

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF PICKERINGTON

AND

FRATERNAL ORDER OF POLICE
CAPITAL CITY LODGE NO. 9

Case Numbers 2012-MED-10-1305 and 2012-MED-10-1306

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced cases by the State Employment Relations Board on February 13, 2013 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

The collective bargaining agreement between the parties expired on December 25, 2012. Following a number of bargaining sessions, impasse was reached on a number of issues, and fact finding was scheduled between the parties. The City and Union agreed to a full session of mediation with the Fact Finder on June 17, 2013 at the Pickerington Police Department. The parties worked hard at resolving the issues at impasse but were unable to achieve settlement. A full evidentiary hearing was then conducted on July 22, 2013. The parties agreed that the Report and Recommendation of the Fact Finder would be issued on August 29, 2013.

The Union represents two bargaining units at the City, and the parties have engaged in multi-unit bargaining for Police Officers and Sergeants. The Police Officers' unit includes twenty (20) employees, and the Sergeants' unit includes four (4) employees. The City of Pickerington lies in two counties, Franklin and Fairfield. The majority of Pickerington citizens reside in the Fairfield County portion of the City.

OUTSTANDING ISSUES:

Article 17, Compensation/Hours of Work, Section 17.1, Wage Rates
Article 17, Compensation/Hours of Work, Section 17.7, Shift Differential
Article 17, Compensation/Hours of Work, Section 17.8, Longevity Pay
Article 18, Insurance

Article 22, Vacation

Article 24, Sick Leave, Section 24.1, Sick Leave Accrual

Article 24, Sick Leave, Section 24.8, Retirement Pay Out

Article 26, Injury Leave

Those participating for the Employer at hearing included the following:

John Krock, Consultant

Stephanie Spencer, Deputy Finance Director

Chris Schornack, Finance Director

Matt Delp, Police Department

Lynn Miller, HR Director

Those participating for the Union at hearing included the following:

Robert W. Sauter, Attorney

Jim Gilbert, FOP Executive Board Member

Tim Planck, Sergeant Representative

Jim Gallagher, Police Officer Representative

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles that are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification.
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.

5. The stipulations of the parties.

6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party. The Fact Finder will transmit, by way of electronic mail, the Report and Recommendation on August 29, 2013 by agreement of the parties.

The Employer states that, based on its financial condition, it would struggle to meet the demands of the Union. Local government funding decreased by 20% from 2012 to 2013 and is expected to decrease by an additional 25% in 2013 and another 25% decrease in 2014. The Employer collected only \$54,000.00 in estate tax in 2012 which was distributed in 2013. The estate tax has been eliminated going forward. The Employer argues that, if current trends continue, local government funding may be completely eliminated by 2016. Funding designated for police services remains stagnant in the face of escalating costs. The Employer projects increases in wages each year from 2013 to 2017, and it may be necessary to hire one additional police officer in 2014. Employee health insurance costs increased 4% in 2013, but the Employer's primary concern is projections for 2014 and beyond. The cost of health insurance is projected to increase by 18% of current cost due to the

Affordable Healthcare Act, and the Employer projects a 12 % increase each year from 2015 to 2017. The Employer states that its unencumbered fund balance is forecast to decrease by the end of 2013 to \$2,741,402 with continued decreases each year until at a deficit in 2017. Expenditures dedicated to the Police Department exceed dedicated revenue. The Employer states that it is at a point in which it cannot reduce Police Department expenditures any further. The Employer requested the Auditor of State to conduct a performance audit of its Police Department (See Performance Audit Exhibit). The report, dated January 19, 2012, recommended that the Employer renegotiate provisions of the FOP collective bargaining agreement which “are overly generous when compared to the peers.” Specifically the report suggested that wages were not in line with the peer average and recommended increasing employee contributions for health insurance. The Audit compared the Pickerington Police Department to a sample of central and southern Ohio municipal jurisdictions. The Employer states that another appropriate survey of comparable political subdivisions are those within Fairfield County as the majority of its citizens and land mass fall within this jurisdiction. Pickerington Police Department employees are the highest paid based on this list of comparable jurisdictions (Salary and Benefits Exb.). In a broader survey of 13 municipal jurisdictions, the City of Pickerington spends 83% of its income tax revenues on its Police Department which is the second highest among the surveyed cities. The per capita cost is in the middle of the survey jurisdictions. The Pickerington income tax rate is one percent (1%). The Employer argues that Police Department pension costs are higher as compared to all other city employees. The

