

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Numbers:
Between	:	2013-MED-11-1507 (Patrol Officers)
	:	2013-MED-11-1508 (Lieuts. & Sgts.)
BATH TOWNSHIP,	:	2013-MED-11-1509 (Dispatchers)
SUMMIT COUNTY, OHIO,	:	
	:	
Employer	:	
	:	Date of Fact Finding Hearing:
and the	:	November 19, 2014
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	
Union	:	Howard D. Silver, Esquire
	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Bath Township, Summit County, Ohio, Employer

Robin L. Bell, Esquire
Regional Manager
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road, Suite A
Akron, Ohio 44319-1907
rbell@clemansnelson.com

For: Fraternal Order of Police, Ohio Labor Council, Inc., Union

Charles Wilson
Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
Northeast Office
2721 Manchester Road
Akron, Ohio 44319
cwilsonfop@aol.com

PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on November 19, 2014 in the Bath Township Trustees' Chamber at Bath Township Hall, 3864 West Bath Road, Akron, Ohio 44333. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 2:10 p.m. on November 19, 2014.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, to prepare a fact-finding report, and to recommend language to the parties for inclusion in the parties' initial collective bargaining agreements.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, Bath Township, Summit County, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, have had between them no prior collective bargaining agreements.
2. The three bargaining units addressed by this fact finding case are newly certified, having been certified in June, 2013; are comprised of Patrol Officers, 2013-MED-11-1507; Lieutenants and Sergeants, 2013-MED-11-

1508; and Dispatchers, 2013-MED-11-1508, and are employed in the Bath Township Police Department.

3. The parties engaged in bargaining their initial collective bargaining agreements for the bargaining units comprised of Patrol Officers, Lieutenants and Sergeants, and Dispatchers on December 13, 2013; January 22, 2014; February 11, 2014; February 20, 2014; March 11, 2014; March 19, 2014; April 9, 2014; April 23, 2014; May 21, 2014; June 11, 2014; and July 23, 2014.
4. As a result of the bargaining engaged in by the parties, tentative agreements were reached on most Articles to be included in the parties' initial Agreements but seven Articles were not agreed – Article 14, Grievance and Arbitration Procedure; Article 17, Hours of Work and Overtime; Article 19, Uniform Allowance; Article 20, Wages and Other Compensation; Article 23, Insurance; Article 24, Holidays; and Article 35, Duration.
5. The bargaining units to be covered by the parties' initial Agreements were, at the time of the fact finding hearing, comprised of fourteen (14) full-time Patrol Officers, four (4) Sergeants and one (1) Lieutenant, and five (5) Dispatchers.

TENTATIVELY AGREED ARTICLES

The parties reached tentative agreement on the following Articles, all of which are recommended by the fact finder for inclusion in the parties' Agreements.¹

Preamble and Purpose

Article 1 Recognition

¹ The numbers assigned to the Articles are for purposes of presentation only and each number for an Article is subject to the parties' determination.

- Article 2 Management Rights
- Article 3 Non-Discrimination
- Article 4 Payroll Dues Deduction
- Article 5 Fair Share Fees
- Article 6 Mid-Term Bargaining
- Article 7 Work Rules
- Article 8 No Strike – No Lockout
- Article 9 Labor Management Meetings
- Article 10 Probationary Period
- Article 11 Seniority
- Article 12 Layoff and Recall
- Article 13 Disciplinary Action
- Article 15 Bulletin Board
- Article 16 Shift Assignment
- Article 18 Shift Differential
- Article 21 Severance of Prior Agreements/Mid-Term Bargaining
- Article 22 Court Time and Call-in
- Article 25 Vacations
- Article 26 Sick Leave
- Article 27 Injury Leave/Transitional Work
- Article 28 Bereavement Leave
- Article 29 Military Leave
- Article 30 Leave of Absence with Pay
- Article 31 Family Medical Leave Act
- Article 32 Drug and Alcohol Abuse Screening
- Article 33 Waiver in Case of Emergency
- Article 34 Severability

