

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION**

STATE EMPLOYMENT  
RELATIONS BOARD

2011 JAN 18 P 3: 55

**IN THE MATTER OF:**

City of Trotwood, Ohio

and

Ohio Patrolmen's Benevolent Association

Case Numbers:

10-MED-05-0777 (Police Officers and Detectives)

10-MED-~~05~~-0787 (Sergeants)

*06*

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Kenneth L. Edsall  
Clemans, Nelson & Associates, Inc.  
6500 Emerald Parkway, Suite 100  
Dublin, Ohio 43016  
(For the City of Trotwood)

and

Joseph M. Hegedus  
92 North Woods Blvd., Suite B-2  
Columbus, Ohio 43235  
(For the OPBA)

and

J. Russell Keith, General Counsel  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced cases by the State Employment Relations Board on September 1, 2010 in compliance with Ohio Revised Code Section 4117.14 ( C ) ( 3 ).

The parties requested that the Fact Finder conduct a mediation session prior to the scheduling of an evidentiary hearing. This occurred on November 16, 2010 at Trotwood City Hall. A fact finding hearing was then scheduled on December 20, 2010 at Trotwood City Hall. Prior to the commencement of the evidentiary hearing, the parties briefly explored the possibility of a mediated settlement. The hearing then went forward at noon.

Prior to mediation and fact finding, the parties have engaged in a number of negotiating sessions for two collective bargaining agreements. The parties have bargained over a wage reopener only for the bargaining unit which consists of police officers and detectives. There are approximately twenty-four employees in this bargaining unit. The re-opener represents wages for years two and three of the collective bargaining agreement, August 1, 2010 and August 1, 2011. The second bargaining unit consists of approximately six sergeants. The entire agreement is open for negotiations.

The parties submitted pre-hearing statements in a timely manner. The previous collective bargaining agreements provide that, in future negotiations, provisions of 4117.14 (G) (11) are waived, and "...the fact finder and/or conciliator shall have the right to determine that rates of compensation and matters with cost implications may be retroactive to August 1, 2010." Prior to the commencement of the hearing, the Union withdrew a number of proposals which had been at impasse.

Outstanding issues include the following:

New Article, Shift Schedules  
Article 24, Insurance  
Article 22, Compensation

#### BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is specifically guided by the principles that are outlined in ORC 4117.14 (G) (a – f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing

comparable work, giving consideration to factors peculiar to the area and classification involved.

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.

4. The lawful authority of the public employer.

5. The stipulations of the parties.

6. Other factors, not confined to those listed above, 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.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party. The City made a general, but extensive, presentation regarding the finances of the City of Trotwood at the onset of the hearing.

The Fact Finder indicated that he would transmit written findings of fact and recommendations on January 14, 2011. The report and recommendations will be sent by overnight mail on this date, and it will also be sent to the parties, on the same date, by way of electronic mail.

A brief discussion of each issue at impasse and recommendations of the Fact Finder are as follows.

#### NEW ARTICLE, SHIFT ASSIGNMENT

The City proposes to modify the current work week schedule of its road sergeants from four days on and three days off to five days on and two days off. In the past the parties had negotiated the current schedule in a Memorandum of Understanding which became effective on January 1, 2003 and has continued in effect since that time. The City argues that, due to a poor economic climate and budgetary losses, the current system is not cost effective. Sergeants on this schedule average 156 days off each year, and it allows for gaps in coverage. The schedule results in high overtime costs during a period of time in which finances are not available. The City loses 260 shifts per year and 411 hours of work per sergeant. The Police

Chief states the cost of all "time off" costs the city \$88,800.00. By moving to a five day on two day off schedule, this cost would be reduced to \$56,000.00. The change and cost savings would result in the equivalent of an additional employee in a department which has lost a number of sergeants over the past years due to the financial condition of the City. There were eight sergeants in the bargaining unit when the Memorandum of Understanding was negotiated and signed in 2003. There are currently six sergeant positions on the table of organization with one occupied by an employee on an extended leave of absence. In reality there are only five working sergeants in the department at this time, and a 4/3 schedule does not allow for an efficient operation with a small compliment of employees who are so assigned. The current schedule requires 25% more personnel which results in automatic built-in overtime costs. One sergeant must be assigned to each shift. In order to staff each shift within a week, 5.25 sergeants are required. The City is forced into an overtime scenario. The City must budget \$107,000.00 for overtime due to the current system. A change to a 5/2 shift schedule would require 4.2 sergeants to operate. Costs will be reduced and the financial burden on the community will be relieved. The City illustrates the cost savings in its exhibit, 6 (E). The bottom line is that the current system requires weekly overtime when the City continues to face a fiscal shortfall.

