

OHIO STATE EMPLOYMENT RELATIONS BOARD

Ohio Patrolmen's Benevolent Association)	Cases No. 11-MED-10-1598
)	And 11-MED-10-1599
)	
Union)	Fact-Finder
)	Judge Burt W. Griffin
and)	
)	<u>Fact-Finder's Recommendations</u>
City of Waterville, Ohio)	
)	
Employer)	

Background

The fact-finder was appointed by the Ohio State Employment Relations Board on May 9, 2012. By agreement of the parties, the fact-finding hearing was held on July 25, 2012, in the conference room of the the Waterville Fire Department.

This dispute involves wages and other conditions related to the employment of patrol officers and police sergeants by the City of Waterville. Representing the Union at the fact-finding hearing was Michelle Sullivan, attorney for the Ohio Patrolmen's Benevolent Association. Also present on behalf of the Union were Sergeant Robb Canup, Sergeant Larry Albright, Patrol Officer Stephen Hallett, Patrol Officer Tina Nicolai, and Patrol Officer Art Linger.

Representing the Employer (frequently called herein "the City") was Gary McBride, Attorney at Law. Also present on behalf of the City were Municipal Administrator Jim Bagdonas, Finance Director Dale Knepper, and Police Chief David LaGrange.

Testimony was presented by Mr. Bagdonas, Mr. Knepper, Chief LaGrange, Sergeant Albright, and Patrol Officer Linger. The parties presented extensive exhibit books including,

among others, the following exhibits:

City Exhibit 10: Pay ranges for all City employees

- 11: Certificates of Estimated City Resources for 2008-20012, Budget details for 2008 through July31, 2012
- 13: Wage rates for all city employees
- 14: Proposed City Pay Increases for 2012
15. W-2 earnings for City employees 2011
17. Union's proposed wage rate matrix for 2012, 2012, 2014 including 3% annual raise plus shift differential and longevity pay.
18. Annual municipal wage settlements in Ohio (2002-2011)
19. Clemans, Nelson Compensation and Benefits Analysis
20. Personnel Evaluation Forms Used by City

Union Exhibit 3. Table Comparing Municipal Income and Expenses in Region 7

4. Comparison of comparable cities and fair share provisions
5. Comparison of comparable cities and shift premiums for police
7. Comparison of comparable cities and longevity pay
8. Table of length of service of bargaining units' members
Table of City pay ranges as of April 9, 2011
9. Comparison of starting patrol wages in comparable cities
10. Comparison of potential ending patrol wages in comparable cities
11. Comparison of starting sergeant wages
12. Comparison of potential ending sergeant wages
13. Comparison of wages steps between beginning and ending wages
15. Waterville unencumbered balances for 2008, 2009, 2010, 2011
16. City's estimated resources 2012 & statement of 2011 expenses
17. City's estimated resources 2011 & statement of 2010 expenses
18. City's estimated resources 2010 & statement of 2009 expenses
19. City's estimated resources 2009 & statement of 2008 expenses
20. Consumer price index 1913 to 2011.

Applicable Law

Under Section 4117(G)(7) of the Ohio Revised Code, a fact-finder must consider the

following factors:

- 1) The past collective bargaining agreement between the parties.
- 2) Comparison of the issues submitted to fact finding relative to the employees of the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- 3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
- 4) The lawful authority of the public employer.
- 5) The stipulations of the parties.
- 6) Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

Background

The parties are negotiating their first collective bargaining agreement. Until April, 2011, Waterville was a village. As a result of the 2010 census, Waterville was determined to have more than 5,000 residents. Pursuant to Ohio law, that population made Waterville a municipality, and the municipality was required to engage in collective bargaining with employees who had a certified bargaining representative. On October 20, 2011, the State Employment Relations Board certified the Ohio Patrolmen's Benevolent Association as the bargaining representative for a separate unit of six patrolmen and another unit of three sergeants.

Prior to that certification, patrolmen and sergeants in the Waterville Police Department had been members of the Ohio Patrolmen's Benevolent Association, and the City had dealt with the Union on a variety of matters without entering into collective bargaining agreements.

The parties began negotiations for collective bargaining agreements on January 12, 2012. They held 12 bargaining sessions, the last being July 12, 2012. The parties reached tentative

agreement on all but seven Articles in the proposed collective bargaining agreements. The tentatively agreed upon provisions are included in the City's Exhibits 1 and 2, which are incorporated by reference in this Fact-Finder's Report and Recommendations.

At the fact-finding hearing, both sides agreed that the collective bargaining agreements should cover the period January 1, 2012 through December 31, 2014 and that Fridays should be the bi-weekly pay days. The remaining unresolved issues are:

1. Fair Share—whether the City should be required to deduct and pay to the Union dues from the pay of employees who are in the bargaining unit but not members of the Union.
2. Performance Evaluations—whether performance evaluations conducted by the City should be utilized in determining pay increases and whether the City should be required to engage in discussions with the Union concerning factors that are relevant to performance evaluations.
3. Shift Premiums—whether the City should pay an additional 50 cents per hour above the standard rate of pay for work between 4:00 p.m. and 8:00 a.m.
4. Longevity Pay—whether employees who have completed five years service should receive an additional \$100 per year for each additional year in the City's employee as a full time police officer.
5. Step System for Pay Increases—how much of pay increase should be granted at what particular time interval based upon years of full time service, what that pay increase should be, and whether it should be based upon a merit evaluation.
6. Annual Pay Increases—the dates that pay increases should occur in 2013 and 2104 and the amounts of those pay increases.