UNRESOLVED ARTICLES

The following Articles remained unresolved between the parties:

Article 14 Grievance and Arbitration Procedure

Article 17 Hours of Work and Overtime

Article 19 Uniform Allowance

Article 20 Wages and Other Compensation

Article 23 Insurance

Article 24 Holidays

Article 35 Duration

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article 14 – Grievance and Arbitration Procedure

The parties have agreed to the vast majority of the language to be included in the parties' contractual grievance procedure presented in Article 14, Grievance and Arbitration Procedure. There remain, however, three proposals from the Employer, one of which is agreed by the Union. The other two proposals are opposed by the Union.

The Employer proposes adding language to Article 14, section 4, at the conclusion of the language in that section, that reads: "An arbitrator is without authority to render any decision involving a grievance that does not conform to the parties' negotiated time limits." The Union does not object to the addition of this language. The fact finder recommends that the language proposed by the Employer to be added to Article 14, section 4 be included in the parties' Agreements.

A second proposed addition to Article 14 by the Employer is intended for section 8, Hearing and Decision. The Employer proposes adding to section 8, numbered paragraph 4, language that would prohibit an arbitrator from:

Implying any restriction or condition upon the Employer's reserved management rights unless such restrictions or conditions are specifically set forth in this Agreement, or are fairly and reasonably inferable from the express language of the Agreement.

A third proposal from the Employer as to Article 14 would add language to section 8 that reads: "The arbitrator shall not have the authority to mitigate the level of discipline imposed by the Employer upon a finding that, by a preponderance of evidence, misconduct occurred."

The Union opposes the addition of the language on management rights proposed by the Employer for section 8, paragraph 4 as unnecessary and vague. In support of this claim the Union points to the "fairly and reasonably inferable" language in this proposal.

The Union opposes the other proposal as an unneeded and undesirable limitation on an arbitrator's authority to address disciplinary action imposed on a bargaining unit member by the Employer.

The fact finder recommends the additional language agreed by the parties for inclusion in section 4 of Article 14. The fact finder does not recommend the other two proposed additions to Article 14. The Management Rights Article, Article 2, reserves to the Employer, in express language, rights that are limited only by express provisions in the parties' Agreement. The fact finder finds the expression of this reservation of authority to the Employer in Article 2 provides the same guarantee proposed by the Employer for section 8 of Article 14.

The fact finder finds the language proposed by the Employer for inclusion in section 8 of Article 14 that refers to limitations on management rights that are “fairly and reasonably inferable” from express language to be ambiguous. The fact finder finds the absence of such ambiguous language from the parties’ Agreements better serves the parties.

The proposed language for section 8 of Article 14 by the Employer that would add a limitation on the authority of an arbitrator to mitigate the level of discipline imposed by the Employer has within it the solution to a problem of an arbitrator’s overreach but also contains the seeds of disciplinary overreach. The proof of *any* misconduct under such proposed language could be interpreted as an inflation of the Employer’s discretion in disciplining bargaining unit members and a reduction in the guarantees otherwise held by bargaining unit members under the language of their respective Agreements.

The fact finder recommends the addition of language to Article 14, section 4, specifying an arbitrator’s lack of authority to render a decision involving a grievance that does not conform to the parties’ negotiated time limits. The fact finder does not recommend the addition of other language proposed by the Employer for Article 14.

RECOMMENDED LANGUAGE – Article 14, Grievance and Arbitration Procedure

Section 1. Retain current language.²

Section 2. Retain current language.

Section 3. Retain current language.

² The reference to current language refers to the language *de facto* tentatively agreed by the parties for this Article. Additional language recommended by the fact finder is presented in bold.

