

STATE EMPLOYMENT RELATIONS BOARD

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STATE EMPLOYMENT
RELATIONS BOARD

In the Matter of the Fact-Finding between

2012 JAN 26 P 2: 00

CITY OF OLMSTED FALLS, OHIO

FACT-FINDER'S REPORT

-and-

SERB No. 10-MED-10-1535

**OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION**

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FOR THE CITY:

**SUELLEN OSWALD, Esq.
EDWARD H. CHYUN, Esq.
JEFFREY J. MOYLE, Esq.
Littler, Mendelson, P.C.
1100 Superior Avenue, 20th Floor
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FOR THE ASSOCIATION:

**DANIEL J. LEFFLER, Esq.
Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
Post Office Box 338003
North Royalton, Ohio 44133**

DATE OF THE HEARING:

October 19, 2011

PLACE OF THE HEARING:

**City Hall
Olmsted Falls, Ohio**

FACT-FINDER:

**HYMAN COHEN, Esq.
Office and P. O. Address:
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Cleveland, Ohio 44122
Tel: 440-442-9295
Fax: 440-442-8167
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The hearing was held on October 19, 2011 at City Hall, Olmsted Falls, Ohio before HYMAN COHEN, Esq., the Impartial Fact-Finder, selected by SERB, pursuant to Ohio Revised Code §4117.

The hearing began at 10:00 a.m. and was concluded at 4:10 p.m.

2012 JAN 26 P 2: 00

FACT-FINDING REPORT
[SERB Case No. 10-MED-10-1535]

The **OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**, the "**Association**" represents five (5) different bargaining units in the Police Department of the City of **OLMSTED FALLS, OHIO**, the "**City**". The bargaining units include the full-time Dispatch, the part-time Dispatch, the full-time Patrol and part-time Patrol and the Sergeants' unit.

Historically, the City has engaged in negotiations with the full-time Dispatch and Patrol units at the same time as the Sergeants' unit. The negotiations took place at the same time because the Sergeants' unit has agreed to generally the same terms and conditions as the Dispatch and Patrol units, except for compensation.

The most recent Agreement between the City and Sergeants' unit expired on December 31, 2010. Except for meeting with the City initially, the Sergeants' unit did not engage in parallel negotiations with the Dispatch and Patrol units. According to the City, the Sergeants' unit represented that they would accept the same terms as the Patrol unit, along

with the wage differential; but it failed to do so. Collective bargaining has resulted in successor Agreements for both the Dispatch and Patrol units, effective August 22, 2011 through December 31, 2013.

The City provided a one percent (1%) ratification signing bonus to the Patrol and Dispatch units that entered into Agreements; the Sergeants' unit was offered the same one percent (1%) ratification bonus, but apparently rejected it. It should be noted that the Patrol and Dispatch units accepted the same proposals offered by the City that are being offered to the Sergeants' unit in this fact-finding dispute.

During negotiations, the City and the Sergeants' unit reached tentative agreement with respect to various Articles [Articles 8, 18, 21, 22 and 23]. Except for the unresolved issues which are involved in this fact-finding dispute, the parties agreed that the provisions of the previous Agreement shall continue to remain the language in the successor Agreement. Currently, there are three (3) bargaining unit members in the Sergeant's unit.

Since the parties have reached an impasse in negotiations, the parties have resorted to fact-finding. Pursuant to the

procedures of the State Employment Relations Board, or “SERB”, Hyman Cohen was appointed as Fact-Finder.

On October 19, 2011, a fact-finding hearing was held at Olmsted Falls City Hall in Olmsted Falls, Ohio. The City was represented by Edward H. Chyun, Esq. and Jeffrey J. Moyle, Esq. of the law firm of Littler, Mendelson, P.C., located in Cleveland, Ohio and the Association was represented by Daniel L. Leffler, Esq., of the Ohio Patrolmen’s Benevolent Association, located in North Royalton, Ohio.

BACKGROUND

Olmsted Falls, Ohio is a charter city with approximately 7,900 residents. The City employs 38 full-time and approximately 60 part-time employees. The staffing of the Police Department consists of the Chief, two (2) Lieutenants, three (3) Sergeants, four (4) Patrol Officers, six (6) Dispatch and eighteen (18) part-time personnel.

