

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF
FACT-FINDING BETWEEN

CITY OF ST. MARYS

AND

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

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CASE NO: 12-MED-09-0944

FACT-FINDING REPORT

HEARING

Hearing Date:
Report Issued:
Hearing Location:

December 06, 2012
December 12, 2012
City Municipal Building
101 East Spring St.
St Marys, OH

Employer Representative:

Mr. Patrick A. Hire, Regional Manager
Clemans Nelson & Associates, Inc.
417 North West St.
Lima, OH 45801-4237

Other Employer Participants:

Ms. Sue Backs, Personnel Director
Mr. Eric J. Ostling, Safety-Service Director

Union Representative:

Mr. Mark J. Volcheck, Esq.
Ohio Patrolmen's Benevolent Association
92 Northwoods Blvd., Suite B2
Columbus, OH 43235

Other Union Participants:

Mr. Randy Allemeier, St. Marys Patrolman
Mr. Gary W. James, St. Marys Patrolman

Fact-finder:

William M. Slonaker, Sr., JD, MBA, SPHR

APPOINTMENT

This Fact-finder was appointed by letter dated November 19, 2012, from the Ohio State Employment Relations Board. Pursuant to the appointment, this Fact-finder was bound to conduct a Fact-finding Hearing and to serve on the Parties and SERB his written Report and recommendations on the unresolved issues. Subsequent to the appointment, the Parties did not agree to an extension. Thus, the Fact-finder was to hold a hearing and issue a report no later than December 12, 2012. The earliest the Parties could schedule the hearing was December 06, 2012. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearing as above noted. The Fact-finder apologizes in advance for the typos that are surely hiding in this Report that is being concluded the night of December 11, *i.e.*, the night before it is due.

STIPULATIONS

1. That only the remaining issues before this Fact-finder are in dispute. That issues previously agreed to by the Parties be recommended by this Fact-finder.

CRITERIA

Pursuant to Rule 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Report are based on reliable information relevant to the issues before the Fact-finder. In making recommendations, Fact-finders shall take into consideration the following:

1. Past collectively bargained agreements, if any between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and,
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND – THE PARTIES

The bargaining unit consists of nine (9) Patrolmen (Police Officers). The term of the Parties current Agreement is January 1, 2010, through December 31, 2012.

The City includes approximately 8,300 residents, and has about 82 full-time employees. Other bargaining units include the dispatchers (OPBA, 01-01-11 through 12-31-13); the police sergeants (OPBA, 01-01-12 through 12-31-14); the firefighters (IAFF, 01-01-11 through 12-31-13); and the utility/maintenance workers (UWUA, through 12-31-12).

Negotiations began in September, 2012, and the Parties met three times. A brief attempt to initiate mediation was made prior to the start of the Hearing, but both parties agreed that it would likely not succeed, and that the time was needed to present the issues. The Hearing was convened. The following issues identified by the Parties in their Pre-hearing Position Statements and presented during the Hearing remained unresolved at the conclusion of the Hearing. The Parties agreed that only the issues presented during the Hearing were to be the subject of this Fact-finding. However, anything not presented as an issue by the Parties during the Hearing and the Parties' Tentative Agreements are recommended for adoption as part of this Report.

Collective bargaining is an ongoing process that develops and matures through the years, through successive collective bargaining agreements, and perhaps most importantly, through the daily interactions between the members of the bargaining unit and members of management. It appears that the Parties have a mature bargaining relationship that started in the 1980s. Both appear fully committed to the residents they serve. Difficult times experienced during the past few years that continue to the present require the best working relationship possible for the benefit of all of their various respective stakeholders.

ISSUES

ISSUE 1: REGARDING ARTICLE 2 – UNION PROPOSAL FOR FAIR SHARE & EMPLOYER PROPOSAL FOR MORE TIMES TO REVOKE DUES DEDUCTION

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that the following language be added (as shown in bold):

Section 10.3. The parties agree that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this article regarding the deduction of union dues **or fair share fees**. The Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions, or proceedings by any employee arising from deductions made by the Employer pursuant to this article. Once the funds are remitted to the Union, disposition of such funds thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 10.8. Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the duration of this Agreement. **An employee may revoke such authorization during the 10-day period immediately prior to the expiration of this Agreement. In such event, however, the Employer shall still deduct a fair share fee from such employee in accordance with Section 10.9.**

Section 10.9. **Upon successful completion of their probationary period, all members of the bargaining unit shall either (1) maintain their membership in the OPBA, (2) become members of the OPBA or (3) pay a service fee (fair**

share fee) to the OPBA in an amount set by the OPBA, as a condition of employment, all in accordance with Ohio Revised Code Section 4117.09. In the event that a service fee is to be charged to a member of the bargaining unit, the Employer shall deduct such fee and pay such fee to the Union in the same manner as dues are deducted and paid as specified in this Article. The employee's authorization or consent shall not be required to deduct such service fee.

All nine patrolmen in the bargaining unit are Union members. However, the Union proposes that new bargaining unit employees or current employees who may revoke their dues deduction should pay their fair share fee. Six of ten cities in contiguous counties have fair share. Eighteen of 27 cities in the Dayton Region have fair share. The OPBA provides for an appropriate "rebate procedure" under which the amount of fair share can be challenged by Patrolmen.

In response to the City's proposal to increase the number of times during a contract that a Union member can revoke membership (dues deduction) the Union maintains that the current one-time opportunity is a common provision, is sufficient for its members, and is supported by Parties' collective bargaining history.

EMPLOYER'S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

~~Section 10.8. Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the duration of this Agreement.~~ **The payroll deduction authorization shall be irrevocable for a period of one (1) year or until the negotiated Agreement expires, whichever occurs first. An employee may revoke authorization for payroll deduction of dues by submitting a written notice to the Employer with a copy of the revocation to the Union, during the ten (10) day period immediately prior to the expiration of each one (1) year period or the expiration of the Agreement. If no revocation is received during this ten (10) day period the authorization for pay of deduction of dues shall be considered renewed for an additional one (1) year period. The Union warrants and guarantees to the Employer that no provision of this article violates the Constitution or laws of either the United States of America or the State of Ohio.**

The Employer opposes including a fair share fee in the Agreement. The City's other collective bargaining agreements (OPBA/Sergeants, OPBA/Dispatchers, IAFF/Firefighters, UWUA/street, line, etc. workers) do not provide for fair share. O.R.C. §4117.09(C) does not require fair share fees, it merely states that an agreement "may contain" fair share.

The City's proposal for three opportunities for Union members to revoke their dues deduction is consistent with the City's four other three collective bargaining agreements, all of which provide for 10-day revocation periods at the end of each year of the agreement.

RECOMMENDATION

Dues, including fair share, is one of the foundation stones for a union to effectively represent both its dues-paying members and all other members of the bargaining unit. Asking a union to perform its duties without a reliable source of funding from its beneficiaries is analogous to asking a city, county or other governmental entity to meet its service obligations with funding totally reliant on residents voluntarily choosing to contribute and then following through by voluntarily mailing a check. The current situation, while not having been a problem in the past, is similar to an “unfunded mandate.” ORC §4117.09(C) provides that a collective bargaining contract may provide for fair share.

For these reasons, the **Fact-finder recommends** that the Parties agree to fair share as part of Article 10, Sections 10.3, 10.8, and 10.9 as proposed by the Union. On condition that the Parties accept this recommendation for fair share, then the **Fact-finder recommends** that the Parties accept an annual 10-day window during which a dues paying member of the Union can revoke their authorization for continuing dues deduction. However, upon such revocation, the provision for deduction of fair share shall apply in lieu of dues deduction. If the Parties do not accept fair share, then the **Fact-finder recommends** that the Employer’s proposal for an annual 10-day window not be accepted. There was no evidence whatsoever that the current language regarding revocation was not working, had caused any problem, or that any member had had ever expressed a desire to revoke their dues authorization.

ISSUE 2: REGARDING ARTICLE 15 – EMPLOYER’S PROPOSAL TO RECALL & UNION’S PROPOSAL TO RECALL

EMPLOYER’S NON-ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes additional language be added to Section 15.8 (as shown in bold):

Section 15.8. In the case of long-term layoff, recalled employees shall have ten (10) calendar days following the date of mailing of the recall notice to notify the Employer of their intention to return to work. Employees shall have fifteen (15) calendar days following the mailing date of the recall notice in which to report for duty unless a different date for returning to work is otherwise specified in the notice. **If the recalled employee fails to notify the Employer of their intention to return to work within the timeframes in this section, the employee shall be removed from the recall list.**

The City has a responsibility to all laid off employees on the recall list. Under the current language, it would be unfair to the others on the list to wait in limbo on an employee who fails to respond. Further, what if there is only one employee on the list and he fails to respond within the specified time? Or, if there is more than one, what if they all fail to respond? At what point can the City go outside and seek a new employee?

Under the Union’s proposal, the City is also concerned about how to calculate seniority if a recalled employee fails to respond, drops behind the next person on the list (who has lower

seniority), that next person returns to work, and then at some point the first employee (with more seniority) is recalled and then returns.

UNION'S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes additional language be added to Section 15.8 (as shown in bold):

Section 15.8. In the case of long-term layoff, recalled employees shall have ten (10) calendar days following the date of mailing of the recall notice to notify the Employer of their intention to return to work. Employees shall have fifteen (15) calendar days following the mailing date of the recall notice in which to report for duty unless a different date for returning to work is otherwise specified in the notice. **If the recalled employee fails to notify the employer of his/her intention to return to work within the timeframes in this section, the employee next on the recall list shall be eligible to be recalled. The employee who failed to give notification shall follow said employee on the recall list.**

The Union's proposal is its response to the Employer's proposal regarding recalling laid off employees. It answers the City's concern of what to do if a recalled employee fails to notify the City of their intention to return to work within the timeframe. Additionally, current Section 15.6 provides in-part that, "Employees who are laid off shall be placed on recall list for a period of eighteen (18) months." The OPBA/Sergeants contract does not include the Employer's proposal. [Note: there are five sergeants in that unit.]