Section 4. Time Limits. All grievances must be processed and answered at the proper step in the grievance progression to be considered at the next step. The aggrieved may withdraw a grievance at any point with the approval of the Union by submitting, in writing, a statement to that effect, or by permitting the time requirements at any step to lapse without further appeal. Any grievance not answered by the Employer or his designee within the stipulated time limits provided herein shall be deemed to have been answered in the negative and advanced to the next step of the procedure. Any grievance that is not timely appealed to the next step of the procedure will be deemed to have been settled on the basis of the Employer's answer or default rejection, if applicable, at the last completed step. Time limits set forth herein may only be extended by mutual agreement of the parties, and are to be strictly enforced. **An arbitrator is without authority to render any decision involving a grievance that does not conform to the parties' negotiated time limits.**

Section 5. Retain current language.

Section 6. Retain current language.

Section 7. Retain current language.

Section 8. Retain current language.

Section 9. Retain current language.

Section 10. Retain current language.

Section 11. Retain current language.

Article 17 – Hours of Work and Overtime

The Employer has proposed the inclusion of language in Article 17 that the Union has agreed to include, language that specifies that when an employee is required to work in excess of forty (40) hours during a seven (7) day work period, the employee shall be paid overtime pay for such time worked over forty (40) hours at the rate of one and one-half times the employee's regular hourly rate of pay. The fact finder recommends the inclusion of this agreed language - the first sentence of Article 17, section 3.

The Employer also proposes language that would exclude Lieutenants from an overtime eligibility rotation used to fill patrol officer positions on an overtime basis. The

Union opposes the Employer's proposal to exclude the Lieutenants from the overtime eligibility rotation.

The issue of whether to exclude Lieutenants from the overtime eligibility rotation to fill patrol officer positions on an overtime basis affects whether the Employer may employ part-time officers to fill these positions on an overtime basis prior to offering the opening to a Lieutenant. This issue arises in two bargaining units and therefore, argues the Employer, is a permissive subject of bargaining because a lieutenant is seeking to fill a position covered by a separate bargaining unit. Under the Patrol Officers' Agreement, argues the Employer, this issue can be decided and this determination does not require an agreement between the Employer and the Lieutenants' and Sergeants' bargaining unit. In reference to the Lieutenants' and Sergeants' bargaining unit, the Employer states that the issue is a permissive subject of bargaining and the Employer has no interest in bargaining this permissive subject of bargaining with the bargaining unit comprised of Lieutenants and Sergeants.

The Patrol Officers' bargaining unit may be unaffected by including or excluding Lieutenants from the overtime eligibility rotation, but the use of such high-ranking officers for this purpose does increase the cost of overtime coverage. Increased costs to the Employer in areas outside the control of the Patrol Officers' bargaining unit nonetheless reduce the funds available to the parties.

The fact finder finds the efficiency proposed by the Employer that would exclude Lieutenants from the overtime rotation to fill Patrol Officer positions on an overtime basis to be non-discriminatory and intended to save money. The fact finder recommends

that the language proposed by the Employer in this regard be included within the collective bargaining agreement for the Patrol Officers' bargaining unit.

RECOMMENDED LANGUAGE: Article 17 – Hours of Work and Overtime

Section 1. Retain current language.

Section 2. Retain current language.

Section 3. When an employee is required to work in excess of forty (40) hours during the seven (7) day work period, the employee shall be paid overtime pay for such time worked over forty (40) hours at the rate of one and one-half times the employee's regular hourly rate of pay. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement. For purposes of determining an employee's eligibility for overtime, all hours actually worked by the employee and scheduled vacation and holiday time will be included. All other hours for which the employee is compensated but does not actually work shall not be included in determining eligibility for overtime.

Section 4. Retain current language.

Section 5. Retain current language.

Section 6. Overtime Rotation. The Employer will attempt to equitably distribute available overtime opportunities within each classification. The following outline will be utilized when it is determined by the Chief of Police or his designee that overtime is required.

