

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

December 11, 2012

In the Matter of:

City of Berea)	
)	Case No. 12-MED-10-1112
and)	Patrol Officers
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the City:

Marc Bloch, Counsel
Sara Fagnilli, Counsel
Cyril Kleem, Mayor
Dana J. Kavander, Director of Finance
Kenneth R. Adams, Director of Public Safety

For the Union:

Randy Weltman, OPBA Attorney
Mary Schultz, Expert - Finances
Thomas Walker, Negotiator
Charles Gute, Negotiator
Robb Chernisky, Negotiator
Chris Holmes, Negotiator

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Berea and the Ohio Patrolmen's Benevolent Association. The city is located in the southwest portion of Cuyahoga County and has a population of 19,093. It employs approximately 22 Patrol Officers. They are represented by the Ohio Patrolmen's Benevolent Association.

The dispute involves the negotiations between the city and the union for a successor agreement to the one due to expire on December 31, 2012. The union states that approximately six weeks ago, Cyril Kleem, the city's mayor, proposed a wage freeze for 2013 in return for a promise not to lay off Patrol Officers, except in a case of catastrophe, and a reopener for wages in 2014 and 2015. When the union rejected the city's proposal, the dispute proceeded to fact-finding.

The Fact Finder was notified of his appointment on December 3, 2012. He met with the parties on December 5, 2012. At that time, a number of issues were resolved but when no overall agreement was reached, the Fact Finder prepared this report with recommendations for resolving the issues in dispute.

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

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

ABILITY TO PAY

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

City Position - The city offered the testimony of Dana J. Kavander, its Director of Finance, in support its position. She reported that the city's 2011 General Fund revenue of \$13,563,853 was drawn from several sources. Kavander indicated that \$7,794,141, or 58%, came from income taxes; \$1,901,025, or 14%, came from property taxes; and \$1,370,606, or 10%, came from the Local Government Fund.

Kavander observed that the monies collected from the various sources have changed over time and are expected to continue to change. She pointed out that from 2013 through 2015 property tax revenue is projected to decrease by 1.5%; income tax revenue is projected to remain at the 2012 level less \$90,000 due to the city's loss of its ninth largest employer, Equity Trust; license and permit revenue is projected to remain at the 2012 level; Local Government Fund revenue is projected to remain at the 2013 level; and inheritance tax revenue is projected to fall to zero after the collection of a residual of \$20,000 in 2013. Kavander noted that revenues from property taxes, the Inheritance Tax, the Local Government Fund, and the Personal Property Tax have fallen from \$3,154,302 in 2008 to an estimated \$1,884,930 in 2013.

Kavander reported that Police and Fire Pension Fund revenues and expenditures have changed. She indicated that while revenue has declined slightly, expenditures have risen steadily. Kavander added that estimated expenditures in 2013 are substantially higher due to two extra payments during that year.

Kavander argued that while the General Fund cash balance has remained more or less constant for a number of years, even assuming no wage increases, it will decline very substantially from 2013 through 2015. She pointed out that in 2012 the balance was \$1,139,029 but that it will decline to \$157,195 in 2015. Kavander emphasized that the projected 2015 cash balance represents less than one week of expenditures.

Kavander contends that the decline in the cash balance is much more alarming if wages for all employees are increased by 2% in 2013 and 2014 and 3% in 2015.¹ She stated that with these increases, the carryovers will be \$587,339 in 2013; \$43,300 in 2014; and a negative balance of \$704,462 in 2015.

Kavander maintains that the cost of 2% increases in 2013 and 2014 and a 3% increase in 2015 is substantial. She estimated the annual costs for union-represented employees, including roll-up, to be \$140,770 in 2013; 143,554 in 2014; and \$219,664 in 2015 or \$504,038 over three years. Kavander estimated the cost for all employees to be \$238,278 in 2013; \$253,301 in 2014; and \$368,924 in 2015 or \$878,503 over three years.²

Kavander observed that the city has substantial liability for accrued sick leave. She indicated that if all employees who become eligible to retire between 2013 and 2016 do so, the city's liability will be \$300,283 in 2013; \$328,533 in 2014; \$22,641 in 2015; and \$9,551 in 2016. Kavander stated that the city's overall estimated liability is \$751,010.

