

(c) The interests 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;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Before fact finding, the parties consented to mediation. The parties were separated. This fact finder spent a substantial amount of time speaking with both of the representatives and members of each party. Mediation was successful to the point that some of the issues were eventually settled between the parties, and both parties and this fact finder gained an in depth understanding of all of the facts surrounding this fact finding. After mediation was finished, parties commenced the fact finding conference.

At fact finding, the parties were left with six issues:

Issue No. 1, Article XI-Vacations-Accumulation of Vacation time

Issue No. 2, Article XI-Vacations-Increase in Vacation time off

Issue No. 3, Article XIX-Wages

Issue No. 4, Article XXI-Medical Insurance-Premium Sharing and Co-Pays

Issue No. 5, New Article – Specialty – First Responder

Issue No. 6, Term of Agreement

FACTUAL FINDINGS

Although Pepper Pike Ohio is an affluent community, the nationwide recession/depression has had a negative impact on the finances for the City. Tax revenue and the City's surplus or year to year carry over has been decreasing each year for several years.

According to the finance director, the reserves/carry over are as follows:

2005-\$4.3 million

2006-\$5.5 million

2007-\$5 million

2008-\$4.3 million

2009-\$835,000

The finance director testified that the following are some of the reasons as to why the reserves fell: increases in pay, increases in pensions, and increases in health care costs. The City has 70 full time employees. In 2008 and 2009, two roads were reconstructed by the City. During the 2008/2009 period, revenues from estate taxes went down and revenues from income taxes went down. It is expected that in 2010, real estate taxes will be down again.

The finance director further estimated that unless something changes for the positive, the carry over at the end of this year (2010) will drop to \$160,000.

The Union states that the City has always had "aggressive" debt pay-off programs. In other words, the City would attempt to pay off their debts quickly. The City, by and through the finance director, responded that their debt repayment program is usually a 10 year repayment plan instead of a 15 – 20 year plan. The finance director further stated that the City has not defaulted on any debts.

The policy of the City, to pay off debts for improvements in 10 years rather than 15-20 years, is not necessarily a bad policy. No evidence was presented, as to whether this policy actually saved public funds or cost more public funds, in the long run. However, it is elementary that payment of a debt earlier than later decreases the total amount of interest paid on that debt. The taxpayers pay less for the improvement.

The payment of debts and how the debts are paid is considered in determining the bond rating of the City. The City has a AA bond rating which is the second best rating that

one can have. If the City would lose that bond rating or if the City's bond rating was downgraded, the interest rate would be increased for any loan that the City would incur. It would then cost the tax payers more money in interest payments. In other words, if the bond rating fell, the cost of improvements would increase.

In order to meet the impending problem of a deficit, the City cut back on some non-essential services like the ice cream social and the newspaper.

No evidence was introduced as to what percentage of costs to operate the City were made up by wages and salaries for all employees and what percentage of costs to operate the City were the salaries of this bargaining unit. Since a municipality provides "services" one could assume that wages and salaries make up the "lion's share" of the City's budget. It is never good policy to "assume", however, no evidence was introduced what percentage of the cost to operate the City went to wages and went to wages of this particular bargaining unit.

The main part of the City's plan to reduce costs included wage cuts, furloughs, and a request for a tax increase. A furlough is a situation where each employee in each department would take one day off, without pay, per pay period. Combining the wage cuts and the furloughs, each department has already reduced its department costs by 25% as follows:

Fire Department – 15% pay cut, 10% furlough

Service – 10% pay cut, 15% furlough

Building Department – 10% pay cut, 15% furlough

Administration – 15% pay cut, 10% furlough

Dispatch – 10% pay cut, 15% furlough

The City has requested that the bargaining unit take a 25% cut in labor costs via wage cuts and furloughs just like the other departments.

