



## **Introduction**

This matter is a dispute between the Ohio Patrolmen's Benevolent Association [hereinafter the "Union" or the "OPBA"] and the City of Wapakoneta [hereinafter the "City" or the "Employer"]. The bargaining units are composed of: "All full-time Patrol Officers in the City of Wapakoneta" and "All full-time Lieutenants in the City of Wapakoneta Police Department." The Agreement between these parties was effective November 1, 2005 and continued in full force and effect until 12:00 midnight October 31, 2008. The bargaining unit is located in the City of Wapakoneta, the county seat of Auglaize County. There are approximately ten (10) full-time Patrol Officers and three (3) Lieutenants.

The Fact-Finder was appointed by the State Employment Relations Board on September 25, 2008, in compliance with Ohio Revised Code Section 4117.14(C)(3).

The City of Wapakoneta is approximately fifteen miles southwest of Lima, fifty-five miles north of Dayton, and ninety miles northwest of Columbus. Interstate 75, a major North-South highway, and U.S. 33, an equally important East-West route, intersect at the southeast corner of the City. Four major highway interchanges are located within two miles of this intersection. Over twelve million non-commuters pass through Wapakoneta each year. Wapakoneta comprises five and one-third square miles and is located eight hundred ninety-five feet above sea level. Two-thirds of the nation's population and almost 70 percent of the nation's purchasing power are located within six hundred miles of Wapakoneta.<sup>1</sup>

The parties have met three (3) times: On September 24, 2008, on October 1, 2008 and on October 8, 2008. At the close of this hearing the parties presented the Fact-Finder with eleven (11) issues upon which there was as yet no mutual agreement. They are:

- 1. ARTICLE 12 REDUCTION IN FORCE**
- 2. ARTICLE 17 WAGES**
- 3. ARTICLE 18 LONGEVITY**
- 4. ARTICLE 22 CALL-IN/CANINE UNIT**
- 5. ARTICLE 23 HOURS OF WORK/OVERTIME**
- 6. ARTICLE 25 HOLIDAYS**
- 7. ARTICLE 27 SICK LEAVE**
- 8. ARTICLE 33 PERSONAL LEAVE DAYS**
- 9. ARTICLE 38 TRAINING**
- 10. ARTICLE 46 DURATION**
- 11. A NEW ARTICLE-DUTY WEAPONS PURCHASE**

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<sup>1</sup> The above information was extracted from the City of Wapakoneta, Ohio official web site.

The following agreements were made between the parties at this hearing and were evidenced by their signatures. The parties requested that the fact-finder incorporate all such agreements into his decision. Articles and Sections where such changes are evidenced, are listed herein:

1. **ARTICLE 31 INJURY LEAVE SECTIONS 31.1, 31.2, 31.3, 31.4, 31.5**
2. **ARTICLE 35 INSURANCE SECTIONS 35.2, 35.6**
3. **ARTICLE 41 DRUG/ALCOHOL TESTING SECTIONS 41.2,**
4. **ARTICLE 14 GRIEVANCE PROCEDURE SECTIONS 14.6, STEP 3:  
Arbitration: A.**
5. **ARTICLE 13 DISCIPLINE SECTION 13.4.**
6. **ARTICLE 6 SECTION 6.4**

**Additionally, all agreements by the parties, as evidenced by their signatures, made prior to this hearing are also incorporated into this decision.**

### **Criteria**

When making his analysis and recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C)(4)(e) and Ohio Administrative Code § 4117-9-05(K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

## Discussion

The parties are not in conflict as to the history of their negotiations prior to this hearing. No major issues were resolved. Minor issues were discussed and there were some tentative agreements reached. Only three (3) meetings were held making any productive dialogue unlikely. These meetings were relatively short. Paper was exchanged. Substantive discussions were limited.

### **Unresolved Issues:**

#### **1. ARTICLE 12-REDUCTION IN FORCE**

**Union Position:** The Union has stated that its proposal on this issue was made in response to the City's proposal to add language to this Section to the effect that Article 12 supersedes the provisions of R.C. 124.37. with which position the Union takes exception.

**City Position:** The City's position is that the Union's proposal would create an ambiguity with Article 44 Severability, and force the parties to look outside of the labor Agreement by introducing civil service law. The existing language has been in effect for some twenty years and the proposal represents a monumental change in procedure.

The City further argues that the Union has not bargained over this issue. The City of Wapakoneta has never had a reduction in force therefore no reason exists to modify the present language.

**RECOMMENDATION: Retain the current language in the Agreement without modification.**

**Rationale:** No logical or compelling reason has been advanced to modify the existing language. The continuity of the bargained Agreement, the understandings and practices of the parties developed over the time period this Article has been in effect are relevant.

