



## **Submission**

The Parties in the present negotiation are engaged in multi-unit bargaining and have had an ongoing collective bargaining relationship culminating in an Agreement that became effective on January 1, 2007 and obtained through December 31, 2009. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter.

Having reached impasse, the Parties requested that the Factfinder attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on April 8, 2010 at the City Administration Building in Rossford, Ohio. During the course of mediation the Parties reached tentative agreement as to a number of issues, but failed to resolve the issues at impasse below. Accordingly, an evidentiary hearing was convened subsequent to mediation, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

## **ISSUES AT IMPASSE**

The Parties identified and presented the following issues as unresolved:

- |                    |   |                                   |
|--------------------|---|-----------------------------------|
| 1. §8.1/§9.1       | - | <b>Wages</b>                      |
| 2. §9.3/10.3       | - | <b>Compensatory Time</b>          |
| 3. §12.2           | - | <b>Trading Shifts*</b>            |
| 4. §12.2           | - | <b>Trading Shifts</b>             |
| 5. §§16.1,4/17.1,4 | - | <b>Maternity/Paternity Leave*</b> |
| 6. §19.3/20.3      | - | <b>Court/Jury Duty*</b>           |
| 7. §20.1/29.1      | - | <b>Court Appearance</b>           |
| 8. §21.1           | - | <b>Funeral Leave*</b>             |
| 9. §22.1           | - | <b>Holiday and Personal Leave</b> |
| 10. §24.2          | - | <b>Vacation Rights*</b>           |
| 11. §30.4          | - | <b>Approved Expenses*</b>         |
| 12. §31.1          | - | <b>Uniform Allowance*</b>         |
| 13. §33.2          | - | <b>Part-time Patrol Officers</b>  |
| 14. §39.2          | - | <b>Residency Requirements</b>     |

\* Resolved by mutual agreement of the Parties.

## **STATUTORY CONSIDERATIONS**

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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 factors peculiar to the area and classification involved;
- 4117-9-05(K)(3)** 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;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **BACKGROUND AND STATUTORY CONSIDERATIONS**

The City of Rossford (City or Employer) is a first tier suburb of Toledo, located along the Maumee River in Wood County. The safety of the City's some 6,400 residents is maintained, in part, by approximately nine Police Patrol Officers and approximately three Command Officers represented in separate bargaining units by the Ohio Patrolmen's Benevolent Association (OPBA or Union). The City and the OPBA (Parties) relate under the terms of separate collective bargaining agreements (Command Agreement and Patrol Agreement), the latest of which took effect on January 1, 2007 and obtained through December 31, 2009. The Parties are engaged in multi-unit bargaining toward successor agreements.

As with many area political subdivisions, Rossford's economic circumstances have historically been based in glass production and, more recently, tied to the automobile industry. And, as with many public and private sector entities, the general economic decline coupled with cutbacks in vehicle manufacture and collateral industries have resulted in reduced revenue to the City's General Fund. The City projects a 2010 budget deficit of some \$1.1 million, with a reduction in its cash reserves of approximately \$1. million, from \$2.7 million to \$1.7 million, or approximately four months of operating income. The City projects that the \$1.7 million 2010 ending General Fund balance will be reduced to some \$400,000, or less than one month's operating expenses, by the end of 2011. Wages and benefits for Police Personnel represent approximately \$1.25 million, or some 27%, of the Employer's \$4.66 million General Fund operating expenses. The City placed on the May 4<sup>th</sup> ballot a 3.5 mil renewal levy. While the City's economic circumstances are not presently within the traditional understanding of statutory inability to pay the demands of the Union, fiscal watch is not inconceivable in the near future.

A significant issue in the current negotiations is the matter of manpower. At present, the bargaining units consist of some 12 Patrol and Command Officers, down from a level of 18 with little or no population reduction. As a result, Officers often work more than a regular workweek, and overtime is an ongoing expense for the City and drain on its Police Officers. Under the predecessor Agreement the City obtained the right to hire two Part-time Patrol Officers, but as of the date of hearing had hired and trained only one, who is currently

engaged in a field training program.

