

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

March 12, 2013

In the Matter of:

City of Parma)	
)	Case No. 12-MED-03-0337
and)	Patrol Officers
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the City:

Jon Dileno, Attorney
Thomas William Weinreich, Human Resources Director
Gregory Baeppler, Safety Director
Dennis Kish, Auditor

For the Union:

Randy Weltman, OPBA Attorney
Mary Schultz, Financial Expert
James Manzo, Negotiating Committee
Greg Koaler, Negotiating Committee
Norm Kekil, Negotiating Committee
Bobby Jackson, Negotiating Committee

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Parma and the Ohio Patrolmen's Benevolent Association. The city is located in the southern part of Cuyahoga County and has a population of approximately 81,000. The union represents the patrol officers employed by the city.

The parties' collective bargaining agreement expired on December 31, 2011. They met on several of occasions to negotiate a successor agreement and resolved a number of issues. However, when the parties were unable to reach an overall agreement, the union declared impasse.

The Fact Finder was notified of his appointment on January 4, 2013. The fact-finding hearing was held on February 20, 2013. When the parties indicated that the dispute could not be resolved through mediation, this report was prepared.

The Fact Finder's recommendations are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ABILITY TO PAY

As indicated above, one of the criteria governing the fact-finding process is the ability to pay. In the instant case, the city argued that it cannot afford the union's proposed wage increases and its other economic demands. The union responded that the city has the ability to pay its demands.

City Position - The city argues that it was hit extremely hard by a "1-2 punch." It indicates that the Great Recession resulted in income tax revenue dropping by \$3 million between 2008 and 2009 or from \$29,347,000 in 2008 to \$26,283,000 in 2009 and General Fund revenue dropping more than \$4 million from \$45.9 million in 2008 to \$41.8 million the next year.

The city contends that its second problem was cuts in state funding. It observes that the Local Government Fund was initially reduced by 25% in 2012, increasing to 50% in 2013. The city reports that the state eliminated the Tangible Personal Property Tax and virtually ended Commercial Activity Tax reimbursements. The city claims that the elimination of the Estate Tax on December 31, 2012, meant a \$1.5 million reduction in 2013 from the 2011 level. The city emphasizes that its annual revenue from these four sources will decline by approximately \$3 million from 2010.

The city acknowledges that it ended 2012 with a "modest" carryover balance. It states that this was the result of the austerity measures it adopted and a \$1.5 million increase in income tax receipts in 2012. The city claims that the \$3.8 million unencumbered carryover on its \$45.8 million budget will be needed for 2013.

The city maintains that the outlook for 2013 is “precarious.” It points out that while it has not completed its budget for 2013 for submission to City Council, the Auditor has constructed “a preliminary, summary estimate for 2013’s revenues by plugging in the reduced numbers for the LGF and the real estate taxes already known for 2013; by assuming an \$800,000 reduction in estate taxes; and by estimating all other revenues to remain at their 2012 levels.” (City Pre-Hearing Statement, page 4) The city stresses that the estimate is that General Fund revenue will drop from \$45.2 million in 2012 to \$43.4 million in 2013, which means that even with no increase in expenditures, it would be required to consume \$2.4 million of its \$3.8 million carryover balance.

The city argues that to assume expenditures will not increase ignores the reality. It reports that in April of 2013 it will lose a Safer Grant, which pays the salary and benefits for nine firefighters. The city notes that the loss will be \$518,000 in 2013 and \$735,000 in 2014. It indicates that it must also assume an increase in insurance costs of \$200,000 to \$300,000 as well as price increases for supplies, including fuel, utilities, and rock salt.

The city contends that given these circumstances, it must demand a wage freeze. It indicates that since the OPBA is the first unit to negotiate an agreement, it will set a pattern for the entire city. It states that the citywide cost to the General Fund of a 1% wage increase is \$400,000. The city claims that “any wage increases would have to be extracted from some other budget line-item, and with personnel costs comprising nearly 80% of the General Fund Budget, layoffs would likely ensue.” (City Pre-Hearing Statement, page 5)

The city offered the testimony of Dennis Kish, the Auditor, in support of its position. He observed that income tax revenue fell substantially from 2008 to 2009 and expenditures declined from \$47.1 million to \$41.6 million. Kish acknowledged that income tax collections rose from

2009 through 2012, but claims that concessions were still necessary to build up the city's cash reserves.

