to bi-weekly pays. It opposed changing the rank differentials for Sergeants and Captains. Maintaining current percentage rank differentials would have the effect of providing wage increases comparable to the Patrol Officers' increase for Sergeants and Captains.

In support of its position, the City stated that the 42, 43 and 66 cents per hour increases are similar to 2%/2%/3% raises received by the firefighters during the current IAFF contract (which runs from June 1, 2006 to May 31, 2009). It asserts that it "is the goal of the City to maintain parity and equal percentage increases with common effective periods for all collective bargaining units." It stated that it preferred cents per hour increase to a percentage increase because starting officers pay compares less favorably to other cities than pay of more senior officers. The City does not see this as a near-term cost-saving measure, as Patrol Officers and Detectives currently are distributed across the wage scale, not clustered at the top.

The City further introduced comparability data to illustrate that the total compensation of most Fostoria police officers compares favorable with the compensation of officers in neighboring communities. Specifically, the City compared Fostoria compensation to compensation of police officers in Findlay, Tiffin, Fremont, Northwood, Bowling Green, Norwalk and Upper Sandusky. Fremont, Findlay, Tiffin, Bowling Green and Upper Sandusky are neighboring communities, while Norwalk is a bit farther east and Northwood is close to Toledo. Fostoria, Fremont, Tiffin and Norwalk are in the

same population range (13,900 to 18,200), while Findlay and Bowling Green are larger cities and Northwood and Upper Sandusky are smaller. At the top of the scale, Fostoria Patrol Officer wages exceed the wages paid by all cited comparable cities except Bowling Green, which is materially higher. For top Sergeants pay, the results are similar, except that Norwalk and Findlay are slightly higher than Fostoria. Bowling Green is significantly higher, and Tiffin, Fremont, Northwood and Upper Sandusky are materially lower. The City further notes that Fostoria's overtime and holiday pay benefits are better than those provided in the comparable communities, thus further enhancing the relative value of the Fostoria compensation package.

The City acknowledged that it does have the "ability to pay" for a wage increase, and stated that the issue is what increase is financially responsible in view of the comparability data. It asserted that the 32/33/66 cents per hour increases it proposed pass meet this standard.

Union Position: In its Prehearing Statement, the Union proposed annual percentage increases of 4% to be effective January 1, 2008, January 1, 2009 and January 1, 2010. The Union also proposed increasing the contractual rank differential between Sergeants and Patrol Officers and between Captains and Sergeants. Currently, a first year Sergeant receives 6% more than the top Patrol Officers rate. This increases to 9% after one year and 12% after two years as a Sergeant. Similarly, starting Captains currently receive 4% above the top Sergeant rate, and this increases to 8% after one year and 12% after two years. Initially the Union proposed 3% increases at each of these steps, but it orally modified its position at the hearing, and now seeks 1% increases, so that a Sergeant

with 2 years in grade would be paid 13% more than the top Patrol Officer rate, and a Captain with two years in grade would receive 13% more than the top Sergeant rate.

In support of its position, the Union pointed out that the City does have the ability to pay for wage increases during the term of the new Agreement. When times were tough, the Union helped out, accepting wage freezes in 2000 and 2004. It also agreed to modifications in the method of providing health care which were to the City's benefit. Now that finances are better, the Union believes it should share in available funds.

The Union also introduced comparability data at the hearing. Like the City, its exhibits included the neighboring communities of Bowling Green, Findlay, Fremont, Norwalk and Tiffin. It also added Toledo and several Toledo suburbs – Maumee, Oregon, Perrysburg, and Sylvania. Except for Toledo itself, these additional cities are all in the 15,200 to 19,300 population range. Because the Toledo area cities generally have higher pay scales than other northwest Ohio communities, Fostoria compensation for both Patrol Officers and Sergeants falls a little below the average compensation for the ten "comparable cities" submitted by the Union. The Union also noted that the average rank differential in these comparable cities is 13%, the same as the modified proposal it made at the hearing.

In addition to data about wages paid by comparable cities, the Union introduced data about wage increases granted by other cities. For 2008, Findlay, Fremont, Norwalk, Oregon, Perrysburg and Toledo have all agreed to 3% wage increases. Tiffin has agreed to a 4.3% increase, and Sylvania has agreed to 3.5%. The Union did not report 2008 increases for other cities on its list. Statewide, SERB reports average Ohio public sector wage settlements in 2007 were 3.19% for all city contracts and 3.24% for police

contracts. In Region 7, which includes Fostoria, the average increase for all contracts was 3.18%. SERB statistics for 2006 were 3.05% average city increase statewide, 2.93% average increase all contracts Region 7, and 3.23% average increase police contracts statewide.

Further, the Union noted that the All-Urban Consumers Price Index (CPI-U) unadjusted for the 12 months ending December 2007, all items, increased 4.1%. During the same period, the Midwest Urban, Non-Metropolitan (less than 50,000) Index increased 4.7%.

