

STATE EMPLOYMENT  
RELATIONS BOARD

2009 SEP -2 P 2: 26

STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS  
Case No. 09-MED-04-0405

CITY OF OREGON, OHIO :  
:   
The Employer :  
:   
and : TENTATIVELY AGREED  
: SETTLEMENT OF THE PARTIES  
:   
FRATERNAL ORDER OF POLICE :  
:   
The Union :

MARVIN J. FELDMAN  
Attorney/Arbitrator  
1104 The Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114  
216/781-6100

Fax: 216/781-6119

Email: [marvfeldmn@aol.com](mailto:marvfeldmn@aol.com)

APPEARANCES

For the Employer:

Paul Goldberg, Law Director  
Ken Filipiak, City Administrator

For the Union:

Jackie Wegman, Staff Representative  
Hank Everitt, Union President  
Edward Depinet, Union Vice-President  
Chris Bliss, Observer

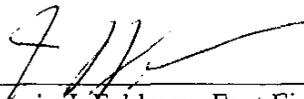
This matter came before this Fact Finder pursuant to the appropriate statutes of the State of Ohio and the administrative rules thereunder of the State Employment Relations Board. Notice was given to the Fact Finder of the appointment by email and the parties were contacted and August 20, 2009 was agreed to for the fact-finding activity. The parties provided position statements as prescribed.

At the hearing, the site being the City Hall of Oregon, Ohio, the parties met and a desire to settle this matter was stated. By the end of the day, the parties tentatively agreed to all of the impasse matters. The parties provided to the Fact Finder a written write-up of all the issues and the write-up is attached hereto, made part hereof as if fully rewritten herein (23 pages, pagination noted on right upper corner of each sheet.)

The Fact Finder perused the sign-off and compared that document to his notes and noted that each tentatively agreed to writing matched the statement language revealed at the hearing on August 20, 2009. The parties were mature and understanding of the issue and are to be complimented with this hard work in hopefully bringing this matter to a conclusion in these difficult economic times.

This Fact Finder finds that the settlement presented and the language used are fair, just and equitable under the circumstances and the settlement therein portrayed becomes the Award of the Fact Finder. The parties requested that this be the final report of the Fact

Finder.

  
\_\_\_\_\_  
Marvin J. Feldman, Fact Finder

Made and entered  
this 31<sup>st</sup> day  
of August 2009.



CITY OF OREGON OHIO

5330 SEAMAN ROAD • OREGON, OH 43616-2633  
www.ci.oregon.oh.us

CITY OF OPPORTUNITY

PAUL S. GOLDBERG, Law Director  
Office: 419-698-7166  
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KENNETH J. FILIPIAK, City Administrator  
Office: 419-698-7095  
Fax: 419-691-0241

August 26, 2009

Mr. Marvin J. Feldman, Esquire  
1104 Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114

Re: City of Oregon and Fraternal Order of Police

Dear Mr. Feldman,

Prior to the Fact Finding/Mediation held before you on August 20, 2009 the parties had reached a tentative agreement on a number of items. The tentative agreements reached involved the following:

- Article 11, Section 2 –Rights of Employees
- Article 12, Section 2 –Grievance Procedure
- Article 16, Section 1 –Acting Time
- Article 25, Section 1 –Leave of Absence Without Pay
- Article 27, Sections 1 & 3 –Allowances
- Article 42, Section 5 –Miscellaneous
- Article 24, Sections 9 & 12 –Hours of Work and Overtime
- Article 31, Section 1 –Residency
- Article 16, Section 1 –Acting Time
- Article 33, Section 5 –Health and Welfare

A copy of the above signed off articles is attached with bolded language indicating the changes agreed to and lines through language agreed to be deleted.



The following proposals were thoroughly discussed before you and with your assistance on August 20, 2009, which resulted in the following agreements:

Article 24, Section 3

Union proposal regarding starting time and instituting an 8 ½ hour work day. The Union agreed to withdraw this proposal.

