

STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

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In the Matter of Fact-Finding between	)	FINDINGS AND RECOMMENDATIONS
FRATERNAL ORDER OF POLICE/OHIO	)	
LABOR COUNCIL, INC.	)	SERB CASE NOS. 2013-MED-11-1519
	)	2013-MED-11-1520
And	)	
	)	OCTOBER 28, 2015
CITY OF EAST LIVERPOOL, OHIO	)	
	)	VERONICA RICE, FACT-FINDER

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For the Fraternal Order of Police/Ohio Labor Council

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## **BACKGROUND**

The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB). The Fact-Finding involves the members of the East Liverpool Police Department, represented by the Fraternal Order of Police/Ohio Labor Council, Inc. and the City of East Liverpool, Columbiana County, OH. The parties involved, held four previous bargaining sessions in October, 2014, November, 2014, May, 2015 and June, 2015, but were unable to come to an agreement on several issues; consequently, they scheduled a Fact-Finding in an effort to reach closure on some of the disputed issues of the new contract.

The current agreement is comprised of a Gold Unit (Rank): 4-Captains and a Blue Unit: 13-Patrol Officers. The Collective Bargaining Agreement expired March 31, 2014, and the Parties agreed to extend the time limit while the City explored different avenues to adjust or increase revenue. The City and the Union engaged in several bargaining sessions prior to proceeding to Fact-Finding.

The City states that the population of The City of East Liverpool declined from 13,089 in 2000, to 11,195 in 2010, and this decline is anticipated to continue. The recession of 2007-2009 is considered to be the worst economic downturns since the Great Depression, and since that recession, taxpayers have come to expect that governmental bodies maintain comparable levels of service without increasing costs. The residents of the City rejected both a 4 mill police protection levy and a 2 mill current expense levy in May of 2015. The City is therefore faced with the ongoing challenge of controlling and containing cost and improving efficiency.

In consideration of the recession and declining revenues, the City first adjusted benefit levels for new hires in the 2008 and 2009 negotiations; wages however were not increased. In 2011 and 2012, further cutbacks were necessary and with public safety and bargaining unit job stability interests in mind, the City and the Union agreed to further benefit reductions and no wage increase under those contracts. Wages and benefits were bifurcated with lesser benefits being available to employees hired on or after January 1, 2011, and by restructuring the wage schedule to provide for five steps to reach the First Class Patrol Officer rate of pay, rather than three. Additionally, in consideration of the City's receipt of a Workers Compensation Refund, during the 2013 re-opener, the Parties were able

to agree to a one-time lump sum payment in a side letter negotiation, on March 5, 2015. The terms of that agreement are as follows:

Full Time Employees with more than 12 months of service \$1500.00

Full Time Employees with more than 6 months but less than 12 months  
\$750.00

Full Time Employees with less than 6 months of continuous service \$375.00

Part Time Employees who averages 20 hours per week or more \$500.00

Part Time Employees who averages less than 20 hours per week \$250.00

Employees hired after January 1, 2013, but prior to March, 2015 had a choice of;

Option 1 – A one-time wage bonus of \$375.00

Option 2 – A one-time wage bonus payable after the employee's one year anniversary date, in the amount of \$500.00.

Additionally, on January 1, 2014, Bargaining Unit Employees received a \$.45 per hour wage increase.

The Union seeks to retain current contract language in the Articles listed below and asks that these Articles be retained as current. There was no objection or opposition by the City, therefore it is recommended that these Articles shall be retained as previously negotiated.

