

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
September 16, 2015

In the Matter of:	)	
	)	
Fraternal Order of Police	)	
Ohio Labor Council, Lodge 1	)	
	)	SERB Case No.
	)	14-MED-10-1430
vs.	)	
	)	
	)	
The City of Steubenville	)	
	)	

APPEARANCES

For the FOP:

Chuck Aliff, Staff Representative for the FOP/OLC  
Ken Anderson, FOP Captain Representative Steubenville Police Department  
Joe Buchmelter, FOP Sergeant Representative Steubenville Police Department  
Karen Chociej, FOP Dispatcher Representative Steubenville Police Department  
Rob Cook, FOP Patrol Officer Representative, Steubenville Police Department

For the City of Steubenville:

Michael Esposito, Clemans, Nelson and Associates; Employer Advocate  
Gary Repella, Law Director, City of Steubenville

Fact Finder: Dennis M. Byrne

**Background**

This fact-finding involves the members of the Steubenville Police Department represented by the Fraternal Order of Police/Ohio Labor Council (FOP/Union) and the City of Steubenville (Employer/City). There are forty-two (42) members of the bargaining unit including four (4) Captains, six (6) Sergeants, twenty-seven (27) Patrolmen, and four (4) Dispatchers. Prior to the Fact Finding, the parties held six (6) negotiating sessions, but were unable to come to a final agreement, although they did tentatively agree on eight (8) articles. Before the formal Fact Finding Hearing, the Fact Finder attempted to mediate the dispute, and eight (8) more articles were settled. The settled articles were 1) Internal Investigations, 2) Discipline, 3) Sick Leave, 4) Benefits guaranteed by City Ordinance inserted into the contract, 5) Hospitalization, 6) Zipper Clause, 7) Promotions, and 8) Injured on Duty Leave. In addition, the Union withdrew its demand for a new article specifying employee rights, and the City withdrew its proposed language on minimum manning. However, there are twelve (12) issues that are still open. These issues are: 1) Article 7 Safety Equipment, 2) Article 10 Manning, 3) Article 18 Overtime, 4) Article 19 Wages, 5) Article 20 Longevity, 6) Article 22 Vacations, 7) Article 23 Holidays/Personal Days, 8) Article 24 Court Time, 9) Article 25 Educational Bonus, 10) Article 26 Uniform Allowance, 11) Article 34 Duration, and 12) a new Article on Midterm Bargaining.

The Hearing was held over two days. The first day, devoted to mediation was August 12, 2015, and the second day devoted to the formal hearing was August 28, 2015. Both days started at 10:00 A.M. and ended at approximately 5:00 P.M. The hearing(s)

were held at the Steubenville City Building located at 123 S. 3<sup>rd</sup> Street, Steubenville, Ohio.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 private employment.

### **Introduction:**

The dispute between the parties has a number of causes. One major area of disagreement is found in the parties' bargaining history. The City and the Union have bargained since the passage of ORC 4117. Beginning with the bargaining cycle that led to the parties' contract signed in 2000, the parties began to bifurcate issues. That is, new hires were put on a different vacation schedule, wage scale, etc., compared to continuing members of Lodge 1. The "new hires" have gradually increased their numbers over time and now represent a majority of the department. The Union membership is now demanding that all members of the Steubenville Police Department be placed in the same position with regard to all contract clauses.

The City believes that this is an attempt to unwind numerous agreements between the parties. Furthermore, the City argues that the Union is not making any concessions in an attempt to “buyback” any of the contested articles. The city believes that 1) it cannot afford to meet the Union’s demands, and 2) that there is no reason for it to meet the Union’s demands absent some Quid pro Quo. Consequently, a large number of open issues reflect this divide between the Union’s demand for an end to bifurcated contract clauses and the Employer’s belief that these agreements represent past negotiated solutions to complex issues.

A second source of friction is the City’s insistence that it can no longer pay the overtime earned by the Union membership. The City pointed out that there was a spike in overtime payments to the patrolmen during 2014. The City believes that it must find some way to reduce its overtime liability and made a number of demands for language changes and concessions related to overtime that the Union rejected. The City’s focus on reducing overtime costs led to a number of demands to change language that had been in the contract for years. The Union rejected all of these demands. Therefore, the City’s demands related to overtime are the main reason for a number of unsettled issues.

However, the greatest problem that divides the parties is a divergence of opinion on 1) the City’s ability to fund the Union’s demands, and 2) whether the City should meet the Union’s demands. The parties’ positions on these issues are based on their view of the City’s current and future financial condition. This discussion leads inexorably to a discussion of comparables. The City’s list and the Union’s list of comparable jurisdictions have only a few jurisdictions in common, i.e., the lists of jurisdictions that are considered as comparable are very different. Ultimately, the Fact Finder must decide

what represents a comparable jurisdiction to Steubenville. This is not the best way to handle this problem. It would be preferable that the parties agree on a list of comparable jurisdictions. However, given the dependence on comparables data as a justification for both parties' position(s) on the issues, the Fact Finder must decide which jurisdictions that he believes are comparable to Steubenville.

There is also one final unique aspect of this negotiation that made it difficult for the parties to reach a negotiated settlement. In this case, both chief negotiators were replaced during negotiations. Consequently, there was no continuity on either side of the table. This "change of horses in midstream" resulted in a loss of institutional memory. That caused problems because institutional memory is an extremely important feature of any negotiation. For example, the parties often could not remember the exact circumstances that prevailed when the clauses that they were attempting to change were inserted into the contract. That is, they were submitting language to change contract clauses without knowing what tradeoffs were made when the offending language was inserted into the contract. This made the negotiations very time consuming because the parties were often trying to determine why a specific clause was negotiated into the agreement when no one on either side of the table knew (could remember) the specific details surrounding issues that they were attempting to change.

