

Received Electronically @ SERB April 11, 2012
10:32am

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

Date of Hearing
March 22, 2012

In the Matter of Fact Finding Between:

OHIO PATROLMEN'S BENEVOLENT]	SERB CASE NUMBER:
ASSOCIATION (OPBA), EXCLUSIVE]	2011-MED-09-1356
REPRESENTATIVE]	
]	FACT FINDER:
and]	Raymond J. Navarre, Ph.D.
]	
]	
]	
CITY OF AVON, EMPLOYER]	

Date of Issuance: April 11, 2012

The fact finding was held March 22, 2012 at the Avon City Hall starting at 10 am.

INTRODUCTION

The city of Avon is a pleasant community along the I-90 corridor and an elite suburb on the west side of Cleveland. The City has a population of about 21,000 residents.

The Avon Police Department has approximately 26 Officers represented by the Ohio Patrolmen's Benevolent Association (OPBA). The collective bargaining agreement for the Avon Police Department expired December 31, 2011. This is referred to as the "expired contract" or the "former agreement". The language in the expired contract is referred to as the "current contract language". In this report the OPBA will be referred to as the Union and the City of Avon as the Employer.

PARTICIPANTS

The following individuals were participants in the fact finding:

Kevin Powers - OPBA

Eric Bergen - OPBA

Joe Novoselski – OPBA

Sandy Conley - City

Bill Logan - City

Richard Bosley – City

June Mitchell - City

Raymond Navarre – Fact Finder

FACT FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the Fact Finder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

- (1) Past collectively 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 stipulations 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.

ADDITIONAL CRITERIA

In addition to the criteria listed above, the Fact Finder will use Comparables, those submitted, by the parties and other Comparables, when applicable, the parties' position statements, background materials presented, as well as historical and chronological events that have implications in respect to the issues being considered.

FINDING of FACT and RECOMMENDATIONS

The unresolved issues submitted by the Union and the Employer to the Fact Finder will be considered in what follows.

The material presented by both parties for each issue will be noted and discussed. The finding of fact will be presented for each issue, followed by the fact finder's recommendation in respect to that issue. When applicable, the recommended language for the Agreement will be given.

The fact finder's report needs to be considered in its entirety as to the overall effect on the parties and their bargaining positions. In particular, issues having an economic impact need to be considered in totality because one will affect the others.

UNRESOLVED ISSUES

The issues under consideration in the fact finding are as follows.

Issue 1 – **ARTICLE 12 HEALTH COVERAGE/LIFE INSURANCE**

Section 2

Issue 2 – **ARTICLE 16 COMPENSATION PLAN/PROBATION**

Issue 3 – **ARTICLE 17 UNIFORM ALLOWANCE**

Sections 1, 2, and 5

Issue 4 – **ARTICLE 18 WORK WEEK/SCHEDULED HOURS**

Section 4 and 5

Issue 5 – **ARTICLE 19 HOLIDAYS**

Section 4

Issue 6 – **ARTICLE 25 VACATION**

Agreement reached at fact finding - see Article 25 in report

Issue 7 – **ARTICLE 26 UNION REPRESENTATION AND TIME**

Withdrawn at fact finding

Issue 8 – **ARTICLE 35 BARGAINING UNIT APPLICATION OF CIVIL SERVICE**

LAW

Issue 9 – **New Article – PROMOTIONS**

Issue 10- **ARTICLE 36 DURATION**

Issue 11 – **New Article – OVERTIME ROTATION PROCEDURES**

Please note that an agreement was reached on Issue 6, **ARTICLE 25 VACATION** at the fact finding. The participants requested that the results be included in the fact finding report. The results of that agreement are as follows.

ARTICLE 25 VACATION

Section 1. Amount Of Vacation Pay.

Current Contract Language

Section 2. Vacation Scheduling.

- A. During the period of December 1 through December 31 (preference period), employees shall submit to the Employer vacation leave preference requests for the following calendar year. Vacation preference requests shall be awarded based upon seniority and operational scheduling requirements as determined by the Employer.

