

**STATE EMPLOYMENT RELATIONS BOARD**

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION**

IN THE MATTER OF:

SPRINGFIELD TOWNSHIP (SUMMIT COUNTY)

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Case Numbers 2015-MED-07-0628, 2015-MED-07-0629  
Police Officers and Detectives and Sergeants

Before Fact Finder: Thomas J. Nowel, NAA  
June 17, 2016

PRESENTED TO:

Ms. Robin L. Bell  
Clemans, Nelson & Associates  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319

Hugh C. Bennett  
Fraternal Order of Police, Ohio Labor Council, Inc.  
3076 Hillside Trail  
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State Employment Relations Board  
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## INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the case as captioned on the cover page by the State Employment Relations Board on November 23, 2015 in accordance with Ohio Revised Code Section 4117.14 (C) (3). Hearing in the matter was held on May 19, 2016 at the Springfield Township Administration Building.

This matter involves two bargaining units which are under one collective bargaining agreement. One bargaining unit is comprised of three Sergeants and the other is comprised of approximately sixteen Police Officers. The Agreement expired on December 31, 2015. The parties met in negotiations on four occasions and reached tentative agreement on a number of issues. Prior to the commencement of the evidentiary hearing, the parties finalized agreement on additional issues including the appropriate wording involving a Memorandum of Understanding. All tentative agreements reached prior to Fact Finding and those finalized just prior to hearing are incorporated in this Report and Recommendation. The parties agreed to the issuance of the Report and Recommendation on June 17, 2016.

### OUTSTANDING ISSUES:

1. Article 18, Pay Schedule
2. Article 19, Longevity
3. Article 20, Uniform Allowance
4. Article 30, Health Protection/Vaccinations
5. Article 34, Physical Fitness Testing
6. Article 35, Duration

Those participating at hearing for the Employer included the following:

Robin L. Bell, Clemans, Nelson & Associates

John Smith, Chief of Police

Ken Ray

Those participating at hearing for the Union included the following:

Hugh C. Bennett, FOP, OLC, Inc.

John Lombardi, Patrol Representative

Eric East, Sergeant Representative

### BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then developing a recommendation, the Fact Finder is guided by the principles which are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained agreements, if any, between the parties.
2. Comparison of the issues submitted to final offer settlement [fact finding] relative to the employees in the bargaining unit involved 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, the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or private employment.

During the course of the hearing, the parties had full opportunity to advocate for their respective positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party.

## ANALYSIS AND RECOMMENDATIONS

### **1. Article 18, Pay Schedule**

The Union proposes three across the board wage increases as follows. 1% increase effective January 1, 2016; 1.5% increase effective January 1, 2017; 2% increase effective January 1, 2018.

The Employer proposes three across the board wage increases as follows. 1% increase effective January 1, 2016; 1% increase effective January 1, 2017; 1% increase effective January 1, 2018.

EMPLOYER POSITION: The Employer states that townships in Ohio were negatively impacted by the recent recession, and then financial stability was further eroded by loss of state funding, loss of the estate tax and declining property taxes. Springfield Township has been significantly impacted by loss of revenue. Township departments have been forced to reduce expenditures. The Township is second to the City of Akron in the number of foreclosure actions in Summit County. The rate of unemployment in Springfield Township is 12.8% (Emp. Exb. 2), and 44.2% of families are below an annual income of \$53,000.00. At the beginning of 2016, the Employer was forced to allocate General Fund monies to subsidize the police levy fund which had insufficient funds to meet expenses at the beginning of the year. It is

unclear if the police levy fund will have the ability to reimburse the General Fund. The General Fund is not in a position to subsidize Police Department operations, and the Employer states that the loss of state funding has reduced General Fund revenues by \$500,000.00.

The Employer states that a renewal of the Police Levy will be on the ballot this November with a possible increase from existing mileage. The Employer states that voters have supported police levies in the past but is now concerned as Township citizens recently defeated two tax issues, one for road maintenance and the other for a renewal and increase for fire protection and EMS services.

The Employer states that the unencumbered fund balance of the Police Department budget has continued to decrease over the past three or four years (Emp. Exb. 15). The Employer states that, during this time, it has never asked bargaining unit employees for concessions and has continued to grant wage increases in the past two collective bargaining agreements. The Employer cites the Report and Recommendation of the Fact Finder in the previous negotiations between the parties (Emp. Exb. 11) which confirmed declining revenue streams and limited financial resources to match the Union's wage proposal at the time. The Employer feels that its proposal is appropriate given the financial climate and asks the Fact Finder to so recommend.

