

The State of Ohio
STATE EMPLOYMENT RELATIONS BOARD

City of Brook Park)	SERB Case No: 07 MED 10-1158
Public Employer)	
)	
and)	FACT FINDER: GREGORY P. SZUTER
)	
Ohio Patrolmen's Benevolent Assn.)	FACT FINDER'S REPORT AND
Labor Organization)	RECOMMENDATIONS

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STATE EMPLOYMENT
RELATIONS BOARD
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INTRODUCTION

The City of Brook Park (herein also "Employer" or "City") and Ohio Patrolmen's Benevolent Association, (herein "Union") are parties to the Collective Bargaining Agreement effective January 1, 2005, and expiring December 31, 2007. (herein "Agreement")

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on April 27, 2009, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D) for Fact-Finding and recommendations on open issues for a replacement Agreement. The parties agreed to extend the date of the Fact Finder Report and Recommendations to July 20, 2009.

The bargaining unit herein consists of 8 members of a unit of all full time Sergeants and Lieutenants and excluding all other police department employees and the chief and deputy chief and those individuals who, in the absence of the chief, are authorized to perform the duties of the chief and all probationary, part time, temporary, and professional employees as more fully stated in the recognition clause of the Agreement, Article II, Section 1. The unit represented by the Union includes the positions of four persons employed as Lieutenants, and four persons employed as Sergeants.

The Parties commenced bargaining approximately October, 2007, but the parties agreed to defer negotiations until the conclusion of the bargaining by the other and larger units of employees with the City. Bargaining re-commenced in earnest in early 2009 after which several tentative agreements were reached. *By the time of the fact-finding referral there were several open issues.*

HEARING

There had been a timely agreement by the parties to extend the fact-finding hearing date to a mutually agreed date as provided under Ohio Administrative Code, Rule 4117-9-05(G). Pre-hearing statements of the issues were submitted by June 5, 2009, with proposals and exhibits in conformity with OAC 4117-9-05(F). The Fact-Finding evidentiary hearing commenced on June 9.

2009, at the Recreation Building in Brook Park, Ohio. Evidence was presented by the Finance Director and Assistant Finance Director. With unresolved issues still pending, the parties agreed that a mediation session be conducted with the parties and counsel and the undersigned for the balance of June 9, 2009. A later Fact-Finding Session was scheduled for July 6, 2009, and commenced again with an evidentiary session with the submission of the balance of the City's documentary evidence and testimony of the Mayor. At the conclusion of the City's case for the changes it proposed, the parties and counsel agreed to enter further mediation with the assistance of the fact finder. The hearing was adjourned on that date and the record closed to evidence and argument. Both parties attended all the sessions and elaborated upon their positions regarding the issues remaining at impasse through their witnesses and representatives.

In attendance June 9, 2009, and July 6, 2009 were the following. For the Union were: Sgt Michael Dulin, Lt. James Brenders, and Lt. James Foster. The Labor Organization was represented by Lou D'Amico, Esq. In attendance for the Employer were: Mark Elliott, Mayor, and Lisa Samiska, Personnel Director. In attendance for the City on June 9 only were Greg Cingle, Director of Finance, and Marty Healy, Asst. Director of Finance. The Employer was represented at both sessions by Gary Johnson, Esq.

Two joint exhibits (JX)¹ were received in evidence. the City presented exhibits (CX).² The

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JX 1	Agreement between City of Brook Park and Ohio Patrolmen's Benevolent Association (Sergeants and Lieutenants), effective January 1, 2005, until December 31, 2007.
JX 2	LOU # 5 Settlement Agreement and Contract Addendum (04-07-2006)

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EX 1	Review of Key Financial Issues Facing the City (Powerpoint™ demonstration)
EX 2	Department of Taxation (statistical tables and graphs), May 2009.
EX 3	Arbitration between Fraternal Order of Police, Lodge 15 and City of Brook Park, SERB Case No 2007-MED-09-0951. (H. Graham , Arb. 3/20/2009).
EX 4	City of Brook Park Overtime Totals and Averages
EX 5	Survey of CBA's on Manning Provisions
EX 6	Base Wage Comparison for Sergeants and Lieutenants
EX 7	U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index April 2009
EX 8	Survey of CBA's on Sick Leave Buyout

Union presented no exhibits before the open issues were resolved in mediation.

MEDIATION

The parties agreed to mediation and proceeded with the assistance of the Fact Finder to address certain of the open issues as explained above. The Union and City reached agreement on all open issues by the July 6, 2009, session.

