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**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
June 28, 2015**

In the Matter of:

FRATERNAL ORDER OF POLICE, OHIO
LABOR COUNCIL, INC.
ASSOCIATION

2014-MED-07-0917

2014-MED-07-0918

and

CITY OF HUBBARD, OHIO

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Robin L. Bell, Regional Manager/Labor
Consultant
Kevin Shebesta, Senior Consultant
James R. Taafe, Chief of Police
Louis P. Carsone, Safety Director

For the Union:

Chuck Aliff, Staff Representative
Otto J. Holm, Jr., Staff Representative
Chris Moffitt, Sergeant
Bob Thompson, Sergeant
Mike Banic, Patrolman

INTRODUCTION

The undersigned was selected by the parties, and duly appointed by SERB by letter dated March 18, 2015 to serve as Fact-Finder in the matter of the Fraternal Order of Police, Ohio Labor Council, Inc.(hereinafter referred to as "Union") and the City of Hubbard, Ohio (hereinafter referred to as "Employer") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until June, 29, 2015. Hearing was held at Hubbard, Ohio on May 26, 2015. The Union was represented Chuck Aliff, Staff Representative, and the Employer was represented by Robin L. Bell, Regional Manager/Labor Consultant. The parties engaged in mediation prior to the start of hearing, and at the conclusion of mediation agreed to submit the remaining outstanding issues to the Fact-Finder based upon testimony and documentary evidence submitted by the parties, pre-hearing position statements and discussions had during the course of the day. The parties agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service of this Report via email.

FACTUAL BACKGROUND

The Employer is a city located in Trumbull County in Northeast Ohio with a population of approximately 8,000. It is party to two collective bargaining agreements with the Union for patrol officers and sergeants, as well as a collective bargaining unit with AFSCME for public works employees. The bargaining units here consist of seven officers in the classification of patrolman, and five in the classification of Sergeant. The most recent collective bargaining agreements between the parties expired on October 31, 2014. The parties engaged in seven negotiation sessions between October, 2014 and February, 2015, and reached tentative agreement on a number of issues, which are referenced and incorporated herein in the attached Exhibit A. The parties were also able to reach resolution through mediation at the time of hearing on an additional issue which is also incorporated in the attached Exhibit A.

The remaining unresolved issues submitted to fact-finding are as follows:

- Article 17 - Extra Duty
- Article 19 - Overtime
- Article 21 - Compensation
- Article 28 - Holidays

Before discussing the specific issues before the Fact-Finder for recommendation, it is necessary in this case to examine the proposed lists of comparable jurisdictions submitted by the parties for consideration. As is often the case, the entities chosen by each of the parties as comparable are not the same, although there is some overlap. Both have limited comparable jurisdictions geographically to those within the Trumbull, Mahoning and Columbiana County area. The Employer, however, has selected only cities, while the Union has included both cities and townships. As the Employer points out, townships do not have the same governmental structure as cities and have different sources of funding. Some of the jurisdictions selected as comparable additionally have substantially greater population size than the Employer here. The population size of a city affects the tax base, and often the type and amount of services provided or required. The Fact-Finder notes, however, that there is an overlap in the selected comparables of the parties. Both have submitted information regarding the following cities, all of which are cities in the area with populations under 10,000: Girard, Campbell and Cortland. These, with the addition of Columbiana are comparable to Hubbard in population size, per capita income, median family income and tax revenue. For those reasons, these four cities will be considered as the comparable jurisdictions for purposes of this Report and Recommendation.

Based upon the considerations enumerated in Ohio Revised Code §4117.14, including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, other factors traditionally

considered in the determination of issues submitted and the discussions of the parties during mediation, the Fact-Finder makes the following recommendations.

