

Non-Discrimination. (3) Article 37, Term of Agreement. This left nine articles with open issues to be resolved by the Fact Finder: (1) Article 14, Wages and Longevity. (2) Article 15, Overtime. (3) Article 16, Holidays. (4) Article 21, Health Insurance. (5) Article 22, Vacations. (6) Article 23, Sick Leave. (7) Article 24, IOD. (8) Article 29, Stand-By. (9) Article 36, Minimum Staffing.

At the hearing, witnesses testified and the parties and their advocates presented arguments and numerous documentary exhibits directed to these issues. Appearing on behalf of the Union were: Mark Volcheck, OPBA Legal Counsel, and Detective Steve Minich. Appearing for the Employer were: Michael Esposito and Kevin Shebesta of Clemans-Nelson, Employer Representatives; John Gross, Safety/Service Director; Scott Griffith, Police Chief; Kevin Knowles, City Auditor.

The Fact Finder has evaluated the proposals and evidence submitted by the parties. His recommendations for resolving the issues are fully explained in the Recommendations Section of this Report, infra. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining agreements, if any, between the parties.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (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.

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” referenced in criterion no. 6 may include the desirability of consistent and equitable treatment for all of the public employer's employees, and in particular the desirability of having uniform insurance provisions across a public employer's workforce.

FINDINGS OF FACT

A. City Profile, General Background

Alliance is an historic City located primarily in northeastern Stark County, Ohio, though a small part of Alliance extends into the southwest corner of Mahoning County. At one time, it was the crossroads for two major railways which serviced area industries. Industry has declined, but Alliance remains the home of Mount Union College. Its population peaked at 28,362 in 1960 and since has gradually but steadily declined to 22,322 in 2010. Estimated median household income in 2010 was \$30,078, and median family income was \$37,011, both well below state averages. More than 43% of families earned less than \$35,000, and 22.9% families and 26.0% individuals were in poverty.

B. City Finances

Alliance is in a tight financial situation. In 2007, voters increased the local income tax 1/4% to 2.0%, and the City began 2008 with a comfortable \$1.76 million General Fund carryover balance. However, City's revenue was impacted by the national recession which began in the Fall of 2008, and its carryover was reduced to \$1.20 million at the start of 2010. While income tax revenues stabilized with the economic recovery and are now increasing, the City still is dealing with loss of revenues from other sources:

Property tax collections have declined, the state has drastically reduced LGF support, and the Ohio estate tax was repealed effective 2013. The City continued to spend more than it collected 2011-2013, and it would have exhausted its General Fund balance but for a \$3,476,683 estate tax windfall in 2010. The windfall resulted in a \$3.92 million General Fund balance at the beginning of 2011, but by January 2014 the balance had been spent down to \$1.29 million. This exceeded the bare minimum necessary to meet the first month's expenditures in the new year by less than \$300,000. Mindful of looming financial problems, the City put a 1/2% income tax increase on the ballot in Fall 2013. Unfortunately, it was defeated by a 57% - 43% margin.

The City is projecting 2014 General Fund expenditures at \$11,939,420, based on a 3% inflation factor. It projects 2014 General Fund revenue at only \$10,052,915 (\$436,000 less than 2013), which may be supplemented by a \$700,000 tax reallocation to the General Fund. If these projections are accurate, then the City will finish 2014 with a General Fund balance of only \$178,400, and the prospect of deficits in years thereafter. The Union argues that the City's projections usually turn out to be too pessimistic. However, even allowing for a conservative projection, it is clear that the City is in a tight situation and, absent new revenues, it must control and reduce expenses during the next three years.

C. Local Wage History, Internal Comparables

The City's employees are represented by unions in thirteen different bargaining units. The City also has nonunion clerical and administrative employees, making a total of fourteen employee groups. Historically, the City has attempted to maintain parity in benefits and wage increases provided for each group. Generally, this has been achieved, although during the period 2009-2011 police and fire department units received 2% wage

increases when other employees had wage freezes. Most employees, including police, had their wages frozen in 2012 and 2013.

For 2014-2016, three unions have settled contracts with annual increases of 1% and agreed to a restructured health insurance program. They also received a \$750 up front lump sum payment. Eight other unions, including the OPBA unit involved in this fact finding, are currently negotiating. In each case, the City is offering the same 1%/1%/1% wage package, and the same health insurance reforms, as were accepted by the first three unions. The IAFF contract runs through this year and provides a 1% raise for 2014. Non-union employees also are receiving a 1% 2014 increase.