Findings of Fact

The Waterville Community. Waterville is about a half-hour's drive south and slightly west of Toledo. It is an historic village that has become a bedroom town for Toledo and Bowling Green but is still separated by corn fields from those larger cities. Most Waterville residents now work outside of Waterville.

Waterville's population growth is situated in relatively new single family housing developments. Land is available for more housing and shopping center development. As a result Waterville looks forward to continued population growth. Indeed, the completion of a new divided state highway may provide an incentive for that development.

Because its more recent residents are competitive in the urban and academic job markets, the median per capita income of Waterville, by the current census, was \$29,895. Median household income was \$73,917. That household income in Waterville is \$12,000 greater than the largest city of comparable size in the Toledo region, and \$20,000 more than median household income in the United States. Among the 15 cities of comparable size in the Toledo region, Waterville ranks third in per capita income.

Northwood—almost the exact size of Waterville --had a per capita income of \$3,000 less and a household income \$12,000 smaller. Rossford, whose population is 1,200 greater, had a per capita income \$1,000 more but a household income almost \$20,000 less than Waterville's.

Municipal Finances for the Village and City of Waterville. Despite the current recession, the Village of Waterville ran budget surpluses in 2008, 2010, and 2011. Waterville accomplished that, in part, by not granting pay increases in 2009. During 2011, it gave pay increases of 1.5% to all employees.

At the end of 2011, the City of Waterville had an unencumbered general fund balance of \$858,383.35 together with unexpended balances of \$280,198.83 for Special Revenue Funds, \$401,599.09 for Capital Projects, and \$1,159,154.61 for Enterprises such as water and sewers. Its general fund balance met professionally recommended management standards.

Approximately two-thirds of the City's revenue is from the personal income tax. At the

present time, the income tax rate is 2%. 1.5% is paid to the city where the resident is employed if that city taxes at 1.5% or higher. Nearly all nearby cities charge 1.5% or higher. Toledo charges 2.25%.

As of July 31, 2012, the City's revenue was \$2,130,405.04 compared to budgeted revenue of \$3,120,334 for the entire year 2012. If collections persist at the same rate, the City can expect to achieve its budgeted income.

As of July 31, 2012, the City's budgeted expenses for 2012 were \$3,330,904—meaning an expected deficit of \$20,570 for fiscal year 2012. The City has included in its budget projections a 1.25 % general pay increase that it is prepared to give to all employees and a 0.5% increase that it will allocate on a merit basis.¹ The budgeted deficit, considering those increases, is one that can easily be covered by the City's unencumbered fund balances without violating professional management standards.

In short, the City's finances have been well managed in the last four years. Nonetheless, Waterville, like all Ohio cities, faces substantial diminution of income from some sources in the future. That is, in part, because the State of Ohio is eliminating estate and inheritance taxes and is reducing the amount it contributes to local government. In addition, revenues from real estate taxes have declined by 10% since 2008 and are expected to decline further when the next assessments reflect the general decline in real estate values. The parties have not, however, provided the Fact-Finder with projections as to the amount of money the City expects to lose from those sources in 2013 and 2014.

¹The Fact-Finder assumes that the budgeted expenses include pay raises that it has offered to give.

The Bargaining Units. All of the employees in the two bargaining units are members of the Union and are long time employees. There are presently six patrol officers and two sergeants. A third position for sergeant is vacant because of retirement. It will be filled soon by a promotion. The resulting patrol officer vacancy will be filled by a new hire.

Five of the six patrolmen have been full time policemen with Waterville for 18, 16, 15, 13 and 13 years respectively. The sixth officer—who will not be with the City when the collective bargaining agreement becomes effective-- has been with Waterville 8.5 years. One sergeant has been with Waterville for 27 years; the second for 21 years. The sergeant who retired had been with Waterville for over 34 years. Turnover has not been a problem

Although the City has established pay ranges for sergeants and patrolmen that allow increased pay at the discretion of the City, none of the officers is paid at the top of the range. The minimum starting pay for a patrol officer is \$17.46 per hour.² Maximum is \$22.56. The highest paid patrol officer earned \$22.37 per hour in 2011. The average was \$19.57.

The minimum for sergeants is \$21.95 per hour. Maximum is \$28.54. The highest paid sergeant now receives \$25.51. Mr. Bagdonas, the City Administrator, expressed the belief that the maximum in a pay range should seldom be paid since the maximum wage rate should be reserved for an employee who shows exceptionally exemplary conduct.