Article 24, Section 6 (a)

This Union proposal also related to the work day and increased work week. The Union agreed to withdraw this proposal.

Article 24, Section 14

The City proposed to give the Chief discretion to determine if command officers were needed on Holidays. The City agreed to withdraw this proposal.

Article 39, Section 3

This is a companion to the above article relating to work on Holidays. The City agreed to withdraw this proposal.

Article 26, Sections 1 & 2 Wages

The parties agreed on a wage increase of 2.5% retroactive to July 1, 2009 in the first year of the agreement.

Article 26, Sections 4 & 5 Premium Pay

The Union agreed to withdraw this proposal.

Article 39, Section 3 Bereavement Leave

The Union agreed to withdraw this proposal.

Article 44 Physical Fitness Training

The City agreed to withdraw this proposal.

Article 46 Contract Duration

The parties agreed upon a three-year agreements with re-openers for wages only after year one and year two of the agreement.

Article 26, Sections 1A and Section 2A

The parties agreed to delete these provisions from the agreement.

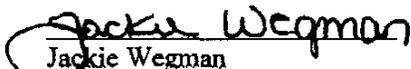
The above represents all of the agreements reached by the parties concerning all of the proposals brought forth by both sides during negotiations.

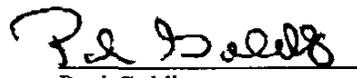
The parties further agreed that all provisions of the current collective bargaining agreement not changed or altered by the above agreements would remain unchanged in the current agreement.

We have reviewed the above and are both in agreement with all of the representations made to you in the correspondence. We would like to thank you for your creative efforts to help fashion an agreement when it looked like it was a remote possibility.

It is truly a pleasure to work with an experienced professional like you who understands that the purposes of negotiations is to reach a fair and equitable agreement for both sides.

Once again thank you for your expert assistance.

  
Jackie Wegman  
Staff Representative  
Fraternal Order of Police,  
Ohio Labor Council, Inc.

  
Paul Goldberg  
Law Director  
City of Oregon

ARTICLE 11

RIGHTS OF EMPLOYEES

*6/24/09*  
*[Signature]*

*PAW*  
*6/24/09*

*HE*  
*6/24/09*

Section 2. HEARING PROCEDURES

- A. No employee shall be dismissed or suspended without first being afforded a hearing in accordance with the provisions set forth herein, unless said hearing is waived by the employees.
- B. The employee shall be provided with two copies of all written charges.
- C. A hearing on the charges shall be held at a mutually agreeable time and place not less than seven (7) nor more than fourteen (14) days after the charges have been served on the employee. An employee may be represented by counsel of his choosing who shall have the right to cross examine all witnesses.
- D. The Chief of Police or his designee, or acting Chief in an extended absence shall hear the evidence and endeavor to ascertain the truth of the charges.
- E. The Chief of Police or his designee shall render a decision within five (5) days of the close of the hearing based upon the evidence rendered at the hearing unless mutually agreed to extend in an extended absence.

- F. If the decision results in a recommendation of some punitive action of an employee, the Chief shall certify same in writing to the Mayor or his designee forthwith.
- G. The Mayor or his designee shall forthwith inquire into the cause of the punitive action in accordance with the City Charter of the Employer.
- H. The decision of the Mayor or his designee may be appealed through the grievance procedure contained in this Agreement at Step 4.
- I. The charged employee shall have the right to cross examine all witnesses and to have three (3) representatives (including counsel) of his choosing with him during the hearing.

ARTICLE 12

GRIEVANCE PROCEDURE

*Handwritten notes:*  
6/24/09  
gaw  
6/24/09  
HE  
6/24/09

Section 2. STEPS

**STEP ONE:** The employee, with or without a Lodge representative, may take up a grievance with the employee's immediate supervisor within ten (10) calendar days of its occurrence, or when the employee knew or should have known of its occurrence, whichever is later. The supervisor shall then attempt to adjust the matter and shall respond within ten (10) calendar days after such discussion.