The Union states that the current system was negotiated by the parties and was actually brought forward by the City. It is therefore fair to maintain status quo and allow the Memorandum to continue in effect during the term of the new collective bargaining agreement. Overlapping hours are helpful to the sergeants in order to maintain good communications and order. This is the first time the City has proposed to make such a change since the MOU has been in effect. If the proper compliment of sergeants was maintained by the City, the current system would be more efficient. The City must bring the staffing level to a reasonable level. In a community, which deals with a high crime rate, the City must improve staffing levels of the department. Bargaining unit employees faced a wage freeze in 2009 and other concessions. This is not the time to modify the schedule which would have a negative impact on the road sergeants. Funds are available to maintain the current schedule. The income tax fund is stable. It is important that status quo be maintained during the term of the new Agreement.

**RECOMMENDATION:**

During the City Manager's comprehensive presentation regarding the fiscal condition of the City of Trotwood (more on this during the discussion surrounding wages), it was noted that the City will meet revenue projections for 2010, and income tax levels have stabilized. There is also a carryover of \$1.3 million in reserves, and this is projected to increase to \$1.8 million by

the end of the 2011 fiscal year. The City's balanced budget is predicated on additional negotiated concessions from the bargaining units later this year or utilization of the reserve fund. The current shift schedule was negotiated by the parties, and it requires agreement on both sides to move to the City's proposed 5/2 alignment. It is not clear what concessions, if any, may be requested by the City later in the year. Therefore it is not advisable to modify the work schedule of the road sergeants at this time. **Maintain the MOU and status quo.**

#### ARTICLE 24, INSURANCE

The City proposes to modify the provisions of Article 24 in the Road Sergeants collective bargaining agreement regarding health care premium cost sharing. Currently the Agreement provides that the City pays 90% of the premium while employees pay the remaining 10%. The City's proposal states that the 90/10 split will continue during the first year of the new Agreement and then move to an 89/11 split in the second year of the Agreement and 87/13 in the third year. The cost savings in the second year of the Agreement will be approximately \$700 for six sergeants. With escalating costs of health insurance and reduced city revenues, the City argues that it is reasonable to expect employees to pay more for health insurance although its proposal is not extreme. The major factor is that all other employees of the City of Trotwood are on the schedule of premium cost sharing that is proposed for road sergeants including patrol officers, fire fighters and EMS employees, and all non bargaining unit employees of the city. The Fact Finder must take into consideration these internal comparables.

The Union states that the City paid 100% of the cost of health insurance for employees for many years. Then in 2005 the Union agreed to the 90/10 split in order to provide relief to the City due to fiscal issues. The Union also agreed to a lump sum payment in 2003 as opposed to an across the board percentage increase to again do its part in responding to the City's fiscal issues. Now the City is asking for an increase in the employees' share of the health insurance premium following a wage freeze and other concessions. When the Union agreed to the 90/10 split, the cost to employees was offset to a degree by a wage increase. There was no wage increase in 2009, and the City is again asking that employees accept a wage freeze in 2010. The employee share of the premium for family coverage under the "Core Plan" was \$109.72 per month in 2009. This has increased to \$153.08 in 2011 (See Tab 10, Union Exhibits.). There has been no wage increase to offset higher costs of health care. A \$700.00 savings, as stated by the City, does not justify shifting more of the cost to employees. There is no justification to increase the employee share of health insurance premiums for the duration of the new collective bargaining agreement.

## **RECOMMENDATION:**

Tab 12 of the Union Exhibits is the 2010 SERB "Report on the Cost of Health Insurance in Ohio's Public Sector." This comprehensive document illustrates, in a number of formats, health insurance cost sharing between employers and employees across public jurisdictions and regions of the state. The proposal of the City of Trotwood, in respect to the employee share of the monthly premium, is slightly higher than state-wide and city jurisdiction comparisons, but it is in line with current benchmarks for the Dayton region. It is clear that the City of Trotwood has experienced financial instability, and a proposal to increase the share of employee contribution is not unreasonable based on the formula of the proposal, a three percent increase by the end of the new collective bargaining agreement. Internal comparables are most critical in this case. All other bargaining units have agreed to the City's proposal, and non bargaining unit employees are already on the new schedule. Based on standards elicited in ORC 4117.14 (G), it is reasonable that the road sergeants' collective bargaining agreement reflect the health insurance premium split which applies to all other Trotwood employees. **The City's proposal regarding Article 24, Insurance, is made a part of the new agreement for Road Sergeants.**

