

**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYEE RELATIONS BOARD  
April 5, 2012**

<b>IN THE MATTER OF</b>	)	
<b>SYLVANIA TOWNSHIP EMPLOYEE, OHIO</b>	)	
	)	
<b>-AND-</b>	)	<b>SERB CASE NO/S</b>
	)	<b>11-MED-10-1491</b>
	)	<b>11-MED-10-1492</b>
<b>OHIO PATROLMEN'S</b>	)	<b>11-MED-10-1493</b>
<b>BENEVOLENT ASSOCIATION</b>	)	
<b>EMPLOYEE REPRESENTATIVE</b>	)	<b>FACT FINDER –</b>
	)	<b>RICHARD F. NOVAK</b>

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**APPEARANCES**

**For the Union**

Justin Burnard,	Attorney for the OPBA
David Shinaver,	Patrol Officer and Union President
Bob Colwell,	Command Officer
Jane Dufendock,	Dispatcher
Michelle Tam,	Dispatcher
Heather Maynard,	Patrol Officer

**For Sylvania Township**

Brenda Meyer,	Attorney for the Township
Robert Boehme,	Chief of Police
John Zeitler,	Administrator
Susan Wood,	Assistant Administrator/Human Resource Director

## ADMINISTRATION

By correspondence from the State Employee Relations Board, Columbus, Ohio dated February 17, 2012, the undersigned was notified of this appointment to serve as Fact Finder to hear arguments and issue recommendations relative thereto, pursuant to Ohio Administrative Code Rule 4117-9-05 (J), in an effort to facilitate resolution of those issues that remained at impasse between the Parties. The impasse resulted after attempts of the parties to resolve the terms related to a 2012 Contract Reopener on the issue of Base Wage Increase for the three bargaining units within this Police Department.

On April 5, 2012 the fact finding hearing occurred at the Township Office in Sylvania, Ohio for approximately 7.5 hours with the presentation of evidence and supporting arguments of the parties. The Fact Finder conducted a mediation session at the hearing.

All relevant evidence and exhibits of the Parties were thoroughly presented. During the course of the Fact Finding Proceedings, each party was afforded a full and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced and cross examine the other party's testimony and evidence. Data obtained from SERB's Research Department by the Fact Finder was also exchanged with the Parties at the hearing. In all, extensive exhibits and information regarding the financial condition of Sylvania Township currently and projected Wage Survey Data and Comparisons of Township's Police, Dispatcher wages were received in evidence and evaluated by the Fact Finder.

The evidentiary record of the proceedings was subsequently closed at the conclusion of the April 5, 2012 proceeding. There were no Post Hearing Statements submitted. The Parties have stipulated that timely notice under the Re-opener provisions

of all agreements have been provided. They also stipulated that the Re-opener provisions apply to base wages for 2012 and 2013 and/or any lump sum payment.

### **The Issue**

The only issue at impasse is the subject of a Base Wage Increase under the 2012 Reopener sought by the Union and Offered by the City. The Union is seeking a 2% Base Wage increase effective 1/1/12 and a \$750.00 signing bonus with a Wage Reopener in 2013. The Township has offered a 1.5% Base Wage Increase effective 1/1/12 and 1/1/13.

### **Statutory Criteria**

The Fact Finders award is hereby arrived at after considering all of the evidentiary information presented and arguments of the Parties; and made in Accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05 (K) which recognizes the following criteria for consideration in the Fact Finding Process:

1. Past Collectively Bargained Arguments, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issued 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. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

**THE THREE BARGAINING UNITS DEFINED, ITS DUTIES**  
**AND RESPONSIBILITIES TO THE COMMUNITY AND**  
**GENERAL FACT SITUATION**

The Units are: The Command (Sergeants and Lieutenants), The Patrol, and the Dispatchers, Secretaries, and Clerks. There are approximately 37 Patrolmen, 10 Command and 17 in the Dispatcher unit employed by the Township.

