

report. The agreed upon hearing was held on March 20, 2009 at the City's administrative offices. They agreed to an issuance date for this report of April 15, 2009. the date upon which SERB is mailed the report.

The parties agreed to waive their statutory time limits for submitting their pre-hearing statements to the Fact Finder before the hearing. They provided their respective positions on the unresolved issues at the hearing. They presented oral testimony and submitted documentary exhibits in support to their positions on each unresolved issue.

The parties negotiations involved three bargaining units; (1) Lieutenants, Sergeants and Communications Supervisors; (2) Patrol Officers; and (3) Communications Officer/Jailers and Parking Enforcement Officer. There are approximately 6 employees in the first unit, 17 employees in the second unit and 5 employees in the third unit. The current collective bargaining agreements expired on December 31, 2008. The parties met in negotiation sessions on December 15, January 6 and January 12.

The parties, through mediation at the hearing were able to resolve three of the outstanding issues: (1) Article 16 (Grievance Procedure), Article 19 (Employee Rights) and (3) Article 20 (Personal Leave Day). The remaining issues remained unresolved: (1) Article 15 (Sick Leave); (2) Article 21 (Overtime); (3) Article 25 (Medical Insurance); (4) Article 26 (Longevity); (5) Article 27 (Uniform Allowance); (6) Article 28 (Wage Rates); (7) Article 32 (Pension- Parking Enforcement Officer, Communication Officers and Communication Supervisor only); and (8) Article 34 (Miscellaneous).

The Fact Finder considered all of the required factors and standards set forth in Ohio Revised Code, the Ohio Administrative Code, and the SERB guidelines in issuing the following recommendations on the unresolved issues. All unchanged language from *the expired collective bargaining agreements, and all items and issues tentatively agreed upon between the parties before and during the hearing are hereby adopted for purposes of this Report, and are to be considered incorporated herein.*

II. Economic Evidence.

Although the municipality of Circleville is located near the metropolis of Columbus, the most vibrant economy in Ohio, it has experienced economic problems since 2002. This was due to the loss of manufacturing jobs from plant shutdowns. Thompson Consumer Electronics, a company that accounted for nearly 18% of the City's income tax revenues began downsizing in 2003, and finally closed its operations in 2004. The General Electric plant also began reducing its workforce. Between the two employers, the City lost approximately \$350,000 in tax revenue. This amounted to an 8% reduction. Other employers initiated major layoffs that have resulted in further reductions in tax revenue. The present economic downturn affecting the state and nation has worsened the economic condition of the City and the surrounding area of Pickaway County.

The City receives most of its revenue from a 1.5% income tax, .5% of which is designated for the safety forces, the police, fire department and EMS operations. The

general fund has been used to pay wages and benefits to these bargaining unit members as well as the safety forces fund.

The City began addressing these problems with budget cuts in 2004. Positions were eliminated and services were cut, including the elimination of the building department. There were 164 employees in 2003. By 2008 there were 128, a reduction of 22%. The police department has been reduced to three officers per shift.

Expenditures for safety operations have exceeded revenue in every year since 2002 except for 2006. The City estimates that operating fund expenditures will exceed revenue by \$400,000 in 2009. The City attempted to increase revenue by reducing the credit given to residents who work in another municipality by one-half. These residents would then pay a .75% city income tax. The change was placed on the November 2006 ballot for voters to approve, but it was defeated. Nevertheless, City Council acted to institute the reduced credit as an emergency matter. The reduced credit began increasing revenues in 2008. The additional funds were used for safety forces.

Unfortunately, more layoffs have occurred for City residents and those who live in the county. The county's unemployment rate is now 10.5%, up from 6% in December 2007. The City's vacancy rate for residential units has now reached 10.67%.

Further revenue reductions will occur. Interest income was reduced substantially from \$552,000 in 2007 to \$324,000 in 2008. This decline is likely to continue due to the

low interest rates during this recession. There will be no personal property tax receipts after 2011, and the City will not receive any amounts from the replacement CAT tax. Moreover, the State will reduce its funding of local governments by 5% to 7% beginning in July 2009.

The Association's picture of the City's finances is less dismal. A CPA audit was conducted for the year ending December 31, 2007. It states that the City's total assets increased in the amount of \$803,719 and net assets of business-type activities increased by \$856,852. The City's budgeting process has historically been very conservative. For example, in 2007, it started the year with an estimate of \$4,670,651 in revenues, but increased the revenues figure in the budget along the way to a final figure of \$4,872,722. Actual revenues, however, exceeded \$5.2 million. There was a significant reduction of actual expenses of \$623,401. This was due to substantial cost savings measures that were instituted, but failure to perform proper preventative maintenance and upgrading will cause future problems and additional costs.