The City is concerned about how to calculate seniority if the laid-off employee who is first on the list is recalled but fails to notify, (under the Union's proposal) drops to second on the list, and the City then recalls the new first person on the list. How is seniority calculated if the City subsequently recalls the original first person who then returns to work? The answer is in a separate section (15.1) which provides that a "layoff of eighteen (18) months or less" will "not constitute a break in continuous service."

Recall rights go to the heart of seniority rights, one of the keystones of bargaining unit security. Seniority rights should prevail over the City's concerns – especially since the Union's proposal answers those concerns.

RECOMMENDATION

There have not been layoffs in the City. However, there is the unanswered question under the current language of what should the City do if the laid-off employee at the top of a future recall list does not notify the City within the specified time period. While the Union's proposal provides an answer, *i.e.* that employee drops to second on the list, it does not answer how many times a recalled employee can sit out by not responding either "yes" or "no."

The **Fact-Finder recommends** that the Union's proposal be accepted on condition that it is modified to provide that a recalled employee can only one (1) time fail to respond and thereby remain on the recall list by dropping to next position.

Section 15.8 addresses "long-term" layoffs. Hopefully the City will continue its commendable

efforts to avoid layoffs. However, a long-term layoff can substantially disrupt employees' lives and there any number of conceivable actions they may take to fill their earnings gaps unless and until recalled. There is no predicting the circumstances in which affected employee may find themselves. The recommendation for limiting the opportunity to not respond and remain on the list is one time should answer the concerns of both Parties, while properly recognizing the importance of seniority within the Union.

ISSUE 3: REGARDING ARTICLE 16 – EMPLOYER’S PROPOSAL FOR REDUCTION IN PERSONAL DAYS FOR NEW HIRES

EMPLOYER’S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes additional language be added to the second (unnumbered) paragraph of Section 16.4 (as shown in bold):

A newly hired employee will receive the following number of personal leave days during the first year of employment:

<u>Hire Date</u>	<u>No. of Personal Leave Days</u>
January – March	4
April – June	3
July – September	2
October – December	0

Employees hired on or after January 1, 2013, shall only receive two (2) personal leave days. Employees hired on or after January 1, 2013, will receive the following amount of personal leave days during the first year of employment:

<u>Hire Date</u>	<u>No. of Personal Leave Days</u>
January – May	2
June - September	1
October – December	0

The Employer further proposes additional language be added to Section 16.5 (as shown in bold):

Section 16.5. Employees who terminate their employment prior to December of any year will have their personal leave days prorated based on the number of months worked in the last year of their employment, pursuant to the following schedule

<u>Date of Termination</u>	<u>Days deducted</u>
March 31 or earlier	3
Between April 1 through June 30	2
Between July 1 through September 30	1
Between October 1 through December 31	0

<u>Date of Termination</u>	<u>Days Deducted</u>
(For employees hired on or after January 1, 2013)	
May 31 or earlier	2
Between June 1 through September 30	1
Between October 1 through December 31	0

Any personal days used in excess of the above schedule, shall be deducted from the employee's final paycheck if sufficient wages are available, or will be otherwise reimbursed to the City.

This proposal marks the beginning of a new bargaining pattern between the City and its organized employees. In these uncertain economic times, the City must do everything it can to reduce costs. Reducing personal leave days from 4 to 2 for employees hired on or after January 1, 2013, is a reasonable and effective way to reduce costs over the long term. This proposal will not reduce personal leave days for current employees.

The City intends to make this same proposal to all the bargaining units that have personal days. Under current CBAs, personal leave days are as follows: Sergeants 5 days, Dispatchers three days, Firefighters 8 hours, Workers 0 hours. Full-time, non-bargaining employees (excepting the Police and Fire Chiefs, and A.A. to Police Chief) receive 8 hours.

Comparable data from similar sized cities show that the average number of personal leave days is 2.6. For an employee hired after January 1, 2013, the cost of one personal leave day will range from \$162.32 to \$172.24. Thus, if the City's proposal is accepted, then it will save the cost of two personal leave days for each new hire, to wit: \$324.64 to \$344.48 per each of the three years of the Agreement, or a total of \$973.92 to \$1,033.44 for all three years (assuming no wage increase) for one new hire. [The City offered the following cities as comparables.]

City	Adjoining County	Miles	Population	Personal Days
Bryan	No	71	8,333	4
Celina	Yes	11	10,303	2
Kenton	Yes	45	8,336	2
Napoleon	No	78	9,318	5
Tipp City	No	57	9,221	4
Upper Sandusky	No	78	6,533	1
Van Wert	Yes	28	10,605	0
Wapakoneta	Same	11	9,474	3
Averages	4 / 8	47	9,015	2.6

The City computed that if a Patrolman used (took off) all holidays, all personal days, all vacation days, all compensatory time, all sick leave, and all bonus vacation time, he would have taken 404 hours of leave with pay or 50.5 days per year.

The City's proposal is both reasonable as well as fiscally responsible and does not harm current

employees.

UNION'S POSITION AND ITS ARGUMENTS

The Union proposes current Agreement language for the entire Article 16, *i.e.*, no changes whatsoever. The City's proposal to delete personal days is unjustified. It is offering nothing in exchange. Members have been entitled to four personal days since at least the January 1, 1998, agreement (Union Exhibit 3). As will be discussed in connection with the issue of wages, the City can afford to continue personal days as is.

City	Adjoining County	Miles	Population	Personal Days
Bellefontaine	Yes	42	13,370	3
Celina	Yes	11	10,303	2
Delphos	Yes	23	7,101	4
Greenville	Yes	42	13,227	2
Kenton	Yes	45	8,336	2
Lima	Yes	28	38,771	4
Sidney	Yes	33	21,229	4
Van Wert	Yes	28	10,605	0
Wapakoneta	Same	11	9,474	3
Averages	9 / 9	28	13,682	2.6

RECOMMENDATION

This is the first of several economic issues that the City identifies as part of its new pattern for bargaining with its unions. The City identified the Patrolmen as the first of the four safety forces contract to be offered this new pattern. The Patrolmen's Agreement expires 12-31-12; the Dispatcher's on 12-31-13; the Firefighters on 12-31-13; and the Sergeants on 12-31-14. The City said its new pattern consists of several cost cutting measures that are necessary to offset declining revenues and increasing expenses. In actuality, the City expressed its concern over a steadily declining General Fund balance, as will be discussed in connection with wages. The Patrolmen are paid from the General Fund.

The nine Patrolmen constitute a small bargaining unit. One can only imagine that they are a closely knit group of officers all of whom work together. They all rotate shifts. The Parties acknowledged that there may be (not certain) one retirement in the very near future. If so, then a new hire would be likely in early 2013. Thus, the City's proposal to only reduce personal days for new hires would likely have a near term effect. This proposal should be considered in conjunction with the City's proposed lower wage scale for new hires.

The concept of a two-tier workforce is not new. For example, many manufacturers have adopted it during the past couple of decades. There is a negative effect in addition to merely lower wages and benefits for new hires. There are numerous reports of animosity in such workforces similar to what occurred when women or minorities were (are) paid less than white males. This is not to suggest that the City's proposal is illegal. However, the City said it is looking ahead to the next ten years as a primary reason for fewer personal days and lower wages for new hires. What will be the effects over the next ten years on Union members and their working relationships as

additional retirements and new hires occur? Will new hires have less trust in both the City and the Union for creating the two tier system, relegating them to a lower status? Are fewer personal days and lower wages merely the thin edge of the wedge? The City did not offer any information as to how it might deal with the human consequences of a two tier workforce.

By its nature, every collective bargaining agreement concerns future members. The Union legitimately needs to consider the future consequences of representing a two tier workforce. Fewer personal days are analogous to lower wages. HR literature has long identified pay as a "satisficer" and not a motivator. That is, more pay does not result in greater/better performance. However, performance can decline/suffer if employees perceive that they are not being fairly paid. The two tier system can clearly identify one group (new hires) as not being paid fairly. Starting a two tier workforce could be a very slippery slope for both the City and Union. Unfortunately, executives and managers too often only consider measurable factors (here \$\$\$) and fail to consider other aspects (human) of a successful workforce.

The **Fact-finder recommends** that the Parties not accept fewer personal days for new hires.

ISSUE 4: REGARDING ARTICLE 18 – EMPLOYER’S PROPOSAL FOR REDUCTIONS/CHANGES TO COMPENSATORY TIME, SICK TIME, AND OVERTIME

EMPLOYER’S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 18.1. Overtime eligible employees shall make a good faith effort not to work past their normal quitting time nor perform work prior to their scheduled starting time, unless overtime has been authorized in advance by the officer in charge of the shift. Full-time employees shall receive overtime pay at the rate of one and one-half (1½) times the basic rate per hour for all hours worked in excess of the forty (40) hour standard workweek or eight (8) hour standard workday. Vacation, ~~compensatory time,~~ funeral leave, and personal leave days shall be considered as hours worked for the purpose of calculating an employee’s entitlement to overtime compensation. All other leaves of absence, whether with pay or not, shall be excluded as hours worked for the purpose of calculating an employee’s entitlement to overtime compensation. ~~If an employee uses sick leave hours during a pay period, any mandatory hours worked in addition to the employee’s regularly scheduled shifts shall be compensated for at the overtime rate as established in this article.~~ For overtime purposes, a day shall be defined as beginning at 12:01 a.m. and ending at 12:00 midnight each day.