**STEP TWO:** If not adjusted in Step One, the grievance shall be reduced to writing and presented by the Lodge to the Chief of Police within ten (10) calendar days following the receipt of the supervisor's answer in Step One. The Chief of Police or his designee shall attempt to adjust the grievance as soon as possible, and therefore will schedule a meeting with the employee, his immediate supervisor or Shift Commander, and Lodge Representative within ten (10) calendar days after receipt of the grievance from the Lodge. The Chief of Police or his designee shall then render a decision, based on information supplied during the meeting, within ten (10) days of the meeting.

**STEP THREE:** If the grievance is not adjusted in Step Two, the grievance shall be submitted the Mayor or his designee within five (5) calendar days of the receipt from the Chief of Police's response to the Step Two procedure. A meeting shall be held at a mutually agreeable time and place not to exceed ten (10) days from the date the grievance is submitted to him by the Lodge and the affected employee(s) to discuss

the grievance and come to an equitable solution. If the grievance is settled as a result of such meeting, the settlement shall be reduced to writing and signed by the parties. If no settlement is reached, the Mayor or his designee shall give the Lodge the Employer's answer within ten (10) working days following their meeting.

**STEP FOUR:** If the grievance is not settled in Step Three, the matter shall be referred for arbitration by written request made within ten (10) days of the Employer's answer in Step Three. Arbitration shall proceed in the following manner.

ARTICLE 16

ACTING TIME

T. A. [Signature]  
2/9/09  
Pb [Signature]  
7/9/09

Section 1.

The Chief or his designee shall have discretion as to whether or not to fill a vacancy.

If a vacancy is filled, it shall be filled in accordance with the following:

When a Lieutenant position is vacant, it shall be filled by a Sergeant in that bureau section who ranks highest on the civil service list. When a Sergeant position is vacant, it will be filled first by the Sergeant who is off on the day in question in the division section in which the vacancy occurs (~~by seniority, then by equalization~~ by equalization, then by seniority), second by a Sergeant in the ~~Division~~ section on vacation or comp time, and third by a Sergeant in the ~~division~~ section on a contiguous shift, fourth by any other Sergeant in the same section (by equalization, then by seniority), and fifth ~~—If no Sergeant is available in accordance with the procedure set forth above, then the vacancy shall be offered to a Sergeant in another Division section (by equalization, them by seniority), and if none~~ If no sergeants are available, the vacancy may be filled first by the ~~Division~~ section Lieutenant and second by a Lieutenant in another section (by equalization, then seniority). If still not filled, it shall be filled by the Patrol Officer from the affected shift and Division who ranks highest on the eligibility list for Sergeant. This shall constitute an Acting Sergeant basis.

When two or more Road Command Officers (Sergeants) are assigned to the same shift or the same shift plus or minus one hour and for whatever reason one officer is absent,

it is determined that no vacancy shall have occurred during said shift. The Road Lieutenant will be limited to covering two (2) patrol shifts per pay period.

*[Handwritten signature]*  
6/24/09  
JAW  
H5  
6/24/09

**ARTICLE 25**

**LEAVE OF ABSENCE WITHOUT PAY**

**Section 1. PERSONAL LEAVE UP TO FIVE (5) DAYS**

A personal leave of absence at the request of the employee may be granted upon the approval of the Employer in accordance with the rules established herein. A formal approved leave of absence form will be required when the employee will be absent at their own request.

Any request for excused absence for a period of five (5) work days or less may be granted by the Chief of Police ~~appropriate department or division head or Service Directors~~ when the employee fills out formal leave of absence form. Request for leave of absence shall be in writing in duplicate, and shall be signed by the employee stating the reason for said leave and the days requested. One (1) copy shall be retained by the employee and one (1) copy by the appropriate department or division head or Service Directors. All city benefits shall be maintained by the employee.

