

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of Fact-Finding Between :
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 :
CITY OF ENGLEWOOD (OHIO) :
 :
Employer : **Case No: 2015-MED-05-0571**
 :
and :
 :
OHIO PATROLMEN'S :
BENEVOLENT ASSOCIATION :
 :
Union :
 :

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Michael D. McDowell, Esq., Fact-Finder
Report Dated: September 23, 2016

APPEARANCES

For the City of Englewood:

Beverly A. Meyer, Esq.
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For the Ohio Patrolmen's Benevolent Association:

Mark J. Volcheck, Esq.
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SUBMISSION

The undersigned was appointed as Fact Finder in this dispute, pursuant to written notice to the Fact Finder dated April 28, 2016. There has been no prior collective bargaining agreement between the City of Englewood, Ohio ("City" or "Employer") and the Ohio Patrolmen's Benevolent Association ("OPBA" or "Union") for the Full-Time Sergeants. This is the first collective bargaining agreement between the Parties for this Full-Time Sergeants Unit, which was certified by the OHSERB on May 7, 2015.

In this case there is one (1) bargaining unit represented by the OBPA which consists of three (3) Full-Time Police Sergeants. The bargaining unit is responsible for enforcing the laws of the state. Historically, the OPBA and the City have been Parties to a series of collective bargaining agreements covering a bargaining unit of approximately sixteen (16) Police Officers employed by the City. The Police Officers are subject to a separate collective bargaining agreement which has effective dates of January 1, 2016 through December 31, 2018.

Prior to the Fact-Finding session of August 29, 2016, the Parties met to negotiate the terms and conditions of the Full-Time Police Sergeants' employment on: December 9, 2015; October 27, 2015; October 26, 2015; and October 1, 2015.

Mr. Gregory Van Pelt was initially assigned to be the Fact-Finder in this matter. However, Mr. Van Pelt resigned from the case due to health issues, which were responsible for cancellations of Fact-Finding hearings scheduled for February 18, 2016, March 21, 2016 and April 20, 2016. Michael D. McDowell, Esq., was thereafter assigned as Fact Finder. A Fact Finding hearing scheduled for June 20, 2016, was canceled because Dwight Washington, Esq., who represented the City, passed away, and the City requested a cancellation and rescheduling of the Fact Finding hearing in order to allow the City time to secure replacement counsel, which postponement and rescheduling request was granted. The Fact Finding hearing was rescheduled for August 29, 2016.

On August 29, 2016, the Parties and the Fact Finder met in the City Government Center, Englewood, Ohio, for a Fact Finding session. Prior to initiating the Fact Finding Hearing procedures, the Fact Finder offered to mediate the remaining disputed issues, which the Parties' declined. However, the Parties were able to come to a tentative agreement on the longevity issue; they executed a written tentative agreement on that issue at the Fact Finding hearing which removed the necessity of the Parties providing evidence and argument on the longevity

issue. The Fact Finder then heard argument and evidence submitted by the Parties on the following disputed issues for this bargaining unit:

Article 15 – Wages

Article 16 – Shift Differential

The Parties have requested that the Parties' tentative agreements be incorporated into the report and recommendations of the Fact Finder. It is noted that in one of these tentative agreements, the Parties agreed that the term of this collective bargaining agreement shall be for three (3) years, from January 1, 2016 through December 31, 2018. The Parties executed a 4117.14(G)(11) waiver, so that any wage increase recommended and/or awarded may be effective January 1, 2016.

The Parties mutually agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder ("Fact Finder Recommendations") as provided under Ohio Administrative Code Rule 4117.9-05-G. The Parties also agreed to waive overnight delivery of the Fact Finder Recommendations and agreed to delivery of the Fact Finder Recommendations by electronic mail only.

