

**IN THE MATTER OF FACT-FINDING  
BEFORE GREGORY J. LAVELLE, FACT-FINDER**

STATE EMPLOYMENT  
RELATIONS BOARD

2009 FEB -9 A 9:33

**OHIO PATROLMEN'S BENEVOLENT  
ASSOCIATION**

**CASE NO. 08-MED-09-0836  
(Dispatch)**

**AND**

**RECOMMENDATION OF THE  
FACT-FINDER**

**THE CITY OF GENEVA**

**FOR THE EMPLOYEE ORGANIZATION:**

**Daniel J. Leffler, Esq.  
Deborah Bright  
Margaret Distler**

**Chief Representative  
Union Representative  
Witness**

**FOR THE PUBLIC EMPLOYER**

**Richard L. Dana, Esq.  
Dan Dudik  
Charles Herbruck  
Alexander Herbruck  
James Pearson  
Gregory K. Wiley  
Tammy Shuttleworth  
Juanita Steutzer**

**Chief Representative  
Police Chief, Witness  
Witness  
Witness  
Witness  
Witness  
Finance Director, Witness**

**February 6, 2009**

## **DESCRIPTION OF THE UNIT AND BARGAINING HISTORY**

The bargaining unit covered by this Fact-Finding Report consists of seven (7) Dispatchers employed by the Police Department of the City of Geneva, Ohio. Full-time and part-time employees are covered by the collective bargaining agreement. This Fact-Finding bears SERB Case Number 08-MED-09-0836. This Fact-Finding Report relates to a collective bargaining agreement between the City of Geneva, Ohio (hereinafter, the City) and the Ohio Patrolmen's Benevolent Association (hereinafter, the OPBA) which will cover Dispatchers. The prior collective bargaining agreement had a duration from January 1, 2006 through December 31, 2008. The parties have negotiated for a new collective bargaining agreement, but were unable to reach tentative agreement. The parties have executed an extension and retroactivity agreement such that the terms of the collective bargaining agreement reached through Fact-Finding would be retroactive to January 1, 2009. The OPBA also represents the other Police Officers within the City of Geneva. Collective bargaining negotiations have not been completed with respect to those units.

The City of Geneva had provided a hospitalization and major medical plan for its union and non-union employees through Medical Mutual. The plan had a contract year which ran from December 1st, through November 30th. Medical Mutual then announced a proposed nineteen percent (19%) increase to maintain the plan. The City, through an Insurance Committee involving representatives of the various labor organizations, reviewed various options and changed the health insurance plan to an HSA (Health Savings Account) Plan with a high deductible. Under the prior plan (hereinafter referred to as the "Traditional Plan"), employees shared in the costs of insurance premiums,

paying half the cost of premiums which exceeded six hundred fifty dollars (\$ 650.00) for family coverage and one half the costs of premiums which exceeded two hundred seventy-five dollars (\$ 275.00) for single coverage. (Article 34, Section 2, 2006 collective bargaining agreement) Under the HSA Plan, employees pay nothing toward premiums and there are no co-pays. Preventative care under the HSA Plan, further, is at no cost. There is, however, a high deductible amount under the HSA Plan, five thousand dollars (\$ 5,000.00) for family coverage and two thousand five hundred dollars (\$ 2,500.00) for single coverage. The City, under the HSA Plan would deposit two thousand five hundred dollars (\$ 2,500.00) into the account of employees taking family coverage and one thousand two hundred fifty dollars (\$ 1,250.00) into the accounts of employees taking single coverage.

The City, with the approval of the Insurance Committee, put the HSA Plan into effect on January 1, 2009 and deposited one half (1/2) of the amount of its HSA contributions into the employee accounts, the remaining half of the payments to be made on July 1, 2009 for calendar year 2009. In collective bargaining, the City proposed a one year contract with a three percent (3%) increase. The parties were unable to reach agreement on a new collective bargaining agreement and the matter was submitted to Fact-Finding, the Fact-Finder being appointed on December 22, 2008. The parties thereafter executed an extension agreement and the Fact-Finding Hearing was scheduled for January 27, 2009.

## **INTRODUCTION**

### **Preliminary Matters:**

The Fact-Finder was appointed on December 22, 2008. The Fact-Finding Hearing was held on January 27, 2009 with a Telephone Pre-Hearing Conference being held on January 26, 2007. A copy of the Collective bargaining agreement and the Position Statements of each party were timely received by the Fact-Finder as required under the Ohio Administrative Code. The parties were requested by the Fact-Finder to provide copies of tentatively agreed items, including sections from the collective bargaining agreement which the parties had agreed would remain unchanged.

The Position Statements and representations of the parties confirmed that the following articles of the collective bargaining agreement were to remain unchanged:

Article 1  
Article 2  
Article 3  
Article 4  
Article 5  
Article 6  
Article 7  
Article 8  
Article 9  
Article 10  
Article 11  
Article 13  
Article 14  
Article 15  
Article 16  
Article 17  
Article 22  
Article 30  
Article 32  
Article 33  
Article 36  
Article 37  
Article 38

In the Telephone Pre-Hearing Conference, the parties confirmed that the copy of the collective bargaining agreement submitted by the City was the proper collective bargaining agreement. It was further confirmed and stipulated that there are no separate Letters of Understanding or other side agreements governing the collective bargaining relationship of the parties. The size of the unit as stated by the City in its Position Statement was stipulated to be correct and it was acknowledged that the parties had entered into an agreement to make the provisions of the new collective bargaining agreements retroactive to January 1, 2009.