¹ This was the union's demand prior to fact-finding.

² Kavander indicated that a 1% increase in wages for all employees results in a \$125,000 increase in expenditures.

Kavander explained that the city also has a Municipal Income Tax Fund. She indicated that the fund receives 25% of income tax receipts, which amounted to \$2,598,047 in 2011. Kavander stated that total fund expenditures were \$2,552,151 with 33% going to General Capital; 27% to Recreation Operations; 20% to Neighborhood Improvement Capital; and the balance to other capital funds. She emphasized that a city ordinance restricts the use of the Municipal Income Tax Fund to capital, debt, recreation, and water purposes.

Kavander provided a comparison of the 2011 year-end balances based on cash and accrual accounting when the General Fund and the Municipal Income Tax Fund are combined. She reported that adding the designated amounts for the General Fund, Municipal Income Tax Fund, and other funds to the undesignated General Fund balance of \$1,138,388 results in a total cash-basis balance of \$2,127,108 compared \$4,281,985 on a GAAP basis.

Union Position - The union offered the testimony of Mary Schultz, a financial consultant, in support its claim that the city has the ability to pay its demands. She reported that in 2011 the city's revenue included \$1,809,000 in property tax and \$856,000 in Local Government Funds. Schultz noted that the city also receives an average of \$1,300,000 in court costs and \$225,000 in Estate Taxes. Schultz acknowledged that Estate Taxes will be eliminated in 2013 and that Local Government Funds will be reduced by \$625,000.

Schultz observed that in 2011 the General Fund received \$7,794,000 in income tax revenue. She pointed out that this represented 57% of General Fund revenue. Schultz noted that in 2012 the General Fund is estimated to get \$8,262,000 in income tax revenue, an increase of \$468,000. She indicated that the Police Department is financed primarily from the General Fund.

Schultz described 2011 General Fund revenues and expenditures. She reported that revenues were \$13,596,000, including income tax receipts of \$7,794,000. Schultz noted,

however, that revenues were less than expenditures and the year-end balance decreased to \$1,130,000.

Schultz observed that the city provided information regarding General Fund revenues and expenditures for 2012. She stated that the city estimated General Fund revenues of \$13,848,000, including income tax receipts of \$8,262,000, an increase of \$468,000 higher over 2011. Schultz indicated that budgeted expenditures were \$13,857,000, which was an increase of \$211,000 over 2011 expenditures. She observed that using the city's estimated revenues and its adopted budget, the year-end balance will be \$1,121,000.

Schultz focused on the year-end balances of the General Fund over the past four years. She pointed out that the year-end balances were \$1,116,000 in 2009; \$1,180,000 in 2010; and \$1,130,000 in 2011. Schultz noted that the budget for 2012 shows a year-end balance of \$1,121,000 but that as of September 30, 2012, the balance was \$1,663,000, which is more than any time in the past four years. She suggested, however, that a more accurate estimate of the year-end balance would be \$1,396,000, which represents a 10% carry-over balance.

Schultz argued that the General Fund year-end balance does not reflect the full picture. She observed that 25% of income tax revenue goes to the Municipal Income Tax Fund and is transferred to other funds. Schultz indicated that this is the way the city supports its various programs. She stressed that "according to the city's 2011 CAFR (Comprehensive Annual Financial Report) this distribution of Income Taxes is determined at the discretion of Council, since the Income Tax money 'is available to the city for any purpose provided it is expended or transferred according to the Charter of the City of Berea and/or the General laws of Ohio.' "

(Union Exhibit 1, page 3)

Schultz examined the Municipal Income Tax Fund year-end balances from 2009 through 2012. She pointed out that the year-end balances were \$628,000 in 2009; \$724,000 in 2010; and \$920,000 in 2011. Schultz noted that the 2012 budget shows a carryover of \$2,191,000.