Finally, the Union refuted the City's argument for parity with the IAFF contract. It stated that the IAFF has not set a pattern for settlement of Fostoria labor contracts in the past. In fact, the three Fostoria Unions currently and historically have negotiated on different time schedules and signed contracts covering different time periods. Further, compensation for the separate employee groups is affected by types of premium pay peculiar to specific groups. Fostoria does not, the Union maintains, have a history of pattern bargaining except for the issue of group insurance.

RECOMMENDATION: (1) Patrol Officers and Detectives: The Fact-Finder recommends the following increases in wage rates for Patrol Officers and Detectives: Effective January 1, 2008 – 3.25%; effective January 1, 2009 – 3.0%; effective January 1, 2010 – 3.0%. Reopener language from the current Agreement should be deleted. The Note regarding “OIC Pay” and the four “Miscellaneous” provisions should remain unchanged. The new wage scale is set out below. (2) The Fact-Finder recommends that the rank differentials and progression schedules for Sergeants and Captains remain the same as in their current Agreement. The same

percentage increases recommended for Patrol Officers and Detectives automatically would be passed on to Sergeants and Captains due to the rank differentials and progression steps established by current language of Article 9 of the Sergeants and Captains' Agreement. The first paragraph of Section 3 of the current Sergeants and Captains Agreement (covering the probationary period) should be retained without change. The second and last paragraph of Section 3 (Reopener) should be deleted. Except for the deletion of this Reopener, there would be no change in the current language of Article 9 of the Sergeants and Captains Agreement. No change in current payroll practice in either Agreement.

**PATROL OFFICERS AND DETECTIVES
ARTICLE 11
WAGES**

Eff. Dates	Step 1	Step 2 6 mos.	Step 3 12 mos.	Step 4 12 mos.	Step 5 12 mos.	Step 6 Top
1/01/08	\$17.57	\$19.45	\$20.61	\$21.70	\$23.69	\$25.13
1/01/09	\$18.10	\$20.04	\$21.23	\$22.35	\$24.40	\$25.88
1/01/10	\$18.64	\$20.64	\$21.86	\$23.02	\$25.13	\$26.66

[Delete Reopener language. No other changes in remaining provisions of Article 11.]

Rationale: Although Fostoria has had its share of financial issues during the past several years, its finances appear to have stabilized since 2006. Tax receipts were up in 2007, and unrestricted general and contingency fund balances increased to \$1,349,838 as of December 31, 2007. (See City Profile, page 4 above). Therefore, as the City acknowledged at the hearing, the issue is not "ability to pay" an increase but what increase is reasonable and responsible in view of comparability data.

Both City and Union agree that Bowling Green, Findlay, Fremont, Norwalk, and Tiffin should be considered in the comparability analysis. Of these cities, only Bowling

Green pays a significantly higher wage than Fostoria, though Norwalk and Findlay are also slightly higher for Sergeants. The Union also offered several Toledo area cities with materially higher wages, and the City similarly named two smaller Northwest Ohio cities with lower compensation. These additional cities are not irrelevant, but they do seem to have less in common with Fostoria than the group shared by both parties, and therefore data concerning the additional cities has been given less weight.

From this, it appears that Fostoria wages are better than average for the most comparable group, especially when Fostoria's superior holiday, overtime and longevity provisions are considered. A "catch-up" raise, therefore, is not required. Rather, the issue is identifying a rate increase that will enable Fostoria to maintain its competitive position. Average wage increases for city employees, and police in particular, in the state and region were between 3.18% and 3.24% in 2007. Three neighboring cities – Findlay, Fremont and Norwalk – have agreed to 3% raises for 2008, as have three of the Toledo area cities listed by the Union. Tiffin has agreed to a higher increase (4.3%) but its pay rate significantly lags Fostoria's. Thus, the recommendation for increases of 3.25%, 3.0%, and 3.0% for 2008, 2009 and 2010, respectively, is consistent with state and area wage increase patterns.

The Fact Finder has not attached much weight to increases in the May 2006 – June 2009 IAFF Agreement, as they were negotiated at different times for different time periods. Except for group insurance plans, there does not seem to be a history of "pattern bargaining" in Fostoria. In particular, no evidence was presented to show that past IAFF agreements have set the wage pattern for other City bargaining units. IAFF and OPBA

base wages were not the same in 2006 and 2007, and the IAFF pay system includes pay for various medical certifications which do not have a parallel in the police pay system.

Finally, the Fact-Finder has decided not to recommend an increase in rank differential at this time. While the 12% differential in Fostoria is 1% less than the 13% differential in some neighboring cities, Sergeants and Captains tend to be more senior employees and thus benefit from Fostoria's superior longevity pay provisions. This mitigates the impact of the slightly lower rank differential.