Employer states that its proposals at Fact Finding are justified and supported by the overall financial climate and report of the Auditor of State. Base wage increases, as proposed by the Union, are not affordable.

The Union states that Pickerington income tax receipts increased by 6.5% from 2010 to 2011, and, by the middle of 2013, receipts have increased by 2% for the year with additional increases expected by the end of the year. The Union states that its list of comparable municipal jurisdictions is more relevant than that suggested by the Employer as it includes cities within Franklin County. The Union argues that, while most of Pickerington falls geographically in Fairfield County, it is a suburb of Columbus and most comparable to Franklin County jurisdictions. The Union states the Employer's projection of the complete elimination of local government funds is unrealistic and not reflective of reality. The Union argues further that the Employer's projections regarding health insurance increases may be exaggerated. Actual costs for 2014 will not be known until October 2013. The Union states that, while the Employer argues that it cannot meet economic proposals of the Union and instead demands certain concessions, the City Manager was granted a \$10,000.00 salary increase for 2014. The Union states that the Auditor's performance audit recommends the renegotiations of certain benefits (pg. 20), but it does not support a number of the Employer's proposals including the reduction in the sick leave accumulation rate and reductions in the injury leave benefit. The Union states that the Employer has not suggested a light duty policy or short term disability plan to justify its concessionary sick leave and injury pay

proposals. The Union argues that the Employer is in a financial position to grant its proposals and asks that the Fact Finder so recommend.

A brief discussion of each issue at impasse and recommendation of the Fact Finder follows.

1. Article 17, Compensation/Hours of Work, Section 17.1, Wage Rates

The Union proposes 4% base wage increases for payroll years 2013, 2014 and 2015 based on the renewal of a three year collective bargaining agreement.

The Employer proposes maintaining the wage scale which is currently in effect in the expired Agreement. In lieu of base wage increases, the Employer proposes a 1% lump sum payment upon ratification of the new Agreement, a 2% lump sum in July, 2014, and another 2% lump sum in July 2015.

UNION POSITION: The Union states that employees in the bargaining units are at the bottom of its list of comparable jurisdiction in Franklin County. Only the City of Groveport pays its police officers less than those of Pickerington. The Union states again that the City of Pickerington is a Columbus suburb, and an appropriate list of comparable jurisdictions, based on the statute, are those within Franklin County. The Union states that its list of comparable jurisdictions indicates that wage increases in 2013 were generally in the 3% range. The same is true for 2014 in jurisdictions which have completed collective bargaining negotiations. The Union states that the other bargaining unit at the City of Pickerington received base wage increases as opposed to lump sum payments.

EMPLOYER POSITION: The Employer argues that the Union delayed negotiations, and therefore a retroactive base wage increase is not justified. Further, the Employer states that its list of comparable jurisdictions (Emp. Exb. 6) should be considered as most relevant in these proceedings as it is based on population. Based on this list of comparables, Pickerington Police Department wages are in the middle and are higher than the average. The Employer states that the Union's argument, that bargaining unit employees are underpaid, is therefore not based on fact. Additionally, the Auditor's Performance Audit found bargaining unit wages to be higher than its peers. The Employer states that its proposal for lump sum payments is based, in part, on the findings and conclusions of the Performance Audit.