D. External Comparables

The Union submitted data comparing Alliance officers' wages to wages for patrol officers in five other Stark County cities of widely varying size and economic circumstances. The "top pay" rates at year 15 for officers in these cities are: Canal Fulton \$52,255; Canton \$52,688; Louisville \$52,963; Massillon \$51,678; North Canton \$53,234 and Alliance \$44,491. The Union noted that Alliance pay is only 84.64% of the average pay (\$52,563) in these cities. The Union also provided data for total compensation in each city. Alliance's relative ranking for total compensation was the same as its ranking in the wage chart.

The City provided data for eight other Northeast Ohio cities of varying sizes. Except for Massillon, these cities were located east and southeast of Alliance. The top salaries for these cities are: Massillon \$56,597; New Philadelphia \$50,107; Steubenville \$48,933; Salem \$46,738; Girard \$45,446; East Liverpool \$45,074; Alliance \$44,491; Struthers \$42,016 and Campbell \$36,391. Alliance ranked a bit higher in this group than in the Union group, but Alliance patrol wages still are well below the group average.

ANALYSIS AND RECOMMENDATIONS

1. Article 14, Wages and Longevity

Positions of the Parties: The City proposes a \$250 signing bonus and 1% annual wage increases effective on January 1 in each year of a three-year agreement. The City also proposes other changes in the compensation structure, as follows: 1) Add new section which would prevent step increases from going into effect after expiration of a collective bargaining agreement until a successor agreement is negotiated. 2) A two-tier longevity plan, which would eliminate longevity for new hires. 3) “Clarification” of the “work out of classification” provision. 4) A two-tier wage schedule, which would stretch the current four-year wage progression to ten years for new hires. The Union counters with 3.0% annual wage increases effective January 1 of each year of a three-year agreement. It rejects all of the City's other proposals.

RECOMMENDATION: One percent (1%) annual wage increase in each year of the Agreement, effective January 1, 2014, January 1, 2015 and January 1, 2016. Lump sum payment to each officer within 30 days of ratification in the amount of \$750. Retain current contract Section 2, longevity, without change, except for deletion of “2012” reference. Keep current Section 3 (work out of classification). Retain current four-step wage scale without change. Do not add proposed language regarding “wage schedule administration.”

Revised Article 4, Section 1 should state:

Base hourly wages for Patrol Officers within this Bargaining Unit shall be:

	1/1/2014	1/1/2015	1/1/2016
PATROLMAN III (Commencing with the 5th year of employment)	\$21.60	\$21.82	\$22.04
PATROLMAN II (Commencing with the 3rd year of employment)	\$20.52	\$20.73	\$20.94
PATROLMAN I (Commencing with the 2nd year of employment)	\$19.57	\$19.78	\$19.78
PATROLMAN PROB. (Equal to or less than 1 year of employment)	\$17.49	\$17.67	\$17.84

The wage rates above reflect 1% general wage increases effective on January 1 in each year of this three-year Agreement.

To implement the lump sum payment, the following side letter should be added to the Agreement:

SIDE LETTER: LUMP SUM PAYMENT

Within thirty (30) days of the execution of this Agreement, all bargaining unit members employed as of the ratification date of the Agreement shall receive a lump sum payment of seven hundred fifty dollars (\$750.00).

Rationale: The 1%/1%/1% recommendation is below the trend and unfortunately does not raise wages enough to close the wage gap between Alliance and many neighboring communities. However, the City's tight financial situation prevents more than a modest increase, and the City's relatively low wage rates are commensurate with the status of its local economy relative to the economy of its more affluent neighbors. Further, the recommended wage increase is justified by internal equity – it is consistent with wages and bonuses negotiated by three other City unions; with wages awarded to the

City's non-union employees for 2014; and with the 2014 increase granted to the City's firefighters in the third year of the IAFF Agreement.

The City's proposal to extend the schedule to ten steps would exacerbate the already low relative wage status of City employees. Moreover, it is not supported by Comparability data, as a four or five step schedule is most common in neighboring jurisdictions.

Similarly, the City's proposal to eliminate longevity for new employees, thus creating a two-tier system, is not warranted at the present time. Comparability data shows that most neighboring cities have a single longevity scale applicable to all patrol officers. The proposed two-tier longevity scale would put the city's new hires even farther behind new hires in neighboring communities.