A. If a supervisor's position needs to be filled:

- 1. the supervisor rank needed**
- 2. the next lower supervisory rank**
- 3. qualified Full-time Officer**
- 4. the next higher supervisory rank**
- 5. qualified Part-time Officer**
- 6. Mandatory overtime may be ordered**

B. If a police officer position needs to be filled:

- 1. Part-time Officer**
- 2. Full-time Officer**
- 3. Sergeant**
- 4. Mandatory overtime may be ordered**

If no one responds to the offer, an employee in the classification on duty at the time the overtime is needed may be held over until a replacement arrives.

Article 19 – Uniform Allowance

The Union has proposed a 100% increase in the uniform allowance for Lieutenants, from \$800 annually to \$1,600 annually, and has suggested a 56% increase in the uniform allowance for Dispatchers, from \$450 annually to \$700 annually. Both parties have agreed that the uniform allowance for Patrol Officers, \$800 per year and an annual \$300 maintenance allowance, should be retained.

The fact finder recommends the retention of language in Article 19, Uniform Allowance, leaving Detective Lieutenants with a clothing allowance of \$800 annually and a \$300 annual clothing maintenance allowance. The fact finder recommends the retention of the \$450 annual clothing allowance for Dispatchers. The fact finder finds an insufficient basis upon which to recommend an increase in these allowances as proposed by the Union. The fact finder prefers to recommend the expenditure of additional monies in other areas.

RECOMMENDED LANGUAGE: Article 19 – Uniform Allowance

Section 1. Retain current language.

Section 2. Retain current language.

Section 3. Retain current language.

Section 4. All Detective Bureau personnel shall, in lieu of the clothing allowance in section 1, be provided with sufficient clothing allowance to maintain two uniforms and shall also be provided with a yearly clothing allowance check in the amount of eight hundred dollars (\$800.00) issued no later than April 1 of each year and shall receive an annual clothing maintenance allowance of three hundred dollars (\$300.00).

Section 5. Retain current language.

Section 6. Retain current language.

Section 7. Retain current language.

Article 20 – Wages and Other Compensation

Bath Township’s fiscal year corresponds to the calendar year. From 2008 through 2010, Bath Township used a modified cash basis accounting system, and from 2011 through 2013, Bath Township used a cash basis accounting system. Under a cash basis accounting system receipts are recorded when cash is received rather than when the receipts are earned, and disbursements are recorded when cash is paid rather than when a liability is incurred. A modified cash basis accounting system presents short-term items on a cash basis and presents longer-term items (such as long-term debt) on an accrual basis.

Bath Township uses a financial accounting category, “Unrestricted Fund Balance,” that is divided into five classifications – nonspendable, restricted, committed, assigned, and unassigned. The total of the last three classifications, which include only resources without a constraint on spending or for which the constraint on spending is imposed by the government itself, is called an “*Unrestricted Fund Balance.*”

As is the case with all Ohio townships, Bath Township is primarily funded through property taxes levied on real property within the borders of the township. Other tax monies available to Bath Township include levies and motor and lodging taxes. In recent years other sources of revenue for Ohio townships have been eliminated or greatly reduced. In this regard the Employer points to the elimination of the estate tax and the redirection of local government funds.

Bath Township operates from a General Fund that is used to account for all financial resources available to the Township except those funds required to be accounted for in a different fund. General Fund balances are available to Bath Township for any purpose, provided the funds are expended or transferred according to the general laws of the state of Ohio.

Bath Township has a Police District Fund that receives property tax money for providing police services to township residents. The Police District Fund was first passed in 1987 and was passed again in 1994. Although police operations are paid primarily through the Police District Fund, a small portion of the resources available to operate police operations is received from various charges for services, fees, and fines, along with an allocation from the Bath Township General Fund.

Police District Fund cash receipts from 2008 through 2013 were: 2008 - \$2,653,570; 2009 - \$2,672,330; 2010 - \$2,747,983; 2011 - \$2,619,621; 2012 - \$2,556,097, and 2013 - \$2,601,371.³

Police District Fund disbursements from 2008 through 2013 were: 2008 - \$2,816,748; 2009 - \$2,666,887; 2010 - \$2,823,187; 2011 - \$2,569,889; 2012 - \$2,524,289, and 2013 - \$2,592,635.