The only other factors that affect gross earnings paid to a police officer are over-time pay and longevity pay. Until 2010, all officers received as longevity pay an additional \$100 times their years of service once they had been employed five years. For budgetary reasons, longevity pay was eliminated in 2010. In 2011, longevity pay was reinstated at the rate of \$50 for every year of

²The minimum rate in 2011 was \$17.35/hour.

service once the officer had been employed five years.

Discussion and Recommendations for Unresolved Issues

1. Fair Share Provision. The Union has requested that the City deduct from the pay checks of all bargaining unit members and provide to the Union an amount not exceeding the dues from all members of each bargaining unit, whether the employee is a Union member or not. To achieve that, the Union proposes the following language for the Fair Share article:

All employees in the bargaining unit who, sixty (60) days after the date this agreement is signed, or upon the completion of the probationary period or extended probationary period, whichever is later, are not members in good standing of the Union, shall pay a fair share fee to the Union as a condition of employment. The fair share amount shall be certified to the City by the Treasurer of the Union. The deduction of the fair share fee by the City from the payroll check is automatic and does not require written authorization of the employee. The Union shall prescribe an internal rebate procedure which conforms to applicable law including Ohio Revised Code Section 4117.09 (C). Payment to the Union of the fair share fee shall be made in accordance with the regular dues deduction as provided in Section 10.8. This fair share agreement between the City and the Union does not require any employee to become a member of the Union, nor shall the fair share fee exceed dues paid by the members of the Union who are in the same bargaining unit. The provisions of Section 4117.09 (C), paragraph 3, of the Ohio Revised Code, apply in regard to the bargaining unit employees who assert conscientious objections to the payment of a service fee. The Union agrees to indemnify, defend, and hold the City harmless against any claim made or any suit instituted by any employee or others representing an employee as a result of the City's compliance with the provisions of this Section.

The City objects to any fair share provision in the proposed collective bargaining agreement.

Union's Argument. Non-union employees receive the benefit of collective bargaining and other union benefits. They should pay for it as union members do. Fair share provisions exist in

10 of 14 smaller cities in SERB Region 7. All seven cities in the Toledo region—including Northwood and Rossford—have fair share agreements.

City's Argument. The provision is unnecessary because all present bargaining unit members are also Union members and R.C. Section 4117.09(B)(2) mandates deduction of union dues and assessments upon authorization of an employee. It is inappropriate because the City of Bryan, a city in SERB Region 7 with comparable population and number of police officers, does not have a fair share provision in its collective bargaining agreement.

Recommendation and Reasoning. **The Union's proposal should be incorporated in the collective bargaining agreement.** All present members of the bargaining unit are Union members and pay Union dues and assessments. No present union member is known to oppose the fair share provision.

The provision exists in the overwhelming majority of cities in the region. Turnover in the Waterville bargaining units is slight. To have one member not pay dues yet receive benefits of unionization could damage working relationships among employees in such small units.

In a small organization of employees, a dissident employee is likely to have a reasonable opportunity to influence Union policy while participating in Union business; thus, the fair share's incentive to be a union member confers real power within the bargaining unit upon the employee if the employee accepts Union membership.

A fair share provision places no economic burden on the employer.

2. Evaluation of Performance. The Union proposed an Article on "Performance Evaluation." During the Fact-Finding hearing the Union and City agreed to certain revisions in the proposed Article; however, the City rejected the Article even though it did not oppose any of the

amendments agreed to by the Union. The amended language of the “Evaluation Performance” agreed to by the Union is:

SECTION 1: The employee will receive an annual performance review. The performance review will be conducted during the month of March.

SECTION 2: The Employer shall meet and review the performance evaluation with each individual employee. Should the employee disagree with their performance evaluation, they may seek consideration by submitting a request in writing to the City Administrator outlining the employee’s objections to the evaluation. The City Administrator shall review the request and shall issue a resolution on the matter. Should the employee be dissatisfied with the resolution, the employee may place a letter in his/her file noting his/her objection(s).

SECTION 3: The Employer agrees to meet with the Labor Management Committee to discuss the appropriate criteria for performance evaluations.

Union’s Argument. Because performance evaluations are inescapably subjective, there should be a mechanism by which an employee can express his/her disagreement with the evaluation and have it “documented in the employee’s file.”

City’s Argument. The City believes that the Union’s proposed “Performance Evaluation” Article is inextricably linked to the Union’s desire to eliminate merit based wage increases from the City’s pay scale. The City would agree to the Union’s proposal on “Performance Evaluation” if the Union would drop its resistance to merit based wage increases. The City argues that the proposed “Performance Evaluation” article violates the City’s statutory right under R.C. Section 4117.08(C)(2) to “direct, supervise, and evaluate . . . employees.” The City says it “must decline agreement to share its right and responsibility to evaluate its employees unless OPBA is willing to accommodate the maintenance in . . . collective bargaining agreements of the existing

compensation system based on pay ranges”

Recommendation and Reasoning. **The language of the proposed “Performance Evaluation” Article, as set forth above, should be incorporated in the collective bargaining agreement.**

The proposed Article does not interfere with the City’s statutory right to “evaluate” employees. With one exception, proposed Sections 1 and 2 simply place in the agreement procedures that are already followed by the City. The one exception is the provision under Section 2 for the employee to indicate an objection to an evaluation and place his or her written objections in the personnel file. In discussions during the fact-finding hearing, the City did not object to such a requirement.