The provisions of Article 44 are clear and unambiguous. The introduction of either of these proposals would produce conflict, the results of which would not be in the best interest of either party.

## **2. ARTICLE 17-WAGES**

**Union Position:** The Union proposes across-the-board increases in the wage scales for each year of the Agreement: **Effective November 1, 2008, an increase of 3.5%. Effective November 1, 2009, an increase of 3.5%. Effective November 1, 2010, an increase of 3.5%.** The Union also proposes that the present spread between probationary Lieutenants, 7% above the top base rate of a Patrol Officer and the present spread between a non-probationary Lieutenant and the top base rate of a Patrol Officer, be maintained. These spreads also are to remain the same on top of the Patrol Officers' proposed increases.

The Union has presented internal and external comparables on both the general increase and the pay numbers. An example offered is: Comparable wages in the City of St. Mary's, also located in Auglaize County, are higher than those in Wapakoneta. The Union also references the Police Chief of Wapakoneta, who, effective July 1, 2008, had his wage scale increases by 3.5%.

The City's last proposal was out-of-line with internal and external comparisons and was a low-ball attempt that should not be used as a credible reference for weighing the relative discrepancy in positions and, of significant relevance, was the fact that the City did not indicate at any time it could not afford these increases.

**Employer Position:** The City of Wapakoneta is a rural community; a community that is approximately a two (2) hour drive from the closest major metropolitan area.

It has been forced to operate on an economy reflecting its rural location and plan for the future by exercising financial prudence. The General Revenue Fund, the source of the entire police department funding, has been on a declining trend for the past five (5) years. There are no major private employers in Wapakoneta. The income tax rate is only 1%, a factor that limits the growth of the most substantial source of revenue for the General Fund. There is a continuing need for capital improvement projects yet the failure of recent ballots to increase property taxes and income taxes failed. This indicates that the City has to live with what revenue it now has. The testimony of the City's Safety-Service Director, Mr. Katterheinrich, was very helpful to the Fact-Finder.

The City's proposal for wage increases is: A two percent (2%) increase effective upon signing. A two percent (2%) increase effective one (1) year after signing. A two percent (2%) increase effective two (2) years after signing.

**RECOMMENDATION: After reviewing the testimony, evidence and supporting statistical data, the Fact-Finder adopts a compromise position such Recommendations to be reflected in Article 17, as appropriate: <sup>2</sup>**

**In the first year: An increase of three (3) percent.**

**In the second year: An increase of three (3) percent.**

**In the third year: An increase of three (3) percent.**

**In addition, the present spread between probationary Lieutenants, 7% above the top base rate of a Patrol Officer and the present spread between a non-probationary Lieutenant and the top base rate of a Patrol Officer, is to be maintained.**

**Sections 17.2, 17.3, 17.4 and 17.5 are to retain the current language, as appropriate.**

**Rationale:** The police department budget represents approximately one-third of the General Fund expenditures.

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<sup>2</sup> See Issue 10, Page 17, Article 46-Duration for a Recommendation as to the effective dates of these increases.

Significantly, recent bargaining history discloses that City employees, both bargaining unit and non-bargaining unit and management were granted a 3% wage increase for 2005.

The UWUA bargaining units agreed to 3% wage increases in 2005, 2006 and 2007. Furthermore, the Unions' wages track well with other local comparable jurisdictions. The wages of this bargaining unit are very comparable within the City, and in fact, with the Employer's wage proposal added, this bargaining unit is well ahead of the fire department's wages. The City wage level for this bargaining unit is very comparable with the police wages found in the area. References by the Union to a wage increase granted to the City Chief of Police, however, are not relevant nor are comparisons made to the City of St. Mary's.

### **3. ARTICLE 18-LONGEVITY**

**Union Position:** The Unions' proposal would amend Article 18.1 by increasing the Lieutenants' Longevity benefit by putting them in line with the Patrol Officers' benefit increasing the rate of payment from \$30.00 per year of continuous employment with the City of Wapakoneta to \$50.00. The Union argues that its proposal seeks to correct an inequity in the Agreement in that, under the existing Agreement, Patrol Officers earn their longevity at the rate of \$50.00 per year of continuous service with the City upon completing five (5) years of employment. Lieutenants, however, are paid at the rate of \$30.00 per year. Therefore, a Lieutenant's service for his entire career, including time as a Patrol Officer, is reduced by \$20.00 per year when he is promoted. The Unions' proposal was made to correct an inequity and to bring the Lieutenants in line with the Patrol Officers.