For purposes of compliance with the FLSA and in the event of an audit by the Department of Labor, the parties agree the Employer has adopted a 207(k) (28 day/171 hour) schedule.

The Employer further proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 18.2. Each employee covered by this bargaining unit shall be permitted to earn compensatory time in lieu of pay when overtime is earned. Such compensatory time shall be earned at the rate of one and one-half (1½) times the actual hours of overtime worked. For the purposes of determining overtime, Section 18.1 of this article, defining overtime, shall be used. ~~Compensatory time, when taken, will be considered as active pay status. No eligible employee shall be permitted to accumulate an excess of sixty (60) hours of compensatory time at any one time.~~

Employees may accumulate up to a maximum of sixty (60) hours of compensatory time per calendar year (January 1 through December 31). Once sixty (60) hours of compensatory time is accumulated at anytime during the calendar year, the employee will become ineligible to accumulate any additional compensatory time until the following calendar year. Any accumulated compensatory time not used by December 31 of the calendar year shall be paid at the previous year's hourly rate at the end of the first full pay period in January of the following year. All employees must have a zero balance of compensatory time by December 31.

[* * * Note: the next unnumbered paragraph of Section 18.2 starts "When an employee has accumulated . . ." There are no proposed changes or additions to the remainder of Section 18.2 – see pages 18 and 19 of the Agreement for the remainder Section 18.2.]

First, regarding Section 18.1 and the City's proposal remove compensatory time ("comp time") taken from active pay status for purposes of computing overtime, the City wants to save money. When comp time is factored into the overtime rate, both when the leave is earned and when it is taken, and when the employee is replaced with another employee, both will be at the overtime rate of time and one-half. This results in a triple time, compounding effect on the City.

Second, regarding Section 18.1, the City finds that there is ambiguous language regarding how sick leave hours are to be factored into an overtime calculation. That is, sick leave is not identified in the third sentence as hours worked for purposes of computing comp time. Yet, in the second to the last sentence (which the City proposes to strike) it is to be included as hours worked. The relationship of sick leave to overtime is ambiguous and contradictory.

Third, regarding Section 18.1, the City proposes to add one sentence to demonstrate the Parties' intent, solely in the event of an FLSA audit performed by the U.S. Department of Labor, to compliance with section 207(k) of the FLSA. It is not the City's intent to change the current work period established by the collective bargaining agreement. FLSA section 207(k) provides employers the flexibility to establish a work period up to 171 hours in a 28 day period. In a January 13, 1994, DOL Wage and Hours Opinion Letter, the DOL made their stance clear on what they look for when going into the audit process. They do not believe that employers may

retroactively claim 207(k) protections, rather they must make an affirmative claim that they intend to follow the 207(k) provisions, and pay employees accordingly. The proposed language is to comply with the DOL stance. It will be in the best interests of both Parties to avoid unnecessary costs associated with an audit. This is not a change to how the Parties are currently operating. Rather, it is a statement of intent for auditing purposes. In any contractual dispute, an arbitrator will apply the current overtime process; therefore, there is no risk or loss to employees. It is not intended to change the current work period of 40 hours per week.

Fourth, regarding Section 18.2, the proposal is to remove the language recognizing comp time from active pay status, consistent to the above first proposal for Section 18.1. Further, the City proposes a hard cap on total comp time for any one year of the Agreement, that is, 60 hours max. As noted above, the City's intent is to save money by avoiding the double or even triple compounding effects. The City's Sergeants (OPBA) agreed to the proposed language for a hard cap. Currently, employees "bounce" up and down, that is, they accumulate 60 hours, use some, build it back up again, use some, *etc.* It is very difficult for the City to track the bouncing. Administration of the contracts within the same department (police) will be streamlined and it will significantly help the City to budget. (The OPBA agreed to a hard cap with the City of Wapakoneta.)

UNION'S POSITION AND ITS ARGUMENTS

The Union proposes current Agreement language for the entire Article 18, that is, no changes whatsoever.

Since at least the 1989-1991 agreement, comp time has been considered as hours worked for purposes of overtime computation, that is, active pay status. If an employee uses sick leave hours during a pay period, any mandatory hours worked in addition to the employee's regularly scheduled shifts are compensated for at the overtime rate. All of the Union's comparables (except Delphos) consider comp time as hours worked. (Union 7)

Since at least the 1998-2000 agreement, employees have been permitted to accumulate up to 60 hours of comp time at any one time – with no hard cap. All of the Union's comparables (except for Delphos, Celina, and Kenton) allow for accumulations ("up to") in excess of 60 hours. (Union 7)

Finally, the Union sees no reason to add language regarding the FLSA. FLSA is a matter for the City as employer and is not a matter for the Union.

RECOMMENDATION

The easiest part of the City's proposals regarding Article 18 is the proposed addition to the end of Section 18.1 regarding the FLSA language. The Union expressed some concern that it might have unforeseen negative consequences on the Union, and there was not sufficient time before or during the Fact-finding Hearing to make a determination. The City assured that Union that there were none, but was unwilling to provide the Union with a letter confirming its position. Thus, the **Fact-finder's recommendation** regarding the proposal to add language relating to the FLSA is that the Parties not accept it. They can include that question in future negotiations.

The next least difficult part of the City's proposal is whether or not there should be a cap on annual comp time, *i.e.*, 60 hours max. Neither Party could provide any indication whatsoever as to the extent that members use more than 60 hours of comp time per year. They could not give any indication as to whether or not it was insignificant or material. The Sergeants have agreed to a cap. In every negotiation, both sides must be willing to do something(s) they would rather not do if an agreement is to be reached. It appears that the City's request for a cap is reasonable from both a budgetary and administrative standpoint. It will likely appear more reasonable from the perspective of City residents. Thus, the **Fact-finder's recommendation** is that the Parties accept the language related thereto proposed by the City, to wit:

~~No eligible employee shall be permitted to accumulate an excess of sixty (60) hours of compensatory time at any one time.~~

Employees may accumulate up to a maximum of sixty (60) hours of compensatory time per calendar year (January 1 through December 31). Once sixty (60) hours of compensatory time is accumulated at anytime during the calendar year, the employee will become ineligible to accumulate any additional compensatory time until the following calendar year. Any accumulated compensatory time not used by December 31 of the calendar year shall be paid at the previous year's hourly rate at the end of the first full pay period in January of the following year. All employees must have a zero balance of compensatory time by December 31.

Regarding whether or not comp time should continue to be considered as active pay status for purposes of computing overtime, at first glance it appears that it should be continued. After all, the Union properly noted that it has been so considered since at least the 1989-1991 agreement. While the Union noted that the City is offering nothing in exchange to justify changing this long established provision, this Fact-finder suggests that the Union look to the recommendation regarding wages to find adequate consideration. The availability of up to 60 hours of comp time is itself a valuable benefit to help the Patrolmen balance work and family. However, the City has a valid, common sense point regarding the potential for doubling or tripling the cost when an officer uses comp time. No problem earning the comp time at one and one-half time. But it seems only fair and reasonable that using comp time should not result in the member "double dipping" and turning additional time and one-half benefits (overtime pay or more comp time). Thus, the **Fact-finder's recommendation** is that the Parties agree to the City's proposal to strike the two words "compensatory time" in the third sentence of Section 18.1 and to strike the fourth sentence of Section 18.2, "Compensatory time, when taken, will be considered as active pay status."

Finally, regarding the City's proposal to remove sick leave as hours worked for purposes of computing overtime, the Parties should clearly not accept such proposal. Unlike comp time, there is no compounding of costs when sick leave is included. The Union noted that such has been the case since at least the 1989-1991 agreement. Neither Party offered any information regarding the cost impact of including sick time as hours worked. Thus, the **Fact-finder's recommendation** is that the Parties **not** accept striking the sentence near the end of Section 18.1, which reads, "If an employee uses sick leave hours during a pay period, any mandatory hours

worked in addition to the employee's regularly scheduled shifts shall be compensated for at the overtime rate as established in this article."

ISSUE 5: REGARDING ARTICLE 20 – EMPLOYER'S PROPOSAL FOR SHARING HEALTH PREMIUMS BY PERCENTAGES & UNION'S PROPOSAL TO CONTINUE SHARING USING DOLLAR AMOUNTS

EMPLOYER'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 20.3. The premiums relating to the benefits and coverages under any offered plan(s) shall be paid in a manner explained in this section. The Employer **and employee** agrees to pay premiums for each eligible employee requesting coverage as follows:

FAMILY COVERAGE

<u>Year</u>	<u>Amount</u>
2010	Up to and including \$8,472.00
2011	Up to and including \$9,126.00
2012	Up to and including \$10,326.00

SINGLE COVERAGE

<u>Year</u>	<u>Amount</u>
2010	Up to and including \$2,888.00
2011	Up to and including \$3,115.00
2012	Up to and including \$3,523.00

~~Any costs which exceed the above specified amounts shall be paid equally by the Employer and the employee, provided any employee selecting single coverage shall not pay a greater percentage of the total cost than the percentage of the total cost paid by an employee selecting family coverage offered by the same plan. In 2010, the Employer shall not apply the remaining cost of the run-out claims from the City's switch to a health insurance provider from being self-insured to the cost of the family and single plans.~~

~~The employee's share shall be paid through a weekly payroll deduction and the computation of the employee's share shall be as follows:~~

~~The annual premium for each type of policy shall be determined by the Employer in accordance with the recommendation of the third party administrator, if self-funded, or by the health insurance provider. After this determination the Employer's share as specified above shall be subtracted from the annual cost of the applicable coverage. These results shall both be divided by two (2) to determine the 50% shares for the~~

~~Employer and the covered employee. The 50% share that is computed for the employee will then be divided by fifty-two (52) and the result will then become the employee's weekly contribution for health insurance coverage. This computation will be done for each employee using the applicable cost for whichever coverage (single or family) is requested by the employee.~~

PPO Plan

Effective first full pay period following January 1, 2013:

Employer's Share – 83% of monthly premium

Employee's Share – 17% of monthly premium

Effective first full pay period following January 1, 2014:

Employer's Share – 80% of monthly premium

Employee's Share – 20% of monthly premium

HSA Plan

Effective first full pay period following January 1, 2013:

Employer's Share – 90% of monthly premium

Employee's Share – 10% of monthly premium

The Employer shall contribute \$500.00 to each non-probationary bargaining unit employee's health savings account (HSA) provided the employee is eligible for and enrolled in a family plan at the time of the contribution. Such Employer contribution shall be made only once per calendar year and no later than February 1.

