

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

**\*\*CORRECTED CASE NUMBERS\*\***

In the Matter of the Fact-Finding Between	2014-MED-09-1215
FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.	2014-MED-09-1216 2014-MED-09-1217
Employee Organization	CASE NOS. 2014-MED-09-2015 2014-MED-09-2016 2014-MED-09-2017
	Fact-Finder: Jerry B. Sellman Date of Report: April 29, 2015

and

THE CITY OF READING, OHIO

The Employer

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**FACT FINDERS REPORT AND RECOMMENDATION**

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APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Barry L. Gray – Staff Representative with the Fraternal Order of Police, Ohio Labor Council, Inc. representing the Fraternal Order of Police, Ohio Labor Council, Inc.

FOR THE EMPLOYER:

Patrick Ross – Safety Service Director for the City of Reading, representing the City of Reading, Ohio

## I. INTRODUCTION

This matter concerns a Fact-finding proceeding between the City of Reading, Ohio (hereinafter referred to as the “Employer”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder on March 5, 2015, to conduct a Fact-finding hearing. A Fact-finding hearing was held on April 17, 2015, at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. Since this proceeding involves only one issue, a Reopener on Wages for 2015, the parties proceeded directly to Fact-finding.

The open issues identified and discussed by both parties included:

### Article XII - Wages

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder’s consideration. The Parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issue before him, and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargained agreements, if any, between the parties;

- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related 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 public service or in private employment.

## **II. PRELIMINARY MATTERS**

Pursuant to OAC 4117-9-05(F), parties are to submit pre-hearing position statements to the Fact-finding panel. That provision provides, in pertinent part:

“Pursuant to division (C)(3)(a) of section [4117.14](#) of the Revised Code, upon notice of appointment of the fact-finding panel and no later than five p.m. on the last business day prior to the hearing, each party shall submit via electronic mail to the fact-finding panel and the other party a position statement. A failure to submit via electronic mail such a position statement to the fact finder and the other party no later than five p.m. on the last business day prior to the hearing, shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing...”

In this proceeding the City of Reading did not provide a position statement until 10:55 PM the day before the scheduled hearing. The Union moved to exclude information and issues addressed in the City’s Position Statement. The Fact-finder took the Motion under advisement, since the only issue addressed by both parties was the appropriate level of wages, if any, in the 2015 Wage Reopener.

The Fact-finder has determined that the Union’s Motion is well-taken and the Fact-finder has granted the Motion. Since the remedy is to only take evidence in support of matters raised in

the written statement submitted prior to the hearing, which was Wages, the Fact-finder excluded information concerning pre-hearing negotiations, to which the Union had objected. Evidence in support of wages, submitted by both parties was considered.

### **III. BACKGROUND**

The FOP represents all permanent full-time Dispatchers & Clerks, all permanent full-time Patrolmen, and all permanent full-time Lieutenants employed by the City of Reading, Ohio.

There are currently twenty-one (21) employees in the three bargaining units; three (3) from the Dispatcher & Clerk unit, thirteen (13) from the Patrolmen unit, and five (5) from the Lieutenants unit.

Both the City and the Union have made original proposals concerning wages during these negotiations, and the Union has made amended or counter proposals concerning wages during the negotiation process.

The City, during these negotiations, offered wage increases based solely on the increase (if any) in the General Fund Revenues. The City indicated that it would go as high as 3% if the General Fund Revenues increased by 5% or more, and as low as 1% if the General Fund Revenues increased by 2%.

The City and the Union entered into an extension agreement on October 14, 2014, extending the date of the Fact -Finder's report to February 28, 2015. When it became evident that date was not attainable, both the City and the Union entered into a second extension agreement on January 19, 2015, extending the date of the Fact- finder's report to May 1, 2015.