ISSUES

All Agreement Articles as stated on December 31, 2007, were agreed to remain unchanged with the exception of the following that were resolved by Tentative Agreement and others that

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- EX 9 Agreement between City of Brook Park and Fraternal Order of Police, Lodge 15 (Patrol Officers) effective January 1, 2007 through December 31, 2008 [uncorrected first draft]
 - EX 10 Internal Survey of CBA's on Sick Leave Buyout Provisions
 - EX 11 Agreement between City of Strongsville and Fraternal Order of Police, Lodge 15 (Sergeants and Lieutenants) effective January 1, 2007 through December 31, 2009 [final]
 - EX 12 Agreement between City of Seven Hills and Ohio Patrolmen's Benevolent Association (Patrolman /Sergeant) effective upon execution through June 30, 2008 [final]
 - EX 13 Agreement between City of Parma Heights and Ohio Patrolmen's Benevolent Association (Captain Sergeants) effective January 1, 2006 through December 31, 2008 [final]
 - EX 14 Agreement between City of City of Parma and Ohio Patrolmen's Benevolent Association (Sergeants and Lieutenants) effective April 1, 2008 through March 31, 2009 [final]
 - EX 15 Agreement between City of North Royalton and Fraternal Order of Police, Lodge 15 (Sergeants) effective January 1, 2007 through December 31, 2009 [final]
 - EX 16 Agreement between City of Brook Park and Fraternal Order of Police, Lodge 15 (Patrol Officers) effective January 1, 2007 through December 31, 2008 [final]
 - EX 17 Agreement between City of Brook Park and Brook Park Firefighters Association, Local 1141 effective January 1, 2008 through December 31, 2009 [final]
 - EX 18 Agreement between City of Brook Park and Fraternal Order of Police Ohio Labor Council (Safety Dispatchers-Clerks) effective January 1, 2008 through December 31, 2009
 - EX 19 Agreement between City of Brook Park and Teamsters Union Local No. 436 effective January 1, 2008 through December 31, 2009
 - EX 20 Agreement between City of Brook Park and Municipal Foremen and Laborers Union No. 1099 effective January 1, 2008 through December 31, 2009
 - EX 21 Agreement between City of North Olmsted and Fraternal Order of Police Ohio Labor Council effective January 1, 2007 through December 31, 2008 [final]
 - EX 22 Agreement between City of Middleburg Heights and Ohio Patrolmen's Benevolent Association (Sergeants) effective January 1, 2009 through December 31, 2010 [final]
 - EX 23 Agreement between City of Middleburg Heights and Ohio Patrolmen's Benevolent Association (Lieutenants) effective January 1, 2009 through December 31, 2010 [final]
 - EX 24 Agreement between City of Berea and Fraternal Order of Police, Lodge 15 (Sergeants) effective January 1, 2007 through December 31, 2009 [final]
 - EX 25 Agreement between City of Broadview Heights and Fraternal Order of Police, Lodge 15 (Sergeants) effective January 1, 2006 through December 31, 2008 [final]
 - EX 26 Collection of news clippings on local public and private employment effects of the recession November 14, 2008 through July 3, 2009

remained open for Fact-Finding . The issues on which the parties had reached Tentative Agreement (TA) before June 9, 2009, are:

Article XXVI Duration of Agreement
Letters of Understanding (LOU)³
LOU # 1 (Health Insurance)
LOU # 2 (Compensatory Time)
LOU # 4 (High Risk Injury Leave and SWAT)

The open issues remaining for consideration by the Fact Finder on June 9, 2009, are:

Article II Recognition, Section, 3
Article IX Grievance, Step 5 and Section 7
Article XI Overtime, Section 1
Article XII Leaves, Section 2
Article XII Leaves, Section 3
Article XII Leaves, Section 5
Article XIII Vacation, Section 1
Article XIV Holidays, Section 1
Article XV Compensation, Section 1
Article XIV Insurance, Section 1
Article XVIII Clothing, Section 1 and 2
LOU # 3 (Seven Subjects) dated April, 2005
¶ 1 (Residency)
¶ 2 (Sub Contracting)
¶ 3 (Service Weapon)
¶ 4 (Minimum Manning)
¶ 5 (Overtime Replacement)
¶ 6 (Rotating Shifts)
¶ 7 (Ten hour shifts)
LOU # 5 Settlement Agreement and Contract Addendum (04-07-2006)

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

³ The Letters of Understanding (LOU) are not labeled as such but in testimony and positions this has referred to several addenda to the agreement. For present purposes include those addenda of various titles, eg. "Memorandum of Understanding," and "Settlement Agreement." All except the last are dated April 2005 and will be identified by their sequence as it appears at the end of the Agreement. The last is listed at the end of the sequence.