The Union has rejected this proposal and requests a 3 year contract, zero increases in wages in the first year and subsequent increases to be negotiated depending upon the increase in tax paid by the tax payers. The formal Union proposal is as follows:

Section I: Effective January 1, 2010, employees in the bargaining unit shall receive the wages set forth below based upon an annual year of 2080 hours. Wage rates for 2011 and 2012 shall be subject to wage re-opener to be commenced in December of each calendar year. Wage re-opener shall be subject to the statutory alternative dispute mechanism in Revised Code 4117, et seq.

1/1/2010	
	0%
Sergeant of Police	\$76,059
Patrolman Class A	
After 3 Years	\$67,309
Patrolman Class B	
After 2 Years	\$63,117
Patrolman Class B	
After 1 Year	\$58,924
Patrolman Class B	
First Year	\$54,729

*Employees attending the Police Academy shall be paid 90% of the above rate while attending the Academy (\$49,256). Patrolman, Detective is a title assignment delegated by the Chief of Police.

The underlying rank is that of Patrolman Class A. Seniority within the department for any such person will be determined by his or her seniority standings as a Class A Patrolman with respect to all other patrolmen.

Section 2: In addition to the above annual rates of pay, each eligible employee shall, on December 15th, receive a lump sum payment based upon the salary set forth above and based upon full years of service as of December 1st:

5 years, but less than 10	2%
10 years, but less than 15 years	3%
15 years, but less than 20 years	4%
20 years or more	6%

Time served by an employee during any probationary period shall be included in computing eligibility for longevity pay. Any interruption in the service of an employee, except for allowed vacations, holidays, sick leave, authorized leaves of absence **and disciplinary suspensions** shall be deemed a determination of such employee's tenure in office for the purposes of determining eligibility for longevity pay."

The above proposal has been taken from the position statement presented by the Union.

The City has introduced a document of public employers and their pay rates for Cuyahoga County (for police). Pepper Pike listed at 7 out of 37 Cuyahoga County departments (Pepper Pike's status would be slightly higher in ranking if longevity pay was taken into account).

The City's position relies heavily on "past collectively bargaining agreements." The City introduced testimony that eight or nine years ago, the City officials met with Union officials regarding the wage rate of the police. The City officials took note that although the City could afford higher wages, their police department was not among the highest paid officers in Cuyahoga County, Ohio.

The City officials increased the wage rates of the police approximately twenty percent (20%). My understanding of the 20% raise was that the wage increase occurred all at one time and was not spread out over a period of months or years. The effect was to raise the wage rates of these officers such that their wage rates were among the highest paid police officers in Cuyahoga County.

At that time of the City's history, the City had the funds to pay those rates of pay, which were and still are among the highest in Cuyahoga County. Now, however, with the country and the state in an economic downturn, the City now is asking this bargaining unit to take what the City believes is its fair share of concessions, during this time of financial strife.

The City officials believe that since the City historically increased the wages to a high rate in a very short period of time when funds were available, the bargaining unit should accept the concessions when the funds are not readily available.

The City further argues that the morale of the employees in the other departments is low. If this bargaining unit does not accept the same concessions accepted by the other departments, the morale in the other departments will sink even lower. This argument is an "internal comparable". The distinction, however, is that the employees in other departments are not "bargained for" employees. They are not unionized. Therefore, if the employees in the other departments disagree with the wage reduction imposed by the employer, the alternative to employees in the other departments is to leave the job.

The City has the burden of showing "inability to pay." The finance director stated that he expects the carry over reserved to be 160,000 at the end of 2010. This carry over is down from millions just a few years ago. If the current tax revenue remains the same, the City will not be able to meet its financial obligations, pay its employees and avoid layoffs.

If current tax revenue falls and wage rates remain the same, then the City could easily fall into a deficit. Layoffs would be the only answer, not only in this department, but in other departments. Layoffs jeopardize public service to the residents.

The City officials stated that the administration is suggesting an income tax increase from 1% to 1.75%. The proposed tax increase will be on the ballot sometime in 2010. I assume that the tax revenues will be available for the 2011 fiscal year. If the voters increase the income taxes for its residents and businesses, then the City will probably be able to meet its obligations and pay the wage rate demanded. However, if the tax increase is defeated and the current trend continues, the City will be forced to lay off workers or use some other cost savings device.