Kish commented on revenues and expenditures for 2012. He stated that even with the \$1.4 million increase in income tax receipts that year, the city still spent \$600,000 more than it received. Kish acknowledged that the city ended 2012 with an unencumbered carryover balance of \$3.8 million, but insisted that it was necessary for the city to "shore-up" its year-end balance.

Kish also described the loss of state revenue. He observed that LGF receipts rose slightly in 2011 but emphasizes that cuts in 2012 and 2013 will leave receipts at 50% of the 2010 level; that TPPT receipts will be eliminated entirely in 2013; that CAT reimbursement fell from \$266,029 in 2010 to \$2,332 in 2012 and will be eliminated in 2013; and that the Estate Tax was eliminated on December 31, 2012, so that collections in 2013 are likely to be only \$500,000.

Kish also discussed the impact of the countywide reassessment process on real estate tax collections. He pointed out that in 2013 General Fund real estate tax receipts will fall by 11% from the previous year. Kish noted that payments to the Police and Fire funds will be reduced by \$1 million. He states that the lower assessed values will remain in place until 2015.

Union Position - The union argues that the city is in good financial shape. It points out that the city claimed in its 2011 report to the state auditor that the best measure of a city's financial well-being is its Statement of Net Assets and Statement of Activities. The union notes that the city's report to the state auditor indicates that its assets exceeded its liabilities by \$86,708,548 and that in 2011 its net assets increased by \$4,658,082.

The union contends that the city's claim that it has no money is like "a broken record." It indicates that in 2002 the city claimed that it could not pay its wage demands because of its inability to pay. The union observes that in City of Parma and Ohio Patrolmen's Benevolent

Association; SERB Case No. 02-MED-01-0039; March 3, 2003, Fact Finder Alan Miles Ruben noted that the city's bond rating had been upgraded to AA- and that the city's year-end balance was 6.3%, which was more than the 2.81% average for the prior 10 years and concluded that the city had not demonstrated an inability to pay the union's demand for 4% increases in 2003 and 2004.

The union maintains that the city made a similar claim of financial difficulties in 2005. It points out that at that time, the city stated that it could not pay the union's wage demand because it faced severe financial problems. The union notes that in City of Parma and Ohio Patrolmen's Benevolent Association; SERB Case No. 05-MED-01-0047; July 20, 2006, Fact Finder Dennis Byrne found that while the city had financial problems, it was not facing a financial crisis. It indicates that Byrne rejected its demand for 5% wage increases and awarded the 3% increases offered by the city only because its demand exceeded the increases being granted in Ohio.

The union argues that a similar situation existed in 2011 in bargaining with the IAFF. It reports that in those negotiations, the city argued that it had no money for wage increases and that its financial condition called for the continuation of concessions. The union observes that in City of Parma and International Association of Firefighters, Local 639; SERB Case No. 09-MED-07-0743; July 14, 2011, Fact Finder Ruben rejected the city's demand for a wage freeze for 2010 and 2011 and recommended a \$200 signing bonus and a 1% increase in the top wage. It noted that the Fact Finder observed that the city had a 7% General Fund carryover in 2010 but that a "prudent" carryover balance of 5% left it with \$858,340 to cover revenue shortfalls or unanticipated cost increases.

The union offered the report and testimony of Mary Schultz, a Certified Public Accountant and Certified Fraud Examiner, in support of its position. She stated that the city's

General Fund is “financially stable and recovering.” Schultz reported that income tax revenues have increased each year since 2009 and that year-end cash balances have risen steadily.

Schultz testified that the city’s 9% cash balance at the end of 2012 is satisfactory. She acknowledged that the Government Financial Officers Association recommends a carryover balance of 16% but notes that the Association recognizes that larger cities can more easily absorb changes in revenue and expenditures so they can operate with smaller balances. Schultz added that it should be noted that the balance has grown from 5% in 2009 to 9% in 2012.