RECOMMENDATION: The Employer presented a comprehensive and detailed report at hearing regarding its finances and projections over the next several years. It illustrated that the wages of police officers and sergeants are competitive based on three lists of comparable jurisdictions, Fairfield County, a population based survey and a list of "peer" cities utilized in the Performance Audit. The Union presented a strong argument that Pickerington should be compared to Franklin County political subdivisions, as it is a suburb of Columbus. The Employer states that its proposal of lump sum payments is based on the recommendations of the Performance Audit and the survey which was utilized. But the three other lists of comparable jurisdictions presented at hearing contradict, to some degree,

conclusions reached in the audit. The development of lists of comparable jurisdictions and the conclusions they may suggest is not an exact science. Internal comparables, in this case, provide guidance. The Employer's argument, that it cannot meet the Union's wage demands of three 4% base wage increases, is meritorious. But its argument, that a retroactive wage increase is not justified because the Union failed to schedule bargaining sessions, is not supported by the facts as a number of informal meetings between the parties occurred in March, April and May. The Employer bargained three 2% base wage increases with its other bargaining unit, and this is a pattern which is recommended in the instant matter, 2% base wage increases for full payroll years of 2013, 2014 and 2015 as follows.

17.1 Bargaining unit members shall be paid in accordance with the following rates which shall reflect a two percent (2%) base wage increase for the payroll year 2013.

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Bargaining unit members shall be paid in accordance with the following rates which shall reflect a two percent (2%) base wage increase for the payroll year 2015.

(The parties will develop the actual pay rate charts for each of the three years of the Agreement for inclusion in this section.)

2. Article 17, Compensation/Hours of Work, Section 17.7, Shift Differential

The Union proposes an increase in shift differential from \$1.10 per hour to \$1.15 per hour for payroll year 2013 and an increase to \$1.20 per hour in payroll year 2014. The Employer proposes to maintain current language.

UNION POSITION: The Union states that shift differential is paid based on the inconveniences shift work creates on individual employees and their families. The Union states that it expected the Employer to propose a small increase and would have settled this issue if a \$.05 increase would have been offered.

EMPLOYER POSITION: The Employer states that its list of comparable jurisdictions finds that bargaining unit members are at the top of the list for shift differential pay, and Police Department employees earn a higher rate of shift differential than other Pickerington city employees. The Employer argues that there is no justification to increase shift differential.

RECOMMENDATION: The Employer's argument, that Pickerington Police Department employees shift differential pay is at the top of the list, is meritorious. The Union's survey indicates the same. There is no reason to increase shift differential pay for bargaining unit members. The recommendation is no change in contract language. Maintain status quo.

3. Article 17, Compensation/Hours of Work, Section 17.8, Longevity Pay

The Union proposes an increase in longevity pay from the current base (five years of service) of \$650.00 per year to \$700.00 for payroll year 2013 and a further increase to \$750.00 for payroll year 2014.

UNION POSITION: The Union states that a number of regional jurisdictions are paid a more generous longevity program than Pickerington, and this increase would have a significant impact on a majority of the bargaining unit.

EMPLOYER POSITION: The Employer rejects the proposal to increase longevity pay and argues that, based on its survey, Pickerington employees are significantly above the average (Emp. Exb. 6). The Employer states that \$500.00 is the starting base for AFSCME represented employees and non bargaining unit employees.

RECOMMENDATION: Both external and internal comparables suggest that no increase in longevity pay is warranted at this time. The recommendation is to maintain current language and the status quo.

4. Article 18, Insurance

The Employer proposes language which eliminates the 12% employee share of the insurance premium and inserts language which bases the employee cost as the same as non bargaining unit, non administrative employees during the term of the collective bargaining agreement. In addition the Employer proposes to fund the Health Savings Account (HSA) at the same level as non bargaining unit, non administrative employees of the City.

EMPLOYER POSITION: The Employer states that its proposal is based on equity with other Pickerington City employees. In addition, the Employer states that the

Auditor of State recommended modifications in bargaining unit wages and benefits and suggested Police Department employees should pay a greater share of the monthly insurance premium and HSA cost. This is a cost savings proposal which has the potential to save resources which are required in other areas of the budget. The Employer states that the “non administrative” language is required to allow the City to negotiate the City Manager’s contract. Other unionized employees have agreed to an increase in the employee cost for health insurance.