Vacation leave may be utilized in increments of eight (8) hours per scheduled work day, subject to operational and staffing needs. Requests for less than four (4) hour increments may be granted at the discretion of the Chief of Police.

- B. **Non-preference** vacation requests shall normally be submitted by an employee at least fourteen (14) calendar days in advance of the date(s) being requested. The fourteen (14) day requirement may be waived at the discretion of the Chief. Non-preference vacation requests shall be granted on a first come first served basis. However, in the event of more than one request being submitted on the same day, for the same dates, the employee with the most seniority shall prevail for the dates requested, except that requests for a full week, (seven [7] consecutive calendar days, Saturday through Friday or Monday through Sunday) of vacation, or more, will be given preference, irrespective of seniority.

Section 3. Compensation

- A. Current Contract Language
- B. Current Contract Language
- C. Vacation earned shall be taken within one (1) year from the calculation date, except that each employee shall be able to bank forty (40) hours of vacation time which must be used during the following calendar year. Each employee shall be able to bank eighty (80) hours of vacation time which must be used during the following calendar year.

- D. The vacation calculation date shall be December 31st of each year. All vacations credited in the current year will be calculated on the basis of the months or years of continuous full-time service completed on December 31st of the preceding year. Vacation time will be credited in January and must be used by December 31st of the calendar year in which it is credited, or banked in accordance with the provisions of subsection C. above, or it shall be lost. Employees are eligible for prior service credit for full-time service with the State of Ohio, county, another Ohio city, or a civil service township. It is the responsibility of the employee to obtain and submit documentation of service time from previous employers. Employees shall receive prior service credit commencing within the calendar year the necessary documentation is submitted.
- E. Current Contract Language
- F. Current Contract Language
- G. Current Contract Language

Issue 1

ARTICLE 12 HEALTH COVERAGE/LIFE INSURANCE

The Union’s position is to maintain the current contract language except for Section 2. The language of Section 2 would be as follows. “The City agrees to pay ninety percent (90%) of the premium/contribution costs for health coverage for each eligible fulltime employee enrolled in any of the health coverage plans offered by the City. Employees electing coverage shall pay the remaining 10% through the payroll deduction”.

The Employer’s position is to maintain the current contract language except for two housekeeping matters: (1) In Section 2, delete language referencing provisions that were applicable only within 2006, (2) In Section 7, correct the typographical error that references Article 13, Section 1 to reflect Article 12.

Obviously there are a number of considerations in examining the amount of the employee’s premium/contribution for those who select coverage in the City’s health coverage plans.

One is that all city employees who are covered under the City’s health coverage plan pay twenty percent (20%) of the premium/contribution costs. This is true for six bargaining units in the City as well as the non-bargaining unit personnel.

Another consideration is that a number of comparable units in the area of Avon pay a considerably less amount of premium/contribution (not percentage but cost) for their

health coverage. However, there may be a considerable difference in respect to the coverage.

The City states that between 2003 and 2010, a higher wage increase was given to City employees as the city proactively moved to the 80% for the City and 10% for the employee for cost sharing for health coverage.

The Union included in their material **The 2011 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector**. In that report on page 9, Table 3.2, cities of less than 25,000 residents, the average medical premium is \$460.00 for single coverage and \$1,270 for family coverage. In the same table, the percentage premium paid by the employee is 8.0% for single coverage and 7.5% for family coverage with an average employee contribution of \$38.00 for single coverage and \$94.00 for family coverage.

Obviously the cost for Health Coverage is an important economic concern to both the Union and the Employer. It is the opinion of the fact finder that the contribution of the participants in the City's plan should continue as in the current contract but that an adjustment needs to be made to other economic issues to balance the total economics of the agreement. This will be addressed further in Issue 2, Article 16.