The parties' current collective bargaining agreement provided for a Wage Reopener for contract years 2014 and 2015. The Wage Reopener for contract year 2014 had not been finalized

by the time the Wage Reopener for contract year 2015 was to be negotiated. The Union, in an attempt to reach an agreement on both years, proposed that a retroactive wage with a 2% increase for 2014 and a wage increase of 4% for 2015 be implemented. The City offered a \$500.00 “bonus” for 2014 and the Union accepted that offer and continued to negotiate for the 2015 reopener.

#### **IV. UNRESOLVED ISSUES**

##### **1. ARTICLE XII – Wages**

###### **The Position of the Union**

The Union Employer proposes a four percent (4%) increase in wages.

Members of this bargaining unit have not reached any agreement with the City on wages in almost ten years; they have not received a wage increase since 2009. Wages were increased in the 2007-2009 contract period, but only after the City rejected a Fact-finder’s Report and Recommendation and wages were increased further by a Conciliator. During bargaining sessions for the 2010-2012 collective bargaining agreement, the bargaining unit recognized the poor financial condition of the City and agreed to freeze any wage increases.

As a result of the potential impact of Ohio SB5, the bargaining unit and the City agreed to roll in the current employee portion of their pension paid by the City into their wages and the employee would pay their own pension, rather than have the City pay the employee’s portion of the pension. This resulted in the appearance of an increase in wages, but it was an increase that was paid out by the employee for their pension. On an after tax basis, they actually suffered a wage decrease. As a result of this “roll-in,” the wages of the Reading Police bargaining unit members appear to be higher in comparison to other local jurisdictions, but in reality are not.

In 2011, in an effort to assist the City in saving money, the bargaining unit expanded the number of steps in its wage scale. The Police officers' wage scale increased from three (3) to seven (7) steps, and the Dispatchers' wage scale increased from four (4) steps to nine (9) steps. In 2012, even though there was no further wage increases, the Police Officers' wage scale increased another step.

While the City has indicated it has no additional funds to increase salaries, in 2014 the City increased the Salary of the Safety Service Director by ten thousand dollars (\$10,000), a fourteen percent (14%) increase. If the City can find money for its Safety Service Director, it should be able to pay its police officers and dispatchers higher wages.

Income tax receipts have been consistently up each year since 2011. In 2011, the City collected \$6,164,106 in Income taxes. That number steadily increased each year thereafter; in 2014 the City collected \$6,763,064. As of March 2015, Income Tax Revenues are up for year to date. With these increases, the City can afford to pay higher wages.

Financial reports filed by the City show that the City has maintained a positive, unencumbered General Fund balance every year that the bargaining unit members were not paid. In 2011 the City had a balance of \$154,247. In 2012, the City had a balance of \$490,883.<sup>1</sup>

During the last several years, the police department has been down two officers. With the City's estimate that each employee costs the City approximately \$100,000, the bargaining unit has had to do more work and at the same time saved the City \$200,000 per year.

While salaries have remained the same, health care premium contributions have increased during that period from a ten percent (10%) contribution to a fifteen percent (15%) contribution. The bargaining unit members are taking home less due to increased contributions taken from

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<sup>1</sup> While the unencumbered General Fund balance was up during that period of time, it was substantially decreased in

their wages (pension contributions and health care premium contributions) and at the same time have experienced rising cost of living expenses, as has everyone, since their last wage increase in 2012.

The Position of the City

The City proposes no increase in wages.

As a result of cuts in the local government funding by the State of Ohio and the elimination of the estate tax, the City's annual average of \$436,000 from these funds was reduced to approximately \$181,000 a year, a decrease of over \$250,000. In addition to these decreases in revenue, the City collects less from property taxes than it did in prior years due to the diminution of home values since the 2008 recession.