## **ARTICLE 22, COMPENSATION**

At the commencement of the hearing, City Manager, Michael J. Lucking, presented a detailed analysis of the financial condition of the City of Trotwood. He presented maps of the city which indicate those properties which are either in foreclosure or certified delinquent. Twenty percent of the tax base in the city is in foreclosure. This substantiates the position of the city that it is not able to pay for wage and economic proposals of the Union. More foreclosures are anticipated in 2011. The city is in the midst of 13.5% unemployment which is one of the highest in the region. City officials are deeply concerned about the possibility of significant reductions in the local government fund which emanates from the state of Ohio which has a large budget deficit. The City currently receives \$600,000.00 from the state and it is estimated that this will be reduced between 30% to 50% in 2011. The City is attempting to increase its reserves to 20% of the overall budget. The City states this is prudent management which is necessary during times of fiscal crisis. \$1.3 million are currently in the reserve fund, and this does not reach the 20% level. The City Manager has submitted the 2011 budget to City Council. It is a balanced budget which is required by state law, but the balanced budget is predicated on a 10% reduction of the Police Department budget. The City will approach the Union in 2011 to discuss furloughs and other cost reductions. The 5 ¾ mill operating levy will be on the ballot for renewal in 2011. The City is concerned about passage in a difficult

economic climate, and its concerns are magnified due to the fact that a number of levies will appear on the ballot this year. To further compound the reductions in revenue, real estate values have been decreased by the County. Trotwood has a significant drop in real estate values, a 4.45% value loss. Tab 8 of the City's exhibits includes the City Manager's letter to City Council which details the city budget for 2011. This communication highlights the loss of property tax revenue and the increase in personnel costs including increases in the cost of employee health insurance. He states that a 10% furlough is assumed with the possibility of layoffs if bargaining units do not consent to a furlough plan. Although the City Manager indicates that there are variables that could cause a balanced 2011 budget to be revisited mid-year, he states that general fund revenues are expected to exceed expenses by \$518,655.00 with this amount being added to the end of year unencumbered general fund balance. The City has contracted with a firm to assist in collecting tax revenues which remain uncollected or are late, and this may increase the revenue stream. The Finance Director, Patricia A. Shively, states that "income tax income is level" for the period. The City of Trotwood maintains a 2.25% income tax. Month to month data regarding income tax collection in 2010 indicate that the City will meet or exceed projected revenues. Tab 7 of City Exhibits illustrates population reduction in Ohio, Montgomery County and Trotwood. The City of Trotwood lost over 2000 residents over the past nine years. This, of course, has an impact on all sorts of revenue streams. Unemployment in Montgomery County is 10.9%, but Trotwood is experiencing an unemployment rate of nearly 14%. Sales tax collections in Montgomery County have been reduced from \$64,734,278 in 2006 to \$58,729,714 in 2009. Again, receipts from the local government fund will certainly be reduced as the state contends with large deficits. Unionized police officers employed by the City of Dayton agreed to significant concessions in 2010 as illustrated by news reports which are attached to Tab 7 of city exhibits. The City of Trotwood may lose \$300,000.00 due to reductions in the local government fund. This may reduce the City's projected carry over from \$518,655.00 to \$318,655.00. The City states that there has been cooperation between the parties in addressing budget shortfalls over the past year, but, again, the 2011 budget calls for a 10% reduction in the police Department budget. There are no funds available for contingencies such as law suits or other unforeseen circumstances. The City argues that it is clear that it does not have the ability to meet wage proposals set forth by the OPBA. The City's proposal is a wage freeze for police officers and detectives for the first year of the reopener and another reopener in the second year. It offers the same proposal for the wage and compensation article of the sergeants' collective bargaining agreement.