The Employer shall contribute \$250.00 to each non-probationary bargaining unit employee's HSA provided the employee is eligible for and enrolled in a single plan at the time of the contribution. Such Employer contribution shall be made only once per calendar year and no later than February 1.

This proposal is another key part of the City's effort to change the pattern among its organized employees. Health insurance has been part of pattern bargaining in the City in the past. The non-bargaining employees moved to the percentages plan (80/20) in 2010, and it was not a phase in process as the City is offering the Union. All the City's employees share the same health plan, so all should share in the plan costs equally.

The bargaining unit members currently pay approximately 14% of the premium of the PPO plan. The City is proposing that the percentage be fixed at 17% for the first year, and 20% for the second and third years.

UNION'S PROPOSAL AND ITS ARGUMENTS

The Union proposes that the following language be presented in table format and that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 20.3. The premiums relating to the benefits and coverages under any offered plan(s) shall be paid in a manner explained in this section. The Employer agrees to pay premiums for each eligible employee requesting coverage as follows:

FAMILY COVERAGE		
YEAR	AMOUNT	
2010 2013	Up to and including \$8,472.00	\$11,565.00
2011 2014	Up to and including \$9,126.00	\$11,565.00
2012 2015	Up to and including \$10,326.00	\$13,300.00

SINGLE COVERAGE		
YEAR	AMOUNT	
2010 2013	Up to and including \$2,888.00	\$3,946.00
2011 2014	Up to and including \$3,115.00	\$3,946.00
2012 2015	Up to and including \$3,523.00	\$4,538.00

The Union proposes that all other language in Article 20 remain as in the current Agreement.

RECOMMENDATION

The following data should be considered when discussing the issue of health insurance.

**SERB 2012 Report on the Cost of Health Insurance in Ohio’s Public Sector
Table 4.1 Monthly Employee Contributions to Medical Premiums When a Contribution is**

Required	Single		Family	
Statewide	\$63	12.3%	\$173	12.9%
Cities	\$57	11.0%	\$150	10.8%
Cities less than 25,000	\$57	10.9%	\$152	10.8%
Dayton Region*	\$78	15.4%	\$207	15.6%
Employees covered	\$62	12.0%	\$167	12.5%

(*11 counties: Mercer, Auglaize, Darke, Shelby, Logan, Miami, Champaign, Clark, Preble, Montgomery, Greene)

Increases to Health insurance premiums have far outpaced wages increases in Ohio. The cumulative percent increases in family medical premiums over the years 1997 to 2012 is 136%, whereas average wages over same time period increased only 43.1%. (Chart 3, SERB 20th Annual Report)

Neither Party clearly calculated and summarized the economic impact on the Patrolmen of their respective proposals. (While the City offered charts and tables purporting to disclose the impact over the next three years, they are difficult to track given the very limited time for this Report to be issued.) The insurance premiums for the next three years will be what they will be. Therefore, the following **hypothetical** calculations are offered merely to try to get some grasp on the magnitude of the impact of the City’s proposals. [Note: actual 2013, 2014, and 2015 premium costs for Patrolmen will be higher.] From the City’s “Insurance Meta Data” it appears that the 2012 total cost for a family plan is \$14,256.48; and for a single plan \$5,403.46. From Section

20.3 of the current Agreement, the City pays the following amounts, with the differences split 50/50 between the Parties.

Current Agreement 2012 Annual Premium Sharing

	Single	Family
Total premium	<u>\$5,403.46</u>	<u>\$14,256.48</u>
City pays	\$3,523.00	\$10,326.00
City's 50% of balance	<u>940.23</u>	<u>1,965.24</u>
Total paid by City	<u>\$4,463.23</u>	<u>\$12,291.24</u>
Percent paid by City	82.6%	86.2%
Patrolman pays	<u>\$940.23</u>	<u>\$1,965.24</u>
Percent paid by Patrolman	17.4%	13.8%

Hypothetical Sharing of 2012 Premiums Under City's 83%/17% Proposal

	Single	Family
Total premium	<u>\$5,403.46</u>	<u>\$14,256.48</u>
City pays	<u>\$4,484.87</u>	<u>\$11,832.88</u>
Percent paid by City	83%	83%
Patrolman pays	<u>\$918.59</u>	<u>\$2,423.60</u>
Percent paid by Patrolman	17%	17%

Increased costs to Patrolman over current 2012*

Total Annual	(\$21.64)	\$458.36
Total Monthly	(\$1.80)	\$38.20
Total Weekly	(\$.42)	\$8.81

(*Remember, this is a hypothetical calculation. Actual costs to Patrolmen for 2013, 2014, and 2015 will be higher.)

Hypothetical Sharing of 2012 Premiums Under City's 80%/20% Proposal

	Single	Family
Total premium	<u>\$5,403.46</u>	<u>\$14,256.48</u>
City pays	<u>\$4,322.77</u>	<u>\$11,405.18</u>
Percent paid by City	80%	80%
Patrolman pays	<u>\$1,080.69</u>	<u>\$2,851.30</u>
Percent paid by Patrolman	20%	20%

Increased costs to Patrolman over current 2012*

Total Annual	\$139.46	\$886.06
Total Monthly	\$11.62	\$73.83
Total Weekly	\$2.68	\$17.04

(*Remember, this is a hypothetical calculation. Actual costs to Patrolmen for 2013, 2014, and 2015 will be higher.)

If either Party has a final solution/answer to the ongoing health insurance dilemma (other than eliminating all old, retired college professors) please let me know. The first hurdle faced about 10 years ago was for employers to convince employees to accept some dollar contribution toward premiums. The SERB Report (p. 4) notes: "Only 10.8% of plans do not require employees to pay a deductible or co-insurance for medical coverage." The days of employer pays all are essentially gone. Now is the time to stop negotiating annual dollar splits and move to sharing percentages of premium costs. Hopefully, percentages will require fewer renegotiations. This is a big change that the City is asking the Union to accept. If it wants acceptance, it must be prepared to help the bargaining unit members bear the increasing costs.

Thus, the **Fact-finder recommends** that the Parties accept the City's proposals for changes to Section 20.3 as shown above.

ISSUE 6: REGARDING ARTICLE 24 – EMPLOYER'S PROPOSAL TO ELIMINATE EDUCATIONAL INCENTIVES FOR NEW HIRES

EMPLOYER'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 24.1 In addition to the wages as otherwise provided herein, employees who have attained an associate degree or higher in either law enforcement, police science, criminology, or criminal justice shall receive \$1.05 per hour additional compensation, subject to the rules, regulations, and conditions specified in this article. ~~Newly hired~~ **Employees hired on or after January 1, 2013, shall not be eligible for such any reimbursement until they have successfully completed their training period and/or additional compensation as described in this Article.**

The Employer proposes that all other language in Article 20 remain as in the current Agreement.

This proposal is part of the City's intended new pattern for bargaining with its unions. The Sergeants agreed to end the educational incentives for all Sergeants not employed on or before January 1, 2012. The City notes that there is no legal requirement that a police officer have any college education. Thus, it proposes to eliminate both the \$1.05 per hour additional compensation and reimbursement of education related expenses for new hires – on or after January 1, 2013. The City does not offer educational incentives to its non-bargaining unit employees. Essentially, the City wants to save the expenses.

UNION'S POSITION AND ITS ARGUMENTS

The Union proposes current Agreement language for the entire Article 20, that is, no changes whatsoever. Article 24 dates back to at least the 1998-2000 agreement. All of the current

officers have taken advantage of the educational incentives, with only one officer still working on his degree.

RECOMMENDATION

The City noted, “It is the Employer’s position that neither the Employer nor the taxpayers of St. Marys receive any benefit from the advanced degrees for bargaining unit employees.” A brief review of police literature indicates that results are mixed regarding higher education and successful job performance as an officer. For several decades, the high school diploma is being replaced by the associate degree, and the associate degree by a bachelors degree. Consider only the last 10 years:

US Civilian Labor Force 24 yrs & over	2002	2012
Less than HS diploma, HS diploma	41.2%	35.7%
Some college, Associates, Bachelors & higher	58.8%	64.3%

(BLS – retrieved 12-11-12)

One wonders how residents of St. Marys would respond to a question asking whether they prefer their police officers to have some education beyond high school or not. Would there be differences between those with children (minors or adults) and those without? With higher education themselves or not?

Regardless, as the Union notes, Article 24 dates back to at least the 1998-2000 agreement. The City did not offer any indication of what cost savings might accrue from the proposed change. The City did not offer anything in exchange for the change. The elimination of educational benefits would only apply to new hires on or after January 1, 2013. The same concerns about a two tier workforce discussed above in connection with personal days may be promoted by this proposal.

The **Fact-finder recommends** that the Parties not accept the City’s proposal to change Article 24, and that the current contract language be retained.