The Patrolmen provide all security and Law Enforcement services for the Sylvania Township, its citizens, residents, and businesses. The Dispatchers Unit dispatches for both the Police and Fire Departments of the Township. The Employees of all Three Units are represented by the Ohio Patrolmen's Benevolent Association (OPBA). The Parties negotiated the current Labor Agreements which are effective January 1, 2011 through December 31, 2013. In settling the current contract, the Parties agreed upon a 2% increase in Base Wage in 2011 and \$750.00 Signing Bonus. However, Reopeners of the contracts for the issues of: "Base Wages (Article 24) or Insurance (Article 25)" were provided in the agreements which gave either Party the option to Reopen for years 2012 and/or 2013 on a timely notice basis. The Contract Provision provided that any reopener would involve the dispute settlement procedure as set forth in ORC Section 4117.14

For the sake of the record and in the interest of not having a 100 plus page Fact Finder's Report the Fact Finder, by reference, includes all of both parties' Exhibits presented at the Fact Finding hearing of April 5, 2012. See Exhibit 1 Attached, "Summary of Exhibits Submitted".

The Fact Finder in “The Conclusions” sections, of this report will comment on or summarize the salient data of the aforementioned exhibits as factual support of his Findings, so that:

1. The Parties are aware of the data that drove the Findings and,
2. If a conciliator needs information upon which to base his/her findings, this award’s Findings are supportable by the Parties Exhibits/Facts and the Fact Finder’s rationale.

### **RELEVANT ISSUES PRESENTED TO THE FACT FINDER**

#### **AND CONCLUSIONS**

As stated earlier on Pg. 3, The Sole Issue of Impasse between the Parties is: “What is the Appropriate Wage Increases sought by the Union and offered by the Township under the 2012 Wage Reopener”.

#### **THE UNION’S TESTIMONY**

The Union, as the Moving Party to Reopen Article 24 – Wages for all three Collective Agreements presented the following in support of their Proposal of Settlement.

- Sylvania Township is a financially sound entity and in the case of Fiscal Year 2011 managed all departments’ expenditures to be under their respective budgets and specifically in the case of the Police Fund (Budget) controlled expenditures to 88.3% of budget for 2011. This contributed to the increase of Police Fund surpluses going into 2012. In addition to Union exhibit 2, tabs 2,3,4 ;

evidence submitted by the Township, Employer (Exhibit 2 Police Fund) and (Exhibit 3 General Fund) support, the above conclusion by the following historical summary of year end Fund Balances and Budget Projections for 2012.

**Ending Balance**

	<u>2010 (actual)</u>	<u>2011 (actual)</u>	2012(budget)
Police Fund	\$3,546,057	\$3,716,187	\$3,992,306
General Fund	\$5,856,496	\$6,108,856	\$5,686,914

- The Township could have accrued an even greater Police Fund surplus had they acted in 2010 and 2011 to collect via property tax statements, the Police tax levy which approximates \$630,000 per year of uncollected tax revenue. This assertion of failure to collect revenue for the Police Tax Levy was confirmed by testimony from the Township Administrator Mr. John Zeitler.
- There are also Sub Funds in 2012 related to Law Enforcement functions. that have Positive Cash Balances totaling approximately \$168,337. These Funds Are: Drive Law Enforcement Fund, Federal Law Enforcement Fund, and Grant Fund II – Police Department. This is supported by Union Exhibit 2 Tab 4 “YTD Fund Report Summary Unaudited Jan-12”. These funds further add to Police fund surpluses for use as Wage Increases.

- There is also approximately \$200,000 additional available from the Fire Department Budget to compensate for the expense of Dispatching Fire Department Personnel. The Dispatching department is a part of the Police Department Budget. This added surplus is supported by Union Exhibit 2, Tab 8 testimony by Jane Dufendock, Dispatcher and corroborated by John Zeitler, Township Administrator. These Funds could further add to the Police Fund Surplus for use as Wage Increases.

### **FACT FINDER'S CONCLUSION**

*Based upon the Unions testimony, exhibits submitted, cross examination and corroboration by Township witnesses during the hearing. The Union has shown that Factor 4117-9-05 (k)(3)*

*“...The ability of the Public Employer to Finance and Administer the issues Proposed and the effect of the adjustments on Normal Standards of Public Service” has been met.*

*This conclusion is further supported by Township Counsel’s statement: “That they (township) are not arguing “Inability to Pay/Finance in furtherance of their positions in this hearing”.*

*The Fact Finder Points out that while proving “Ability to Finance” is a critical Factor under 4117 -9-05 O.R.C., it is not the only factor or necessarily “The Factor” which determines “How Much of an Adjustment” is “Appropriate” for the Fact Finder to Support.*