The result of these cuts has caused economic hardship for the City. In order to address the wage needs of the bargaining unit, the City believed the only responsible offer for wage increases needed to be tied to increases in the General Fund. The framework for this was as follows:

<u>General Fund Increase</u>	<u>FOP Increase</u>
5%	3%
4%	2%
3%	1.5%
2%	1%

The City's General Fund revenue/expenditure comparison for the last four years is as

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2013 and 2014 (\$2,518 in 2013 and \$33,230 in 2014)

follows is as follows:

2010-2014					
5 year General Fund Rev/Exp Comparison					
	2010	2011	2012	2013	2014
General Fund revenue	\$7,649,450.08	\$7,949,809.32	\$7,623,899.66	\$7,818,911.38	\$7,659,060.57
General fund expense	\$7,676,937.50	\$7,865,684.49	\$7,441,996.02	\$7,892,424.12	\$7,797,595.39
Revenue over Expense	-\$27,487.42	\$84,127.83	\$181,903.64	-\$73,512.74	-\$13,853.82

Because the City experienced a decrease in revenue from 2013 to 2014 by nearly \$160,000 (\$159,851 actual), no increase could be given under a formula of wages tied to General Fund Increases. Furthermore, \$125,205 of the revenue in 2013 and \$125,124 of the revenue in 2014 was from BWC Rebates. Those rebates are not anticipated in 2015.

The City is currently spending more than it is bringing in as can be seen for the years 2013 and 2014. It cannot afford to further increase expenditures without any prospects of additional revenues in the next year.

The City believes it would not be in the best interest of the City and its police department to grant increases that could put the City in a position that it could not maintain the current levels of staffing in all departments, including the Police. The current administration and mayor's top priority is to maintain a high level of Police, Fire, and Service department, and they do not want to do anything that could jeopardize this as they are still going through these difficult economic times.

The City is currently bargaining with two other bargaining units and if an increase is given to one, the others will want an increase, and the City is not in a financial position to do so.

In comparison to other local communities from data contained in the most recent Center for Local Government Pay Data, the City of Reading patrolmen, lieutenants, and dispatchers are

well paid, as set forth in the following chart:

Comparisons					
City	Patrol Pay Range		City	Dispatch Pay Range	
Reading	\$24.96	\$32.07	Reading	\$20.62	\$25.94
Deer Park	\$26.14	\$31.06	Blue Ash	\$18.53	\$27.93
Loveland	\$26.53	\$32.05	Deer Park	\$18.32	\$21.07
Colerain	\$22.85	\$31.53	Amberley	\$16.11	\$25.86
Sharonville	\$19.48	\$35.54	Sharonville	\$20.61	\$25.43
St. Bernard	\$21.32	\$32.51			
Wyoming	\$20.21	\$31.90			
Evendale	\$25.44	\$34.80			
Lockland	\$19.72	\$22.93			

With the current financial picture, the City cannot recommend any increases.

The City did increase the salary of the Safety Director. That salary increase was due to the Safety Director taking on additional duties formerly performed by an employee that resigned. Rather than hiring a new employee, the Safety Director took over those additional duties and saved the City \$19,762.

Discussion, Findings, and Recommendation

In assessing what is a fair recommendation on the issue of wage increases for the three bargaining units (Dispatchers & Clerks, Patrolmen and Lieutenants) in this case, the Fact-finder considered the language in the parties’ agreements concerning the reopener provisions, the wages of public employees doing comparable work, the level of any wage increases over the past several years given to the bargaining unit, the Employer’s ability to pay, and the City’s current economic situation, among other factors.

The financial health of the City of Reading is best described as struggling, but stable. Due to sound fiscal management by its management team, expenditures have been controlled in order to meet budgetary constraints resulting from the loss of State funding, diminution of estate

taxes revenues, and lower property taxes from lower property values. Because its General Fund expenses have been greater than the General Fund Revenues, the Employer argues that a wage increase is inappropriate for this bargaining unit. The Union recognizes the ongoing financial challenges of the City, but in their view, six years without any wage increase, in light of other concessions made by the bargaining unit during those years, merits a wage increase for this last year of the current collective bargaining agreement.