1. Past collective bargaining 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;
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 the public service or in private employment.

In as much as this proceeding is an advisory interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in ELKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor, BNA, 2003) at pp1358-1364.

As quoted therein, note:

"...[interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

As a public sector statutory proceeding in the nature of advisory Fact-Finding under the Ohio's law, the interest of the public is a third element in the balance of equities. ELKOURI at p. 1361.

The major consideration put forward by the City, but not exclusively, is the ability of the public employer to finance and administer the issues proposed. To that end the Finance Director and Assistant Finance Director testified about the City being under severe financial pressure based on the present and expected revenues. The income tax proceeds were historically correlated to one major industry (automotive) which has had drastic manpower reductions that are expected to continue. The

City did have a carry over balance last year to bridge its deficit. However, that was an accumulation of funds from a one time revenue source that will not recur. Their conclusion was that the City is in dire financial straits which are rapidly deteriorating. The Union countered, but only through cross examination. It urged that although it recognizes the financial straits of the City, the loss of population reduces demand for services in some areas freeing costs and other sources of revenue can be explored. Nonetheless, this being a small unit, its impact on the City is not felt in financial terms. While nothing is off the table, the Mayor testified that, tax or fee increases are being currently resisted in light of the loss of population in the City and the nature of the revenue sources of the typical taxpayer being affected by the continuing recession.

Although the City had begun a compelling financial argument, it was not completely developed nor subject to opposing evidence before most issues became agreed by mediation. The criterion operative in this Fact-Finding, except as may be stated otherwise below, is chiefly the fifth, the stipulations of the parties.

DISCUSSION AND RECOMMENDATIONS

Note: Unless identified as "new", changes are shown as underscoring for addition and cancellation for omission.

ISSUE: **Typographical Changes**

CONTRACT SECTIONS: *various*

POSITIONS: **The Employer** proposed to change the term "City" to "Employer" where it appears.

POSITIONS: **The Union:** No position taken.

FINDINGS AND RECOMMENDATION: The Fact-Finder recommends this change.

ISSUE: **Retroactivity**

CONTRACT SECTIONS: *various*

POSITIONS: **The Employer** proposed to add the compensatory day (Art. XII Sec.2) effective July 1, 2009 and to make all compensation changes including health care retroactive to January 1, 2007 but no other retroactive effect of the terms of the agreement.

POSITIONS: **The Union:** The Union has agreed.

FINDINGS AND RECOMMENDATION: The Fact-Finder recommends this change.

ISSUE: Article II Recognition, Section 3

(Related to LOU # 3 dated April, 2005)

CONTRACT SECTIONS: Delete Section 3 *in toto*.

POSITIONS: The Employer: The City proposes to delete Section 3 because since it requires minimum manning that does not appear in comparative departments depriving the city of management flexibility to create more efficient systems. In combination with LOU # 3, ¶15 it causes artificially created overtime. In exchange to Union concessions on LOU # 3 the City withdrew its proposal.

POSITIONS: The Union: The Union opposes the change. Minimum manning is a safety consideration for the department and the public. It is needed to provide enough supervisors to cover all shifts. This is a small unit and four of each are needed to cover the 24/7 three shift operation.

There may be adjustments under existing language that could save the City money without deleting Section 3.

FINDINGS AND RECOMMENDATION: Section 3 requires the City to retain four (4) employees as sergeants and lieutenants subject to certain exceptions for a substantial reduction in force and promotions. It has always been interpreted to mean four of each classification. This is not the unit description for certification purposes which is Section 1. The Fact-Finder considers this issue was resolved between the parties. Current contract language is recommended.

ISSUE: Article IX Grievance, Section 3(e) Step 5, and new Section 7

CONTRACT SECTIONS: The parties have agreed to amend Section 3 as follows without other change except agreed typographical ones:

(e) Step 5. The parties will promptly meet to select and arbitrator from the panel of arbitrators herein contained ~~request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators and will chose one ty the alternative strike method.~~

new Section 7. There is hereby created a panel of arbitrators for selection of an arbitrator pursuant to this procedure. The arbitrators shall be: 1) ___; 2) ___; 3) ___; 4) ___; and 5) ___.

POSITIONS: The Employer: The Employer proposed to amend the agreement to delete the provision for selecting arbitrators from the FMCS in favor of the parties establishing their own panel of five named arbitrators. This is identical to the provision of the other City collective bargaining agreements.

POSITIONS: The Union: This was agreed provided that the arbitrators are to hear grievances under the Agreement and that this not an agreement to convert statutory Fact-Finding to an arbitration (eg. MAD).

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The City's proposal is recommended.