*O.R.C. 4117-9-05 (k) (1-6) requires the Fact Finder to consider all of the following factors in making a determination of the parties’ position.*

1. Past Collectively Bargained Arguments, if any, between the Parties;
  2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issued 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. Any stipulations of the parties;
  6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.
- The Union next presents evidence in its Exhibit 2 Tab 7 of other Labor Settlements in the area. Specifically the Toledo Police Offices New 2012 Three year Agreement. Additionally the Union refers to the Serb “Employment Relation Board Clearinghouse Wage Increase Report” dated February 3, 2012. Both documents show a Range of 2012 and 2013 wage increases of 1.0% to 3.0% recently negotiated in other agreements. However, it must be recognized that notwithstanding, the Toledo Police settlement of 2.5% and 3.0% wage adjustments in 2013 and 2014 respectively and a \$1500.00 lump sum in 2012 and \$1000 lump sums for 2013 and 2014; such officers also lost their Employers Contributions to their pension plan and incurred added health care contributions equaling an average cut of \$8600 in take home pay over the life of the contract.

#### **FACT FINDER’S CONCLUSION**

*Accurate Wage adjustment comparably is an analysis of at least three components of:*

1. *The absolute wage rate*
2. *The size of adjustment(s)*
3. *Other economic elements of the agreement (eg. Vacation pay, longevity pay, Premiums, Allowances, Benefits etc).*



*Other relevant factors also include*

- 1. Historical contractual increases, freezes, or concessions during the previous agreement and*
- 2. The ability of the Public Employer to Finance.*

*To avoid redundancy the Fact Finder will further discuss these components in his “Finding of Fact” on Page 14 of this report. Accordingly there is more data required before a finding of the “Appropriate Increase” can be made based upon the Union’s evidence.*

### **Township’s Testimony**

- Counsel for the Township acknowledges that the Township arguments, rejecting the Union’s wage proposal, are not based upon the employer’s Statutory Factor of: 4117-9-05 (k) (3):

“Inability to Finance and Administer the issues proposed”.
- Instead, the Township argues in support of its offer, based upon:
  1. Prudent Fiscal Management
  2. Equity between other Township labor settlements
  3. The high cost and substantial 2012 increases in employee health care costs
  4. Comparability of Sylvania Township wage rates to those of similar Police department bargaining units within the surrounding area.

Accordingly the Township’s Settlement Proposal is:

### **Article 24 Wages**

Effective January 1, 2012 – Base Rates of Pay shall be increased by 1.5%

Effective January 1, 2012 – Base Rates of Pay shall be increased by 1.5%

- Township witness Mr. John Zeitler, Administrator, introduced employer “Exhibit 2 – Police Fund” and “Exhibit 3 – General Fund”. The Exhibits corroborated Union Exhibit 2 Tab 3 and Tab 4 regarding the overall sound financial status year to date of Sylvania Township. The historical numbers support the findings that the Township has managed revenues and expenses in a cost effective manner and appears to have a philosophy to do so in the future.

### **FACT FINDER'S CONCLUSION**

*As previously stated and agreed to, the Township has the ability to finance and administer the range of wage adjustments proposed. However, seven year financial projections cannot be determinative as to what actions or inactions should be taken in the here and now (2012-2013). At least, before the decision is made that employees must bear the sole brunt of such projections in the form of cuts, freezes, uncompetitive adjustments; management should develop "other solutions" to offset or mitigate against such projections and demonstrate that they have exhausted all other possibilities of mitigation before turning to the terms and conditions of employment to fix the negative fiscal trends. Accordingly the Fact Finders is not persuaded that single assumption financial projections alone of future long term status of specific funds (instead of the actual fund status) can sustain a finding in favor of the Employer's Settlement Proposal.*

- The Township cites the recently negotiated labor agreement with the Firefighter's base wage increase of 1.5% for 2012 and 1.5% for 2013 and their purported "Me Too" clause to other settlements as the appropriate pattern for the reopener.