In presenting the Fact Finder Recommendations, the Fact Finder has given full consideration to all reliable information relevant to the issues, and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties (Not applicable as this is the first collective bargaining agreement between the Parties for this Unit);
- (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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;

- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS

The issues are described and resolved as follows:

ARTICLE 14
WAGES
WAGE RATES

OPBA Position: Concerning the issue of Wage Rates, the OPBA proposes an initial 5% equity adjustment to the current wage scale, and also a 2.5% general wage increase in each of the three (3) years of the Agreement. It proposes that such for the first year of the Agreement be paid retroactively to January 1, 2016. Effective January 1, 2017, OPBA proposes a general wage increase to the 2016 wage scale of 2.5%. Effective January 1, 2018, the OPBA proposes a general wage increase to the 2017 scale of 2.5%. The OPBA set forth its proposed CBA provisions in this issue as follows:

ARTICLE XIV, Wages

Section 1. Rate. *Wage rates for employees covered herein shall be set forth in Addendum #1, attached hereto and made a part hereof.*

ADDENDUM #1

Agreement, effective January 1, 2016 through December 31, 2018, between the Ohio Patrolmen's Benevolent Association and the City of Englewood.

<i>STEP</i>	<i>A Hire/ Promotion</i>	<i>B (6 mos.)</i>	<i>C (18 mos.)</i>	<i>D (30mos.)</i>	<i>E (42mos.)</i>	<i>F (52 mos.)</i>
<i>Current</i>	30.33	31.90	33.47	35.14	36.88	38.77

<i>Eff. 1/1/2016</i>	<i>32.65</i>	<i>34.34</i>	<i>36.02</i>	<i>37.82</i>	<i>39.69</i>	<i>41.73</i>
<i>Hourly Rate</i>						
<i>Eff. 1/1/2017</i>	<i>33.47</i>	<i>35.20</i>	<i>36.92</i>	<i>38.77</i>	<i>40.68</i>	<i>42.77</i>
<i>Hourly Rate</i>						
<i>Eff. 1/1/2018</i>	<i>34.31</i>	<i>36.08</i>	<i>37.84</i>	<i>39.74</i>	<i>41.70</i>	<i>43.84</i>
<i>Hourly Rate</i>						

Section 2. Step Increases. Employees may receive step increases until the maximum step is reached. There shall be no step increases beyond the maximum shown on Addendum #1.

The OPBA argues that its position is realistic, supported, and is not presented as a high-end offer with the hopes of landing somewhere close. The OPBA submits that the relevant internal and external comparables in this case support its position. First, the initial five percent (5%) equity adjustment to the current wage scale is justified by a review of relevant rank differential among the organized Sergeant bargaining units of city employees in Montgomery County. The rank differential, as discussed herein, refers to the percentage amount that a top Sergeant's pay exceeds the top rate Patrol Officer pay. A review of organized Sergeants in Montgomery County cities reveals that the average rank differential between Sergeants and Patrol Officers is 17.2%. The rank differential for Sergeants and Patrol Officers in the City of Englewood is 12.6%. Moreover, there are no ranking officers between the Sergeants in the City of Englewood and the Chief of Police. While the Chief of Police in the City of Englewood also functions as the City's Public Service Director, the differential between the base wage of a top Sergeant and the Chief of Police is 37.86%. It states that the Chief of Police is only working 75% of his time or essentially 4 days a week as Chief of Police and that his wages should be considered for only a 32 hour week compared to a 40 hour week for the Sergeants, which the OPBA states confirms its position on the rank differential between the City Sergeants and the City Chief of Police.

The OPBA notes that comparing the City with the City of Union in Montgomery County, Ohio is not a good comparison in that the City of Union has no Sergeants but a Lieutenant who is not organized, and it is a part-time heavy department. It also argues that it is not appropriate for the City to include comparables which are outside of Montgomery County where the City is located. The OPBA also argues that to include the Montgomery County Sheriffs in the City's comparables is not appropriate as they are not City employees and it is widely known that Sheriff Deputy pay is lower than city police department pay throughout the state.

