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**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF CHARDON

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Numbers:

11-MED-03-0315; 11-MED-03-0316; 11-MED-03-0317

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Kevin Powers, Esq.
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and

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and

James R. Sprague, Interim General Counsel
State Employment Relations Board

65 East State street, 12th Floor
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Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced cases by the State Employment Relations Board on June 22, 2011 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

An initial abbreviated hearing was held on August 15, 2011, and a full hearing occurred on September 6, 2011. Both hearings were held at the Chardon Municipal Center. Prior to the fact finding hearings, the parties engaged in negotiations but then declared impasse. The parties submitted pre-hearing statements in a timely manner. The Fact Finder inquired if the parties were willing to engage in mediation of the issues submitted for hearing. Settlement possibilities were explored in an effort to find common ground upon which to construct a settlement. The discussions were particularly helpful to the fact finder in understanding the unique concerns of each party. Both advocates represented their respective parties in an excellent manner and clearly articulated the positions of their clients on the issues in dispute. The Employer's and Union's position statements are attached to this report, and for purposes of efficiency will be referenced and summarized but not restated in their entirety in the body of this report. The parties requested the Fact Finder to expedite the Report and Recommendation, and there was agreement between the parties that the Fact Finder would write each recommendation without rationale.

The OPBA is the exclusive representative of three bargaining units, and the parties engaged in multi-unit bargaining. The Police bargaining unit is comprised of eight full-time Patrolmen; the Sergeants bargaining unit is comprised of one full-time Sergeant; and the Dispatchers bargaining unit is comprised of four full-time Dispatchers.

Outstanding issues include the following:
Article VIII, Probationary Period (Patrol)
Article XIV, Sick Leave
Article XVI, Holidays (Patrol and Sergeants)
Article XX, Compensatory Time
Article XXIV, Uniform Allowance
Article XXV, Insurances
Article XXVI, Rates of Pay
Article XXVI, Rates of Pay, Section 26.04

Those participating for the Union at hearing include the following:

Kevin Powers, Attorney
Rusty White, Sergeant
Mike Shaw, Patrolman
Debra Talarcek, Dispatcher

Those participating for the City include the following:

Jeffrey C. Miller, Labor Counsel
Randy Sharpe, City Manager
Jeff Smock, Finance Director
Tim McKenna, Chief of Police

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder will be guided by the principles that are outlined in ORC 4117.14 (G) (7) (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 Fact Finder indicated that, by agreement of the parties, the Report and Recommendation would be transmitted no later than September 12, 2011 by way of electronic mail.

ARTICLE VIII, PROBATIONARY PERIOD (PATROL)

CURRENT LANGUAGE:

8.01 All newly hired full-time police officers shall serve a probationary period according to the following schedule.

1. Without previous OPOTC certification 18 months.
2. With previous OPOTC certification 12 months.

EMPLOYER PROPOSAL:

8.01 All newly hired full-time police officers shall have OPOTC certification and serve a 12 month probationary period.

RECOMMENDATION:

The parties reached tentative agreement over this issue in mediation accepting the Employer's proposal.

ARTICLE XIV, SICK LEAVE

EMPLOYER PROPOSAL:

The Employer proposes to eliminate Section 14.12 as it is superfluous language. The Employer also proposes eliminating Section 14.13 which provides sick leave buyout for employees who resign and have not qualified for retirement benefits from a State of Ohio public employee retirement system.

UNION PROPOSAL:

The Union proposes to include “parents” in the use of sick leave for immediate family members and to remove the restriction of dependent children in Section 14.09, and to remove the condition of “requiring the presence at the employee’s home in Section 14.10.

RECOMMENDATION:

The parties reached tentative agreement slightly modifying the Union’s proposal which modifies 14.01 and will eliminate 14.09 and 14.10. The parties agreed to delete Section 14.12

With respect to Section 14.13, the Fact Finder determines that the section shall be removed from the contract.

ARTICLE XVI, HOLIDAYS
(PATROL AND SERGEANTS)

EMPLOYER PROPOSAL:

Modify Section 16.03 (1) so that the Holiday Leave bank is 104 hours.

UNION POSITION:

Maintain current language.

RECOMMENDATION:

Maintain current language.

ARTICLE XX, COMPENSATORY TIME

UNION PROPOSAL:

The Union proposes increasing the Compensatory Time bank from 80 hours to 120 hours and including a provision for comp time cashout.

EMPLOYER POSITION:

Maintain current language.

RECOMMENDATION:

20.01 Employees may accumulate up to one hundred (100) hours of compensatory time to be taken as time off with pay, as stipulated in Article 21.01.

20.02 – 20.04 Current contract language.

20.05 Employees shall have the right to cash out up to fifty (50) hours of accumulated comp time. Such request shall be submitted to the Employer on or before February 1 of each year and such requests will be honored by the last payroll of February.