UNION POSITION: The Union is opposed to the proposal of the Employer stating that the City would have total control over the amounts of premium cost to employees during the term of the Agreement. The Union states that the parties were unable to agree to the Insurance provision of the Agreement during the last negotiations, and the current language was awarded in conciliation. There is no reason to modify this provision again. The Union states that it is also opposed to allowing the Employer to set the HSA contribution unilaterally. The Union states further that the AFSCME Agreement with the City provides for specific employee premium amounts and the continuation of the 75% funding of the HSA. The Union argues that the current employee contribution of 12% compares well to its survey of Franklin County jurisdictions. The Union argues that the Fact Finder should maintain status quo in respect to issues of insurance.

RECOMMENDATION: The Employer’s desire to control its health care costs is understandable. The Union’s concern, that the proposal would allow for the

unilateral implementation of increases in employee costs in both premium and HSA program during the term of the three year Agreement, is well founded. Although the Employer states that it negotiated specific percentages with AFSCME and maintained the HSA funding at not less than 75% because AFSCME agreed to modify sick leave benefits, the AFSCME provision is an internal comparable which forms the basis for the recommendation in these negotiations. The recommendation is for an increase in the employee's share of the monthly cost of health insurance to 13% effective 2014 and a continuation of 13% in 2015. This recommendation includes the continued funding of the HSA at not less than 75%.

Section 18.1 Insurance Coverage and Member Premium. The Employer will provide comprehensive hospitalization, surgical, medical, physician' services coverage, prescription drug coverage, vision care plan, and dental coverage in the same manner it provides insurance to non-bargaining unit, non-administrative City employees. Members shall pay the following monthly contribution for such coverage during the listed payroll year:

Effective in payroll year 2013, 12% of the premium paid by the Employer.

Effective in payroll year 2014, 13% of the premium paid by the Employer.

Effective in payroll year 2015, 13% of the premium paid by the Employer.

If the City chooses to offer incentives to members not to be covered through the City's health care plan because they have coverage elsewhere, then the members shall be awarded the same opportunity for such incentives. Further, representatives from the bargaining unit will have input and participate in the City's Insurance Review Committee. Bargaining unit employees will pay the same contribution

toward the monthly premiums as non-bargaining unit, non-administrative City employees pay, except not greater than outlined above. The City also agrees to fund the Health Savings Account (HSA) at not less than 75% of the deductible, or the funding as non-union employees, whichever is greater.

5. Article 22, Vacation

The Union proposes vacation rate increases for employees who attain twenty-two years of service and an additional increase at the twenty-four year level.

UNION POSITION: The Union proposes an increase from 192 hours to 200 hours at the twenty-two year level and an increase from 192 hours to 208 hours at the twenty-four year level. The Union argues that this proposal provides a meaningful benefit to seasoned and experienced Police Officers and Sergeants. It is also an aid to retention of senior employees. The Union states that bargaining unit employees are at the bottom of the regional survey for years twenty-two and twenty-four.

EMPLOYER POSITION: The Employer rejects the Union's proposal and wishes to maintain the current vacation accrual schedule. The Employer states that other City employees max out at 176 hours. The Employer states that its survey of regional comparables indicates that, while the accrual rate is low for employees with less seniority, bargaining unit employees move to the top of the accrual rate in less time than their peers. The Employer argues that there is no justification for an increase in vacation accrual rate.

RECOMMENDATION: In light of other issues at impasse including wages, insurance and sick leave, this is not the time to increase the vacation accrual rate. At hearing, the Union indicated that this proposal remained on the table due to the Employer's concessionary proposals. Internal comparables do not suggest that equity is a factor. The recommendation is to maintain current language, status quo.

