

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NOS. 11-MED-09-1140 and 1141**

FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE NO.9

and

THE CITY OF COLUMBUS, OHIO

FACT FINDING REPORT

**Submitted by John F. Lenehan
October 17, 2012**

TO:

VIA E-MAIL

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On April 24, 2012, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of Fraternal Order of Police, Capital City Lodge No. 9 and the City of Columbus, Ohio (Case Nos. 11-MED-09 1140 and 1141). A Fact Finding Hearing was held on June 28 and 29, 2012, at 1250 Fairwood Ave., Columbus, Ohio, and on July 24, 25 and 26, 2012, at 2550 Corporate Exchange Drive, Columbus, Ohio. The Employer's principal representative was Ronald G. Linville, Esquire. Also representing the Employer were Joseph C. Devine, Esquire and Janet J. Lanza, Labor Relations Manager for the City of Columbus. The FOP's principal representative was Russell E. Carnahan, Esquire. Also, representing the FOP was Jim Gilbert, President of FOP Capital City Lodge No. 9.

The parties agreed to bifurcate the hearing. The first two days were dedicated to testimony and documentary evidence relating to wages and insurance. The last three days were to deal with the remaining issues. Prehearing statements were timely submitted for both phases of the hearing. During the hearing the parties called witnesses to support their positions and submitted one hundred and eleven (111) exhibits. A transcript of the hearing was taken and reported by Diane L. Schad and Michelle K. Douridas, Certified Court Reporters, with the firm of Fraley, Cooper & Associates.

As required by SERB's rules, an effort was made by the Fact Finder to mediate the outstanding issues. As a result, the parties reached tentative agreement on Article 1- Definitions, Article 10 – Disciplinary Action and Records, Article 11 – Assignments and Transfers, and Article 37- Duration. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on September 19, 2012. Subsequently, at the request of the Fact Finder, the parties agreed to extend the time for issuing the Fact Finding Report to October 17, 2012.

A. Description of the Bargaining Units

The parties are the Fraternal Order of Police, Capital City Lodge No. 9 (“FOP” or “Union”) and the City of Columbus (“City” or “Employer”). There are two (2) bargaining units of sworn

officers: (1) all full time sworn police officers below the rank of Sergeant (“Police Officer Unit”), and (2) all full-time, sworn police officers holding the rank of Sergeant or above (“Police Supervisor Unit”), but excluding the Chief of Police and the Deputy Chiefs. Both units have traditionally have been bargained together and included under a single labor contract.

There are approximately 1900 members in the two (2) bargaining units. The employees in these units perform duties ranging from patrol and investigations to other specialized functions in areas such as SWAT, K-9, Training, Narcotics, Helicopter, Marine Park, Mounted Unit, Gangs, Freeway Patrol, Strategic Response Bureau, Dive Team, Terrorism Early Warning, and Police Net.

Columbus is the state capital and the largest city in Ohio with a population in excess of seven hundred thousand (700,000). It operates the largest metropolitan police agency in the state. The Columbus Division of Police is comprised of six (6) Sub-Divisions, which include Patrol North, Patrol South, Investigative, Support Services, Homeland Security, and Administrative. Within the subdivisions are more than a dozen different Bureaus and many more Units within the various Bureaus.

B. History of Bargaining

The parties had a Collective Bargaining Agreement with an effective date of December 9, 2008, through December 8, 2011. The City and FOP bargaining teams met on more than twenty (20) occasions for the purpose of negotiating a successor agreement. As a result of these meetings and the mediation during the Fact Finding Hearing tentative agreements were reached on most issues. The unresolved issues submitted to this Fact Finder for findings and recommendations were: 1) Section 20.1 – Wages; 2) Section 20.2 – Members’ Contribution to Pension Fund; 3) Section 25.2 – Maintenance Allowance; 4) Article 35 – Insurance; and, 5) Article 15- Promotions.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

Issue 1

ARTICLE 20, SECTION 20.2

PENSION PICKUP

Since this issue is inextricably linked to the Wage Issue, it will be dealt with first in this Report.

CITY'S POSITION

The City has proposed as part of its overall economic package a reduction in the FOP pension pickup of 1% per year. In the first year of the contract, the City's pension pickup would go from 5.5% to 4.5% after October, 2012. In year two of the agreement, the City's pension pickup would go from 4.5% to 3.5%. In year three of the agreement, the City's pickup would go from 3.5% to 2.5%. The City would seek to have new hires pay their required pension contribution.

The City claims that the FOP opposes any meaningful reduction in the pension pickup. The FOP's position that every percentage point that is removed from the pension pickup should be replaced by a percentage point increase in wages is unrealistic given the reality of the City's budget and the reemergence of the structural imbalance that plagued it prior to the passage of the

City's .5% income tax increase. In addition, the public has recognized, the pension pickup is far too generous a benefit given the reality of the City's budget, the private sector, and the steadily increasing wages of the FOP membership. The public simply will no longer stand for, and the City's budget can no longer tolerate the practice of paying for employees' shares of their retirement.