## ARTICLE 27

### ALLOWANCES

#### Section I. CLOTHING

The Employer shall either provide or reimburse the employee for the purchase of any necessary uniforms, insignia, leather gear and required equipment that is required for the life of this Contract. Each uniformed officer may obtain by purchase through the department or through reimbursement to the employee any necessary equipment up to a maximum of ~~\$500.00~~ <sup>\$700.00 PAV</sup> each year of the contract. Any unused balance may be carried forward to the next contract year to purchase necessary equipment. Any remaining balance at the termination of the contract term shall be forfeited. ~~The frequency of provision of such Allowable items for purchase by uniformed officers is listed~~ in Appendix G of this Agreement. Plain-clothed officers shall be reimbursed for the purchase of clothing items used on the job for those items listed in Appendix H of this Agreement. Reimbursement shall be provided up to a maximum reimbursement of \$800.00 each Contract year. In addition, all officers shall receive a \$250.00 uniform and equipment maintenance allowance in each Contract year, payable with the first pay check in December of each year. The City and the Union agree to form a committee and meet once per contract year to review and make joint recommendations on items to be added or removed from Appendices G and H. The final determination of any necessary clothing or equipment items to be added to Appendices G and H shall be made by the Chief of Police. All officers are required to wear clothing/uniforms with no visible sign of excessive wear and to keep all equipment presentable and in good working order.

The determination of whether ~~as-needed~~ items need replacement shall be made by the Police Chief.

Section 3. UNRECEIPTED MEAL ALLOWANCE

Any employee ordered to be away from home for a period of eighteen (18) hours or more shall receive a meal allowance in accordance with City Administrative Policy ~~an overnight allowance in the amount of Twenty Dollars (\$20.00).~~

6/24/09  
gaw

HE  
6/24/09

  
6/24/09

**ARTICLE 42**  
**MISCELLANEOUS**

A handwritten signature in black ink, appearing to be 'J. Wegman', written in a cursive style.

Section 5. **STUDY MATERIAL**

The Employer shall, ~~three (3)~~ ~~six (6)~~ months prior to any promotional test, provide the employees of the Police Department with a list of all reference material used in making up the promotional test which will be forthcoming. The maximum number of study references shall be five (5).

gaw  
6/29/09

HG  
6/24/09

APPENDIX G*Wegman*ITEMS FOR UNIFORMED OFFICERS

<u>Item</u>	<u>Quantity</u>
Long Sleeve Shirts	5 (annually)
Sentry Trouser with Lintrak	5 (annually)
Reversible Raincoat	(as needed)
Metal Nameplate	(as needed)
1 ¾" Pant Belt	1 (every 3 years)
Clip-on Ties(regular/Dickies/turtlenecks)	4 (annually no more than 2 turtlenecks)
Uniform Hat	(as needed)
Summit Jacket	(as needed)
Shoes (as described below)	Any quantity up to \$140.00 annual total
Insignia	(as needed)
Leather Gear	(as needed)
Other assigned equipment	(as needed)
Sweater	Upon request, replace as needed up to 1 annually

## Options for shoes/workboots:

- 1) Leather Shoe – Low boot or athletic oxford
- 2) High-shine Clarino Oxford
- 3) Casual Walking
- 4) 6" Tactical Boot
- 5) Black Smooth Leather Oxford
- 6) Gortex Insulated 8" boot

T.A.  
7/9/09  
*[Signature]*

**ARTICLE 24**

**HOURS OF WORK AND OVERTIME**

**Section 6(a). 8 HOUR DAY - BREAK TIMES**

A command officer's workday shall be 8 hours (excepting Article 24, Sections 4 and 5) and the work week shall be 40 hours. Mealtime shall be a maximum of 30 minutes, when available. A command officer is entitled to two fifteen-minute breaks in a workday of 8 hours.

**Section 9. TIME OFF ENTITLEMENTS**

T.A.  
gaw  
7/9/09

Holidays, vacation days and other time off to which an employee is entitled as a matter of right under or by virtue of any Ordinance of the City and this Title of the Code, shall be considered as time worked in the active pay status and compensated accordingly.