ISSUE 7: REGARDING ARTICLE 26 – EMPLOYER’S PROPOSAL TO CLARIFY SICK LEAVE WHEN ASSISTING FAMILY MEMBER; TO ELIMINATE SPECIFIC CONSEQUENCES FOR USE OF SICK LEAVE; AND, TO ELIMINATE REWARDS FOR NONUSE OF SICK LEAVE

EMPLOYER’S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 26.9. Sick Leave may be granted to an employee under the following circumstances:

1. **Illness or injury of the employee, or illness or injury in the employee’s immediate family, which requires the employee’s personal care and attendance;**

2. If, through exposure to a contagious disease, the presence of the employee at their job would jeopardize the health of others;
3. An employee may use **up to** eight hours (1 day) sick leave to take a member of the employee's immediate family to or from the hospital and/or doctor, or to make arrangements for the care of the ill or injured person, provided no other person is available.
4. An employee may use **up to** eight hours (1 day) sick leave on the day surgery is to be performed on the employee's spouse and/or children, if such occurs on a working day;

[See continuing Section 26.9 (pp. 32-33 of current Agreement) for additional sick leave provisions (5-9) to which the Employer does not propose any changes.]

Section 26.10 Employees failing to comply with sick leave rules and regulations may not be paid. Falsifying or filing sick leave applications and documentation with the intent to defraud shall result in the disapproval of sick leave and be grounds for disciplinary action, up to and including discharge.

Any employee who has established a record of excessive or pattern of absences as determined by the Director of Public Safety, may be required to furnish a statement from the employee's physician for each use of sick leave for a predetermined time limit. The Employer also maintains the right to investigate all absences.

~~If an employee uses sick leave on four (4) separate occasions of sixteen (16) hours or less per occasion during any twelve (12) month period, the employee shall receive verbal counseling.~~

~~If an employee uses sick leave on five (5) or six (6) separate occasions of sixteen (16) hours or less per occasion during any twelve (12) month period, the employee shall receive a written reprimand.~~

~~If an employee uses sick leave on seven (7) or more separate occasions of sixteen (16) hours or less per occasion during any twelve (12) month period, the employee's use of sick leave shall be limited as follows:~~

~~The first two (2) consecutive days of any sick leave occasion will be without pay. However, the employee may use accrued compensatory time or vacation time for such absence. If an employee's sick leave is for three (3) or more consecutive days, sick leave will be with pay starting on the third day.~~

~~The reduction of sick leave for the first two (2) consecutive days under this provision does not preclude the right of the Employer to take further~~

~~disciplinary action for excessive or unexcused absenteeism.~~

~~* The word "occasion(s)" as used in this Section shall mean each time sick leave is used, except in the case of: a death in the immediate family; birth of the employee's child; the day the newborn child is brought home from the hospital; the day an employee's immediate family member undergoes surgery; sick leave as prescribed by a physician and pre-approved by the Employer for a regularly scheduled course of medical treatment which cannot be scheduled outside regular working hours; or emergency doctor or dentist visits for immediate family members, limited to three (3) occasions during any twelve (12) month period.~~

[Note: no changes are proposed to the intervening paragraph Section 26.11 – see pp. 33-34 of the current Agreement.]

~~Section 26.12. Employees who have demonstrated excellent attendance by not utilizing any sick leave or leave without pay, and have received no disciplinary suspension(s) from January 1st through June 30th of each calendar year, shall be granted eight (8) hours of bonus vacation. Further any employee who demonstrates excellent attendance by not utilizing any sick leave or leave without pay, and have received no disciplinary suspension(s) from July 1st through December 31st of each year shall be granted eight (8) hours of bonus vacation. Bonus vacation shall be scheduled in the same manner as other vacation time. Employees must be employed in a full-time bargaining unit position for the entire six (6) month period, as described herein, in order to be considered for the bonus vacation.~~

~~Notwithstanding the above, any employee denied a bonus vacation day in accordance with this article solely due to a disciplinary suspension, shall be granted such bonus vacation if said suspension is subsequently overturned.~~

Regarding Section 26.9 (3) & (4) the City is not opposed to an employee using eight (8) hours of sick leave when a member of their immediate family is affected. However, they should not use more sick leave than is necessary. All of the City's other bargaining units have agreed to add the phrase "up to" as is proposed here. The City finds the current language confusing as it could be interpreted to mean that a full eight hours of sick leave must be taken for such needs. The addition of "up to" clarifies that fewer than eight hours can be used, and that the officer can return to work.

Regarding the proposed changes to Sections 26.10 and 26.12, the City originally agreed to those provisions in order to discipline employees who did not comply with sick leave rules and regulations and reward the employees who demonstrated excellent attendance by not utilizing sick leave. However, the two Sections are not working as intended. Instead, they reward a minority of officers coming to work and result in disciplinary action against other employees. The City will prefer to deal with each employee on a case-by-case basis, being a more effective and fair way to enforce sick leave rules and regulations.

UNION'S POSITION AND ITS ARGUMENTS

The Union proposes current Agreement language for the entire Article 20, that is, no changes whatsoever.

Regarding the City's proposed changes to Section 26.9(3) & (4) the Union represented that practice has been that an officer can return to work if the full eight hours are not needed. The Union noted that there is an incentive to return to work in order to preserve sick leave time. It sees no need for a change. Section 26.9 (3) & (4) language has existed since at least the 1989-1991 agreement.

Regarding the City's proposed changes to Sections 26.10 (occasions) and Section 26.12 (non use of sick time bonus) the provisions have existed since at least the 2001-2003 agreement, although at that time, there was no condition that an employee not receive a disciplinary suspension during the applicable period. There has not been any discipline under these provisions that reached a suspension or arbitration level. The City has not shown that has been any problems. There is no reason to change the language of these two Sections.

RECOMMENDATION

The current contract language in Section 26.9(3) & (4) states that, "An employee **may** use eight hours (1 day) sick leave . . ." [emphasis added] It does not appear to require that an officer use a full eight hours. However, in light of the City's explanation that it believes the current language could be interpreted as requiring full eight hours; and, in light of its explanation that it does not intend to limit an officer to less than eight hours; and, considering that all of the City's other bargaining units have adopted the "up to" language, the **Fact-finder recommends** that the Parties accept the City's proposal to add the words "up to" to Section 26.9(3) & (4).

The City's proposes changes to Sections 26.10 and 26.12. Essentially it wants to remove the discipline and the rewards associated with sick leave use. The City's explanation seems contradictory. It said its original intention was to discipline employees who did not comply with sick leave rules and regulations and reward the employees who demonstrated excellent attendance by not utilizing sick leave. The City then states that the Sections are rewarding a minority of officers who come to work and result in disciplinary action against other employees – presumably those who abuse sick leave. It appears the Sections are working. If the City believes that there are abuses or too many disciplines, then perhaps additional education/training is needed.

It seems like a step backwards to give the City the right to deal with each employee on a case-by-case basis. It would exchange a specific set of punishments and rewards for black box – an unknown, opaque process that then results in discipline. This is the sort of situation that could encourage supervisors/managers to act in adversarial ways and not in good faith. Alternatively, this is an opportunity for the Union to demonstrate a high level of trust in the administration should it choose to agree to the proposed changes. Perhaps the Parties will continue to discuss the City's concerns with the current language. In the meantime, the **Fact-finder recommends** that the Parties not agree to the City's proposed changes to Sections 26.10 and 26.12.

ISSUE 8: REGARDING ARTICLE 38 – EMPLOYER’S PROPOSAL TO DISCIPLINE FOR REFUSAL TO TEST; TO TERMINATE FOR POSITIVE TEST; FOR UNPAID LEAVE FOR ARREST; AND FOR TERMINATION FOR CONVICTION, ETC. & UNION’S PROPOSAL TO TERMINATE FOR POSITIVE TEST

EMPLOYER’S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

[Note: no changes are proposed to the intervening paragraphs Sections 38.1, 38.2, and 38.3 – see pp. 41-42 of the current Agreement.]

Section 38.4. Test Results/Refusal to Submit to Testing: The results of the testing shall be delivered to the Employer and the employee tested. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. If the employee wants a copy of the certified testing results, the employee must sign a release for disclosure. A representative for the bargaining unit shall have a right of access to the results upon request to the Employer, with the employee’s consent. Refusal to submit to testing provided for under this Agreement ~~may~~ **shall** be grounds for discipline.

[Note: no changes are proposed to the intervening paragraph Section 38.5 – see p. 42 of the current Agreement.]

Section 38.6. Positive Test Results:

- A. In cases involving alcohol use and abuse, the Employer will give strong consideration to the use of rehabilitation instead of discipline. The Employer will also give strong consideration to rehabilitation in cases where an employee voluntarily notifies the Employer of the employee’s drug problem involving the use of a legally obtained prescription drug. However, if circumstances warrant, the Employer reserves the right to impose appropriate discipline up to and including termination.
- B. [Note: a new, inserted paragraph “B” as proposed by the Union was accepted by both of the Parties, essentially providing for termination of an officer who tests positive, and a limit on an arbitrator’s authority to modify the termination. The current contract paragraph B would be re-lettered as “C”. However, in addition, the Employer is continuing with its proposal for a new, inserted paragraph “B” (perhaps lettered differently) which essentially addresses arrest, unpaid leave, pleas, and a limit on an arbitrator’s authority. That proposal is shown below in bold]
- ~~BC.~~
- ?? **Any employee that is arrested for the possession, use, distribution, or manufacture of illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such**

prescription shall be placed on an unpaid administrative leave of absence from the employee's position with the Employer, awaiting the resolution of the criminal arrest. If the employee is convicted, enters into a plea arrangement, or admits guilt regarding the possession, use, distribution, or manufacture of illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription shall be terminated. If the employee is found to be not guilty of the criminal charges described in this section, the employee shall be paid for the amount of time spent on unpaid leave at the employee's base hourly rate of pay. However, the Employer shall discipline the employee for any other policy and/or work rule violations that may have occurred.