The City cost savings efforts produced a \$1.1 million unreserved, undesignated general fund balance at the end of 2007. The total year ending fund balances were \$1.3 million. Expert reports opine that an ending balance of 5% of annual operating expenditures is sufficient to guard against the effects of most types of economic uncertainties. Other cities use a formula of reserving one month's operating expenditures for contingencies, amounting to an 8.3% figure. The Association points out that the ending fund balances for the City are substantially in excess of the 5% to 8% of annual

operating expenses, thereby leaving the City with sufficient funds to pay any needed wage and benefits increases. The City does not allege or assert that it is unable to pay increases in economic items, only that it believes that such increases should be kept to a minimum due to present adverse economic conditions.

The City's expert evidence as to the appropriate amount of an unreserved ending general fund balance is that the balance should be "no less than five to 15 percent of regular general fund operating revenues," or an amount equal to one to two months of general fund operating revenues. The City's ending general fund balances are within these recommendations. More importantly, each city has unique circumstances regarding this issue. Factors such as volatility of funding, availability of resources and liquidity must be taken into consideration. The ending balances are reasonable given the above-mentioned uncertainties of revenue streams and funding sources. Depending upon which opinions are used, the City's ending balances are in the range of two months of operating expenditures using an estimate of \$7 million in annual expenditures for the general fund and safety forces fund (\$583,000 x 2) and beyond the 15% range. It is reasonable to conclude that the City has more than sufficient reserves to address its economic concerns in the short term.

The City believes that the particular demographic statistics are relevant to this discussion. Population has only increased by 0.4% from 2000 to 2007 (13,648). Median household income is substantially below the state level. Residential unit values are well below state levels. The cost of living index number is below the national average. The

county statistics are much better. Median household income and residential unit values are above the state level, showing that the City residents are faring worse than their county neighbors.

The City's abysmal forecast of future economic times should be countered with a possibility that federal stimulus package funds targeted for safety forces may be paid to Circleville. The City has applied for the funds and is waiting for a response.

III. Unresolved Issues

(1) Article 15 – Sick Leave

The current unused sick leave pay upon retirement is 35% if an employee retires with 20 or more years of service. Employees with less than 20 years of service receive 25% of accrued but unused sick leave. The Association proposes an increase to 50% for 20+ years and 40% for employees with less than 20 years of service. The City prefers no change for cost reasons.

The Association argues that the Circleville pay benefit is below that of nearby and competing departments. Chillicothe, for example, pays 75% of the total accrued sick leave time for those employees hired before 1988, and 50% of total time for those hired after 1988. Lancaster pays 100% for up to 960 unused sick leave time hours, and 25% above 960 hours. These are nearby departments that compete with Circleville for employees.

The City computes that 1% of a wage increase equals \$21, 866. It estimates that the Association's proposal would cost an additional \$11,000 for the three employees who have over 25 years of service and are near retirement. For three employees with less than 20 years, the proposal would cost an additional \$5,000. Moreover, the City's policy is to provide the same benefits to the two other bargaining units. Accordingly, any raise in this benefit would amount to a substantial cost increase that it cannot afford.

The current plan, while somewhat below the nearby cities of Chillicothe and Lancaster, are in the ballpark with other comparable Ohio cities. On closer examination, one sees that cities in southeast Ohio such as Athens and Logan pay less for this benefit. Some cities near to Columbus such as Delaware, Mt. Vernon and Newark pay at higher percentages. Exceptions are London, Marysville, Urbana and Zanesville, which pay at the same rate as Circleville or somewhat below the 35% mark.

Recommendation. I believe that an adjustment in this area is probably warranted at some future time. However, at this point, the City is within the range of payments for some comparable cities in the nearby geographical area, and does not appear to be too far out of line. Considering the present economic conditions affecting the City and the surrounding areas and the State, I recommend no change at this time. However, any increase in this benefit provided to any of the other bargaining units resulting from their upcoming negotiations should be paid to these bargaining unit members.

(2) Article 21 – Overtime

Presently, when employees work overtime they can receive 1.5 hours pay, or 1.5 hours in a compensatory time bank for use at a later date. The bank can accrue up to 24 hours of compensatory time. When the time is taken it can be replenished up to 24 hours. Both parties have proposals for changing the current provision. The City wants to cap the bank at 24 hours without replenishment when time is used. Its reasons for the cap are to reign in costs and to cure operational problems when time is taken. The department is small and requires 24/7 coverage. Employees have substantial leave time in the form of *vacation time, sick leave time, and training time in addition to compensatory time*. The continued use of compensatory time causes staffing problems and coverage shortages. Additional costs are incurred when time is taken and other employees are off on contractual leaves. The City is required to bring in substitutes and pay at overtime rates or provide additional compensatory time, which exacerbates the shortage/coverage problems.