RECOMMENDATION

After considering the arguments presented by the Union and Employer, as well as considering the finding of fact and the statutory criteria, and other considerations, it is the recommendation of the fact finder that the contribution of the participants in the City's plan should continue as in the current contract. However, an adjustment needs to be made to balance the difference found in the comparable wages and compensation to the persons participating in the health care coverage of the City. This will be addressed further in other economic issues in the agreement. The wording of **ARTICLE 12** will be current contract language except for the removal of expired language in Section 2 and the correction of typographical error in Section 7 and will be as follows:

ARTICLE 12

HEALTH COVERAGE/LIFE INSURANCE

Section 1. Current Contract Language

Section 2. The City agrees to pay eighty percent (80%) of the premium/contribution costs for health coverage for each eligible full-time employee enrolled in any of the health coverage plans offered by the City.

The election of single or family coverage rests with the eligible bargaining unit employee.

Each eligible bargaining unit employee electing (single or family) coverage shall pay twenty percent (20%) of the monthly premium/contribution costs.

Section 3. Current Contract Language

Section 4. Current Contract Language

Section 5. Current Contract Language

Section 6. Current Contract Language

Section 7. The Employer and the Union agree that Article 12, Section 1, shall apply in the event the Employer determines it necessary to change health plan providers during the term of this agreement. It is understood that all involved parties reached a consensus in August 1996 to transfer to coverage under the Lorain County Health Plan, and that such transfer includes being subject to any modification and/or changes in coverage and levels of benefits as determined appropriate by the Lorain County Board of Commissioners, or as may result due to a transfer of coverage to a plan other than that provided through Lorain County.

Issue 2

ARTICLE 16 COMPENSATION PLAN/PROBATION

The Union proposes current contract language for Sections 1 and 2 of Article 16. The Union further proposes to amend the Wage Table, Appendix A, to reflect three percent (3%) annual increases for 2012, 2013, and 2014. The Union also proposes that when a patrol officer is acting sergeant (OIC) for any period of time he receives sergeant pay.

Considering the Ohio Revised Code 4117.14 (G) (11) and the need for commencement of economic changes in calendar year 2013, the Employer proposes to maintain the existing rate for 2012, for 2013 a three and one quarter percent (3.25%) increase to the top rate and maintenance to the descending wage scale, and for 2014 one and three quarter percent (1.75%) increase to the top rate and maintenance to the descending wage scale

Both the Union and the Employer presented material to support their position. It was pointed out that the City was in a solid financial position because it controlled spending, contained costs and maintained or increased efficiency. Also, this could not be accomplished without the support and understanding of the Union.

RECOMMENDATION

After considering the presentations of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the wages of the patrol officers shall be increased two percent (2%) each year of the contract, 2012, 2013, and 2014. The increase shall be

based on the wages for 2011 as listed in **APPENDIX A, Section 3.** , page 36 of the current contract. The increase goes into effect the first pay period of each year of the contract, 2012, 2013 and 2014.

In **Section 6, of Appendix A**, the Union proposes that whenever the Chief of Police assigns a Patrol Officer the primary duties and responsibilities of a Sergeant the assigned employee shall be entitled to the base rate of pay for the Sergeants for the period of time served in that capacity.

The Employer rejects the Union's position and proposes that Section 6 of APPENDIX A remain as in the current contract.

Arguments and materials were presented for both sides of the issue.

RECOMMENDATION

After considering the presentations of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the **Section 6** of **APPENDIX A** be as follows.

APPENDIX A Section 6. Whenever the Chief of Police assigns a Patrol Officer the primary duties and responsibilities of a Sergeant for four (4) hours or more the assigned employee shall be entitled to the base rate of pay for the Sergeants for the period of time served in that capacity.

APPENDIX A Section 8. FTO Stipend. Withdrawn at fact finding.

NOTE : APPENDIX A, PATROL OFFICER WAGES should be as follows:

Section 1. Wages for 2012 should reflect a two percent (2%) increase to what was paid in the year 2011 in the current contract.

Section 2. Wages for 2013 should reflect a two percent (2%) increase to what was paid in the year 2012.

Section 3. Wages paid for 2014 should reflect a two percent (2%) increase to what was paid in the year 2013.