Schultz complained that the city failed to provide her with information regarding the 2013 budget. She rejected any claim that the information was not available because the law requires cities to have a temporary appropriations measure in place by January of each year. Schultz indicated that most financial directors have projections for future years and monitor those projections on an ongoing basis.

Schultz suggested that the Capital Improvement Fund is a potential source for paying the union’s economic demands. She reported that on December 31, 2012, the fund had a carryover balance of \$2.7 million or 34% of 2012 fund expenditures. Schultz added that City Council could also reduce the 21.25% of income tax collections going to the Capital Improvement Fund and place the additional money in the General Fund where it could be used to pay the wages of police officers.¹

Schultz also examined the Police Department’s budget. She observed that in addition to the General Fund, the department is supported by the Police Levy Fund and several small grants. Schultz indicated that over the past few years, the fund has collected approximately \$3.1 million

¹ Subsequent testimony indicated that changing the allocation of the income tax between the General Fund and the Capital Improvement Fund would require a vote of the citizens.

per year and in 2012 had a carryover balance of \$247,000. She observed that the Police Levy Fund can be used for police salaries.

Schultz claimed that the Law Enforcement Trust Fund is another potential source of money to pay the union's wage demands. She pointed out that in 2012 the year-end balance was \$395,000. Schultz acknowledged that the fund can only be used to pay for supplies, training, and equipment but noted that this frees up other funds to be used for wages and benefits.

Schultz suggested that another option for paying the union's demands is to change General Fund spending priorities. She observed that General Fund expenditures for recreation and senior citizens' activities have increased each year. Schultz noted that in 2012 General Fund spending for those purposes was \$2.4 million.

Schultz testified that the cost of a 1% wage increase for members of the bargaining unit is \$100,333, including pension contributions and Medicare and Workers Compensation payments.

ISSUES

The parties presented 11 issues to the Fact Finder. For each issue, he will present the parties' positions and summarize the arguments and evidence they presented in support of their positions. The Fact Finder will then offer his analysis of the issue and his recommendation for resolving the issue.

1) Article 16 - Sick Leave, Section 16.09 - Cash-Out at Retirement - The current contract provides that at retirement employees are entitled to be paid for one-third of their accumulated, unused sick leave up to a maximum of 720 hours. The union proposes that employees be paid for one-half of their accumulated, unused sick leave with no maximum number of hours. The city opposes the union's demand.

Union Position - The union argues that its demand should be recommended. It claims that the data for the seven contiguous cities and for 17 cities in the western part of Cuyahoga County support its demand.

City Position - The city argues that the union's demand should be rejected. It points out that paying employees for one-third of their unused sick leave is a common arrangement. The city acknowledges that the maximum number of days is less than in a number of other departments but states that if the maximum number of days is increased, the union should allow it to more closely monitor the use of sick leave.

Analysis - The Fact Finder cannot recommend the union's demand. First, four of the seven contiguous cities pay employees for one-third of their unused sick leave and all place caps on the number of days. In the entire west side of the County, more than one-half of the 17 cities pay for more than one-third of an employee's accumulated sick leave but all but five of the cities limit the number of days.

Second, while the Fact Finder believes the city's financial outlook has improved and will continue to improve, its ability to pay is still somewhat restricted. Available funds should be devoted to increasing the base wage rather than for other purposes.

Recommendation - The Fact Finder recommends that the current contract language be retained.

2) Article 16 - Sick Leave, New Section - Attendance Policy - The current contract has no specific language relating to the adoption of an attendance policy. The city demands a provision reserving its right to implement policies governing the use of sick leave, including a no-fault attendance policy. The union opposes the city's demand.

City Position - The city argues that the Fact Finder should recommend its proposal, which would allow it to adopt a no-fault attendance policy. It indicates that while it is difficult to prove that there is an abuse of sick leave, a no-fault system would be an efficient way to address any problem. The city reports that MetroHealth and the Metroparks have no fault attendance policies. The city adds that its proposal would require it to meet and confer with the union before any rules were implemented.