ARTICLES TO BE RETAINED

PATROL OFFICERS

BLUE UNIT

Article Numbers

- #1 Recognition
- #2 Strikes and Lockouts
- #3 Dues Check Off
- #8 Call Back Pay
- #9 Court Pay
- #11 Pay Period
- #12 Personal Absences
- #13 Clothing Allowance
- #14 Holidays and Holiday Pay
- #16 Shift Differential
- #17 Hazardous Duty Pay

CAPTAINS

GOLD UNIT

Article Numbers

PATROL OFFICERS BLUE UNIT		CAPTAINS GOLD UNIT
Article Number		Article Numbers
#18 Temporary Assignment		
#20 Special Medical Training		
#21 Labor Management Committee	#21	Communication Allowance
#22 Communication Allowance	#22	Labor Management Committee
#23 Reinstatement		
#24 Grievance and Arbitration		
#25 Group Life Insurance		
#26 Liability Insurance		
#28 Union Days		
#29 Shift Trades		
#30 In-Service Training		
#31 Sick Pay		
#33 Pick Up Plan		
#35 Reserved Rights		
#36 Jury Leave		
#37 Personnel Records		
#38 Disciplinary Procedure		
#39 Shift Preference	#39	Tuition Reimbursement
#40 Bargaining Unit Application of Civil Service Law		
#41 Duty Weapon		
#42 Mileage		
#43 Probationary Period	#43	Does not Apply to Gold

The Fact Finding Hearing was held on Wednesday, October 28, 2015 in the Mayor's Office at City Hall, 126 W.6<sup>th</sup> Street, East Liverpool, Ohio, 43920.

In compliance with Ohio Revised code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past Collective Bargaining Agreements between the parties;

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

### **ISSUES AND RECOMMENDATION**

#### **UNION AND EMPLOYER ISSUE 1 – ARTICLE 4 – BASE PAY**

The **UNION** seeks a 2.25% increase for year 2015, a 2.75% increase for year 2016, and a 2.75% increase for year 2017 and asserts that the City of East Liverpool Officers are paid below the comparable labor pool for the Employer. Due to wage freezes in previous contracts, the Union seeks to adjust those rates so as not to continue to lose ground with other comparable jurisdictions.

The **EMPLOYER** proposed to retain the current wage schedule and wage rates (as effective on March 1, 2014) until the first full pay period of January 2017, when the regular hourly rate of pay for bargaining unit employees would be increased by twenty cents (\$.20). Captain's positions would retain the same differential as in the expired Agreement. i.e., 10%, 15% and 18% above the Senior Patrol Officer rate. Additionally, if income tax revenues in calendar year 2015 or 2016 exceed

income tax revenue for calendar year 2014 by 5% or more, either party may reopen negotiations for the purpose of discussing a one-time wage "bonus". The Employer proposes to maintain Side Letter of Agreement #2, as executed on March 11, 2011, in its entirety except for the modification proposed under Article 15, Health and Medical Coverage. The City of East Liverpool and the Fraternal Order of Police, Ohio labor Council, Inc., on behalf of the Patrol Officer's bargaining unit did agree to the following wage and benefit alternative for Patrol Officers hired on or after January 1, 2011:

**Article 15, Section 1, Rank Designation Blue Units – Patrol Officers**

Fifth Class Patrol Officer, Full Time with less than 18 months of continuous service

Forth Class Patrol Officer, Full Time with more than 18 months of continuous service, but less than 36 months

Third Class Patrol Officers Full Time with more than 36 months of continuous service, but less than 48 months

Second Class, Patrol Officers, Full Time with more than 48 months of continuous service, but less than 5 years

First Class Patrol Officers, Full Time with more than 5 years of continuous service

Side Letter of Agreement #2 created a fifth class of Patrol Officer which was not part of the Collective Bargaining Agreement which expired March, 2014. Some salaries changed as a result of the newly created position, others did not.

**FINDINGS AND RECOMMENDATION**

The Parties had prolonged and often heated discussions over this issue but failed to reach an agreement. After considerable discussion and numerous attempts to resolve the issue, the Parties were unable to come to an agreement.