Section 4. Current Contract Language

Section 5. Current Contract Language

Section 6. Whenever the Chief of Police assigns a Patrol Officer the primary duties and responsibilities of a Sergeant for four (4) hours or more the assigned employee shall be entitled to the base rate of pay for the Sergeants for the period of time served in that capacity.

Section 7. Current Contract Language

Section 8. Current Contract Language

Issue 3

ARTICLE 17 UNIFORM ALLOWANCE

The Union proposed that three (3) cargo pants, a tie and tie clip be added in Section 1, that Bullet Resistant vests be replaced every five years, and that there is a clarification

that uniform allowances be paid the first payroll in April and the first payroll in September.

The Employer agreed to the additions in Section 1 of ARTICLE 17 proposed by the Union. The additions are: tie, tie clip and three cargo pants.

Discussion occurred concerning the Union’s proposal that the bullet resistant vests be replaced every five (5) years or sooner, if necessary, due to wear and tear. The Employer offered an overview of comparable departments and their policy on replacement. The policies listed vary from ten (10) years to recommended warranty time of the manufacturer with an emphasis on when the vest is unserviceable or the condition of the vest requires replacement.

The Union seeks to have the uniform allowance paid with the first pays of April and September. The Employer is satisfied with the current contract language but if a more specific time is to be defined, the Employer would propose that the payments be no later than the second pay period of the month.

RECOMMENDATION

After considering the remarks of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the language **ARTICLE 17, UNIFORM ALLOWANCE** be as follows:

ARTICLE 17
UNIFORM ALLOWANCE

Section 1. Current Contract Language with the addition of (3) cargo pants, (1) tie, and (1) tie clip.

Section 2. Current Contract language

Section 3. Current Contract Language

Section 4. Current Contract Language

Section 5. Current Contract Language

Section 6. Current Contract Language

Issue 4

Section 4. ARTICLE 18 WORK WEEK/SCHEDULED HOURS

The Union proposes current contract language for Section 4, Article 18 but would have an appendix that contains an overtime distribution procedure.

The Employer would move for a more reasonable method of calculating and compensating for over time and would actually distinguish between actual overtime and

other types of premium pay. The Employer is proposing that overtime be calculated on the actual hours worked. The Employer further feels that compensating officers at a double level for working twelve hours is excessive. The Employer would not have this take effect until 2013.

This is another situation that affects the economics of the agreement and therefore needs to be considered in this light. Considering what has been proposed as to changes in Section 4, Article 18, the fact finder makes the following recommendation.

RECOMMENDATION

The fact finder recommends that **Section 4. ARTICLE 18 WORK WEEK/ SCHEDULED HOURS** be current contract language.

ARTICLE 18 Section 5. WORK WEEK/SCHEDULED HOURS

The Union proposes I Section 5, Article 18 an increase in the amount of compensatory time that may be accrued at anyone time, or used within a calendar year. The present agreement is ninety (90) hours and the Union proposes an increase to one hundred and thirty (130) hours.

The Employer proposes to reduce the amount of compensatory time from ninety (90) to eighty (80) hours. The Employer states that the increase of compensatory time to one hundred and thirty (130) hours would produce an additional one thousand and forty (1,040) additional hours of time off per year.

Again this is a situation that affects the economics of the agreement and therefore needs to be considered in this light. Considering what has been proposed as to changes in Section 5, Article 18, the fact finder makes the following recommendation.

RECOMMENDATION

The fact finder recommends that **Section 5 ARTICLE 18 WORK WEEK/ SCHEDULED HOURS** be current contract language.

Issue 5

ARTICLE 19 HOLIDAYS

The Employer proposes to restructure this article to distinguish between holidays and floating holidays, to make the two floating holidays and the employee's birthday as personal days. The proposed restructuring would address the prorating of designated holiday time and personal time for new hires and employees who have not completed one (1) year of service as of January of the applicable calendar year. If an employee has to work on the actual holiday of New Year's Day, Thanksgiving and Christmas, the Employer proposes premium pay, at one and one-half (1½) the regular base rate of pay for that employee .