2. Voluntary Overtime- Art. 12 (Patrol/Detective), Art. 10 (Sergeant/Captain)

City Position: The current Agreement provides premium pay for hours worked over 8 in a workday. The premium rate equals 1.5 times the base hourly rate over 8 hours, and increases to 2 times the base hourly rate over 10 hours. Further, the current Agreements provide for 1.5 times the base hourly rate for working 8 hours on a scheduled day off, and 2 times the base hourly rate for hours above 8 on a scheduled day off. The City proposes to limit double-time to hours worked on the second consecutive day off in a workweek. Double-time would no longer be paid for hours over 10 on a regular workday or for hours over 8 on a scheduled day off. In support of its proposal, the City notes that the current overtime pay provision is more generous than the overtime pay provisions in any neighboring city. In fact, most neighboring cities do not pay double time under any circumstances. Further, the City expressed concern about excessive overtime costs.

Union Position: The current overtime system has been in effect for many years. In fact, one Captain stated it has not changed since he joined the force in 1983. Like holidays, it has become an integral part of the compensation package. Under these

circumstances, it is incumbent on the City to establish the need for a reduced benefit. If the City is concerned about costs, it can control them by maintaining appropriate staffing levels.

RECOMMENDATION: The Fact-Finder recommends no change in the overtime pay rates. Current language would be retained for Article 12, section 2 of the Patrol Officers and Detectives Agreement and Article 10, section 2 of the Sergeants and Captains Agreement.

Rationale: If the Union were proposing the double-time rate for the first time, it would not be supported by comparability data in neighboring cities. However, it appears that the overtime pay system has been in effect in Fostoria for many years, and has become an integral part of the officers' total negotiated compensation package. This must be given some weight, as consideration of past agreements and the bargaining relationship of the parties is among the statutory fact-finding criteria. Further, while it is logical to assume that the double time rate may either increase costs or restrict assignment options, the City did not offer any specific data to support its cost concerns, and overtime costs are partially a function of staffing levels, over which the City exercises some control. The City did not show a financial or operational need to reduce the long-standing overtime benefit at this time, at least absent a bargained quid pro quo.

3. Call-In – Art. 12 (Patrol/Detective), Art. 10 (Sergeant/Captain)

City Position: The City expressed concern that the language of Section 5 in the current Agreements could require a 4.5 hour call-in minimum, payable at 1.5 times the base hourly rate. It therefore sought clarifying language to provide for a 3-hour minimum payable at 1.5 times the base rate.

Union Position: The Union stated that current Agreements are not applied as the City suggested. Rather, as applied, current language requires only that employees be called in for a minimum of 3 hours, and paid at 1.5 times their base rate, which results in an amount equal to 4.5 hours pay at the base rate for the 3-hour minimum call-in.

RECOMMENDATION: Retain current language of Article 12, Section 5 of the Patrol Officers and Detectives Agreement and Article 10, Section 5 of the Sergeants and Captains Agreement.

Rationale: Based on the mutual understanding that the current language requires only a 3-hour minimum at 1.5 times the base rate, the Fact-Finder sees no need to recommend new language for the call-in provision.

4. Insurance – Art. 17 (Patrol/Detective), Art. 15 (Sergeant/Captain)

City Position: The City currently funds the self-insured prescription coverage which it provides for employees. The current plan provides a maximum sixty (60) day supply, subject to an employee out-of-pocket charge of five dollars (\$5.00) for generic and ten dollars (\$10.00) for non-generic. Further, if a generic is available but not utilized, the employee's out-of-pocket increases to fifteen dollars (\$15.00) or 20% of the cost up to \$50, whichever is greater. The City proposes to modify this prescription drug plan so that: 1) There would be three categories of drugs (generic, preferred and non-preferred) rather than just two. 2) Retail prescriptions would be subject to a thirty-day supply maximum and mail order prescriptions would be subject to a 90-day supply maximum. 3) Co-pays would increase to \$5 Retail/\$13 mail for generic, \$20 retail/\$50 mail for preferred, and \$40 generic/\$100 mail for non-preferred. The City justifies the

increased co-pays as reasonable in light of increasing costs, and states that the three drug categories more accurately reflect the variety of drugs now offered in the marketplace.

Union Position: The Union objects to the City proposal. It emphasizes that it accommodated the City when it wanted to change to a self-insured plan in the recent past and does not think an increase in employee co-pays is warranted at this time. It states that City employees in the AFSCME bargaining unit and the IAFF bargaining unit will continue to enjoy the current prescription plan until April 2008 and May 2009, respectively. It does not believe that its employees should have to pay increased co-pays before the higher amounts could be passed on to other union-represented employees too.

RECOMMENDATION: The Fact-Finder recommends no change in the Insurance provisions of the Agreements through calendar year 2008. Effective January 1, 2009, the Fact-Finder recommends prescription benefits should be changed to provide for 30-day retail and 90-day mail-order supply maximums, and to create three categories of drugs (generic, preferred and non-preferred) with co-pays most recently proposed by the City. Section 1.C. of Article 17 of the Patrol Officers and Detectives Agreement, and Section 1.C. of Article 15 of the Sergeants and Captains Agreement should be revised to state:

- C. (1) **In effect for calendar year 2008:** A prescription drug plan with a maximum of a sixty (60) day supply and subject to an employee out-of-pocket charge of five dollars (\$5.00) for generic and ten dollars (\$10.00) for non-generic. If generic is available but not utilized, the employee's out of pocket charge will be fifteen dollars (\$15.00) or 20 percent of the cost up to \$50 whichever is greater. The plan is to be totally funded by the City as per current policy.