The Police District Fund balances from 2008 through 2013 were: 2008 - \$581,916; 2009 - \$587,359; 2010 - \$512,155; 2011 - \$561,887; 2012 - \$593,695, and 2013 - \$602,431. The 2013 Police District Fund balance comprises 23.2% of the annual disbursements from the fund in 2013.

³ All Police District Fund and General Fund receipts, disbursements, and balances are taken from Union Exhibit 1-A, pages 2 and 3, data that originated in Bath Township Regular Audit Reports.

As to Bath Township's General Fund, the following were the General Fund cash receipts from 2008 through 2013: 2008 - \$2,706,818; 2009 - \$2,586,856; 2010 - \$2,557,364; 2011 - \$2,828,990; 2012 - \$2,909,747, and 2013 - \$2,540,556.

The General Fund disbursements by Bath Township from 2008 through 2013 were: 2008 - \$1,849,355; 2009 - \$1,634,632; 2010 - \$2,646,882; 2011 - \$2,820,472; 2012 - \$2,408,015, and 2013 - \$2,485,971.

The Bath Township General Fund ending balances for fiscal years 2008 through 2013 were: 2008 - \$3,437,644; 2009 - \$4,275,452; 2010 - \$4,159,594; 2011 - \$4,183,863; 2012 - \$4,552,115, and 2013 - \$4,473,561.

The Government Finance Officers' Association (GFOA) conservatively recommends that a public entity maintain an unrestricted General Fund balance of approximately two months of expenditures or approximately 16.7% of annual general operating expenditures as a cushion for emergencies and unexpected expenditures. See Union Exhibit 1A, page 4, and GFOA, (2002 and 2009), *Best Practice: Appropriate Level of Unrestricted Fund Balance in the General Fund*.

Bath Township has within its reserve policies a goal of maintaining a General Fund balance reserve of forty-five percent (45%) of the General Fund's annual operating budget. See Bath Township, Summit County, Ohio, Reserve Policies (policy 8.7, paragraph B). From 2008 through 2013 the amount of unreserved/unassigned funds in comparison to General Fund operating disbursements for those years were: 186% in 2008, 262% in 2009, 157% in 2010, 148% in 2011, 189% in 2012, and 180% in 2013. These annual unencumbered carryovers are obviously far in excess of the 16.7% suggested by the GFOA and the 45% called for by Bath Township's reserve policy.

The fact finder does not cite the above substantial annual carryovers to question the policies of the Bath Township Trustees but only to reflect what is in the hearing record - that some small wage increase is not deterred by a lack of funds available to the Township. The wage increase proposals from both parties in no way threaten in any substantial or significant way the very impressive unreserved/unassigned funds that have been carried over annually from 2008 through 2013.

The fact finder acknowledges the existence of a police levy that is now twenty years old, a levy last approved by Bath Township voters in 1994. This levy may need to be revisited by voters in the Township to adequately fund police operations at the level expected by Township residents. Deciding on what to do with the present police levy, however, is a decision exclusively within the discretion of the Bath Township Trustees. For purposes of this fact finding the present Police District Fund is considered in its present state, the same state in which it was passed twenty years ago.

Another complicating feature affecting the consideration of wage increases proposed by the parties is language that was agreed by a prior Bath Township administration in negotiations with other bargaining units that included "me too" language that could be interpreted to require wage increases granted to the patrol officers be granted to other bargaining units. The Union in the fact finding procedure herein complains that a consideration of the "me too" language in other collective bargaining agreements is a denial of the right of the three bargaining units addressed by this proceeding to negotiate their terms and conditions of employment unencumbered by the uninvited and unwelcome influence of other bargaining units.

Another complication arising between the parties as to wage increases involves the duration of their initial Agreements. The Union seeks a collective bargaining agreement that is retroactive to January 1, 2014 that would include wage increases retroactive to January 1, 2014. The Employer proposes that the initial Agreements between the parties begin January 1, 2015, and any wage increases agreed by the parties begin on January 1, 2015.