Therefore, before each specific issue is addressed some general discussion of the parties' bargaining history is necessary. The issues surrounding comparability will be discussed in the Section of the report dealing with wages.

Steubenville has weathered the gradual decline of the steel industry and the Great Recession better than many of the surrounding jurisdictions in the Mahoning and Ohio

River Vallies. One reason is that the political leadership in Steubenville seems to have foreseen the impending economic maelstrom that resulted from the collapse of the steel industry. Consequently, Steubenville reacted to the changing economic environment earlier than many other cities and towns up and down the Ohio River. One way that the City tried to deal with the decline in its financial prospects was to negotiate contracts with its unionized employees based on the assumption that the City's financial condition would deteriorate over time. As a result, the parties negotiated bifurcated contract clauses that did not penalize current employees but did reduce future labor costs.

Therefore, the City was able to maintain a relatively stable work force that did not have the same worries about job security as workers in other cities along the river. In addition, the parties often agreed to freeze or curtail wage increases, especially during and after the Great Recession. This financial acumen meant that the City and its employees were spared many of the problems that plagued other jurisdictions in the surrounding area. The Fact Finder believes that the past tradeoffs worked the way that the parties intended.

Unfortunately, bifurcated wage scales and benefit packages often cause problems between labor and management because Unions and their members believe in equal pay for equal work. However, for a Fact Finder to recommend that the entire gamut of bifurcated wage and benefit clauses found in this contract be changed would undo the results of numerous negotiations that have been successful in avoiding both labor strife and contractual obligations that would cause financial problems for both the City and its employees.

Therefore, the Fact Finder believes that the burden of proof is on the Union, as the moving party, to prove that each of the contract clauses that contain bifurcation language is now outdated for a demonstrable reason. The assertion that the Union and its membership no longer want to accept tradeoffs negotiated and ratified in the past is insufficient reason for this Fact Finder to recommend changing the “deals” that were negotiated in good faith and that seem to have worked to the benefit of both the City and its employees..

**Issue:** Article 7: Safety Equipment

**Union Position:** The Union demands that language found in Article 7.1.C. be deleted from the contract. That language requires officers hired after 5/13/13 to provide their own service weapon.

**Employer’s Position:** The Employer rejects the Union’s demand and counters with current contract language.

**Discussion:** The discussion on this issue mirrors the discussion on many of the issues that divide the parties during this negotiation. The Union argues that almost all police departments provide their officers with an approved service weapon. The Union also points out that the City can change the required weapon at any time without any input from the Union. According to the Union the cost of a weapon is in the vicinity of \$650.00 dollars, and this is a significant amount of money to come out a new employee’s take home pay. Therefore, the Union believes that the Employer should provide an officer’s service weapon.

The Employer argues that the tradeoff for newly hired officers purchasing their own service weapon was that the employed officers were able to keep their "outdated" service weapons when the changeover occurred. When the City decided to change the recommended service weapon, the City paid for the then employed officers' new weapon, and allowed these officers to keep their old weapon. This was the quid pro quo for the current language in the Safety Equipment Article. Moreover this tradeoff (language) was suggested by the Union.

The City stated that it would be willing to consider a change in the current language, but only if the Union was willing to make some offer to recompense the City for any additional cost. The Union was unwilling to consider this demand. Therefore, the City believes that the facts of the situation justify its rejection of the Union's proposal.

The Fact Finder understands the Union's position on this issue. If an officer has to replace his/her service weapon at regular intervals, the cost may be substantial. However, there was no discussion that the City changed its required weapon very often, and there was no offer of any quid pro quo by the Union for changes in the language in question.

**Finding of Fact:** The Union did not prove that the offending language should be removed from the contract in light of the circumstances surrounding the original agreement.

**Suggested Language:** Current Contract Language

**Issue:** Article 10: Manning

**Union Position:** The Union demand is for current contract language.

**Employer's Position:** The Employer demands changes in the language of Article 10.C that would allow the Department to use part-time employees to man the 4:00 P.M. to 12:00 A.M. shift if the overtime cost of maintaining at least four (4) officers on the shift exceeds the current overtime cost cap of \$23,000.00 found in the contract.

**Discussion:** The Union is adamantly against the use of part-time employees to cut the overtime cost of the current contract. The Employer presented evidence that overtime costs were rising rapidly and used this evidence to buttress its demand that it would use any means available to control costs. The Union testified that the overtime costs incurred by the City were the result of a conscious decision by City Officials to staff the Afternoon Shift with a minimum of four (4) officers because of serious law enforcement problems in one area of the City. According to the Chief, the City will always staff the Afternoon Shift with at least four (4) full time officers regardless of the amount of overtime that entails. In light of this information, the City withdrew its demand to change the manning clause while maintaining that it had the right to use any means possible to control overtime.<sup>1</sup>

The Fact Finder believes that the testimony proffered in the hearing shows that the City agrees that it will have to use at least four (4) officers on the 4:00 P.M. to 12:00 A.M. shift. Moreover, there was no evidence put forth by the City to show that its rising part time costs related to the shift were caused by any Union action. The Fact Finder also

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<sup>1</sup> The parties did not present data on overtime use (payments) for the current year. The Union presented data for January 2015, but no later data was submitted. Therefore, the Fact Finder has no way to determine whether the increase in overtime is continuing.

notes that the City has put forth another demand with respect to its right to hire part time workers. Therefore given the testimony in the record, the Fact Finder does not believe that there should be any changes in the Manning Clause.