ISSUES

ARTICLE 17 - EXTRA DUTY AND ARTICLE 19 OVERTIME

Employer Position: The Employer proposes that the minimum pay for extra duty be reduced from four to three hours at the extra duty rate. This proposal is made in conjunction with its proposal in Article 19 to increase minimum call out pay from two to three hours. This language originated when a reserve officer was given extra duty which was not offered to bargaining unit members. The original purpose was to require that the work be given first to bargaining unit members. However over time, the language has become a source of disagreement between the parties prompting several grievances. The purpose in the two proposals is to resolve the on going disagreements regarding what constitutes "extra duty" eligible for the four hour minimum, and what constitutes a "call out", eligible for only the two hour minimum. The Employer argues that extra duty was intended to cover events such as an assignment related to a special event, prison transfers or a special investigation. The Union, however takes the position that any call out to work is extra duty. There have been several grievances on this point, and one is currently pending arbitration. The change to make extra duty and call out both subject to a three hour minimum would eliminate the confusion while providing fair compensation to employees who are called in to work or are assigned to extra duty. While the Union expressed a concern regarding reducing shift fill scheduling from four to three hours, there is no intention to change shift fills from four to three hours, since to do so would be logistically impractical. The proposal would have very little impact on overtime paid to employees since while one category is reduced, the other is increased.

Union Position: The Union proposes that language in Article 17 be maintained at current language. The Union agrees that there is disagreement between the parties as to what constitutes extra

duty versus a call out. It notes that the issue of confusion as to which minimum applies to any given situation could be eliminated by deleting the words "including for" from Section 19.5. This would make it clear that the two hour call out pay applies to training and court time, and all other extra duty would be subject to the Article 17 four hour minimum. The evidence demonstrates that the payments for the two categories have not been consistent. When the Union's comparables are examined, it is clear that four hours minimum pay is the norm for call-outs. Further, the AFSCME bargaining unit Agreement provides for a four hour minimum for all call outs, and there is no demonstration that there is any basis for not providing internal parity in this bargaining unit.

Discussion: The evidence did not demonstrate that the Employer's proposal for a three hour minimum payment for both extra duty and call outs would significantly decrease compensation over all. The Employer noted that the two categories involved are generally about even in use. The proposed change would, however, eliminate the disagreement between the parties regarding what constitutes extra duty versus a call out which has spawned several grievances. A recent example of this dispute concerns an officer who was called out to unlock the evidence room to release evidence during his off duty hours. He came in, unlocked the room, released the evidence and returned home within a short time. The Employer argues that this was a call out, while the Union argues it was extra duty. The grievance is pending arbitration over the two hour pay difference, and will undoubtedly cost far more than the amount at stake. The change to a uniform three hours minimum compensation would alleviate the need for such grievances.

At the same time, employees would be fairly compensated for the inconvenience of being called in to work during off duty hours, and in many cases, that compensation would increase. The proposal would further increase payment for training and court time, and bring this group into closer alignment with the comparable jurisdictions as presented by the Union. The reduction in guaranteed hours in instances of extra duty for special events would be substantially offset by the increase for call outs. While the Union argues that the AFSCME Agreement provides for four hours minimum, and these employees should be provided the same, it must be noted that the AFSCME employees are paid

at the straight time rate for the portion of the hours of the call out up to four which are not actually worked, and double time only for the hours actually worked, while these employees are paid at the time and one half rate for the entire three hours regardless of whether or not they are required to work the entire time.

Recommendation:

Article 17 Section 2. Extra Duty Rate. Amend to read as follows:

All sworn employees shall receive an extra duty pay rate not to exceed one and one-half (1 ½) times the present rate of pay per hour of extra jobs worked and such pay shall be for no less than three (3) hours minimum of any payment made.

Article 19 Section 5. Minimum Call-Out Amend to read as follows:

An employee who is ordered to report for work, and so reports, shall receive a minimum of three (3) hours pay at one and one-half (1 ½) times his current rate of pay, so long as the time worked does not abut his regular shift. Shift fill scheduling will be continue to be in no less than four (4) hour increments.

ARTICLE 19- OVERTIME

Union Position: The Union proposes that the current cap of 125 hours of Accumulated Time, referred to by the parties as AT, and also commonly known as compensatory time, should be increased from the current maximum accumulation of 125 hours to 240 hours. This is far below the maximum permissible accrual under the FLSA of 480 hours. Further, this increase is justified by a review of comparable jurisdictions. It would move this bargaining unit close to the average of surrounding jurisdictions in Trumbull and Mahoning Counties, which is 276.8 hours. Further, the documents submitted indicate that the Employer has in the recent past permitted employees to accumulate far more than the permissible 125 hours. The cost to the Employer is minimal. The payout of AT at retirement is payment at a lesser rate, the Employer has the benefit of retaining the funds, and it is not obligated to pay wages out in overtime.