The Union proposes a three percent (3%) annual wage increase, with the initial annual wage increase occurring retroactively on January 1, 2014. The Union points to the fact that the members of the three bargaining units at issue in this proceeding last received a wage increase in 2010, in the amount of 3.75%. For 2011, 2012, 2013, and 2014, the members of these bargaining units received no wage increase, although lump sums were received over the past four years. The Union argues that the bargaining unit members' sacrifices over the last four years in forgoing wage increases show employees who are deserving of a reasonable three percent (3%) wage increase effective January 1, 2014; January 1, 2015, and January 1, 2016.

The Employer has proposed a two percent (2%) wage increase effective January 1, 2015, a lump sum payment of \$600 in 2016, and proposes that wage negotiations between the parties be reopened in 2016. The Employer points out that Bath Township has been adversely affected by recent cuts to local government funding and the elimination of the estate tax. The Employer claims its wage proposal reflects a fiscal restraint that best serves the interests and welfare of Township residents.

The Employer notes that General Fund revenue has decreased from 2011 through 2013 as a result of stagnant property tax collections and cuts to local government

funding. It is noted that over the past three years Bath Township has lost approximately \$260,000 in local government funding and \$950,000 in estate tax receipts.

The Employer claims that bargaining unit members are well compensated by the Township in comparison to other law enforcement officials in other political subdivisions and notes that wage increases for members of other bargaining units will be triggered if an award over one percent (1%) is given to the patrol officers in 2014 or two percent (2%) in 2015.

The fact finder recommends the Union's wage proposal but recommends the Employer's proposal on duration. The fact finder recommends that the parties' initial Agreements begin January 1, 2015 and that three percent (3%) wage increases occur annually on January 1, 2015; January 1, 2016; and January 1, 2017. Making the Agreements effective January 1, 2015 avoids one year of the "me too" language found in other bargaining unit contracts and would leave only 2015 as a year exposed to the effects of the "me too" language. The three percent (3%) wage increase recommended by the fact finder to begin January 1, 2015 could produce a one percent (1%) wage increase under other contracts, but the absence of a wage increase in 2014 under the fact finder's recommendation saves sufficient funds to mitigate if not eliminate the extra expense under the "me too" language.

The fact finder believes that forgoing a wage increase for calendar year 2014 is a substantial and significant sacrifice, following as it does three years without a wage increase. The support provided by forgoing wage increases over a four-year period was helpful to the Township and now, under present circumstances, and with the funds

available to the Township to do so, wage increases for the bargaining unit members are recommended.

The fact finder recommends annual wage increases for bargaining unit members of three percent (3%), three percent (3%), and three percent (3%), effective January 1, 2015; January 1, 2016; and January 1, 2017. The fact finder also recommends that the initial collective bargaining agreements between the parties begin effective January 1, 2015.

RECOMMENDED LANGUAGE: Article 20 - Wages and Other Compensation (for Patrol Unit)

Section 1. The following pay scale, which reflects a three percent (3%) pay increase for current employees, shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Position		Hourly Rate: <u>2015</u> <u>2016</u> <u>2017</u>		
Hire on or before June 30, 2014	Hired after June 30, 2014			
	0 – 12 Months	\$20.4566	\$21.0703	\$21.7024
	13 – 24 Months	\$22.1801	\$22.8455	\$23.5309
0 – 12 Months	25 – 36 Months	\$23.9035	\$24.6206	\$25.3592
13 – 24 Months	37 - 48 Months	\$25.6273	\$26.3961	\$27.1880
25 – 36 Months	48 – 60 Months	\$27.3512	\$28.1717	\$29.0169
37 – 48 Months	61 – 72 Months	\$29.0750	\$29.9473	\$30.8457
After 48 Months	After 72 Months	\$30.7988	\$31.7228	\$32.6745

New employees shall be assigned to the starting rate and shall advance to the next succeeding pay step during the pay period which includes their anniversary date of hire as a full-time employee of the department, until they reach the 48 month rate.