**Finding of Fact:** The Employer did not prove that the minimum manning provision was the root cause of the City's rising overtime costs. Rather, the testimony showed that the overtime costs were caused in large part by the need to provide police service to the citizenry, especially in one or two high crime areas within Steubenville.

**Suggested Language:** Current Contract Language.

**Issue:** Article 18: Overtime

**Union Position:** The Union rejects the Employer's demand and counters with current contract language.

**Employer's Position:** The Employer demands a change in the language to move from a forty (40) hour work period with overtime paid after eight (8) hours per shift to a fourteen (14) day work period with overtime paid for all time worked in excess of eighty (80) hours. In addition, the City demands that only time actually worked will be used in the calculation of overtime. Finally, the Employer demands that call-ins shall be paid at the employee's hourly rate and that the current three (3) hour minimum call-in pay shall not apply if the call-in abuts the employee's normal shift.

**Discussion:** The Employer's position on this issue would change the overtime payment calculations dramatically. The move from a seven (7) day, eight (8) hour work period with overtime paid at time and one-half to a fourteen (14) day period with overtime calculated on time actually worked may lead to many changes in the work schedules of

the police personnel. An examination of Article 17 and Article 18 shows that the only definition of a workday is found in Article 18, which the Employer is proposing to change. However, the Fact Finder does not believe that the Employer has any desire to change the usual definition of the workday from the current eight (8) hours.

The Employer does want to change the definition of time worked from the current time paid concept to an actual hours of work concept. This is a significant change that would lead to less overtime for all employees. The situation in Steubenville is unusual in that all time paid is considered as time worked. This implies that vacations, sick leave, holidays, etc. all count toward the definition of work for the calculation of overtime. The Employer's demand would end the current system.

The same situation is found in the Employer's proposed language for the dispatchers. Hours of work will count only hours actually working at the console. This will lead to less overtime for the dispatch unit.

Finally, the minimum call in payment calculation would also change under the Employer's proposal. First, call-ins that abut the employees' regularly scheduled shifts would not be eligible for the three (3) hour minimum call-in. Second, all call-ins would be paid at the employee's straight time rate rather than time and one-half. Taken as a package, these proposals would have a substantial impact on the Union membership.

The rationale for the Employer's position is found in the Employer's exhibit that shows that the amount of overtime paid rose by over forty (40%) per cent between 2013 and 2014. The City believes that it cannot continue to pay overtime of approximately \$200,000.00 dollars per year. The proposals put forth above are all designed to reduce the overtime paid. While the Fact Finder is convinced that the City needs to rein in

overtime payments, he is not convinced that the changes demanded by the City are reasonable. This is especially true given the testimony that much of the overtime growth was caused by a need to provide police services to certain sections of the City.

Steubenville is unique in that it counts all paid time as time worked. There are very few jurisdictions throughout Ohio or the Nation that still define hours worked as hours paid. At a minimum almost no jurisdictions count sick leave as time worked. Many jurisdictions are moving or have already defined time worked as actual hours on the job. The Fact Finder believes that an adjustment to the definition of hours worked that excludes sick leave is reasonable and consistent with the standard practice throughout Ohio and the Nation.

The Fact Finder also finds that the Employer has demonstrated that there is a reason to believe that there may be a problem with overtime use. However, with the lack of data on the issue, 2014 could have been an anomaly, and recommending massive changes in the overtime article does not seem warranted at this time. If overtime use proves to be a continuing problem, then the Employer will have a much stronger justification for the language changes that it is suggesting in Article 18. However at this time, the Fact Finder does not find that the Employer proved a need for its other suggested changes to Article 18. If overtime continues to grow, then future negotiations are the forum to discuss further changes to the wording of Article 18.

**Finding of Fact:** Overtime costs have soared over the past year. If that is the start of a trend, then the Employer will have a pressing need to control overtime payments in the Police Department.

**Suggested Language:** Article 18: Overtime

Section 18.1. Overtime shall be defined as hours worked over and above the normal forty (40) hours in a one (1) week period or eight (8) consecutive hours in a one (1) day work period and such hours shall be compensated at one and on-half the regular hourly rate.

Section 18.2. Time paid, with the exception of sick leave, will count as actual time worked for overtime purposes. There shall be no pyramiding of overtime.

Section 18.3. There shall be no banking of overtime in lieu of cash payments.

Section 18.4. Employees called in during a non-scheduled work time shall be paid a minimum three (3) hours or actual time, whichever is greater, at the rate of time and one-half

Section 18.5. The minimum three (3) hours call back guarantee shall not apply where such call back abuts the beginning or ending of the work turn. Also, there shall not be more than one (1) guaranteed three (3) hour call back during any twenty-four (24) hour period. Provided, however, a bargaining unit member called in two (2) hours or more, but not more than four (4) hours, prior to a scheduled turn shall be paid a minimum of three (3) hours at the rate of time and one-half.

**Issue:** Article 19: Wages

**Union Position:** The Union demands four (4) changes in the compensation article: 1) a three (3.0%) per-cent per year across the board increase for each member of the bargaining unit; 2) an equity adjustment of two dollars and fifty cents (\$2.50) per hour for the dispatchers; 3) an end to the two-tiered wage scale; and 4) when a Captain fills in for the Chief, he/she will receive Superior Officer pay.