The current wages received by Rossford Patrol and Command Officers appear to be somewhat less than the area market average. However, in circumstances in which public sector employers face adverse economic circumstances, internal parity is often worthy of greater consideration than wages and benefits offered by comparable area jurisdictions, which may face very different financial situations and bargaining histories. In the past, the City and the OPBA entered negotiations following conclusion of the Employer's negotiations with its other bargaining units. When wages received by the Police Officers exceeded those obtained by other units, some consternation arose.<sup>1</sup> In the current negotiations the Police bargaining unit leads, and any compensation and benefit increases obtained by OPBA members will establish a pattern for other unions.

It is in consideration of these factors, and those discussed below, that the Report & Recommendations of the undersigned Fact-finder are respectfully submitted.

## **FINDINGS AND RECOMMENDATIONS**

### **§8.1/§9.1 – Wages**

#### **City Proposal:**

On the basis of its current financial position, the Employer proposes a three year Agreement including a wage freeze for 2010; a \$500 lump sum payment to bargaining unit members in January of 2011 should the City conclude 2010 with a General Fund balance with an excess of revenues over expenses; and a reopener on wages for 2012.

#### **OPBA Proposal:**

The OPBA likewise proposes a three year Agreement, which it maintains is the standard duration for a public sector police contract. While it concedes that the City's current financial circumstances require that bargaining unit members, and other City employees, agree to a wage freeze in 2010, the Union believes that a reopener is appropriate for 2011, at which time the Parties can reevaluate the Employer's financial position, and make appropriate adjustments.

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<sup>1</sup> Following negotiations for the predecessor Agreement, OPBA members received wage increases of 3% in each of the Agreement's three years. Other bargaining units agreed to more modest compensation increases of around 2%.

**Findings and Recommendation:**

As discussed above, there is no question that the City’s fiscal position is tenuous. The City’s revenues have continued to decline, while its operating expenses continue to grow. Regrettably, there seems little respite on the immediate economic horizon.

Both Parties here are fully cognizant of the situation. The Union’s proposal for a three year Agreement, with a wage freeze in the first year and a reopening of wage negotiations in January of 2011, is clearly a good faith attempt to resolve a difficult problem.

Consequently, under normal circumstances the undersigned neutral would whole heartedly recommend the OPBA’s proposal that the Parties reassess the Employer’s fiscal condition after the first year of the Agreement. However, contract negotiations – even those limited to a reopening of wage discussions – are resource intensive undertakings. In circumstances in which, as here, there seems virtually no possibility that an employer’s financial position will improve within the time frame contemplated by a reopener it would be irresponsible to recommend it. Rather, the \$500 proposed by the City contingent upon even a minimal surplus of revenues over expenses for 2010 would seem a more manageable obligation for the Employer and a more probable benefit to the OPBA membership.

Accordingly, a three year Agreement, with the Employer’s proposed \$500 lump sum payment contingent on a 2010 surplus of revenues over expenses, and a wage reopener in January of 2012 is recommended.

**§9.3/10.3 - Compensatory Time**

**Current Contract Provision:**

Section 9.3 An employee who has worked overtime shall if he/she elects be allowed to receive compensatory time at the overtime rate, in lieu of pay provided he/she does not exceed the 480 hour accumulation limitation set forth in the Fair Labor Standards Act, as amended. In the event the employee has not taken all compensatory time in excess of fifty-six (56) hours by January 1 of the year following the year in which the time was earned, then he/she shall be paid for all such hours in excess of fifty-six (56) hours in the next regular paycheck at the overtime rate including all regular benefits. Compensatory time is to be taken at a time mutually agreeable to both the employee and the Chief of Police; however, every effort will be made to grant compensatory time at the convenience of the employee if such scheduling does not seriously hamper the Department’s operations.

**City Proposal:**

The Employer maintains that the overtime generated through the granting of

compensatory time off amounts to some \$17,500 per year, an expense the City contends it cannot sustain in its present economic situation. Accordingly, it proposes elimination of compensatory time, with payment of overtime when and at the rate it occurs.

**OPBA Position:**

The Union points out that the practice of paying compensatory time was initiated at the urging of the Employer, which believed that it would result in savings to the City. While the OPBA argues that compensatory time is not a problem for the City, it agrees to concessions with regard to total overtime accumulation, reducing the maximum accumulation allowable under the FLSA by 50%, from 480 to 240 hours.