**Employer Position:** The longevity program of the Lieutenants is very comparable, both internally and externally. An increase is not necessary. Any increases in longevity for the Lieutenants would also modify the compensation package of the Lieutenants. In the year 2000, in the give and take of the collective bargaining process, the City agreed to pay the Lieutenants an additional 15 minutes of pay per day in order to cover roll calls, a program requested by police department employees. This equals an additional 65 hours of pay per year, or \$1,200.00 per year at current wages, or three (3) percent.

The current longevity amounts are comparable to local, similar jurisdictions. There is no basis for the Union's proposal. The Union offered no supporting documentation other than a desire to obtain the increase.

**RECOMMENDATION: No change to the existing language.**

**Rationale:**

After reviewing the testimony and the arguments presented by the parties, the Fact-Finder's recommendation is based upon his conclusion that there is no evidence indicating any necessity, nor is there any compelling reason as to why a change the existing language of this Article 18, Section 1 should be implemented.

**4. ARTICLE 22-CALL IN/CANINE UNIT:**

**Union Position:** The Union's proposal would modify Section 22.2, clarifying that employees qualify for court-time-pay when they are required to appear in court or perform duties required by the Court. The City did not object to this change when it was made as a part of its contingent package offer.

**Employer Position:** As the parties were unable to come to an understanding during the negotiation process, the Union should not expect the Fact-Finder to impose a settlement. The Union's proposal is not supported by any evidence.

**RECOMMENDATION:** The Fact-Finder recommends that the language of the first sentence of Article 22, Section 22.2 be modified as follows:

**Rewrite the first sentence of 22.2 to include the following phrase:** "Employees required to testify in court in the performance of their duties as a police officer *or who are required to perform a specific duty assigned by a judge of said court...*"

**Rationale:**

When making his analysis and recommendations upon this unresolved issue, the Fact-Finder must be mindful of and guided by the Criteria set forth in this Report. The parties both recognized in their testimony that an officer(s) could be and, in fact has been directed by a judge to perform certain duties other than giving testimony in his court. The Officer was not compensated. Both parties agreed that the Officer must obey the order of a judge. It is not in the interest or welfare of the public that there be an inequity of this nature.

**5. ARTICLE 23-HOURS OF WORK/OVERTIME:**

**Union Position:** The Union's position is that the current language in the Agreement be maintained. The Union had made proposals for changes during the negotiations but withdrew them prior to fact-finding. The Union contends that this is a huge proposal and is without merit.

**Employer Position:** The City is seeking to implement a 207(k) overtime schedule pursuant to the Fair Labor Standards Act (FLSA) which provides that law enforcement officers are not entitled to overtime until more than 86 hours are worked in a 14 day period. This is due to the nature of law enforcement being necessary 24 hours a day, seven (7) days a week. The City is not proposing to change the work schedules of the employees, but a way to balance a reasonable award.

This FLSA 207(k) schedule would allow the City to balance the economic increases granted to the bargaining unit employees at a time when fiscal planning is most important to the City. The employees would still be paid for all hours worked and the citizens of Wapakoneta would still receive the quality law enforcement services they deserve. The City points out that there has been a practice of give and take during the bargaining process with other units and cites examples: the UWUA, the police Lieutenants and the IAFF.

The City's proposal is: Calculate overtime on a FLSA Section 207(k) schedule: (23.2) 86 hours in a 14 day period.

**RECOMMENDATION: The Fact-Finder recommends that no changes be made to this Article 23.**

**Rationale:** This is a matter for resolution under the give and take of the collective bargaining process, and does not call for the Fact-Finder to impose a resolution upon a quite reluctant party. Whatever the merits would be or whatever benefits this proposal might produce for the City, this proposal represents a major revision in the way the parties now administer their labor Agreement.

## **6. ARTICLE 25-HOLIDAYS:**

**Union Position:** The Union proposes that in Section 25.2 of this Article, four (4) of the recognized holidays, specifically: New Years Day, Independence Day, Thanksgiving Day and/or Christmas Day, be paid at the rate of time and one-half without the employee losing a floating holiday for the next year.

As the current Article is applied, if an employee elects to be paid at time and one-half for working the holiday, that employee loses a floating holiday in the next year. But, if an employee does not elect to be paid time and one-half for working the holiday, that employee is paid at straight time for the holiday but will receive a floating holiday in the next year.

This proposal is supported by external comparables. Further, even the dispatchers in the Police Department, a non-union department, is paid at time and one-half for working Thanksgiving without losing any floating holidays in the next year.