**Employer Position:** The Employer is offering two and one fifth (2.2%) per-cent for each year of the prospective contract. The Employer rejects the other parts of the Union's wage proposal.

**Discussion:** The parties submitted voluminous data in support of their positions on this issue.<sup>2</sup> The Union's conclusion is the City is in good financial condition and can more than afford to fund each of its demands. The City's presentation shows that the City is currently in good financial condition, but the City's analysis also posits that its General Fund and carryover balance will be declining precipitously in the coming years. Therefore, the City argues that it must continue to control expenditures because of looming financial problems. The City cites changes in estate taxes, declining revenue from the State, and flat income tax revenues for its dim financial outlook.

The Fact Finder, after analyzing all of the data presented by the parties, finds 1) currently the City is not experiencing any financial difficulties; 2) the intermediate term outlook is less clear. In a perfect world, the City would find some ways to enhance its revenue streams. The main source would probably have been the shale oil industry, but the collapse in oil prices makes that source of revenue uncertain. Therefore, the Fact Finder believes that the City must be careful in undertaking new financial liabilities given that there is no reason to believe that its revenues will show substantial, sustained growth.

There are a few other points that need some mention. First, the Union and to a lesser degree the City spent an inordinate amount of effort in discussing and analyzing the City's General Fund Balance. A General Fund carryover must be examined with care. A carryover balance is necessary because expenses flow in a stream and revenues are lumpy. In general, the carryover balance should be able to fund the City's expenses during times when revenues are stagnant. The usual example is that income tax revenues

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<sup>2</sup> Each party presented hundreds of pages of financial data and analysis. The Fact Finder has read and analyzed every page and will only summarize his findings in this report.

begin to flow in during April, and the carryover is needed to fund expenditures during the months of January, February, and March.

There are various “rules” that have been derived to determine the optimal size of the carryover balance. In general, if any jurisdiction has two months of expenses carried over from one year to the next, the jurisdiction is in decent (good) financial shape. Changes in the carryover from one year to the next, unless the change is dramatic, often offer little insight into a jurisdiction’s financial condition unless the change is part of a trend. In this particular negotiation the parties spent too much time and effort analyzing the City’s General Fund. Currently, the General Fund is in good shape. The problem is that the future forecast is for a steady decline in the Fund balance. With respect to the forecasted decline in revenues, the Fact Finder believes that the City’s forecasts are very conservative. However, there is reason for concern based on the data presented by both parties.

The second, more serious, problem is that the parties did not agree on a list of comparable jurisdictions. Any wage demand encompasses two different parts. The first is the ability to pay. The Fact Finder agrees with the Union that the City can meet its demands. However, the second component of a wage issue is whether the City should pay the Union’s demand. The way the second question is answered depends on the criteria used to make the decision. In Ohio, the use of comparables data is the approach taken to analyze whether or not a jurisdiction should meet the Union’s demands. That is, if a jurisdiction has the ability to pay and comparables data show that its employees are underpaid compared to others performing the same or similar work, then there is strong evidence that the jurisdiction should pay its employees more. On the other hand, if the

comparables data show that the employees are not underpaid when compared to other jurisdictions, then there is less reason for the City to meet the Union's demands.

In this case, the parties' comparables lists had some overlap. Both lists contained Salem and East Liverpool. The Union's list also contained North Canton, New Philadelphia, Mt. Vernon, and Dover. The City's list contained Alliance, Columbiana, Martin's Ferry, St. Clairsville, Toronto, and Uhrichville. The difference is the way that the parties compiled their lists. The Employer used a "Labor Market" approach to compiling its list. That is, the Employer looked for jurisdictions in the same geographic area. The Union's list is less easily characterized. However, it seems to be that jurisdictions further from Steubenville, outside the Steubenville labor market, that had some similar socioeconomic characteristics were also identified and selected. Again, the comparables lists are important because both sides buttressed their arguments on this issue based on the wage data (comparables) found in other jurisdictions.

The Fact Finder used the parties' lists as the raw data to determine which other jurisdictions that he found comparable to Steubenville. The lists were pared down based on distance from Steubenville and per capita income levels. That is, any jurisdiction that was over 100 miles and/or a two-hour drive from Steubenville was not considered comparable. These jurisdictions do not face the same economic conditions found in the Mahoning/Ohio River area. Also, jurisdictions with significantly different levels of per capita income will have different resource constraints than Steubenville; and therefore, these jurisdictions were also not considered comparable to Steubenville. The list of jurisdictions that the Fact Finder believes are comparable to Steubenville are: Alliance, Columbiana, Dover, East Liverpool, Martin's Ferry, New Philadelphia, Salem, and

Toronto.<sup>3</sup> The following table shows the relative wage position of the Steubenville officers and dispatchers compared to comparable jurisdictions.

<u>Wages</u>		
Rank	Minimum	Maximum
Captains	\$26.64 (\$27.35)	\$27.32 (\$28.42)
Sergeants	\$24.50 (\$25.13)	\$24.60 (\$26.20)
Patrolmen	\$17.44 (\$19.16)	\$23.13 (\$23.55)
Dispatchers	\$14.80 (\$14.55)	\$18.16 (\$15.31)

**Source:** Data in the parties' submissions. Figures in parentheses are Steubenville data.

These data show that the Steubenville police personnel, with the exception of the maximum rate for dispatchers are not underpaid with respect to other jurisdictions. If the jurisdictions are rank ordered from highest to lowest, Steubenville is at or near the top in every instance with the exception maximum rank for the Dispatch Unit (see footnote 2).