Employer Position: The Employer opposes the increase in AT, and proposes instead to decrease in the accumulation to eighty hours and limit usage of accrued hours to 80 per calendar year. The excessive use of AT by some employees creates additional expense through the necessity of using overtime to cover those out on AT. It creates an endless cycle of additional

overtime which is difficult to sustain. Only a few employees carry significant amounts of AT, and there is no demonstrated need to increase AT as proposed by the Union. While the Employer did in the past permit employees to carry AT over the contractual limitation, this practice was discontinued in 2012, and in 2014 the maximum AT which any employee was carrying was 105 hours. Further, since employees may accumulate up to 125 hours on a rolling basis, some employees use significantly more than 125 hours per year, creating a hardship on the Employer in scheduling and overtime cost.

Discussion: Neither the Union nor the Employer has presented a compelling case for its proposal regarding AT accumulation. As the Employer notes, AT usage records for the past two years reflect that no employee had an AT balance at the current maximum 125 hours. Further, there was no evidence that employees are unable to obtain adequate time off, necessitating a need for additional AT accumulation. Similarly, while the Employer notes that scheduling is more difficult and additional overtime is required to accommodate AT usage, there was no evidence that the Employer was placed in any scheduling crisis as a result of AT usage, and the contractual language permits the Employer to control AT usage as needed to meet operational needs. Finally, in examining the comparables determined to be most appropriate by the Fact-Finder, the current AT accumulation places this group in the middle. There does not appear to be any significant basis for either an increase or decrease in the AT accumulation.

Recommendation:

Section 19 Section 3 - Current Language.

ARTICLE 21 - COMPENSATION

Union Position: The Union proposes a wage increase of three percent in each year of the Agreement along with maintenance of the \$500. lump sum payment which these employees received in the past two years. These employees did not receive a pay increase in the past three years. While they did receive a \$500 bonus in two of those years, that amount was not added to

their base wages, and their wages have therefore remained stagnant. In reviewing the comparable jurisdictions submitted by the Union, this increase would move this bargaining unit to the average wage, and place them at the average in the second year of the Agreement. This assumes no wage increase in any of the comparable jurisdictions. This increase is clearly fair and appropriate to place these employees at a wage which is competitive in the area. The Employer has not contended that there is any inability to pay this increase. The cost difference between the Union's proposal and the Employer's proposal of two percent, one percent, one percent is \$36,993 over the three year life of the contract.

The second proposal which the Union makes regarding wages is the differential for sergeants. The Union proposes that the wages of sergeants reflect a fifteen percent differential over the patrolman rate. The average rank differential among the comparable jurisdictions selected by the Union is fifteen percent. This bargaining unit is currently at eleven percent, well below the average. The Union's proposal would move these employees to the average. Again, there is no contention of an inability to pay, and the increase in the rank differential would cost \$58,352. over the life of the Agreement.

Employer Position: The Employer believed that the parties had reached an agreement on wages of either an increase of two percent in each year of the Agreement or increases of three, two and one percent in the three years of the Agreement, which has been agreed to by the AFSCME bargaining unit. Believing that agreement to be in place as part of a resolution of all outstanding issues, the Employer agreed to maintain the employee contribution rate of either three and one half percent or ten percent premium share on health insurance, depending on date of hire, well below the state average. Because of the Union's insistence of retention of the \$500 bonus payment as well as its refusal to accede to the Employer's proposal regarding holidays, the Employer maintains its proposal of increases of two percent, one percent and one percent in each year of the Agreement. The Employer further proposes elimination of the \$500 lump sum payment. These payments were to compensate for lack of wage increases. There is no basis for

their continuation. An analysis of the Employer's comparables demonstrates that these employees are above the average. Additionally, these employees reach the maximum rate in fewer years than many other jurisdictions.