UNION POSITION: The Union states that it generally agrees with the Employer's assessment of Township finances and therefore has proposed a wage increase of 1%

for 2016. The Union states that Township voters have never failed to support Police Department levies and is certain they will again do so later this year.

The Union states that bargaining unit Police Officers and Sergeants are the lowest paid of the three township Police Departments in Summit County (Union Exb. 3). The Union states that it is also true that its members in Springfield Township are paid less than most employees in Police Departments in Summit County cities. The Union argues that the Employer finds it difficult to recruit for members of its Police Department due to the lowest wages in the County. The Union believes that the General Fund carry-over will adequately fund its three year wage proposal and states that it is essential that an improved wage schedule is critical for the success of the Springfield Township Police Department. The Union states that its wage proposal is necessary but will not bring wages in line with comparable jurisdictions in the area in any event.

The Union states that the Employer transferred the expense of cruisers and other material equipment for the Police Department from the General Fund to the police levy fund. The Employer did the same regarding its cost for Police Department workers compensation payments. It is this shifting of expenditures which has negatively impacted Police Department finances. Police Department personnel costs should not be negatively impacted by these actions of the Township. The Union urges the Fact Finder to recommend its modest wage proposal.

RECOMMENDATION: The parties have little disagreement regarding the state of Township finances. The Union's argument regarding its members wages being

among the lowest in Summit County is compelling, but, as it knows, Township finances dictate what the parties are able to accomplish at the bargaining table. Fact Finder McCormick was confronted with the same set of facts in 2012 as he recommended a moderate wage increase in an attempt to reach a level of parity with surrounding jurisdictions while living within the limited Police Department budget. He suggested that shifting funds from the General Fund was not a wise approach. Little has changed since the previous negotiations were concluded, and Fact Finder McCormick's analysis is relevant today. The wage proposals of both parties in the instant proceedings are moderate in recognition of budgetary constraints.

The Union is confident that voters will support the levy renewal in the fall, and the Employer is not as optimistic due to other recent departmental levy failures. It is compelling that the history is good in respect to citizen support of Springfield Township police levies.

The recommendation regarding wages is based on the recognition of limited financial resources, a need to reach for limited equity with counterparts in Summit County and the knowledge that Township voters have consistently supported the Police Department levy. 1% across the board wage increase effective January 1, 2016; 1% across the board wage increase effective January 1, 2017; 2% across the board wage increase effective January 1, 2018. The Fact Finder will rely on the parties to develop the wage schedules for each year of the new Agreement if the recommendation is accepted or deemed accepted by the Employer and Union.

## **2. Article 19, Longevity**

The Employer proposes that only employees, who have been hired prior to the execution of the new Agreement, will receive longevity benefits as outlined in Article 19. New employees will no longer be eligible for the longevity benefit.

The Union is opposed to the proposal to limit the longevity benefit.

EMPLOYER POSITION: The Employer states that, through bargaining, the Township is attempting to eliminate the longevity payment. A two tier approach is usually the manner in which this may be accomplished. The Employer states that the Road Department bargaining unit has agreed to such limitation. The Employer urges the Fact Finder to recommend the proposal which will not impact current employees.

UNION POSITION: The Union is opposed to the proposal. The Union states that the longevity benefit was "bought and paid for" in previous negotiations and to agree to the proposal would be a significant loss. The Union argues that any two tier system decreases morale in the future and potentially inhibits recruitment of new employees. The Union states that the Fact Finder should not recommend a two tier longevity schedule.

RECOMMENDATION: The Union suggests that the longevity proposal may inhibit recruitment. But the opposite may also be true. If available financial resources are available to enhance the wage schedule itself, recruitment may actually be

enhanced. The longevity benefit is effective only following five years of service. The Union argues that longevity was “bought and paid for” during an earlier negotiations, and this is a legitimate argument. The fact that all current bargaining unit employees will continue to receive the longevity benefit is therefore consistent with the Union’s argument. At one point the Union, recognizing the need to phase out the benefit on a long term basis, was agreeable to limiting longevity to employees hired prior to January 1, 2018. There is a recognition that, long term, available monies are better spent on the wage schedule which benefits all bargaining unit members. The recommendation is to implement the Employer’s proposal effective January 1, 2018 as follows.