Section 3 of the proposed “Performance Evaluation” Article is not a part of present procedures. It does not—contrary to the City’s fears—impair any right of the City to evaluate an employee. Section 3 merely calls for the City to “meet with the Labor Management Committee to discuss appropriate criteria for performance evaluation.” After meeting and discussing, the City remains free to establish relevant performance criteria and to conduct its own performance evaluation.

The need for such criteria was testified to at the fact-finding hearing. The Fact-Finder requested a statement of criteria now being used. The City presented Employer’s Exhibits 20-A, 20-B, and 20-C.

Exhibit 20-A is a list of general performance considerations for all City jobs—communications skills, reliability, motivation, productivity, quality of work, adherence to policies, job knowledge, and other matters. For each category, the evaluator is asked to use the

following rating levels: 100 (exceptional), 70 (above average), 50 (satisfactory), 30 (needs improvement), 10 (unacceptable).

An employee who received a final rating between 75 and 100 was one whose “performance is consistently above the required standards in most or all categories.” A rating of 60 to 74 was to be given to one whose “performance is consistently good, generally exceeding required standards.” A rating of 45 to 59 was for an employee whose “performance generally meets required standards and is satisfactory.” A rating of 30-44 means that the employee “needs improvement in several areas.” A rating less than 30 signifies that “performance is unacceptable in most or all categories.”

The individual ratings were to be added and then divided by the number of categories evaluated. An employee who rated between 75 and 100 would be considered eligible “for special recognition.” Exhibit 20-A does not indicate what that recognition would be.

Exhibit 20-B was a supplementary set of performance criteria related to patrol officers. Exhibit 20-C was a supplementary set of performance criteria related to police sergeants. Presumably the same numerical rating system used for Exhibit 20-A applied to the supplementary evaluation forms of patrol officers and sergeants.

Examples of factors being evaluated are: “Issues citations, warnings, and makes criminal arrests;” “Responds to call for assistance on criminal and civil complaints. Provides assistance to the general public and motorists.” “Completes all paper work in a timely manner;” and “Has a thorough knowledge of departmental policies and procedures.”

Exhibits 20 (A), (B), and (C) are a helpful list of qualities to be evaluated. They are ambiguous, at best, as to the criteria by which those qualities should be rated. They could be unquestionably helpful in guiding a conversation between a supervisor and supervisee with respect

to needed corrections or entitlement to praise. It is difficult to determine how the listed criteria might be related to a grading system between 0 and 100.

Sergeant Larry Albright testified that he had been told by his superiors that, when evaluating patrol officers, he should try to give everyone between 52 and 56—“Performance generally meets required standards and is satisfactory.” If an evaluation over or under 50 was granted, he was told to document it. Albright testified that he followed that instruction when conducting evaluations and almost always evaluated in the 52 to 56 range. No evidence was presented that any officer had been give a higher pay rate within the allowable pay range because of an annual evaluation or that any officer had ever been a “candidate for special recognition.”

Patrol Officer Arthur Linger testified that, in 13 years of service, he had never received an “exemplary evaluation,” that he had inquired what he needed to do to get the maximum pay within his pay range, and that he was told it was impossible. He did not testify who told him that.

City Administrator Bogadonas testified that no City employee had ever been instructed to alter ratings or confine them without adequate reason. The evidence was clear to the Fact-Finder, however, that Waterville police officers do not regard the evaluation system as objective and believe strongly that it should not be connected to pay raises.

The relationship between pay raises and evaluations need not be addressed in a contract provision on performance evaluations. Evaluation criteria, even if vague, can be helpful in discussing with an employee how the employee’s performance can be improved. Such criteria and performance evaluations have importance even if not related to rates of pay.

The proposed Article, itself, does not make a connection between performance evaluation and rates of pay. And the Fact-Finder declines to do so in assessing the merits of the propos

Article.

The Fact-Finder **recommends that the proposed Article be adopted with the language set forth above and that the parties use the provisions under Section 3 to reexamine appropriate criteria.** Serious consideration might be given to studying how other communities evaluate police officers and how performance evaluations can be achieved fairly, objectively, and without creating issues of distrust and dissension.

3. Shift Premiums. The Union has requested an Article having the following language:

In addition to compensation provided by the wage schedule, employees working between 4:00 p.m. and 8:00 a.m. shall be paid a shift differential premium of \$.50 (fifty cents) per hour in addition to the regular pay for those hours.

Union's Argument. The Union states that a shift premium is common in law enforcement work and provides fair compensation for working hours that deprive an employee of family time.

City's Argument. The City notes that the premium proposed by the Union would constitute a 1.94% pay increase for sergeants and a 2.25% increase for patrol officers with respect to the hours affected. It further notes that the hours to be covered constitute two-thirds of the working hours. The City adds that comparable cities of Rossford, Sylvania, and Wauseon do not provide shift premiums and that Waterville has not experienced a loss of officers seeking to work in cities that have shift differentials.