**Section 12. COMPENSATORY TIME**

T.A.  
7/9/09  
gaw

Employees who have worked overtime shall be permitted to receive compensatory time off at the overtime rate, in lieu of pay. Upon reasonable request by the employee, days off accumulated due to overtime shall be granted upon approval of the Lieutenant, Assistant Chief of Police, or the Chief of Police. Whenever possible, the request shall be made at least three (3) days prior to the requested days off unless an unforeseen emergency makes it impossible for the employee to do so.

*[Signature]*  
**Section 14. HOLIDAY OVERTIME**

**ARTICLE 31**

**RESIDENCY**

T. A.  
7/9/09  
gaw

H.E.  
7/9/09

[Signature]  
7/9/09

**Section 1.**

The City agrees to abide by the determination of the Ohio Supreme Court in City of Lima vs. State of Ohio (2009) upholding the prohibition against residency requirements for municipal employees pursuant to state law. In the event state law is amended allowing municipalities to adopt residency requirements, or in the event the Ohio Supreme Court or any higher court rules that municipalities do have the right to enact residency requirements, the provisions of Section 2 shall apply. However, any employee who is residing beyond the requirements imposed by Section 2 at the time such change in law occurs shall not be required to relocate within the limits determined by Section 2 or any other limit that may be imposed by the City.

**Section 2.**

Employees may reside within ten (10) miles of the City of Oregon. The Mayor may grant a waiver to the 10-mile limit if the employee can demonstrate that travel time to the City from the location where the employee desires to reside is not greater than typical travel times within the 10-mile radius.

**ARTICLE 16**

**ACTING TIME**

at  
T.A. 7/9/09  
9AW  
H.E. 7/9/9

Section 1.

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it is determined that no vacancy shall have occurred during said shift. The Road Lieutenant will be limited to covering two (2) patrol shifts per pay period.

T.A.  
7/9/09  
*[Signature]*  
7/9/09  
GAW

HS  
7/9/09

**ARTICLE 33**  
**HEALTH AND WELFARE**

Section 5. INJURY PAY

Any employee sustaining injury in the course of employment shall, concurrent with seeking any necessary medical attention, complete and present to the immediate supervisor, an employee incident report as soon as possible. In doing so the employee shall choose whether or not to participate in the employer's Injury Pay Program.

PARTICIPATION IN INJURY PAY PROGRAM:

Employees electing to participate in the Injury Pay Program shall seek treatment from a "program" physician or facility ~~determined by the City (as defined below)~~, who will in turn render a diagnosis, prognosis, and a return to work prescription.

Upon the "program" physician's determination that an employee's injury requires absence from work, wage continuation identified as accident on duty and coded "A" for payroll purposes, shall be granted for a period up to ninety (90) days. The City Administrator and Mayor may extend this period up to two years immediately following the incident with a recommendation from the "program" physician or other physician recommendation accepted by the City.

At the expiration of the wage continuation granted, if the employee is still unable to return to work, the employee may elect in writing to use accumulated sick and other accrued time. If the employee is still unable to return to work, payment of normal wages will be stopped and the Industrial Commission will be requested to begin weekly payment under the provisions of the Worker's Compensation Act. Wage continuation will further cease under the following conditions:

- 1) Attending physician releases employee to return to work.

- 2) Employee returns to work for another employer without city permission. The decision to approve or disapprove outside employment is not subject to the grievance procedure.
- 3) Employee fails to return to a transitional assignment consistent with his/her medical restrictions and approved by the injured worker's treating physician.
- 4) Employee refuses to appear for employer-sponsored medical examination.
- 5) Employee has reached maximum medical recovery and/or the condition has become permanent.
- 6) The claim is found to be fraudulent after payment has commenced.
- 7) Employment separation.