Union Position - The union argues that that the city's demand should be rejected. It states that since the creation of a no-fault policy is a mandatory subject of bargaining, the city should propose one during negotiations. The union claims that in any event, attendance is not a problem in the department.

Analysis - The Fact Finder cannot recommend the city's proposal. The city had the opportunity to propose a no-fault plan during negotiations but did not do so. Furthermore, the Fact Finder does not believe it would be appropriate to grant the city's demand without some indication that attendance is a problem.

Recommendation - The Fact Finder recommends that the city's demand for the new contract provision be denied.

3) Article 20 – Vacation, Section 20.02(E) - Vacation Entitlement - The current contract provides for six weeks of vacation for employees who have completed 22 years of continuous service. The city seeks to eliminate this provision of the contract and to reduce the maximum vacation entitlement to five weeks. The union opposes the city's demand.

City Position - The city argues that its proposal should be recommended. It states that with sick leave, compensatory time, and six weeks of vacation, the amount of time off is “unwieldy.” The city asserts that six weeks of vacation is unheard of in the private sector.

Union Position - The union opposes the city’s demand. It points out that employees are not eligible for six weeks of vacation until they complete 22 years of service and that the average career of police officers has been 25 years. The union claims that given staffing levels, six weeks of vacation does not create overtime.

Analysis - The Fact Finder cannot recommend the city’s demand. While six weeks of vacation after 22 years is generous by private sector standards, no data was offered by the city to show that the current vacation schedule is not consistent with comparable cities. In addition, given the number of years where police officers have not gotten a wage increase, it is not appropriate time for the city to reduce a benefit enjoyed by its most senior police officers.

Recommendation - The Fact Finder recommends that the current contract language be retained.

4) Article 22 - Longevity Compensation, Section 22.01 - Longevity

Schedule - The current contract provides for a longevity payment of \$400 after five years of service and \$400 increases after each additional five years of service reaching a maximum of \$2000 after 25 years. The union demands longevity of \$100 for each year of service beginning after five years. The city rejects the union’s demand.

Union Position - The union argues that its demand to increase longevity payments is justified. It observes that the dollar amount for longevity is less than the norm at each step and

that rather than longevity increasing each year, it increases every five years. The union complains that over a career the result is “harmful.”

City Position - The city argues that given its financial situation, it would be irresponsible to increase longevity.

Analysis - The Fact Finder cannot recommend the union’s demand. While the union offered no data for longevity in comparable cities, the Fact Finder recognizes that the city’s longevity schedule is less generous than in many other jurisdictions. However, he believes that any increase in longevity should be delayed until the city’s finances improve.

Recommendation -The Fact Finder recommends that the current contract language be retained.

5) Article 24 – Insurance, New Section - Health Insurance Committee - The current contract contains no provision for a Health Insurance Committee but the union has participated in the activities of the Health Insurance Committee which was created by a provision in the IAFF’s contract with the city. The committee is composed of up to 18 representatives of bargaining unit and non-bargaining unit employees plus an unspecified number of city representatives. It is charged with reviewing the city’s health insurance plans and recommending new plans to promote cost containment and to minimize employee premium contributions. The IAFF provision states that if the committee fails to approve a new plan, the alternative plans are to be submitted to an Arbitrator, who selects a plan from among those submitted. The city proposes modifying the IAFF’s contract language by limiting the number of employee representatives to 10 and by allowing the city to submit an alternative health insurance plan to the Arbitrator. The union opposes the city’s demand.

City Position - The city argues that the health insurance committee provision needs to be revised. It complains that the number of union representatives is “excessive and cumbersome.” The city further indicates that “although contrary to the intent of the parties, the current language could be interpreted to suggest that whatever recommendation as presented by the Committee, would have to be implemented, even over the objection of the city.” (City Pre-Hearing Statement, page 8). It states that consistent with the original intent of the committee, its proposal allows it to reject the committee’s proposal and present its own proposal to the Arbitrator who could choose the committee’s plan, its plan, or “a middle ground proposal.”

Union Position - The union argues that the city’s proposal should be rejected. It observes that the city did not show there were any problems with the current committee and that the committee “works.” The union adds that in any event, if the committee is changed, it should be done in negotiations with the IAFF.