The employee may appeal the termination in accordance with the grievance procedure contained in this Agreement. However, the arbitrator shall only review whether the employee was convicted, entered into a plea arrangement, or admitted guilt regarding the possession, use, distribution, or manufacture of illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription. If the arbitrator determines this to be the case, the arbitrator shall be without authority to modify the termination.

BC.

[Note: no changes are proposed to the final section of this Article, Section 38.7 – see p. 43 of the current Agreement.]

Regarding Section 38.4, the City's proposal for discipline if an officer refuses to test "shall" be subject to discipline. This proposal is consistent with the "obey now and grieve later principle."

The City is proposing a procedure for placing an officer who is arrested for possession use, distribution, or manufacture to be removed from duty and placed on unpaid leave awaiting the resolution of the criminal action. This is not too much to ask of police officers who are held to a higher standard by the public and the courts – public policy interest. Both the Ohio legislature and the City think that unpaid leave is appropriate.

The City does not intend that a plea bargain could avoid the zero tolerance termination penalty. Some drug related plea bargains include intervention in lieu of conviction. The accused is permitted to seek rehab and ultimately his guilty plea is expunged. (O.R.C. 2951) The City's proposal is termination even if a guilty plea is accompanied by intervention.

The Ohio Supreme Court has held that Ohio law has no dominant and well defined public policy that renders unlawful an arbitration award reinstating a safety-sensitive employee who was terminated for testing positive for a controlled substance, assuming that the award is otherwise reasonable. Hence, these Parties need to be specific with regard to termination.

While the Union agrees for automatic termination for a positive drug test, it believes that a police officer arrested for a drug violation should continue to be paid with taxpayer funds.

UNION'S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that the following language be added (as shown in bold):

Section 38.6. Positive Test Results:

- A. In cases involving alcohol use and abuse, the Employer will give strong consideration to the use of rehabilitation instead of discipline. The Employer will also give strong consideration to rehabilitation in cases where an employee voluntarily notifies the Employer of the employee's drug problem involving the use of a legally obtained prescription drug. However, if circumstances warrant, the Employer reserves the right to impose appropriate discipline up to and including termination.

- B. [Note: a new, inserted paragraph "B" as proposed by the Union was accepted by both of the Parties, essentially providing for termination of an officer who tests positive, and a limit on an arbitrator's authority to modify the termination. The current contract paragraph B would be re-lettered as "C". However, in addition, the Employer is continuing with its proposal for a new, inserted paragraph "B" (perhaps lettered differently) which essentially addresses arrest, unpaid leave, pleas, and a limit on an arbitrator's authority.]

- ~~BC.~~

[Note: no changes proposed to the final section of this Article, Section 38.7 – see p. 43 of the current Agreement.]

Regarding Section 38.4, the City's proposal that an officer who refuses to test "shall" be subject to discipline, it is really tying its own hands by limiting its review of a situation where it may be unreasonable for an officer to submit to testing. There may in fact not be grounds for discipline. Under the current contract language, discipline imposed for an officer's refusal is subject to the standard test of "just cause." This is sufficient.

The Sergeant's contract (1-1-12 through 12-31-14) retained the current language of "may be grounds for discipline." The Dispatcher's contract (1-1-11 through 12-31-13) does not even cover the event of refusal to submit to testing.

Regarding the City's proposed changes to Section 38.6, inserting a new paragraph "B," the Union objects to using "arrest" as the "trigger" for placing an officer on unpaid leave. The Union wants paid leave if there is an arrest. There are many unknown possible arrest situations that could be both unexpected and complex. Further, the City's proposal restricts an officer's options when considering a plea agreement. Unfortunately, an innocent officer may still need to consider the prosecution's case and the odds of being wrongfully convicted.

RECOMMENDATION

There are very important issues at stake in this issue. The parties agree that if an officer tests positive for an illegal substance – and there are no flaws in the testing procedure – the officer should be terminated. Beyond that, the Union is correct that there are many unexpected and

complex situations/circumstances that could arise. Officers have to enforce the drug laws which exposes them to the people who manufacture, distribute, use, deal, *etc.* It is possible that one of them, or others (including a fellow officer, supervisor, *etc.*) would falsely “set up” an officer for arrest as a personal vendetta or as retaliation. Coincidentally, this Fact-finder (sitting as an Arbitrator) recently encountered what appeared to be “retaliation” situation involving an innocent safety force officer. The officer was off work for almost one year while the grievance process unfolded. For an innocent officer the personal toll would be substantial, let alone the financial toll – unless he is independently wealthy. Even if untrue, an arrested officer could lose all while on unpaid leave trying to defend himself in the justice system.

The important considerations raised in this issue are not ripe for decision. Unfortunately, while the Parties met several times before proceeding with this Fact-finding (by their own admission - reason unknown) they did not engage in serious, continuous, determined negotiations necessary to have resolved this and perhaps the other issues.

RECOMMENDATION

The **Fact-finder recommends** that neither unresolved proposal be accepted by the Parties. They should include these issues for future discussions and negotiations.

ISSUE 9: REGARDING ARTICLE 42 – EMPLOYER’S PROPOSAL TO CHANGE DURATION TO WHEN SIGNED AND TO REMOVE AUTOMATIC RENEWAL & UNION’S PROPOSAL FOR EMAIL NOTICE

EMPLOYER’S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 42.1. This Agreement represents the total and complete agreement on all matters subject to bargaining between the Employer and the Union, and shall be effective January 1, ~~2010~~ **2013, or upon signing, whichever is later** and shall remain in full force and effect until 12:00 midnight on December 31, ~~2012~~ **2015**, provided, ~~however, it shall be renewed automatically on its termination date for another year in the form in which it has been written, unless one party gives written notice as provided herein.~~

[Note: no changes are proposed by the Employer to the intervening paragraph Section 42.2 – see p. 49 of the current Agreement.]

[Note: as a reminder to the Parties, both agreed to remove the last sentence of Section 42.3 that starts, “Therefore, the Employer, the employees and the Union . . .”]

UNION’S NON ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 42.1. This Agreement represents the total and complete agreement on all matters subject to bargaining between the Employer and the Union, and shall be effective January 1, ~~2010~~ **2013**, and shall remain in full force and effect until 12:00 midnight on December 31, ~~2012~~ **2015**, provided, however, it shall be renewed automatically on its termination date for another year in the form in which it has been written, unless one party gives written notice as provided herein.

Section 42.2. If either party desires to modify, amend or terminate this Agreement, it shall notify the other in writing of such intent no earlier than one hundred and twenty (120) calendar days prior to the expiration date of this Agreement. Such notice of intent shall be given ~~by certified mail with return receipt requested~~ **by email**. If the Union gives such notice, the Union shall submit its written proposals for modifying or amending this Agreement at the first (1st) negotiation session. The parties shall commence negotiations within two (2) calendar weeks upon receipt of notice of intent. In all other respects, the parties shall be governed by the provisions of O.R.C. Chapter 4117, and, more specifically, O.R.C. Chapter 4117.14, with regard to modification, amendment or termination of this Agreement.

[Note: as a reminder to the Parties, both agreed to remove the last sentence of Section 42.3 that starts, "Therefore, the Employer, the employees and the Union . . ."]

RECOMMENDATION

The Parties have had three-year agreements, starting on the first day of January since at least their 1989-1991 agreement. The **Fact-finder recommends** that the Parties accept the Union's proposal as to the effective date (January 1, 2013) and the duration (three years) of the new Agreement. Further, the **Fact-finder recommends** that the Parties accept the Union's proposal for notice by email – excepting that in addition to the email, a paper copy of the notice of intent be sent by regular mail as a courtesy to the other party.

ISSUE 10: REGARDING ARTICLE 43 – EMPLOYER'S PROPOSAL FOR ONE-TIME SIGNING BONUS FOR CURRENT EMPLOYEES AND FOR LOWER WAGE SCHEDULE FOR NEW HIRES & UNION'S PROPOSAL FOR 3% ACROSS THE BOARD WAGE INCREASES EACH YEAR

EMPLOYER'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Employer proposes that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 43.1. The following hourly wage schedules will apply during the term of this Agreement:

Effective the first full pay period following ~~1/1/2012~~ **January 1, 2013**

<u>Step:</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
	\$20.29	\$20.87	\$21.53	\$22.17	\$22.85	\$23.53

All bargaining unit employees, employed by the Employer on or before January 1, 2013, shall be given a one-time signing bonus of \$1,500.00 per employee for the years 2013-2015 only. This signing bonus is a result of negotiations between the parties in SERB Case No. 12-MED-09-0944.

Employees hired on or after January 1, 2013, shall be paid according to the following wage scale:

No OPOTA Certification	OPOTA Certification	Step 3	Step 4	Step 5	Step 6
\$16.02	\$18.07	\$18.97	\$19.92	\$20.92	\$21.97

[Note: no changes are proposed to the second and final Section 43.2 – see p. 50 of the current Agreement.]

The City's offer of a \$1,500 signing bonus is equivalent to 1% (\$500 per year). It will help keep them closer to the comparable region. These officers are the highest paid officers in the region. They have the highest wage for employees at the top end as well as for newly hired. The City's officers are paid incredibly well as compared to cities of similar size in the region.