The Association believes that the 24-hour bank is woefully inadequate and considerably below the compensatory time provided by comparable cities. It computes 158.5 hours as the average amount of annual compensatory time among the comparable cities. It therefore proposes an increase in the bank to 120 hours, still well below the average. It believes the City's staffing and operational problems caused by the use of compensatory time is a problem due to the City's decision to operate with insufficient staff. The City has not hired additional needed employees. The City acknowledges this fact, but states that it has been constrained to hire more staff due to the existing economic

problems. The City further argues that any additional compensatory time would cause it to increase this benefit for the other units, a cost that it cannot reasonably absorb. It computes that the 24-hour replenishment bank produces about 80 hours of annual compensatory time on the average per employee.

I find that the City's staffing problems are real. The present economic problems prevent it from hiring additional employees. However, it has not made its case that compensatory time should be reduced. The replenishment bank was a bargained for benefit that should remain.

The present call-in pay is 3 hours pay. The City proposes to reduce this payment to 2 hours pay – the Association proposes to increase this pay to 4 hours. I believe, for the above reasons that the current pay should remain.

The City proposed at the hearing that overtime pay now provided for over 8 hours of work per day be eliminated. The Association objects to this issue being raised for the first time at the hearing, and not during previous negotiations. Moreover, this is a longstanding benefit that all city employees have.

Recommendation. No change. However, these bargaining unit members should receive any increase in overtime pay or compensatory time benefits that are provided to the other bargaining units resulting from their negotiations during the term of this Agreement. Payment of overtime compensation for work over 8 hours per day shall remain.

(3) Article 25 – Medical Insurance

All City employees have the same hospital and medical insurance coverage and pay the same premiums. The City pays 100% of the premium for single coverage and 80% of the premiums for double and family coverage. The current cost of the monthly premium for single coverage is \$430.75, for double coverage - \$861.52 and for family coverage - \$1,206.12. Employees pay 20% for double and family coverage, \$172.30 and \$241.22. The City's current annual police department employees' premium cost is \$233,436, and \$900,042 for all employees.

The Association believes that its members have suffered in this area by bearing higher out of pocket expenses for higher premiums as costs have risen, without receiving commensurate wage increases to pay for the higher costs. It believes that the 80/20 formula needs to be adjusted to 90%/10% for double and family coverage. The average percentage paid by employees in the comparable cities is 11%. According to the 2007 SERB report, the statewide average paid by employees for family plans is 10.9%. It is only 7.2% for cities below 25,000 in population. The average amount of the monthly employee contribution for family coverage in the state is \$144.76.

The City believes that its coverage is comparable to that in other nearby cities. It argues that it is difficult to compare plans due to the unique features contained in its plan. For example, most employers do not pay 100% of the premium for single coverage. Moreover, in 2007 the City went into a Health Reimbursement Account plan. Under this

HRA, the City reimburses employees for out of pocket costs that are incurred in this account.

The Association argues that the HRA saved the City considerable money in premium costs, but provided less coverage and benefits to its employees. The cost for City paid deductibles was \$88,308 in 2007. The cost was reduced to \$65,026 in 2008.

The current language provides that the parties will discuss employee contributions toward the premiums; that they will meet 60 days prior to any proposed changes in premiums or benefits; that the Association has the right to provide input into the decisions before implementation of any changes; and that the City will consider Association proposals and accept the proposals if they are feasible. A joint health care committee was established that meets in May each year to discuss plan changes prior to the City's selection of a carrier for the following year. The City retains its discretion to secure alternate insurance carriers and to modify coverage and reduce premiums, but it agrees to meet with the Association to discuss modifications in coverage and/or benefits before they are implemented.

The Association members have experienced serious problems due to the continuous changing of plans, coverage and carriers in the City's efforts to reduce or restrain the constant increases in medical insurance costs. These transition problems are set forth in a letter from Association counsel to the Mayor dated January 10, 2008. Every time the City changes carriers lapses in coverage have occurred due to changeover

problems. These coverage lapses cause financial and related problems. Members have been billed for charges that should be covered. They have been harassed from bill collectors for items that should have been covered. This problem has occurred during holiday weekends when services were required, but members could not provide the provider with the new carrier's information. New language needs to be drafted to resolve these problems for not only these members, but for all City employees.