Schultz argued that since the monies in the Municipal Income Tax Fund are used for General operating purposes, they should be considered part of the General Fund and the year-end balance in that fund needs to be added to the year-end balance in the General Fund. She pointed out that when this is done, the year-end balances were \$1,744,000 in 2009; \$1,904,000 in 2010; and \$2,050,000 in 2011. Schultz noted that the budget for 2012 shows a combined carryover of \$3,312,000, which is equal to 24% of expenditures. Schultz stated that the Government Finance Officers' Association advises that two months of expenditures, or 16%, is a reasonable carryover balance.

Schultz contended that the city has acknowledged its strong financial position. She observed that its 2011 CAFR states:

The future economic outlook for the City of Berea is promising. Despite the sagging economic condition nationwide and Berea being an older community, most thought the City could not expand and grow. However, the City has seen significant changes. The annexation for housing development along with another smaller development has helped bring higher tax bracket taxpayers that Berea has been seeking. The City anticipates continued development in both residential and commercial areas. (Union Exhibit 1, page 4).

Schultz reported that wages in the city have not grown. She pointed out that overall General Fund wages decreased by 1% since 2009. Schultz noted that in 2012, budgeted wages in the Police Department are 4% less than expenditures in 2011. Schultz added that in some other departments, including the Finance Department, the Municipal Court, the Signage Department, and the Administration Department, wage expenditures have increased.

Schultz maintained that employment in the city has declined. She reported that the city's CAFR reveals that its employment has declined between 2003 and 2011. Schultz added that the Police Department operated with 1.5 fewer officers in 2012 than the previous year while employment increased in the Recreation Department.

Schultz concluded that the wage and benefit increases sought by the union are affordable. She claimed that the December 31, 2012, carryover balance will be at least \$3,300,000, or 24% of expenditures. Schultz added that the city expects a \$468,000 increase in income taxes in 2012 and claimed that there is no reason to believe that income tax receipts will decline in the future. She maintained that the increase in income tax receipts offsets the losses in Estate Taxes and Local Government Funds.

ISSUES

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

1) Article 16 - Rates of Pay, Section 16.01 - Professional Training and Professional Pay - The current contract provides that employees who have training and certification in domestic violence response; firearm proficiency; blood-alcohol analysis; K-55 Unit and S-80 Unit radar operation; and approved defensive tactics are to be paid an amount equal to 7.5% of the basic wage. The city proposes converting the 7.5% to the dollar amount equal to the current payment. The union opposes the city's demand.

City Position - The city argues that its demand should be recommended. It states that “there is simply no reason to pay anything extra to employees who need the certificates in this article to maintain their ability to perform police work.” (City Pre-Hearing Statement, page 6) The city indicates, however, that “rather than seek to eliminate this provision [it] seeks to change it to a flat stipend, so that it will not be impacted as wages rise or fall.” (Ibid.)

Union Position - The union argues that Professional Pay should continue to be paid as a percentage of the base wage because it was negotiated by the parties rather than imposed on them by a Fact Finder or Conciliator.

Analysis - The Fact Finder recommends that the current contract language be retained. First, the contract indicates that Professional Pay was established as the equivalent to the firefighters Paramedic Pay Supplement. The firefighters payment is specified as a percentage of the base wage. Second, the city’s claim that the percentage payment should be changed to a dollar amount to prevent the supplement from increasing as wages rise, is unconvincing because the supplement has come to be regarded by the Patrol Officers as part of their regular compensation.

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

2) Article 16 - Rates of Pay, Section 16.02 - Wage Adjustments - The current contract establishes a top rate of pay of \$64,230 for Patrol Officers. The union demands 2% wage increases effective January 1 of 2013, 2014 and 2015. The city proposes a wage freeze for 2013 and a reopener for wages in 2014 and 2015.

Union Position - The union argues that the city has the ability to pay its wage demand.