Since the City’s demographics are heavily residential, the majority of the City’s revenue is derived from income taxes and property taxes. I take constructive notice that real estate values around the country have sharply decreased thereby causing

serious problems for states and cities to meet the required expenditures to serve the needs of its citizens.

In addition to some income derived from building permits, the General Fund for the City derives its revenues primarily from income taxes and property taxes. The County Auditor's office has informed the City that it anticipates property values to decrease during the next round of audits in 2012 and implemented the following year (2013). Moreover, due to a change in the law, the City would no longer receive estate tax revenues from the State.

The City's operating budget for 2011 is approximately \$5 million. The City's 2011 total expected revenue is barely expected to exceed the total budgeted expenditures by \$1,180.

Evidence was established that the Ohio Department of Taxation has notified the City that in 2012 the Local Government Funds that the City will receive from the State will decrease from \$202,000 to \$93,000. The City also points out that a recent flooding at City Hall has caused the City to incur an additional \$25,000 of unanticipated expenses, representing the insurance deductible for 2011.

Based upon a document entitled “Department Budgets for the General Fund”, the City’s Finance Director testified that the City will operate at a deficit this year because expenditures will exceed its revenue by approximately \$250,000. According to the City, there is slightly over \$750,000 in its reserve funds. Should the City continue to spend \$250,000 over and above the revenue it collects, the reserve fund will be depleted in a few years. The City indicates that it is required to generate additional revenue or reduce its expenditures, which means layoffs and/or reductions in service.

POLICE DEPARTMENT’S BUDGET

The City’s Police Department’s budget for 2011 is estimated to be \$1,463,591. In reviewing the Police Department’s actual expenditures for 2008, 2009 and 2010, the wages and benefits accounted for approximately 80% of the Department’s total budget.

A small portion of the Police Department’s operations is funded by two (2) property tax levies – a 1.5 mil general purpose levy is estimated to generate \$257,000 in 2011 (Fund 107); and a 0.3 mil levy dedicated to police pension

contributions is estimated to generate \$61,000 in 2011 (Fund 116).

The two (2) levies will generate a total of \$318,000 and the Department's expenditures for the year are \$1,463,591. This leaves a shortfall of \$1,145,591 that the City must provide from the General Fund. In 2010, the General Fund's contribution to the Department's budget was approximately \$1,223,951.03. Thus, the City has expended monies above and beyond those monies specifically dedicated to the Department to maintain services.

By law, the City's General Fund must be balanced; a budgetary deficit cannot exist at the end of the year. When a budgetary deficit occurred in 2010 by approximately \$370,000, the City resorted to utilizing reserve funds to balance the budget.

Such reserve funds, however, are limited. If the City is required to dip into reserve funds to make up the anticipated \$250,000 budget shortfall, the reserve fund is in danger of being wiped out. At the end of 2010 the City had approximately \$748,000 in reserve funds; as the Finance Director testified, if the City continues at its current pace, it will become insolvent within the next few years.

THE ASSOCIATION'S POSITION

The Association claims that it does not seek any increase in benefits; rather, it seeks to maintain the status quo. Referring to the U.S. Census data for 2010, among the two (2) municipalities in Northeast Ohio which had increases in population over 10% were Broadview Heights (21.5%) and Olmsted Falls (13.5%).

It is true that the City had an increase in its population of over 10%; but the increase was over a ten (10) year period, from 2000 to 2010. When the increase occurred was not disclosed – in one (1) year, a few years, gradually, or over the ten (10) year period. I find the increase in population not helpful in this fact-finding dispute.

Moreover, the Association claims that from 2009 there has been an increase in the City's total net assets of \$5,709,199. Income taxes have remained steady for the past several years. Testimony by the City's Financial Director indicated that there will be an increase in income taxes for 2011.

The Association relies upon the City's net assets while indicating that the City's fiscal health is sound during these

financially difficult years in this country. However, as the 2010 audit for the City indicates, “capital assets represented 66.32% of total assets”. Such capital assets “include land, construction in progress, buildings, improvements other than buildings, machinery, equipment and vehicle and infrastructure * * these capital assets are used to provide services to citizens and are not available for future spending”. Clearly, capital assets cannot be used to pay for the bargaining demands of the City’s employees.