Analysis - While The Fact Finder believes that the city’s proposal may have merit, he cannot recommend the changes the city seeks. First, since the committee appears to have helped control costs and employee premium contributions, any changes should be negotiated by the parties rather than imposed on them by a neutral. Unfortunately, the city’s proposal regarding changes to the health insurance committee was given to the union only a few days before the fact-finding hearing so that the parties had no opportunity to discuss the proposed changes. Second, as the union noted, the health insurance committee was negotiated by the city and the IAFF and is not in the OPBA contract. The union’s argument that the changes sought by the city should be negotiated with the IAFF is not without some merit.

Recommendation - The Fact Finder recommends that the city’s demand for a new contract provision for a health insurance committee be denied.

6) Article 26 – Salary Schedule and Supplements, Section 26.01 - Salary

Schedule - The current contract provides for a starting salary of \$44,348 with a maximum salary of \$63,161 beginning with the fifth year of service. The union demands a 3% increase in each step of the salary schedule effective January 1, 2012; a 3.25% increase effective January 1, 2013; and a 3.5% increase effective January 1, 2014. It also seeks to add a new top step to the wage schedule, 2% above the current top step, and to eliminate the first step on the salary schedule effective on January 1 of 2012, 2013, and 2014. The city seeks to freeze wages in 2012 and 2013, and offers a wage reopener for wages in 2014. It opposes the union's demand to add a new top step to the wage schedule.

Union Position - The union argues that its demand should be adopted. It states that in 2011 wages for a ten-year patrol officer in the city were \$63,161, or 96.32% of the \$65,337 average wage for suburban cities in Cuyahoga County.² The union indicates that the total compensation for a ten-year officer in Parma is \$65,707, or 94.08% of the \$69,845 average for the County.³ The union adds that wages in the city were only 98.4% of the average wage in the seven contiguous cities and total compensation was only 96.81% of the average for those cities.⁴

The union reports that the wage and compensation comparisons for 2012 show even greater gaps between the city's wages and compensation. It points out that if it does not receive a wage increase for 2012, the top pay for ten-year patrolmen in the city will remain at \$63,161 while the average for officers in other cities in the county will rise to \$66,469, nearly 5% more than in the city. The union notes that the average total compensation in the County will rise to

² The union's list of cities does not include Cleveland or East Cleveland.

³ Total compensation includes uniform allowance, shift differential, longevity, and a number of additional items.

⁴ The contiguous cities are Broadview Heights, Brook Park, Brooklyn, Middleburg Heights, North Royalton, Parma Heights, and Seven Hills.

\$70,875 leaving the city's total compensation 7% less than in the county. It observes that similar results would occur with respect to contiguous cities.

The union complains that wages have not risen even though the city has hired more police officers. It points out that at the end of 2006 and 2007 there were 87 sworn personnel but that this number rose to 95 at the end of 2010 and to 99 at the end of 2011. The union emphasizes that this increase in staffing took place while the city was claiming that its financial circumstances required wages to be frozen in 2009 and 2010 and to increase by only 1% in 2011.

The union challenges the city's complaint that it offered less concessions than its other unions. It indicates that the city did not seek furlough days or propose layoffs for police officers because it had promised to increase the number of police officers in order to convince voters to renew the Police Levy. The union stresses that it did agree to freeze wages and to forgo some benefits.

City Position - The city argues that its wage offer should be recommended. It suggests that its police officers are not poorly paid. The city acknowledges that its wages rank at approximately the 25th percentile in Cuyahoga County. It claims, however, "it is the City's deplorable financial condition which drove the reduction in their officers' comparable standing." (City Pre-Hearing Statement, page 6) It adds that despite this fact, its top-step patrol officers earned an average gross wage of \$83,231.70 in 2012 because of abundant overtime opportunities.

