

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FOR THE STATE OF OHIO

FRATERNAL ORDER OF POLICE

OHIO LABOR COUNCIL

2014-MED-09-1163

: (Patrol Officers)

AND

HEARING DATE

JUNE 16, 2015

:

CITY OF MARION, OHIO

REPORT OF FACT FINDER JACK E. McCORMICK

JUNE 22, 2015

Pursuant to an Appointment letter dated November 24, 2015 from the State Employment Relations Board a fact-finding hearing was held at 10:00 am June 16, 2015 at the offices of the Marion Mayor.

Present at the hearing were the following:

For the City: Mark Russell, Esq. Law Director  
Tom Robbins, Safety Director  
Kelly Carr, City Auditor

For the Employees: Chuck Choate, Staff Representative FOP/OLC  
Rob Musser, Patrolman, Marion PD  
Matt Baldrige “ “ “ “  
Dave Duaway “ “ “ “  
Nick Esterline Chairman of the Local  
Paul Cox, Esq. Chief Counsel for FOP/OLC

The parties were fully advised by the Fact-finder of the applicable law as well as the Rules regarding fact-finding. The parties declined mediation at the conclusion of the hearing.

The City of Marion is located in Marion County, Ohio with a population of 36,837 (2010 census). It is located in west central Ohio fifty miles northeast of Columbus. The bargaining unit is the City's patrolmen comprised of 35 officers (with one vacancy). The collective bargaining agreement under

consideration is for the years 2015 through 2017. The current agreement expired on December 31, 2014. Six of the seven bargaining units contracts have been negotiated as of the date of this hearing.

#### BACKGROUND

The negotiating teams have formally met four times between November 20, 2014 and January 24, 2015.

The parties have signed tentative agreements on all articles except Article 17(wages) 17.2 (pension pick-up), Article 21.1 (Health, Dental, Life and Drug Insurance), Article 23.2 (Sick Leave Sell Back), Shift Differentials (new).

The Union proposes current language on all articles except that pertaining to wages. The Union proposes a new article (Article 17.5) which would grant bargaining unit members shift differentials of \$.55 for the afternoon shift and \$.65 for the night shift.

Meanwhile the City is proposing to change its portion of the pension pick-up making the members pay an additional 8.5%. The City proposes a .5% wage increase effective July 1, 2015, but only if the Union agrees to eliminate Sick Leave Sellback (Article 23.2). In addition the City proposes a 85/15 healthcare premium split with no caps. The current split is 80/20. As to base wages the City proposes, in addition to the aforementioned July 1, 2015 increase, that the bargaining unit receive wage increases of 1.5% on January 1, 2016 and again on January 1, 2017. The Union rejects all the City's proposals in their entirety.

#### DISCUSSION

The Union's position on the ability to pay was outlined in great detail (Union Exhibit 1) and by an oral presentation by Mr. Wade Steen, Certified Public Accountant with a great deal of experience in public accounting in various counties, cities and the State of Ohio. Mr. Steen concludes that in his expert opinion the City can afford modest spending increases. Mr. Steen also opines on

the merit of any wage increases based on comparables, which will be discussed later.

#### THE CITY'S BUDGET

All of the data reviewed by Mr. Steen came from the City's Auditor's office. First he notes that the City suffered, as all Ohio cities from the 2007-2009 recession and the reduction in local funds from the state. However, he notes that from the year 2011 through 2013 the City has seen its expenditures drop from \$17,465,559 to \$14,756,432. Meanwhile its revenue has stayed steady resulting in surpluses in each of those years. This was accomplished by cuts made by the City and a recent increase in the City's income tax. While the City's end of the year fund balance in 2010 was a negative \$2.820 million, by 2014 in it's estimated by the Auditor to have positive balance of over one million dollars. Its cash to expense ratio was 16.2% in 2014 (the target was 15%). Mr. Steen notes that for the last few years the City has "consistently outperformed its own budgetary expectations". Furthermore, the general fund revenues show a positive upward trend in the last three years. The City did not rebut Mr. Steen's findings. The City's own Exhibit #1 estimates an ending balance of \$2,057,686 for 2015. They claim however that they approximate needing \$431,000 for firefighter retirements.

The City also points to the Moody's rating report dated April 7, 2015 in which they downgraded the City from A3 to Baa1. However, the Union asserts, and the City Auditor concurs, that this is a result of a change in Moody's accounting methodology. One important thing to note is that since that report the City's unemployment rate has plunged from 7.3% to 5.2%. Since the income tax is the primary source of revenue this will offset some of the concerns of Moody's.

## **FINDING OF FACT**

**Based on the evidence presented and a detailed review by this Fact-finder, the facts support increases in wages, when coupled with savings that will be realized by recommendations of the Fact-finder.**

The mere fact that an employer has sufficient resources to fund wage and/or benefits does not compel a neutral to grant all, or any increases. There also must be merit for those increases based on non-monetary facts.

Just one of those facts is comparables. The other is the principle of pattern bargaining.

Comparing different jurisdictions to a particular unit is difficult, at best. The contracts of the jurisdictions are usually not available to a neutral, so often he/she is comparing apples to oranges. However, some disparities, where they are wide in nature, can be easily discerned.

The Union points to the fact that currently the top step patrolman in Marion receives a base salary of \$26,950. The only city police officers that low in their comparables are those in Findlay. Their comparables, which include Findlay, Delaware, Reynoldsburg, Upper Arlington, Hilliard and Gahanna; all of whom are within a fifty mile range. The City relied on comparing Marion with Mansfield, Sandusky, Findlay and Newark. They also note the average household income in all of the cities chosen by the Unit, in either party's selected cities. Accordingly the Fact-finder will focus on facts we do know.