Recommendation and Reasoning. **A shift premium should not be included in this contract.** There is no prior history in Waterville of shift premiums. No evidence has been offered to the Fact-Finder as to the likely total cost of such premiums. Nor has evidence been presented as

to what would be a fair or appropriate shift premium. In the comparables presented by the Union, shift premiums range from \$.10 per hour on the afternoon shift to \$.90 on the midnight shift. Nearly all of the cities which pay shift premiums differentiate between afternoon and midnight shifts. The Union’s proposal does not make such a differentiation.

To introduce a premium as a bargaining item at this time without evidence of either the cost to the City or the annual benefit to employees diverts attention from and complicates the more fundamental issue of a fair wage rate. Absent data as to cost and the method of allocating shifts, the arbitrator recommends that all wage issue be resolved in the controversy over a pay matrix and a general pay increase.

4. Compensation Rates–Step Increase Based on Time in Service and Time in Rank. The Union seeks to raise the hourly rate of compensation through two devices--automatic raises to the hourly rate of pay based on the number of years in service or rank (step increases) and annual increases in the basic rate of pay. The Union has not proposed specific contract language for either increase. It has, however, identified the rates of pay that it seeks.

For Sergeants it proposes the following starting rates and step increases:

<i>Starting Pay Upon Promotion</i>	<i>\$25.71 per hour</i>
<i>Upon Completion of Probation</i>	<i>\$26.121</i>
<i>After Three (3) Years in Rank</i>	<i>\$26.971</i>
<i>After Five (5) Years in Rank</i>	<i>\$27.821</i>
<i>After Seven (7) Years in Rank</i>	<i>\$28.545</i>

The Union has not explained how it arrived at those hourly rates or step intervals.³ The City

³The Clemans, Nelson study shows comparables for similar cities; however, the rates requested by the Union do not seem to correspond to any other city.

presently has an established pay range of \$21.954 per hour to \$28.544 per hour for sergeants.⁴ Upon his retirement recently, Sergeant Mark Hearndon was paid \$28.543 per hour. He had 34 years of service when he retired.⁵ Sergeant Larry Albright is presently paid at the rate of \$25.514 per hour. He has 15 years in rank and 27 years of service.⁶ No evidence has been presented as to why he is not at the highest pay level or why his pay was \$3.29 per hour less than Herndon's.

Sergeant Rob Canup, presently the only other sergeant, is paid \$23.415 per hour. He has 14 years in rank and six years less total service with the Waterville Police Department than Sergeant Albright.⁷ No evidence has been presented as to why his pay is \$2.095 per hour less than Sergeant Albright's.

For patrol officers, the Union seeks the following step increases:

<i>Starting Pay</i>	<i>\$17.460 per hour</i>
<i>After One (1) Year</i>	<i>\$18.48</i>
<i>After Three (3) Years</i>	<i>\$19.502</i>
<i>After Five (5) Years</i>	<i>\$20.523</i>
<i>After Seven (7) Years</i>	<i>\$21.544</i>
<i>After Eight (8) Years</i>	<i>\$22.563</i>

The proposed starting and ending rates are those presently in effect under the City's pay scale.⁸ The Union has presented no evidence or argument as to how it arrived at the proposed

⁴City Exhibit 10.

⁵Union Exhibit 8.

⁶Ibid.

⁷Ibid.

⁸City Exhibit 10.

intevening rates of pay or the number of steps. No officer presently receives the maximum rate of pay under the City's pay scale, although one officer has 18 years of service, one 16 years, another 15 years, and two 13 years.⁹

The officer with 18 years earns \$20.98 per hour. The officer with 16 years, \$19.875 per hour. The officer with 15 years, \$19.753. And one officer with 13 years earns \$19.265 per hour; the other \$19.175 per hour.¹⁰ The City has not explained how it has arrived at those difference.

Union's Argument with Respect to Step Increases. The Union points out that pay increases based on step intervals exist in 12 other small cities in the Toledo region. One has two steps for patrol officers, another three, and another four. Four cities, including Rossford, have five step intervals; four others have six. Northwood has seven; and Bryan has 15.

Two cities which have pay increases at step intervals for patrol officers do not have step intervals for sergeants. In six of the cities that have step intervals for both patrol officers and sergeants, there are fewer step intervals for sergeants than for patrol officers. Bryan, Ohio, is unusual in having 15 intervals. The majority have between one and four intervals.

Other than for Bryan, no evidence has been presented as to periods of time that elapse between intervals. Nor has any explanation been given as to why it is common for cities to have different intervals for patrol officers than for sergeants.

Waterville's Argument About Step Increases. The City notes that the step increases sought by the Union, if applied to existing personnel, increase wage levels for sergeants by 10.6% and for patrol officers by 15.3%. The City reiterates that it opposes any system that abandons merit

⁹Union Exhibit 8.

¹⁰City Exhibit 13.

increases.

