



**MARC A. WINTERS** STATE EMPLOYMENT RELATIONS BOARD

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MEMBER - NATIONAL ACADEMY OF ARBITRATORS  
212 SYCAMORE DRIVE  
SEVEN FIELDS., PA 16046

2009 JAN -8 P 12: 45

Telephone 724-778-9987

Fax 724-778-9986

E-mail - mwinters@zoominternet.net

January 7,, 2009

Sandy Conley  
Senior Consultant  
Clemans, Nelson & Associates  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319-1907

Lucy DiNardo  
Staff Representative  
FOP/OLC  
2721 Manchester Road  
Akron, Ohio 44319

2009 JAN -8 P 12: 45  
STATE EMPLOYMENT  
RELATIONS BOARD

Re: SERB Case No. 08-MED-07-0716 (Dispatchers) - Fact-Finding Report  
City of Avon and the Fraternal Order of Police/Ohio Labor Council

Advocates:

Enclosed is a copy of my Report/Recommendations and invoice relative to the above-referenced Fact-Finding Hearing. It has been a pleasure to assist you in this matter, and I will look forward to the opportunity to be of service in the future.

Sincerely,

Marc A. Winters  
Arbitrator

cc: SERB

**FACT-FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
January 7, 2009**

STATE EMPLOYMENT  
RELATIONS BOARD  
2009 JAN -8 P 12:45

**In the Matter of** )  
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**The City of Avon** )  
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 )  
**And** )  
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 )  
**Fraternal Order of Police,** )  
**Ohio Labor Council** )

**08-MED-07-0716  
Dispatchers**

**APPEARANCES**

**For the City  
Sandy Conley  
Account Manager  
Clemans, Nelson & Associates, Inc.**

**For the FOP/OLC  
Lucy DiNardo  
Staff Representative**

**Fact-Finder, Marc A. Winters**

## **BACKGROUND**

The Fact-Finding involves the City of Avon, (hereafter referred to as the “Employer”) and the Fraternal Order of Police, Ohio Labor Council, (hereafter referred to as the “Union”). The Union’s bargaining unit is comprised of approximately seven (7) full-time Dispatchers. This Bargaining Unit falls within the City’s Police Department and is in accordance with SERB rules.

In a letter, dated November 21, 2008, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder for this matter under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement expired on December 31, 2008. The parties have met on numerous occasions to negotiate a successor agreement, September 16, September 25, October 9 and December 12, 2008, and have signed approximately fifteen (15) tentative agreements. Although successful in resolving most issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.

The parties have signed an extension agreement whereby they have agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder until January 15, 2009.

The Fact-Finding Hearing was conducted on Tuesday, December 30, 2008, in the City’s Offices, Avon, Ohio. The Fact-Finding Hearing began around 9:50 A. M., and was adjourned at approximately 12:10 P. M. At the end of the Fact-Finding Hearing an attempt was made to mediate the issues at impasse.

Although the mediation, at face value, was unsuccessful, it gave the Fact-Finder a thorough understanding of each parties respective position on each issue at hand.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given consideration to factors peculiar to the area and classification involved.

3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition to, the testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report. However, this Fact-Finder assures the parties that their position books were thoroughly read, studied and relied upon.

For the most part, the parties and this Fact-Finder used and relied on the following jurisdictions, all in Lorain County for external comparable purposes: Avon Lake, Bay Village, Elyria, Lorain County, North Ridgeville and Westlake. The City also provided the jurisdictions of Amherst, Oblerlin and Sheffield Lake, also found in Lorain County, for consideration of the external comparables.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report, that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement. The Parties have approximately 15 signed tentative agreements.

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the parties proposals.

The following nine (9) issues are the issues that were considered during the Fact-Finding Hearing on December 30, 2008.