Section 2. Officer in Charge (OIC). Retain current language.

Section 3. Longevity. Retain current language.

Section 4. Incentive Stipends. Retain current language.

RECOMMENDED LANGUAGE: Article 20 – Wages and Other Compensation (for Promoted Unit)

Section 1. The following pay scale, which reflects a three percent (3%) pay increase for current employees, shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Rank	Time in Rank	Hourly Rate:	2015	2016	2017
Sergeant	0 – 12 Months		32.9547	33.9433	34.9616
	After 12 Months		34.6185	35.6571	36.7268
Lieutenant	0 – 12 Months		37.2126	38.3290	39.4788
	After 12 Months		39.0482	40.2197	41.4263

Section 2. Longevity. Retain current language.

Section 3. Incentive Stipends. Retain current language.

RECOMMENDED LANGUAGE: Article 20 – Wages and Other Compensation (for Dispatch Unit)

Section 1. The following pay scale, which reflects a three percent (3%) pay increase for current employees, shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Position	Hourly Rate:	2015	2016	2017
0 – 6 Months		16.8962	17.4031	17.9252
7 - 12 Months		17.7232	18.2549	18.8026
13 – 24 Months		18.5917	19.1495	19.7239
25 – 36 Months		19.5035	20.0886	20.6913
37 – 48 Months		20.4610	21.0748	21.7070
After 48 Months		21.4662	22.1102	22.7735

Section 2. Longevity. Retain current language.

Section 3. Incentive Stipends. Retain current language.

Article 23 – Insurance

With the exception of a single proposal, the parties have agreed to language to be included within Article 23, Insurance. The tentatively agreed language for this Article intends that all bargaining unit members participate in the same coverage pool, receive the same level of benefits, and participate at the same level of contributions as is the case with non-bargaining unit employees. This underlying spirit of inclusion of all employees of the Township, organized and non-organized, in the same coverage pool, sharing risks and benefits equally and fairly under the coverage secured, is recommended as the most efficient method of providing health care coverage.

What remains to be decided is a proposal from the Employer that would affect bargaining unit members' spouses who are employed elsewhere and have access to health care coverage through their employers. Under the language proposed by the Employer, a bargaining unit member's spouse would be required to obtain single coverage through the spouse's employer so long as the cost of the single coverage is \$100 or less. Under such a circumstance the actual cost of the single coverage for the spouse employed elsewhere would be reimbursed by Bath Township, and Bath Township would not provide coverage to spouses of bargaining unit members who present these facts.

The Union opposes the Employer's proposal for Article 23, Insurance, pointing out that insurance coverage plans vary widely in terms of contributions, coverage, co-pays, and deductibles. The Union argues that to exclude spouses of bargaining unit members from coverage through Bath Township could require a spouse to accept either much more expensive coverage or a coverage plan with less coverage. The Union argues

that the language proposed by the Employer is too restrictive and would expose bargaining unit members' family members to risks that are unacceptable to the Union.

The fact finder finds the Union's objections to the Employer's proposal on spousal coverage to be as legitimate and as persuasive as the Employer's arguments in support of its proposal intended to contain very expensive and ever-increasing health care coverage costs. The fact finder does not recommend the Employer's proposal but fully endorses extending coverage to bargaining unit members that is equal to and uniform with the coverage of other Bath Township employees, both organized and non-organized.

RECOMMENDED LANGUAGE: Article 23 – Insurance

Section 1. Retain current language.

Section 2. Employer and Employee Contribution. Retain current language.

Section 3. Coverage Coordination. Retain current language.

Article 24 – Holidays

The language of Article 24, Holidays, is agreed by the parties, with one exception, a proposal from the Union. The Union proposes adding language to Article 14, section 2 that would compensate bargaining unit members who work a designated holiday (the holidays are enumerated in section 1 of Article 24) at one and one-half (1½) times the bargaining unit member's base hourly rate. Under a prior practice in Bath Township the compensation rate for working a designated holiday had been the employee's regular hourly rate of pay and eight hours to be scheduled off with pay.