Article 19, Longevity

Section 1. Bargaining unit members hired prior to January 1, 2018, shall receive an eight dollar (\$8.00) per month pay supplement for each year of continuous employment upon completion of five (5) years of continuous employment with the Township, beginning with his/her original employment date, with a maximum of one hundred dollars (\$100.00) per month.

1. The bargaining unit members shall earn each applicable payment increase to which he/she is entitled beginning on the first scheduled pay date following his/her anniversary date of employment.
2. The longevity pay shall be paid in one lump sum payment per year, in the first pay of December.

**3. Article 20, Uniform Allowance**

The Union proposes an increase in the uniform allowance from \$950.00 annually to \$1000.00. In addition, the Union proposes to increase the annual clothing allowance for detectives from \$50.00 to \$100.00.

The Employer rejects the proposal.

UNION POSITION: The Union states that the uniform allowance, as provided by the Employer, has not increased significantly since 1997 while the costs involved have expanded over the same period. The Union states that, in a survey of local Police Departments, most jurisdictions enjoy annual uniform allowances which, in some cases, are significantly greater than that which is provided bargaining unit employees in Springfield Township (Union Exb. 4). The Union states that its proposal is justified.

EMPLOYER POSITION: The Employer's argument in response to the Union's proposal to increase the annual uniform allowance and the additional payment to detectives is that budgetary constraints make it unaffordable. The Employer refers to its discussion of Township finances and states that the Fact Finder must recommend current contract language.

RECOMMENDATION: Both parties to the negotiations recognize that the Township budget does not allow for a more competitive wage schedule. At the same time, the cost of clothing items has increased. Union Exhibit 4 illustrates that the Springfield Township uniform allowance is one of the lowest in the area. At the same time, this exhibit provides an estimated cost of uniforms for bargaining unit members. The average annual cost for shoes, trousers, shirts and jackets is \$990.00. Then there is additional cost for web gear such as belts and holsters, and members of the SWAT team incur additional uniform costs. The Union reduced its initial proposal of \$1500.00 in order that its position would fall in line with actual costs. In recognition

of a lower wage schedule, regional comparables and actual out of pocket costs, the Union proposal to increase the annual clothing allowance to \$1000.00 is recommended. Detectives will benefit from an increase in uniform allowance, and, therefore, the Union's additional proposal to increase the allowance for detectives is not part of the recommendation.

#### Article 20, Uniform Allowance

Section 1. Allowance. A uniform allowance shall be paid to each bargaining unit member subject to the following terms and conditions. The uniform allowance check will be issued on a non-payroll week.

A. The Township agrees to provide for all full-time bargaining unit members of the Police Department one thousand dollars (\$1000.00), per employee, per year, toward the cost of approved Township uniforms and related equipment. Additionally, a member serving as a full-time detective will receive up to fifty dollars (\$50.00), per employee, per year, toward the cost of required clothing for his position.

#### **4. Article 30, Health Protection/Vaccinations**

The Employer proposes a number of modifications and additions to this provision of the Agreement. In addition the modifications, the more significant revisions include the following. Remove the specific named testing facility. Add language which indicates the testing procedures, listing of drugs and initial screen with confirmatory screening levels. The requirement of a member of the bargaining unit to notify the Employer when prescribed a narcotic by a physician and review of the medication by the Township Medical Review Officer. A provision which allows for the reporting of positive drug levels while taking a prescription narcotic.

The Union is opposed to the proposed changes to this Article of the collective bargaining agreement.

EMPLOYER POSITION: The Employer states that it is proposing to modify contract language in order that it reflect the testing procedures, and the listing of testing levels assures that the parties are in agreement regarding what is acceptable to the Department. The Employer argues that it is reasonable to require an Officer to report the narcotic prescription drugs he/she is taking in order for a safe work environment. The Employer argues that its proposed modifications to the Article are reasonable and not a significant change in terms of current practice and urges the Fact Finder to recommend the proposal.

UNION POSITION: The Union argues initially that the proposals of the Employer are not necessary. The Union states that there have been no issues of non compliance or positive drug tests of bargaining unit employees. At hearing the Union indicated that it was acceptable to delete the named providers, but objected to the listing of initial tests and drug levels as outlined in the Employer's proposal. Additionally, the Union expresses concern and opposition to Employer's proposed paragraphs M and N. The Union argues that a misinterpretation could result in the loss of employment. The Union generally prefers current contract language.