The Union states that these negotiations include a two year wage re-opener for police officers and detectives and a successor agreement for the sergeants bargaining unit. Contract years for both agreements commence on August 1 and end on July 31. The wage reopeners are for contract years beginning August 1, 2010 and August 1, 2011. The bargaining units accepted

a wage freeze for contract year beginning August 1, 2009. The Union's wage proposals had been 3% increases for each year of the re-opener beginning on each August 1, but, for purposes of fact finding, the Union's proposals were modified to 3% increases on January 1, 2011 and January 1, 2012. The wage proposals for sergeants is to implement wage increases negotiated for police officers in accordance with the rank differential which is contained in Section 22.1, 7.6% above the top wage of police officers for probationary employees and 15.2% above the top wage of police officers for non-probationary employees. The Union argues that it is significant that bargaining unit employees have received no increase in wages since August 1, 2008. In addition, both bargaining units saw major concessions during the past year (Tab 1, Union Exhibits). Overall, police officers realized a 6.5% decrease in compensation and benefits, and sergeants realized a 6.3% decline. This more than justifies the Union wage proposals over the next two years, and the Union has, once again, made another concession in that it is voluntarily moving its wage increase proposals from the beginning of the contract year to January 1 of each year. Tab 2 illustrates that Trotwood police officer wages are falling behind their peers throughout Montgomery County. Trotwood wages are 93.22% of the county average and 92.79% of the county average for all compensation including wages, uniform allowance, shift differential, longevity and other compensation. The wages of Trotwood's sergeants are 92.44% of the county average and 91.78% of the county average for all compensation (Tab 3). The average annual wage increase since 2000 is 2.7%. This tally includes the 2009 wage freeze and a 0% increase in 2003 when a lump sum payment was negotiated. In 2009 the state-wide average pay increase in Ohio's public sector was 2.15%. The average increase in the Dayton region was 2.17%. The average wage increase among police departments in Ohio was 2.43% in 2009. Trotwood's wage freeze has set its police department employees behind in the state, county and law enforcement comparables (Tab 7). Clearly the Union wage proposals are justified. The Union cites a study by *The Government Finance Officers Association* dated September 1990 (Tab 9) entitled "Unreserved Fund Balance and Local Government Finances." The study makes the following conclusions on page 10:

*As a general rule, local governments should maintain an amount equal to 5 percent of annual operating expenditures. This should satisfy some of the credit rating agencies' concerns regarding the adequacy of resources available for contingencies. Those governments facing greater uncertainty should maintain a higher level of unreserved fund balance. Those governments that maintain an unreserved fund balance above 10 percent of annual operating expenditures should be able to provide appropriate justification for maintaining that level. This in turn will satisfy the concerns of those analysts who consider an unreserved fund balance in excess of 10 percent to be unwarranted.*

The Union argues that the City's attempt to establish an unreserved fund balance of 20% is excessive and unwarranted. A portion of the unreserved funds are therefore available to meet

the Union's wage proposals. The negotiated wage freeze in 2009 and the City's proposals for the next two years will set Police Department employees further behind as increases in health insurance costs have a negative impact on employees and their families. Employees have experienced a 40% increase in the cost of health insurance since 2009. Current police officers, detectives and sergeants are doing more with less. The City of Trotwood has the highest crime statistics of any city jurisdiction in Montgomery County. Due to reduced staffing, current employees have seen their workloads increase significantly over the past few years. The continuation of the wage freeze cannot be justified in this light. The Union argues that its wage increase proposals are justified and should be adopted by the Fact Finder.

**RECOMMENDATION:**

It is clear that the economic outlook is not stable. The rate of foreclosures in the City creates a great deal of uncertainty. Decreases in real estate values and shrinking sales tax collections compound a difficult economic climate. High unemployment in the Dayton region and Trotwood in particular are the result of a major economic downturn and recession. Trotwood is not alone as many political subdivisions in Ohio face the same financial issues and difficult personnel decisions. The Trotwood Police Department has lost employees, and the Union granted significant concessions last year including furloughs. Both parties have worked together in a spirit of cooperation. The City has attempted to increase its reserves to a 20% level, and this is a lofty and commendable goal especially during difficult economic times. While the Finance Officers Association study provides excellent information and benchmarks, its conclusions may be a bit outdated. Issued in 1990, the writers could not have envisioned the economic realities of 2008 to present time. Nevertheless, the \$1.3 million dollar reserves are critical to these negotiations especially in light of the additional \$518,655.00 carry over that is projected by the end of 2011 bringing the reserve total to a potential \$1.8 million. The 2011 budget of the City contemplates a 10% reduction in the Police Department budget. In the letter from the City Manager to members of City Council (Tab 8, City Exhibits), he indicates that furloughs will be necessary in 2011. Notwithstanding that the negotiations for police officers focused on a wage re-opener only, it may have been helpful to both sides if the concessionary proposals would have been discussed in context with the contractual proposals of both sides. This could have occurred during the two off the record mediation sessions. Instead we are left to wonder what concessions may be requested and when they might be effective. The City Manager's letter states further, "If the bargaining units do not agree to a continuation of the furlough practice, in order to balance the City's operating budget in 2011, it will be necessary to fund personnel costs utilizing the unencumbered General Fund balance or utilize layoff's and/or some other method of personnel cost reduction." The Manager admits that the use of the unencumbered balance to fund personnel costs is a possibility. Therefore the City argument of