(2) **In effect beginning January 1, 2009:** The prescription drug plan is as follows:

<u>Copay:</u>	<u>Retail</u>	<u>Mail Order</u>
Generic	\$5.00	\$10.00
Preferred	\$20.00	\$40.00
Non-Preferred	\$40.00	\$80.00

Retail prescriptions are subject to a thirty (30) day supply maximum and mail prescriptions are subject to a ninety (90) day supply maximum. The plan is to be totally funded by the City as per current policy.

Rationale: The three drug categories proposed by the City have become increasingly common in prescription drug plans. The proposed co-pays are in line with co-pays paid by many other employees, and they do not appear to be burdensome. In fact, the generic co-pays in particular are very reasonable. In view of the increased co-pays for preferred and non-preferred drugs, the Fact-Finder does not think it is necessary to retain the current language providing for an additional payment if an employee opts for a brand name product when a generic is available. Finally, the Fact-Finder has delayed the effective date of the change until January 1, 2009, so that the changes will impact police officers in the same calendar year they may (subject to negotiations) impact the City's other Union employees.

5. Holidays – Art. 18 (Patrol/Detective), Article 16 (Sergeant/Captain)

City Position: Currently, Fostoria has more holidays, and pays a higher rate for work on holidays, than any comparable neighboring city. Specifically, it provides 14 holidays plus 2 personal days. With three exceptions, in addition to holiday pay, Fostoria pays double time for the first 8 hours worked on a holiday and 2.5 times the base hourly rate for hours worked beyond 8 hours. (The exceptions are Martin Luther King Day, Veterans Day and the day after Thanksgiving.) The City proposes to bring holiday benefits more in line with comparables by reducing the number of holidays and the pay

rate for holidays worked. Specifically, the City would pay 1.5 times the base rate, not double time, for hours worked on a holiday, and would eliminate the Friday after Thanksgiving, New Year's Eve, Christmas Eve, and Easter Sunday as contractual holidays.

Union Position: The Union rejects the City's proposal and would retain the holiday provisions of the current Agreements without change. The Union concedes that the City provides superior holiday benefits, but notes that these benefits were negotiated over time and are supported by local bargaining history. One additional holiday was added during negotiations for the 2005-2007 Agreements as the quid pro quo for the Union's consent to give up double time for work on Martin Luther King Day, Veterans Day, and the day after Thanksgiving. Other holidays have been in the Agreement at least since 1993, and the Union states that the current superior holiday benefits may have been negotiated in part as trade-offs for other concessions. The City has not shown an economic or operational need sufficient to justify the cutbacks proposed, at least without the negotiation of an economic or non-economic quid pro quo.

RECOMMENDATION: The Fact-Finder recommends no change in the Holiday provisions of the Agreements. Current language should be retained.

Rationale: Comparables do tend to support some reduction in holiday benefits, perhaps more so than with respect to the City's other proposed take-aways. But, there are other considerations as well. The holidays provided are not out of line with the holidays provided in collective bargain agreements with AFSCME (17 holidays) and the IAFF (15 holidays). Moreover, as noted in the discussion of overtime above, bargaining history and past agreements are a consideration. Here, in some instances the generous

holiday benefits may have been given for concessions by the Union on other issues. Under these circumstances, the party seeking to take away an economic benefit, without offering any economic or non-economic quid pro quo, needs to show a clear economic and/or operational need for the proposed change. Having considered all of the evidence, the Fact-Finder is not satisfied that there is a compelling need to reduce holiday benefits at this time.

6. Longevity – Art. 21 (Patrol/Detective), Art. 19 (Sergeant/Captain)

City Position: The City proposes to retain the current longevity system for persons employed on the execution date of each new Agreement, but that employees hired thereafter would not be eligible for longevity pay. The City asserts that longevity is based on the fallacious assumption that competence improves with years of service. It further states that longevity is disappearing in the private sector. As an alternative to its proposal, the City states it would consider converting the current percentage longevity scale to specific dollar amounts, and applying this fixed dollar schedule to all employees.

Union Position: The Union opposes change in the longevity provisions. It asserts that longevity payments are a long-standing negotiated benefit and an integral part of the overall compensation scheme. Since longevity is part of total wage compensation, reduction in longevity benefits would adversely impact employee pensions as well as current compensation. The two-tier system proposed by the City would not achieve any cost savings during the term of the 2008-2010 Agreements, and the City has shown no economic necessity for its proposals.

RECOMMENDATION: The Fact-Finder recommends no change in the longevity provisions of the Agreements. Current language should be retained in both Agreements.