The city contends that the data the union offered on the total compensation of police officers in Cuyahoga County and in the contiguous cities is misleading. The city points out while the union includes uniform allowances, shift differentials, longevity, and a number of other forms of compensation in its figures for total compensation, it did not include the 50 hours of

compensatory time Parma police officers get for firearms qualification. It notes that this comp time, which can be banked or cash out, is worth \$1500.⁵

The city maintains that internal comparisons support its position. It points out that in the second half of 2009, AFSCME, which represents City Hall employees, agreed to 9½ furlough days and accepted another 15 days in 2010. The city notes that Laborers Local 1099 accepted the same number of furlough days as AFSCME for lower-level supervisors in the Service Department and rank and file employees in the department had their workweek reduced from 40 to 35 hours. It claims that “the concessions offered up by safety-force employees and particularly patrol officers paled in comparison.” (City Pre-Hearing Statement, page 3) The city asserts that the police officers’ “sacrifice” was to defer rather than give up compensation.

Analysis - The Fact Finder must consider two issues. First, he must offer recommendations for wages in 2012, 2013, and 2014. Second, the Fact Finder must also consider the union’s proposal to add a new 2% top step to the wage schedule each year of the contract.

While the Fact Finder recognizes the hardship the city’s proposal for a wage freeze in 2012 may create, especially since it follows wage freezes in 2008, 2009, and 2010 and a 1% top-step wage increase in 2011, he must recommend the city’s proposed wage freeze for 2012.⁶ He recognizes that income tax receipts have grown but this was more than offset by the decline in the Estate Tax, the Local Government Fund, the Tangible Personal Property Tax, and Commercial Activities Tax reimbursements. The fact that expenditures grew more than revenue led to a deficit of \$597,206 in 2012 and a reduction in the city’s cash carryover from \$4,607,000 to \$4,009,000 or from 10% of General Fund expenditures to 9%. Although it may be true that big

⁵ If an additional \$1500 is included in total compensation for 2012, Parma’s compensation increases from \$65,707 to \$67,207, or from 92.71% of the average compensation for police officers in Cuyahoga County to 94.82%.

⁶ The Fact Finder is not recommending that employees be frozen on the wage schedule. They should advance on the schedule in accord with the practice of the parties.

cities can operate with somewhat smaller cash carryovers than other cities, the city's current carryover balance is less than in many other large cities and may be needed to meet expenditures going forward.

The Fact Finder believes that 2013 is a different situation. While the city suggests that General Fund revenue will fall from \$45.2 million in 2012 to \$43.4 million in 2013, its estimate seems unduly pessimistic. First, it projects that revenue from cable franchise, school zone enforcement, building, and Municipal Court will be the same in 2013 as in 2012 despite the fact that these revenue sources have grown steadily since 2009.

Second, the city projects no increase in income tax receipts. The record, however, shows that they have grown steadily from \$26.3 million in 2009 to \$29.2 million in 2012, including a 5.1% increase from 2011 to 2012. The Fact Finder is confident that income tax receipts will continue to grow as the economic recovery proceeds.

Third, as indicated above, the city's General Fund cash carryover at the end of 2012 was \$4,009,000 or 9% of expenditures. As Fact Finder Ruben observed in City of Parma and Ohio Patrolmen's Benevolent Association; SERB Case No. 02-MED-01-0039; March 3, 2003, the city has customarily had an unencumbered carryover of 2.81%.⁷ Thus, the city can cover any shortfall in revenue or unanticipated expenses by drawing on its carryover balance.

The Fact Finder believes that these points indicate that in 2013 the city can afford to pay essentially the same wage increases as comparable cities. The data supplied by the union indicates that in 2013, the average wage increase for police officers for the 13 cities in Cuyahoga County who have reached an agreement on wages for 2013 is 1.7%. The average settlement for the three contiguous cities which have settled wages for 2013 is 2.1%. Based on this data, the Fact Finder recommends that wages be increased by 1.75% effective January 1, 2013.

⁷ The Fact Finder acknowledges that the average cash carryover would have been somewhat larger.

The Fact Finder is handicapped in making a wage recommendation for 2014 by the fact that the city did not supply the customary projections of revenues and expenditures. While this makes it tempting for the Fact Finder to consider the city's proposal for a wage reopener for 2014, he would not be serving the parties well if he were to do so. A wage reopener would mean that negotiations for wages to be effective on January 1, 2014, would have to resume in the matter of months. Since it appears that little is left to cut in state funding and the probability of state funding being restored is very small and since the economy seems likely to continue to slowly improve, little new information would be available by the time negotiations would have to resume.