The parties indicated in their Position Statements that there were open issues relative to various articles. The respective Position Statements, however, were not in agreement with respect to the matters which remained in dispute. The Fact-Finder requested that the parties review the open issues and provide an update regarding the issues actually remaining in dispute.

### **THE HEARING IN CHIEF**

The Fact-Finding Hearing was conducted pursuant to the Ohio Collective Bargaining Law and the Regulations of the State Employment Relations Board on January 27, 2009 in the Municipal Building of the City of Geneva. The parties met on the morning of January 27, 2009, prior to the Fact-Finding Hearing, to attempt to resolve discrepancies with respect to issues in dispute. The parties, after having met, reported to have resolved a number of additional issues as follows:

Article 20 – Sick Leave

**Section 13.** (new) Unless a valid doctor's excuse is provided, an employee who does not work a regularly scheduled day before, the day of, or the day after a Holiday specified in Article 23, Section 1 due to sick leave shall not qualify for the benefits under Article 23, Section 2.  
Article 21 – Family and Medical Leave

**Section 2.** Employees shall use their accumulated leave (vacation, holiday time, and personal days) with the exception of forty (40) hours in conjunction with Family and Medical Leave.

Article 24 – Court Time

**Section 1.** An employee required to appear in court on behalf of the Employer during off duty hours shall be paid a minimum of three (3) hours of pay at one and one-half (1 ½) times the employee's regular rate of pay. In the event a court appearance is scheduled within one hour prior to the officer's regularly scheduled shift, the rate of pay will be one and one-half only for the one-hour period prior to the start of his/her shift. Any court appearance scheduled within one hour after the officer's scheduled shift shall be compensated at the overtime rate for the time required to remain after the shift.

Article 25 – Call in Pay

**Section 3.** (new) If an employee is scheduled for training/proficiencies, that employee does not receive the minimum call-in pay.

Article 26 – Educational Pay

**Section 2.** (new) To be eligible for educational pay, all part-time employees must work a minimum of 525 hours. The Chief of Police has discretion to grant educational pay to part-time employees, if the Chief determines, at his sole discretion, that the part-time employee is making a good faith effort to warrant educational pay.

Article 27 – Wages

**Section 3 Leads Terminal Agency Coordinator** The dispatcher who is assigned and trained as the Leads Terminal Agency Coordinator and/or Assistant Leads Terminal Agency Coordinator shall be provided an annual payment of five hundred dollars (\$500.00). The annual payment provided hereunder shall be paid to only one employee.

Article 28 – PERS Pickup

**Section 1.** All employees covered by this Agreement, shall have the City “pick-up” (assume and pay) the employee’s share of PERS by the salary reduction method.

Article 31 – Jury Duty

**Section 1.** All full-time employees who are called for jury duty shall be excused from work for the days on which they are required to serve. If working day shift, the employee must return to work if not seated on the jury or is dismissed early.

The parties then proceeded to hearing with respect to issues involving the following articles and sections:

Article 12 – Discipline, Section 5	The Discipline Duration Issue
Article 18 – Hours of Work, Section 1	The Pay Period Issue
Article 19 – Overtime, Section 1	The 80/40 Overtime Issue
Article 20 – Sick Leave, Section 12	The Bonus Calculation Issue
Article 23 – Holidays, Section 1	The Additional Holiday Issue
Article 26 – Educational Pay, Section 2	The Educational Pay Issue
Article 27 – Wages, Section 1	The Pay Scale Issue
Article 29 – Longevity, Section 1	The Longevity Issue
Article 34 – Insurance, Section 1	The Insurance Issue
Insurance, Section 2	The Premium Share Issue
Insurance, Section 5	The Opt-Out Payment Issue
Article 35 – Compensatory Time	The Comp Time Issue
Article 39 – Duration	The Duration Issue

The parties, at hearing, were given full opportunity to present testimony and documentary evidence in support of their respective positions. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05(K) of the State Employment Relations Board:

- (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 the 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 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

The parties presented evidence and argument, being represented in the hearing by the following individuals:

For the O.P.B.A.

Daniel J. Leffler, Esq.  
Deborah Bright  
Margaret Distler

Chief Representative  
Union Representative  
Witness

For the City:

Richard L. Dana, Esq.  
Dan Dudik  
Charles Herbruck  
Alexander Herbruck  
James Pearson  
Gregory K. Wiley  
Tammy Shuttleworth  
Juanita Steutzer

Chief Representative  
Police Chief, Witness  
Witness  
Witness  
Witness  
Witness  
Finance Director, Witness

During the course of the hearing, the parties reached a general understanding with respect to the Bonus Calculation Issue. The parties were directed to discuss the language of a formal agreement on said issue and to communicate to the Fact-Finder

any understanding reached. The parties, thereafter, communicated to the Fact-Finder that agreement was reached that the language contained in the collective bargaining agreements for the Streets Department and Waste Water Treatment Department units of the City would be adopted in this collective bargaining agreement. The language of that provision is reflected in the Proposed Collective Bargaining Agreement attached hereto.