According to the City, both internal and external comparables support the elimination of the pension pickup. The members of the City's other unions have agreed in their most recent negotiations to eliminate or reduce the pension pickup. The Firefighters agreed to the complete elimination of the pension pickup by October 2014. AFSCME members have previously agreed to a 1% annual reduction in their pension pickup and MCP members have agreed to a 1% annual reduction until their pension pickup is completely phased out.

As to the external comparables on this issue, the City represents that Columbus is the only major city in Ohio that continues to pay a portion of its employee's retirement contributions.

FOP'S POSITION

The FOP has no problem with eliminating the pickup provided there is a corresponding increase in wages to replace the reduction in the pickup. The FOP states that its proposal would allow the City to eliminate the pickup over time. In other words it gives the City what it wants, but does not permit the City to play a game wherein a wage increase is immediately reduced or taken away through a reduction in pension pickup. According to the FOP, the parties in contract negotiations over the past three decades have routinely considered pension pickup to be part of wages. As such, the City knows well that elimination of pension pickup is a straight reduction in pay, and it is not simply the elimination of a "perk" or extra benefit. The notion that the pickup was a "perk" or extra benefit was rejected by Fact Finder Fitts in his report issued December 2, 2009. Fact Finder Fitts concluded that the pension pickup reduction should be offset by increases in wages.

FINDING AND OPINION

It is clear from the evidence, and specifically Fact Finder's Fitts Report that both parties have treated the pick-up and wages as a single item in contract negotiations over the years.

According to Fact Finder Fitts' Report it was made clear from the evidence submitted at a previous fact finding hearing that the origin of the pension pick-up was not to provide the bargaining unit members with a new fringe benefit, but rather to provide them with cash in their pockets in a form other than a wage increase that would receive less scrutiny than a larger wage increase.

The pension pick-ups, in this case, are part of the compensation package negotiated by the parties. A reduction in the pick-up is a reduction in compensation. It had been customary to grant pension pick-ups as part of compensation packages for higher level administrators in school districts and other governmental entities. Likewise, such pick-ups had been more common in police and firefighter bargaining units. For ninety plus percent of public employees, the pick-ups have been non-existent. Recently, however, the pick-ups have been demonized as excessive "perks" granted to public employees. There was no recognition that these pick-ups were negotiated in good faith in lieu of wage increases, and were less costly than an actual wage increase. For these reasons, the Fact Finder concurs with Fact Finder's Martin Fitts statement:

"It is simply unreasonable for the bargaining unit members to pay the draconian price of losing this form [of] compensation in its entirety without receiving a corresponding increase in base wages in return, as that would result in a wage decrease that is simply not justified by the City's current financial situation."

While this Fact Finder believes that it is unreasonable, under current circumstances, to reduce the pension pick-up without a corresponding increase in wages, he finds the City's position compelling as a long-term goal. The reduction in the pension pick-up commenced during the previous contract period should be continued. Since almost a year has passed under what would have been the first year of a new contract term, no reduction in the pick-up should occur for the period commencing December 9, 2011 through December 8, 2012. The continued phase out of the pick-up at 1% per year over the second and third year of the agreement would be appropriate, i.e., December 9, 2012 through December 8, 2013 and December 9, 2013 through December 8, 2014.

Also, the Fact Finder believes the City's position regarding the complete elimination of the pick-up for new hires is appropriate since there would be no reduction in their compensation.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the pension pick-up in Article 20 .2 be amended to read that there will be 4.5% pension pick-up in the second year of the agreement and a 3.5% pick-up in the third year. Further, it is the finding and recommendation of the Fact Finder that effective January 1, 2013, there will be no pick-up of a new hire’s share of the his/her pension contribution. To implement this later finding and recommendation, a new provision, as proposed by the City in its Prehearing Statement should be added to Article 20, Section 20.2 as paragraph (E). That provision is set forth below.

- (E) The provisions of this Section 20.2 shall not apply to any employee hired (initial day of employment) by the City on or after January 1, 2013, or as soon as practical thereafter; and such employee will be responsible for paying the full employee contribution to the Fund. This contribution is a salary reduction employer pick-up and is tax deferred.

Issue 2

ARTICLE 20, SECTION 20.1

WAGES

FOP’S POSITION

The FOP has proposed wage increases of 4.75% effective December 9, 2011; 4.75% effective December 9, 2012; and 4.75% effective December 9, 2013. According to the FOP, this proposal is based upon what it considers to be relevant comparable wage rates from FOP Lodge No 9 bargaining units in the area, which demonstrate that the wage rates for Columbus Police have steadily declined over the past thirteen (13) years in comparison to the majority of law enforcement agencies in Franklin County, Ohio. The wage increases it is proposing are necessary to maintain a rate of pay for Columbus police officers which are competitive with that of their peers within the local law enforcement community.

In addition, it argues that the proposal is supported by overwhelming evidence that the City of Columbus’s budget and economic outlook is stronger than it has been in decades. In

contrast to other local governments in Ohio and throughout the U.S. which are still dealing with reduced revenues, the growth in the City's revenues (both realized and anticipated) is unmatched by any major city in the State of Ohio, and it is significantly better than most cities of its size in the United States.