Rationale: The current longevity system does appear to be more generous than longevity provisions in most neighboring cities, but it is an integral part of the overall compensation package, and its continuing existence was taken into account when evaluating wage comparables and determining a fair and competitive wage increase, see Recommendation and Rationale for Wages at pages 8 - 11 of this Report. Although the City alludes to the disappearance of longevity provisions in the private sector, it did not provide supporting data and, more to the point, it did not assert that longevity pay is disappearing in the Ohio public sector. For example, it did not direct the Fact-Finder's attention to any other public settlements establishing two-tier longevity systems or converting longevity from a percentage to a flat rate. Similarly, agreements now in effect for other City employees provide percentage-based longevity akin to the current longevity provisions in the two police Agreements. For these reasons, the Fact-Finder concludes that there is no sound basis for recommending a change in longevity at this time.

7. Equipment/Uniforms – Art. 25 (Patrol/Detective), Art. 23 (Sergeant/Captain)

Union Position: The Union proposes to increase the current \$700/year uniform allowance to \$1000/year. Further, the Union proposes to increase the one-time additional payment made to employees at the time of their initial assignment to the Detective Bureau from \$200 to \$500. Finally, the Union proposes that, when an employee is

assigned to the SWAT Team, an additional one-time payment of \$500 should be made to cover expenses associated with the SWAT assignment.

In support of its request to increase current allowances, the Union notes that uniform costs steadily increase over time. Further, the IRS now taxes uniform allowances, making the allowance less valuable than it was in the past. The Union also submitted “comparables” – i.e., uniform allowances paid in selected neighboring cities. These revealed a variety of approaches to the uniform allowance issue – several cities simply provide uniforms. Others pay allowances, which range from \$530/year to \$950/year. In two cities, these are supplemented by uniform maintenance allowances, a benefit which Fostoria employees do not have. Finally, the Union stated that the City currently provides only a vest and helmet to SWAT members, and it submitted a list of other clothing and equipment which SWAT team members state they purchase with their own money. The list included prices from Gall’s on-line catalogue which totaled \$839.84.

City Position: The City acknowledges some inflation in uniform costs and that the IRS now taxes uniform allowances. But, it maintained that the Union’s proposed increases in allowances were too high. The City would not increase the \$700 annual uniform allowance, but, as a compromise, it offered to increase the one-time allowance for detectives from \$200 to \$350. It took a different approach to the SWAT issue, proposing to add the following provision: “Necessary SWAT uniform and equipment items, as determined by the Chief, shall be provided at no cost to the employee so assigned.” It did not supply information as to what items the Chief deemed necessary.

RECOMMENDATION: The Fact-Finder recommends increasing the annual uniform allowance from \$700/year to \$750/year, and the one-time payment to detectives from \$200 to \$350. The Fact-Finder further recommends that the new Agreements include the City's proposed language on the SWAT issue. Therefore, Section 2 and Section 5 of Article 25 of the Patrol Officers and Detectives Agreement, and Section 2 and Section 5 of Article 23 of the Sergeants and Captains Agreement, should be revised to state:

**PATROL OFFICERS AND DETECTIVES
ARTICLE 25
EQUIPMENT AND UNIFORMS**

Section 2 Uniforms

Management shall furnish and/or replace all required uniforms damaged in the line of duty. Management shall provide a uniform allowance of Seven Hundred Fifty Dollars (\$750) per year for each officer in order to furnish, replace and maintain required uniforms that need replacement due to normal wear and tear. Where the City orders a new uniform item to be part of the official uniform, and such new item renders old uniform items obsolete within one (1) year of the date of the order or where the required new item is an additional uniform item, the City shall furnish the new item without charge to the uniform allowance. New officers shall be fully equipped with a uniform only during their first year on the force. Payments shall be on an annual basis for January 1st through December 31st. Requisitions must be submitted by December 1st of each year.

Section 5

In case of promotions, the City will reimburse Sergeants and Captains for the original costs of required change in uniforms and accessories.

If an employee is placed into the Detective Bureau an additional three Hundred Fifty Dollars (\$350) for clothing will be granted along with the regular uniform allowance. This will be paid only once.

Necessary SWAT uniform and equipment items, as determined by the Chief, shall be provided at no cost to the employee so assigned.

**SERGEANTS AND CAPTAINS AGREEMENT
ARTICLE 23
EQUIPMENT AND UNIFORMS**

Section 2 Uniforms

Management shall furnish and/or replace all required uniforms damaged in the line of duty. Management shall provide a uniform allowance of Seven Hundred Fifty Dollars (\$750) per year for each officer in order to furnish, replace and maintain required uniforms that need replacement due to normal wear and tear. Where the Employer orders a new uniform item to be part of the official uniform, and such new item renders old uniform items obsolete within one (1) year of the date of the order or where the required new item is an additional uniform item, the Employer shall furnish the new item without charge to the uniform allowance. Payments shall be on an annual basis for January 1st through December 31st. Requisitions must be submitted by December 1st of each year.