The Association proposes to add an additional benefit for term life insurance in the amount of \$50,000 for each member. All of the other comparable cities provide this benefit. It is time that the City included this benefit in the contract.

The City states that it provides a benefit of \$20,000 for each employee. It is willing to include this benefit in this amount within the contract. A review of the comparables shows that the range of benefits is from \$15,000 to \$50,000. Chillicothe is at \$50,000; Lancaster is at \$30,000.

Recommendation. The language in Section 25.04 shall be amended to read as follows:

The parties agree to discuss employee contributions for health insurance along with the health insurance coverage. The City shall establish a joint labor management health insurance committee that shall include a member of the bargaining unit. The committee shall meet at least every sixty (60) days to review and discuss issues relating to health insurance. The committee shall have access to all pertinent information concerning health insurance coverage. The committee shall review any potential changes to health insurance coverage and shall have input prior to changes being made.

The OPBA recognizes the right of the Employer in its discretion to secure alternate insurance carriers and to modify coverage, which measures may be used to maintain or lessen premium costs. The City may not make any changes until it meets with the health insurance committee to review such potential changes.

Reducing the premium contribution for employees to a level in line with the amounts required from employees in comparable cities is a reasonable proposal. Constant medical cost increases and premium increases tend to reduce or even eliminate wage increases that are provided to employees. However, it is not reasonable at this time to add this cost burden to the City's budget, considering that the additional premium payments would be required for all employees who are covered by the same insurance plans. Instead, a reasonable wage adjustment should be implemented to assist the members in dealing with these increased medical premiums, lower coverage and higher out of pocket expenses.

The HRA addresses some of these issues, but my experience is that premium costs continue to rise notwithstanding the implementation of HRA plans and HSA plans. Because practicalities and prudent financial decisions require that all employees be in the same group for medical insurance plans, all employees should likewise pay the same premium contributions. The contributions have a lesser impact on many of the members of these bargaining units because they include some of the higher paid City employees. This is true for the police officers, sergeants and lieutenants, and less so for the communications officers who are paid at lower wage rates.

I further recommend that the Association's proposal to include employees under a group life insurance plan for each bargaining unit employee be added to the contract. The amount, however, should be \$25,000 per employee. This amount is more in line with the benefit provided by other comparable cities and the cost for the City is minimal.

(3) Article 26 – Longevity

The unit members now receive \$60 for each year of service. The Association proposes an increase to \$75 per year. Employees must work full-time and have completed five years of continued uninterrupted service with the City. The \$60 per year figure has remained the same since 2002.

All of the comparable cities except Wilmington, London and Urbana have some form of longevity pay. The payments range from \$250 to \$2,190 for the required years of service. Longevity pay for those cities that pay for that benefit averages approximately \$947. The City believes the Association's proposal is excessive. It would cost \$4,700 per year and over \$20,000 when the City makes the additional benefit available to the rest of the bargaining units.

Recommendation. I believe an increase is justified after almost seven years. I recommend that the payment be increased to \$70. The added cost does not appear to be unreasonable and the added income rewards employees for their long service. The

impact to the City, however, must be considered and factored into the consideration of wage increases.

(5) Article 27 – Uniform Allowance

Present uniform allowance payments are \$950 per year for patrol officers, \$750 for dispatchers, and \$850 per year for the parking enforcement officer.

Detective/investigators receive \$500. The Association proposes increases to \$1,100, \$900, \$850 and \$750 respectively. Moreover, the unit members and the City have agreed to add language in this article to address the problem of the City automatically withholding 25% of the payments. The members sometimes do not receive enough of their money to pay for their uniform expenses when 25% is taken out of the check at the beginning. They understand that they ultimately may have to pay income taxes on the money they receive over and above their actual expenditures. The parties will attempt to determine whether the City can pay the full amounts and issue 1099 forms, or otherwise find another way to address this problem.

Recommendation. The Association did not produce evidence warranting an increase in this area. There is no indication that the present amounts paid are insufficient to cover the members' uniform needs. The City should, however, use all reasonable and legal efforts to permit the payments to be made without withholding 25% for taxes.

(6) Article 28 - Wage Rates

The Association states that it has always been willing to assist the City with its

financial problems. This is evidenced by the fact that it accepted wage increases in the last contract of 0%, 1.5% and 2.75%. The City has money in its ending fund balances to pay members a reasonable wage increase to meet cost of living expenses including higher medical care costs and insurance premiums. Other employees received more wages when the Association members accepted less. It is proposing wage increases for a 3-year contract beginning January 1, 2009 of 6%, 6% and 6% in order to catch up with the other employees who received higher increases in the past.