In support of its position relative to comparable wage rates, the FOP submitted testimony and exhibits that the wage rates of Columbus police officers have steadily declined in relation to the local labor market for police officers. According to the FOP, the wage comparable tables reflect that the police officers employed in other FOP Lodge No. 9 bargaining units have consistently received annual increases that are greater than 2% with the majority increases exceeding 3% per year. This wage data reflects the broader economic data, which establishes that, even with the prevailing economic conditions of the past five years, central Ohio truly is an island of relative economic stability. Thus, attempted comparisons to other governments in other areas of Ohio and the United States are not appropriate in determining the wage rates in this case. Although wages in any profession vary between different metropolitan areas and different states, they are more closely aligned within specific professions within local markets.

According to the exhibits and testimony submitted by the FOP, the bargaining units at the end of the current contract had fallen to twelfth place in the local market. If the 2012 raises were considered for other units, the annual wage rates for Columbus police officers would rank in thirteenth place out of all the law enforcement agencies represented by the FOP in Franklin County. In comparison to the ranking fifteen years ago, this current ranking represents a precipitous decline. The only local police agencies with wage rates that presently are lower than the Columbus Division of Police consist of small municipal and township police departments and the Columbus Regional Airport, all of which have significantly fewer resources than Columbus and the other agencies in the county.

Specifically, concerning the placement of the bargaining units, the FOP submitted at the hearing an exhibit listing the pay increases for the twelve comparable bargaining units represented by the FOP Lodge 9 for the years 2010, 2011 and 2012. The net average of those increases, less any off set for the pension pickup, was 2.27% for 2010, 2.65% for 2011 and 2.58% for 2012. The FOP members working for the City received a 3.5% with a one percent off set for the pension pickup for a net increase of 2.5% effective December 9, 2010 to December 9, 2011.

The FOP points out in its post hearing brief that the average increases mentioned in the aforementioned exhibit are skewed significantly downward by the Hilliard and Bexley

bargaining units that agreed to 0% net increases in 2011 and 2012. Although those units are still at the top of the comparable wage charts, the FOP maintains that they were impacted by outside forces, viz., the threat of Senate Bill 5 which would have eliminated all pension pickup without bargaining. According to the FOP if the zero percent increases for these two units are excluded from the calculus, the average increase would be 2.80% in 2011 and 3.10% in 2012.

The FOP also states that its current wage proposal of \$4.75% per year would not move the Columbus police officers and supervisors back to the top of the local wage comparables in 2012. It would only move them from 13th to 10th in the 2012 wage rankings.

With respect to the City's ability to pay the proposed wage increases of 4.75% per year, the FOP notes that the current economic conditions and outlook for Columbus are excellent. The influx of revenues and the continued growth of the local economy has fully restored and substantially enhanced the City's economic outlook and provided fiscal stability for many years into the future. The income tax increase that became effective in October, 2009 has generated, and will continue to, more than \$100 million dollars per year. In July, 2012 the City began receiving revenues from the casino operations. By the end of 2013, it is projected that the City's total revenue from the State's casino fund will be flowing at a rate equivalent to approximately \$19 million per year. This does not include the additional income that will be created by the 3200 new jobs in the gaming industry. Also, does not include the other new jobs being created in other areas. Hospital expansion projects of more than \$2 billion are expected to result in the creation of more than 8,400 new health care related jobs, and the income tax resulting from this will be more than 8 million per year.

These new revenue from multiple sources ensures financial stability, which is recognized by all major rating agencies. These agencies have given the City the highest possible bond rating.

Based upon the current comparison of the FOP's wages with those of other bargaining units in Franklin County and the City's current and future financial condition, the FOP maintains that the City's proposal is unacceptable. The current proposal is lower than the net 5.5% net wage increase received by the bargaining unit over the life of the expired contract. According to the FOP, the period in which the expired contract was in effect, i.e., from December 2009 through 2011, the City claimed was the worst economic period in decades. As such, the City's proposal plainly is not based upon current or projected condition of the City finances, nor is it based upon relevant comparable wage data.

The external comparable wage data used by the City in the fact finding hearing is an “apples to oranges” comparison states the FOP. The in-state comparisons are readily distinguished from Columbus area based upon significant differences between local economies and local budgets. Likewise, when presenting its list of “national” comparables, the City provided no evidence, other than the list of wage rates, that any of its selected cities are truly comparable. The City avoided inclusion of certain cities with higher wage rates (even if those cities were closer in population to Columbus) and, the City did not know , or offer evidence of, the other types of compensation and benefits that are provided to police officers in its selected cities.

As to the internal comparables used by the City, the FOP argues that the wage increases received by the other City bargaining units that entered into new or extended contracts in 2011 have little value. They are typically discounted by fact finders because they plainly do not offer an “apples to apples” comparison with police bargaining units, especially when the municipality in question is well-funded.