The most obvious but most controversial cost savings device is a reduction in wages. As noted above, the City administrators and representatives have asked the bargaining unit members for a 25% reduction in combined wage cuts and furloughs.

As was stated in another way earlier, the City representative and administrators didn't need to "ask" the other departments for concessions. There was no bargaining. Since there was no union, the City simply cut wage related costs by 25%. In economic terms, the wage rates of the non-union departments were "elastic". Because the City's income decreased, i.e., revenues were down, the City has less money to pay its bills. At a point, there is not enough income or revenues to pay the City's bills. The City's administrators look to cut costs. Since the City administration is readily able to unilaterally cut wage rates, they cut wage rates in the other departments. The wage rates in the other departments are "elastic".

Because this bargaining unit had a Union, the City management could not simply cut wages or impose a furlough. Under Ohio's collective bargaining law, wage rates must be "bargained". The union made the wage rates "inelastic" against the market forces of loss of tax revenue.

The economic terms of "elastic" or "inelastic" wage rates are cold descriptions of what is actually occurring. Throughout Ohio and the rest of the Country, industrial and

manufacturing plants as well as service business see less demand for their goods and services. With less demand for goods and services comes a less need for workers who produce those goods and services. The result is a reduction of income and eventually a loss of jobs.

The loss of jobs and less income results in less demand for goods and services. With less income, there is less money to purchase real estate. Hence the price or value of real estate declines or decreases.

This drop in real estate directly affects state and municipal organizations because they rely heavily on real estate taxes. When the real estate value goes down, tax revenue falls and state and municipal revenue also falls. Of course, the home owner also suffers. If the homeowner wants to relocate, he must sell his real estate. If he tries to sell his real estate, he will get less for it, if he can sell it at all. The real estate owner (i.e., homeowner or business owner) faces lower income, and lower property values. To keep getting the same municipal services while the wage rate to provide those services remains the same, the real estate owner will pay higher taxes. The same phenomena occur with income taxes. This is, in short, part of the ancient law of supply and demand.

Those who are paid by tax dollars, i.e., this bargaining unit's members, face a different, but no less serious fiscal malady. If wage rates are kept at the same level, and there is not enough tax revenue to pay the workers, the City will be forced to lay off bargaining unit members. This will result in increase of overtime, a further increase in costs and perhaps an increase in layoffs. It will also result in less service being provided by these bargaining unit members. As an alternative, the voters could raise their taxes.

The community of Pepper Pike is at a crossroads. The residents are now in the position to decide the services they want and what they want to pay for these services.

The residents are able to make this decision by voting. After the vote, the City administrators and the bargaining unit members will receive the message.

In our Country, the citizens communicate to our leaders by voting.

In the short meantime, we must be concerned about the present. The City should not incur further expense without being reasonably assured that those expenses will be paid with current income. To act any other way would be irresponsible and would deprive the voters of their right to communicate to their leaders.

ISSUE NO. 1 AND NO. 2

Article XI – Vacations – Accumulation of Vacation time.

Article XI – Vacations – Increase in Vacation Time.

DISCUSSION

Both of these items will have an economic impact for a long time. Given the current financial status of the City, recommending these changes is inadvisable.

RECOMMENDATION

The contract language set forth in Article XI regarding Issues 1 and 2 should remain the same.

ISSUE NO. 3

Article XIX – Wages

DISCUSSION

The wages of this bargaining unit, unlike the wages of those in non-bargaining units, are protected by a collective bargaining agreement. Before wages can be lowered, there must be good faith bargaining between the parties on basic items covering wages, hours and working conditions. A wage/furlough concession amounting to 25% of the current wage rate is a substantial amount of pay. A drop in income of 25% for someone in the middle class will directly affect the standard of living of an employee and his/her family.

In a short period of time, the electorate of Pepper Pike, Ohio can choose to raise its taxes on the residents and business owners. If the voters raise taxes, the City and this bargaining unit can then decide the wages, hours and working conditions of the members of the bargaining unit and the duties they are to perform. If the voters choose not to raise their taxes, the parties will know the amount of public funds available for compensation.