2. Article 16 – Overtime/Hours of Work

Positions of the Parties: The City proposes several significant changes in overtime practices, as follows: 1) Affirm management's "sole discretion" to determine the need for overtime. 2) Define the work week as "forty hours of work during a seven-day, one hundred sixty-eight (168) hour period established by the Employer." 3) Offer overtime by classification seniority, with exceptions. 4) Limit 4-hour guarantee for call-in and court time so that it would not apply when the additional time abuts a shift. 5) Limit overtime pay to hours actually worked in excess of 40 hours in a week, except that paid time other than sick leave and compensatory time would still count as hours worked.

The Union proposes additional language defining a standard eight-hour workday and five-day workweek with an established lunch period in accord with current practice. The Union also would clarify that overtime should be offered by classification seniority and provide that all paid hours would count as "hours worked" for overtime purposes.

RECOMMENDATION: Add new Section 1 providing eight-hour standard workday and forty-hour standard workweek, including the established paid lunch subject to operational needs as determined by the Employer. Renumber current Section 1 as Section 2 and modify to change “Department Seniority” to “Classification Seniority.” Renumber current Section 2 as Section 3 and add: “Except for sick leave and compensatory time, all hours paid shall be considered hours worked for purposes of computing overtime payment.” Renumber Sections 3 and 4 as Sections 4 and 5. No other changes in Article 16.

Language of new Section 1 to state:

The standard work day for bargaining unit employees shall be eight (8) consecutive hours. The standard work week for bargaining unit employees shall consist of forty (40) hours in a seven (7) day period. Bargaining unit employees shall work five (5) consecutive days followed by two (2) consecutive off-days. Such time includes the established paid lunch period. The Employer shall have the ability to interrupt the lunch period and order employees to return to work if it determines that its operational needs so require.

Rationale: The Fact Finder is mindful that overtime is a cost to the City. However, it also is a source of income for employees. In a year when employees are receiving only a modest wage increase and are being asked to accept greater future responsibility for medical costs, the Fact Finder is very reluctant to impose overtime restrictions which would materially reduce employee overtime income from current levels. Therefore, only modest changes in Article 16 are recommended. These changes are consistent with comparability data.

3. Article 16 - Holidays

Positions of the Parties: The City proposes to eliminate compensatory time for employees who work on holiday and provide instead that employees will receive eight

hours holiday pay and pay for all hours worked on a holiday at a rate of 1.5 time the base hourly rate. The City also has several “clarification” proposals which it states are not intended to be substantive. The Union argues that current contract language would be retained without change.

RECOMMENDATION: Eliminate the option to take compensatory time in lieu of holiday pay. Current Section 4 should be deleted. No other changes.

Rationale: Elimination of compensatory time option is reasonable and supported by City comparability data.

4. Article 21 – Health Insurance Benefit

Positions of the Parties: The City is proposing a major restructuring of its health insurance program on a city-wide basis. Currently, the City manages its self-insured health care program, with appropriate stop-loss for high individual and high aggregate claims. The City proposes transitioning plan design and management functions to an employer-employee committee, with a majority of employee members. The new structure would take effect whenever a “majority of bargaining units” approve participation in the committee. As proposed, effective 2014 the City would continue to contribute a base amount toward health insurance costs but additional costs above the minimum would be split 60%/40% between the City and the employees. The proposal also modifies criteria for spousal coverage, creates a wellness screening program, and provides incentives for participating in annual wellness screening and a penalty for tobacco use.

The Union objects to the City proposal, but acknowledges the need to manage insurance costs. Its counterproposal would provide increases in employee premium share and, effective 2015, increases in deductibles and co-pays. The Union opposes change in

criteria for spousal coverage, noting that it would pose a hardship for spouses with costly and/or inadequate insurance from their part-time employers.

RECOMMENDATION: With the following modifications, the Fact Finder adopts the City's proposal as his recommendation: 1) Amend proposal to provide that the bargaining unit's representative will be paid his/her regular hourly rate for attending committee meetings. 2) Retain current practice and language of current Article 21, Section 8, for spousal coverage. 3) Provide that cost increases after ratification of the Agreement shall be split 30% employee and 70% City rather than 40%/60% as proposed. 4) Add a note that the screening discount and surcharge rate charts will become effective as soon as the programs are implemented and the employees qualify. New Article 21 will provide:

Section 1 – As proposed by the City.

Section 2 – As proposed by the City.

Section 3 – As proposed by the City.

Section 4 - Introductory paragraph as proposed by the City. Charts as proposed by the City, followed by a note stating that “The Screening Reduction and Surcharge charts will be effective when programs are implemented and employees qualify.” Final paragraph as proposed by the City, except the first sentence shall be revised to state: “Upon ratification of this Agreement, any costs above the cumulative total of the Employer and employee base contribution amounts set forth above shall be paid seventy percent (70%) by the Employer and thirty percent (30%) by the participating employee.”