### **DISCUSSION OF THE ISSUES**

The parties stipulated that the primary issues of Insurance, Opt-Out, Wages and Duration would be presented first, followed by the remaining issues. Witnesses were then sworn and testimony was taken with respect to the primary issues.

### **DISCUSSION OF INSURANCE, OPT-OUT, WAGES AND DURATION ISSUES**

#### **POSITION OF THE CITY**

The City, in October of 2008, presented a proposal for a three percent (3%) wage increase. Under that proposal, the City agreed to provide the HSA insurance plan with the City paying one-half (1/2) the deductible. The City proposed a three (3) year contract with re-openers for wages and insurance in the second and third years of the contract. The proposal of the City was accepted by several of the bargaining units.

The City indicated that the insurance plan was changed because of an announced premium increase of nineteen percent (19%). The City expressed, however, that it had concerns over the change from the Traditional Plan to the HSA Plan, indicating that the use of the HSA Plan was an experiment and that it wanted the ability to make changes in the future.

contract with no increases in wages over the term of the contract. The City, in Fact-Finding, argued that there has been a drastic change in the economy since the time it made its proposal in October. The City presented evidence of the dire economic conditions in neighboring communities. The City further pointed out that the average budget carry-over among government employers is twenty-three percent (23%), while the City only has a carry-over of approximately eight percent (8%).

### **POSITION OF THE OPBA**

The OPBA has proposed wage increases of four percent (4%) in each year of the collective bargaining agreement. The OPBA does not object to the proposal of the City with respect to health care in the first year of the contract, but seeks protection with respect to the employee share of insurance premiums in the second and third years of the contract should the City revert to a Non-HSA plan. The OPBA contends that the City has a carry-over of approximately a million dollars and can afford the wage increases it has proposed. The OPBA has expressed that it feels that the position of the City on wages is retaliatory based on the OPBA decision to proceed to Fact-Finding.

### **INSURANCE, "OPT-OUT", WAGES AND DURATION RECOMMENDATION**

#### **DURATION RECOMMENDATION**

The discussion of these issues will begin with the Duration Issue. Both parties have proposed a three (3) year contract. The City would have the contract be subject to re-openers in the second and third years of the agreement with respect to wages and health insurance. The proposal of the City that there be re-openers with respect to such issues is very understandable. The state of the economy is in the highest state of flux in

history with crises arising practically overnight. There should be a mechanism to deal with the state of the economy in the coming few years. There should also be a mechanism to deal with health insurance issues. The HSA concept may produce results exactly the opposite of those intended. Employees may avoid treatment because they perceive that they would be spending their own money. There is no assurance, further, that there would not be prohibitive increases in premiums in the HSA plan in future years. A re-opener concept might also be useful to the OPBA should a new federal program relieve the City of some of the costs of health care.

The specific proposal of the City with respect to re-openers which proposes that the contract be silent with respect to wages and potential health insurance premium costs can not be recommended. The City proposal practically guarantees at least a tripling of the cost of negotiations for an employer with only thirty-five (35) employees. The costs are likely to increase even more dramatically. The Police unit is generally the “dog” that wags “the tail” composed of the other units within the employer. Resolving a three (3) year agreement with the Dispatch Unit will be almost certain to resolve issues with the other police units and will be also likely to resolve issues with the other units.

Before potentially tens of thousands of dollars and hundreds of hours are spent in negotiations, the first question that should be asked is, “Are the negotiations necessary?”. Under the City proposal, there will be automatically be negotiations with possible Fact-Finding and Conciliation at least two (2) more times for this unit and also for the other safety force units. Therefore, the parties should at least be afforded the opportunity to avoid having to negotiate. The only way to do that would be to create a “ratifiable” alternative which would represent the terms of the collective bargaining agreement with

respect to wages and health insurance should neither party choose to re-open the agreement. Since it is unlikely that the parties will be in a position to know whether or not to open the contract by October 1<sup>st</sup> and since there would be few items to negotiate, the time for re-opening the contract is recommended to be between sixty (60) and thirty (30) days prior to the contract anniversary date. It is recommended that the Duration Clause of the contract state as follows:

**ARTICLE 39  
DURATION OF AGREEMENT/RE-OPENER**

**Section 1.** This Agreement shall be effective as of January 1, 2009, and shall remain in full force and effect until December 31, 2011.

**Section 2.** If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) days, nor later than ninety (90) days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) weeks upon receipt of the notice of intent.

**Section 3.** The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the Employer and the Union and all prior agreement, either oral or written, are hereby canceled. Therefore, the Employer and the Union for the life of this Agreement, each voluntarily and unequivocally waives the right and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter not specifically referred to or covered in this Agreement; even though such subjects or matters may not have been within the knowledge of either party or both parties at the time they negotiated or signed this Agreement.

**Section 4.** Except for the wage scales to be effective January 1, 2010 and January 1, 2011, this Agreement shall remain in full force and effect during the period of negotiations of a new Agreement, provided, however, that either party may re-open this Agreement for the purposes of Wages and Health Insurance only effective with the first and/or second anniversary dates hereof. If this Agreement is re-opened, the wage scale in effect at the time of re-opening shall remain in effect until altered by mutual agreement or until a new Wage Scale is placed into

effect through Fact-Finding or Conciliation. If either party desires to re-open this Agreement, it shall give written notice of such intent no earlier than sixty (60) days, nor later than thirty (30) days prior to the anniversary dates of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) weeks upon receipt of the notice of intent.