The Union also proposes to introduce “clean-up” language in Section 25.2 of this Article specifying that: A Lieutenant’s Floating Holiday is worth eight (8) and one-quarter hours each to correspond to the Lieutenant’s work day pay.

**Employer Position:** The Employer argues to retain the current language in Article 25.

The Union’s proposal would, in effect, cut the amount of Floating Holidays that an employee can “sell back” from any or all of the eight (8) Floating Holidays in order to receive holiday pay for only four (4) holidays. The current policy was bargained for between the parties and, Fact-Finding in this case should not override what language the parties mutually agreed.

**RECOMMENDATION: Retain the current language in Article 25**

**Rationale:** The parties might have allowed, when possible, more time to discuss this proposal as well as other open issues. Unfortunately, as was the case with these other unresolved key issues presented during this hearing, the parties ran out of time before they ran out of ideas and compromises. This lack of opportunity was evident to the Fact-Finder during this hearing.

The Fact-Finder has reviewed the Exhibits. Our issue is not the number of holidays granted, fifteen (15) in fact, but the pay practices already in effect. What was negotiated by the parties effective November 2005 presumably suited their needs and aspirations to the extent that collective bargaining is capable of producing such a result. I am in agreement with the City here.

Data submitted as to other employers' holiday pay practices are not relevant in this instance as the negotiations concluded by the parties in 2005 was ratified. Absent a finding of a gross inequity or misunderstanding, the parties are bound by their bargain.

**7. Article 27-SICK LEAVE:**

**Union Position:** The sole Union position is to amend Section 27.1 as it applies to the Lieutenants. The Union proposes that Lieutenants be credited with accruing Sick Leave for the extra quarter hour of their workday, for the time they are in active pay status.

Presently, the existing language limits their accrual to eight (8) hours per day even though the extra quarter hour of their workday is not overtime.

In its last package proposal, the City did not appear to object to this Union proposal but the parties have not worked out any agreed to language.

**Employer Position:** Maintain the current language

The Employer submits that the Union is attempting to increase the amount of Sick Leave that was mutually agreed to by the parties in that:

The Lieutenants and the City agreed to the current work schedule in 1999. In fact, it was the Union's proposal. That first contract was negotiated without fact-finding. Now, eight (8) years later, the Union apparently does not wish to bargain wanting only to have a Fact-Finder grant the increase.

The Union has presented no problems with the language or in any instances of an employee being adversely impacted by the language.

**RECOMMENDATION: Retain the existing language in Article 27.**

**Rationale:** The Union, by its own language, appears to be requesting that the Fact-Finder initiate the changes it has proposed here as was suggested by the City in its argument. Fact-Finding is not a substitute for collective bargaining. It is noted that there are no instances where there is a demonstrated problem that has been created by the negotiated language which has existed, apparently in its original form, for eight (8) years.

**8. ARTICLE 33-PERSONAL LEAVE DAYS:**

**Union Position:** The Union proposes to introduce "clean-up" language to account for the extra quarter-hour of a Lieutenants' workday. This proposal is in line with the practice of the Department. The City did not oppose this in their package offer.

**Employer Position:** Retain the current language.

Again the Union is seeking to increase the amount of Personal Leave that was previously agreed to by the parties. The Lieutenants and the City agreed to the current work schedule in 1999.

And again, this was the Union's proposal. Eight (8) years have passed. The Union has not presented any problems with the language or any instances of an employee being adversely impacted by this language.

**RECOMMENDATION: Retain the existing language in Article 33.**

**Rationale:** Absent any compelling reason to initiate a change in the existing language, the Fact-Finder is unwilling to comply with the Union's request under the circumstances.

**9. ARTICLE 38-TRAINING:**

**Union Position:** Under the current Agreement, Section 38.7, Police Officers receive from the City 150 rounds of ammunition for duty weapon practice in addition to the rounds they receive for firearms testing. The Union proposes to add this new provision to Section 38.7: **That the City also provide an additional 150 rounds of ammunition to each Police Officer for rifle practice each year in addition to the ammunition now provided for firearms testing.**

At present, the City provides ammunition for rifles as a part of firearms proficiency testing, but rifle ammunition is not provided for practice. The Union views this proposal as addressing proactively Officer and public safety issues. Further, this proposal is reasonable given consideration of a fact-finders' relevant factors. {*Criteria*}

**Employer Position:** The Union is seeking to increase the amount of practice ammunition rounds. Every bargaining unit employee is required by law to be certified to carry and use a handgun.

There is no such requirement for an assault rifle. Currently, only three (3) of thirteen employees use the assault rifle and one (1) of those employees owns his assault rifle.