In addition, the wages negotiated with the other City bargaining units occurred under the threat of Senate Bill 5 (“Issue 2”) which would have effectively gutted the collective bargaining rights of Ohio’s public employees. As a result in many jurisdictions across the state, bargaining units scrambled in 2011 to “lock down” their contracts, by accepting lower wages in order to protect other terms and conditions of employment for their members.

The FOP argues that the wage rates negotiated for the City’s IAFF bargaining unit cannot be compared to the FOP for the additional reason that Columbus IAFF members are much more highly compensated than Columbus FOP members in comparison to the local market. For this reason states the FOP, when the IAFF accepted a “concessionary” wage offer prior to the public’s vote on Senate Bill 5, it was in a better position than the FOP to do so. According to the FOP, based upon a comparison of hourly rates, the Columbus firefighters are nearly the highest paid of all local bargaining units.

In summary, the FOP maintains that its proposed wage increase is reasonable, supported by relevant comparable wage rates, and well within the City’s ability to pay.

CITY’S POSITION

The City has proposed the following wage increases.

- 2% for the first year of the contract with a 1% give back on the pension pick-up (Dec. 2011 – Dec. 2012).
- 2% for the second year of the contract with a 1% give back on the pension pick-up (Dec. 2012 – Dec. 2013)
- 2% for the third year of the contract with a 1% give back on the pension pick-up (Dec. 2013 - Dec. 2014)

The City claims that the dollar difference between the wage proposed by the FOP and the City is significant. The City calculates the true cost of the wage increase proposed by the FOP is \$60,405,877, which is \$41,739,250 more than the City's proposal over the life of the contract. The cost of the City's proposal in additional wages paid to FOP members over the life of the contract would be \$18, 666,627.

The City's first argument is that it does not have the ability to finance the FOP's wage proposal. Ability to finance states the City is a question of what is reasonable and fiscally responsible. In support of this proposition, it cites the decision of the Ohio Supreme Court in *Rocky River v. SERB*, 43 Ohio St. 3d 1, (1989), along with other cases. In that case, the Supreme Court explained that the statute was not intended to allow the fact finder to adopt an employee proposal that would spell financial disaster for the public employer.

According to the City, it may not, as a matter of law, spend more money in any given year than it has in available resources as estimated by the City Auditor. The monies approved by the City Auditor for the general operations of the City are placed into the General Fund. The General Fund is the fund from which the vast majority of police department expenses, especially those related to personnel, are paid. It is for this reason that the General Fund is the only relevant fund for the purposes of this Fact Finding. Public Safety forces constitute 68% of the 2012 General Fund expenditures-of which approximately 82% is personnel costs.

Based upon the testimony and exhibits offered by the City during the hearing, the General Fund is supported by the City income tax. In 2012 approximately 75% of all funds deposited in the General Fund were from income taxes. Until 2001, the income tax growth for the City was stable. Beginning that year, the City began to experience unstable, and in some years negative growth in income tax revenues. From 2001 to 2009 the City not only experienced meager and unpredictable growth in its income tax, but also other sources of General Fund revenue also contracted. By 2009 the City's General Fund had lost nearly \$24 million a year in revenue from sources other the income tax. According to the City after making the spending cuts that could be made and based upon the recommendations of an independent economic advisory committee, it asked the voters for a one half per cent (½ %) increase in the income tax.

Although the citizens of Columbus approved the increase in the income tax, such did not result in additional, unallocated funds for the City. According to the testimony of the City's Director of Finance the income tax enhancement simply placed the City at the place it would have been had it experienced the needed five to six percent annual income tax growth each year from 2001-2009. Simply put the tax increase gave the City the ability to again cover its normal expenses without dipping into its savings account. Certainly, the City, states it did not result in excess money that is now available to fund an unreasonable FOP wage proposal.

The City further argued that not only does it not have the funds to pay the FOP's proposed wage increase, but it will be losing General Fund revenue over the life of the agreement. The estate tax has been eliminated by the State of Ohio and will no longer generate revenue for the City in 2013. In addition, the local government fund (which is the City's share of taxes collected at the state level) has been reduced by 25% in 2012 and 50% in 2013. This according to the City will result in an estimated loss of \$50 million in revenue.

According to the City's Three-Year Financial Plan, even the City's own \$18,666,627 proposal will not prevent the structural imbalance from resurfacing in the City's budget. In each year from 2012 through 2014 the City projects General Fund shortfalls ranging from \$29 million to over \$37 million.

The City argued that the testimony of Mr. Woodson-Levey's and the exhibits submitted during his testimony by the FOP should be disregarded for two reasons. First, he used the wrong method of accounting and second he only looked at revenues and did not analyze expenditures. The City utilizes the budgetary method of accounting when building and analyzing its budget, not an accrual method. Second, except for one exhibit, the charts or exhibits submitted and testified to by Mr. Woodson-Levey did not deal with expenditures.