It states that when the city claimed that its financial position forced it to seek a wage freeze for 2013, it researched and analyzed the city's finances and concluded that there was no merit to the city's claim. The union asserts that "the City's own submissions, its 2011 Comprehensive Annual Financial Report (CAFR) and its year to date revenue and expenditures reports, revealed that it can easily sustain average to above-average pay raises for its Police Officers." (Union Pre-Hearing Statement, page 4)

The union contends that the city's economic outlook is promising. It points out that in 2011, the city reported an increase in community growth on the west side as a result of the Bagley Road underpass project. The union notes that "the City's investment in infrastructure has helped bring the higher tax bracket taxpayers that the City has been seeking." (Union Pre-Hearing Statement, page 2)

The union maintains that the wages of other Cuyahoga County Police Officers support its wage demand. It reports that the average wage for Police Officers in 30 Cuyahoga County cities is \$67,045 compared to \$64,230 in Berea and that the average total compensation is \$71,168 compared to \$70,642 in Berea. (Union Exhibit 4) The union notes that for 15 west side cities, the average wage is \$65,101, approximately 2.3% more than Berea, while the average compensation is \$69,199, 2.0% less than in Berea. (Ibid.)

The union argues that the "going rate" for wage settlements is 1.5% to 2%. It acknowledges that there are a relatively small number of settlements for 2013, but indicates that the existing settlements in Cuyahoga County are generally in this range. The union emphasizes that it needs a wage increase of this magnitude in order to maintain its ranking among comparable cities.

The union contends that rising prices also support its demand. It reports that the Bureau of Labor Statistic's CPI-W for the Midwest rose 4.4% between May 2011 and May 2012. The union observes that in May 2012 increase in the index was 1.5%.

City Position - The city argues that it is not in a position to afford a wage increase for 2013. It states that "it has no room to expand, its infrastructure is aging and its 'successful' citizens tend to move out to other locations." (City Pre-Hearing Statement, page 2) The city claims that it has become an inner-ring suburb.

The city contends that a number of changes have had a significant impact. It points out that its General Fund revenue has shrunk by approximately \$2 million. The city notes that despite its economic difficulties, it has maintained a positive carry forward balance into 2013 of approximately 8% to 9% of General Fund expenditures. It adds, however, that bond rating agencies prefer a carry forward of 15% to 20%.

The city maintains that its union-represented employees have done well. The city reports that since 2008 they have received wage increases of 15% while nonunion employees have received far less and in fact, received no increases over the last several years. It observes that its Police and Fire Pension Fund, which is derived from property taxes, has had to be shored up by the General Fund.

The city argues that the State of Ohio has cut its funding. It reports that the state "has eliminated sources of funding in the area of tangible property tax, inheritance tax, and local government funding for 2012 and 2013." (Ibid.) The city adds that the state has not determined if it will totally eliminate the Local Government Fund for 2014, which leaves approximately \$200,000 "in play" for 2014.

The city contends that it faces problems related to “buybacks.” It points out that, pursuant to Article 24, Section 24.08, it must fund buybacks for the safety forces from the General Fund. The city notes that it is difficult to estimate the number of employees who will exercise their rights under the contract but claims that “if the entire eligible groups leave us during the next three years, it would eliminate any carry forward.” (Ibid.)

The city maintains that it faces the prospect of a substantial decline in its carryover balance. It claims that even with no wage increase in 2013, it “has conservatively estimated that between state funding shortfalls and contractual obligations, such as the Sick Leave buyouts, that ending balance in 2013 will shrink from \$1.2 million to less than \$300,000.

The city argues that collective bargaining has an “immense” impact on its finances. It points out that a 1% increase in wages for all employees increases its costs by \$125,000. The city claims that “it does not take an accountant or economist to realize that [it] could be perilously close to a serious economic situation if its revenue sources do not improve.” (City Pre-Hearing Statement, page 3)

The city contends that it has limited sources of new revenue. It states that it has one major private employer, the Cleveland Browns, and that the next largest employers, Baldwin-Wallace University, Berea Schools, the Ohio Turnpike, and the City of Berea, are either public or nonprofit entities. The city asserts that since there are no large tracts of land to be developed, “the prospect for new employers coming into the City is not good.” (Ibid.)

The city concludes that its wage proposal should be adopted. It claims that “this is not the time for additional unfunded mandates to be put upon the city’s coffers ... [but] is time for retrenchment, for conservation and preservation of jobs.” (Ibid.)