### **HEALTH INSURANCE AND “OPT-OUT” RECOMMENDATION**

The next matters to discuss are the issues of Health Insurance and Opt-Out. The parties are in agreement as to the terms of the health insurance plan to be provided for 2009. The general terms of the current health insurance plan, therefore, should be incorporated into the collective bargaining agreement.

The major difference between the parties is the issue of potential health insurance premiums to be paid by employees should the City revert to a Non-HSA Plan after January 1, 2010. The City would have the contract be silent while the OPBA would have an increase in the amount absorbed by the City should a Non-HSA Plan be adopted.

It appears to the Fact-Finder that there is a problem of perceptions in these negotiations. Both parties have pointed to alleged back-pedaling by the opposing party which could be considered as evidence of bad faith. These perceptions, however, are reflective of the pressures of our present economy and the nature of collective bargaining, rather than reflective of actual bad faith by either party. While the perceptions may be incorrect, perceptions must be taken into account in formulating recommendations in Fact-Finding. People on both sides vote on the perception of the value of the offer. If the proposal is rejected because it is perceived as unfair, it remains rejected, even though it may ultimately be proven to have been fair.

The OPBA has expressed concern as to the employee share of health insurance premiums should the City revert to a Non-HSA Plan. In the best of circumstances, that is a very legitimate concern. In addition, the language, as proposed by the City, literally read, would indicate that the City would contribute **nothing** toward the deductible in the HSA Plan in 2010 and 2011. One could almost guarantee that employees would reject that language, even if it were not the intent of the City to actually pay nothing toward the deductible in 2010 and 2011. The expressed concerns and potential concerns of OPBA members should be realistically addressed even if the language drafted to address those concerns proves to be merely academic. It is recommended that the amount of the “City Financial Support” toward insurance premiums be increased by approximately ten percent (10%) per contract year. It is also recommended that it be expressly stated that the City would continue to make the same contributions toward the deductible under the HSA Plan throughout the term of the collective bargaining agreement. It is recommended that the concerns of the OPBA that employees might be required to make contributions to the HSA Plan be addressed. It is further recommended that the commitment of the City that it would make contributions in advance should employees incur expenses due to catastrophic events should be incorporated into the language of the collective bargaining agreement. The City proposed Opt-Out increases are also recommended as a necessary incentive to encourage employees to “Opt-Out” of coverage in light of the amounts the City would be depositing into the HSA accounts. The recommended language of Article 34, Insurance is as follows:

## INSURANCE

**Section 1.** Subject to the terms of Article 39, Duration/Re-Opener, the City shall provide each full-time employee with the HSA Plan as in effect as of January 1, 2009 with annual deductibles of \$ 2,500.00 for single coverage and \$ 5,000.00 for family coverage with no premium payment being required by the employee.

**Section 2.** So long as said Plan remains in effect, the City will contribute annually \$1,250 for single coverage and \$2,500 for family coverage to be paid to the employee's Health Savings Account with the HSA provider selected by the City. The employer payments will be made on a semi-annual basis during each calendar year, the first half in January and the second half in July. Provided, however, that the City may contribute up to the entire annual amount should an employee, due to a catastrophic event, spend his entire account balance prior to July of a given year. Each employee has the option to contribute to his/her HSA account pre-tax through payroll deduction. No employee, however, shall be required as a condition of remaining in the HSA Plan to make any contributions. For employees enrolling in the plan after 1/1/2009, the City's contribution will be prorated based on months of employment remaining in the current year. The first contribution will be paid during the employee's first month of participation in the high deductible health plan. Any additional employer payments will be made on the next regularly scheduled citywide funding date.

**Section 3.** In the event a Non-HSA Plan is selected, the City's financial support toward health insurance premiums shall be limited to six hundred and seventy-five dollars (\$675.00) per month for family coverage, and three hundred and five dollars (305.00) per month for single coverage for the first year of this agreement beginning January 1, 2009. In the second year, the City shall increase its contributions to seven hundred and forty dollars (\$ 740.00) per month for family coverage and three hundred and thirty dollars (\$ 330.00) per month for single coverage beginning January 1, 2010; and the third year of the agreement, the City shall increase its contributions for the family plan to eight hundred dollars (\$ 800.00) per month and three hundred and forty dollars (\$ 340.00) per month for single coverage beginning January 1, 2011. Costs realized above the City's financial caps, shall be paid 50% by the employees through payroll deductions, and 50% by the City.

**Section 4.** Additional coverage for prescription, dental, vision and other possible coverages may be added, based on the selection provided by the City, conditional on the approval of all City bargaining units.

**Section 5.** The Employer will also provide a paid life insurance policy in the amount of twenty thousand dollars (\$20,000.00), payable by the city for each full-time employee.

**Section 5.** If an employee is covered by their spouse’s medical coverage, said employee shall be eligible for the following total yearly payment, upon providing a written request to the City Manager. Payments shall be made on a “pro rata” monthly basis for each month that the employee remains eligible for said payment.