The Fact Finder recommends that wages be increased by 2.25% effective January 1, 2014. This increase assumes that the economic recovery will continue and that wage settlements in comparable cities will be rising. At the same time, it reflects the fact that the city is likely to still be adjusting to the drastic cuts in state spending.

The remaining wage issue is the union's demand to add a new top step to the wage schedule each year of the agreement. The Fact Finder cannot recommend the union's proposal. Adding a new wage step to the wage schedule on top of the recommended increases in the wage schedule could generate costs beyond the city's ability to pay.

Recommendation - The Fact Finder recommends the following contract language:

Effective January 1, 2012, the wage schedule shall be frozen.
Effective January 1, 2013, the wage schedule shall be increased by 1.75%.
Effective January 1, 2014, the wage schedule shall be increased by 2.25%.

7) Article 26 - Salary Schedule and Supplements, Section 26.04 - Shift

Differential - The current contract establishes a shift differential of \$.25 per hour for all hours worked on a shift beginning at or after 2 p.m. The union proposes increasing the shift differential to \$.40 per hour. The city opposes the union's demand.

Union Position - The union argues that its demand should be adopted because it is another way to add money to the police officers' pay package.

City Position - The city argues that its financial situation rules out any increase in the shift differential.

Analysis - The Fact Finder cannot recommend the union's demand. He believes that increasing the base wage is a better way to increase the pay of police officers.

Recommendation - The Fact Finder recommends that the current contract language be retained.

8) Article 26 - Salary Schedule and Supplements, Section 26.08 – Shooting

Proficiency Bonus - The current contract provides that employees who successfully qualify with their pistol are to receive between 16 and 50 hours of compensatory time as determined by department policy. The union wishes to add to the comp time an annual grant of \$500. The city opposes the union's demand

Union Position - The union argues that its demand should be adopted. It claims that an increase in the shooting bonus is necessary "to match the firearms benefit that is paid elsewhere." (Union Pre-Hearing Statement, page 6) The union adds that it is another way to enhance the city's pay package.

City Position - The city argues that the union's demand amounts to a wage increase, which it cannot afford to pay.

Analysis - The Fact Finder recommends that the union's demand be denied. As indicated above, the most appropriate way to increase the police officers' compensation is to increase their base wage.

Recommendation - The Fact Finder recommends that the current contract language be retained.

9) Article 31 - Duration of Agreement, Section 31.02 - Retroactivity - The current contract allows Conciliators to order wage and benefit increases in the fiscal year of their appointment. The city seeks to drop this provision from the agreement. The union wishes to retain it.

City Position - The city argues that its demand should be recommended. It suggests that the current contract provision allows Conciliators to award wage increases and other cost items even though the city has not budgeted for them. The city suggests that the provision is not necessary because under the statute, the union can accelerate negotiations.

Union Position - The union opposes the city's demand. It points out that the current provision represents a long-standing agreement between the parties and is included in the agreement because negotiations have typically been delayed. The union notes that under the statute, the city can compel timely negotiations by filing a notice to negotiate.

Analysis - The Fact Finder rejects the city's demand. The record reveals that bargaining in the city has not infrequently been delayed. While the union can attempt to force the city to adhere to the statutory timelines, it appears that delaying bargaining and removing any

controversy over retroactivity can benefit both parties. This was apparently the conclusion the parties reached when the provision was negotiated.

Recommendation - The Fact Finder recommends that the current contract language be retained.

10) Appendix B - Drug and Alcohol Testing Policy and Procedures - The current contract provides for testing blood and urine for alcohol and drug use on a random basis and after an accident where an employee or another person suffered a serious injury or where there was \$10,000 of property damage. The policy requires the evaluation and treatment of the employee after the first positive test and further evaluation and treatment after the second and third positive results.