Analysis - The Fact Finder recommends that wages be frozen for 2013 and increased by 2% effective January 1 of 2014 and 2015. First, his recommendation for a 4% wage increase over three years is consistent with the data supplied by the union for 30 cities in Cuyahoga County. While the majority of the cities have not reached agreement on wages for 2013, for the 14 cities who have reached agreement, the increases range from 0 to 6.8% and the average increase is 1.8%. These cities face the same cuts in the Local Government Fund, the elimination of the Inheritance Tax, and the slow recovery in income collections.

Second, the city clearly has the ability to pay the recommended wage increase. The Fact Finder rejects the city's argument that the carryover in the Municipal Income Tax Fund should be completely ignored. While a city ordinance restricts how money from the fund can be spent, expenditures made from the fund free up money in the General Fund that would otherwise have to be used to pay for activities covered by the Municipal Income Tax Fund. This is reflected in the fact that the General Fund and the Municipal Income Tax Fund are combined in the CAFR in a single fund referred to as the "General Fund." Furthermore, carryover balances are generally regarded as an indicator of the financial status of a city. The significant year-end balances in the Municipal Income Tax Fund suggest that the city is in sound financial condition.

Third, although the city should be conservative in making revenue estimates, its projections for income tax receipts are unduly pessimistic. The record indicates that General Fund income tax receipts grew from \$7,775,104 in 2010 to \$7,794,141 in 2011 and are estimated to increase to \$8,106,495 in 2012.³ Despite these increases and the continuing economic recovery, the city projects no increase in income tax receipts through 2015.

³ The Fact Finder recognizes that income tax receipts were reduced in 2011 due to the players' strike in the National Football League.

Finally, at the fact-finding hearing, the city presented a rather pessimistic assessment of the city's prospects. The Fact Finder observes, however, that the city's 2011 CAFR states that "the future outlook of the city is promising."

Recommendation - The Fact Finder recommends the following contract language:

All employees shall be paid bi-weekly according to the attached wage schedules, which shall be increased as follows:

Effective January 1, 2013, the wage schedule shall be frozen.

Effective January 1, 2014, the wage schedule shall be increased by 2%.

Effective January 1, 2015, the wage schedule shall be increased by 2%.

3) Article 17 – Officer-in-Charge Premium, Section 17.01- Compensation -

The current contract requires the city to pay Patrol Officers who are designated as Officers-in-Charge for a full day an additional 1.5 hours of pay at their regular rate of pay and .75 hours of pay to those who are required to serve as Officers-in-Charge for one-half of a day. The city seeks to pay Patrol Officers at the base rate for Sergeants for each full- or half-day spent as Officers-in-Charge. The union opposes the city's demand.

City Position - The city argues that its proposal should be recommended. It observes that under the current contract provision, OICs are paid more than the Sergeants they are replacing.

Union Position - The union offered no rationale for retaining the current provision.

Analysis - The Fact Finder finds the city's proposal that OICs be paid the base rate for Sergeants entirely reasonable and recommends its adoption.

Recommendation - The Fact Finder recommends the following contract language:

Whenever a Patrol Officer is designated Officer-in-Charge (OIC), such Patrol Officer shall be additionally compensated as follows:

a. For each full day as Officer-in Charge, a Patrol Officer shall be paid at the Sergeant's base rate.

b. For each one-half (1/2) day or less as Officer-in-Charge, a Patrol Officer shall be paid at the Sergeant's base rate.

c. In no event shall the Officer-in-Charge premium be paid to any Patrol Officer designated as an Officer-in-Charge for a period of less than two (2) hours.

4) Article 18 - Longevity Compensation, Section 18.01- Longevity

Payments - The current contract provides for a longevity payment of \$100 after five years of service. In subsequent years, the longevity payment is calculated by multiplying the number of years of service minus three times \$85. The city proposes the elimination of longevity payments. The union opposes the city's demand.

City Position - The city argues that longevity payments should be eliminated. It reports that the city's non-union employees no longer receive it.