The Employer proposes a one percent increase in the rank differential from eleven to twelve percent. This modest increase would put these employees in the second position among the comparable jurisdictions. This clearly indicates that this more modest increase is sufficient to place these employees in a favorable comparative position.

The Employer finally notes, that while the Employer's financial position is improving over the conditions which prevailed during the recession, the Employer must be a good steward of tax payer dollars. Improving economic conditions allow the Employer to provide wage increases which it was unable to do in the prior three years. But the increase must be reasonable and within the realm of the responsible use of tax dollars. The Union's proposal would cost a total of \$113,937 more than the Employer's proposal over the life of the Agreement.

Discussion: As noted above, the issue here is not the ability to pay the wage increases proposed, but rather, the inability to come to terms on the holiday proposal and lump sum payment which has resulted in the parties' disagreement on wages. The AFSCME bargaining unit has already been granted wage increases of three percent, two percent and one percent, and the Employer has not provided any rationale for providing this bargaining unit with lesser increases other than the inability to conclude an agreement on the holiday and lump sum issues. As noted by Fact-Finder James M. Mancini in his 2003 Findings and Recommendation between these parties, "[t]here is a heavy burden upon the party which seeks to deviate from a well-established pattern of internal wage increases". Parity between the FOP and AFSCME units has existed within City since before 2003. Neither party has presented any argument which raises compelling arguments for providing this bargaining unit with either greater or lesser wage increases than the AFSME unit.

Further, when the comparable jurisdictions as selected by the Fact-Finder are examined, it

appears that increases of three percent, two percent and one percent in each year of the Agreement will place this employees at the top at the minimum pay rate and second at the maximum pay rates. While, as the Union points out, this position could change at any time based upon increases in those other units, that is always the case, and should not change the analysis. The comparison of jurisdictions selected as comparable is by its nature an inexact science. Because of the ever changing nature of collective bargaining agreements with new negotiations and new contract years altering statistics, the best that can be done with comparison is to compare a snap shot in time. Based upon the comparable wages at this time, the increase clearly places these employees in a favorable and competitive position.

Although the Union urges that the \$500. lump sum payment should be retained in addition to the wage increase, there is insufficient justification for retention of this payment. The lump sum was provided during wage re-openers in an effort to provide some minimal increase to these employees in years when a wage increase was not affordable. Since wages are being increased, its purpose and rationale are no longer extant. The lump sum should therefore be eliminated.

On the issue of the rank differential, there were no compelling reasons presented for the increase of four percent in the differential. While not all of the comparable jurisdictions have sergeants, the one percent increase to twelve percent would place the sergeants second among the comparable jurisdictions which do. This permits them to remain competitive in their wages, while accommodating the Employer's need for fiscal responsibility.

Recommendation: Amend Article 21 Section 1 of both Agreements to reflect the following wage increases on the current hourly rates: 3% in the first year of the Agreement, 2% in the second year of the Agreement, and 1% in the third year of the Agreement.

Delete Article 21 Section 2 of the Patrol Agreement Addendum
Delete Article 21 Section 4 of the Sergeant Agreement Addendum.

Amend Article 21 Section 2 of the Sergeant Agreement to increase the rank differential to 12%.

ARTICLE 28 - HOLIDAYS

Employer Position: The Employer makes two proposals regarding holidays. It first proposes to change the floating holiday schedule which permits flexible scheduling of holidays off. The proposal would have eleven paid holidays and a total of twenty-eight hours of personal leave for a total of fourteen and one-half days per calendar year. The proposal includes Easter as a holiday as proposed by the Union, but excludes Martin Luther King Day, a personal holiday, Good Friday and one half day on Election Day, converting these days to personal leave time. The Employer also proposes to eliminate the twice annual payments for holidays. Instead, holiday pay would be paid in the pay period in which the holiday occurs. This is the same benefit as provided to the AFSCME bargaining unit, and would aid in scheduling and payroll administration. The Employer would rather pay the time off than incur the uncertainty and difficulty in scheduling and the additional overtime which it generates. The Employer provides an above average number of holidays compared to comparable jurisdictions, and there is no demonstrated need for additional time off, especially in light of the Employer's generous vacation benefits.