6. Article 24, Sick Leave, Section 24.1, Sick Leave Accrual

The Employer proposes a reduction in the sick leave accumulation rate from four and six tenths (4.6) hours per bi-weekly pay period to three and one tenth (3.1) hours per bi-weekly pay period. On an annual basis, this is a reduction from fifteen (15) days to ten (10) days per year.

EMPLOYER POSITION: The Employer states that this is a major proposal in these negotiations and is important to Pickerington City Council. The Employer's survey of comparable jurisdictions indicates that only the City of Westerville provides for less than fifteen sick leave days per year, but what is critical in these negotiations is that the Agreement with AFSCME provides for an accumulation rate of 3.1 hours (10 days per year), and the Employer argues that this must be considered as a significant factor by the Fact Finder. The Employer states that the annual sick leave sell back is a costly factor, and the reduction in accumulation rate would modify this liability. The Employer emphasizes the directive from City Council regarding this issue.

UNION POSITION: The Union states that this and other proposals regarding sick leave are regressive and have been a road block to settlement of the negotiations. The Union states that City Council wishes to impose a private sector concept which is not appropriate for law enforcement officers who face safety issues every day on the job. The Union states that the Employer provides no short term disability plan in lieu of fully paid sick leave. Further, the current accumulation rate is standard in public sector law enforcement in Ohio. The Union states further that the Employer is unable to claim sick leave abuse by bargaining unit employees. The Union argues that the high level of sick leave sell back is the result of the low wage scale. The Union states that its survey of comparable jurisdictions indicates that the proposal of the Employer is clearly outside the norm.

RECOMMENDATION: External comparables presented by the Employer and Union indicated that the standard sick leave accumulation rate is 4.6 hours per bi-weekly pay period. This has generally been the standard throughout public employment in Ohio. The sell back is a concern of the Employer. The Union legitimately argues that law enforcement cannot necessarily be compared to most private sector employment. It is significant that the service workers collective bargaining agreement provides for a 3.1 hour accumulation rate, and, it is assumed that non bargaining unit employees will receive the reduced level of benefit leaving only Police Department bargaining unit employees at the 4.6 hours rate. The recommendation therefore is as follows. The sick leave accumulation rate for the

payroll year 2014 will reflect fourteen (14) days per year. The sick leave accumulation rate for payroll year 2015 will reflect thirteen (13) days per year. The parties are directed to determine the per bi-weekly rates and modify Section 24.1 accordingly.

7. Article 22, Sick Leave, Section 24.8, Retirement Pay Out

The Employer proposes that employees hired after the effective date of this Agreement will receive, after ten years or more of service and upon service or disability retirement, one-quarter (1/4) of their unused City of Pickerington sick leave accrual not to exceed 300 hours of total pay. Current employees will continue to receive one-half (1/2) of their unused sick leave not to exceed 600 hours. The Employer proposes language requiring immediate retirement upon application for the pay out.

EMPLOYER POSITION: The Employer states that this proposal will affect only new employees. Pension costs are higher for Police Department employees as compared to all other employees of the City. The Employer argues that the overall financial health of the City justifies this proposal, and it impacts only new employees. The Employer states that its two tier proposal is identical to the pay out provision which is contained in the AFSCME Agreement, and the Fact Finder should consider this internal comparable.

UNION POSITION: The Union opposes the pay out proposal and states that there be no change to this provision. The Union also opposes language proposed by the Employer which would require an employee to immediately begin a service or disability retirement. The Union argues that this proposal is based on an ideological stance of City Council and is not supported by the reality of the public sector work place. The Union states that this benefit is advantageous for both parties as it encourages employees to not use sick leave during their years of employment, and this benefit is the only severance plan available to retiring employees. The Union argues that the language, which would require immediate retirement, was not discussed by the parties during negotiations.