ISSUE: Article XI Overtime, Section 1

CONTRACT SECTIONS: Delete Section 1 *in toto* and substitute:

Sick leave shall not count in the calculation of overtime.

POSITIONS: The Employer: The City proposes the change as one of many cost savings necessitated by the financial environment. This is not an uncommon practice to exclude sick leave from overtime calculation and it appears in most police agreements. However, the City withdrew its proposed change in consideration of the Fact-Finding occurring in the late term of the proposed Agreement without practical opportunity to make it retroactive.

POSITIONS: The Union: The Union opposes the change. It is along standing practice. It represents very little cost exposure to the City because this unit rarely uses sick leave. Its members have the largest sick leave banks in the City.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. Current contract language is recommended.

ISSUE: Article XII Leaves, Section 2

CONTRACT SECTIONS: The City proposes (A) and the Union proposes (B).

(A) Section 2, Conversion of Unused Sick Leave, to be amended as shown without other change except agreed typographical ones:

(a) An employee who was promoted into the bargaining unit prior to January 1, 2005 and who retires shall be entitled, as part of the employee's final pay, to a lump sum payment of ~~four-eighths (4/8)~~ ~~five-eighths (5/8)~~ of all the employee's accrued and unused sick leave. The payment will be based on the employee's hourly rate on the last date of employment and will eliminate all accrued and unused sick leave. Any patrol employee promoted into the bargaining unit on January 1, 2005, or later and who has less than {sic} 1920 accumulated such hours as of January 1, 2005, shall be entitled to lump sum payment upon retirement of ~~four-eighths (4/8)~~ ~~five-eighths (5/8)~~ of accumulated unused sick leave to a maximum payment of 1200 hours (~~4/8~~ ~~5/8~~ of 1920 hours equal {sic} 1200 hour maximum payout {sic}).

(B) Section 2, Conversion of Unused Sick Leave, to be amended as shown to become one of the two following alternatives without other change except agreed typographical ones:

(1) Section 2(a) as proposed by the City with the following addition:

An employee shall be entitled to a lump sum payment for up to eighty (80) hours of accrued and unused sick leave each year.

OR

(2) Section 2(a) as proposed by the City with the following addition:

For each six month period in a calendar year in which the employee does not use sick leave, the employee shall be credited with one (1) work day of compensatory time.

POSITIONS: The Employer: The City proposes the change (A) as one of many cost savings necessitated by the financial environment. It is a significant matter due to the size of the sick pay banks of the unit members. This clause came about by an unusual historical means. A former mayor obtained a benefit increase from 3/8 to 5/8 sick leave payout for himself before leaving office and installed it in all the contracts. The litigation to prevent his collection was successful but it remained in the labor agreements. In this cycle all the other units of the City have agreed to reduce to the 4/5 level of payout and many City employees have already retired with this benefit at the this level.

POSITIONS: The Union: The Union opposes the change. It is along standing practice. It represents very little cost exposure to the City because this is a small unit. It represents a significant benefit to this unit since it consists of many senior employees with large sick leave banks that have been accumulated in reliance on the 5/8 benefit in anticipation of retirement. However, recognizing the City's financial pressures, the Union proposes its own change (B) as in the alternative in order that the unit be compensated for the loss of the 1/8 payout. The alternatives are payment of a lump sum of 80 hours sick leave each year or crediting the employee with 1 day compensatory time for each six months when the sick leave bank is not used.

FINDINGS AND RECOMMENDATION: After much discussion and testimony, the City opted for the one day compensatory time as the *quid pro quo* for the Union's agreement to the proposed change. This was done after consideration of the inability to make the compensatory day retroactive before July 1, 2009. The Fact-Finder considers the proposal to be resolved between the parties and recommends the City's proposal with the addition of the Union's language of (B)(2) above. However, the transcription of the City's proposal provided to the fact finder is muddled in the final sentence. To wit, 4/8 of 1920 is not 1200. Considering that uniformity with the prior language was intended with the only effective change being 5/8 to 4/8, the recommended language is as follows:

(a) An employee who was promoted into the bargaining unit prior to January 1, 2005 and who retires shall be entitled, as part of the employee's final pay, to a lump sum payment of ~~four-eighths (4/8) five-eighths (5/8)~~ of all the employee's accrued and unused sick leave. The Payment will be based on the employee's hourly rate on the last date of employment and will eliminate all accrued and unused sick leave. Any patrol employee promoted into the bargaining unit on January 1, 2005, or later and who has less ~~then~~ than 1920 accumulated such hours as of January 1, 2005, shall be entitled to lump sum payment upon retirement of ~~four-eighths (4/8) five-eighths (5/8)~~ of accumulated unused sick leave to a maximum payment of ~~+200 960~~ hours ~~(4/8 5/8~~ of 1920 hours equals ~~+200 960~~ hour maximum payout). For each six month period in a calendar year beginning July 1, 2009 in which the employee does not use sick leave, the employee shall be credited with one (1) work day of compensatory time.