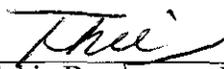
Union Position: The Union proposes that Easter be included in the paid holidays provided for in Article 28, but that the Article remain otherwise unchanged. The AFSCME contract provides for twelve paid holidays. This group only gets ten paid holidays which provide premium pay. The rest are treated as personal time off. The current system of holiday pay, which provides employees with the option to take holiday time off or receive a lump sum payment for holidays twice per year, has been in effect since at least 1976. It is common among comparable jurisdictions to provide the option of pay or time off for holidays. Further, the evidence does not support the conclusion either that there is difficulty scheduling or substantial overtime generated as a result of optional holiday scheduling.

Discussion: While both parties have made proposals regarding holidays, neither has provided any substantial basis for a change. The Union seeks to add an additional paid holiday for which premium pay will be paid, but a review of comparable jurisdictions indicates that these

bargaining units, with eleven and one half paid holidays are well within the average range. Similarly, the Employer has proposed that the optional time off for holidays be eliminated so that holidays are paid in the pay period in which they occur. While the Employer argues that the option for time off or pay twice per year makes scheduling more difficult and creates overtime, there was no evidence that there have been any documented instances of scheduling problems, and the overtime created due to holiday scheduling is, as the Union notes, only a small portion of the overall overtime costs. It should be noted that the holiday language provides that authorization of the time off is “subject to scheduling considerations” and “may be approved or denied based on the Employer’s assessment of its operational needs”. This language clearly provides the Employer with the flexibility to deny requested holiday leave when it determines that it is necessary to do so. Further, while no other group is paid this way, making the biannual payout of holidays an administrative aberration, the Employer has successfully accommodated the biannual payout of holidays for this group for a very long time without evidence of any hardship in doing so. Absent some evidence of significant overtime, difficulty in manning shifts or other hardship attributable to holiday time off scheduling and pay out, there does not appear to be a sufficient basis for dismantling a holiday provision which has been part of the Agreement for almost forty years.

Recommendation: Current language.

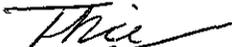
Dated: June 28, 2015



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was delivered via email and this 28th day of June, 2015 to Chuck Aliff at Califf@fopohio.org, Staff Representative, FOP, Ohio Labor Council, Inc. and to Robin L. Bell at rbell@clemansnelson.com Regional Manager/Labor Consultant for City of Hubbard.



Tobie Braverman

EXHIBIT A

	Preamble
Article 1	Recognition
Article 2	Fair Share Fee and Dues Deduction
Article 3	Nondiscrimination
Article 4	Management Rights
Article 5	No Strike - No Lockout
Article 6	Probationary Period
Article 7	Meetings
Article 8	Seniority
Article 9	Layoff and Recall
Article 10	Work Rules, Policies and Directives
Article 11	Personnel Files
Article 12	Disciplinary Procedures
Article 13	Grievance Procedure
Article 14	Arbitration Procedure
Article 15	Employee Liability
Article 18	Minimum Manning
Article 20	Overtime Scheduling
Article 22	Longevity
Article 23	Clothing Allowance
Article 24	Shift Differential
Article 25	Pay Incentive C.P.R. Training
Article 26	Educational Incentive
Article 27	Medical and Life Insurance
Article 29	Vacation
Article 30	Sick Leave
Article 31	Injury Leave
Article 32	Special Leaves
Article 33	Union Leave/Business
Article 34	Unpaid Leaves of Absence
Article 35	Health and Safety
Article 36	Bulletin Board
Article 37	Miscellaneous
Article 39	Obligation to Negotiate
Article 40	Gender and Plural
Article 41	Conformity to Law
Article 42	Total Agreement
Article 43	Midterm Dispute Resolution Procedure
Article 44	Alternate Dispute Resolution
Article 45	Drug Free Workplace
Article 46	Duration
Article 47	Execution
Forms:	Employee rights; Notice of Disciplinary Action; Appeal or Acceptance of Disciplinary Action Proposal
MOU's	Insurance Maintenance/Transition; Promotions; Acting Sergeant; Vacation Use
Appendix A	Drug Screening Program
Appendix B	Insurance Benefits Schedule