### **FACT FINDER CONCLUSION**

*It is true other settlements within the employer group are a relevant factor for the Fact Finder. However, bargaining history (e.g., who leads and follows negotiations) and tactics such as "Me Too" clauses for the bargaining lead settlement are problematic and not solely determinative for driving future settlements with other units. The Statue in 4117-9-05 (J) through 4117-09-05 (K) (6) provide factors to be considered by the Fact Finder to replicate a condition of full and unencumbered collective bargaining. Artificial barriers like "Me Too" agreements in "other" collective agreements should not be given great weight to thwart the statutory framework of full and unencumbered collective bargaining. In other words to assert that "we can't afford to give an increase to the Unit in*

*bargaining because of the ripple cost of such to all other units with “Me Too” agreements is a stifling condition to the statutory framework of 4117-09-05 (J) – (K). The barriers of the asserted Me Too’s were not agreed to by the bargained for Unit (Police) with the Unit (Firefighter) asserted by the Township. The barrier “Me Too” was agreed to by the Township and the Township should bear the consequences of such special agreement not to the detriment of the Unit (Police) currently in bargaining. In other words, the City cannot build a box around its ability to afford one agreement by agreeing to Me Too’s with other Bargaining Units. To give credence to such argument would support a tactic that frustrates full and unencumbered collective bargaining.*

*In the Fact Finders judgment there is one factual exception to the above principle of ignoring the impact of “Other Me Too’s”. The exception situation is when “all agreements” and in particular when the current unit in bargaining status has their own “Me Too” clause and has negotiated the added protection to other settlements. In that case the units have “linked themselves” to one another and essentially said: “What one gets we all get”. That linkage to all agreements (particularly when it is the practice for “Me Too’s” in all agreements with the Township) creates an “additional factor” to collective bargaining. That factor must be considered by the Fact Finder. Accordingly, in this exception setting of “every unit” is “Me Too’d to one another” by union agreements and bargaining patterns, the cost impact of a Me Too settlement for all other units must be considered as part of the cost of the settlement in bargaining status. It is analogous to the axiom of “you can’t have your cake and eat it, too”. Essentially the unit in bargaining cannot enjoy Me Too protection to others and claim that the protection other units enjoy to it, is irrelevant to the settlement at hand.*

*Accordingly the Firefighter Settlement is “A Factor” but not “The Factor” in determining the reasonableness of a settlement for the Police Unit.*

- The Township introduces Employer Exhibit 4 “Health Costs” into testimony. Health care costs from 2011 to 2012 on a self funded, stop loss cap of \$75,000 per claim have increased approximately 30% annually or a total of \$4653.00 for family coverage. The Township’s annual share of such increase is 90% (per the Labor Agreement) or \$4189.00 per/Family coverage and the Employee’s Annual Share of such increase is 10% (Per the Labor Agreement) or \$465.00 per Family coverage. After an exchange of questions by the parties regarding what factors drove this dramatic increase, it was not possible to conclude whether this increase will re-occur or if it is a onetime anomaly, or if rates may decline in the future.

#### **FACT FINDER CONCLUSION**

*Because of the inaccuracy of any health care projection of costs using these increases from 2011 to 2012, the Fact Finder deems it prudent to defer to future plan experience (2012 v 2013 or 2014) of claims when considering wage adjustments; but recognizes the significant one year cost increase to both the employer and employees resulting from Health Care Benefits provided by the Township.*

- The Township counsel additionally submits in support of the township’s settlement proposal Exhibit 6, “Article of BGSU Pact” and Exhibit 7, “Summary of Settlements with Surrounding Area Settlements” dated 4/4/12.
- The Exhibit 7 summarizes the following Police department settlements:
  1. Bowling Green State University
  2. Perrysburg Police Department
  3. Perrysburg Township Police Department
  4. Bowling Green Police Department
  5. Sylvania City Police Department
  6. Oregon Police Department
  7. Lucas Department Sheriff’s Office

- These summaries set forth:
  1. Actual base rates by position v. Sylvania Township Police rates
  2. Percent increases in base wage rates for year 2011, 2012, 2013, where applicable.

Additionally State Employee Relations Board Clearinghouse Benchmark Reports dated March 19, 2012 was shared by the Fact Finder with the parties.

The Reports provided by SERB's research department dated March 19, 2012 summarized statewide base wage percent increases and lump sums negotiated in new and reopened Police contracts for years 2008-2013. In addition a SERB Benchmark Report dated 3/19/2012 for Police Township units in Ohio compared actual contractual top level rates by position (Dispatch, Patrol, and Command) to Sylvania Township current rates of pay.