ISSUE NO. 1,	ARTICLE 11, EDUCATIONAL INCENTIVES
ISSUE NO. 2,	ARTICLE 13, HEALTH COVERAGE/LIFE INSURANCE
ISSUE NO. 3,	ARTICLE 18, UNIFORM ALLOWANCE

ISSUE NO. 4,           ARTICLE 19, WORK WEEK/SCHEDULED HOURS  
ISSUE NO. 5,           ARTICLE 21, SICK LEAVE (CONVERSION)  
ISSUE NO. 6,           ARTICLE 37, DURATION  
ISSUE NO. 7,           APPENDIX A, WAGES  
ISSUE NO. 8,           APPENDIX A, WAGES (EQUITY ADJUSTMENT)  
ISSUE NO. 9,           MEMORANDUM OF UNDERSTANDING

### RECOMMENDATIONS

ISSUE NO. 1,           ARTICLE 11, EDUCATIONAL INCENTIVES

#### UNION POSITION:

The Union has proposed to increase the educational incentive, by \$200, for those employees who have obtained an Associates Degree in Police Science. Likewise the Union proposes an increase in the educational incentive, by \$500, for those employees who have obtained a Bachelor's Degree, whether it is not affiliated with Police Science.

#### EMPLOYER POSITION:

The Employer wishes to retain the status quo and is opposed to any increases in this benefit as the comparable data does not support an increase in this area.. The Employer, however, does propose a clarification to establish the same requirement for an Associate's Degree as the Bachelor's Degree, having the Degree in Police Science or a Police Science related Degree.

#### DISCUSSION AND RECOMMENDATION:

Currently an employee under this contract receives \$650 annually for an Associates Degree and \$850 annually for a Bachelor's Degree. Using the external comparables cited, the Avon Dispatchers are not the highest in this area and are certainly not the lowest. Using the nine comparable jurisdictions provided by the Employer shows that the Avon Dispatchers are above average in this area. Using just the six comparable jurisdictions provided by the Union still has the Avon Dispatchers in the middle of the group with respect to the educational incentive.

Based on the testimony given and the following wage discussion in this Report, along with other financial gains obtained during this contract's bargaining sessions, the Avon Dispatchers are not substandard with respect to the educational incentive.

It is therefore, this Fact-Finder's recommendation, that the status quo apply to the amounts of the educational incentives given for a Bachelor's and Associate's Degree. However, the Employer's clarification, which is a benefit to those who obtain an Associates Degree which establishes the

same requirement for an Associate's Degree as required for a Bachelor's Degree which is in either Police Science or a Police Science related Degree is hereby incorporated.

## ISSUE NO. 2, ARTICLE 13, HEALTH COVERAGE/LIFE INSURANCE

### EMPLOYER POSITION:

The City proposes removing the caps on the premium contributions required of employees on the Health Plan and keeping the contribution amounts at a straight 80/20 split as is required with all other City bargaining units, with the exception of the Dispatchers and the Rank Officers, and as required with all non-bargaining unit employees. The City argues that they cannot justify treating these employees differently than any other City employees, and is totally averse to moving away from the 80/20 cost sharing.

### UNION POSITION:

The Union has proposed to reduce the maximum employee contributions to thirty-five dollars (\$35.00) for family coverage and fifteen dollars (\$15.00) for single coverage. The Union is attempting to bring their members more in line with the contributions being paid by all jurisdictions in Lorain County whom are all covered by the same plan and subject to the same premiums. The Union argues that the City of Avon's premium contribution is the lowest among all County Employer's within this Healthcare group and the employee's premium contributions are the highest within the Lorain County Health Care Plan.

### DISCUSSION AND RECOMMENDATION:

The FOP/OLC bargaining unit employees (Dispatchers, the unit in the instant case, and the Rank unit) who elect to participate in the City's group health insurance plan currently contribute twenty percent (20%) of the premium/per employee cost for such health plan coverage, with employee maximums of two hundred dollars (\$200.00) per month for family coverage, and one hundred dollars (\$100.00) per month for single coverage.

All other City employees, bargaining unit and non-bargaining unit alike, contribute a straight twenty percent (20%) of the premium/per employee cost for such health plan coverage (with no employee maximums).

According to the City the 80/20 shared contributions were gained by the Employer at fact finding and conciliation in 2003. That 2003-2005 agreement did incorporate the employee maximums. The City points out that substantial/higher than average wage increases of five percent (5%), (3%) and (3.5%), (eleven and one-half per cent cumulatively) were also awarded for the 2003 – 2005 time period. The state-wide average increases for Police Units, according to the Annual Wage Settlement Report of the State Employment Relations Board, were 3.28%, 2.99%, and 2.98% (nine and one-quarter percent cumulatively) for the same time period.