An employee may, after the initial evaluation by the program physician, elect to continue treatment with their personal physician provided the program physician's recommendations are followed. The employee will sign any necessary waivers to allow their personal physicians to release information to the program physician. The employee's personal physician will be the physician of record for workers' compensation purposes. In the event employee's personal physician prescribes absence from work such authorization shall be presented to the City within 24 hours and shall require concurrence by the program physician. Should authorization be rejected by the program physician, the employee will be referred for a third opinion at the City's discretion to a physician selected by the City at the City's cost.

The third opinion shall be determinative of the employee's injury pay status under the contract and shall not be subject to further appeal or review. If the third opinion is

consistent with the program physician's plan and the employee fails to abide by the rehabilitation plan, or if the employee enters and later drops out of the plan, the City can recoup injury pay advanced from the employee's sick time accumulation. If the employee does not have a sufficient sick time balance, the City shall recoup the injury pay by reducing future sick leave earnings by one-half until the injury pay is fully recouped.

#### NON-PARTICIPATION IN INJURY PAY PROGRAM:

In those cases when an employee chooses not to participate in the employer's Injury Pay Program, the employee shall further choose compensation under the Workers' Compensation laws of the State of Ohio or use of personal sick time for any absence from work. This choice shall be made on the incident report form. Employees opting out of the Injury Pay Program are cautioned to be aware of the Bureau of Worker's Compensation guidelines when selecting a physician outside the network established by the City.

#### TRANSITIONAL WORK:

Transitional alternate work assignments with restriction may be prescribed by the program physician and are encouraged. Employees assigned to such duty shall be compensated at their regular rate of pay and will not be eligible for overtime.

#### ~~PROGRAM PHYSICIAN/FACILITY:~~

~~St. Charles Hospital E.R. — 2600 Navarre Ave.  
and Work Injury Network — Oregon, OH 43616~~

~~Treatment rendered by any physician at either of the above mentioned facilities shall constitute treatment by a program physician.~~

**OTHER PROVISIONS:**

- A. An employee on Injury Pay shall suffer no loss of previously scheduled vacation or compensatory time.
- B. If the employee returns to work prior to the expiration of the ninety (90) calendar day period and is disabled at a later date due to the same injury, he may use the unused portion of the ninety (90) day period.
- C. Injury pay extension requests accompanied by a "Statement of Attending Physician" setting forth the nature of the illness or injury and the need for additional time, must be represented to the City Administrator no later than one (1) week after expiration of the original ninety (90) days disability period. If the above requirements are not fulfilled, the request for injury pay extension may not be considered.
- D. Whenever an employee is off duty on Injury Pay due to an injury or illness which is related to his duties, he shall not be required to use any of his accumulated sick days and he will also accumulate sick days as if he were working.
- E. Holidays which occur during approved injury disability period shall be considered as ordinary calendar days.

- F. An employee shall refund to the Clerk Auditor of the Employer amounts received as temporary total disability benefits under the Ohio Workers' Compensation Law.

MARVIN J. FELDMAN

ATTORNEY AT LAW  
1104 THE SUPERIOR BUILDING  
815 SUPERIOR AVENUE, N.E.  
CLEVELAND, OHIO 44114  
216 / 781-6100

STATE EMPLOYMENT  
RELATIONS BOARD

2009 SEP -2 P 2: 25

FAX 216 / 781-6119

LICENSED TO PRACTICE LAW  
IN THE STATE OF OHIO &  
COMMONWEALTH OF KENTUCKY

August 31, 2009

Jackie Wegman, Staff Representative for  
Fraternal Order of Police  
4854 Waterbury Lane  
Maumee, Ohio 443537

Paul Goldberg, Attorney for  
City of Oregon  
5330 Seaman Road  
Oregon, Ohio 43616

Re: Case No. 09-MED-04-0405  
City of Oregon, Ohio and FOP  
SERB Fact-Finding

Dear Ms. Wegman and Mr. Goldberg:

Enclosed please find a Fact Finding Tentatively Agreed Settlement of the Parties and a fee bill relevant to the above captioned matter.

Very truly yours,



Marvin J. Feldman

MJF/sss  
Enclosures