Section 5 – As proposed by the City, with the following sentence added at the end: “The bargaining unit representative on the committee will be compensated for time spent attending committee meetings at his/her regular hourly rate.”

Section 6 – As proposed by the City.

Section 7 – Language from Article 21, Section 8 of the current Agreement.

Section 8 – As Proposed by the City.

Section 9 – As proposed by the City.

Section 10 – As proposed by the City.

Side Letter – As proposed by the City.

Rationale: The City has demonstrated a financial need to control insurance costs. It is opting to deal with this constructively by establishing a joint employee-management committee to oversee the health insurance program. The committee would have authority to make choices on coverage and costs. It would have a majority of employee representatives, insuring the employees and their unions of a meaningful opportunity to participate in the decision making process. The City plan also provides for a wellness program, with economic incentives, which is calculated both to improve employee health and decrease long-term medical costs. At the outset, the employees would be responsible for 10% of the monthly cost of the program – a reasonable percentage a little below the average paid by Ohio public employees, which, according to SERB's annual Insurance Report, was 11.2% for single coverage and 12.2% for family coverage in 2013. Although this could increase over time due to the 70%/30% employer-employee split of cost increases, it is likely that the resulting employee contribution percentage would remain below 15% even if healthcare costs increased more than 25% during the term of this agreement. And, of course, the Committee could avoid or minimize cost increases by choosing modifications in the benefits provided. While there are no guarantees of success, the program appears to be a reasonable approach to the necessary task of containing medical costs.

In addition, the City supported its proposal with comparability data showing that a number of other area cities are using the employee-management committee approach to

oversee their insurance programs. Finally, the City is in the process of negotiating committee participation with all of its unions, and thus may be able to achieve the objective of covering all employees with a single cost-effective uniform insurance program.

5. Article 23 - Vacations

Positions of the Parties: The City proposes a two-tier vacation system, with a reduced vacation benefit for new hires. In the second tier, vacation would top at 30 days for employees over twenty years, and eligibility for 15, 20 and 25 days would be delayed until completion of the employee's sixth, thirteenth and twentieth years. The employer also would clarify or tighten control over current provisions covering use of vacation for sickness and buyback of vacation days. Finally, the City's proposal would specifically state that the vacation article would pre-empt R.C. 9.44, provided that current employees who are receiving prior vacation service credit will continue to do so. The Union urges rejection of the City's proposed changes, except it agrees to the provision pre-empting R.C. 9.44.

RECOMMENDATION: Add language to Section 1 stating that the Agreement shall prevail over R.C. 9.44 but preserving service credit for current employees. New language to be added as follows:

It is the intent of the parties that this article shall prevail over R.C. 9.44 for employees hired on or after January 1, 2014. Employees who were hired before January 1, 2014 shall continue to receive all rights and benefits of R.C. 9.44. No bargaining unit member hired before January 1, 2014 shall have his/her vacation service credit reduced as a result of this provision.

Clarify Section 4 by adding reference to “classification seniority.” In Section 6, add following two sentences at end to clarify procedure for electing to sell back vacation:

“Employees electing to sell back vacation shall do so by notifying the Chief by

November 30 of the year preceding payment being made. Payment will be made as soon as practicable following the request being made.”

Rationale: Per discussions at the hearing, the parties now are in basic agreement on the recommended changes. The Fact Finder agrees with the City that the current vacation schedule is a bit rich at the top, and acknowledges that some cities have dealt with this by implementing a two-tier system. However, vacation is a long-term negotiated benefit in this jurisdiction. Nothing is being offered to the Union in exchange for proposed concessions, nor would the City obtain an immediate savings from it. Therefore, a two-tier system is not recommended at this time.

6. Article 24 – Sick Leave

Positions of the Parties: The parties settled several sick leave issues at the hearing, but the following three City proposals remain open: 1) Section 5 – Right of employer to require fitness for duty examinations. 2) Section 8 – A two-tier system which, for new employees, would significantly reduce the maximum severance on retirement from 960 hours to 240 hours. 3) Section 9 - Convert the current semi-annual eight-hours pay attendance bonus to a quarterly \$100 flat fee attendance bonus.