The second argument proffered by the City is that the comparables show that the FOP's Wage Proposal is unreasonable. It claims that the City's external comparables are to be given greater weight than the FOP's. First, the City compared the Division of Police in Columbus to the departments in the five other major Ohio cities. Next, it compared the Columbus Division of Police to departments in a national peer group. There were twelve cities selected based upon geography, population, median household income, operating budget for the Division of Police, number of sworn officers, ration of sworn officers per 1000 citizens, and crime rates. Contrary to the position of the FOP, the City asserts that these comparables indicate that the City's sworn officers are well compensated. They are number one in total salary compared to the five other major cities in Ohio, and number two in salary compared to the twelve other cities nationally.

The city argued that in contrast to the City's comparables, the FOP offered only data from small, suburban jurisdictions and did not include those that fell below the City's salary schedule. Also, the City maintains that since the work of the City's officers is unique and specialized, as testified to by the FOP's President; it is not really comparable to the work of other departments. In addition, the City's Division of Police is far larger than other departments, and there was no evidence submitted in the record on the financial health of the FOP's "Central Ohio Comparables," let alone the revenue sources and a description of the cost expenditures for those jurisdictions. The City also argues that contrary to the FOP's representations, it is clear that the City's wages are competitive with the rest of the local labor market as the City hires officers from the local labor market and routinely has between 1,500 and 2,000 applicants for each new class of recruits.

Finally, the City argues that the FOP's comparable analysis looked only at top step Police Officers and did not analyze the upper ranks of Sergeant, Lieutenant and above. The FOP has acknowledged an 18% rank differential which is high compared to most, if not all Central Ohio jurisdictions.

For all of the foregoing reasons, the City maintains that the Fact Finder should reject the FOP's comparable evidence, and the City's position should be recommended.

FINDING AND OPINION

Based upon the prehearing statements, the exhibits submitted at the hearing, the testimony of witnesses, post hearing briefs and a review of the five (5) volumes of transcripts of the hearing, the following findings are made.

1. Ability of the City to pay the proposed FOP wage increases

The City's position that the ability to pay or finance a wage proposal is a question of what is reasonable and fiscally responsible is persuasive. It is not a question of whether a wage proposal can be paid under any circumstance. Although the City is receiving revenues from an increase in the income tax and receipts from the casinos, other sources of revenue to the General Fund are being reduced or eliminated. Also, while income tax revenues are anticipated to increase from employment at the Columbus Casino and health care facilities, these sources of revenue are purely speculative at this time. The City is confined to living within its budgeted

resources. It has made commitments to the citizens who supported the tax increase to be accountable and to replace services that were discontinued or eliminated. While the increase in the income tax provided needed revenue, it did not eliminate the need to be reasonable and responsible in the expenditure of City revenues.

2. The FOP Wage Proposal is Unreasonable and Fiscally Irresponsible

The FOP Wage proposal is unreasonable and fiscally irresponsible in that it could put the City back into the same pattern that it was in prior to the income tax increase. The City has presented a persuasive case that the 4.75% increase per year would strain the budget and erode most of the revenue from the increase in the income tax. The testimony of the Finance Director Raksoky and the exhibits submitted by the City established that the FOP wage proposal would cost the City \$41.7 million dollars more over the life of the contract than the City's proposal and would eat up all but \$7 million of the total income tax growth projected to take place during the contract term.

Thus, assuming, *arguendo*, that the City could pay the FOP's proposed wage increase; it would not be reasonable and responsible.

3. The External Comparables submitted into evidence are all relevant; however, greater weight is to be given to comparable wages in the surrounding community

While the Fact Finder believes that the wage comparisons of the police officers in Ohio's Major cities and nationally are relevant, what is paid to officers in the surrounding communities is of greater relevance. The surrounding and contiguous jurisdictions is the labor market that the FOP members live and work in, not Cleveland, Ohio or Austin, Texas. This is the labor pool from which the City hires and those applicants compete for positions.

The argument by the City that the local jurisdictions are not comparable is without merit. Certainly, all these local jurisdictions are doing police work. The fact that the Columbus FOP Officers are more specialized and unique does not change the basic nature of the work. In fact, it would support an argument for higher pay scales.

4. **The internal comparables although relevant are not to be given greater weight than the external comparables.**

It is the Fact Finder's opinion that the FOP's argument that Issue 2 (Senate Bill 5) had an influence on the City's bargaining units to make concessions and settle early is persuasive. All the other City bargaining units settled prior to the vote on Issue 2. Had there been no Issue 2 on the ballot there would not have been the unique external pressure for these bargaining units to settle. Thus, while the internal comparables are relevant and normally given greater weight than external comparables, the impact of Issue 2 on settlements of collective bargaining agreements reduces the significance to be given the internal comparables in this case.

5. **Assuming the FOP bargaining wages have fallen behind relative to the historical position of its wages to the wages received by police officers in the surrounding communities and the firefighters in the City, it would be unreasonable to expect a major shift in a single contract term.**

The FOP wage rates falling behind other police departments in the surrounding communities and the fire fighters in the City did not happen overnight and cannot, and should not, be resolved in one year or one contract term. Considering the current economic status, it would be unreasonable to do so.