The assault rifles were purchased at the request of employees who wanted the ability to shoot it. While the Union's professed "proactive" stance is appreciated, there has never been an identified need to use the assault rifle.

Currently, not every Officer is using the 150 rounds of handgun ammunition and the Union has given no indication that an additional 150 rounds of assault ammunition will also be consistently used. However, the City would have to fund the additional 150 rounds every (approximately \$3,000.00 per year). There is simply no need for that level of usage in a rural community like Wapakoneta.

**RECOMMENDATION:** Add the following provision to the Agreement as a new **Section 38.8: "The Employer shall provide an additional 100 rounds of practice ammunition for the assault rifle to each officer each year who uses an assault rifle. This is in addition to the ammunition required for firearms proficiency testing."**

**Rationale:** It is beyond dispute that the assault rifle is an effective weapon in the hands of an Officer trained in its use. True, Wapakoneta is a "rural" community but it would take a bold individual to predict immunity for a "rural" community in these days of random terror attacks on cities and communities. This Fact-Finder would not want to predict immunity and subsequently be proven wrong. This proposal is in the interest and welfare of the public. Caution takes precedence over the cost involved in the implementation of this new Section. The citizens of Wapakoneta deserve the protection offered by their Police Officers who volunteer to train in the use of the assault rifle.

#### **10. A NEW ARTICLE-DUTY WEAPON PURCHASES:**

**Union Position:** The Union has proposed a new Article and Section be added to the labor Agreement stating that: Upon their retirement, employees shall be permitted to purchase their City-issued handgun at the price of its trade-in value.

This proposal is not uncommon for Police Officers, and several area jurisdictions now provide an Officer with his duty weapon at little or no cost.

**Employer Position:** The Employer rejects this Union proposal. 1. The City Law Director has made it known that he does not want any former employee taking a handgun from the City upon “retirement”. 2. The Union’s proposed language is ambiguous at best. The word “retirement” has not been discussed at the bargaining table nor defined by the Union. The definition of “retirement” has been a subject for many arbitrations and court cases. Further, the Union has not defined who determines the trade-in-value, when such purchase is to occur and how payment is to be made (to the City or to the vendor). 3. The use of Employer equipment is a permissive issue and the Employer does not wish to give up this right. 4. Absent a permissive argument, Fact-Finding should not take the place of bargaining when it comes to the issue of purchasing City equipment.

**RECOMMENDATION: The Fact-Finder must agree with the City’s position.**

**Rationale:** The City’s position is adamant and unyielding: No City handguns are to be issued in this manner. The Fact-Finder is aware that such programs do exist in some other jurisdictions but that is not persuasive in evaluating this dispute. The Fact-Finders conclusion is, after reviewing the testimony, that only the parties themselves should resolve this matter through mutual agreement during the collective bargaining process.

11. **ARTICLE 46-DURATION:**

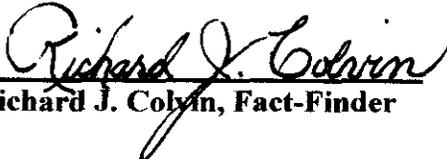
**Union Position:** The Union proposes that the contract be for three (3) years, retroactive to November 1, 2008 through October 31, 2010.

**Employer Position:** 1. The parties have had a practice of beginning the Agreement upon signing if the negotiations go past the expiration date. 2. The Employer is now proposing to maintain that practice through an Agreement that will begin upon signing and go for a full three (3) years, including all economics.

**RECOMMENDATION: Retain the present language in Article 46.1 sustaining the Union's position.**

**Rationale:** No past collectively bargained Agreements between the parties where the effective date was modified were introduced as exhibits. The Fact-Finder was not made aware whether the alleged "practice" was uniform and consistent. On so important an issue it would seem logical that the parties would have already formalized their wishes in Article 46. There is no evidence or testimony that either the City or the Union unduly delayed these negotiations.<sup>3</sup>

**Respectfully submitted this 10<sup>th</sup> day of December 2008**

  
Richard J. Colvin, Fact-Finder

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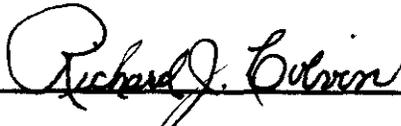
<sup>3</sup> See Fact-Finder Jerry Hetrick's Decision, (U-3), on this issue dated December 18, 2005

## CERTIFICATE OF SERVICE

This is to certify that this Fact-Finding Report was forwarded to the State Employment Relations Board by Regular U.S. Mail and was also served upon the parties listed below by Overnight Mail, this 10<sup>th</sup> day of December 2008.

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