The Union also proposes that the current fifty-six hour carryover be modified to sixty-eight hours, equivalent to two weeks work under the four-day work schedule currently being utilized by the City's Police Department.

**Findings and Recommendation:**

As did many employers, the City instituted compensatory time off in lieu of paying overtime because it believed that doing so would result in a cost savings. And, as have many employers, the City of Rossford has found that with a smaller workforce it is often forced to pay additional overtime in order to accommodate compensatory time off already earned by its employees. The result, particularly in situations in which large amounts of compensatory time off may be accrued and carried over from year to year, is that overtime earned at current rates must be paid at higher – and sometimes unbudgetable – future rates.

However, employees have come to value compensatory time as a benefit, to utilize comp time as additional personal time off, and to accumulate the time as a hedge against situations in which extended absence may be required. As such, it is an existing benefit, the total elimination of which requires a demonstration of substantial harm to the Employer.

In the present case the Union has agreed to reduce the maximum accumulation permissible from the current FLSA standard of 480 hours to 240 hours. In exchange, it proposes to increase the number of hours carried over from year to year from the present 56 to sixty-eight, or two weeks under the present work schedule. While the Union's proposal to increase the number of annual carryover hours for which the City is potentially obligated may result in some increased liability at future wage rates, the amount is minimal, as against the current situation, in which bargaining unit members work substantially increased

overtime hours. Accordingly, the OPBA's proposal is recommended:

*Section 9.3 An employee who has worked overtime shall if he/she elects be allowed to receive compensatory time at the overtime rate, in lieu of pay provided he/she does not exceed the ~~480~~ 240 hour accumulation limitation set forth in the Fair Labor Standards Act, as amended. In the event the employee has not taken all compensatory time in excess of fifty-six (56) hours by January 1 of the year following the year in which the time was earned, then he/she shall be paid for all such hours in excess of ~~fifty-six (56)~~ sixty-eight (68) hours in the next regular paycheck at the overtime rate including all regular benefits. Compensatory time is to be taken at a time mutually agreeable to both the employee and the Chief of Police; however, every effort will be made to grant compensatory time at the convenience of the employee if such scheduling does not seriously hamper the Department's operations.*

### **§12.2(C) – Trading Shifts**

#### **Current Contract Provision:**

Section 12.2. It is agreed that the City will keep senior employees assigned to their preferred shift(s), subject to other provisions of this Section. A minimum of five (5) calendar days written notice will be required and provided to the employees affected by work schedule change, however, an employee will not be required to change his/her posted schedule solely to avoid payment of overtime pay to such employee. It is agreed that nothing in this Agreement shall restrict the rights of management to reassign any employee's shift, with the appropriate notice, for the following limited reasons:

\* \* \*

- C. To perform work on a shift other than the employee's shift assigned under the provisions of Section 12.1 of this Article, by mutual agreement between the employee and the City.

\* \* \*

#### **OPBA Proposal:**

The Union proposes eliminating the provision at §12.2(C) permitting the Employer to assign bargaining unit members to perform duties on shifts other than those for which they have bid under §12.1. This conflicts with other language of the Agreement and, according to the Union, permits an individual employee and the Chief to enter into an arrangement potentially circumventing the bidding process. While it agrees that the provision may be of some benefit to individual bargaining unit members, the OPBA argues that it does not benefit the Union membership as a whole. In the past, the Union contends, the provision has been interpreted in a way that circumvents not only the seniority bidding process but the overtime provisions of the Agreement as well.

#### **City Position:**

The Employer maintains that it does not interpret the clause in a manner consistent

with the Union's assertion of circumvention of the bidding process. Rather, it contends, it views the provision as being intended to be a temporary measure enabling the City to address specific, limited circumstances such as special events requiring reallocation of manpower.

**Findings and Recommendation:**

While the Union's concern regarding potential misinterpretation and misapplication of §12.2(C) is well-taken, no evidence was proffered to indicate that the OPBA's apprehension was based on any immediate or ongoing instance of abuse. By contrast, elimination of the provision would serve to constrain the Employer in the proper exercise of its responsibility to the public.