6. **The City can afford to grant reasonable wage increases**

Although the FOP's wage proposal is unreasonable and fiscally irresponsible, the City can afford a reasonable increase, given the stability and additional revenue from the income tax. It is assumed that the City built into its budget pay increases. Failure to do so would not be fiscally responsible. Based upon the current fiscal condition of the City, a reasonable wage increase would be 2% effective December 9, 2011 without any offset for the pension pick-up; a 3% wage increase effective December 9, 2012 with a 1% off set for the pension pick-up; and, a 4% wage increase effective December 9, 2013 with a 1% offset for the pension pick-up. The total net wage increase would be 7% over three years of the contract. This is in line with wage settlements in the surrounding local communities which averaged a net wage increase over a three year period (2010 through 2012) of 7.5%.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact finder that wages be increased as follows:

- 2% effective December 9, 2011 through December 8, 2012, with no give-back on the pension pick-up.
- 3% effective December 9, 2012 through December 8, 2013, with a 1% give-back on the pension pick-up
- 4% effective December 9, 2013 through December 9, 2014, with a 1% give-back on the pension pick-up

Issue 3

ARTICLE 35

INSURANCE

CITY'S POSITION

The City proposes to: 1) to raise the FOP member's co-insurance contribution from 90%/10% to 80%/20%; 2) align deductibles, office visit co-pays, out-of-pocket maximums, and wellness benefits with that of all other City employees; and 3) increase the bargaining unit members' premium contribution from 9% to 12% over the life of the contract. These changes, according to the City will bring the FOP members onto the same health insurance structure as all other City employees giving the City the opportunity to realize cost savings by competitively bidding out the administration of its health insurance program. In addition, these changes will bring bargaining unit members' cost of health insurance into line with both internal comparables and the insurance market generally.

FOP'S POSITION

The FOP proposes to maintain the current language with only one exception. Specifically, it proposes the following change to Section 35.11 (Premium contribution).

“The monthly insurance premium shall be an amount equal to nine percent (9%) of the negotiated insurance base, but no more than \$75.00 for single contribution and \$175.00 for family contribution.”

The foregoing proposal restores a cap on member insurance premium contributions, which according to the FOP is warranted in view of several factors. First is the City's robust revenue stream and healthy budget. The FOP claims there is presently no budget necessity that would justify a further shift of insurance premiums costs from the employer to employees. Second, the FOP insurance plan continues to out-perform and cost less than other city health insurance plans. In particular, the FOP (with a 9% premium contribution rate) and the IAFF plan (with a capped premium contribution that is currently at \$50 for single coverage and \$125 for family coverage) have experienced lower costs per member than other City insurance plans. Third, the FOP's cap is significantly higher than the amount the FOP bargaining unit members currently pay in premium share, and it is higher than the cap already established by the City-IAFF contract for 2012, 2013 and 2014. Fourth, the restoration of the cap, states the FOP, will give management an incentive to hold costs down; and importantly, it will restore the FOP's ability to negotiate – with certainty- the economic impact of health insurance benefits upon the membership.

FINDING AND OPINION

The City is self-insured and contracts with United Health for the administration of its health insurance plans. It has a separate plan for each group of employees. The cost of health insurance for FOP members is tracked separately from the cost of insurance for employees in all other unions. The insurance costs for each other four unions are also tracked independently. The purpose of the independent tracking is to ensure that the union members only pay a percentage of the insurance costs incurred by members of their union. This structure according to the City creates an incentive for members of each union to keep their unit's medical costs as low as possible in order to minimize each member's premium contribution.

In its first two proposals, the City's seeks major changes in the benefit structure of the FOP Health Insurance Plan. The plan is unique and difficult to administer. United Health has to process many of the claims for this unit manually. This probably adds to the cost of administration, although no evidence was submitted concerning additional costs of administration. Also, the manual processing of claims limits the competition in the market place for bidding the contract for its administration. Apparently, as a result of the manual processing of claims required by the FOP plan, no one but United Health will bid to administer the City's plans. No evidence was submitted as to potential savings that could result from competitive bidding.

While the FOP plan benefit structure is complex and poses some difficulty in administration, it, apparently, is being administered to the satisfaction of the bargaining unit. The plan covers approximately 1900 members and their families. To make major changes in the plan's benefit structure could result in more chaos than currently exists. Such major changes as proposed by the City should be implemented jointly by the parties after considerable consultation and preparation of the bargaining unit members. That has not occurred here. In summary, it is the Fact Finder's opinion that the employer has not submitted sufficient compelling evidence to make any changes in the plan's benefit structure at this time.

However, the Fact Finder finds there is merit in the City's proposal to increase the employee's share of the premium contribution, but not to 12%. The current 9% premium contribution is below the state average for co-pays on health insurance premiums. The other bargaining units and employee groups with the City are paying at least 10% of the premium. Thus, increasing the premium paid by the employees to 10% would not be unreasonable or burdensome.