It is clear that these data do not support a finding that the Police Personnel in Steubenville are underpaid with respect to other comparable jurisdictions with the possible exception of the dispatchers' top rate. Based on the information outlined above and considering the fact that the City can afford to fund raises, and in light of the uncertainty surrounding the financial future of Steubenville, the Fact Finder is recommending the City's offer of a two and one fifth (2.2%) percent raise for each year of the proposed contract. In addition, the Fact Finder is recommending a one-dollar (\$1.00) equity adjustment be added to the dispatchers' wage rates.

The Union's proposal that the bifurcated wage schedule be adjusted so that the officers hired after June 1, 1999 receive the same twelve (\$1,200.00) hundred dollar lump

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2. Dover and New Philadelphia are the least comparable jurisdictions compared to the others on the Fact Finder's list. They are located the farthest away in Stark County, and they also pay more than any other jurisdictions closer to Steubenville.

sum adjustment to their wages that twenty year (20) employees earn is not ripe for discussion. There was no discussion of the tradeoffs, etc., that were made for the inclusion of that language into the contract. Moreover, there will be at least one more round of negotiations before that language affects any member of the Department. Future negotiations are the place to discuss that issue in depth.

Finally, the Fact Finder is not recommending that the last sentence of Section 19.6 be deleted from the contract. It is standard in police contracts that any individual who replaces a superior officer be paid for the time worked in the position. However, there was little (no) discussion of this issue. Therefore, the Fact Finder is not sure why the language is in the parties' contract. Given the unusual clauses that have been negotiated into this contract over the years and the tradeoffs that have been made, the Fact Finder does not believe that he has adequate information to recommend changing this language. But given the fact that the cost implications should be minimal, an argument can be advanced that any Captain performing the duties of the Chief should be paid for his/her efforts. This is another issue that should be addressed in future negotiations.

**Finding of Fact:** The comparables data do not show that the members of the Steubenville Police Department are underpaid.

**Suggested Language:** The wage rates in Article 19 shall be adjusted to show a 2.2% raise in each year of the prospective contract. In addition, the wage rates for Communications Officers (dispatchers) shall be adjusted to show an equity adjustment of \$1.00 per hour.

**Issue:** Article 20: Longevity

**Union Position:** The Union demands current contract language.

**Employer Position:** The City wants to 1) cap the current longevity schedule at \$1,000.00 for current employees, and 2) eliminate longevity for all employees hired after the execution of this agreement.

**Discussion:** The City has negotiated an end to longevity for new employees with the AFSCME bargaining unit. The City stated that it is attempting to end longevity for all new hires because its wage scale is so far above comparable jurisdictions that there is no need for a longevity payment. However, longevity is a way that any Employer rewards good employees for staying with the Employer rather than looking for another position. Therefore, the rationale given by the Employer is not germane to a discussion of a longevity payment. The payment is intended to give employees an incentive to stay with the Employer. Consequently, there should be less turn over and lower total labor costs associated with a competitive longevity payment.

In addition, regardless of which list of comparables is examined, all other jurisdictions on the parties' lists of comparable jurisdictions have a longevity payment schedule. An examination of the City's list of comparables shows that the Steubenville longevity payment is substandard for the first fifteen years of employment. It is similar to the payments of other jurisdictions for the 16<sup>th</sup> through the 25<sup>th</sup> years of employment. The Steubenville longevity scale is above the scale paid on the City's comparables list after the 25<sup>th</sup> year of employment. Therefore, the City's own data does not show that the current longevity scale is overly generous for any employee with less than twenty-five years of service.

**Finding of Fact:** The City's data does not show that the current longevity scale is overly generous. Moreover, the parties' comparables lists show that longevity is a standard benefit in all police departments.

**Suggested Language:** Current Contract Language.

**Issue:** Article 22: Vacations

**Union Position:** The Union demands that all of Lodge 1's membership receive the same number of vacation weeks. That is, the Union demands that the language that states that employees hired after May 31, 2013, are not able to earn the same number of vacation weeks as all employees hired prior to May 31, 2013 should be deleted from the contract.

**Employer Position:** The City rejects the Union's demand.

**Discussion:** This is a situation where the Union membership desires to change the terms of an agreement reached during the last round of negotiations. The Union testified that the more senior members of the Department could earn up to eight (8) weeks of vacation, but the less tenured personnel could earn only five (5) weeks of vacation. The Union presented evidence showing that if compensatory time is factored into the equation, then the amount of vacation time off earned by the longer tenured employees is not excessive.

The City objected to the Union's presentation because it stated that it had offered a comp time proposal to the Union during negotiations and that proposal was rejected. The Sheriff's representatives testified that the new schedule was a tradeoff for changes in other articles during the last round of negotiations and the Union had offered no quid pro quo for its suggested changes in the vacation article.

The Fact Finder notes that eight (8) weeks of vacation is excessive in Ohio. The norm is either five (5) or six (6) weeks. Moreover, regardless of whatever jurisdictions are considered comparable to Steubenville, no other jurisdiction allows its employees to earn eight (8) weeks of vacation; and only one other jurisdiction, East Liverpool, has a seventh week of vacation on its vacation scale. Parenthetically, it can be assumed that the Steubenville and East Liverpool vacation schedules are vestiges of the steel industry contracts that were negotiated decades ago. The vacation schedule for new hires that is capped at five (5) weeks is found in many other contracts and is the last step on numerous vacation schedules. Given all of the information in the record, the Fact Finder does not believe that the Union met its burden of proof on this issue.

**Finding of Fact:** The Union did not prove that the vacation schedule negotiated during the last round of negotiations should be changed.