**Coverage Change**

**Payment**

Family to Single	\$1,000.00
No Coverage	\$2,800.00

**WAGES RECOMMENDATION**

The City had proposed a three (3) year agreement with a three percent (3%) wage increase in the first year of the collective bargaining agreement and wage re-opens for the second and third years of the agreement, but went into Fact-Finding proposing a three (3) year wage freeze. The OPBA appears to have been generally amenable to a three percent (3%) increase for the first year of the agreement, but sought increases in the second and third years. The OPBA, however, went into Fact-Finding seeking four percent (4%) wage increases in each year of a three (3) year agreement.

The Fact-Finder is in the somewhat unique position of being able to give to each party the opportunity to accept what it actually is willing to accept and the opportunity to reject what it may want to reject. The only catch is that while a party can accept what it may want to accept now, it must wait until later to reject what it may not want to accept.

“Presumptive” second and third year wage increases, stated City contributions to HSA accounts and “presumptive” increases in the City share of health insurance premiums are recommended. It seems that the parties are in general agreement as to the first year of the agreement. If a party is satisfied with the first year of the agreement,

but feels that it may come to be dissatisfied with the “fall back” position stated in this Report with respect to presumptive wages and health insurance premium contributions for the second or third years, it should still ratify the recommendation and decide later whether to re-open the contract. Doing so, the parties would save the cost with respect to the Police Department of potentially two (2) more Fact-Findings and three (3) Conciliations without losing any control over negotiations for the upcoming years.

The recommendation with respect to wages is based on economic projections which are speculative at best. It is the aim of this recommendation that that presumptive wages will prove to be “within the ballpark” such that the parties come to accept them when considering the costs and uncertainty involved in negotiations, Fact-Finding and Conciliation.

While it is true that the economy, as it is perceived today, has drastically changed from the economy as it was perceived a few months ago, it appears that the City of Geneva can afford a three percent (3%) wage increase. It seems that Geneva is different from surrounding communities in that it is not so dependent on a manufacturing base. The City of Geneva also appears to have been more proactive and creative in developing revenue sources.

The Fact-Finder has considered the state of the economy and the probable range of acceptability of the parties to suggest “presumptive” wage increases in the second and third years of the collective bargaining agreement. Since the City proposal of October of 2008, the inflation rate has been averaging less than one and one quarter percent. (November, 1.07, December .09 according to the Bureau of Labor Statistics) Inflation for the rest of 2009 is likely to remain the same. Therefore, a one and one half percent

(1 ½%) increase for 2010 would place employees in the same position in terms of after-tax purchasing power. Looking forward to 2011, one would hope that the economy would improve such as to justify a three percent increase. It is therefore recommended that the presumptive wage scale be as follows:

**ARTICLE 27  
WAGES**

**Section 1.** Subject to the provisions of Article 39, Duration of Agreement/Re-Opener, Effective January 1, 2009, the following wage schedule shall apply to Dispatchers:

	<b>1-Jan-09</b>	<b>1-Jan-10</b>	<b>1-Jan-11</b>
<b>Full-Time</b>			
Start	\$ 14.31	\$ 14.50	\$ 14.96
6 months	\$ 15.09	\$ 15.32	\$ 15.78
12 months	\$ 15.88	\$16.12	\$16.60
18 months	\$16.66	\$16.90	\$17.41
24 months	\$17.49	\$17.75	\$18.28
<b>Part-Time</b>			
Start	\$11.60	\$11.77	\$12.12
12 months	\$13.78	\$13.99	\$14.41

**DISCUSSION OF THE DISCIPLINE ISSUE**

**POSITION OF THE CITY**

The City proposes to increase the time during which notices of disciplinary actions remain in force for the purpose of being considered for future discipline. The City has pointed out that maintaining discipline among police officers is very important and argues that without a more lengthy period during which discipline would remain active, employees would be encouraged to flaunt rules once the disciplinary actions ceased to have force and effect under the terms of the collective bargaining agreement.

## **POSITION OF THE OPBA**

The OPBA opposes the change proposed by the City, indicating that the change is not necessary.

## **DISCIPLINE RECOMMENDATION**

While the Fact-Finder agrees that maintaining discipline is very important with respect to members of a police force, the change in the discipline clause proposed by the City is not recommended. The City speculates that employees might be encouraged to act with impunity once warnings would cease to have an effect. The City, however, has cited no existing disciplinary problems and no specific instance where an employee has intentionally acted to violate rules since a prior disciplinary action had ceased to have force and effect. Looking to the other collective bargaining agreements with the City, it must be noted that the discipline provision for this unit is already stronger in terms of the time disciplinary actions remain in force than the provisions contained in other collective bargaining agreements. Oral reprimands under the Dispatch contract already remain in effect for nine (9) months as opposed to the six (6) months in the Streets and Wastewater Treatment Units. Suspensions of less than three (3) days remain in effect for fifteen (15) rather than twelve (12) months and suspensions of ten (10) days remain in effect for twenty-four (24) rather than eighteen (18) months. There is no indication that the City has even proposed such a change in the other units.

The speculative chance that disciplinary infractions might be avoided by the change in language is clearly outweighed by the negative impact on the chances of ratification of having new language which might be interpreted as punitive. The Fact-Finder recommends no change in the language of the Article 12, Discipline, Section 5.