The annual 2.5% general wage increase proposed by the OPBA mirrors those received by the OPBA Patrol Officer bargaining unit, which most recently concluded their negotiations for a collective bargaining agreement effective January 1, 2016 through December 31, 2018. The Patrol Officers' negotiations went to conciliation where they received annual general wage increases of 2.5% effective January 1, 2016, 2.5% effective January 1, 2017, and 2.5% effective January 1, 2018. In addition, such general wage increases comport with the going rate of general wage increases for organized Sergeants employed by the cities in Montgomery County. The Chief of Police/Public Service Director and City Manager all received 2.5% increases in 2016. The City has not raised an inability to pay issue at any time during the negotiation process and such was not raised by the City at the Fact Finding Hearing. The OPBA therefore argues that the City has the ability to finance and administer the offer of the OPBA and that such will not have a harmful effect on the normal standard of public service in the City.

City Position: the City proposes to increase the Sergeants' hourly rates by 2% effective each year of the contract as follows:

Article XIV, Section 1

Rate: Wage rates for employees covered herein shall be set forth in Addendum 1, which is attached hereto and made a part hereof.

Addendum 1

<i>STEP</i>	<i>A (hire)</i>	<i>B (6 mos.)</i>	<i>C (18 mos.)</i>	<i>D (30mos.)</i>	<i>E (42mos.)</i>	<i>F (54 mos.)</i>
<i>Current</i>	30.33	31.90	33.47	35.14	36.88	38.77
<i>1/1/16</i>	30.94	32.54	34.14	35.84	37.62	39.55
<i>1/1/17</i>	31.56	33.19	34.82	36.56	38.37	40.34
<i>1/1/18</i>	32.19	33.85	35.52	37.29	39.14	41.15

Article XIV, Section 2

Step Increases: Employees may receive step increases until the maximum step is reached. There shall be no step increases beyond the maximum shown in Addendum 1.

The City's initial salary proposal was to increase the Sergeant's hourly rate 1.5% effective each year of the contract, and the City has adjusted its proposal from 1.5% to 2.0%. Comparable data in the history of the Parties demonstrates that the Sergeants rank among the highest paid within similarly-situated police departments, and that the City's proposed 2%

increase would retain the Sergeant's position as follows: as 1st within the cities served by Northmont School District; as 2nd in Northern Montgomery County jurisdictions; and as 3rd in comparable jurisdictions north of Interstate 35 in Montgomery and adjoining Greene and Miami counties. The City argues that salary increases in comparable jurisdictions range from 0% to 3% with an average increase of 2.11% for jurisdictions in Northern Montgomery County and 2.20% for jurisdictions north of Interstate 35. The City's proposed increase is also appropriate relative to the business and citizen demographics of the City as compared to those of comparable jurisdictions. It points out that cities north of I-35 are more agriculturally based with some retail, manufacturing and hospitals but not the same as those below I-35 which cities have more hospitals, abundant retail and more white collar jobs, i.e. Lexis Nexis and insurance employers.

The City also argues that considerations should be given that the Sergeants pay no premium cost for their high deductible health insurance plans and that the City provides each Sergeant with an annual \$1,500.00 toward their health insurance deductibles. It points out that the only neighboring jurisdiction that does not charge its Sergeants with a health care premium is the City of Huber Heights, but that the City of Huber Heights does not provide any contribution towards the health insurance deductibles.

The City points out that the OPBA's last wage proposal at the bargaining table was for 3% each year of the contract, plus an additional equity adjustment of 5%. The City argues that no rationale has been presented that justifies the OPBA's demand, and the City strongly objects to the OPBA's proposed equity adjustment due to its patently inequitable effect on pay parity within the City, its disproportionate effect on the Sergeant's pay in relation to comparable police departments and jurisdictions, and the Parties' history.