This is a situation of equal and competing interest. Both sides made a strong argument for their position and presented evidence to buttress their position. The City's proposals support the necessary objective of fiscal responsibility, as it must operate within available resources, one department bargaining unit cannot advance to the detriment of all others. The City must implement and retain cost reductions and controls and must have the flexibility necessary to improve

efficiency. The Union must monitor and negotiate wages and benefits for its members and must seek a fair and equitable benefit package for all members. Given the City's uncertainty over its financial picture, and the total cost of all the contract items combined, the Fact Finder recommends that the employees represented by the Collective Bargaining Agreement (Blue, Patrol Officers) receive a one-time lump sum payment of three hundred dollars (\$300.00) on the last full pay period of the year 2015, a 1.0% increase to begin on the first full pay period, of the year 2016 and a 1.0% increase to begin on the first full pay period of the year 2017. The Captain's positions will remain the same as in the expired Agreement. 10%, 15% and 18% above the First Class Patrol Officer rate.

#### **UNION ISSUE 2 – ARTICLE 5 – SPECIAL RETIREMENT PAY**

Article 5, Section 1 states; this article shall only apply to those members of the Police Department who were members of said department on July 1, 1984.

The **UNION** seeks to remove the bifurcation of the units that has occurred by limiting special retirement pay to members of the department that were employed after July 1, 1984. The Union's position is the continued bifurcation of the unit has affected the stability of the Union and caused hiring and retention issues with the Employer and is detrimental to overall labor peace.

The Collective Bargaining Agreement allocates Special Retirement Pay to Employees who were members of the Department on July 1, 1984. The Union seeks to grant Special Retirement Pay to employees who became members of the Department after July 1, 1984. The language the Union wishes to use or omit would be of major concern to the City. The concern is not with the concept that the Union is presenting, but with the potential cost implications. As written, a small percentage of employees would be eligible for Special Retirement Pay. If the Union's changes are implemented, each employee employed after July 1, 1984 would be entitled to this form of payment at retirement, after 25 years of service. It is not recommended that the Unions proposal be adopted and that this Article remain as written and negotiated by the Parties.

## FINDINGS AND RECOMMENDATIONS

### UNION ISSUE 3-ARTICLE 6-LONGEVITY PAY

On October 27, prior to Fact- Finding, it was agreed by the Parties that no changes would be made to Article 6, of the Collective Bargaining Agreement.

## FINDINGS AND RECOMMENDATIONS

### UNION ISSUE 4 – ARTICLE 7 – VACATION

The **Union** seeks to remove the language from the Agreement that reduces benefits for employees hired after December 31, 2005. The Union proposes to strike the reference to the date of hire and eliminate the allocation of six (6) weeks and seven (7) weeks of vacation for employees with twenty (20) and twenty five (25) years of service respectively. As previously outlined by the Union, the bifurcation of the Unit adds to overall recruiting, retention, and Union Peace with the Employer.

The **Employer** provided Side Letter of Agreement #2, in which the vacation procedures and allocations have previously been negotiated and agreed upon by the Parties. Article 7 of the current Collective Bargaining Agreement contains the language applied since the ratification of that agreement.

Based on the information provided by the parties, it is the recommendation of the undersigned that the Union's proposals not be adopted. It is noted that vacation benefits in the public sector are usually fairly generous as compared to the private sector. After careful review, the vacation allocations for time of continuous employment, is adequate and sufficient for years of service with the Department. The bifurcation is necessary as specific guidelines for vacation time earned and how it will be allocated. It is unreasonable for the Union to expect the Employer to do otherwise. Therefore it is not recommended that the language in Article 7 be changed. Side Letter Agreement #2 contains the terms of the agreement between the parties which has previously been negotiated and agreed upon. This letter of agreement is still in effect and should stand as written. The Union's position is not recommended and should not be adopted.