The voters should decide.

RECOMMENDATION

It is recommended that there shall be neither an increase nor a decrease in wages for 2010.

ISSUE NO. 4

Article XXI – Medical Insurance – Premium Sharing and Co-Pays

DISCUSSION

During mediation and fact finding, the parties reached an agreement on this issue. The agreement is set forth on Exhibit B attached hereto and initialed by the representatives. This fact finder reviewed the agreement and applied all factors set forth in §4117.14

RECOMMENDATION

Exhibit B, attached hereto, shall be made a part of Article XXI and incorporated therein by reference.

ISSUE NO. 5

New Article – Specialty – First Responder

DISCUSSION

The Union seeks additional compensation for officers who maintain training in Firearm Qualifications, less lethal weapons such as Tasar, Pepper Spray, Baton, CPR, AED, First Aid, BAC Data master and others shall receive extra compensation. Unless an officer maintains these skills, he/she cannot be a police officer. There was no evidence that there was a cost to the bargaining unit members to so qualify. Most of the above items, especially those items dealing with weapons, are mandatory to be and remain a police officer. Finally, this is a time when layoffs are being considered because of lack of funding.

RECOMMENDATION

It is recommended that this new article not be made part of the Collective Bargaining Agreement.

ISSUE 6

Term of Agreement.

DISCUSSION

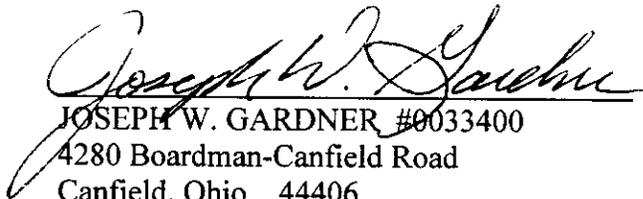
Usually the term for a CBA is three (3) years. These are not usual times. The future of this City and this bargaining unit should be left to the electorate. The voters should have

opportunity and should bear the responsibility of how and how much this City should be funded. The vote of the citizens should start with a clean slate and not be burdened by contractual obligations decided in uncertain and unusual times.

RECOMMENDATION

This fact finder recommends a one year contract commencing January 1, 2010 and ending December 31, 2010.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joseph W. Gardner", is written over a horizontal line.

JOSEPH W. GARDNER #0033400

4280 Boardman-Canfield Road

Canfield, Ohio 44406

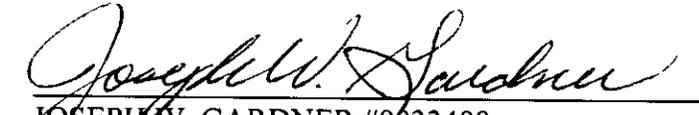
Phone: (330) 533-1118

Fax: (330) 533-1025

Fact-Finder

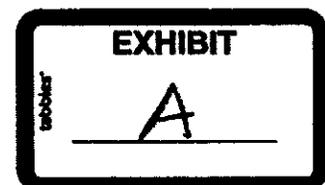
CERTIFICATION

I hereby certify that on March 26, 2010 a copy of the foregoing Fact Finder's Report was sent via facsimile and/or regular U.S. mail and/or e-mail to the following: Representative for the Union, **DANIEL J. LEFFLER**, 10147 Royalton Road, Suite J, North Royalton, OH 44133, danielleffler@sbcglobal.net; Representative for the Employer, **ROBERT T. ROSENFELD**, 31853 Cedar Road, Mayfield Heights, OH 44124, buzrose@gmail.com, and to **EDWARD E. TURNER**, Administrator, Bureau of Mediation, 65 East State St., 12th Floor, Columbus, Ohio 43215-4213.