The Sergeants are the highest paid City employees with the exception of the City Manager, Police Chief/Public Service Director, Fire Chief, Finance Director and Economic Development Director. It asserts that the OPBA's argument of a 37.86% differential between the Chief of Police and the Sergeants is not accurate as the Chief of Police is also the Public Service Director and 75% of his salary, or \$83,382, is allocated to the Chief of Police position with the remaining 25% of his salary allocated to the Public Service Director position, leaving only a 3.3% differential between his Chief of Police salary and the top Sergeant's wages. Further, the City argues that the Sergeants are all eligible for overtime, which they may decline, while the five (5) higher paid City officials are not entitled to overtime pay. The City asserts that any rank differential pay is thus unnecessary and unwarranted.

The City argues that the OPBA reference to a 5% increase for the Patrol Officers in 2000 was actually a step increase after six (6) years of service because the Police Officers' wages were so low in comparison to the other comparable jurisdictions. The City reiterates that here, the Sergeants are 2nd in Northern Montgomery County jurisdictions and 3rd in comparable jurisdictions lying north of Interstate 35 in Montgomery and adjoining Greene and Miami counties.

The City also points out that in the comparable charts provided by the OPBA for the comparison of the City Sergeants, the City Sergeants rank 3rd in base rate pay, and rank 4th in total pay when compared to the top Sergeant of the 12 cities in Montgomery County.

The City asserts that it will agree to retroactive application to January 1, 2016, of the 2% wage increase it proposes for Sergeants in the first year of the Agreement.

Recommendations of the Fact Finder:

It is recommended that the OPBA's proposal for a 5% equity adjustment for wages not be adopted.

As to the rationale for the 5% equity adjustment, the OPBA points out that a review of organized Sergeants in 12 Montgomery County cities (including the City of Englewood) reveals that the average rank differential between top Sergeant and top Patrol Officer is 17.2% for the cities in the whole of Montgomery County, but the rank differential for the top City Sergeant and the top City Patrol Officer is 12.6%. It shows that the rank differential for the City as a % of Average among the 12 cities in Montgomery County is 73.3%. However, the top base pay for City Sergeants is 101.85% of the average of the 12 cities in Montgomery County, and the City Sergeant's total compensation is 99.56% of the average of the 12 cities in Montgomery County. These numbers do not take into account a general wage increase for 2016 nor the lump sum one-time longevity payment which has been tentatively agreed to by the Parties for the City Sergeants. The OBPA also points to the top base pay for Police Officers in the City as being 105.75% of the average of the 12 cities and the total compensation of City Police Officers being 103.86% of the average of the 12 cities. However, the City's comparisons of base wage rates shows that the City Sergeants are 2nd in Northern Montgomery County jurisdictions, and 3rd in comparable jurisdictions lying north of Interstate 35 in Montgomery and adjoining Greene and Miami counties. With the 2.5% yearly increase recommended, the Sergeants will maintain their relative positions with these comparables. Finally, in the comparable charts provided by the

OPBA for the comparison of the City Sergeants, the City Sergeants rank 3rd in base rate pay, and rank 4th in total pay when compared to the top Sergeant of the 12 cities in Montgomery County.

It is recommended that the wages for the Full-Time Sergeants' Bargaining Unit for the first year be increased 2.5% retroactive to January 1, 2016, increased 2.5% for the second year on January 1, 2017, and increased 2.5% for the third year on January 1, 2018.

The rationale for the recommendations for the yearly wage increases begins with the fact that the City has not claimed that it has an inability to pay. Of further significance is the recent Fact Finder's Recommendations concerning the City Patrol Officers Bargaining Unit, and the subsequent Conciliation Report for the City Patrol Officers Bargaining Union. Both support a 2.5% increase for each year of the City Patrol Officers' Bargaining Union CBA, which is for the same period for which the Parties in this case have agreed to be the term of their agreement, January 1, 2016 through December 31, 2018. See *City of Englewood and OPBA, OHSERB Case No. 2015-MED-09-0859 (Fact Finder Betty R. Widgeon, February 19, 2016)*, *OPBA and the City of OH SERB Case No. 2015-MED-09-0859 (Conciliator Howard Tolley, April 27, 2016)*. These decisions have considerable weight as they are an internal comparable for the City Police Department, and they considered many of the city jurisdictions used by the Parties as comparables in this case. The undisputed evidence at the hearing was that the Chief of Police/Public Service Director (the Chief of Police also has the Position of Public Service Director) and City Manager all received 2.5% increases in 2016.