The Association points out that while the General Fund expenses exceeded revenues in 2010 by \$373,638, the audit statement indicates that expenses exceeded revenues by some \$50,000 less or \$324,679. However, the City’s final budget appropriations for 2010 anticipated a deficit of \$625,940. Thus, when compared to the final budget, the General Fund exceeded the budget by \$345,679.

The Association indicated that the unreserved General Fund balance at the end of 2010 was \$1,308,785 which took into account the \$324,679. The Association goes on to claim that the General Fund’s liquidity and viability is the ratio of the General Fund balance compared to Fund expenditures. The general rule

of thumb, according to the Association is that a ratio of 15-20% is good; the City's ratio, however, is 32.4%.

The City also claims that the anticipated deficit for 2012 is \$240,546 which has been prepared by the Finance Director. The deficit is based upon estimated expenditures recommended by each Department and therefore constitutes a "wish-list".

I cannot conclude that the City's budget for the 2012 was arbitrarily inflated. Granted, that Departments generally request more than what may be actually required to meet anticipated expenses; but as the City indicates, if the expenses were frozen, the reduction in State funds would nevertheless cause a deficit of close to \$100,000 in 2012.

In addition, the City passed two (2) levies which have been previously referred to [Police Levy and Police Pension]. These levies are anticipated to generate approximately \$318,000 in 2011. These funds, the Association states, are specifically designated for the Police Department and will help to offset the previous cost to the General Fund.

However, for 2011 the Police Department's projected expenditures are \$1,463,591; this leaves \$1,145,591 with which the City must fund the Department from the General Fund. It

should be noted, that the 0.3 mil levy can only be used to pay the pension fund for the Police Department. The revenue generated from this levy (\$61,000), however, does not even cover half of the actual pension costs of \$141,035 for the Police Department.

CITY'S NEGOTIATIONS WITH THE ASSOCIATION

Historically, the Sergeants have accepted the same material terms and conditions negotiated by the Patrol bargaining unit, except for the bargained wage differential [higher wages for Sergeants]. Indeed, the City historically bargained with all of the units, or one of them, and all units accepted essentially the same contract with differences in pay and terms allowing for their varied job duties.

It is significant that the Dispatch and Patrol units have already accepted the terms disputed by the Sergeants' unit. Moreover, the Agreements with the Dispatch and Patrol units resulted from collective bargaining with the Association which also represents the Sergeants' unit.

During negotiations with the Patrol unit, the City claims that the Sergeants specifically represented that they would

accept the same terms and conditions negotiated by the Patrol unit, as they have done in past negotiations. The City claims that it negotiated with the Association based on the representation by the Sergeants. These considerations, in the view of the Fact-Finder, weigh heavily in considering the recommendations on the unresolved issues.

UNRESOLVED ISSUES

1. Uniform Allowance

POSITION OF THE CITY

The City provides Sergeants with a \$900 uniform allowance. Under the current procedure, Sergeants generally order uniform apparel through a purchase order system administered by the City.

However, the processing of claims for uniform apparel or equipment is time consuming. Testimony at the hearing was that it takes up to five (5) hours a week to process such claims. In order to reduce these administrative costs involving processing claims within the uniform allowance, the City has proposed giving the unit members a cash allowance, which the members can use at their discretion.

However, by directly providing cash payments, there are tax consequences to the recipients. Accordingly, the City proposed a 14% increase in the allowance from \$900 per year to \$1,026 per year, to minimize the tax impact to the Sergeants.

Both the Dispatch and Patrol units have accepted the proposal by the City.¹ The Sergeants' claim that an increase in the allowance is needed to cover the tax costs. It should be pointed out that if thirty-eight (38) cities with similar populations to Olmsted Falls, only three (3) of the cities provide a uniform allowance greater than \$1,026 with the highest allowance being \$1,100, or \$74 more than the City has proposed.

It should also be noted that as a result of an audit, the IRS concluded that the City would be required to issue proper documentation for apparel that can be used off duty, such as boots, gloves, etc. Thus, unit members will be required to pay taxes for these items. Even under the current Agreement the Sergeants will be taxed on these items.