RECOMMENDATION: The Union's survey of comparable political subdivisions indicates that retirement pay out benefits range from a low of 40 hours to a high of 1200 hours. Many Employers provide a 25% to 50% pay out with limits in the range of 400 to 600 hours. In most jurisdictions, the pay out is based on retirement or resignation. The Union's argument, that new language requiring immediate retirement was not discussed during negotiations, is meritorious, and the Employer's argument, that the internal comparable (AFSCME) should act as a guide, is also meritorious. The recommendation is the Employer's proposal for new employees beginning at ratification of the Agreement but without the new language regarding immediate retirement. It is problematic that the parties did not discuss this aspect of the Employer's proposal during negotiations.

24.8 Employees hired prior to the ratification date of this Agreement who work for ten (10) or more consecutive years with the City of Pickerington shall, upon retirement from employment with the City, be compensated for one-half (1/2) of their unused City of Pickerington sick leave accrual. This payout calculation will result in no more than six hundred (600) hours of total pay. The pay rate per hour shall be the employee's final hourly pay rate. "Retirement" shall mean service or disability retirement pursuant to a State of Ohio retirement plan.

Employees hired on or after the ratification date of this Agreement who work for ten (10) or more consecutive years with the City of Pickerington shall, upon retirement from employment with the City, be compensated for one-quarter (1/4) of their unused City of Pickerington sick leave accrual. This payout calculation will result in no more than three hundred (300) hours of total pay. The pay rate per hour shall be the employee's final hourly pay rate. "Retirement" shall mean service or disability retirement pursuant to a State of Ohio retirement plan.

8. Article 26, Injury Leave

The Employer proposes to reduce the allowable amount of injury leave from 1040 hours to 520 hours, a 50% reduction. The proposal includes a reduction from 1040 hours to 520 hours for any extension of injury leave granted by City Council.

EMPLOYER POSITION: The Employer states that the Bureau of Workers' Compensation will not longer credit an employer which pays injury leave to its employees especially when hospitalization is involved. A paid injury leave benefit

had previously not counted against the Employer's experience. This loss of credit necessitates a reduction in the injury leave benefit contained in the collective bargaining agreement. The Employer states that the Auditor of State Performance Audit indicated that the injury leave provision was excessively generous compared to peer Police Departments.

UNION POSITION: The Union states that the argument regarding BWC experience rating has not been substantiated, and there has been no evidence submitted during negotiations or at fact finding to prove an increased rate. The Union argues that the current injury leave benefit is critical as there is no light duty program or short term disability plan at the City. The Union states that a majority of the political subdivisions in its survey provide injury leave benefits of 1040 hours. In addition, the AFSCME Agreement, which is effective through 2015, provides for injury leave benefits for six months with an extension of an additional six months upon the approval of City Council. The Union argues that there is no justification to make a change in the injury leave provision especially in light of the dangerous work of law enforcement officers.

RECOMMENDATION: This recommendation is based upon the following factors. The Employer was unable to clearly illustrate a change in the rate it must pay to the Bureau of Workers' Compensation; regional comparables indicate that a six month injury leave benefit is the norm; and the City of Pickerington and AFSCME Agreement provides for a six month benefit. In addition, Article 26 provides a

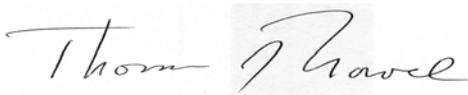
number of checks and balances which would preclude abuse of the injury pay benefit. The recommendation is to maintain current language and the status quo.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties, all facts presented at hearing and the exhibits presented during the evidentiary hearing. In addition, the Fact Finder has given consideration to the positions and arguments presented by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the specific recommendations contained in this Report and Recommendation, all tentative agreements, which were reached by the parties during negotiations and prior to the fact finding hearing, are hereby incorporated in this Fact Finding Report and Recommendation. Any issues or sub-issues not addressed during negotiations are also intended to remain current language for the purposes of this Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 29th Day of August 2013.



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th Day of August 2013, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon John J. Krock, representing the City of Pickerington; Robert W. Sauter, representing the Fraternal Order of Police, Capital City Lodge No. 9; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in black ink that reads "Thomas J. Nowel". The signature is written in a cursive style and is positioned above a horizontal line.

Thomas J. Nowel
Fact Finder