**Suggested Language:** Current Contract Language.

**Issue:** Article 23: Holidays/Personal Days

**Union Position:** The Union demands that the language that prohibits employees hired after May 31, 2013 from receiving bi-annual holiday pay be deleted from the contract.

Furthermore, the Union rejects the City's demands on this issue.

**Employer Position:** The City wants eliminate Good Friday as a holiday and it also proposes that the employee must work the shift before the holiday (if scheduled) and the day after the holiday to be eligible for holiday pay. Finally, the Employer wants to reduce the number of personal days by one (1) day for employees with fewer than five (5) years of service and two (2) days for employees with more than five (5) years of service.

**Discussion:** This is a situation where an understanding of the bargaining history between the parties is necessary to understand the parties' positions. The employees hired after May 31, 2013 only receive holiday pay if they are scheduled to work the holiday. That is these employees only receive four or five days of holiday pay depending on the number of days that they are scheduled to work. All other employees receive twelve and one-half (12 ½) holidays. In addition, the employees with longer tenure receive biannual payments for holidays not worked. In other words, the less tenured employees receive a severely truncated holiday benefit. The Union estimates that the current language leads to a 40% - 60% reduction in holidays per year. This may amount to over a fifty thousand (\$50,000.00) dollar reduction in holiday pay over a twenty-five (25) year career. This seems to be a glaring inequity.

However, the City's Law Director testified that during the last round of negotiations, the Union agreed to (suggested?) this language as a tradeoff for a General Wage increase. That is, the Union wanted a wage increment for all of its members when other City employees were getting no raises, and the tradeoff was the change in the holiday schedule for the less tenured employees.

The Union membership ratified the proposed holiday language when they ratified the entire agreement. The membership now believes 1) that it made a bad deal or 2) the age/tenure distribution of the membership has now changed and there are enough employees with less tenure who wish to undo the actions taken by the entire membership during the last round of negotiations. The City offered to discuss the issue, but stated that there had to be a quid pro quo. The Union did not accept the City's offer to negotiate a wage concession, etc.

Turning to the City's proposals: there was no testimony that the Holiday/Personal day language was creating any problems overall. That is, the City's demands seem to be based on a desire to get the language in the Steubenville contract in line with what the City argues are comparable jurisdictions. Without knowing what tradeoffs were made in order to get the current benefit into the contract, the Fact Finder does not believe that either party proved that there needs to be any changes in this article.

**Finding of Fact:** Even though Holiday language for the less tenured members of the Department is highly unusual and diminishes the benefit to those employees; it was the product of a negotiation for a General Wage Increase. With respect to the Employer's demands, the Employer did not prove that there was any need to change the current Holiday/Personal Day language in the contract.

**Suggested Language:** Current Contract Language.

**Issue:** Article 24: Court time

**Union Position:** The Union rejects the City's position and counters with current contract language.

**Employer Position:** The City demands that time spent contiguous to the employee's regularly scheduled shift shall not be eligible for payments for court time. In addition, the City also demands that Court Time be paid at straight time rather than time and one-half for any hours spent in court in excess of three (3) hours.

**Discussion:** The Employer's proposal is a departure from the current system that pays the employees three hours of call-out time (overtime) for appearances in court. If the employee has to be in court for more than three (3) hours, any additional time is paid at

time and one half. The City proposes to stop payment for court time if the time is scheduled immediately before or after (abuts) the employee's shift. That is, the hours would simply be hours worked, i.e., it would be part of the work period. If the court time appearance pushed the officer over forty hours of work for week then the time would be paid at the overtime rate. Any time in excess of three (3) hours would be paid at the employee's hourly rate rather than the overtime rate. The Employer argued that it had to control overtime use and this was one way to attack the problem

Court time is part of a police officer's job, and the officer often has to report for court when he/she is not scheduled to work. Almost all jurisdictions pay an officer for appearing in Court. However, there are many jurisdictions that pay the officer straight time for court time hours that abut the officer's regularly scheduled hours. If the overtime problem continues for the life of the contract, the parties may have to look at the payment for Court Time, especially for hours that abut an officer's regularly scheduled shift.

The Fact Finder understands the City's desire to control overtime, but this is a standard benefit that has been in the contract for years. Without some evidence that the amount of Court Time is excessive and that it is causing some financial problems for the Employer, the Fact Finder cannot recommend changes to this Article.

**Finding of Fact:** the Employer did not prove that there was a need to change the current Court Time payment system in Steubenville.

**Suggested Language:** Current Contract Language.

**Issue:** Article 25: College Education

**Union Position:** The Union demands an end to the bifurcated system of educational bonuses paid to the members of the Police Department.

**Employer Position:** The Employer proposes to eliminate the bonuses paid to the employees based on educational attainment.

**Discussion:** The educational bonus language found in the parties' contract is unusual. The bonus is a twelve hundred dollar (\$1,200.00) annual bonus for an Associate's degree, a twenty-four hundred dollar (\$2,400.00) annual bonus for a Bachelor's degree, and a forty-eight hundred dollar (\$4,800.00) annual bonus for a Master's degree. For example, assuming that an officer joins the Police Department with an Associate's degree, earns a Bachelor's degree in four years, and works thirty years and retires at age fifty-two, the current language would mean that this officer would earn \$66,700.00 extra over the span of his/her career. This would equate to approximately two million eight hundred thousand (\$2,800,000.00) summed over all employees time served with the Police Department if each member of the bargaining unit followed the career path used in the example. This works out to approximately ninety-three thousand dollars (\$93,000.00) per year payment for the entire unit.