## **DISCUSSION OF THE PAY PERIOD ISSUE AND OVERTIME ISSUES**

### **INTRODUCTION**

The City has proposed changes in Article 18, Hours of Work, Section 2 and in Article 19, Overtime, Section 1. Since these proposals are inexorably intertwined, they will be discussed together herein.

### **POSITION OF THE CITY**

The City has proposed to change the standard work period (payroll period) for employees from forty (40) hours to eighty (80) hours and to make various changes in the manner in which overtime is calculated. The primary change is to pay overtime only after eighty (80) hours and worked in a pay period. The City also seeks clarification regarding the manner in which overtime is calculated, requesting a provision which states, "There shall be no pyramiding of overtime". The City proposal also adds language that states that hours "in the active pay status" are counted as overtime.

### **POSITION OF THE OPBA**

The OPBA opposes the changes in the Hours of Work and Overtime articles, indicating that the changes are unnecessary and take away existing benefits.

## **RECOMMENDATION ON THE PAY PERIOD AND OVERTIME ISSUES**

This proposal of the City relates to Dispatchers who are both full-time and part-time. There is no indication regarding the potential cost savings or other benefits of changing the pay period and overtime provisions. This is another instance where the perceptions of the bargaining unit must be considered. It is likely that the bargaining unit would consider the proposed changes "punitive" in light of several factors. First, it

appears that the hours of work and overtime issues were raised, or “re-raised” only after Fact-Finding was requested since there is no mention of them in the OPBA Position Statement. Second, no such changes appear in the collective bargaining agreements for the bargaining units which accepted the proposal of the City with respect to wages and health care or in the overtime provisions for non-bargaining unit employees. Third, read literally, the provision would have a person working eighty (80) consecutive hours without being entitled to overtime. This particular aspect would be expected to have a highly negative impact on potential ratification.

Looking at the provision itself, there are multiple changes proposed. One change deletes language which would require the City to approve all requests for overtime prior to scheduled overtime. There was no evidence of the intent or proposed operation of the overtime provision based on the removal of that language. There is a statement that “hours in active pay status” count toward overtime which appears to be less clear than the existing language which refers to hours which the employee is “required to work”. There is a “no pyramiding” provision for which there is no clear explanation which also does not appear in the other collective bargaining agreements. The proposed language, even with the additional language stating that sick leave does not count toward overtime, appears to be less clear than the existing language. Another consideration is the administrative difficulty in dealing with a new overtime computation system where there are already at least two (2) different overtime systems in place within the City.

There may be some logic in switching to an eighty (80) and eight (8) overtime system for police officers which might be justified on the basis of scheduling concerns. There has been insufficient rationale and evidence provided for such a change for this

particular unit which includes part-time employees. Therefore, the Fact-Finder recommends that there be no changes made in Article 18, Hours of Work, Section 2 and Article 19, Overtime, Section 1.

## **DISCUSSION OF THE ADDITIONAL HOLIDAY ISSUE**

### **POSITION OF THE PARTIES**

The OPBA requests that it be given an additional holiday, Veteran's Day.

The City opposes that proposal.

### **RECOMMENDATION ON THE ADDITIONAL HOLIDAY ISSUE**

Consistency between collective bargaining agreements and ease of administration are concerns in resolving any issues in Fact-Finding. Costs and relative equity are also concerns. Looking to the various collective bargaining agreements, there is no unit which has Veteran's Day as a holiday. Most units have a total of thirteen (13) days; eight (8) specified days and five (5) personal days. This unit also has thirteen (13) holidays, made up of ten (10) particular dates and only three (3) personal days. The Fire Unit, however, has the eight (8) specified days and the equivalent of fifteen (15) additional days (120 hours) of personal time. Personal time, generally, because of the lack of premium pay, is less expensive than regular holidays. In terms of equity and similarity of jobs, Police are more like Fire units, both being considered "Safety Forces".

It terms of acceptability, given the alternative of having an extra named holiday and having an extra "personal day", each side should prefer having a extra personal day. For the employee, being able to spend a benefit now and at his own convenience, should be preferred over waiting nine (9) months. For the City, not having one unit being

entitled to a different day as a holiday, saving the premium cost of a named holiday and spreading the cost more evenly over the year should also favor the granting of a personal day, rather than a named holiday. Therefore, the Fact-Finder recommends that the language of Article 25, Holidays, Section 1 read as follows:

**ARTICLE 23  
HOLIDAYS**

**Section 1.** All employees shall receive the following paid holidays:

New Years Day  
Martin Luther King Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day After Thanksgiving Day  
Christmas Day  
Employee's Birthday  
Four (4) Personal Days

**DISCUSSION OF THE EDUCATIONAL PAYS ISSUE**

**INTRODUCTION**

The City made proposals to add Section 2 to Article 26, Educational Pays. Part of the City proposal was accepted as set forth above. Part of the City proposal was not accepted, the portion relating to when and under what circumstances certificates must have been earned in order to qualify the employee holding the certificate for Educational Pay.

### **POSITION OF THE PARTIES**

The City seeks to have educational pay granted only in cases where the certificate is no more than five (5) years old and only when the certificate was earned using the employee's own resources. The OPBA opposes the proposal as a take-away of an existing benefit.