After the parties' review of all wage data submitted in evidence the parties acknowledged the following significant conclusion:

“Sylvania Township Police Department Wage Rates are generally very comparative with the other Police Department in the surrounding areas”.

#### **FACT FINDER CONCLUSION**

*Based upon preliminary analysis of the wage comparison data reviewed at the hearing, the Fact Finder concludes that Sylvania Township Police Department wage rates (Lieutenants/Sergeants, Police Officers, Safety Dispatches) appear to be in the 75<sup>th</sup> to 80<sup>th</sup> percentile of the survey group of statewide data. In other words only 20% to 25% of the Police departments surveyed pay higher rates than Sylvania Township. The Township wage rates are also generally well about the survey average rates paid for each respective bargaining unit Position.*

*Additionally, based upon a preliminary analysis of wage increases negotiated which has ranged from 1% to 3% in years 2011, 2012, 2013 for the Police settlements, the larger wage increases (2%-3%) were primarily in settlements where the actual top rates were “Lower” than the current top wage rates in the current Sylvania Township Agreements.*

*The reasonable conclusion that can be drawn is: the other contracts that provided larger increase 2% to 3% per year were in agreements either:*

- 1. Where the actual rates or pay are lower than the current Sylvania rates (thus such settlements are catching up to Sylvania), or*
- 2. The actual adjustments are making up for 0% increases in years 2011 or prior.*

*With respect to Lump Sum/Signing Bonuses, based upon the data of other settlements, lump sums are usually payable only in the first year of a negotiated agreement, or provided in other years when there is a 0% pay adjustment, or paid when there is some concession agreed to in pensions or health care or other economic benefits.*

*The Fact Finder uses multiple data points to arrive at Reasonable and Fair Wage adjustments. Those data points are the:*

- 1. Absolute Base Wage Rates compared*
- 2. The Percentage Increases applied to other settlements*
- 3. The History of prior increases or lack thereof in the prior Labor Agreement*
- 4. Any History of concessionary reductions or restoration of same.*

*Only after a full review of all data, findings of a “rationale and fair” basis can effectively be made using Survey Wage Data.*

#### **FACT FINDERS FINDINGS AND AWARD**

**Based upon all of the testimony, arguments, exhibits and data presented and reviewed by the parties at the hearing on April 5, 2012, the most reasonable settlement terms for this wage reopener applicable to all three collective agreements (Patrol Officers, Sergeants and Lieutenants, Dispatchers, Secretaries, and Clerks) is:**

#### **ARTICLE 24 – WAGES**

<b><u>YEAR</u></b>		<b><u>ADJUSTMENT</u></b>
<b>-Effective 1/1/2012</b>	<b>-</b>	<b>2.0% Wage Increase</b>
<b>-Effective 1/1/2013</b>	<b>-</b>	<b>1.5% Wage Increase</b>

**Issued this 12<sup>th</sup>. Day of April 2012, by:**

**S/: Richard F. Novak  
Fact Finder**

Summary of Exhibits Submitted

At Fact Finding Hearing

4-5-2012

11-Med-10-1491

11-Med-10-1492

11-Med-10-1493

By Sylvania Township

By OPBA

By Joint Parties

X-1 Prehearing Statement  
Current

X-1 Prehearing Brief

X-1 The

X-2 Police Fund Projections

X-2 Eight Tab

Collections

X-3 General Fund Projections

3-Ring Binder

Bargaining

X-4 Health Care Costs

Tab 1 – CBA

Agreements

X-5 Pay Article Toledo

Tab 2 – Blade Article

Patrol,

X-6 BGSU Article Pact with

Re: Township Finances

Dispatchers,

Dispatchers, Police

Tab 3 – 2010, 2011, 2012

and

X-7 Wage Comparables

Sylvania Township

Command

Actual rates and percent

Detail Trial Balance

Units

increases surrounding

Reports

areas Police Departments

Tab 4 – YTD Fund Summary Reports

2010, 2011, 2012

Tab 5 – Operating Budgets, Police Fund 2011,2010

Tab 6 – Property Taxes Police Fund

2010, 2011, 2012

Tab 7 – Blade Article Re: Toledo Police Settlement

2012

Tab 8 – Record of Proceedings Transfer of General Funds

Resolution