¹. Pursuant to the Patrol Agreement, effective August 22, 2011, the employees receive an annual uniform allowance of \$1,000 [Article 24, Section 4]; under the Dispatchers' Agreement August 22, 2011, the employees receive an annual uniform allowance of \$745. [Article 24, Section 4].

POSITION OF THE ASSOCIATION

Under the current Agreement, the employees are not charged a sales tax, and are able to utilize the amount of \$900 towards uniforms and equipment. Due to the City's proposal to pay the uniform allowance to the Sergeants, they would not realize the full benefit of the uniform allowance on a dollar-for-dollar basis. The Association requests the status quo and opposes the proposal by the City.

RECOMMENDATION

The other Police units in the Department agreed to direct payment of the uniform allowance. The City's proposal is beneficial to the City and helps it to ease the burden of limited staffing resources. As the City states: "* * the Sergeants can either receive \$900 and be taxed on some of the items [as established by the IRS] and cause the City to incur additional expenses, or they can receive \$1,026, and be taxed on this amount and save the City money.

The City's proposal is recommended.

2. OVERTIME

The Finance Director testified that there have been occasions when the Police and Fire Department employees were abusing the use of paid time off, vacation, compensatory time, personal, sick and earned time. For example, consider an employee's work week to be between June 26 (Sunday) and July 2 (Saturday). The employee takes off ten (10) hours for sick leave. The employee works only thirty-six (36) hours but seek overtime pay for six (6) hours beyond forty (40) hours. This scenario actually occurred. The Finance Director said he was able to detect what he considered to be a discrepancy in the time sheet of the employee.

To ensure that these situations do not occur in the future and to establish certainty in how overtime is calculated, the City proposed during negotiations to define "hours worked" for overtime purposes as "hours actually worked".

In order to alleviate any potential confusion with respect to how overtime is calculated when an employee receives premium pay, the City also proposed that there would be no pyramiding of overtime or premium payments. The City is opposed to the Association's claim that the term "hours of work" for overtime purposes should include all paid time, such

as vacation, sick, personal, compensatory time off and earned time.

The City indicates that it is expected to make budget this year by less than \$2,000 (in 2011) and anticipates to be at a deficit of approximately \$250,000 in 2012.

The City has provided similar overtime benefits to its Police Officers as that of its other City employees in order to maintain employee morale. It has provided benefits beyond what is required under law – overtime compensation for working more than 40 hours in a week. Moreover, Sergeants receive overtime compensation in situations beyond what is required under the Fair Labor Standards Act [FLSA]; for example, such as court time, working more than 8 hours in a day.

Although the contracts of Firefighters and Service employees (AFSCME) define hours worked for the purpose of calculating overtime as including non-working hours, the Mayor indicated that the City will be making the same proposal in those negotiations. The City concludes its position by stating that it is operating on a limited budget and will be at a deficit in 2012.

POSITION OF THE ASSOCIATION

Under the current contract, Sergeants receive overtime at (one and one-half) 1 ½ times the base hourly rate. Their overtime is received based upon various circumstances including but not limited to working over 8/10 hours in a (twenty-four) 24 hour period, over forty (40) hours a week, working time that does not abut their shift, working holidays, court time and working Benefit Overtime (an unresolved issue which will be discussed below).

In April, 2011, the City issued a memorandum that vacation, holiday, sick leave, personal time, compensatory time, etc. would not be “hours worked” for purposes of accrual of overtime over 40 hours per week. The Association opposes the City’s unilateral modification of the existing collective bargaining agreement.

The Association proposes to modify the language of Article 19 and to reflect “the practice” prior to April, 2011, by adding the following language to Article 19, Section 1: “Hours of Work” “includes vacation, personal, compensatory time, holiday, sick and earned time”.

RECOMMENDATION

I have given great weight to the Patrol contract negotiated with the City, which is consistent with the City's position in this fact-finding dispute. Article 19, Section 1 of the Patrol contract emphasizes "hours worked" in calculating overtime pay; and "hours paid but not actually worked, will not be counted toward the forty (40) hours in one (1) work week". Furthermore, fact-finding is not the proper forum for resolving an issue of past practice with respect to "hours worked" for overtime purposes which appears to be in dispute.

The City's proposal is recommended.