The Fact Finder is unaware of any other educational bonus plan that pays anything like that amount per year. It is also worth noting that the above example does not assume that any member of the Department has a Master's degree. According to the information supplied by the parties, educational bonus language is found in the contracts of most comparable jurisdictions. However, that language usually requires the Employer to pay for college classes and/or pay some amount for earning a degree. That amount is,

according to the data submitted by the parties, reasonable. For example, a number of jurisdictions in the Union's submission pay twelve (\$.12) cents per hour for a Bachelor's degree. This amounts to two hundred and eighty-eight (\$288.00) dollars per year assuming the officer works twenty-four hundred (2,400) hours per year.

The result of this "analysis" is that the Fact Finder is sympathetic to the Union's position that the contract should contain educational bonus language for all employees. However, the Union must negotiate with the Employer on a realistic bonus. The Fact Finder could craft language for the parties, but this is an area where substantive negotiations are needed. Proposals and counter proposals should be exchanged and substantive discussions on the issue should ensue.

The Fact Finder is unsure why the current language is in the contract. It may be a vestige of another time when the steel industry was vibrant and money to pay for education was plentiful. Regardless, the Fact Finder is not aware of any police contracts in the State of Ohio that pays over \$2,000.00 a year as an educational bonus.

**Finding of Fact:** The educational bonus demand made by the Union is excessive. Given the lack of proposals, discussions on the issue, the Fact Finder believes that the issue is not ripe for Fact Finding at the current time. The parties should negotiate for the inclusion of a realistic educational bonus into the contract during the next round of negotiations.

**Suggested Language:** Current Contract Language.

**Issue:** Article 25: Clothing Allowance

**Union Position:** The Union demands an increase in the clothing allowance from four hundred and ninety (\$490.00) dollars to eight hundred (\$800.00) dollars in the first year, nine hundred (\$900.00) dollars in the second year, and nine hundred and fifty (\$950.00) in the third year of the prospective contract.

**Employer Position:** The Employer rejects the Union's demand and counters with current contract language.

**Discussion:** This is another somewhat unusual situation. The clothing allowance was four hundred (\$400.00) dollars in 1992 and it has risen only to ninety dollars (\$90.00) in twenty-three years. Four hundred (\$400.00) was a reasonable (generous) clothing allowance in 1992. However, given the costs of uniforms, cleaning, and replacement of clothing articles and shoes, etc. four hundred and ninety (\$490.00) dollars is not sufficient. This is especially true because the officers now have to buy their own weapon. There was no testimony of whether the Employer supplies the required leathers, but the Fact Finder assumes that the officers are also responsible for leathers. There was also no testimony on whether the Department requires and provides bulletproof vests.

Given the facts of the situation, the Fact Finder believes that the Union has proved its contention that the clothing allowance should be increased. The question is the amount of the increase. Given the information supplied by the Union, the Fact Finder believes that an increase of two hundred and sixty dollars (\$260.00) is a reasonable figure. This will increase the clothing allowance to seven hundred and fifty (\$750.00) dollars.

**Finding of Fact:** The clothing allowance has not increased over decades, and the current allowance is insufficient to maintain uniforms.

**Suggested Language:**

**Section 26.1.** Each bargaining unit member shall be entitled to a clothing allowance, as follows, payable in the first pay period of January, of each year.

Effective 1-1-15	\$750.00
Effective 1-1-16	\$750.00
Effective 1-1-17	\$750.00

**Section 26.2.** The aforementioned clothing allowance shall be prorated for any member of the Police Department who retires in any given year.

**Issue:** Article 34: Duration

**Union Position:** The Union demands that the term of the contract be for three (3) years starting on January 1, 2015 and ending on December 31, 2017. The Union also demands that rather than certified mail service of the intent to bargain that the parties notify each other by email (electronically).

**City Position:** The City demands that the contract run for three (3) starting at the date that the prospective contract is ratified by both parties.

**Discussion:** The difference in the parties' positions concerns retroactivity. If the contract is retroactive to January 1, 2015, then the Employer will have to make a lump sum payment for any wage increases, etc. If the contract starts on the day it is ratified, then the wage increases, etc., are prospective and there is no lump sum payment to the employees.

An examination of the Union's submission on this issue shows that the parties have historically negotiated three (3) year agreements that terminated on May 31<sup>st</sup>. However during the last round of negotiations, the parties negotiated a nineteen (19) month agreement that terminated on December 31, 2014. Therefore the evidence seems

to show that a termination date of December 31<sup>st</sup> was the parties' preferred termination date.

Therefore, the Union is demanding the status quo in terms of the termination date of the current contract. Because it is demanding a change in the status quo, the burden of proof falls on the Employer to justify its position. In this case, the City argued that the reason that negotiations dragged on for so long is that the Union did not show any sense of urgency to finish negotiations and sign a contract. It is true that this negotiation took a prolonged period, but the main reason is that both parties switched negotiators during negotiations for the prospective contract. Therefore, both parties bear some responsibility for the drawn out negotiating cycle.

As to the Union's second demand that service of the intent to negotiate be exchanged by email: the Fact Finder believes that public sector negotiations take place under the aegis of SERB, and the Fact Finder believes that the parties should follow SERB rules on this issue.

**Finding of Fact:** The Employer did not prove that there was a need to change the termination date of the contract. This is especially true since the parties changed their historic pattern of an ending date of May 31<sup>st</sup> during negotiations for the current contract.