ISSUE: Article XII Leaves, Section 3

CONTRACT SECTIONS: The City proposes (A) and the Union proposes (B).

(A) Section 3, Funeral Leave, to be amended as shown without other change except agreed typographical ones:

~~... If the funeral is held within four hundred (400) miles of Brook Park, the employee will be granted three (3) working tours of leave, and if over four hundred (400) miles, forty (40) working hours' leave. ... Employees may utilize sick leave for additional time in excess of three (3) days.~~

(B) Section 3, Funeral Leave, to be amended as shown without other change except agreed typographical ones:

~~... If the funeral is held or the death occurred within four hundred (400) miles of Brook Park, and if over four hundred (400) miles, forty (40) working hours' leave.~~

POSITIONS: The Employer: The City proposes the change (A) as one of many cost savings necessitated by the financial environment. However, the City withdrew its proposed change in consideration of the Fact-Finding occurring in the late term of the proposed agreement without practical opportunity to make it retroactive.

POSITIONS: The Union: The Union opposes the change. It is along standing practice. It represents very little cost exposure to the City because this unit rarely uses sick leave. The Union proposes its own change (B) as consistent with other agreements.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers that with the withdrawal of the City's proposal, that proposition is resolved between the parties. However, after duly considering all of the evidence presented by the parties, the Fact-Finder finds the Union's request to change Article XII Section 3 well taken and recommends that change.

ISSUE: Article XII Leaves, Section 5

CONTRACT SECTIONS: Section 5 to be amended as follows without other change except agreed typographical ones:

Section 5 Wage Continuation /Transitional Work Policy. All employees are subject to the City's Wage Continuation /Transitional Work Policy which is on file at the Human Resources Commissioners office, ~~and will not be modified during the term of this Agreement without mutual consent.~~

POSITIONS: The Employer: The City proposed the change without discussion.

POSITIONS: The Union: No position taken.

FINDINGS AND RECOMMENDATION: This language was attached to the City's position statement and buried under changes at the end of a page concerning funeral leave. The Position Statement of the City did not address it or list it as open and the Union never commented. The Fact-Finder considers this proposal to have been withdrawn by the City before Fact-Finding and the issue is resolved between the parties. No change is recommended.

ISSUE: Article XIII Vacation, Section 1

CONTRACT SECTIONS: Section 1 to be amended as follows without other change:

Years of Service	Length of Vacation
...	
After 18 <u>15</u> years	5 weeks
After <u>20</u> years	<u>6</u> weeks

POSITIONS: The Union: The Union proposes the change as part of its compensation package.

This is a unique unit of senior employees who are more likely than others to reach levels of 15 and 20 years service and longevity should have its recognition. However, the Union withdrew its proposal in agreement with the balance of the compensation package as outlined elsewhere.

POSITIONS: The Employer: The City opposes the change as one of many added costs to be avoided in the current financial environment. The City argued that its compensation package given the current environment is very generous already.

FINDINGS AND RECOMMENDATION: *The Fact-Finder considers with the withdrawal of the Union's proposal, the issue is resolved between the parties. No change is recommended.*

ISSUE: Article XIV Holidays, Section 1

CONTRACT SECTIONS: Section 1 to be amended as follows without other change:

Section 1. All full-time employees shall be entitled to ~~eight (8)~~ ten (10) hours of paid holidays for each of the following days:

... Thanksgiving Day
Day after Thanksgiving Day
Chiasmas Day

POSITIONS: The Union: The Union proposes the additional day as part of its compensation package. This is a unique unit having 10 hour shifts rather than eight (8) as the patrol and others do. It is fair to compensate the lost day at 10 hours. However, the Union withdrew its proposal in agreement with the balance of the compensation package as outlined elsewhere.

POSITIONS: The Employer: The City opposes the change as one of many added costs to be avoided in the current financial environment. The City argued that its compensation package given the current environment is very generous already.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers with the withdrawal of the Union's proposal, the issue is resolved between the parties. No change is recommended.

ISSUE: Article XV Compensation Section 1

CONTRACT SECTIONS: Section 1 wage increase. [table] including the effective date representing an increase of 3% each year of the Agreement.