The city proposes a number of changes in the policy. First, it seeks the ability to test hair follicles in addition to testing blood and urine. Second, the city proposes testing of an employee involved in an accident where there is an injury requiring medical treatment or \$2500 in property damage. Third, it wishes to eliminate the second and third chances for employees who test positive for drugs or alcohol, except for those who voluntarily come forward. The union rejects the changes sought by the city.

City Position - The city argues that the changes it seeks are necessary. It states that it has had two police officers with drug problems, including cocaine, and three firefighters with drug problems, including a repeat cocaine user. The city indicates that it will use its agreement with the union as a template for bargaining with the IAFF.

The city contends that the second and third strikes for employees who test positive for drugs or alcohol should be eliminated. It states that “employees carrying a gun, driving at high

speeds, in arresting suspects... must be free of drugs and alcohol.” (City Pre-Hearing Statement, page 9) The city claims that “to argue otherwise places the lives of citizens and the lives of other officers in danger.” (Ibid.) It adds that its survey of 10 cities indicate that seven of the cities allow for the termination of a police officer for the first positive test result.⁸

The city maintains that it is necessary to expand testing to include hair follicles. It points out that since random tests are done two to four months apart, once a test occurs police officers have period of time when they can use drugs and escape detection. The city notes that this possibility is eliminated by hair follicle tests because they detect drug use three to six months after the fact.

The city argues that it is necessary to tighten up post-accident testing. It suggests that the current standards allow many employees to escape testing despite being involved in an accident. The city claims that “the Bureau of Workers Compensation encourages it employers to engage in such testing.” (Ibid.)

Union Position - The union opposes the city’s demands. First, it complains that hair follicle testing is simply too intrusive. Second, the union states that requiring drug and alcohol tests where an accident involves any injury requiring medical treatment or \$2500 in property damage, would significantly and unnecessarily expand drug and alcohol testing. Third, it opposes the elimination of second and third chances for employees who test positive.

Analysis - The Fact Finder believes that one of the changes sought by the city ought to be adopted. He is convinced that while a police officer who tests positive may be entitled to a second chance, is not clear that a police officer is entitled to a third chance. This conclusion is not inconsistent with the data supplied by the city. It indicates that two of the jurisdictions

⁸ The cities included in the survey are Berea, Cleveland, Euclid, Fairview Park, Garfield Heights, North Olmsted, North Royalton, Olmsted Falls, Solon, and Westlake.

selected by the city provide for a second chance and the third city offers a second chance for non-felonious drugs.

The Fact Finder is not convinced that the property damage and injury thresholds for testing should be changed. There was testimony or evidence offered regarding problems resulting from the current standards.

The Fact Finder cannot recommend adding hair follicle testing to the current blood and urine testing. The data submitted by the city indicates that none of the ten cities for which it presented data test hair follicles. The parties in those jurisdictions may view the tests sought by the city as too intrusive.

Recommendation - The Fact Finder recommends the current contract language except that Section 10 should be revised as follows:

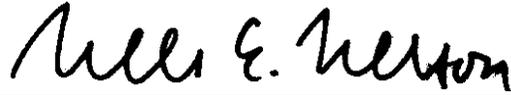
Employees who test positive for illegal drugs shall be medically evaluated, counseled, and treated as recommended by the E.A.P. counselor. Employees who successfully complete a rehabilitation program, will be returned to work and will be re-tested randomly once every quarter for the following 24 months. Employees who test positive during the 24 month period or at any subsequent time shall be terminated.

The treatment and rehabilitation shall be paid for by the employee's insurance program. Any cost over and above the insurance coverage shall be paid for by the employee. Employees will be allowed to use their accrued and earned leave for the necessary time off involved in the rehabilitation program.

Employee may voluntarily enter rehabilitation. Those who enter the program on their own initiative shall not be subject to re-testing.

11) Tentative Agreements – During negotiations the parties reached tentative agreement on a number of issues. At their request, the Fact Finder recommends the adoption of the tentative agreements.

Recommendation - The Fact Finder recommends the adoption of the tentative agreements reached by the parties.

A handwritten signature in black ink that reads "Nels E. Nelson". The signature is written in a cursive style and is positioned above a horizontal line.

Nels E. Nelson
Fact Finder

March 12, 2013
Russell Township
Geauga City, Ohio