## FINDINGS AND RECOMMENDATIONS

### UNION ISSUE 5 –ARTICLE 10 – HOURLY RATES AND OVERTIME PAY

The **Union** proposes to reinstate the benefits for all members of the bargaining unit that have been previously removed by the former side letters. It is the understanding of the Union that Article 10 – hourly Rates and Overtime Pay Defined may be in conflict with the current practice of the Department and seeks to gain assurance that these provisions are not in conflict with any former Side Letters of Agreement. The Union seeks to adjust and clarify that the Side Letters of Agreement are properly documented and in place with current language and current practice as outlined in other sections of the Agreement.

It is the recommendation of the undersigned that all Side Letters of Agreement be consolidated and reviewed to assure the Parties that all regulations previously negotiated shall be correctly administered. It is further recommended that the Side Letters, as negotiated, become a part of the Collective Bargaining Agreement as a Memorandum of Understanding or other appropriate language to eliminate any possible conflict, once ratified by the Parties.

## FINDINGS AND RECOMMENDATIONS

### UNION ISSUE 6 – EMPLOYER ISSUE 2 – ARTICLE 15 – HEALTH AND MEDICAL COVERAGE

The **Union** seeks to adjust Section 3 of this article to reflect employee contribution amounts that are more than average when compared to other statewide employees of this particular region. Even with the Union's proposal the employees will still be obligated to pay 20% above what is the statewide average of employee contributions for other regional employees.

The **Employer** seeks to keep Section 3 of the article as in the current Collective Bargaining Agreement.

**Article 15, Section 1.** The Employer will continue to make available to full-time bargaining unit employees basic surgical, hospitalization, and major medical coverage, and supplemental dental, vision, and prescription coverage . The Employer reserves the right to select carriers/providers and/or to otherwise determine the manner by which any and all coverage is to be provided.

Cost containment programs which seriously reduce benefit levels, and for which a benefit level is not improved in any other area, unless such reduction is necessitated by reason of market availability (unavailability), shall require the mutual agreement of the Employer and the Union.

**Section 2.** An employee may elect single or family coverage consistent with any eligibility requirements set forth under the terms and conditions of the plan.

**Section 3. A.** The Employer shall contribute up to a maximum amount, per employee, per month, towards the total cost of coverage as follows:

<u>EFFECTIVE DATE</u>	<u>TYPE OF COVERAGE</u>	<u>MAXIMUM MONTHLY EMPLOYER CONTRIBUTION</u>
	Single	\$260.00
	Family	\$623.00

**B.** Should the cost exceed the maximum amounts set forth in subsection (A) above, the participating employee shall be required to contribute one hundred percent (100%) of the amount in excess of such maximum, for the next one hundred dollars (\$100.00) of excess cost, in order to continue participation. Should the costs of coverage exceed three hundred and sixty dollars (\$360.00) for single coverage or seven hundred twenty-five dollars (\$725.00) for family coverage, any such excess costs shall be split equally between the Employer and the participating employee.

**Section 4.** Within six (6) months of the execution of this agreement, the City shall attempt to convene a health and medical insurance committee comprises of one (1) employee representative from each of the City bargaining units who wish to participate and one (1) management representative. It shall be the responsibility of each local union to designate their own representative and to notify the Employer in writing of the designated representative.

The purpose of the committee shall be to review the cost, utilization, and benefit levels of the health insurance plan, and to make recommendations to the City administration relative to cost containment provisions. Cost containment measures recommended by the Committee and adopted by the City shall not require the mutual agreement set forth in Section (1) herein.

**Section 5.** Nothing herein shall be construed to preclude the Employer from participating in any state and/or national health care plan. However, should such participation be or become mandatory resulting in a provision of benefits in excess of those set forth herein, and/or a cost in excess of that set forth herein, the Employer reserves the right to reopen contract negotiations on any or all economic issues. If the Employer reopens, then the Union also may reopen any or all economic issues.

After careful consideration of all information provided by the Parties, the undersigned recommends that the language as written in Article 15 above, be adopted and incorporated into the Collective Bargaining Agreement. Establishing a committee, responsible for recommending and implementing changes in the health plan empowers the employee to make decisions about his own health plan.