The City rejects this proposal and counters with the same contract duration, but a freeze in the first year, and a re-opener in the following two years. It justifies this position based upon the above economic evidence that identifies the large number of employee layoffs and business closings that have reduced tax revenues. It predicts that expenditures will exceed revenues for safety forces by more than \$400,000 in 2009. Accordingly, the City has not budgeted for any wage increases for the OPBA unit for 2009.

The City believes that the OPBA unit has not suffered compared to other employees. Over the past 10 years, the OPBA unit received increases of 30.77%. This compares with the NUEO unit that received increases of 30.65% over the same period and the IAFF that received 28%. Wage freezes are now commonplace in the State. The OCSEA with 35,000 employees recently accepted a fact finder's report providing for a wage freeze for three years, and a step freeze for two years. A re-opener is warranted in this contract because the NUEO and IAFF contracts expire at the end of 2009. The City

will be in a better position to evaluate its economic circumstances and consider wage increases for all of the units at the same time.

The current contract provides for a \$.15% shift differential. The Association proposes an increase to \$.25. Eleven out of the 15 comparable cities pay a shift differential. The average increase for those who pay is \$.38 per hour. An increase is justified on this basis alone. The City opposes any increase for financial reasons.

Recommendation. I recommend an increase to \$.20 per hour in the shift differential. The parties further agreed to a language change in Section 28.05. That section shall read as follows:

Effective January 1, 2009, all employees assigned and working second shift and/or third shift shall be paid a shift differential of \$.20 per hour for all hours worked.

I further recommend an across the board pay increase for the first year of a 3-year contract in the amount of 3%, retroactive to January 1, 2009. This is based upon the fact that the IAFF unit is receiving 3% for 2009. There will be a re-opener for wages only in years two and three. This is based upon the possibility of increased revenues due to better economic conditions and the possibility of receiving federal funds.

(7) Article 32 – Pension for Parking Enforcement Officer, Communication Officers and Communication Supervisor

The police officers, sergeants and lieutenants participate in a different pension fund than these employees. They participate in PFPF. The parking enforcement officer, communication officers and supervisor participate in PERS. The City has paid for all of the police and fire employees' contributions to their pension fund in the amount of 10% in addition to the employer's share. The City pays 8.5% of the employees' contribution to PERS in addition to the employers' share. The employee share for PERS was increased to 9% for 2006 and is going up again to 10%. The Association proposes that the City continue to pay 100% of the employees' share as in the past.

The City considers this proposal as amounting to a .5% wage increase for these employees, and a 1.5% wage increase when the employees' share is raised to 10%. It cannot afford these increases when it is considered that the employer's contribution share has risen for PERS from 13.55% to 14%. It believes that these employees should contribute for amounts over the present 8.5% that the City pays.

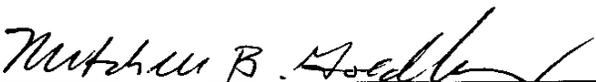
Recommendation. The Association's proposal is accepted. The City shall pay 100% of the employees' contribution as long as it does the same for the police and fire employees. The increases in the City's costs for these items should be factored in when wage increases are addressed in the re-opener years.

(7) Article 34 – Miscellaneous

The Association proposes an additional section that provides for tuition reimbursement up to a maximum of \$1,500 annually. Nine of the comparable cities provide for payment for additional schooling in various amounts from \$500 per year to \$6,000 per year. Chillicothe pays up to \$1,000 per year. Lancaster does not have this benefit. The City opposes this new cost item for financial reasons, and further believes that any such provisions, if ever agreed upon, should contain certain conditions that benefit the City in terms of employee expertise and services, as well as restrictions upon the payments by first requiring completion of courses and minimal grade requirements.

Recommendation. No change. Any provisions in this area should be further negotiated between the parties and considered later if and when the City receives additional funding. Other items that were at issue between the parties in Article 34 were agreed upon at the hearing and otherwise were resolved between the parties.

Date of Award: April 15, 2009



Mitchell B. Goldberg, Appointed Fact Finder

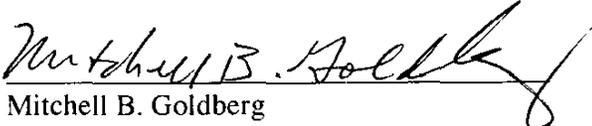
CERTIFICATE OF SERVICE

The following persons were served with this Report by U.S. Mail, First Class on April 15, 2009:

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