City	Adjoining County	Miles	Population	Min/Hr	Max/Hr
Bryan	No	71	8,333	\$17.75	\$23.22
Celina	Yes	11	10,303	19.52	21.12
Kenton	Yes	45	8,336	16.70	19.51
Napoleon	No	78	9,318	17.63	23.02
Tipp City	No	57	9,221		
Upper Sandusky	No	78	6,533		
Van Wert	Yes	28	10,605	16.20	21.77
Wapakoneta	Same	11	9,474	19.38	21.86
Averages	4 / 8	47	9,015	\$17.86	\$21.75
St. Marys			8,342		
Current				\$20.29	\$23.53
New Hires				\$16.02 - \$18.07	\$21.97

The City must work to maintain fiscal stability with an uncertain financial future. The City must control expenditures, especially from the general fund. Expenditures from the general fund have exceeded revenues for the past four years:

2008 (\$129,779) 2009 (\$287,031) 2010 (\$79,341) 2011 (\$359,621)

(As of November 1, 2012 \$289,116)

The City projects that the 2012 general fund difference between revenues and expenditures will be (\$500,000) to (\$700,000). Additional fiscal stress will be the loss of local government funds in January 2013. The City must bring wages back to a stable amount.

The City is proposing a second tier wage scale for new hires on or after January 1, 2013. It is one way to curtail rising costs attributable to bargaining unit employees. While the City's current employees are paid far above the average for comparable cities, the proposed scale for new hires will bring them back to comparable rates. Still, the new hires will be above the average wage of comparable cities. Current employees will not be affected in any way.

The City's Sergeants agreed to a new pay scale in the last negotiations. There are new wage scales and a new classification system for the UWUA. The City is reviewing wages for non-bargaining employees.

The City projects that its proposal will increase wage costs over the next three years by \$28,822, whereas the Union's proposal will increase them by \$114,707.

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that the following language be presented in table format and that the following language be stricken (shown as strike through) and that the following language be added (as shown in bold):

Section 43.1. The following hourly wage schedules will apply during the term of this Agreement:

Effective the first full pay period following 1/1/~~2010~~ **2013**:

Step	1	2	3	4	5	6
	\$19.60	\$20.16	\$20.80	\$21.42	\$22.07	\$22.73
	\$20.90	\$21.50	\$22.18	\$22.84	\$23.54	\$24.24

Represents a ~~+0~~ **3.0%** increase.

Effective the first full pay period following 1/1/~~2011~~ **2014**:

Step	1	2	3	4	5	6
	\$19.89	\$20.46	\$21.11	\$21.74	\$22.40	\$23.07
	\$21.53	\$22.15	\$22.85	\$23.53	\$24.25	\$24.97

Represents a ~~+0~~ **3.0%** increase.

Effective the first full pay period following 1/1/~~2012~~ **2015**:

Step	1	2	3	4	5	6
------	---	---	---	---	---	---

	\$20.29	\$20.87	\$21.53	\$22.17	\$22.85	\$23.53
	\$22.18	\$22.82	\$23.54	\$24.24	\$24.98	\$25.72

Represents a ~~4.0~~ 3.0% increase.

[Note: no changes are proposed to the second and final Section 43.2 – see p. 50 of the current Agreement.]

The Union offered the following calculation of entry and top level wages for 29 City employers of police officers in the Dayton Region:

Classification: Police Officer	Top Level Regional Average	Top Level St. Marys	Increase Necessary to Meet Average
	\$60,297	\$48,942	23.2%

[Note: the SERB Benchmark Report included contracts as early as 2009, the latest 2012.]

The Union offered a SERB Benchmark report showing wage increases among the Dayton Region (29 cities) for police officers, reporting increases as early as 2009 and as recent as 2013. [The Union did not offer any summary or comparisons, e.g., similar size cities or police forces, from report.] The lowest annual increase shown is 0% and the highest shown is 3%. The following reported 2013 and or 2014 increases for the Union’s comparables located within the Dayton Region. The Union also separately offered 2012 top pay for police officers in its comparables:

City	Adjoining County	Miles	Population	2013 increase	2014 increase	2012 top pay
Bellefontaine	Yes	42	13,370	0%	0%	\$52,852
Celina	Yes	11	10,303	0	2	43,366
Delphos	Yes	23	7,101			39,478
Greenville	Yes	42	13,227			52,617
Kenton	Yes	45	8,336			40,580
Lima	Yes	28	38,771			47,756
Sidney	Yes	33	21,229			59,173
Van Wert	Yes	28	10,605			45,281
Wapakoneta	Same	11	9,474	2		46,529
Averages	9 / 9	28	13,682			\$47,657
St. Marys			8,332			\$48,942

The Union notes that for 2012, the City’s police officers top pay is only 2.7% higher than the average for the comparables – it is not substantially higher as the City would lead one to believe. The Union also noted that none of its nine comparables have a two tier wage scale.

The Union offered the following bargaining history for the City's OPBA bargaining units:

	Dispatch	Patrol	Sergeants
1998	4.0%	4.0%	4.0%
1999	3.8	3.0	3.0
2000	3.0	3.0	4.9
2001	3.0	4.0	4.0
2002	3.0	3.5	3.5
2003	3.5	3.0	3.5
2004	4.0	3.0	3.0
2005	3.5	3.5	3.0
2006	3.0	3.5	3.0
2007	3.0	3.0	3.0
2008	0.0	3.5	3.5
2009	4.75	3.0	3.0
2010	4.75	1.0	3.0
2011	1.5	1.5	3.5
2012	2.0	2.0	2.0*
2013	2.5		2.0
2014			1.5

*Sergeants CBA included a new scale for the newly employed in the Sergeant bargaining unit position after January 1, 2012, that topped out at Step 2 as opposed to Step 4, which constitutes a top-out rate at 6% less than the top-out rate for current employees.

The Union noted that per the BLS CPI (All Urban Consumers – US city average – All items) for the 12 months ending October 2012, is 2.2%.

The Union offered pages 16 and 17 of the Ohio Auditor's Report of its Audit of the City for the year ended December 31, 2011. Some highlights from those two pages include (under Economic Conditions and Outlook):

- several major industries include: Veyance Technologies (formerly Goodyear) employing about 350; Setex a 20-year Japanese company making seats for Honda with about 450 employees; AAP St. Marys (a division of Hitachi) producing aluminum wheels with about 525 employees; and others such as Parker Hannifin, Omni Mfg, St. Marys foundry, Pro-Pet, Classic Delight, MTO, and others.
- the Joint Township District Memorial hospital employs over 800
- “retail growth was very strong in the City in the past year with the opening of a new Kohl's store creating about 130 jobs.”
- “The diversity of the manufacturing, retail and service sectors bodes well for the economy of the City. If there is an occasional downturn in one individual industry, the City's diverse employment opportunities should be strong enough to withstand any economic challenges that occur.”
- “Businesses have been retained, with many undergoing expansions. the cooperative attitude between business and government has also resulted in many new industrial additions to the community over the past 15 years.”

The Union introduced a copy of an article from the August 21, 2012 edition of the Evening Leader:

Income Tax Revenues Increase

Revenue from income tax receipts continues to remain strong for the city of St. Marys in 2012.

In July, the city collected \$347,015 in income taxes – up from the \$261,572 it collected in 2011. The figure also surpassed the \$258,111 and the \$306,857 it collected in 2009 and 2010 respectively.

“It certainly is picking up, and it’s probably an indicator of how the businesses here are doing fairly well,” St. Mary’s Mayor Pat McGowan told the Evening Leader. “All you have to do is look at the ads in the paper for help wanted and you can see how things are improving. I think it is a further indication that at least the companies around here are doing fairly well.”

To date, the city has collected \$2.43 million – up from the \$2.24 million it collected during the first seven months of 2011. During the same time in 2009, the city collected \$2.16 million. It collected \$2.28 million in 2010.

Despite the increase, McGowan stressed he planned to keep the city’s purse strings tight. “Just because your revenues are increasing, it doesn’t mean you relax and start spending money,” McGowan said. “You have to keep challenging each department to try to be as frugal with their money as possible.”

* * *

The Union introduced a copy of an article from the November 20, 2012 edition of The Daily Standard:

\$24.3 million carryover expected for city budget

The city expects a carryover of \$24.3 million in all funds going into 2013.

St. Mary’s city council financial committee learned Monday that appropriations and revenues for 2013 are expected to mirror 2012’s.

Safety service director Eric Ostling said 2013 appropriations are estimated at about \$45.6 million. Total appropriations for 2012 were \$45.7 million, with anticipated spending at \$41.8 million.

Final total revenues for 2012 are expected to be about \$42.2 million. Ostling didn’t have final revenue projections for 2013 but estimated it to be similar to this year.

Although expenditures are predicted to exceed revenues in 2013, Ostling said the city usually doesn’t use all appropriations and revenues typically are a bit higher than estimated.

“Now this is the numbers game that happens,” Ostling said the morning. “We usually

don't spend the amount appropriated."

* * *

The Union offered page 25 from the same Ohio Auditor's report noted above. It reports the revenues, expenditures, *etc.* in the General Fund. The Police Officers are paid from the General Fund. The following amounts apply to only the General Fund. For the year ended December 31, 2011, total revenues were \$4,446,119; total expenditures were \$3,692,011; additional adjustments are shown, leaving a General Fund balance at the end of the year of \$4,031,336. The Union noted that this balance is 107% of an entire year's expenditures from the General Fund.

RECOMMENDATION

The Parties were unable to mutually identify *the* compromise answer for this major economic issue. This Fact-finder does not have *the* answer. However, considering the information introduced by both Parties regarding the financial health of the City, it appears that overall it is in decent financial health. The Ohio Auditor noted in 2011, business in the City was positive and growing. The Auditor noted that the City's base is diversified and that it should be able to weather any sector that would have downturn.

This Fact-finder wonders why the City is being so "stingy" by only offering a one-time signing bonus, equaling about a 1% increase per year (3% total for three years) – especially in light of all the various concessions (give-backs) it is proposing that the Union make.

The national economy seems to be improving; the Ohio economy is improving. Consider this data from the Ohio Department of Job and Family Services:

Unemployment Rates			
	Oct '12	Sep '12	Oct '11
Ohio	6.9%	7.1%	8.3%
U.S.	7.9%	7.8%	8.9%

On the other hand, it appears that the officers fared fairly well during a difficult part of the "Great Recession." They received a total of 4.5% for the three years (2010, 2011, 2012) of the current Agreement. So they did not lose much ground.