**Suggested Language:**

Section 34.1 This Agreement shall be effective as of January 1, 2015, and shall remain in full force and effect until December 31, 2017, unless otherwise terminated as provided herein.

If either party desires to modify, amend, or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, no later sixty (60) calendar days prior to the expiration of this Agreement. Such notice shall be in accord with SERB regulations.

**Issue:** Article (New) Midterm Bargaining

**Union Position:** If any midterm bargaining language is put into the contract, the Union wants it to mirror the language found in ORC 4117 including a conciliation procedure if the parties cannot agree on any issue raised in any midterm negotiations.

**Employer Position:** The Employer wants to add language memorializing the fact that it has the right to act, if the need arises, on any issue not covered by the contract under the Management's Rights Clause of the contract.

**Discussion:** During the negotiations for the prospective agreement, the parties agreed to add a Zipper Clause to the contract. That clause is standard and states that the signed contract is the complete agreement between the parties. In addition, the Employer proposes to add a Midterm Bargaining Clause that allows it to act on any issue that may arise that is not covered by the existing contract. The Employer's suggested language requires that it must bargain with the Union over the effects on the Union membership of any action that the Employer takes during the term of the agreement.

The Union does not wish to have any language in the contract over Midterm Bargaining. However in light of the language proposed by the Employer, the Union countered with a three page document that is essentially the language found in ORC 4117 for bargaining between an Employer and its employees, including a conciliation procedure. The Employer rejected the Union's proposal. The Union then suggested that Management drop its proposal. The Employer also rejected that proposal.

During the discussions on this issue, the Union stated that the Employer's focus on excessive overtime payments seemed to imply that the City was considering hiring part-time employees in an effort to save money. The Employer stated that there was no current plan to use part-time employees, but if the need arose and overtime payments continued to increase, then the Employer would have to consider the use of part time employees.

From the discussion of the various issues on the table, it should be clear that the Fact Finder believes the amount of overtime paid by the City *may* (emphasis added) be a problem. However with only one year of data that showed a spike in overtime, there is not enough information to prove that a problem with overtime payments actually exists. Moreover, the testimony at the hearing proved that there is no real agreement on the cause of any long-term increase in overtime.

In response to the perceived problems caused by a large and growing overtime cost, the Employer has suggested changes in a number of articles that require overtime payments. The Fact Finder has not recommended many of the Employer's suggested changes because there is no data to support major changes in current contract clauses based on a single year's data. Moreover, using Court Time as an example, there was no testimony that the Court Time procedure is responsible for any of the observed increase in overtime pay.

The Fact Finder notes that the Employer has the right to act in situations where the contract is silent. However, the Employer must also follow established law and precedent when taking any action. At a minimum, the Employer and the Union must meet and discuss the impact that the Employer's actions would have on the Union and its

members. The Employer agreed to substitute the word negotiate for meet and discuss. However, the Union wants any action taken by the City to be subject to some type of outside examination i.e., conciliation. There is no SERB requirement that a Midterm Bargaining impasse go to conciliation.

If the Employer acts under the Management's Rights Clause on an issue that is not covered by the contract, the two most probable outcomes are: 1) the Union takes no action, or 2) a ULP is filed and SERB issues a decision on the issue. SERB has ruled on this issue numerous times. The current state of the law is that absent a Midterm Bargaining clause, an employer cannot make changes in contract clauses that affect any mandatory issue. That is usually interpreted to mean that any change that affects "wages, hours, terms and other conditions of employment" cannot be unilaterally changed if the contract does not contain a Midterm Bargaining Clause. The proviso is that an Employer can act if there is an unforeseen, serious event that arises, or if the failure to act will cause substantial problems and if negotiations would be too time consuming to meet the emergency.

However, any action that the Employer takes will also inevitably lead to proposals and counterproposals during the next round of negotiations. It is hard to imagine a circumstance that would not have some effect on "wages, hours, and other terms and conditions of employment." In that case, the moving party would have the ability to have the issue decided by a Conciliator. So in many ways the presence of a Midterm Bargaining Clause changes the timing of a Neutral's opinion, but not the fact that an outside agent will ultimately opine on the issue.

The Fact Finder recognizes that recommending the Employer's position may lead to an action(s) that the Union disagrees with. Not recommending the Employer's position may cause financial problems for the City if the spike in overtime proves to be permanent or even just the tip of the iceberg. This is a difficult decision, but the City's elected officials have proved that they are able to provide good leadership during difficult times. The Fact Finder believes that given all of the information in the record, that the contract should include a Midterm Bargaining Clause.

**Finding of Fact:** The uncertainty surrounding the current economic situation in Steubenville may necessitate that the Employer has the flexibility to unilaterally take actions on issues not covered by the contract. However, the Employer must recognize that any actions taken that affect any issue related to "Wages, Hours, Terms and Other Conditions of Employment" will probably be raised during future negotiations, and if bargaining reaches impasse, subject to the Conciliation Procedures of ORC 4117.

**Suggested Language:** Article (New) Midterm Bargaining

Neither party is obligated to bargain over any matter already covered by the agreement. Where a proposed action involves a mandatory subject of bargaining and is not already provided for by the Agreement, then the Employer, prior to making such change, shall inform the Union of said proposed change prior to the date of implementation and meet to negotiate the impact of the decision with the Union.

**Note:** All of the tentatively agreed upon Articles are included in the Fact Finder's recommendations by reference.

Signed this 16<sup>th</sup> day of September 2015, at Munroe Falls, Ohio

*/Dennis Byrne/*

Dennis M. Byrne, Fact Finder