“inability to pay,” is somewhat flawed. In the conciliation case of 2005, SERB Case No. 04-MED-06-0658, City of Trotwood and OPBA, Arbitrator Frank Keenan noted that the fund balance was \$1,253,325. The City’s argument at that time was that the fund balance would be completely exhausted, at a 0 fund balance level, by 2007. Arbitrator Keenan nevertheless awarded two 3.5% increases for 2004 and 2005 (Tab 6, Union Exhibits). At the current time, income tax collections are stable and may have exceeded projections for 2010, and the City has engaged a tax collection agency which will certainly increase revenues in the future. All of this is not to say that the City of Trotwood’s finances are in great shape. They are not as evidenced by the City Manager’s presentation at hearing and budgetary data provided as exhibits. It is also unclear at this time what concessions, if any, the Union may be asked to consider later in 2011. It is significant that the Union agreed to a number of cost saving features, including furloughs, last year and agreed to a wage freeze in 2009. Health care costs have increased at the same time. The City proposed another wage reopener on August 1, 2011 for patrol officers and detectives as opposed to a negotiated increase or wage freeze. Based on the amount of time devoted to continuing re-openers and the cost of negotiations and the potential for fact finding and conciliation, it is recommended that both years of the wage re-opener be resolved at this time. The scenario of continued re-openers does not create a positive labor management relationship. In light of the continued unstable financial condition of the City of Trotwood but also based on the ability to utilize a small portion of the unencumbered reserves, the recommendation regarding compensation is as follows. **Employees in both bargaining units will receive a lump sum payment of \$500.00 effective immediately. Effective January 1, 2012 patrol officers and detectives will receive an across the board wage increase of 2%. Sergeants’ wages will be implemented pursuant to Article 22, Section 22.1 of the new collective bargaining agreement effective January 1, 2012. A wage re-opener for the sergeants bargaining unit will be in place for the third year of their new collective bargaining agreement, August 1, 2012.** With no roll-up costs involved, the lump sum payments will cost the City approximately \$15,000.00 in 2011, a figure which is affordable in light of the carry over and additional unencumbered funds projected within the 2011 budget. Again, based on budget projections by the end of 2011, the cost of a 2% wage increase is within the City’s ability to pay.

#### SUMMARY

After review of all facts presented to the Fact Finder and having given consideration to the positions and arguments of the parties including all exhibits and presentations by representatives of the City and Union and to the criteria enumerated in ORC 4117. 14 (G) (a-f), the Fact Finder in this matter recommends the provisions as contained in this report. In

addition, the withdrawal of certain proposals, which occurred during mediation sessions, is incorporated in this Fact Finding Report and Recommendation. Any and all tentative agreements, which were reached between the parties during negotiations, are also incorporated in the Fact Finding Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 14<sup>th</sup> day of January, 2011.

A handwritten signature in black ink, appearing to read "Thomas J. Nowel", is written over a solid horizontal line.

Thomas J. Nowel  
Fact Finder

**THOMAS J. NOWEL**  
**ARBITRATOR AND MEDIATOR**  
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January 14, 2011

Kenneth L. Edsall  
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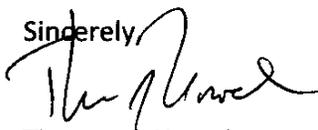
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Re: City of Trotwood  
and  
Ohio Patrolmen's Benevolent Association  
10-MED-05-0777  
10-MED-05-0787

Dear Mr. Edsall and Mr. Hegedus:

Enclosed is one original copy of the Fact Finder's Report and Recommendation in the cases as captioned above. I have also included an original copy of my billing. An electronic copy of the Report and Recommendation was sent to each of you on the date of this letter. I enjoyed working with the parties and appreciate the attempts to mediate. It was my pleasure to serve both parties in this matter. Thank you.

Sincerely,



Thomas J. Nowel  
Fact Finder

c: J. Russell Keith, General Counsel  
State Employment Relations Board



el, Arbitrator  
Street  
  
14113



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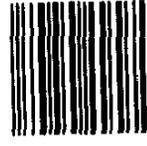
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**FIRST CLASS MAIL**

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