In most circumstances this Neutral is hesitant to include or retain in any contract language that might conceivably require resolution through the grievance procedure. However, such a course seems to be the best alternative in this instance. Accordingly, retention of the current contract provision will be recommended; resolution of any allegations of abuse may be sought through the grievance procedure, up to and including dispositive arbitral review.

**§20.1/29.1 - Court Appearance**

**Current Contract Provision:**

Section 20.1/29.1. All Patrol/Command Officers of the Police Department who represent the City at a proceeding in courts of law while off duty shall receive compensation at the overtime rate for all time consumed, with a minimum of two (2) hours. If an employee's court appearance starts within two (2) hours of the end of his/her shift or ends within two (2) hours of the start of his/her shift, he/she will receive continuous time. Any fees paid by the courts of law shall be signed over to the General Fund of the City.

**OPBA Proposal:**

The Union contends that bargaining unit members who are required to appear in court, in uniform, on their time off should be compensated for the time required to groom, dress and travel to the proceedings. Accordingly, it proposes to increase the two hours provided under the current Agreement to three hours, which it maintains more accurately reflects the actual time required.

**City Position:**

The City contends that it cannot afford the Union's proposal, and argues for retention

of the current contract language.

**Findings and Recommendation:**

The OPBA’s assertion that Officers require more than the present two hours to prepare for uniformed court appearances on off duty time is probably true. Moreover, evidence submitted indicates that the two hours at straight time paid Rossford Police Officers is somewhat less than the market average. However, it is beyond the City’s current economic means to provide what might be a costly increase in the existing benefit. Accordingly, current contract language is recommended.

**§22.1 - Holiday and Personal Leave**

**Current Contract Provision:**

Section 22.1 HOLIDAY AND PERSONAL LEAVE: The following holidays are hereby established and each regular full-time employee shall be paid for such holidays at his/her assigned base rate of compensation:

- |     |                             |                            |
|-----|-----------------------------|----------------------------|
| 1.  | January 1                   | New Year’s Day             |
| 2.  | Third Monday in January     | Martin Luther King Day     |
| 3.  | Last Monday in May          | Memorial Day               |
| 4.  | July 4                      | Independence Day           |
| 5.  | First Monday in September   | Labor Day                  |
| 6.  | November 11                 | Veteran’s Day              |
| 7.  | Fourth Thursday in November | Thanksgiving Day           |
| 8.  | Fourth Friday in November   | Day after Thanksgiving Day |
| 9.  | December 24                 | Christmas Eve              |
| 10. | December 25                 | Christmas Day              |

\* \* \*

Section 22.5 PERSONAL DAYS: From time to time an employee may be faced with the need to be excused from work for personal matters that necessitates taking time off during work hours. To meet this need, each full-time employee shall receive five days personal leave with pay each calendar year.

**OPBA Proposal:**

The Union believes that addition of New Year’s Eve as a paid holiday would facilitate scheduling of employees for that night. The OPBA also proposes the addition of two personal days for Patrol Officers, on grounds that the increased benefit would bring Patrol Officers into parity with the Command Officers, who currently enjoy seven personal days.

**City Position:**

The City argues that no additional holiday or personal time off is warranted.

**Findings and Recommendation:**

As with increases in court appearance time, an additional holiday – and the related costs – are beyond the means of the City, and cannot be recommended at this time. Nor can two additional personal days be added, despite the argument of internal parity advanced by the OPBA. Consequently, the current contract provision is recommended.

**§33.2 - Part-time Patrol Officers**

**Current Contract Provision:**

Section 33.2 Part-time patrol officers shall not exceed 1,200 hours worked per year, not including hours worked in a field training program. The City may employ no more than two (2) part-time patrol officers or twenty percent (20%) of the total number of Patrol Officers, whichever is greater.

**City Proposal:**

The City maintains that an increase in the hours which part-time Patrol Officers may work, from the current 1,200 to 1,650, would assist in relieving reliance on full-time Officers at overtime rates to fill vacant shifts. In addition, the Employer argues that the ability to offer part-time Officers sufficient hours to make the position viable would assist in recruiting and retaining qualified candidates.