Section 5

In case of promotions, the City will reimburse Sergeants and Captains for the original costs of required change in uniforms and accessories.

If an employee is placed into the Detective Bureau an additional three Hundred Fifty Dollars (\$350) for clothing will be granted along with the regular uniform allowance. This will be paid only once.

Necessary SWAT uniform and equipment items, as determined by the Chief, shall be provided at no cost to the employee so assigned.

Rationale: The Fact-Finder agrees that increasing prices and the effect of the IRS decision to tax uniform allowances warrants some increase in allowances. The comparables submitted by the Union reflect different ways of dealing with uniform expenses and reveal a fairly wide range of uniform allowances among the selected cities. It appears that the recommended rates – a \$750 annual uniform allowance, and a \$350 reimbursement for detectives – will provide an above average benefit to Fostoria officers relative to the benefits provided by the cities in the Union’s exhibit. The Union’s comparables do not support a separate monetary allowance for SWAT team members.

The addition of language requiring provision of “necessary SWAT uniform and equipment items” should afford employees some protection .

8. Promotions – Proposed New Article for Both Agreements

Union Position: The Union has proposed adding a new 4-page article covering Promotions to both Agreements. The proposed new Article would govern every aspect of the promotion process. Promotions are a permissive subject of bargaining under the Ohio Supreme Court’s decision in DeVennish v. City of Columbus, (1991), 57 Ohio St. 3d 163, Syllabus No. 1 & No. 2. The Union wants to add the Promotion article now because, in its view, the Fostoria Civil Service Commission has been “subjective and erratic.” One point emphasized by the Union was the desire to require 60 months service in Fostoria as a condition of promotion to Sergeant, subject to availability of candidates who meet the 60-month rule. The Union did not bring up other specifics, and acknowledged that there had been no discussion of the proposed article in negotiations. It stated that a similar promotion article was included in the IAFF Agreement.

City Position: The City opposes adding Promotions to the new Agreement. Some of the Union’s concerns reflect misunderstanding of the Civil Service Commission’s practice and intended future practices. In other respects, this proposal may reflect dissatisfaction with a single promotion decision which is now in litigation and will soon be resolved by the Court of Appeals. Adding a new four-page article to the Agreements, without any meaningful discussion at the table, is not an appropriate way to deal with such specific individualized complaints.

RECOMMENDATION: The Fact-Finder recommends that the new Agreements should not include the proposed language regarding promotions. A new Article on Promotions should not be added to either Agreement.

Rationale: Promotion is a permissive subject of bargaining. However, when extensive language is to be added to an Agreement, it is best done as part of the negotiation process, during which all participants – employees and supervisors – have an opportunity to carefully review the language, identify and discuss any implementation issues, refine the language to their mutual satisfaction, and satisfy themselves that they have a mutual understanding of the meaning and intent of their final agreement. Adopting one party’s initial proposal in fact-finding, when that proposal has not been discussed at the table before the hearing, usually is not a good solution. In this case, it appears that the most immediate local issue will be resolved by the Court of Appeals in the near future without regard to any language being added to the Agreement.

9. Duration – Art. 33 (Patrol/Detective), Art. 31 (Captain/Sergeant)

Union Position: The Union proposes three-year Agreements, to be in effect from January 1, 2008 through December 31, 2010. It notes that the extension agreement with the City contemplates that the Fact-Finder has authority to recommend that the Agreements be retroactive to January 1, 2008.

City Position: The City’s Position Statement states that “the Duration of Agreement Article is still at issue,” but it did not object to three-year Agreements at the hearing.

RECOMMENDATION: The Fact-Finder recommends 3-year Agreements, commencing on January 1, 2008 and expiring on December 31, 2010 for both bargaining units. Revised language would state:

**PATROL OFFICERS AND DETECTIVES
ARTICLE 33
DURATION OF AGREEMENT**

This Agreement shall be effective as of January 1, 2008, and shall remain in effect through December 31, 2010 and shall continue thereafter for successive periods of twelve (12) months, unless either party to the Agreement, on or before sixty (60) days prior to the expiration of any such period, notifies the other party, in writing, of its intention to terminate this Agreement. Within ten (10) days after receipt of such notice, a conference shall be arranged between the parties hereto and such conference shall be held at a time mutually agreeable to the parties.

**SERGEANTS AND CAPTAINS
ARTICLE 31
DURATION OF AGREEMENT**

This Agreement shall be effective as of January 1, 2008, and shall remain in effect through December 31, 2010 and shall continue thereafter for successive periods of twelve (12) months, unless either party to the Agreement, on or before sixty (60) days prior to the expiration of any such period, notifies the other party, in writing, of its intention to terminate this Agreement. Within ten (10) days after receipt of such notice, a conference shall be held at a time mutually agreeable to the parties.

Rationale: Three years is the most common duration for Ohio public sector collective bargaining agreements, and January 1, 2008 is the logical starting date, as the expiration date of the prior Agreements was December 31, 2007.