### **RECOMMENDATION ON THE EDUCATIONAL PAYS ISSUE**

The City proposal would disqualify employees from receiving Educational Pays if they had received training which involved any cost to the City, including the cost of an employee attending training on paid time. That disqualification, under the language as proposed would be applied, in a sense, retroactively, denying Educational Pay to an employee who had received training at City expense in the past. The proposal therefore, constitutes a take-away. There is no indication that any other unit had given back or even been asked to give back any existing benefit. In addition, taking away benefits for receiving training may discourage employees from taking training that would be of benefit to the City in terms of efficiency and avoiding potential liability. The Fact-Finder, therefore, recommends that the additional language suggested by the City for Article 26, Section 2 be rejected.

### **DISCUSSION OF THE LONGEVITY PAY ISSUE**

#### **POSITION OF THE PARTIES**

The OPBA has proposed an increase of two hundred dollars (\$ 200.00) annually for each level of longevity. The City opposes the proposal.

## **RECOMMENDATION ON THE LONGEVITY ISSUE**

The OPBA seeks an increase in Longevity Pay as an additional economic benefit. There has been no argument that the additional Longevity Pay is needed to assist the City in retaining employees. The Longevity Pay policy is consistent through all bargaining units and is the same which is afforded to the non-bargaining unit employees of the City. The Fact-Finder, does not recommend that the proposal of the OPBA be adopted.

The Fact-Finder did note that in all other places in the collective bargaining agreement, the parties agreed to delete references to effective dates prior which would be prior to the effective date of the proposed collective bargaining agreement. That change is also recommended for this provision to avoid begging the question as to whether there was some intent to have this provision interpreted differently because of its stated January 1, 2006 effective date. There also appears to be a typographical error in the former collective bargaining agreement which does not include “/year” after “\$ 1,250.00” in the “25 years and up” line. All other longevity provisions within the City do contain that language. Leaving that language out of the provision inadvertently could lead to an argument being made that the provision was intended to be interpreted differently. In order to avoid confusion, therefore, the Fact-Finder recommends that the language of Article 29, Longevity, Section 1 read as follows:

**Section 1.** All full-time employees shall receive longevity pay based on their continuous length of service with the Employer. The amounts shall be as follows:

5 through 9 years	\$250.00/year
10 through 14 years	\$500.00/year
15 through 19 years	\$750.00/year
20 years through 24	\$1,000.00/year
25 years and up	\$1,250.00/year

## **DISCUSSION OF THE COMP-TIME ISSUE**

### **POSITION OF THE PARTIES**

The City seeks to eliminate the Comp-Time provision, indicating that Comp-Time can lead to liability issues and problems with scheduling. The OPBA argues that the elimination of Comp-Time constitutes a take-away of an existing benefit. The OPBA seeks to expand the number of hours of compensatory time that can be accumulated from eighty (80) to one hundred twenty (120), seeks to have Comp-Time used in increments of one (1) hour as opposed to increments of four (4) hours and seeks to have a right to demand payment of up to forty (40) hours of Comp-Time within a given pay period.

### **RECOMMENDATION ON THE COMP-TIME ISSUE**

The Fact-Finder recognizes that the elimination of Comp-Time may be viewed as a take-away of an existing benefit. Looking to the other bargaining units and to the non-bargaining unit employees, however, there do not appear to be any employees of the City who continue to have Comp-Time. The City is correct that the existence of Comp-Time may create liability issues. Comp-Time definitely does create additional bookkeeping issues

There are some perceived benefits to employees of a Comp-Time system. They may have more time off, or may create for themselves a “savings account” of cashable Comp-Time hours.

There are also some detrimental aspects to a Comp-Time system. Under a Comp-Time system, an employer can demand that an employee take Comp-Time. Where there is an overtime system, the employer under this collective bargaining agreement, can not demand that an employee be rescheduled with unpaid time. Looking at Comp-Time in

another way, it is the right of an employee to lend his employer money without interest, to be paid back with time off.

The benefits of a Comp-Time system can be accomplished by the employee without the assistance of the employer. The “savings account” aspect can be accomplished by the employee by banking and receiving interest on his excess pay. The “time off” aspect can be accomplished by requesting unpaid time off. Whether under a comp-time system or an overtime system, the City has the right to allow or not allow the time off. It may, in fact, be easier for the employer to deal with requests for an hour of unpaid time off under an overtime system, rather than under a Comp-Time system, since there would be no bookkeeping requirement under the overtime system to “deduct” from the Comp-Time balance. It is likely that the four (4) hour increment limit in the current policy is in effect simply because of the bookkeeping issue. In any event, it is almost certain that at the end of the year employees on overtime systems will earn more money than those on Comp-Time systems.

The Fact-Finder recommends that Compensatory Time be eliminated from the collective bargaining agreement. However, since, as a practical matter, Comp-Time will have accrued and will have been used between January 1, 2009 and the time the Agreement becomes effective, there needs to be language to deal with the transition. The Fact-Finder, therefore, recommends the following language.