### **FINDINGS AND RECOMMENDATIONS**

#### **UNION ISSUE 7 – ARTICLE 19 – COLLEGE EDUCATION AND CERTIFICATION PAY**

The **Union** seeks to remove the language that reduced benefits for employees hired after December 31, 2005. As outlined by the Union, this bifurcation of the Unit adds to the overall recruiting, retention and Union peace with the employer.

The **Employer** seeks to keep the language previously agreed upon by the Parties in Side Letter of Agreement #2 as set forth below:

**Section 1.** Employees hired on or after January 1, 2011, shall not be eligible for College education pay. Employees hired on or after January 1, 2011, shall be required, within their first six (6) months of employment, to acquire and hold the following four (4) law enforcement certifications, as listed below, as a condition  
of

employment, and shall not be entitled to certification pay.

BAC LEADS Hazmat Awareness Electronic Speed Management  
Should any certification expire or be invalidated, the Patrol Officer shall be granted three (3) months to reacquire said certification.

After considerable discussion between the Parties, the undersigned recommends that the language in Side Letter of Agreement #2 stands as written and that the language shall appear in the Collective bargaining agreement in respect to College Education and Certification Pay.

### **FINDINGS AND RECOMMENDATIONS**

#### **UNION ISSUE 8- ARTICLE 27 – LAYOFF (REDUCTION IS FORCE) AND RECALLS**

On October 27, 2015, prior to Fact Finding, the Parties agreed to retain the Current Contract Language in Article 27.

#### **UNION ISSUE 9 – EMPLOYER ISSUE 4 –SIDE LETTER OF AGREEMENT #2**

The **Union** seeks to adjust and clarify that the Side letters of Agreement are properly documented and in place with current language and current practices as outlined in other sections of the Agreement.

The **Employer** proposes to maintain Side letter of Agreement #2 as executed on March 11, 2011, in its' entirety except for modification purposes under Article 15, Health and Medical Coverage.

It is recommended that the parts of Side Letter of Agreement #2 which were submitted to Fact Finding, be adjusted and that the Side Letter becomes part of the Collective Bargaining Agreement. All changes to the current Side letter must be agreed upon by the Parties prior to the Agreement being ratified.

**UNION ISSUE 10 – EMPLOYER ISSUE 3 – ARTICLE 44 – TERM**

During Fact Finding, an agreement was reached between the Parties regarding **Article 44, Term**. It was mutually agreed that unless specifically specified to the contrary, all provisions, covenants and benefits of this agreement shall apply, operate, and run from the date of ratification/acceptance of a final tentative agreement by both parties, the agreement shall remain in effect through midnight on the 31<sup>st</sup> day of March 2018.

Section 7. The rate at which dues are to be deducted shall be certified to the Auditor by the Treasurer of the FOP/OLC during January of each year. One (1) month advance notice must be given the Auditor prior to making changes in an individual's dues deduction.

**ARTICLE 4**  
**BASE PAY**

**Section 1. Rank Designation.**

Third Class Patrol Officer	Less than twelve (12) months of continuous service with the Department as a full-time, fully paid Patrol Officer
Second Class Patrol Officer	More than twelve (12) months of continuous service with the Department as a full-time, fully paid Patrol Officer, but less than twenty-four (24) months
First Class Patrol Officer	More than twenty-four (24) months of continuous service with the Department as a full-time, fully paid Patrol Officer
Senior Patrol Officer	More than twenty-two (22) years of service

Section 2. The regular rate of pay for a bargaining unit employee shall be as follows:

<u>Classification</u>	<u>Annual Salary</u>	<u>Hourly Rate</u>
Senior Patrol Officer	\$44,137.60	\$21.22
First Class Patrol Officer	\$43,347.20	\$20.84
Second Class Patrol Officer	\$36,878.40	\$17.73
Third Class Patrol Officer	\$28,412.80	\$13.66

Section 3. The City of East Liverpool and the Union agree to re-open negotiations for the express purpose of negotiating wages only for calendar years 2013 and 2014, in accordance with O.R.C. 4117.