At the fact-finding hearing, the City argued that merit increases are important to fostering diligent police work. As stated in the City's pre-hearing brief, "The City's willingness to consider any increases in rates of compensation . . . is dependent upon the maintenance of the current system of pay ranges, the limitation of any pay increase to that granted to other employees effective April 2012, and consistency of increases for 2013 and 2014 with comparable increases in comparable communities in Northwest Ohio.

Analysis and Recommendations as to Step Increases with Respect to Patrol Officers..

Comparables show that step increases are overwhelming the practice for patrol officers in similar communities in Ohio. Testimony at the fact-finding hearing revealed that—as applied to patrol officers—the City's present system of determining merit lacked objective implementation.¹¹ No evidence was presented as to why two officers with the same seniority had different levels of pay based on merit. In fact, there was no evidence either that determinations of merit reflected pay differentials among patrol officers or that the possibility of gaining more pay because of merit influenced officers to do a better job. To the contrary, when one patrol officer asked how he could obtain higher pay he was given no answer.

Accordingly, as to patrol officers, the Fact-Finder concludes that a system of step increases based on time in service should be instituted. Such a system would eliminate the possibility of subjective discrimination and the existing distrust that officers now hold of the "merit" system.

At the same time, the City's objection to using a step system to grant pay increases at the

¹¹Sgt. Albright's testimony that he was instructed to confine ratings to a certain range and Patrolman Linger's inability to obtain suggestions as to how to improve his pay level are evidence of that failure.

present time is valid. Any significant pay increases at the present time for patrol officers should be awarded through annual percentage increases, not through a system of step increases

The Fact-Finder **Recommends**, therefor, the following system of **Step Increases for Patrol**

Officers effective April 1, 2012:

<i>Starting Pay</i>	<i>\$17.460 per hour</i>
<i>After Three (3) Years</i>	<i>\$17.995</i>
<i>After Six (6) Years</i>	<i>\$18.530</i>
<i>After Nine (9) Years</i>	<i>\$19.065</i>
<i>After Twelve (12) Years</i>	<i>\$19.602</i>
<i>After Fifteen (15) Years</i>	<i>\$20.223</i>
<i>After Eighteen (18) Years</i>	<i>\$21.351</i>

The recommended matrix preserves the pay levels presently in effect for patrol officers with two exceptions: The pay differential is eliminated between Officers Linger and Hallet, both of whom have 13 years of service, and between Officers Nicolai and Shaneyfelt , who have 16 years and 15 years of service respectively. Linger is brought to the pay level of Hallet, and Shaneyfelt is brought to the level of Nicolai.

Those recommended pay levels also implement the 1.75% pay increase over 2011, effective April 1, 2012, that the City has offered to the Union.¹² The pay level of \$21.351 per hour which Officer Joe Valvano will receive is slightly higher than the \$21.348 proposed by the City because of a difference in calculation that the Fact-Finder has made.

Analysis and Recommendation as to Step Increases for Sergeants. Because sergeants perform a leadership and command function which has managerial, although not policy making, responsibility, the arguments in favor of a merit pay system have more validity than such a system

¹²The City has actually proposed a 1.25% general increase and has allocated an additional fund of .5% for merit increases. The Fact-Finder has allocated the merit fund to the step increase matrix. If the Fact-Finder's is incorrect in calculating that a 1.75% increase for Valvano would take his pay to \$21.351, the parties should use the correct calculation.

for patrol officers. Some comparable cities in the SERB region use a merit system for awarding pay increases to sergeants. Others do not.

A slight pay differential exists between Sergeant Canup and Sergeant Albright. Canup is now paid \$25.415 per hour and Albright \$25.514. If the difference is based on merit, no evidence has been presented to that effect. The Fact-Finder notes that Albright has six more years of service with the city. Perhaps, that accounts for the differential.

But the differential is only 10 cents per hour. In a 2,000 hour work year, the difference would be \$200. For practical purposes there is little difference between the compensation of Canup and Albright. Under the step system proposed by the Union, they would receive equal pay since each would have reached the maximum level of step increases.

As with patrol officers, the evidence at the fact-finding hearing does not show that the pay differential for sergeants has been based on merit. For that reason, the Fact-Finder concludes that a step system based on time in grade rather than performance evaluations or performance incentives should be instituted for sergeants.

The more difficult issues are how many steps should a step system for sergeants have and what the starting pay should be. The differential between top pay for a patrol officer and starting pay for a sergeant should be maintained. The Union has proposed that the top pay for a patrol officer under its proposed step system should be \$22.563 per hour and the starting pay for sergeants should be \$25.271—a differential of \$2.708 per hour. The differential is not unreasonable. Apparently, it is one that both the present patrol officers and the sergeants in Waterville believe is reasonable.

The present minimum pay for a sergeant is \$21.954 per hour. That figure may not be

relevant for a new hire in 2012 since the last time a sergeant's position was filled was in 1998.

To establish a starting pay for a sergeant in 2012, one should look at the 2012 facts. Under the Fact-Finder's recommend step system for patrol officers, the top pay for a patrol officer would be \$21,351. To maintain the differential proposed by the Union, the starting salary for a sergeant would be \$24,051. The Fact-Finder accepts the Union's proposal for a reasonable differential between the highest paid patrol officer and the lowest paid sergeant.