The wage proposal of the in (City Exhibit #4) shows that after their wage proposals, by July 2017 two patrolmen would receive base wages of \$19,846 (lowest) and the highest paid \$37,656.

COMMENT: Raising a family of four would, two years from now, on \$37,656 would be difficult. While those making \$19,846 with a family of four would fall below the federal poverty level.

The Union notes that while the average wage increase of their comparables in 2015 was 3.20%, and that Marion patrolmen, under the City's

proposals, would be 1.50%. Furthermore, Marion patrolmen have had no increase since 2011, which was 1.5%.

The Marion Police Department will have difficulty recruiting and retaining well qualified officers to fill its current, or future vacancies at these levels.

#### **FINDING OF FACT**

**The City of Marion's wage proposals are inadequate.**

Based on the facts of this matter the Fact-finder finds that the following wage increases are appropriate:

**Section 17.1 of the CBA shall provide the Marion Patrolmen a wage increases as follows:**

**A wage increase of 2.5% retroactive to January 1, 2015**

**A wage increase of 2% on January 1, 2016.**

**A wage increase of 2% on January 1, 2017.**

**Section 17.2 of the CBA shall adopt the City's proposed 85% wage shift from the City's current P&FPS pension pickup. (this will result in an immediate savings to the City of \$94,625 by their own calculations)**

**Section 17.5 (new) Shift Differentials as proposed by the Union shall become part of the CBA verbatim.**

**Section 21.1 Health, Life, Dental, Drug Insurance shall be modified as proposed by the City, i.e. costs will now be split 85/15 (same as Firefighters). The remaining language proposed by the City at the third paragraph of the proposal regarding the City's HSA contribution shall be adopted.**

**Temporary Article 23.2 shall be removed.**

**Article 23.2 A1. The City's proposal to eliminate Sick Leave Sellback is rejected.**

**Article 23.2 A1 as set forth in the current CBA shall be made consistent with that now in the current CBA of the Marion Fire Fighters:**

**All members of the bargaining unit may elect to sell back unused sick leave, on an annual basis, according to the schedule below, provided four hundred eighty (480) hours remain after the sell back. At the employee's option, all or any part of hours eligible to be sold back may be converted to compensatory time.**

**Zero (0) hours used, one hundred forty-four (144) maximum sell back. Every hour used reduces eligible hours of sell back by one and one-half (1 ½) hours (i.e. twenty-four (24) hours used reduces sell back by thirty-six (36) hours from one hundred forty-four (144) to one hundred eight (108).**

**Payment will be at the employee's regular rate of pay. A request must be made in writing to the Police Chief prior to December 1 in order to receive payment for any hours. Sick leave usage from the preceding year will be used to determine the number of hours an employee is eligible to sell back.**



June 22, 2015

Jack E. McCormick, Fact-finder

State Employment Relations Board

500 City Park Avenue

Columbus, Ohio 43215-5707

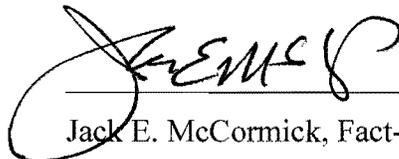
CERTIFICATE OF SERVICE

The foregoing was served on the following by email.pdf on June  
22, 2015:

Mark D. Russell, Esq.  
Law Director the City of Marion, OH  
233 West Center St.  
Marion, OH 443302  
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Chuck Choate  
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Council  
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Donald M. Collins, Esq.  
State Employment Relations Board  
65 East State St., 12<sup>th</sup> Floor  
Columbus, OH 43215-4213

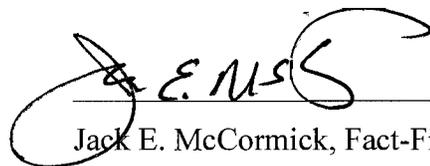
  
\_\_\_\_\_  
Jack E. McCormick, Fact-finder, SERB

FACT-FINDER'S FEE STATEMENT  
FOP/OLC and the City of Marion, OH  
SERB Case No. 2014-M ED-09-1163

Scheduling & review prehearing submissions - 1.0 hr. -	\$ 118.75
June 16, 2015 Travel and conduct fact-finding - .75 day -	\$ 712.50
Study and write report 1.0 day -	\$ 950.00
Mileage 98 miles @ \$.525 -	\$ <u>51.45</u>
Total -	\$ 1,832.70

City' portion - \$916.35

Union's portion - \$916.35



Jack E. McCormick, Fact-Finder

500 City Park Avenue

Columbus, OH 43215-5707

614-221-2718

614-221-5295 facsimile

jack.mccormick@att.net

Tax ID #31-1410950

W-9 attached

**Request for Taxpayer  
Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)  
**JACK E. Mc Cormick, Attorney**

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:  
 Individual/sole proprietor   
  C Corporation   
  S Corporation   
  Partnership   
  Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_  
 Other (see instructions) ▶ \_\_\_\_\_

Exemptions (see instructions):  
 Exempt payee code (if any) \_\_\_\_\_  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_

Address (number, street, and apt. or suite no.)  
**500 City Park Ave.**

City, state, and ZIP code  
**Columbus OH 43215-5707**

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Social security number**

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**Employer identification number**

3	1	-	1	4	1	0	9	5	0
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**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**    Signature of U.S. person: **J. E. Mc Cormick**    Date: **6/22/15**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on IRS.gov for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.