In recognition of the loss of about twenty (20) hours holiday premium pay per employee, at half time, the Employer is proposing a stipend of twenty-five cents (\$0.25) per hour.

The Employer further proposes all changes start January 1, 2013.

The Union considers the modifications proposed by the Employer as radical and consequently rejects them.

The fact finder feels that the arguments offered are not sufficient to change Article 19. The fact finder further recommends the changes be retroactive to January 1, 2012.

The Union and the Employer agreed to a change in Section 4 of Article 19. Section 4 of Article 19 will read as follows: Holiday time not used, up to the maximum of forty (40) hours per year, shall be paid in the first pay of December of the applicable calendar year. However, an employee may submit a holiday(s) for pay during the pay period in which the holiday falls, provided notice is given to the City within the applicable pay period. Employees who have completed one (1) year of service or more are expected to utilize a minimum of forty (40) hours of holiday time.

RECOMMENDATION

After considering the input of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the language of **ARTICLE 19, HOLIDAYS** shall be as follows:

ARTICLE 19 **HOLIDAYS**

Section 1. Current Contract Language

Section 2. Current Contract Language

Section 3. Current Contract Language

Section 4. Holiday time not used, up to the maximum of forty (40) hours per year, shall be paid in the first pay of December of the applicable calendar year. However, an employee may submit a holiday(s) for pay during the pay period in which the holiday falls, provided notice is given to the City within the applicable pay period. Employees who have completed one (1) year of service or more are expected to utilize a minimum of forty (40) hours of holiday time.

Issue 6

An agreement between the Union and the Employer was reached at the fact finding on Article 25 Vacation. The parties asked that this agreement be contained in the report. This is included on pages four (4) and five (5) of the report as requested.

Issue 7

ARTICLE 26 UNION REPRESENTATION AND TIME

Article 26 Union Representation and Time was withdrawn at fact finding.

Issue 8

ARTICLE 35 BARGAINING UNIT APPLICATION OF CIVIL SERVICE

The Employer wishes to retain the current provisions of the article. The same or similar provisions are contained in all the City's labor agreements. The Employer sees the Union's proposal as permissive and impinging on the authority and responsibilities of the City of Avon Civil Service Commission as established by the Charter of the City. The Employer also states that the City cannot accept any provisions that would interfere with the rights and responsibilities of the Municipal Civil Service Commission as established by the City Charter.

The Union proposes to delete paragraph B of Article 35 and rename paragraph C as paragraph B.

The fact finder, in studying the positions of the parties involved, concluded that there is not a need to replace or change Article 35 of the current contract. The Employer stated that the same or comparable provisions are contained within all City-wide labor agreements. The issue is that there seems to be a need for discussion and exchange of concerns between the parties, so that there is an equal application of the article to all the City's labor agreements. There must be consistency in the testing, the grading, the lists, the eligibility and all aspects of the promotion process.

RECOMMENDATION

After considering the input of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the language of **ARTICLE 35, BARGAINING UNIT APPLICATION OF CIVIL SERVICE LAW** shall be as in the current agreement and as written below.

ARTICLE 35
BARGAINING UNIT APPLICATION OF CIVIL SERVICE LAW

- A. Current Contract Language
- B. Current Contract Language
- C. Current Contract Language

Issue 9

New Article PROMOTIONS

To quote the Union, the Union does not propose to remove this subject of promotions from the Civil Service Commission altogether. Rather, the Union proposes that how the Commission conducts its business be dictated by the contract rather than be subject to the Commission's oft-changing rules. The Union's proposal is modeled after the relevant provisions of the Ohio Revised Code. The Union proposes the following:

Section 1. Except as stated in this article, vacancies in and promotions to the rank of sergeant shall be handled in accordance with Ohio Revised Code 124.44 and other state civil service laws, where applicable.

(Promotions continued)

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Section 2. Patrol officers must have two (2) years of full-time service with the City of Avon at the time the testing begins in order to compete for promotion to sergeant.