10. Retaining Provisions of 2005-2007 Agreements

The Union requested, without objection from the City, that the Fact-Finder include a Recommendation that current contract language remain in effect, unless modified by the Report or by agreements reached in negotiations between the parties.

(The agreements reached in negotiations were identified by the parties and are noted at page 2 of this Report.) Therefore, the Fact-Finder makes the following recommendation as to retention of provisions from the 2005-2007 Agreements:

RECOMMENDATION: Except as otherwise recommended in this Report or as otherwise agreed by the parties in negotiations, the provisions of the 2005-2007 Agreements should be retained in the new Agreements.

SUMMARY OF RECOMMENDATIONS

1. Wages – Article 11 (Patrol Officer/Detective), Article 9 (Sergeant/Captain)

RECOMMENDATION: (1) Patrol Officers and Detectives: The Fact-Finder recommends the following increases in wage rates for Patrol Officers and Detectives: Effective January 1, 2008 – 3.25%; effective January 1, 2009 – 3.0%; effective January 1, 2010 – 3.0%. Reopener language from the current Agreement should be deleted. The Note regarding “OIC Pay” and the four “Miscellaneous” provisions should remain unchanged. The new wage scale is set out below. (2) The Fact-Finder recommends that the rank differentials and progression schedules for Sergeants and Captains remain the same as in their current Agreement. The same percentage increases recommended for Patrol Officers and Detectives automatically would be passed on to Sergeants and Captains due to the rank differentials and progression steps established by current language of Article 9 of the Sergeants and Captains’ Agreement. The first paragraph of Section 3 of the current Sergeants and Captains Agreement (covering the probationary period) should be retained without change. The second and last paragraph of Section 3 (Reopener) should be deleted. Except for the deletion of this Reopener, there would be no change in the current language of Article 9 of the Sergeants and Captains Agreement. No change in current payroll practice in either Agreement.

**PATROL OFFICERS AND DETECTIVES
ARTICLE 11
WAGES**

Eff. Dates	Step 1	Step 2 6 mos.	Step 3 12 mos.	Step 4 12 mos.	Step 5 12 mos.	Step 6 Top
1/01/08	\$17.57	\$19.45	\$20.61	\$21.70	\$23.69	\$25.13
1/01/09	\$18.10	\$20.04	\$21.23	\$22.35	\$24.40	\$25.88
1/01/10	\$18.64	\$20.64	\$21.86	\$23.02	\$25.13	\$26.66

[Delete Reopener language. No other changes in remaining provisions of Article 11.]

2. Voluntary Overtime- Art. 12 (Patrol/Detective), Art. 10 (Sergeant/Captain)

RECOMMENDATION: The Fact-Finder recommends no change in the overtime pay rates. Current language would be retained for Article 12, section 2 of the Patrol Officers and Detectives Agreement and Article 10, section 2 of the Sergeants and Captains Agreement.

3. Call-In – Art. 12 (Patrol/Detective), Art. 10 (Sergeant/Captain)

RECOMMENDATION: Retain current language of Article 12, Section 5 of the Patrol Officers and Detectives Agreement and Article 10, Section 5 of the Sergeants and Captains Agreement.

4. Insurance – Art. 17 (Patrol/Detective), Art. 15 (Sergeant/Captain)

RECOMMENDATION: The Fact-Finder recommends no change in the Insurance provisions of the Agreements through calendar year 2008. Effective January 1, 2009, the Fact-Finder recommends prescription benefits should be changed to provide for 30-day retail and 90-day mail-order supply maximums, and to create three categories of drugs (generic, preferred and non-preferred) with co-pays most recently proposed by the City. Section 1.C. of Article 17 of the Patrol Officers and Detectives Agreement, and Section 1.C. of Article 15 of the Sergeants and Captains Agreement should be revised to state:

D. (1) **In effect for calendar year 2008:** A prescription drug plan with a maximum of a sixty (60) day supply and subject to an employee out-of-pocket charge of five dollars (\$5.00) for generic and ten dollars (\$10.00) for non-generic. If generic is available but not utilized, the employee's out of pocket charge will be fifteen dollars (\$15.00) or 20 percent of the cost up to \$50 whichever is greater. The plan is to be totally funded by the City as per current policy.

(2) **In effect beginning January 1, 2009:** The prescription drug plan is as follows:

<u>Copay:</u>	<u>Retail</u>	<u>Mail Order</u>
Generic	\$5.00	\$10.00
Preferred	\$20.00	\$40.00
Non-Preferred	\$40.00	\$80.00

Retail prescriptions are subject to a thirty (30) day supply maximum and mail prescriptions are subject to a ninety (90) day supply maximum. The plan is to be totally funded by the City as per current policy.

5. Holidays – Art. 18 (Patrol/Detective), Article 16 (Sergeant/Captain)

RECOMMENDATION: The Fact-Finder recommends no change in the Holiday provisions of the Agreements. Current language should be retained.