POSITIONS: The Employer:

The City has proposed a three percent (3%) wage increase effective January 1, 2008, and three percent (3%) effective January 1, 2009 . The City explained that the 3% was the agreed increase for the patrol and others, but those agreements were reached earlier during the term of the replacement agreement negotiations. This is the last agreement in the 2007 cycle. Between start to finish of the cycle, the nation suffered a great recession exacerbating the City's revenue problems in light of its reliance on the automotive industry. While the argument could now be made concerning the inability of the public employer to finance and administer even a 3% compensation increase, the City is not doing so with respect to this unit. Given current the economic environment of the City and the nation, this is a generous offer. A wage increase retroactive to January 1, 2008 was agreed.

POSITIONS: The Union: The Union agreed to the three percent (3%) wage increase effective January 1, 2008, and three percent (3%) effective January 1, 2009 . A wage increase retroactive to January 1, 2008 was agreed.

FINDINGS AND RECOMMENDATION: The compensation of this unit is based on a differential of 14% to the patrol unit and a similar differential between ranks. The patrol unit had completed its negotiations earlier through Fact-Finding concluding with a 3% increase to the patrol rates. Consequently, at 14% over the already 3% increase of the patrol would yield a net 3% increase to this unit if that factor continued to apply. The Fact-Finder has carefully considered all of the evidence and stipulations. The Fact-Finder recommends that bargaining unit members receive a three percent (3%) wage increase on the basic wage rate table retroactive to January 1, 2008 and, a three

(3%) percent increase effective January 1, 2009. The Fact-Finder finds retroactivity was resolved pursuant to the parties' agreement that any wage adjustments be retroactive to that date. The recommendation is as shown with the 3% increases to be calculated in the parties' usual method with no other change to Section 1:

Section 1. Effective January 1, 2005-2008, the salary paid to Sergeants and Lieutenants shall be as follows:

SERGEANTS (+14% of Patrolmen Certificate of Proficiency rate)	<u>1/1/08</u>	<u>1/1/09</u>
After 24 months	{to be calculated}	{to be calculated}
After 5 years	{to be calculated}	{to be calculated}
After 10 years	{to be calculated}	{to be calculated}
After 15 years	{to be calculated}	{to be calculated}
After 20 years	{to be calculated}	{to be calculated}
After 25 years	{to be calculated}	{to be calculated}

LIEUTENANTS (+14% of Sergeants rate)	<u>1/1/08</u>	<u>1/1/09</u>
After 24 months	{to be calculated}	{to be calculated}
After 5 years	{to be calculated}	{to be calculated}
After 10 years	{to be calculated}	{to be calculated}
After 15 years	{to be calculated}	{to be calculated}
After 20 years	{to be calculated}	{to be calculated}
After 25 years	{to be calculated}	{to be calculated}

The wages reflected above . . .

ISSUE: Article XIV Insurance, Section 1

CONTRACT SECTIONS: Section 1(a) to be amended to substitute a 90%/10% coinsurance program and to increase prescription drug co-pays with Section 1(b) and (c) to be deleted *in toto*.

POSITIONS: The Employer: The City proposes these changes as a means to avoid cost increases in the current financial environment. The City has proposed to change the coverage from 100% to 90% co-insurance program without demanding premium contribution by the employees. The deductibles of \$200/\$400 and \$750/\$1,500 are modest in comparison to insurance products in the market. It also seeks to increase the deductibles on the prescription drug program. These changes were agreed by the other units' negotiations and were implemented city-wide with knowledge of the Union.

The City also proposes to eliminate providing insurance for retirees conditional on the elimination of that benefit by the state police and fire pension fund [Sec 1(b)], and to eliminate the insurance committee [Sec 1(c)].

POSITIONS: The Union: The Union has recognized the economic environment and the City's internal comparisons and so agreed to the changes.

FINDINGS AND RECOMMENDATION: The Fact-Finder finds both parties agree that any new coverage schedule should be effective January 1, 2008, and should continue. The Fact-Finder recommends that the City's proposal be adopted with an additional change. The transcript of the City's language showed as deleted the prescription drug language with partial handwritten additional changes. To clarify, *new (b)* will be created to identify the changes that were agreed on the prescription drug program. The *new (c)* was designated as a logical division. The recommendation is as shown with no other change to Section 1 except agreed typographical ones:

Section 1. Hospitalization Insurance.

(a) The City will provide and pay ninety (90%) percent of the ~~for the full~~ premium on behalf of each full-time employee for single and family hospitalization and medical service coverage pursuant to Exhibit A. ~~under the current plan or substantially similar or better plan.~~ *new* (b) Prescription drug coverage for current employees and their families shall be as follows:

- 1) Tier 1 ~~-\$5.00~~ \$10.00 deductible
- 2) Tier 2 ~~\$10.00~~ \$20.00 deductible
- 3) Tier 3 ~~\$25.00~~ \$35.00 deductible
- 4) Maintenance Drugs by mail order; mandatory program.

new (c) The City shall have the right to chose and alterative insurance carrier and/or provide other delivery systems . after discussion with the Union, provided that the benefits in such new policy are substantial similar to better to the current policy.