Section 3. Testing shall consist of a written, objective test and an oral assessment, each comprising fifty percent (50%) of the overall test score. Seniority points shall only be added to those who scored seventy percent (70%) or better on the overall test score. Seniority for these purposes includes all time as an OPOTA- certified peace officer. Once an eligibility list is established, promotion shall go to the highest on the list.

Section 4. Testing shall be conducted by the Ohio Chiefs of Police Association or another mutually agreeable entity.

The Employer rejects the Union proposals and is adamantly opposed to abolishing Article 35 or adding promotional provisions that address positions within another bargaining unit and which impinge upon the authority and responsibilities of the City of Avon Civil Service Commission as established by the Charter of the City.

The Employer provided the text of Article VI, Section 3 of the Charter. In essence it says that the Civil Service Commission shall provide by rule for the ascertainment of merit and fitness as the basis for appointment and promotion in the service of the Municipality. The text goes on to say these rules shall establish the basis and method of determination of eligibility, certification, selection, appointment and promotion of candidates for positions in the classified service. Finally, the text says that any rule adopted by the Civil Service Commission, pursuant to the home rule power of the City of Avon, shall supersede the requirements of the general law of the State of Ohio and conform to the requirements of them Ohio Constitution....

Again as stated above, the fact finder, in studying the positions of the parties involved concluded that there is not a need to replace or change Article 35 of the current contract. The issue is that there is a need for discussion and exchange of concerns between the parties, so that there is an equal application of the article to all the City's labor agreements. Also, rules should not change without a clear need for the change.

Another concern the fact finder has is that some of the considerations being offered are management rights and should remain as such.

RECOMMENDATION

After considering the input of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the Proposed New Article, Promotion not be added to the current agreement.

Issue 10

ARTICLE 36 DURATION

The Employer proposes that the Agreement be effective prospectively, (upon ratification /acceptance of a tentative agreement by both parties [date of latest acceptance], the (Duration continued) SERB CASE No. : 2011-MED-09- 1356

acceptance by both parties of a fact finding report [date of latest acceptance at SERB or expiration of seven (7) day time period as applicable] or the date of any final dispute resolution, as may be applicable), and that it terminate on December 31, 2014.

The Union proposes that the Agreement shall be effective as of January 1, 2012, and shall remain in full force and effect through December 31, 2014.

Further, the Union proposes that if either party desires to modify, amend, or terminate this agreement, it shall give written notice of such intent not later than sixty (60) calendar days prior to the expiration date of this agreement. Such notice may be submitted earlier by either party, but not earlier than one hundred eighty (180) days prior to the expiration date.

The parties acknowledge that during the negotiations which resulted in this agreement, each party had unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Employer and the OPBA, for the life of this agreement, each voluntarily and unequivocally waive the right and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this agreement.

The fact finder sees no reason that the contract should be less than the usual three years. The negotiations were on the part of each of the parties, Employer and Union, and therefore it seems that the parties involved should be anticipating that the agreement should be starting where the other agreement ended unless there is an important reason that it starts later than the expiration of the past agreement. The fact finder does not find such a reason and believes that neither part presented such a reason. The fact finder makes the following recommendation.

RECOMMENDATION

After considering the input of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that Article 36 Duration, shall be as follows:

**ARTICLE
DURATION**

This agreement shall be effective as of January 1, 2012, and shall remain in full force and effect through December 31, 2014.

If either party desires to modify, amend, or terminate this agreement, it shall give written notice of such intent not later than sixty (60) calendar days prior to the expiration date of (Duration continued) SERB CASE No. : 2011-MED-09- 1356

this agreement. Such notice may be submitted earlier by either party, but not earlier than one hundred eighty (180) days prior to the expiration date.

The parties acknowledge that during the negotiations which resulted in this agreement, each party had unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Employer and the OPBA, for the life of this agreement, each voluntarily and unequivocally waive the right and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this agreement.

Issue 11

New Article OVERTIME ROTATION PROCEDURES

The Union says that the current agreement make no provision for the distribution of overtime and as a consequence there is always at least the perception of favoritism.