The City did not show an inability to pay. The Union showed an ability to pay. While the economic future is not certain – it never is – it is definitely not bleak for the City. Assuming the City is also concerned about the financial health of its nine police officers and their families, it needs to minimally try to keep the officers current. The CPI is increasing at about 2% per year. Hopefully inflation will not be a problem over the next three years.

All things considered, including the bargaining history, the comparables, the City's financial condition, the recommendation regarding health insurance premiums, *etc.*, the **Fact-finder recommends** that the Parties not accept the City's offer, and not accept the Union's offer. In lieu thereof, the **Fact-finder recommends** wage increases of: 2% for the year 2013; 2% for the

year 2014; and 3% for the year 2015. Each increase to commence with the first day of each year. The Parties can calculate the various hourly rates for each step per each year (Section 43.1).

ISSUE 11: REGARDING NEW ARTICLE 43 – UNION’S PROPOSAL FOR EMPLOYEE’S PURCHASE OF FIREARM UPON RETIREMENT

UNION’S ECONOMIC PROPOSAL AND ITS ARGUMENT

The Union proposes that the following language be added (as shown in bold) as a new/additional Article

**ARTICLE 44
FIREARM UPON RETIREMENT**

Section 44.1. Upon retirement with ten (10) years continuous service, at the time of separation from the City through the Police and Fire Pension Fund, employees shall be entitled to purchase their City-issued side arm weapon from the City for the price of one dollar (\$1.00). If the current side arm of the retiring employee has been purchased by the City within three (3) years of the employee’s retirement date, said employee will be entitled to purchase for the price of one dollar (\$1.00) the side arm previously carried by the employee. If the current side arm of the retiring employee has been purchased by the City prior to three (3) years from the employee’s retirement date, said employee will be entitled to purchase said weapon. The employee shall have the option of having the side arm engraved with the employee’s name and dates of service at the City’s expense. Such engraving shall not require any modification to the gun.

This proposal was copied from the Sergeant’s contract. It is within the nature of a “wage” and/or “terms and other conditions of employment.”

EMPLOYER’S PROPOSAL AND ITS ARGUMENT

The Employer proposes that the Article not be added to the Parties’ Agreement. The subject matter is merely permissive and not required to be bargained.

RECOMMENDATION

There are a number of studies and articles in the workplace literature that describe the value of a “thank you” for a job well-done. To promote goodwill with its police officers, the City may wish to consider agreeing with the Union’s proposal. To avoid promoting bad will, the City may wish to consider agreeing with the Union’s proposal. However, with no time left to try to research for precedent, this **Fact-finder recommends** that the parties not accept the Union’s proposal regarding firearms.

ADDITIONAL RECOMMENDATION

The **Fact-finder recommends** that the Parties agree that all tentative agreements reached by the Parties be part of their collective bargaining agreement, and that all unchanged provisions of the

current contract be maintained as current contract language and part of their collective bargaining agreement.

SUMMARY OF FACT-FINDER'S RECOMMENDATIONS

See the complete recommendations under each of the issues discussed above. The following is merely a brief summary for the benefit of those who immediately turn to the end to read the outcomes without reading the proposals and the discussions.

ISSUE 1: ARTICLE 2: FAIR SHARE & DUES DEDUCTIONS

Recommendation: that the Parties agree to fair share; and if they do, then the additional opportunities to revoke dues deductions should be accepted.

ISSUE 2: ARTICLE 15: RECALL

Recommendation: that the Union's proposal be accepted on condition that its proposal be modified to provide for only one failure to notify and stay on the list.

ISSUE 3: ARTICLE 16: PERSONAL DAYS FOR NEW HIRES

Recommendation: that the Parties *not* accept fewer personal days for new hires.

ISSUE 4: ARTICLE 29: FLSA, COMP TIME, SICK TIME & OVERTIME

Recommendation: that the Parties not accept addition of the FLSA language; that they accept an annual cap on comp time; that they accept eliminating comp time as active status for purposes of computing overtime; that they not accept eliminating sick time as active status for purposes of computing overtime.

ISSUE 5: ARTICLE 20: HEALTH INSURANCE

Recommendation: that the Parties accept the City's proposal for sharing health care premiums on a percentage basis.

ISSUE 6: ARTICLE 24: EDUCATIONAL INCENTIVES FOR NEW HIRES

Recommendation: that the Parties not accept the City's proposal to eliminate educational incentives for new hires.

ISSUE 7: ARTICLE 26: SICK LEAVE

Recommendation: that the Parties accept the City's proposal to add the words "up to;" that the Parties not accept the rest of the City's proposals concerning discipline and rewards in connection with sick leave.

ISSUE 8: ARTICLE 38: DRUG TESTING, ARREST, ETC.

Recommendation: that the Parties not accept either the City's or the Union's proposals.

ISSUE 9: ARTICLE 42: DURATION AND NOTICE

Recommendation: that the Parties accept the Union's effective date of January 1, 2013, for a term of three years; and, that they accept email for notices on condition that a paper copy is mailed by regular mail.

ISSUE 10: ARTICLE 43: WAGES

Recommendation: That the Parties accept the Union's proposal except that the annual wage increases be 2% for the year 2013; 2% for the year 2014; and, 3% for the year 2014.

ISSUE 11: NEW ARTICLE 44: FIREARM UPON RETIREMENT

Recommendation: that the parties not accept the Union's proposal.

ADDITIONAL RECOMMENDATION

That the Parties agree that all tentative agreements reached by the Parties be part of their collective bargaining agreement, and that all unchanged provisions of the current contract be maintained as current contract language and part of their collective bargaining agreement.

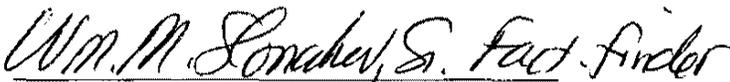
Note: the Fact-finder, in preparing this Report and making his Recommendations, considered the oral presentations made at the Fact-finding Hearing and supporting documentation submitted by the Parties, even though not referenced in this Report.

Further Note: the Fact-finder considered the Criteria set forth in Rule 4117-9-05(J).

Further Note: the Parties presented and discussed economic issues without separately breaking out, identifying, or discussing the costs of roll-ups or other roll-up considerations. The roll-up consequences are impliedly part of their respective economic proposals. Thus, this Fact-finder has not ignored the roll-up costs, merely (as is common practice) subsumed/ incorporated them in discussing and in making recommendations regarding economic issues. This is analogous to when you negotiate to buy a new lawn mower with a price tag of \$300. You know that when you check out the sales tax will be added as part of the total cost.

THE FOREGOING RECOMMENDATIONS ARE RESPECTFULLY SUBMITTED to the Parties as a proposed settlement for their interest dispute concerning the terms and conditions of their collective bargaining agreement.

Fact-finder


William M. Slonaker, Sr., JD, MBA, SPHR

William M. Slonaker, JD, MBA, SPHR

Arbitrator • Mediator

STATE EMPLOYMENT
RELATIONS BOARD

2012 DEC 14 P 3:44

Wednesday, December 12, 2012

Mr. Mark J. Volcheck, Esq.
Ohio Patrolmen's Benevolent Association
92 Northwoods Blvd., Suite B-2
Columbus, OH 43235

Mr. Patrick A. Hire, Regional Manager
Clemans, Nelson & Associates, Inc.
417 Northwest Street
Lima, OH 45801

Re: City of St. Marys & OPBA Police Officers
Fact-finding
SERB Case No.: 12-MED-09-0944

Dear Messrs. Hire and Volcheck:

Per your agreement, I sent enclosed Fact-finding Report to you by email this morning at about 9:00 a.m. The email was the respective formal submission to each of you.

For your convenience, enclosed is an original signed copy for your files. This U.S. mail to each of you includes the invoice and the W9.

Thank you again for your great, professional work.

Sincerely,

Wm. M. Slonaker, Sr.

P.S. The Report includes 36 pages.

pc: State Employment Relations Board
Bureau of Mediation
65 East State St., 12th Floor
Columbus, Ohio 43215-4213

wslonakersr@woh.rr.com

5314 Rahndale Place, Kettering, Ohio 45429-5425
Phone: (937) 312-0594 • Fax: (937) 312-0680

William M. Slonaker, JD, MBA, SPHR

Arbitrator • Mediator

STATE EMPLOYMENT
RELATIONS BOARD

INVOICE

Copy FYE
2012 DEC 14 P 3:44

Date: December 12, 2012
Dispute Between: City of St. Marys & OPBA – POLICE OFFICERS
Fact-finding
SERB Case No.: 12-MED-09-0944

PER DIEM:- 41.18 hours = 5.1 days @ \$700.00/day = \$3,570.00

Travel (Kettering-St. Marys-Kettering) 2.87
Fact-finding Hearing (10:00 – 5:20) 7.33
Writing, research, correspondence 30.98
Total hours 41.18 hours

EXPENSES:

Mileage (Kettering-St. Marys-Kettering)
(64 x 2 = 128 miles x \$.50) 64.00

TOTAL: \$3,634.00

ALLOCATION:

50% = City of St. Marys \$1,817.00

50% = OPBA \$1,817.00

PLEASE MAKE CHECK PAYABLE TO: William M. Slonaker, Sr.
MAIL CHECK TO: 5314 Rahndale Place
Kettering, OH 45429-5425

DUE: Net 30 from Date
IRS Form W-9 Enclosed

THANK YOU

5314 Rahndale Place, Kettering, Ohio 45429-5425
Phone: (937) 312-0594 • Fax: (937) 312-0680