The Recommended Contract Language for Article XIV - Wages is set forth in Addendum #1 below:

Article XIV, Wages

Section 1. Rate: Wage rates for employees covered herein shall be set forth in Addendum 1, which is attached hereto and made part hereof.

Addendum 1

<i>STEP</i>	<i>A (hire)</i>	<i>B (6 mos.)</i>	<i>C (18 mos.)</i>	<i>D (30mos.)</i>	<i>E (42mos.)</i>	<i>F (54 mos.)</i>
<i>Current</i>	<i>30.33</i>	<i>31.90</i>	<i>33.47</i>	<i>35.14</i>	<i>36.88</i>	<i>38.77</i>
<i>1/1/2016</i>	<i>31.09</i>	<i>32.70</i>	<i>34.31</i>	<i>36.02</i>	<i>37.80</i>	<i>39.74</i>
<i>1/1/2017</i>	<i>31.87</i>	<i>33.51</i>	<i>35.16</i>	<i>36.92</i>	<i>38.75</i>	<i>40.73</i>
<i>1/1/2018</i>	<i>32.66</i>	<i>34.35</i>	<i>36.04</i>	<i>37.84</i>	<i>39.72</i>	<i>41.75</i>

Article XIV, Section 2

Step Increases: Employees may receive step increases until the maximum step is reached. There shall be no step increases beyond the maximum shown in Addendum 1.

ARTICLE 14
WAGES
SHIFT DIFFERENTIAL

OBPA Proposal: The OPBA proposes that a shift differential of \$.50 per hour be paid to City Sergeants for all hours worked between the hours of 3 PM and 7 AM. The OPBA specifies that shift differential pay shall go into effect starting January 1, 2017. The OPBA proposes the following language:

Article XIV WAGES

.....

Section 4. Shift Differential. Shift differential pay shall be added to each employees regular hourly rate under the following circumstances:

For all hours worked between the hours of 3 pm and 7 am, employee shall receive an additional \$.50 per hour. This amount shall not be added to the pay of employees for paid time off when an employee is not actually working, i.e., vacation leave, sick leave, funeral leave, and holiday leave/pay. This amount shall be added to the regular hourly rate for purposes of computing overtime for time worked between the hours of 3 pm and 7 am.

This (Section 4) shall go into effect starting January 1, 2017.

The OPBA points out that the City Police Department operates on three shifts: Day shift (7am - 3pm); Afternoon shift (3pm - 11pm); and Night shift (11pm - 7am). The OPBA proposal provides additional compensation for those Sergeants working during the hours of the afternoon and night shifts. Such is proposed as a means to compensate those Sergeants for the hardship associated with those work times. The OPBA argues that all such shifts diminish an Officer's family time. The OPBA states the Sergeants on such shifts are working or sleeping when they could be attending to family duties and/or typically family recreation. The OPBA additionally asserts that it is becoming generally accepted that such shifts are unhealthy and can lead to rather

serious health conditions. Finally, the OPBA points out that the City does not permit the Sergeants to bid their shifts and, accordingly, employees are not working second or third shifts as a matter of preference. One Sergeant testified that in the last two (2) years since he has been promoted to Sergeant, he has had no input into which shift he worked, which is the Night Shift, and prior to that he worked the Night shift as a Patrol Officer since 2008. The OPBA argues that such bolsters the need to compensate Sergeants for working such hours as Sergeant's seniority does not serve to improve his or her shift over the length of one's career. The OPBA acknowledges that while the Patrol Officers do not receive this benefit, the ability to bid shifts distinguishes this bargaining unit from the Patrol Unit on this important issue. The OPBA argues that the differential amount proposed by the OPBA is comparable to departments that offer such benefit.