The Fact-Finder **recommends** the following system of **step increases for sergeants:**

<i>Starting Pay Upon Promotion</i>	\$24,501
<i>Pay After Three (3) Years in Rank</i>	\$24,951
<i>Pay After Six (6) Years in Rank</i>	\$25,960

The obvious consequence of this proposal is to establish the City's proposed 2012 salary level for Sergeant Albright as the current top level for sergeants, to bring Sergeant Canup to that level, and to start the sergeant soon to be appointed at a substantial level above the top patrol officer but approximately \$1.50 per hour less than the top for sergeants.

Under some circumstances a \$1.50 per hour differential between starting level for sergeants and top level might be inadequate. This recommendation reflects the importance the City has attached to limiting the 2012 salary increase for existing employees to 1.75%. The Fact-Finder's reasons for accepting the City's pay level proposal for 2012 is set forth in the discussion of annual pay increases.

5. Compensation Rates--Annual Pay Increases. The Fact-Finder has accepted the City's request that pay increases for 2012 not exceed 1.75% for three reasons. First, the City's requested increase is reasonable in light of the City's current and anticipated income. Second, the pay level for patrol

officers and sergeants is within the middle range of comparable cities in the Toledo region. Third, if the Union accepts the City's 2012 wage proposal, it will provide the Union a strong reason for urging the City to accede to the Union's goal of converting a questionable "merit-based" pay system to one based on seniority. Limiting performance evaluations to improving productivity and separating evaluations from pay increases gains a guaranty of pay fairness that is important to the Union and to employee morale.

The Fact-Finder recommends that the 1.75% pay increment offered by the City be incorporated in the previously mentioned matrices of step increases and that those increases become effective April 1, 2012.

What remains for the Fact-Finder is to recommend pay levels for 2013 and 2014.

Union's Wage Argument for 2013 and 2014. The Union requests 3% annual increases in 2013 and 2014. It argues that the proposed increases "track increases in costs of living" and constitute "a wage that is competitive with other similarly situated police departments."

City's Wage Argument for 2013 and 2014. The City has expressed a willingness to grant wage increases for 2013 and 2014 provided that there is "consistency . . . with comparable increases in comparable communities in northwest Ohio." The City objects, however, to 3% pay increases in those years.

Analysis and Recommendation. From 2002 through 2008, the statewide pattern of annual wage increases for police units in Ohio was over 3%. In the recession years of 2009-2011 wage increases for police units were 2.43%, 1.39%, and .96% respectively. Those increases were higher than received by non-safety forces in government throughout the state.

Annual wage increases in the Toledo region for all governmental units from 2002 through

2008 were slightly over 2.8%. From 2009 to 2011, the wage increases for all units in the region were 2.07%, 1.16%, and .74% respectively. The Fact-Finder has no information as to pay increases in comparable communities for any time period.

The parties have submitted comparables for rates of pay in 2011. The Clemans, Nelson study commissioned by the City of Waterville shows that as of May 25, 2011, Waterville police officers received the fourth lowest starting pay among comparable communities. Its starting pay of \$17.35 per hour compared with an average starting pay of \$20.67 per hour. Waterville's average police officer was paid \$19.57 per hour in 2011 compared with an average of \$24.66 in comparable cities.

The average maximum pay for police officers in comparable cities was \$25.60 per hour. In Waterville, the top police officer pay was \$20.984 per hour in 2011 and would be \$21.351 per hour if the Fact-Finder's recommendation for 2012 is accepted. A 3% increase for 2013 would take the top pay to \$21.971 per hour. Another 3% increase in 2014 would take the top pay for a Westerville police officer to \$22.603. Obviously, even at 2011 rates of pay for police officers in comparable cities, the requested 3% pay increases would not bring Westerville officers up to the average in comparable cities. For that reason, the requested annual pay increases of 3% are reasonable.

A similar analysis for sergeants arrives at similar conclusions. The Fact-Finder's recommendation of 2012 pay for the two existing sergeants is \$25.960 per hour. That compares to an average minimum pay of \$26.17 in comparable communities in 2011 and a comparable average rate of \$28.46. If the Waterville sergeants received a 3% increase in 2013, their pay would be \$26.739 per hour. A 3% increase in 2014 would take them to \$27.541. If the Union's requested 3% increase were granted for 2013 and 2014, Waterville sergeants in 2014 would still be paid

approximately 92 cents per hour less than the average sergeant's pay in comparable communities in 2011.

Of course, if Waterville can not afford to pay the requested increases in 2013 and 2014, it would be imprudent to do so. The City expects reduced revenues from the state's local government fund and from inheritance/estate taxes. Income tax receipts depend upon the future of the local economy. Real estate tax receipts depend upon new construction and re-evaluations of existing property. At the present time there is no reason to expect significant increases in total municipal income in 2013 or 2014. At the same time, the City has not presented evidence as to how much less, if any, it expects its revenues to be in 2013 and 2014.