3. BENEFIT OVERTIME

The City proposed in negotiations to limit "benefit overtime" to 40 hours annually. This benefit is occasioned by another employee's use of vacation, personal or earned time off. When an employee uses such time off, the City will offer the vacant shift to a part-time employee, only after another employee in the unit is offered the shift. The employee filling the shift receives overtime pay for doing so. Under the existing

contract, the maximum amount of benefit overtime is capped at sixty-four (64) hours per year.

The City has proposed reducing the maximum amount of benefit to forty (40) hours per year. By doing so, the City anticipates it will save \$3,316.68 from the Sergeants' unit and \$13,727.88 from the entire Police Department. Although there would be costs incurred for hiring part-time employees to cover these open shifts, the Finance Director estimates these costs to be less than utilizing Sergeants. Moreover, at times, these open shifts are not filled.

The Association estimates that if the City's proposal is implemented the savings amount to \$1,931 rather than \$3,316. The City indicates that where \$2,000 separates it from operating at a deficit or operating under its budget at a surplus, even the savings estimated by the Association would be helpful. It should also be noted that two (2) of the three (3) Sergeants in the unit generally have taken advantage of the existing 64 hour maximum benefit.

POSITION OF THE ASSOCIATION

In other Departments, typically, overtime opportunities are offered to other unit members, based upon seniority. In the City of Olmsted Falls, the vacancies created by an absent officer are filled by part-time employees. The Benefit Overtime provision simply allows Sergeants to have first refusal to fill Sergeant vacancies up to sixty-four (64) hours per year. In addition, the City's estimate of a reduction in savings by reducing the maximum cap to forty (40) hours does not take into account the costs of part-time labor and Officer-in-Charge pay to compensate for the absence of a Sergeant. The annual savings is closer to \$900, which is well within the City's ability to pay.

RECOMMENDATION

In light of the financial problems facing the City, and the shared sacrifices that are necessary, I have concluded that the City's proposal is recommended. Moreover, the Benefit Overtime proposal of the City is consistent with the Patrol and Dispatch contracts.

4. HEALTH INSURANCE

POSITION OF THE CITY

It is well established that health insurance premiums have increased significantly during the past ten (10) years (over 100%). Based upon documentation submitted by the City, the Midwest average monthly employee cost sharing contributions for the 2011 calendar year are \$77 for single coverage and \$321 for family coverage. Compared to these average monthly employee premiums, the City's proposal for a modest increase of contribution rates and caps is fair and reasonable and far below the Midwest average.

The City's proposal provides:

Metro:	2011	2012	2013
	10% (\$95 cap)	10% (\$120 cap)	12% (\$120 cap)

Medical Mutual:

2011	2012	2013
10% (\$95 cap)	10% (\$150 cap)	12% (150 cap)

The City's proposal on the highest family coverage cost for its employees is \$144.50 under Medical Mutual (contrasted with the Midwest Average of \$321) and \$47.60, also under Medical Mutual (contrasted with the Midwest Average of \$77).

The City has already adopted these premiums and caps for the Department's Dispatch and Patrol units and will make the same proposal to the rest of the City's bargaining unit employees (Fire Department and Service employees); and intends on proposing and passing an ordinance adopting the same terms for all of the City's non-Association employees.

The purpose of increasing the maximum caps on the health care contributions (including a higher cap on the premium plan-Medical Mutual) is in the interest of fairness – the employees who utilize the most benefit from the plan should also pay an equal percentage of the plan. It should also be noted that only employees on the most expensive plans – the family plans, would be affected by the increased caps.

It is of some significance that only one (1) of the Sergeants would be adversely affected by the City's proposal – the increase in the cap from \$95 to \$120 or \$150 (depending on the plan). The Sergeant is on the family Medical Mutual Plan and under the City's proposal would be required to pay \$144.50 per month instead of the current cap of \$95 per month.

This Sergeant is currently paying 6.5% of his total health care premiums. Under the City's proposal, he would be

required to pay ten percent (10%) of his health care premiums. If the City is required to meet the Association's health care demands, the City's anticipated deficit for 2012 will increase by approximately \$6,700 which may result in the layoff of public employees. The Association's demand to maintain the status quo which caps the contribution rates at the rates negotiated in 2006 is unreasonable, in light of the extraordinary increases in the cost of health care insurance.