Union Position - The union argues that the present longevity schedule should be retained. First, it points out that only one city among 30 Cuyahoga County cities does not have longevity. (Union Exhibit 4, page 1) The union claims that in the city without longevity, the base rate was raised to reflect its elimination. Second, the union notes that the city's longevity is low. It indicates that a 10-year Patrol Officer in the city receives a \$595 longevity payment while the average payment for Cuyahoga County cities is \$1335 and \$1080 for 15 west side cities. (Union Exhibit 4, pages 1 and 3)

Analysis - The Fact Finder recommends that the current contract longevity provision be retained. The evidence indicates that other union-represented employees in the city and Police Officers throughout Cuyahoga County receive longevity.

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

5) Article 19 - Uniform Allowance, Section 19.05 – Bullet Proof Vests - The current contract requires Patrol Officers to pay one-half of the cost of their bullet proof vests. The union proposes adding language that would prohibit the city from using grants, donations, or other outside contributions to reduce its share. The city opposes the union's demand

City Position - The city argues that its demand should be adopted.

Union Position - The union argues that the city's demand is not justified.

Analysis - The Fact Finder recommends the adoption of the union's demand. It appears that the union's proposal is consistent with the intent of the existing contract provision, i.e., the cost to the city of providing bullet proof vests be split between employees and the city.

Recommendation - The Fact Finder recommends the following contract language:

The Employer shall pay for one-half (1/2) of the cost of a bulletproof vest or other item of approved protective body armor that the employee is either required to or elects to purchase, not to exceed \$900 in total cost. The Employer shall be responsible for one-half (1/2) payment of an article described in this section no more than once every five (5) years. The Employer is responsible for one-half (1/2) of the cost of the bulletproof vest, not to be offset by the availability of grants, donations, or other outside contributing source.

6) Article 21 - Insurance, Section 21.02 - Employee Premium Contribution - The current contract requires Patrol Officers to pay 15% of health insurance premiums. The city proposes increasing their share to 25%. The union seeks to cap premium contributions at the amount paid by employees in 2012.

City Position - The city argues that its demand is appropriate. First, it points out that it is self-funded and that “the percentage amount acts as a deterrent to excesses in usage.” (City Pre-Hearing Statement, page 9). Second, the city asserts that a 25% employee premium contribution is not unusual, especially in the private sector.

Union Position - The union argues that there is no basis for the city’s demand. It claims that the city has done a good job in controlling healthcare costs. It adds that employee contributions are already higher than for other Police Officers in Cuyahoga County.

The union contends that its proposal to freeze the dollar amount of employee premium contributions is justified. It claims that it is called for because the “health care contribution is not commensurate with the employee pay package. “ (Union Pre-Hearing Statement, page 6)

Analysis - The Fact Finder cannot recommend the city’s demand. First, during the term of the prior agreement, the Patrol Officers’ premium contributions were increased substantially to 15%. The city provided no evidence to show that another significant increase is justified at this time. Second, while a 25% employee premium contribution may not be unusual in the private sector, the State Employment Relations Board’s 2011 Report on the Cost of Health Insurance in Ohio’s Public Sector reports that the average employee premium contributions for cities in Ohio is 8.1% for single coverage and 7.7% for family coverage. For all public employees in the state, the premium contributions are 9.5% for single coverage and 10.7% for family coverage. (Page 9)

The Fact Finder cannot recommend the union’s demand to impose a cap on Patrol Officers’ premium contributions. During the last negotiations, it agreed to increase their premium contributions to 15%. The intent of this agreement was to make it unnecessary to negotiate dollar contributions during each round of bargaining. Imposing a dollar limit would be

contrary to the negotiated percentage contribution requirement. In addition, the union did not show that significant increases in premium contributions are expected to occur during the term of the contract.

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

7) Article 24 - Sick Leave, New Section - Selling Back Sick Leave - The current contract contains no provision for Patrol Officers to sell back sick leave to the city. The union demands a provision that would allow those with at least 20 years of service to sell back up to 96 hours of their accumulated sick leave each calendar year. The city opposes the union's demand.