**ARTICLE 5**  
**SPECIAL RETIREMENT PAY**

Section 1. This article shall only apply to those members of the Police Department who were members of said department on July 1, 1984.

*Warrant contract language*

*[Signature]*

*10-27-15*

*[Signature]*

**ARTICLE 25**  
**GROUP LIFE INSURANCE**

**Section 1.** The City shall provide group term life insurance with a death benefit of twenty-five thousand dollars (\$25,000) per man including rights of double indemnity and conversion.

**ARTICLE 26**  
**LIABILITY INSURANCE**

**Section 1.** The City shall continue its existing comprehensive liability insurance, inclusive of coverage for bargaining unit employees for any actions resulting from the discharge of job duties legally and properly within the scope of the affected employee's employment with the City. The parties recognize and agree that the continuation of such insurance coverage is contingent upon continued market availability. In the event insurance coverage becomes unavailable or cost prohibitive, the City agrees to provide legal representation and/or be responsible for any judgments rendered against an employee as a result of such lawsuits where the employee acted in good faith and within the scope of his employment and official responsibilities.

**ARTICLE 27**  
**LAYOFF (REDUCTION IN FORCE) AND RECALL**

**Section 1.** Whenever the Employer determines that a layoff (reduction in force) is necessary *all Seasonal, Temporary, Part-Time or Probational Patrol Officers shall be laid off before any full-time employees.* Should it be necessary to lay off any full-time Patrol Officers, the Employer will notify affected employees, in writing, fourteen (14) calendar days in advance of the effective date of the layoff. The Employer agrees to discuss the impact of layoff with the Union, provided a request is submitted in writing by the FOP/OLC.

**Section 2.** The Employer shall determine the rank, employment status, and number of employees to be affected by any layoff. Within each affected rank, layoff shall occur by inverse order of seniority. Seniority for purposes of these procedures shall mean the length of continuous service within the Police Department, within the applicable classification, and commencing with the employee's date of hire in a permanent full-time position within that classification.

**Section 3.** Any employee receiving a notice of layoff shall have forty-eight (48) hours following receipt of notice in which to exercise his right to displace (bump) the least senior employee in a lower rank within the department. The more senior (bumping) employee must be presently qualified to perform the full duties and responsibilities of the lower rank, without further training, in order for a "bump" to be approved by the Employer. "Lower rank" shall mean a rank with a lower base rate of pay. A displaced or "bumped" employee

10-27-15  
Retain CCL  
[Signature]

CITY OF EAST LIVERPOOL  
CITY PROPOSAL AT FACT FINDING  
10/27/15  
FOP/OLC

BOTH UNITS – PATROL OFFICERS AND CAPTAINS

**ISSUE 3**

ARTICLE 44  
TERM

Unless specifically specified to the contrary herein, all provisions, covenants, and benefits of this agreement shall apply, operate, and run from the date of *ratification/acceptance of a final tentative agreement by both parties (date of latest acceptance), or acceptance of a fact finding report by both parties (date of latest acceptance or expiration of seven day time period as applicable), or upon issuance of a conciliator's award, as may be applicable, and shall remain in effect through midnight on the 31<sup>st</sup> day of March 2018.*

If either party desires to modify or amend this agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days nor later than ninety (90) days prior to the expiration date of this agreement.

FOR THE EMPLOYER

  
\_\_\_\_\_

DATE SIGNED 10/28/15

FOR THE UNION

  
\_\_\_\_\_  
10/28/15

Signed this 12<sup>th</sup> day of November, 2015 at Cleveland, Ohio.

*Veronica A Rice*  
Veronica A Rice, Fact Finder