City Position: The City rejects the OPBA's proposal for a shift differential and objects to including any language relating to a shift differential in the Parties' collective bargaining agreement.

The City asserts that the OPBA's initial and last wage proposal at the bargaining table included additional pay of \$0.75 per hour for all hours worked between 3 PM and 7 AM. It asserts that the OPBA presented a similar proposal for inclusion in the City Police Officer contract that was rejected by the Conciliator and excluded from the Parties' collective bargaining agreement for the Police Officer Bargaining Unit.

The City maintains that the OBPA's proposal is neither justified nor supported by any evidence of genuine need and inequitably increases the Sergeants' proposed pay since it would apply to all hours normally scheduled for two (2) of the three (3) bargaining unit employees. The City notes that the overwhelming majority of police departments in comparable jurisdictions do not pay shift differentials. It notes that in Northern Montgomery County, only one of the 7 cities listed provides shift differential, which is the City of Vandalia. It states that the City of Vandalia Sergeants are on rotating shifts, where the City Sergeants are not and notes that wide discretion on scheduling is provided to the Vandalia Chief of Police, as noted in the MOU to the Vandalia CBA with the Sergeants:

“The Chief may station, [re]schedule, or [re]assign police personal at any time as circumstances, public safety needs, staffing considerations, or the best interests of the City or Division may require.”

The City argues that part of a career choice of being a Police Officer and a Police Sergeant is that it inherently requires shift work. Here the City Sergeants have a lot of control over the hours they work, as they can decline to work weekends and can decline overtime. Further, the City asserts that the shift assignment for City Sergeants is done on an annual basis by the City Chief of Police with their shift essentially set for the year, subject to operational needs, and the Sergeant's shifts are not rotating. It argues that the City has also historically complied with the Sergeants' scheduling requests and preferences in assigning shifts. The City asserts that the City Sergeants essentially have a static work schedule.

The City notes that the OBPA's proposal is for particular hours worked and that becomes administratively burdensome. The City anticipates that, with shift differential, it would need to install a different timekeeping system to accurately record the times based on different rates which would make it more economically burdensome. Further, as the Police Officers don't have shift differential, the requirement of having two (2) different pay systems, one with shift differential for the Sergeants and one without shift differential for the Patrol Officers, would create an additional administrative burden for the City.

Finally, the City states that it has not received health or safety complaints regarding the scheduling of the Sergeants' shifts. Further, as the shifts of the City Sergeants are not rotating and they have a regular, static work schedule, the health issues are not necessarily prevalent as in this case the shifts for the Sergeants do not interfere with the Sergeants' ability to structure regular sleep hours.

Recommendation of the Fact-Finder:

The Fact Finder recommends the OPBA's proposal for a shift differential for the Full-Time Sergeants not be adopted.

At the discretion of the Chief of Police, the three (3) Sergeants for the City are assigned one (1) of the three (3) shifts: Day shift (7am to 3pm); Afternoon shift (3pm – 11pm); or Night shift (11pm – 7am). The assignment is done each calendar year and the Sergeants work those shifts generally for the full year. The shift work does not rotate; it is the set shift for the Sergeant to work each year so the Sergeants have a regular, static work schedule. The City Patrol Officers bid their shifts based on seniority.

The OPBA proposal is actually not shift work related but is related to hours worked. That is, the payment of the shift differential would depend on what hours were worked. For

example, if a Sergeant whose regular shift was Day shift (7am - 3pm) stayed over to work until 4pm, he would be paid one hour of shift differential as he worked one hour within the 3pm - 7pm period when shift differential would be earned under the OBPA proposal.