The Fact-finder recognizes the concern of the City to give any increases in wages in 2015. It must also consider, however, the ability of its safety forces to effectively serve the public when their duties have increased due to reduced numbers in the force, and their salaries have not increased in six years. The City's Tax Budget for 2015 reflects expected increases in revenues in 2015 over 2014 (\$7,997,112 vs. \$7,659,060) and modest increases in expenditures (\$7,841,000 vs. \$7,797,595). Increased Income Tax Revenues through the first part of 2015 portends an overall trend in increased revenues, thus evidence, at least at the time of the hearing, supports the projected 2015 Budget. Considering the trend in increased revenues and the economic concessions taken by the bargaining unit over the last six years, an increase in wages is warranted.

The Fact-finder is mindful that General Fund Expenditures were greater than General Fund Revenues two out of the last four years, but without any analysis of carry-over surpluses by either party at the hearing, the long term effect of this cannot be determined. It appears from data submitted at the hearing, as set forth above, the deficit trend is being reversed due to sound fiscal management by the City and some bump in revenues.

It is worth noting that the City's proposal to increase wages based upon increases in the

General Fund, while purportedly meritorious, is fraught with problems. Since the General Fund can be increased, or decreased, based upon a re-apportionment by the City (e.g. property tax revenues can be apportioned between a Capital Improvements Fund or the General Fund), City management has the ability to control revenues in the General Fund. This is not to suggest, in any way, that the City intended to manipulate wages based upon this formula, but that the opportunity to do so makes such a formula fraught with problems. If it were determined that a Capital Fund allocation could be delayed one year, that would provide additional revenues for wages and benefits under the right financial conditions.

Evidence submitted by the City provided the impact from any wage increases for this bargaining unit. The total impact of a one percent (1%) increase to a five percent (5%) increase ranged from \$21,118.66 to \$105,593.30. The City was concerned not only about the impact of increases given to the Police units, but the “me too” effect of comparable increases to fire and other non-Police/Fire bargaining units. With no data presented at the hearing regarding the other bargaining units, the impact of collective bargaining by other units within the City could not be assessed.

From data presented by the City, it appears that Reading’s Police are paid more than police personnel in neighboring cities. This data was a little misleading, however, when considering the fact that these bargaining unit members are paying their entire portion of their pension, which is 8.5% for the Dispatchers and 9% for the Policemen. This substantially reduces the wages scale comparison if policemen in other jurisdictions are not doing the same.

Considering the current level of wages received without the prior employee-portion pension pick-up by the City, the increased health care premium payments, the expanded wage

scale steps agreed to by the bargaining unit, and the lack of any increase in the last six years, an increase is appropriate.

The Fact-finder does not believe that the Union's request for a four percent (4%) increase for the 2015 year reopener is appropriate. Based upon the cost impact on the City, such an increase would be inappropriate in light of projected revenues and expenditures for 2015. The Fact-finder does believe that a two percent (2%) increase is appropriate and affordable by the City in light of the financial data provided. This would impact the City by \$42,237, a cost well worth maintaining the safety of the community.

**RECOMMENDATION**

**It is recommended that Article XII – Wages, be modified as follows:**

**Wages:           A wage increase of 2%, effective January 1, 2015.**

**CONCLUSION**

In conclusion, this Fact-finder hereby submits the above-referenced recommendation on the outstanding issue presented to him for his consideration.

April 29, 2015

  
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JERRY B. SELLMAN, FACT-FINDER

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the Fact Finder's Report was sent via email, receipt confirmed, on April 29, 2015 to:

SERB

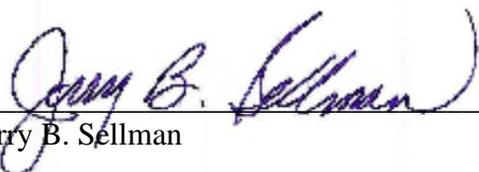
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