6. Longevity – Art. 21 (Patrol/Detective), Art. 19 (Sergeant/Captain)

RECOMMENDATION: The Fact-Finder recommends no change in the longevity provisions of the Agreements. Current language should be retained in both Agreements.

7. Equipment/Uniforms – Art. 25 (Patrol/Detective), Art. 23 (Sergeant/Captain)

RECOMMENDATION: The Fact-Finder recommends increasing the annual uniform allowance from \$700/year to \$750/year, and the one-time payment to detectives from \$200 to \$350. The Fact-Finder further recommends that the new Agreements include the City's proposed language on the SWAT issue. Therefore, Section 2 and Section 5 of Article 25 of the Patrol Officers and Detectives Agreement, and Section 2 and Section 5 of Article 23 of the Sergeants and Captains Agreement, should be revised to state:

**PATROL OFFICERS AND DETECTIVES
ARTICLE 25
EQUIPMENT AND UNIFORMS**

Section 2 Uniforms

Management shall furnish and/or replace all required uniforms damaged in the line of duty. Management shall provide a uniform allowance of Seven Hundred Fifty Dollars (\$750) per year for each officer in order to furnish, replace and maintain required uniforms that need replacement due to normal wear and tear. Where the City orders a new uniform item to be part of the official uniform, and such new item renders old uniform items obsolete within one (1) year of the date of the order or where the required new item is an additional uniform item, the City shall furnish the new item without charge to the uniform allowance. New officers shall be fully equipped with a uniform only during their first year on the force. Payments shall be on an annual basis for January 1st through December 31st. Requisitions must be submitted by December 1st of each year.

Section 5

In case of promotions, the City will reimburse Sergeants and Captains for the original costs of required change in uniforms and accessories.

If an employee is placed into the Detective Bureau an additional three Hundred Fifty Dollars (\$350) for clothing will be granted along with the regular uniform allowance. This will be paid only once.

Necessary SWAT uniform and equipment items, as determined by the Chief, shall be provided at no cost to the employee so assigned.

**SERGEANTS AND CAPTAINS AGREEMENT
ARTICLE 23
EQUIPMENT AND UNIFORMS**

Section 2 Uniforms

Management shall furnish and/or replace all required uniforms damaged in the line of duty. Management shall provide a uniform allowance of Seven Hundred Fifty Dollars (\$750) per year for each officer in order to furnish, replace and maintain required uniforms that need replacement due to normal wear and tear. Where the Employer orders a new uniform item to be part of the official uniform, and such new item renders old uniform items obsolete within one (1) year of the date of the order or where the required new item is an additional uniform item, the Employer shall furnish the new item without charge to the uniform allowance. Payments shall be on an annual basis for January 1st through December 31st. Requisitions must be submitted by December 1st of each year.

Section 5

In case of promotions, the City will reimburse Sergeants and Captains for the original costs of required change in uniforms and accessories.

If an employee is placed into the Detective Bureau an additional three Hundred Fifty Dollars (\$350) for clothing will be granted along with the regular uniform allowance. This will be paid only once.

Necessary SWAT uniform and equipment items, as determined by the Chief, shall be provided at no cost to the employee so assigned.

8. Promotions – Proposed New Article for Both Agreements

RECOMMENDATION: The Fact-Finder recommends that the new Agreements should not include the proposed language regarding promotions. A new Article on Promotions should not be added to either Agreement.

9. **Duration – Art. 33 (Patrol/Detective), Art. 31 (Captain/Sergeant)**

RECOMMENDATION: The Fact-Finder recommends 3-year Agreements, commencing on January 1, 2008 and expiring on December 31, 2010 for both bargaining units. Revised language would state:

**PATROL OFFICERS AND DETECTIVES
ARTICLE 33
DURATION OF AGREEMENT**

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**SERGEANTS AND CAPTAINS
ARTICLE 31
DURATION OF AGREEMENT**

This Agreement shall be effective as of January 1, 2008, and shall remain in effect through December 31, 2010 and shall continue thereafter for successive periods of twelve (12) months, unless either party to the Agreement, on or before sixty (60) days prior to the expiration of any such period, notifies the other party, in writing, of its intention to terminate this Agreement. Within ten (10) days after receipt of such notice, a conference shall be held at a time mutually agreeable to the parties.

10. **Retaining Provisions of 2005-2007 Agreements**

RECOMMENDATION: Except as otherwise recommended in this Report or as otherwise agreed by the parties in negotiations, the provisions of the 2005-2007 Agreements should be retained in the new Agreements.

SUBMISSION

This Fact-Finding Report is submitted by:



John T. Meredith, Fact-Finder

Shaker Heights, Ohio
February 28, 2008

CERTIFICATE OF SERVICE

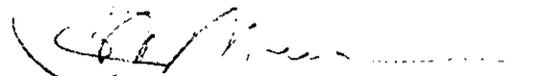
This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 28 day of February, 2008:

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John T. Meredith, Fact-Finder