JOSEPH W. GARDNER #0033400
Fact-Finder

	CITY	RATE	DIFF.	LONGEV.	RATE + LONGEV.
1	Lyndhurst	\$ 69,199	\$ 1,890	\$ 3,460.00	\$ 72,659.00
2	Beachwood	\$ 69,112	\$ 1,803	\$ 1,500.00	\$ 70,612.00
3	Mayfield Heights	\$ 68,938	\$ 1,629	\$ 1,200.00	\$ 70,138.00
4	Shaker Hts.	\$ 68,171	\$ 862	\$ 2,000.00	\$ 70,171.00
5	Brecksville	\$ 68,163	\$ 854	\$ 3,000.00	\$ 71,163.00
6	University Hts.	\$ 67,431	\$ 122	\$ 4,720.00	\$ 72,151.00
7	PEPPER PIKE	\$ 67,309		\$ 4,038.00	\$ 71,347.00
8	Highland Heights	\$ 67,246		\$ 2,179.00	
9	Independence	\$ 67,245		\$ 2,375.00	
10	Middleburg Hts.	\$ 66,560			
29	Westlake	\$ 66,338			
11	Richmond Hts.	\$ 66,043			
12	Solon	\$ 65,735			
13	S. Euclid	\$ 65,467			
14	Rocky River	\$ 65,463			
15	Warrensville Hts.	\$ 64,407			
16	Berea	\$ 64,186			
17	Fairview Park	\$ 64,074			
18	Bedford Hts	\$ 63,814			
19	Bedford	\$ 63,636			
20	Bay Village	\$ 63,305			
21	Brooklyn	\$ 62,886			
22	N. Royalton	\$ 62,240			
23	Broadview Hts.	\$ 61,940			
24	N. Olmsted	\$ 61,464			
25	Parma	\$ 61,303			
26	Moreland Hills	\$ 61,190			
27	Lakewood	\$ 61,034			
28	Cleveland Heights	\$ 60,164			
30	Parma Hts.	\$ 59,546			
31	Maple Heights	\$ 59,468			
32	Seven Hills	\$ 58,883			
33	Olmsted Falls	\$ 54,818			
34	Cleveland	\$ 53,922			
35	Euclid	\$ 53,913			
36	East Cleveland	\$ 42,000			
37	Orange				



CX2

C. Medical Insurance: The medical plan (Article XXI) shall be administered by Medical Mutual Ins. Co.

By *WJ* 3-13-10

D. The parties also agree to the language on paragraph D, p. 2 of the City's position statement and the parties agree to the ~~following~~ following changes in the "co-pay" ^{as} set forth on pages 20²⁵ of the CBA:

PPO family coverage from \$50⁰⁰ to \$100⁰⁰
PPO single coverage from \$25⁰⁰ to 40⁰⁰

~~City's~~

Copay for regular doctor visits from \$10 to \$15
" for specialty doctor visits from \$20 to \$25
" for ER visits from \$50 to \$55

Copays for prescriptions from \$10 to \$15 for generic
" " " " \$15 to \$25 for brand

WJ 3-13-10

By 3-13-10

EXHIBIT

tabber

B

Joseph W. Gardner
ATTORNEY AT LAW
4280 BOARDMAN-CANFIELD ROAD
CANFIELD, OHIO 44406

STATE EMPLOYMENT
RELATIONSHIP BOARD

2010 MAR 29 A 11:39

PHONE: (330) 533-1118
FAX: (330) 533-1025
JWG1118@sbcglobal.net

March 26, 2010

VIA E-Mail & Regular U.S. Mail

DANIEL J. LEFFLER
10147 Royalton Road, Suite J
PO Box 338003
North Royalton, Ohio 44133

ROBERT T. ROSENFELD
31853 Cedar Road
Mayfield Heights, Ohio 44124-4445

**Re: Ohio Patrolmen's Benevolent Association and City of Pepper Pike
SERB Case Nos.: 09-MED-10-1229, 09-MED-10-1230**

Mr. Leffler & Mr. Rosenfeld:

Please find enclosed the Fact Finding Report concerning the above-referenced matter together with my invoice.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



JOSEPH W. GARDNER
Fact-Finder

JWG/law
Enclosures

Cc: EDWARD E. TURNER
Administrator, Bureau of Mediation
65 East State St. 12th Floor
Columbus, Ohio 43215-4213