Of significance is the recent Conciliation Report for the City Patrol Officers Bargaining Union which decided that a shift differential was not appropriate for the City Patrol Officers' Bargaining Union CBA which is for the same period for which the parties in this case have agreed to be the term of their agreement, January 1, 2016 through December 31, 2018. *See City of Englewood and OPBA, SERB Case No. 2015-MED-09-0859 (Conciliator Howard Tolley, April 27, 2016)*. This decision has considerable persuasive weight as it is an internal comparable for the City Police Department. Further, with regard to external comparables using the 11 other cities in Montgomery County provided by the OBPA, six (6), or more than half of those cities do not have a shift differential for Organized Sergeants. Further, among the six jurisdictions closest in size to Englewood (between 6,000 and 20,000) five (5) do not provide any shift differential for Organized Sergeants.

The reports submitted by the OPBA include the University of Iowa Study published in 2012, which concluded that shift workers got less sleep, but it did not establish a link between poor sleep and health problems, which the study speculated may be due to study sample size. Further, as to the report submitted by the OPBA identified as "Sleep Disorders, Health and Safety in Police Officers" *Journal of the American Medical Association* Vol. 306 #23 December 21, 2011 ("JAMA Study") the Conciliator commented on that JAMA Study in rejecting the shift differential proposal stating, among other things, as follows:

The Fact Finder however misinterprets the principal study introduced as a Union exhibit: "Sleep Disorders, Safety and Health and Safety in Police Officers" [sic] *Journal of the American Medical Association* Vol. 306 #23 December 21, 2011. The JAMA study did not conclude as the Fact Finder reported, that night shifts are the main cause of police officers' sleep deficits. According to the published report, Obstructive Sleep Apnea that affects all shift workers is the primary cause of sleep deficit, and that condition is heavily correlated with the 73% overweight/obesity rate of the 5000 officers studied. The JAMA article does not recommend shift differentials to address the problem. If sleep deprivation caused by night shift has led to accidents by drowsy Englewood police officers, then applying the JAMA article research would favor physical conditioning, weight loss and CPAP machines.

OPBA and City of Englewood, OHSERB Case No. 2015-MED-09-0859 (Conciliator Howard Tolley, April 27, 2016) pgs. 5-6.

As stated above, it is recommended that the OPBA's proposal for a shift differential for the Full-Time Sergeants not be adopted.

**MATTERS PREVIOUSLY AND TENTATIVELY AGREED TO,
AND MATTERS NOT ADDRESSED IN THE RECOMMENDATIONS**

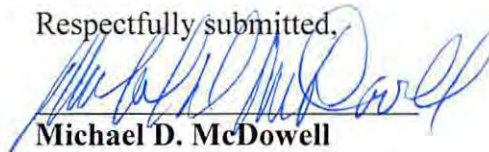
Recommendation of the Fact-Finder: It is recommended that any matters previously and tentatively agreed to by the Parties regarding issues not specifically addressed in this Report and Recommendations of the Fact Finder be deemed incorporated by reference.

The Parties are respectfully reminded that, pursuant to Ohio Revised Code Section 4117.14 (C) (6) (a), any mistakes in the language recommended by the Fact Finder are correctable by the mutual agreement of the Parties.

This concludes the Report and the Recommendations of the Fact Finder.

Pittsburgh, PA
September 23, 2016

Respectfully submitted,



Michael D. McDowell
Fact Finder

CERTIFICATE OF SERVICE

This is to certify that per the agreement of the Parties, an electronic copy in .pdf format of the duly executed original of the foregoing was emailed this 23rd day of September, 2016, to Beverly A. Meyer, Esq. at bmeyer@bricker.com and to Mark J. Volcheck, Esq., at markvolcheck@sbcglobal.net.



Michael D. McDowell
Fact Finder

In the Matter of Fact-Finding Between the City of Englewood (Ohio) and Ohio Patrolmen's Benevolent Association, Case No. 2015-MED-05-0571