The City also notes that higher than average wage increases were also gained by this unit in the 2006-2008 successor negotiations which were four percent (4%) each year of that Agreement. An attempt to go to the straight 80/20 split, by the City, in the 2006-2008 Agreement failed due to a conciliation award, these employees did not move to the straight twenty percent (20%) health care cost sharing as did all other City employees who participate in the group health plan.

First, this Fact-Finder recognizes the benefits to the Employer by trying to have all employees on the same health care plan share or pay the same premium amounts. It's much easier to administer, budget and it helps employee morale when each employee for the Employer is subject to the same premium share amounts.

Rising health care cost can adversely and directly contribute to financial problems for any City. Although the City has not argued an inability to pay more of the premium cost, they do argue that every employee should be subject to the same amount. On the other hand, these employees have an interest in maintaining their current plan by trying to minimize their burden with respect to increased monthly premiums. As in a previous fact-finding report between the City and the Dispatchers, that fact-finder referred to the City's health care plan as the Cadillac of all plans with respect to benefits and copays.

Here the City is trying to pattern bargain with the health care plan and the amount of premium sharing. Currently out of their one hundred and fifteen (115) employees only the seven (7) Dispatchers and the eight (8) Rank Officers, who fall under a different Collective Bargaining Agreement have the 80/20 split with caps. The other one hundred (100) employees have the 80/20 split with no caps. This Fact-Finder has to be cognizant to the fact that a new pattern has been established by several other units, during bargaining, who, along with the non-bargaining unit employees, comprise the majority of the employees who now have the 80/20 split with no cap. To stray from the other employees or in this case keep the status quo, this Union has to present very overwhelming and convincing evidence why they should not follow suit.

The Union make a good argument that other Avon employees make more money than they do and all Avon employees pay more of a premium share than everyone else in the Lorain County Plan. However, as discussed later in the wage portion of this Report, the Avon Dispatchers make a higher wage than the other Dispatchers in the comparable jurisdictions.

It appears that with no caps, at least for 2009, those contributing for single coverage, will not see an increase above the \$100 cap that is now in place. Those contributing towards the family coverage will, however, see a slight increase over the \$200 cap now in place.

To make such an adjustment to an employee's wage, by removing the caps, the Employer must respond with an adequate wage increase to offset any new increases in the amounts an employee will now pay towards their premium. This is particularly true since the Employer is not arguing any inability to pay.

While this Fact-Finder believes that the Employer's proposal to be prudent an adjustment to wages for the removal of the caps will be shown in the wage portion of this report.

It is this Fact-Finder's recommendation that the Employer's proposal be adopted retaining the 80/20 split for premiums with no caps.

**ISSUE NO. 3,           ARTICLE 18, UNIFORM ALLOWANCE**

**UNION POSITION:**

The Union is proposing to increase their uniform allowance by \$100, the first year of the Agreement, by \$50.00 for the second year of the Agreement and by \$50.00 for the third year of the Agreement.

**EMPLOYER POSITION:**

The Employer opposes any increase in the uniform allowance citing a reduction in cost for uniforms and that the comparable data does not support the need for any increase.

**DISCUSSION AND RECOMMENDATION:**

When looking at the comparables, the Avon Dispatchers fall below the average in this area by about \$70.00.

Testimony was that although the recent switch to polo shirts may have been less expensive than the shirts they bought before, the need for more polo shirts, that don't last as long, at \$18.00 a piece has increased. Also, the cost of other uniform replacement items have increased.

It is this Fact-Finder's opinion that the Avon Dispatchers are a little substandard in the area of uniform allowance. With that in mind and taking into account the discussion on the Health Care premium pay and with consideration for an appropriate wage increase, this Fact-Finder recommends an increase in uniform allowance of \$50.00 effective January 1, 2009, \$50.00 effective January 1, 2010 and \$50.00 effective January 1, 2011.