The Employer notes that under the language agreeable to the Employer for Article 24, Holidays, bargaining unit members receive eight hours of holiday pay or eight hours

of time off with pay in addition to any compensation for working the holiday. The Employer notes that its proposal in this regard is consistent with benefits provided to bargaining unit members currently. The Employer points out that other Township employees who work eight –hour days receive the same number of holidays and receive the same rate of pay for working those holidays.

Holidays are sufficiently important to the parties' working relationship to merit a distinct Article in their collective bargaining agreements. The fact finder understands the importance of holidays as days upon which bargaining unit members can be away from duty, often with their immediate and extended families, celebrating the holiday as a family event.

Because of the nature of the work required of bargaining unit members, work that continues on the holidays enumerated in Article 24, section 1, bargaining unit members may be required to work on holidays and therefore be away from their families.

The eight hours of regular pay currently provided to a bargaining unit member who works a designated holiday is accompanied by eight hours of paid time off to be scheduled. The Employer argues that the extra eight hours of time off with pay in addition to being paid for the duties provided on the holiday are sufficient compensation and should be included within the parties' Agreements.

The Union argues that requiring an employee to be away from his or her family on a holiday, especially the holidays that otherwise would have found a bargaining unit member participating in family activities, is deserving of the premium pay expressed in the Union's proposal.

The fact finder recommends the Union's proposal on the pay of bargaining unit members who work on a designated holiday enumerated in Article 24, section 1. Paying premium pay for hours actually worked on a holiday is commonly found among contracts involving safety forces and is a recognition of the sacrifice required of the bargaining unit members in terms of holiday coverage and the effect on the bargaining unit members' families.

RECOMMENDED LANGUAGE: Article 24 – Holidays

Section 1. Retain current language.

Section 2. **Bargaining Unit members who do not work on the holiday shall receive eight (8) hours of holiday pay. Bargaining Unit members who work one of the above designated holidays shall receive an overtime rate of one and one-half (1½) times the employee's base hourly rate for all hours worked on the holiday. Holidays run from 12:00 a.m. through 11:59 p.m. on the actual date of the holiday.**

Section 3. Retain current language.

Section 4. Retain current language.

Article 35 – Duration

The Agreements addressed herein are initial collective bargaining agreements between the parties. For reasons cited in the wages portion of this report, the fact finder recommends that the initial Agreements between the parties take effect January 1, 2015. The fact finder believes that the retroactive proposal from the Union that would initiate these Agreements on January 1, 2014 would cause additional expenses to the Employer that would make an agreement in this case more difficult. The fact finder believes that initiating the Agreements on January 1, 2015 and extending the Agreements to December 31, 2017 would best serve the parties in operating under these contractual relationships.

RECOMMENDED LANGUAGE: Article 35 – Duration

This Agreement shall be effective January 1, 2015, and shall remain in full force and effect through midnight, December 31, 2017. Either party may give notice to modify or amend this Agreement no earlier than one hundred fifty (150) calendar days and no later than sixty (60) calendar days prior to the expiration date.

In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) - (f) as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder
500 City Park Avenue
Columbus, Ohio 43215

Columbus, Ohio
December 11, 2014

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between Bath Township, Summit County, Ohio and the Fraternal Order of Police, Ohio Labor Council, Inc., SERB case numbers 2013-MED-11-1507; 2013-MED-11-1508, 2013-MED-11-1509, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 11th day of December, 2014:

Robin L. Bell, Esquire
Regional Manager
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road, Suite A
Akron, Ohio 44319-1907
rbell@clemansnelson.com

and

Charles Wilson
Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
Northeastern Office
2721 Manchester Road
Akron, Ohio 44319
cwilsonfop@aol.com

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder
500 City Park Avenue
Columbus, Ohio 43215

Columbus, Ohio
December 11, 2014