(b) . . . [deleted]

(c) . . . [deleted]

ISSUE: Article XVIII Clothing, Section 1, 2

CONTRACT SECTIONS: Section 1 and 2 to be amended as follows without other change except agreed typographical ones:

Section 1. Employees shall be provided an annual clothing allowance ~~as follows: three hundred (\$300.00) dollars through purchase orders and during the first year of the agreement a cash payment of one thousand one hundred (\$1,100.00) three hundred (\$300.00) dollars on July 1st January 1, 2009 for the uniform maintenance, and cash payment of three (\$300.00) dollars on December 1st for uniform maintenance, provided however, the Chief may convert any of the payments for maintenance to purchase orders where the Chief determines that the employee fails to meet the Division's standard for dress. In the second year of the Agreement, the cash payments shall be three hundred twenty five (\$325.00) dollars each half. In the Third year of the Agreement each payment shall be three hundred fifty (\$350.00) dollars each half.~~

Section 2. Employees who are assigned to the motorcycle unit ~~and K-9 units~~ will receive an additional three hundred (\$300.00) dollars in purchase orders annually for the purpose of purchasing uniforms and accessories specific to their unit.

POSITIONS: The Employer: The City has proposed to increase the clothing allowance and to simplify the provision. It was \$300 annually in vouchers plus \$700 cash. Purchase orders (vouchers) have been difficult to administer in the past and subject to abuse in other cities. The new amount is \$1,100 annually, an increase of \$100. It would be administered in January of each year, not July as originally written and made retroactively. This change was accepted by the patrol and fire units. The K-9 uniform is eliminated.

POSITIONS: The Union: The Union proposed an \$200.00 increase believing that was the amount already implemented but agreed to the City's proposal as part of the comprehensive compensation package.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this proposal to have been resolved between the parties. The City's proposal is recommended.

ISSUE: Memorandum of Agreement (LOU # 1).

CONTRACT SECTIONS:

This LOU considers the maximum insurance reimbursements or limit of payments to retirees under Article XVI Section 1, Hospitalization Insurance (b).

POSITIONS: The Employer:

This was agreed upon as a Tentative Agreement to continue under the new Agreement.

POSITIONS: The Union:

This was agreed upon as a Tentative Agreement to continue under the new Agreement.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The recommendation is that LOU # 1 shall continue.

ISSUE: Memorandum of Agreement (LOU # 2).

CONTRACT SECTIONS:

This LOU considers the accrual, utilization and payouts of compensatory time.

POSITIONS: The Employer:

This was agreed upon as a Tentative Agreement to continue under the new Agreement.

POSITIONS: The Union:

This was agreed upon as a Tentative Agreement to continue under the new Agreement.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The recommendation is that LOU # 2 shall continue.

ISSUE: LOU # 3 (Seven Subjects) dated April, 2005

CONTRACT SECTIONS: This LOU considers several subjects and the proposed changes shown:

- ¶ 1 (Residency) [delete]
- ¶ 2 (Sub Contracting) [delete]
- ¶ 3 (Service Weapon) [add to existing language: "providing no mental disability."]
- ¶ 4 (Minimum Manning) [delete]
- ¶ 5 (Overtime Replacement) [delete]
- ¶ 6 (Rotating Shifts) [no change]
- ¶ 7 (Ten hour shifts) [no change]

POSITIONS: The Employer: The City has proposed all of the changes to LOU#3. ¶ 1 (Residency) is a matter of law not needed in the Agreement. ¶ 2 (Sub Contracting) is inapplicable to this unit. ¶ 3 (Service Weapon) adds a reasonable mental limitation. The major issues were ¶ 4 and ¶ 5 which related to the City's argument on the Recognition clause, Art. III, Sec. 3. Taken in combination, that clause and these paragraphs of LOU #3 cause artificial overtime. That is overtime that could be reasonably avoided saving cost and adding flexibility. More importantly the unit's overtime the is out of line with regard to the amount of overtime used by the patrol. The members of the patrol unit averages a quarter to a third of the overtime of this unit.