RECOMMENDATION: Add new section proposed by the City regarding employer required examinations. Modify Section 9, Perfect Attendance Bonus, to eliminate the “8 hours off” option and to convert the current semi-annual bonus to a quarterly cash bonus of \$100. Incorporate changes agreed by the parties at the hearing. No other changes to Article 24.

New Section __ should state:

Employer Required Examinations. If the Employer has a reasonable basis for believing that an employee is no longer mentally or physically capable of performing the essential functions of his position or poses a danger to himself

of others, the Employer may order an examination by an appropriately qualified medical professional, at the Employer's expense. Upon receipt of the medical professional's opinion on fitness for duty, the Employer, the Union, and the employee will meet to discuss possible alternatives and/or accommodations. If no alternative or accommodation is mutually agreeable, then the employee will be placed on sick leave (concurrent with family medical leave), other paid leave, and then a disability separation initiated.

Modified Section 9 should state:

Perfect Attendance Bonus. Bargaining unit members shall be given \$100 for every three (3) months prior perfect attendance. Injury on duty leave, death in the immediate family, or the Family and Medical Leave Act shall not be considered as a break in the three (3) month period. Any pattern of unexcused absences incurred withing one month of earning perfect attendance bonus may result in disciplinary action.

Rationale: The new section correctly describes the ADA procedure which should be followed under the circumstances. Switching to a quarterly attendance bonus system is reasonable and it is appropriate to eliminate the comp time option. The Fact Finder rejects the City's two-tier proposal for the same reasons that its two-tier vacation proposal was rejected, to wit: This is a long-term negotiated benefit in this jurisdiction. Such benefits are not usually taken away absent a quid pro quo or a pressing, immediate need. Nothing is being offered to the Union in exchange for proposed concessions, and would the City obtain an immediate savings from it. Therefore, a two-tier system is not recommended at this time.

7. Article 25 - IOD

Positions of the Parties: The City proposes to modify procedure for qualifying for Injury on Duty Leave. Two key proposed requirements would be a requirement for BWC approval and a requirement that the employee be examined by a City-approved physician within seven days of injury. The City maintains these are necessary to insure efficient management of claims. The Union proposes maintaining current contract language

without change.

RECOMMENDATION: The Fact Finder adopts the City proposal as his recommendation.

Rationale: The City proposal retains the current benefit, but establishes procedures to insure that the benefit is administered in a fair and consistent manner and used only in accordance with its intended use. This is a reasonable modification. It also has been accepted in the three union contracts settled to date.

8. Article 29 – Stand-By Time

Positions of the Parties: The City proposes to convert stand-by from one hour of compensatory time for every eight hours assigned to a flat \$100/week. The Union is opposed. However, both parties propose to update Section 2 of the Article, which covers pager notification, to include notification by other electronic devices.

RECOMMENDATION: Revise Section 2 as proposed by the City and agreed by the parties. Convert from compensatory time to a dollar amount, but make it one hour pay at employee's base rate for every eight hours of stand-by time.

Rationale: Currently, one hour compensatory time for every eight hours standby would exceed the \$100/week proposed by City. It is reasonable for the City to try to reduce compensatory time accumulations, but not to cut the value of the standby assignment.

9. Article 36 – Minimum Staffing

Positions of the Parties: The City proposes modifying the current minimum staffing provision to permit requirements to be met by any qualified sworn patrol officer, including probationary and part-time officers. The Union objects to this modification, and proposes instead that the terms of a Letter of Understanding now in effect be

incorporated into the new Agreement.

RECOMMENDATION: Maintain current practice and incorporate Letter of Understanding into the Agreement, as proposed by the Union.

Rationale: All employers would prefer to leave minimum staffing to the discretion of management, and minimum staffing is a permissive subject of bargaining. However, when, as here, the current Agreement already includes a minimum staffing provision, any proposed change in it is a mandatory bargaining subject. The parties seem to agree that the current minimum staffing levels are appropriate. However, the City proposes to meet minimum staffing requirements by use of up to one qualified part-time or probationary employee per shift. This is not per se unreasonable, and no doubt would result in some cost savings for the City, although the City did not specifically estimate the amount of anticipated savings. However, the City's cost saving would be the bargaining unit's income loss. Absent compelling immediate need, it is not appropriate to impose this change in a year when employees are being asked to accept only a modest wage increase and to shoulder greater risk in the area of health insurance.

These Findings and Recommendations are issued this 15th day of April, 2014.

Shaker Heights, Ohio

s/John T. Meredith
John T. Meredith, Fact Finder

CERTIFICATE OF SERVICE

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing same to their representatives, listed below, this 15th day of April, 2014.

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