POSITION OF THE ASSOCIATION

Under the existing contract, employees pay 10% of the health care premiums up to \$95 monthly. Since the contract does not provide for a schedule for the employee's cost of co-payments, co-insurance or deductible, employees pay additional costs for healthcare.

Before 2011, the City provided one (1) plan for employees. As of 2011, employees were given a choice of selecting one (1) of two (2) plans – Medical Mutual or Metro Health. The City has proposed to increase the employee contribution rate to 12% in 2013 and to increase the maximum employee contribution in 2012 and 2013 to \$120 for family

coverage under Metro Health and \$150 under Medical Mutual for family coverage. The increase in employee contributions for 2012 and 2013 is almost 30% under the Metro Health and almost 60% under Medical Mutual.

Assuming an 8% increase in premium costs, an employee in the family Medical Mutual plan would have an annual cost of \$1,780 or an increase of \$643 for 2012, and an annual cost of \$1,800 or an increase of \$660 for 2013. The City estimated their premium increases for 2012 at 5%.

The City has realized significant cost savings when it changed plans in 2011. While the City has realized cost savings related to healthcare, the employees are being asked to contribute up to 60% more.

RECOMMENDATION

It is important to point out that if the Association's proposal is accepted, one (1) Sergeant would be the only employee in the City paying less than 10% of his health care costs. Moreover, it is of great weight that the other units in the Department represented by the Association, have agreed to negotiate the terms of the City's proposals in their contracts.

The City's proposal is recommended.

5. LOSER PAYS FACT-FINDER

POSITION OF THE CITY

The City proposes that if the parties proceed to Fact-Finding and/or Conciliation, the losing party shall pay the costs of the Fact-Finder and/or Conciliator.

RECOMMENDATION

It is sufficient to state that if the City's proposal was found acceptable it would interfere with the freedom to engage in collective bargaining; a process which should be free of any such restraint even if fact-finding under Ohio law is essentially advisory. I believe it would be an abuse of a Fact-Finder's authority to recommend the City's proposal.

The City's proposal is rejected.

CONCLUSION

In making the recommendations on the unresolved issues between the parties, the Fact-Finder has considered the factors set forth in Ohio Revised Code, §4117.14 (G) (7).

“(1) Past collective bargained agreements, if any, between the parties;

(2) Comparison of 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;

(3) The interest and welfare of the public, and 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;

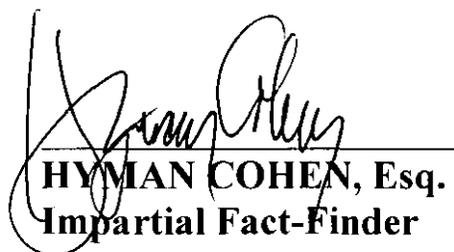
(5) Any stipulation of the parties; and

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.”

As I have previously stated, I have given great weight to the terms of the Patrol and Dispatch contracts (also negotiated by the Association) which have adopted the City’s proposals

with respect to the unresolved issues in this dispute. Moreover, as with most municipalities in Ohio and across the United States, the financial difficulties facing Olmsted Falls is a factor which weighs heavily in my recommendations.

Dated: January 17, 2012
Cuyahoga County
Cleveland, Ohio

A handwritten signature in black ink, appearing to read "Hyman Cohen", is written over a horizontal line. The signature is fluid and cursive.

HYMAN COHEN, Esq.
Impartial Fact-Finder

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January 21, 2012

SERB
65 East State Street
12th Floor
Columbus, Ohio 43215-4213

Attention: Ms. Mary Laurent

Re: Fact-Finding between the City of Olmsted Falls, Ohio
And Ohio Patrolmen's Benevolent Association
SERB No. 10-MED-10-1535

Dear Ms. Laurent:

Enclosed is a copy of the Fact-Finder's Report in the above captioned dispute.

It was a pleasure to be of service to the parties.

Very truly yours,


HYMAN COHEN

HC/cb
Enc.

2012 JAN 26 P 2:00

STATE EMPLOYMENT
RELATIONS BOARD

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Attention: Ms. Mary Laurent

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