Union Position - The union argues that its demand should be recommended. First, it observes that parity supports its demand because the firefighters' collective bargaining agreement includes the sick leave buy back provision it has proposed. Second, the union suggests that its proposal is a "win-win" proposition because it would allow Patrol Officers to get cash and provides the city with an opportunity to "wipe out sick leave days." Third, it observes that the sick leave buy back would apply to a very small number of Patrol Officers, who have managed their sick leave accruals wisely.

City Position - The city argues that the union's demand should be rejected. It states that the union's proposal is very costly. The city indicates that the cost for the bargaining unit could be as high as \$73,306 over the three years of the contract. (City Exhibit 2) It adds that it is proposing to remove the sick leave buy back provision from the firefighters' agreement during the current round of negotiations.

Analysis - The Fact Finder cannot recommend the union's demand. While he understands the union's argument that its demand should be granted because the same provision is included in the firefighters' contract, he must consider this issue along with his other recommendations. Given the potentially high-cost of the sick leave buy back, he cannot support it. In addition, it must be noted that the proposal would benefit only a small number of bargaining unit members.

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

8) Article 25 - Vacation, Section 25.01 - Vacation Entitlement - The current contract procedure is that Patrol Officers are credited with their vacation on January 1 of each year. The city demands that employees accrue vacation during the year it is taken. The union opposes the city's demand.

City Position - The city argues that crediting Patrol Officers with their vacation leave at the beginning of each year, "creates certain inequities in that an employee's actual anniversary date is irrelevant to the calculation." (City Pre-Hearing Statement, page 9) The city also maintains that granting time off that has not been earned violates the guidelines of the State Auditor.

Union Position - The union argues that the city's demand should be rejected. It points out that the city's current procedure is "the common way to do it."

Analysis - The Fact Finder recommends that the city's demand be rejected. While the city may be correct that its current procedure violates some guideline of the State Auditor, he

recognizes that many cities follow the same procedure as Berea and have done so for many years.

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

9) Article 26 - Holiday Leave and Drop Program, Section 26.01 - Holidays -

The current contract calls for 12 days of holiday leave each year. The holidays are available to employees as of January 1 of each year. The city demands that employees accrue holidays during each year. The union opposes the city's demand.

City Position - The city argues that its demand is justified. It points out that employees are currently awarded their holidays at the beginning of each year but claims that this practice violates the guidelines of the State Auditor. The city requests that holidays be accumulated on a payroll basis with time for holidays credited divided by the number of pay periods.

Union Position - The union argues that the city's demand should be rejected because the city's current procedure is "the common way to do it."

Analysis - The Fact Finder rejects the city's demand for the reasons stated in the discussion regarding vacation accrual.

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

10) New Article - Field Training Officer Premium - The current contract has no provision dealing with compensation for Field Training Officers but a practice exists of paying FTOs one hour of overtime for serving as a FTO for two days. The union seeks to add to the

collective bargaining agreement a provision requiring FTOs to be paid one hour of overtime for each day they serve in that capacity. The city opposes the union's demand.

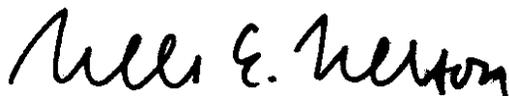
Union Position - The union argues that its proposal should be recommended. It claims that "it is well-established by police advisers that a quality Field Training program is vital to a quality Police Department." (Union Pre-Hearing Statement, page 8) The union also contends that its proposal is supported by data for 15 west side cities in Cuyahoga County.

City Position - The city argues that the union's demand should be denied. It suggests that its financial condition precludes increases in its cost.

Analysis - The Fact Finder cannot recommend the union's demand. The data supplied by the union indicates that 12 of 15 west side cities provide compensation to FTOs. While the different methods of compensating FTO's make comparisons difficult, it does not appear that the city's compensation for FTOs needs to be increased. However, the Fact Finder believes that the current compensation for FTO's should be included in the collective bargaining agreement.

Recommendation - The Fact Finder recommends the following contract language:

Employees assigned to FTO duty shall be paid one (1) hour of overtime compensation for each two days they serve as a Field Training Officer.



Nels E. Nelson
Fact Finder

December 11, 2012
Russell Township
Geauga City, Ohio