#### **ARTICLE 35 COMPENSATORY TIME**

**Section 1.** At the employee's option, compensatory time may be accumulated in lieu of paid overtime **through the end of the pay period during which this Agreement is either ratified by the parties or is deemed accepted.** **Thereafter, no Compensatory Time shall be accrued. Such** Compensatory

time off shall be accrued at the rate of one and one-half (1-1/2) hours for each hour of overtime worked and the maximum amount of accumulated compensatory time off shall not exceed eighty (80) hours.

**Section 2.** An employee shall be compensated for all overtime performed in excess of the accumulated compensatory time limit of eighty (80) hours.

**Section 3.** Use of accrued compensatory time shall be with the prior approval of the Chief or his designee, and shall be in increments of not less than four (4) hours.

**Section 4.** In no event shall compensatory time be utilized to accumulate overtime during the same twenty-four (24) hour time period.

**Section 5.** An employee, upon retirement, shall be paid for all accrued, but unused compensatory time off. In the event of the employee's death, while employed by the Employer, payment pursuant to this provision, shall be made to the employee's legal heirs. This payment shall be based upon the employee's rate of pay of compensation at the time of his retirement.

### **POST-HEARING PROCEEDINGS**

Testimony was concluded and the hearing was declared closed at approximately 4:00 P.M. on January 27, 2009. The Fact-Finder, upon reviewing the Position Statements of the parties, noted that the City had indicated that an understanding had been reached to modify the language of the FMLA provision to add Section 3 as follows:

**Section 3.** Overtime opportunities that arise as a result of extended leave (beyond three days) under the Family Medical Leave Act will be exempt from the overtime requirements of Article 22, Section 2.

The Position Statement of the OPBA, however, did not reflect agreement to that change and no testimony had been taken at hearing regarding the proposal. The parties were contacted by the Fact-Finder through email and were requested to state whether agreement had been reached with respect to said language. The parties were unable to confirm that agreement had been reached. The parties were then requested to advise the Fact-Finder of the positions with respect to the language.

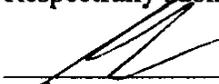
The City indicated that the language should be considered as a proposal of the City submitted to Fact-Finding. The City maintained that the language was necessary in order to allow it to fill long-term vacancies caused by employees being on Family and Medical Leave through the use of part-time employees. The OPBA argued that the provision, as stated, would allow the City to unequally distribute overtime in case of FMLA leaves, possibly giving all overtime to a single employee. The OPBA, however, indicated that the requirement to offer “overtime” on an equal basis would not be triggered where the City would seek to fill the hours of the employee on FMLA with part-time employees who would be working on straight-time.

In light of the position of the OPBA, it is recommended that the City proposal be rejected. There is another problem with the provision. Often, leave under FMLA begins as sick leave or unpaid leave and “becomes” Family and Medical Leave. It would then be very difficult to determine when the requirement to offer overtime on an equal basis had ceased because of the characterization of the leave as Family and Medical Leave. The City does have the flexibility within current language to utilize part-time employees who would be working straight-time to cover for Family and Medical Leave and/or to hire additional part-time employees.

## **CONCLUSION**

For the above reasons, the attached collective bargaining agreement is recommended for ratification by the parties.

Respectfully submitted,



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GREGORY J. LAVELLE, ESQ.  
Ohio Bar No. 0028880  
27346 Edgepark Boulevard  
North Olmsted, Ohio 44070  
Telephone (440) 724-4538  
Facsimile (440) 979-9113  
Email lavellearb@aim.com

Fact-Finder

### S E R V I C E

A copy of the within Recommendation of the Fact-Finder and Proposed Collective Bargaining Agreement were sent to the City of Geneva at 44 Forest Street, Geneva, Ohio 44041 and to the OPBA c/o Daniel Leffler, at 10147 Royalton Road, Suite J, North Royalton, Ohio 44133 by express mail this 6<sup>th</sup> day of February, 2009.



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GREGORY J. LAVELLE

*Gregory J. Lavelle*

ATTORNEY AT LAW AND ARBITRATOR  
27346 Edgepark Boulevard • North Olmsted, Ohio 44070  
Telephone (440) 724-4538  
Facsimile (440) 979-9113  
Email: Lavellearb@aim.com

STATE EMPLOYMENT  
RELATIONS BOARD

2009 FEB -9 A 9:33

**February 6, 2008**

**Edward E. Turner  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213**

**City of Geneva  
44 Forest Street  
Geneva, Ohio 44041**

**Daniel Leffler  
10147 Royalton Road  
Suite J  
North Royalton, Ohio 44133**

**Re: OPBA and City of Geneva  
08-MED-09-0836**

**Dear Mr. Turner and Advocates,**

**Enclosed please find *Fact-Finding Report with Proposed Collective Bargaining Agreement* in the above matter. If you have any questions, please feel free to call.**

**Thank you for your cooperation.**

**Sincerely,**



**GREGORY J. LAVELLE**

**GJL/bij  
enc: Report w/ CBA  
GenevaTransmittal**

EMPLOYMENT  
RELATIONS BOARD

2009 FEB -9 A 9:33

**AGREEMENT BETWEEN**

**THE CITY OF GENEVA, OHIO**

**and**

**THE OHIO PATROLMAN'S BENEVOLENT ASSOCIATION**

**DISPATCHERS**

**JANUARY 1, 2009**

**through**

**DECEMBER 31, 2011**