**OPBA Position:**

The Union argues that the current contract provision allowing part-time patrol officers to work a maximum of 1,200 hours is sufficient. The OPBA contends that, to date, the City has hired only one part-time officer, who has not yet to become fully operational, despite being permitted to hire two part-time officers for the duration of the predecessor Agreement.

**Findings and Recommendation:**

As the OPBA argues, the City's failure to hire and train the two part-time Officers permitted under the 2007 Agreement would seem to indicate that the increase requested by the Employer is unnecessary. However, the necessity of scheduling bargaining unit members to fill open vacation, sick, personal and compensatory time off has resulted in a burden on the City's over-worked full-time Officers and a substantial cost to the Employer. Restricting the total number of hours that part-time Patrol Officers may work per year for three additional

years limits the City's ability to deal with its overtime problem. Additionally, it is reasonable to believe that the increase would facilitate the Employer's ability to attract and retain qualified part-time Officers. Accordingly, the City's proposal is recommended.

*Section 33.2 Part-time patrol officers shall not exceed ~~4,200~~ 1,650 hours worked per year, not including hours worked in a field training program. The City may employ no more than two (2) part-time patrol officers or twenty percent (20%) of the total number of Patrol Officers, whichever is greater.*

### **§39.2 - Residency Requirements**

#### **Current Contract Provision:**

Section 39.2. RESIDENCY REQUIREMENTS: Patrol officers newly hired on or after April 1, 1997 must reside within ten (10) miles of the Rossford Police Station within six (6) months of completion of the probationary period.

#### **City Proposal:**

The Employer proposes modification of the current language to limit non-probationary employees hired after April 1, 1997 to residency in Wood or Lucas Counties.

#### **OPBA Position:**

The Union rejects the Employer's proposal, and argues for language that would bring the City into compliance with current state and federal laws regarding residency requirements for public employees.

#### **Findings and Recommendation:**

In upholding ORC 9.481(B)(1), prohibiting municipalities from imposing and enforcing residency requirements, in *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, the Ohio Supreme Court rendered the provisions of §39.2 of the Parties' Agreement unenforceable. Under the court's ruling, no residency restrictions beyond adjoining counties can be placed on bargaining unit members. Here, the City urges the Fact-finder to recommend terms that would restrict the statutory residency rights of Employees to Wood and Lucas Counties. While such a provision might be reasonable if it were included in the Agreement by mutual consent of the Parties, its imposition by Neutral fiat is not. Accordingly, the OPBA's proposal, mirroring the decision in *Lima* is recommended.

*Section 39.2. RESIDENCY REQUIREMENTS: Patrol officers newly hired on or after April 1, 1997 must reside within ~~ten (10) miles of the Rossford Police Station~~ **Wood County or any adjoining counties** within six (6) months of completion of the probationary period.*

**SUMMARY**

**FINDINGS AND RECOMMENDATIONS**

1. **§8.1/§9.1** - **Wages**  
*0%/\$500 contingency payment/2012 reopener*
2. **§9.3/10.3** - **Compensatory Time**  
*240 hour accumulation/68 hour carryover*
3. **§12.2** - **Trading Shifts\***
4. **§12.2(C)** - **Trading Shifts**  
*Current contract provisions*
5. **§§16.1,4/17.1,4** - **Maternity/Paternity Leave\***
6. **§19.3/20.3** - **Court/Jury Duty\***
7. **§20.1/29.1** - **Court Appearance**  
*Current contract provisions.*
8. **§21.1** - **Funeral Leave\***
9. **§22.1** - **Holiday and Personal Leave**  
*Current contract provisions*
10. **§24.2** - **Vacation Rights\***
11. **§30.4** - **Approved Expenses\***
12. **§31.1** - **Uniform Allowance\***
13. **§33.2** - **Part-time Patrol Officers**  
*Increase to 1,650 hours*
14. **§39.2** - **Residency Requirements**  
*Residency in Wood and adjoining counties.*

\* Resolved by mutual agreement of the Parties.

**All other tentative agreements reached by the Parties in the course of negotiations are included by reference herein.**

*/ss/ Gregory James Van Pelt*

Gregory James Van Pelt

Respectfully submitted this 8<sup>th</sup> day of June, 2010  
At Shaker Heights, Cuyahoga County, Ohio