The FOP's proposal to reinstate a cap on the maximum an employee would be required to pay as a share of the premium should be denied. Although the IAFF bargaining unit may have a cap, such is contrary to the trend in negotiations on health insurance. The problem with the type of cap proposed by the FOP is that it is one sided. It may fix the FOP member's cost, but it exposes the City to considerable liability should health care costs increase. This would certainly not be fiscally responsible for the City. A cap would be fine if the parties could lock in health cost increases for two or three years. This unfortunately has not been the trend in the market. A system that would benefit both parties would be a defined contribution system where the parties agreed to a set dollar contribution for health care premiums for the term of a contract.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact Finder that there be no change in the benefits under Article 35 of the agreement and that effective April 1, 2013 the employee's share of the monthly premium for health insurance increase to 10% without a cap. The following language should be added to Article 35, Section 35.11 of agreement.

Effective April 1, 2013, the monthly insurance premium shall be an amount equal to ten percent (10%) of the negotiated insurance base.

Issue 4

ARTICLE 25, SECTION 25.2

MAINTENANCE ALLOWANCE

FOP'S POSITION

The FOP proposes an increase in the uniform "maintenance allowance" in Section 25.02 of the contract. According to the FOP, while the Division of Police directives concerning uniforms have been regularly amended and expanded to impose numerous specific requirements regarding professional appearance and uniform maintenance, the uniform allowance has not changed since 1999. The FOP states that there should be no debate that the cost of uniform maintenance has increased over the past 13 years; and, as such an increase in the allowance is long overdue. Thus, it proposes an increase from \$850 to \$1250 per year for uniformed members, and from \$1250 to \$1650 for plainclothes members. This proposed increase is comparable to the increase recently granted to IAFF members in their most recent contract extension.

CITY'S POSITION

The City proposes that the current maintenance allowance for uniforms of \$850 per year for uniform officers and \$1200 per year for plainclothes officers be continued. It maintains that

the FOP has not sustained its burden of proof. Also, the settlement with the firefighters was part of a total settlement package that resulted in a net wage increase of 2.25% over three years.

FINDING AND OPINION

Contrary to the City's position there is evidence in the record to support the FOP's claim for an increase in the maintenance allowance. The issue of Maintenance Allowance has been presented in the prehearing and post hearing statements and the comments of council on the FOP's exhibits nos. 30 and 31 submitted into evidence and made part of the record in this case. However, there has been no specific testimony as to the costs to the officers. Also, notice can be taken that there has been inflationary increases in the cost of living and the Consumer Price Index since 1999. Thus, the Fact Finder believes that a reasonable and modest increase is in order.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact Finder that the maintenance allowance be increased by \$100.00 for the term of the agreement to \$950 for uniform officers and \$1,300 for plainclothes officers.

Issue 5

ARTICLE 15, PROMOTIONS

CITY'S POSITION

The City proposes that: 1) the current system of testing procedures for promoting to the rank of Deputy Chief be changed from a "competitive" system to a "non-competitive"

appointment; and 2) the closed book multiple choice phase of the Police Commander exam be eliminated. The City also proposes that when a promotional issue is not addressed in the labor agreement, the Civil Service Rules in effect at the time should govern. Finally, the City strongly opposes the FOP's proposal that minimum staffing levels be required in the promoted ranks through a requirement that vacancies be filed within 15 business days.

As to its first proposal, the City sets forth four reasons for changing the process for promoting to the rank of Deputy Chief from a "competitive" to a "non-competitive" appointment. First, Deputy Chiefs are the executive staff of the Chief of Police and she should be allowed to recommend who she wants for these positions. Second, the majority of comparable cities promote to Deputy Chief by appointment, not competitive exam. Third, all individuals eligible for Deputy Chief position have already passed a competitive exam at three other levels. Finally, Commanders are able to move into the rank of Chief without a competitive exam, but not the lower rank of Deputy Chief, which makes no sense.

The City sets forth the following reasons for eliminating the closed-book multiple choice phase of the Commander's exam. First, the written work sample and oral board portions of the exam adequately and accurately test the skill sets that the City is attempting to assess in potential commanders. This portion of the exam adds little, if any, value to the evaluative process, according to the City. Second, the exam is not job relevant; it simply tests rote memory. Finally, new exams must be developed for each round of promotional testing and the development of these exams is extremely time consuming and expensive.

The City's argues that its proposal that current Civil Service Rules shall apply when the Labor Contract does not address a promotional issue is more reasonable than the current contract provision that the current Civil Service Rules in effect on a specific date set out in the labor agreement control. The FOP's argument that the City's proposed change will subject them to unfair surprise makes no sense because the Civil Service Rules govern only where the agreement is silent. Also, the City argues that the FOP receives a copy of any change in the rules that are relevant, and the FOP is given an opportunity for comment each time an amendment to a Civil Service Rule is proposed.