The Union proposes a new article, Appendix C, as follows.

1. The City shall be the sole judge of the necessity for overtime. Non-emergency overtime will initially be offered to employees within the Patrol Officer classification. In offering overtime, the City shall first offer overtime to the employee(s) with the highest seniority and then to the employee(s) with the least number of overtime hours and sequentially thereafter. Overtime will first be offered to officers on the shift immediately preceding the overtime opportunity, and then to other officers not scheduled to work. Overtime will not be offered to employees in paid leave status unless an emergency is determined by the Chief/designee. If sufficient employees do not voluntarily accept the overtime, the City shall then have the right to offer the overtime to other qualified employees and/or to assign the overtime to the least senior employee(s) within the Patrol Officer classification.
2. Insofar as is practical, the City will equalize overtime among employees. Employees who are eligible to be offered overtime and for any reason refuse, are unable to be contacted, or fail to work the overtime shall be credited as if they had worked the overtime for the purpose of overtime equalization. If an error is made and it is brought to the attention of the Chief/designee within fourteen (14) calendar days of the date of the error, the officer who should have been offered overtime will be compensated as if having worked.

3. When an emergency is determined to exist, overtime will be offered or assigned to the officer(s) on shift immediately preceding the overtime need, (Overtime Rotation Procedures continued) SERB CASE No. : 2011-MED-09- 1356

and/or the City may offer or assign any other available patrol officer or qualified employee. An overtime opportunity arising due to the call off of another employee one and one-half (1 ½) hours or less prior to the start of the applicable shift shall constitute an emergency for the purposes of these procedures.

The Employer rejects the Union's proposal to incorporate overtime rotation procedures into the agreement. The Employer says the matter was discussed during negotiations and the Employer indicated willingness to address the matter through the labor/management process. Further the Employer needs to retain the flexibility to adjust the rotation procedures consistent with operation and staffing needs and organization changes.

In reviewing my notes and my tapes, the fact finder did not find much input concerning this issue as such.

The fact finder recommends that both parties use the labor/management process to pursue this issue further. The Employer needs to have flexibility but the Union also needs to be able to deal with any favoritism in the work environment. The fact finder cannot demand either party to address this issue but can suggest that the issue needs to be addressed by both parties together.

The other concern the fact finder has is that the suggested changes by the Union are procedural and not necessarily what should be a part of a labor agreement.

RECOMMENDATION

After considering the input of the Union and Employer, as well as considering the finding of fact and statutory criteria, and other pertinent information, it is the recommendation of the fact finder that the new article, **Overtime Rotation Procedures** not be part of the agreement.

NOTE

The fact finder has been requested to incorporate in his report the prior tentative agreements of the parties which are as follows:

ARTICLE 6	<u>LONGEVITY PAY</u>
ARTICLE 20	<u>SICK LEAVE</u>
ARTICLE 23	<u>DISCIPLINE</u>
ARTICLE 28	<u>ABSENCE WITHOUT LEAVE AND REINSTATEMENT</u>
ARTICLE 29	<u>ON-DUTY INJURY LEAVE</u>
ARTICLE 31	<u>BILL OF RIGHTS</u>
ARTICLE 33	<u>SUBSTANCE ABUSE TESTING</u>

It is proposed by the Employer that any former article not addressed herein, or not previously agreed to, the City proposes the current contract language be incorporated into the successor agreement.

The Employer, the Union and the fact finder agreed that Fact Finding Report be issued on April 11, 2012.

This concludes the Fact Finding Report and Recommendations.

Signed _____
Raymond J. Navarre

Dated April 11, 2012

CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing Fact Finding Report and Recommendations, SERB CASE NUMBER: 2011-MED-09-1356, was sent by e-mail to the State Employment Relations Board, State of Ohio (med@serb.state.oh.us), to Kevin Powers (kpowersopba@sbcglobal.net), and to Sandy Conley (sconley@clemansnelson.com) on the eleventh (11th) day of April 2012.

(signed) _____
Raymond J. Navarre