The Union suggests that the additional amounts for the pay increases should be taken from the City's unencumbered general fund balance if City revenues are insufficient. On January 1, 2012, the unencumbered fund was \$858,386.35. If all police officers were granted the City's proposed 1.75% increase in 2012 and Union's requested 3% increases in 2013 and 2014, the total increased cost to the City of police salaries for the three years would be less than \$50,000.¹³

Recommended Annual Increases for All Police Officers in 2013 and 2014. **The Fact-Finder recommends that the City grant 3% annual salary increases to all police officers on the first pay period beginning in January, 2013, and again beginning in the first pay period in**

¹³This conclusion was reached by taking the City's police salary payments of \$346,022.35 in 2011, adding \$6,055 to costs in 2012 because of a 1.75% salary increase and multiplying that total by 3% in 2013 and again by 3% in 2014. The Fact-Finder recognizes that overtime from 2012-2014 may differ from 2011 because Officer Rogers will be replaced—probably by a lower paid officer. The \$50,000 projected total increased salary cost is only an estimate.

January, 2014.¹⁴ This recommendation comes from the following facts:

- that Waterville officers are now paid less than the average of police in comparable cities,
- that the recommended 3% increases will still keep them below the average in comparable cities,
- that in the years 2008 through 2011 the country experienced 9.7% inflation¹⁵ but police wages in Waterville increased only 2.5%,¹⁶
- that further price inflation can be expected in 2013 and 2014,
- that the City had a substantial unexpended balance in January 2012,, and
- that the additional cost of these increases will not substantially impair the unexpended general fund balance even if revenues do not increase or if they diminish moderately in 2013 and 2014.¹⁷

¹⁴The parties did not discuss the starting date of annual pay raises in 2013 and 2014. The Fact-Finder recognizes that the City may have had a practice of adjusting pay scales in April of each year. Because this collective bargaining agreement begins on January 1, 2012 and ends on December 31, 2012, it seems practical for pay adjustments covered by the collective bargaining agreement to be made on anniversary dates of the agreement. If the parties disagree, they should feel free to agree upon a different date.

¹⁵Union Exhibit 20.

¹⁶Fact-Finder's computation based on City Exhibit 13.

¹⁷The Fact-Finder recognizes that granting pay raises to police officers for 2013 and 2014 may put pressure on the City to raise other salaries. In 2011, total salaries in the police unit were \$611,583.63 and total salaries, including overtime, for the City were \$1,053,191.60. Thus, salaries for bargaining unit officers constituted 56.6% of total police salaries and 33% of all City salaries. If all other salaries were raised 3% in 2013 and 2014, the additional cost to the City would be about \$100,000. The total two year burden of 3% per year raises for all City employees, including bargaining unit members, might be an additional expenditure of \$150,000. It must be recognized, however, that the reasoning that justifies 3% pay raises to police officers does not necessarily apply to personnel in other departments or to supervisors in the police department; thus, salary increases for other employees might be less than 3%. In any event, a \$150,000 use of

6. Longevity Pay. The Union requests the following language for an Article on longevity pay:

After employees have completed five (5) years of service, they shall receive an annual longevity payment in the amount of \$100.00 per year of completed service, which shall be paid in the first pay period in December.

Union's Argument. Prior to 2010, Westerville police received the requested \$100 longevity pay for each year of service. In 2010, because of the City's financial difficulties, the longevity pay was discontinued. In 2011, longevity pay for those with five years of service was increased at the rate of \$50 for each year of service. The Union seeks to restore the prior longevity pay and "make the longevity payments more competitive with other comparable departments that offer longevity."

City's Argument. The restoration to \$50 per month of service is sufficient.

Analysis and Recommendation. The Fact-Finder **recommends** the following provision for longevity pay:

After employees have completed five (5) years of service, they shall receive an annual longevity payment in the amount of \$50.00 per year of completed service, which shall be paid in the first pay period in December.

The City's Clemans, Nelson study shows that a \$50 per year longevity premium is more than that provided in Bryan, Northwood, and Rossford, that \$100 per year is not the norm, and that only

the City's \$858,386.35 unexpended balance to meet additional wage costs would not be unreasonable.

one city, Bowling Green, among those compared gives \$100 per year for longer than 10 years of service.

The present annual cost to the City of longevity pay is \$5,200. At the \$50 per year of service rate the cost will increase by \$350 in 2012, \$700 in 2013, and \$1,050 in 2014 because each employee's years of service will be longer. If the present longevity payment is unchanged and present employees do not leave the police department, the total additional cost over three years will be \$2,100. If the Union's proposal for longevity pay is adopted, the total increased cost will be \$4,200. If the City and Union accept the Fact-Finder's recommendations on step increases and annual wage increases, longevity pay should not be a deal breaking issue.

\s\Burt W. Griffin

Fact-Finder

August 3, 2012

Certificate of Service

A copy of the foregoing findings of fact, recommendations, and reasons was sent by E-mail to Michelle Sullivan, Esq., msullivan@afwlaw.com, to Gary McBride, Esq, gmcbride@snlaw.com, and to Mary Laurent of the State Employment Relations Board, mary.laurent@serb.state.oh.us this 3d day of August, 2012.

\s\Burt W. Griffin