Finally, the City opposes the FOP's proposal that minimum staffing levels be required in the promoted ranks through a requirement that vacancies be filed within 15 business days. First, the City argues that it is a fundamental right of management to determine when promotions will take place. The City has always had this right, and the FOP has failed to prove that a departure from the status quo is warranted. Second, the FOP's proposal would eliminate the ability of the

City to maintain flexibility in making promotions and filling positions. Third, the FOP's proposal is not justified by a similar provision in the Firefighters Contract because the Division of Police and the Division of Fire are operationally distinguishable. Finally, the FOP has failed to produce evidence that justifies a minimum staffing requirement.

FOP'S POSITION

The FOP argues that based upon the evidence adduced at the hearing the City cannot justify eliminating promotional examinations for the rank of Deputy Chief. Also, the City has not demonstrated a proper justification to modify the Commander's examination from a three-part to a two-part test; and, there is absolutely no need to remove the Civil Service rule "date reference" from Section 15.9 of the contract.

The FOP proposes the following changes to Article 15, Section 15.9. 1) In Section 15.9 (A), it proposes to update the reference to the Rules of the Civil Service Commission from rules in effect on December 8, 2008 to rules in effect on December 8, 2011. 2) In Section 15.9 (B) – (D) the FOP proposes to add new language to the contract that will ensure that promotional vacancies are filled in a timely manner. This language mirrors the language in the City's contract with the IAFF. According to the FOP, the necessity for this language arises from the City's failure to make timely promotions as vacancies occur in supervisory ranks, thereby causing members to suffer a loss of pay and seniority, or lose the opportunity for promotions entirely.

In summary, the FOP states in support of its proposed changes to Article 15, Section 15.9, that the imposition of a fixed period within which promotional vacancies must be filled is inherently fair to candidates on promotional lists. It provides for timely and smooth transitions when promotional vacancies occur, because officers are not left without adequate supervision and existing supervisors are not "spread thin" trying to cover additional duties and shifts outside of their regular assignment.

FINDING AND OPINION

Based upon the testimony at the hearing of Elizabeth Reed and Brooke Carnevale and exhibits submitted into evidence, the City has justified its proposal for changing the procedures for promotion to the Deputy Chief's position from a competitive process to a non-competitive appointment. The City's arguments are persuasive. First, Deputy Chiefs are the executive staff of

the Chief of Police and she should be allowed to recommend who she wants for these positions. Second, the majority of comparable cities promote to Deputy Chief by appointment, not competitive exam. Third, all individuals eligible for Deputy Chief position have already passed a competitive exam at three other levels. Finally, Commanders are able to move into the rank of Chief without a competitive exam, but not the lower rank of Deputy Chief, which makes no sense.

Likewise the City has presented convincing evidence for eliminating the closed-book multiple choice phase of the Commander's exam. The testimony of Elizabeth Reed established that this part of exam for Commander should be eliminated. First, the written work sample and oral board portions of the exam adequately and accurately test the skill sets that the City is attempting to assess in potential commanders. The closed-book multiple choice portion of the exam adds little, if any, value to the evaluative process. Second, the exam is not job relevant; it simply tests rote memory. Finally, new exams must be developed for each round of promotional testing and the development of those exams is extremely time consuming and expensive.

The City's proposal that when a promotional issue is not addressed in the labor agreement, the Civil Service Rules in effect at the time should govern has merit and should be incorporated into the agreement. First, it makes sense to deal with current rules. Second, the rules only apply when there is no contract provision covering the matter. Finally, the FOP receives notice of any rule change, and it has an opportunity to comment. For this reason it should not be at any disadvantage.

The FOP's proposed changes to Article 15, Section 15.9 should be denied. The change in the effective date of the applicable Civil Services Rules has already been discussed. The addition of new sections 15.9 (B) though (D) requiring the filing of vacancies within fifteen (15) days cannot be justified. The determination of when promotions are to be made is traditionally a management right, which has not been given up in negotiations with this bargaining unit. As such, it is a permissive subject of bargaining, which the City could chose to negotiate, but is not required to do so by law. The Fact Finder does not believe he would have the authority to recommend the FOP's proposal. In view of this, the relevance and weight to be given to what has been negotiated with the IAFF bargaining unit is moot.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that:

- 1) the current system of testing procedures for promoting to the rank of Deputy Chief be changed from a “competitive” system to a “non-competitive” appointment;
- 2) the closed book multiple choice phase of the Police Commander exam be eliminated;
- 3) when a promotional issue is not addressed in the labor agreement, the Civil Service Rules in effect at the time should govern; and,
- 4) the FOP’s proposed additions to Article 15 Section 15.9, i.e., (B) through (D) which includes the filling vacancies within fifteen (15) days should be denied.

To implement the foregoing, the language changes proposed by City in its Proposal for Fact Finding , dated July 24, 2012, in Article 15, Sections 15.1 (K), 15.3, 15.7 and 15.9 are incorporated and made a part of this report.

IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted June 28 and 29, and July 24. 25 and 26, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan_____
John F. Lenehan
Fact Finder

October 17, 2012

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 17th day of October, 2012, to the persons named below.

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/S/ John F. Lenehan
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