ARTICLE XXIV, UNIFORM ALLOWANCE

CURRENT LANGUAGE:

24.03 Upon termination of employment, an employee may be required to turn in to the employer the following items.

- 1) any uniform items purchased within one (1) year prior to the termination of employment;
- 2) any equipment purchased within two (2) years prior to the termination of employment;
- 3) any uniforms or equipment issued to the employee by the employer.

The Employer shall make the request for uniform items and equipment to be turned in by the employee in writing, and shall list all items to be turned in.

EMPLOYER PROPOSAL:

24.03 Upon termination of employment, an employee shall be required to turn in to the employer any useable uniforms and equipment either issued to the employee by the employer or purchased by the employee through the uniform allowance. Equipment includes, but is not limited to guns, ammunition clips, taser, holster, body armor, leather, badge, flashlight, etc.

The employer shall make the request for uniform items and equipment to be turned in by the employee in writing, and shall list all items to be turned in.

UNION POSITION:

Maintain current language.

RECOMMENDATION:

Section 24.03 shall be modified in accordance with Employer's proposal.

ARTICLE XXV, INSURANCES

CURRENT LANGUAGE:

25.02 The employer and the Union agree, however, to reopen negotiations on this article if the City is requesting the employees to contribute more than ten percent (10%) of the monthly health and dental insurance premium.

EMPLOYER PROPOSAL:

Modify provision so that reopener occurs if requested contribution is more than 15%.

UNION POSITION:

Maintain current language.

RECOMMENDATION:

Maintain current language.

ARTICLE XXVI, RATES OF PAY

CURRENT COMPENSATION:

The compensation is set forth in Article 26 of each contract and includes a six (6) step compensation package.

EMPLOYER PROPOSAL:

The Employer proposed no increases for the three year collective bargaining agreements. The Employer also proposed that Steps 5 and 6 be removed from the contracts of Patrol and Dispatchers.

UNION PROPOSAL:

The Union proposes annual increases of 3.00%.

RECOMMENDATION:

Steps 5 and 6 will remain in the contracts. A wage freeze shall be in effect from April 11, 2011 through April 10, 2012, and April 11, 2012 through April 10, 2013. Eligible employees will still be entitled to receive step increases.

On or before April 10, 2013, the Employer will provide the Union with the Actual General Fund Revenues generated by the Municipal Income Taxes for the City ("Tax Revenues") for calendar years 2011 and 2012. If the Tax Revenues for 2012 are less than 1.25% greater than the Tax Revenues of 2011, a wage freeze shall be in effect from April 11, 2013 through April 10, 2014 ("Final Year of CBA"). If Tax Revenues for 2012 are between 1.25% and 2.5% greater than 2011, then Employees shall receive a total 1% wage increase for the Final Year of the CBA. If Tax Revenues for 2012 are between 2.5% and 4.5% greater than 2011, then Employees shall receive a total 2% wage increase for the Final Year of the CBA. If Tax Revenues for 2012 are 4.5% greater than 2011, then Employees shall receive a total 3% wage increase for the Final Year of the CBA.

ARTICLE XXVI, RATES OF PAY

EMPLOYER PROPOSAL:

26.04 Original appointments to the position of Police Officer shall be made at the lowest step within the salary schedule; however, the City Manager may make an appointment above the lowest step based on an employee's qualifications and experience. Thereafter, advancement within the pay schedule shall be based on completion of one year of satisfactory service, from the one year anniversary of hiring as a full-time employee or promotion, as determined by performance evaluation. If, in the Police Chief's opinion, an employee's evaluation does not merit a full step increase, the Police Chief may recommend to the Manager for his approval, that the employee be compensated at a rate between steps. However, the aforementioned shall not preclude the Employer from advancing an employee more than one step as determined by performance evaluation at the Employer's discretion.

RECOMMENDATION:

The parties reached tentative agreement over this issue in mediation accepting the Employer's proposal.

SUMMARY

After review of the pre-hearing statements of the parties, all facts presented at hearing and review of pertinent documents and exhibits, the Fact Finder recommends the provisions contained in this report. In addition, the Fact Finder has given consideration to the positions taken by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a – f).

During negotiations, mediation and fact finding, the parties reached tentative agreements on several issues, copies which they have retained. These tentative agreements, on all or portions of articles, and any language recommended to change and/or remain current are all part of the recommendations contained in this report. Any issues or sub-issues not specifically addressed are also intended to remain current language for the purposes of this report.

Respectfully submitted and issued at Cleveland, Ohio this 12th day of September, 2011



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2011, a copy of the foregoing Report and Recommendation of the Fact Finder was served upon Jeffrey C. Miller, Esq., representing the City of Chardon; Kevin Powers, Esq., representing the OPBA; and James R. Sprague, Interim General Counsel, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Fact Finder