POSITIONS: The Union: The Union does not oppose the changes to ¶ 1, ¶ 2, and ¶ 3. The Union opposes the change to ¶ 4 and ¶ 5. Minimum manning is a safety consideration for the department and the public. It requires that there be sufficient trained supervisors to cover all shifts. This is a small unit and four of each are needed to cover the 24/7 three shift operation. The Union offered an adjustments under existing language that could save the City money without deleting the paragraphs. In exchange to City concessions on Art. III, Sec. 3 the Union withdrew its opposition.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers the paragraphs of this LOU #3 were resolved between the parties. The recommendation is the City's proposal.

ISSUE: LOU #4 High Risk Injury Leave and SWAT

CONTRACT SECTIONS:

This LOU incorporates a contract section from the patrol agreement for high risk injury into the Memorandum of Understanding and adds provision for defense tactics training, SWAT, K-9 training and motorcycle training.

POSITIONS: The Employer:

This was agreed upon as a Tentative Agreement to continue under the new Agreement.

POSITIONS: The Union: This was agreed upon as a Tentative Agreement to continue under the new Agreement.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The recommendation is that LOU # 4 shall continue.

ISSUE: LOU # 5 Settlement Agreement and Contract Addendum (04-07-2006)

CONTRACT SECTIONS: This LOU was not designated as such in the Fact-Finding nor did it appear as an attachment to the expiring Agreement but was submitted as JX 2. It is an agreement among the Unions representing the patrol and the supervisors and the City that the City would provide a stipend of \$400.00/month to retirees who retired before December 31, 2007 for health care reimbursement.

POSITIONS: The Employer: The City stated that the LOU expired by its terms. It only covers persons retired before the end of the term of the last Agreement. Since under its terms any future payments are subject to negotiations which require the City's agreement to become effective, and the City has not agreed, it is a dead letter. However, the City argued that it had offered to continue the terms of the letter subject to the Union agreeing to (1) the 90%/10% health care program proposal and (2) the 4/8 Conversion of Unused Sick Leave. Other units have agreed to both through their representatives, cf. Fire Department unit provision (EX 17 p. 13, Art XV, Sec 5.) The Union here agreed only to the insurance program before Fact-Finding and so the LOU #5 is off the table. Since the mediation concluded here with agreement, the City agreed to the LOU #5.

POSITIONS: The Union: The Union proposes that LOU #5 continue to be in effect. It disputed the City's *quid pro quo* argument but nevertheless states that it did agree in Fact-Finding to both the supposed conditions.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The Fact-Finder recommends that LOU #5 continue in effect for the persons retired prior to the effective date of this Agreement, January 1, 2008. To that end, a legend is recommended to be attached to the LOU #5 to state its continuation for the duration of the Agreement.

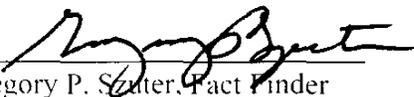
ISSUE: Article XXVI Duration of Agreement

CONTRACT SECTIONS: Section 1

POSITIONS: The Employer: Where the numeral 2007 appears, it shall be replaced with the numeral 2009. Where the numeral 2005 appears in the execution line, it shall be replaced with the numeral 2009. The duration was agreed upon as a Tentative Agreement.

POSITIONS: The Union: Where the numeral 2007 appears, it shall be replaced with the numeral 2009. Where the numeral 2005 appears in the execution line, it shall be replaced with the numeral 2009. The duration was agreed upon as a Tentative Agreement.

FINDINGS AND RECOMMENDATION: The Fact-Finder considers this issue was resolved between the parties. The Fact-Finder recommends that the term of the Agreement be January 1, 2008 through December 31, 2009.


Gregory P. Suter, Fact Finder
Made and entered at Cleveland, Ohio
July 20, 2009

PROOF OF SERVICE:

The foregoing has been sent by U.S. Mail (ordinary) on July 20, 2009, to OPBA c/o Lou D'Amico, Esq. and City of Brook Park c/o Gary Johnson, Esq. per addresses shown on the cover with advance copy via email on the same date to both.

GREGORY P. SZUTER, ESQ

ARBITRATOR MEDIATOR

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July 20, 2009

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RE: Fact Finding between: City of Brook Park and OPBA
SERB Case No: 07 MED 10-1158

STATE EMPLOYMENT
RELATIONS BOARD
2009 JUL 24 A 9:03

Dear Counsel:

Please find enclosed the Fact Finder's Report and Recommendations in the above matter that has been sent this date via email attachment to the above addresses as stipulated. A hard copy is being mailed concurrently to you and SERB. Also by hard copy only, counsel will be receiving the invoice for services in connection with matter. Thank you for allowing me to assist the bargaining parties in this manner.

Very truly yours,


Gregory P. Szuter

cc.
Admr. Bureau of Mediation (SERB)
GPS\MMI ✓