**ISSUE NO. 4,           ARTICLE 19, WORK WEEK/SCHEDULED HOURS**

**EMPLOYER POSITION:**

In Section 4., 1<sup>st</sup> Paragraph, the City proposes to remove "sick days" from consideration when calculating duty hours/compensable time for the purposes of overtime computation. This modification will provide City-wide consistency in the calculation of overtime, as all other City employees do not have sick leave counted towards overtime.

In Subsection C., the City proposes to clarify this language so that employees who voluntarily accept overtime when on a vacation day will receive double time and one-half (i.e., the vacation day plus time and one-half for actual hours worked).

Further, an employee on a vacation day who is called in and required to work (i.e., "ordered in") will receive triple time (i.e., the vacation day plus double time for actual hours worked); the employee will also receive a four (4) hour minimum for the "call in," or actual hours worked, whichever is greater.

**UNION POSITION:**

The Union has rejected the Employer's proposal as a take away of a previously negotiated benefit.

**DISCUSSION AND RECOMMENDATION:**

Once again the Employer is trying to place all City employees on the same page with all benefit items for consistency purposes in which there is an administrative and cost savings to the Employer.

Absent from the record is any detailed information as to how many times with the seven (7) Dispatchers does any of the above overtime pay situations occur and what would be the subsequent savings to the Employer.

The Employer's intent is for consistency. However, trying to accomplish all such consistent changes, that would be viewed as concessionary in one set of bargaining may be too much.

It is this Fact-Finder's recommendation for the status quo.

**ISSUE NO. 5, ARTICLE 21, SICK LEAVE (CONVERSION)**

**EMPLOYERS POSITION:**

The Employer seeks to establish a maximum payment for sick leave upon retirement at nine hundred and sixty (960) hours. The Employer's proposal is consistent with the maximums already established within the other City labor agreements and City policy. The nine hundred and sixty (960) hour maximum is also comparable or better than that provided by the other cities generally looked at when conducting external comparisons.

**UNION POSITION:**

The Union has rejected the Employer's proposal as a take away of a previously negotiated benefit.

## DISCUSSION AND RECOMMENDATION:

Once again, this Fact-Finder recognizes the benefits to the Employer by trying to have all employees be entitled to the same maximum payment for sick leave upon retirement. It is much easier to administer, budget and it helps employee morale when each employee for the Employer is subject to the same buy back amounts.

The City's proposal is consistent with the amount that the majority of City employees, bargaining unit and non-bargaining unit alike, receive as a maximum payment for sick leave upon retirement while keeping the Dispatcher's comparable to the like jurisdictions. In addition, at this time no Avon Dispatcher will be harmed by capping the sick leave buy back at 960 hours.

This Fact-Finder views the City's proposal, regarding the internal consistency of this benefit, to be reasonable and therefore recommends the Employer's proposal as written.

## ISSUE NO. 6, ARTICLE 37, DURATION

### EMPLOYER POSITION:

The Employer seeks to have the agreement commence prospectively (i.e., with the first day of the first full pay period following execution of the agreement), and to end on December 31, 2011.

The notice to negotiate was filed by the FOP/OLC on July 16, 2008, and the Employer made itself available for negotiations by mid August. It is the position of the Employer that the Union was dilatory, not only in commencing negotiations (by not being available until September 16, 2008), but also by cancelling and not promptly rescheduling negotiation sessions. Such dilatory conduct also occurred in the 2005-2006 successor negotiations.

### UNION POSITION:

The Union disagrees with the Employer's proposal and seeks to have the agreement commence effective January 1, 2009, and to end on December 31, 2011.

## DISCUSSION AND RECOMMENDATION:

Based on the testimony given and evidence presented, there is no reason to opt out of the normal beginning or effective date for the new Agreement. There was not sufficient evidence to prove that the Union was in fact dilatory to the point to adopt the Employer's proposal. Evidence also shows that at least two of the City's other bargaining units commence their effective dates in the same fashion as the Dispatchers.

Therefore it is this Fact-Finder's recommendation that the new Agreement will be for three years effective January 1, 2009, and ending on December 31, 2011.

ISSUE NO. 7, APPENDIX A, WAGES

UNION POSITION:

The Union has proposed wage increases as follows:

Effective January 1, 2009	6%
Effective with the 1 <sup>st</sup> pay of January 2010	5%
Effective with the 1 <sup>st</sup> pay of January 2011	5%

The Union believes that these increase are needed to keep the Dispatcher's competitive with other Dispatchers in Lorain County while taking in account any changes to their contributions toward health care premiums.

EMPLOYER POSITION:

The Employer proposes wage increases for this bargaining unit as follows:

Commencing with the 1 <sup>st</sup> full pay period following execution of the agreement	2% plus \$.10
Commencing with the 1 <sup>st</sup> pay of January 2010	2%
Commencing with the 1 <sup>st</sup> pay of January 2011	2%

The Dispatchers in the City of Avon are highly compensated in consideration of the comparative data at approximately fifteen percent (15%) above the average. Historically, the City has compared itself to all cities within Lorain County and the western Cuyahoga County cities of Bay Village and Westlake. The Employer believes that the increases proposed above will still allow the dispatchers to maintain their higher than average ranking during the term of the successor agreement.

DISCUSSION AND RECOMMENDATION:

In comparison purposes with the like jurisdictions in Lorain County, the Avon Dispatchers make a good wage. There is no dispute about it. There is also no dispute, because it wasn't argued, that

the City can not afford to give their Dispatchers a fair wage increase. This Fact-Finder must balance a fair wage increase for the Dispatchers, taking in account other wage items, the change in sick leave conversion buy back upon retirement and the removal of the cap for the amount of the premium contribution, along with their needs to remain competitive within their comparables and the City's need for fiscal responsibility.

Based on the evidence provided, the testimony given and the previous health care discussion with the Employer's need to respond with an adequate wage increase for the removal of the caps for premium contributions, this Fact-Finder makes the following recommendation.

Effective January 1, 2009,	4% increase. (Retroactive)
Effective with the first full pay of 2010,	3.75% increase.
Effective with the first full pay of 2011,	3.75% increase

ISSUE NO. 8,            APPENDIX A, WAGES (EQUITY ADJUSTMENT)

UNION POSITION:

The Union proposes a new Section 8 whereby each member shall receive an equity adjustment of two-thousand dollars (\$2,000.00) in anticipation of extra duties assigned by the Chief of Police and or City Hall with regards to permits and any other non-related dispatch function.

EMPLOYER POSITION:

The Employer rejects the Union's proposal as too costly and not necessary since the Dispatchers already receive a stipend for clerical duties rolled into their base pay. Section 5 of the Wage Appendix establishes that shift differential and a clerical stipend of seventy-eight cents (\$.78) was rolled into the base pay for dispatchers in January of 2000. Naturally, that \$.78 has grown with the percentage wage increases granted commencing in 2000 and forward. It is the position of the City that dispatchers are more than fairly compensated for any duties required of the position.

DISCUSSION AND RECOMMENDATION:

The Dispatchers for Avon make good wage and are at the top of the list of comparables used. Section 5 of the Wage Appendix establishes that shift differential and a clerical stipend of seventy-eight cents (\$.78) was rolled into the base pay for dispatchers in January of 2000. At the Hearing, there was not sufficient evidence to determine that any upcoming clerical work or duties in regards to permits or non related police dispatch functions would demand such an equity adjustment at this time. Therefore, the Union's proposal for an equity adjustment is not recommended.

ISSUE NO. 9, MEMORANDUM OF UNDERSTANDING

UNION POSITION:

The Union proposes a Memorandum of Understanding to include retroactivity with regards to any and all economic increases from January 1, 2009.

EMPLOYER POSITION:

It is the Employer's position that retroactivity or the prospective application of these matters can and should be addressed under the Duration clause and the Wage Appendix.

DISCUSSION AND RECOMMENDATION:

This Fact-Finder agrees with the City. Matters concerning retroactivity and economic increases should be dealt with, referred to and/or stated under duration or appropriate sections that cover the economic increases. Therefore, the Union's proposal for a Memorandum of Understanding is not recommended.



Marc A. Winters, Fact-Finder