RECOMMENDATION: Although the Employer suggests that its multiple proposals reflect ongoing practices and reasonable modifications to the existing procedures as outlined in the Article, the reality is that it has proposed a significant and comprehensive change to what is already a detailed provision of the collective bargaining agreement. The Union's argument, that there have been no issues or

incidents experienced by bargaining unit employees, is compelling. There is no evidence of illicit or extraordinary drug use involving members of the bargaining unit. On the other hand, certain Employer proposed modifications appear to be reasonable and not an imposition on bargaining unit members. When faced with comprehensive proposals of this nature, it is difficult at times for neutrals to recommend or award language when it appears that the parties have not engaged in significant discussion or negotiations. This appears to be the case in this matter. The Fact Finder is not familiar with testing facilities in the Akron area and other aspects of the testing process. The Employer's proposal for new Paragraph D states, in part that "The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution." At hearing there was no discussion or evidence regarding the meaning of this language and how it may impact the bargaining unit. In addition, there was no explanation of the screening levels for a long list of drugs, which are outlined in new paragraph D, during the evidentiary hearing. A proposal of this nature requires substantial discussion by the parties, post negotiations. And this is the recommendation of the Fact Finder. The recommendation is current contract language and referral to the Labor Management Committee pursuant to Article 7. Section 1 of this provision states that meetings of the Labor Management Committee will meet no more often than once every four months. The recommendation is to include a second paragraph in Section 1, which requires monthly meetings, as follows.

Article 7, Labor Management Committee  
Section 1 (New Paragraph 2). The parties agree that the Labor Management Committee will be convened once each month beginning three months from the date

of the execution of this Agreement for purposes of discussing modifications to Article 30, Health Protection/Vaccinations. The parties will consider the proposed modifications to Article 30 which were on the table during the 2015 - 16 negotiations for the current Agreement and any other issues regarding this provision which may be raised by either party. Meetings of these special sessions of the Labor Management Committee will be one and one-half hours (1 ½ hours) in duration and are limited to six monthly sessions or more sessions by mutual agreement. The parties agree to meet in good faith with the goal of a comprehensive process which meets the interests of the Employer and Union.

#### **5. Article 34, Physical Fitness Testing**

The Employer proposes to modify and clarify the components of the physical fitness testing in Section 2 with reference to the Ohio Peace Officer Basic Training Program. The Employer rejects the Union proposal to increase the lump sum payment for passing two fitness tests in a calendar year.

The Union proposes to increase the lump sum payment from 0.5% of annual base salary to 1% for the passing of two fitness tests in a calendar year.

EMPLOYER POSITION: The Employer states that its proposal clarifies and improves the components of the physical fitness testing process. Being in compliance with the Ohio Peace Officer Basic Training Program ensures that the program is effective.

The Employer believes that the Union is not opposed to the modification to Section 2.

UNION POSITION: The Union is interested in an increase in participation by members of the bargaining unit and has therefore proposed the half percent

increase in lump sum stipend. The Union states that only three or four employees participate in the program.

RECOMMENDATION: The Employer suggested that the Union was open to the Section 2 modifications, and the Union, at hearing, believed that the changes were acceptable. The Employer's proposal regarding Section 2 is therefore recommended. Although the Employer advocated for current contract language regarding the Union's Section 4 proposal to increase the stipend, it admitted that it was open to the increase at a point during negotiations. The Fact Finder recommends the increase as the cost to the Employer is affordable, but, moreover, the Union's argument, that it may increase participation in the voluntary program, is important to both parties. A more physically fit Department may impact worker injury and health care issues in a positive way. As half of 2016 has passed, the recommended stipend increase is effective January 1, 2017. The recommendation is as follows.

#### Article 34, Physical Fitness Testing

Section 2. The components of the test shall be push-ups, sit-ups, and 1.5 mile run which must be passed in accordance with the Ohio Peace Officer Basic Training Program requirements for age and gender. The physical fitness tests shall be given two times per calendar year. The tests have traditionally been given in April/May and September/October and that schedule will be maintained unless changed by the Chief due to extenuating circumstances such as inclement weather, outbreak of contagious illness, staffing shortage, etc.

Section 4. Employees who pass two (2) physical fitness tests given at separate times in the same calendar year (traditionally in April/May and September/October – see Section 2) shall receive a lump sum payment equivalent to 0.5% of their annual base salary, less applicable deductions, in the first pay period in December. The lump sum payment will increase to 1% of their base annual salary, less applicable

deductions, beginning calendar year 2017. The employee must be employed by the Springfield Township Police Department at the time of the payment in order to qualify for the payment.

The parties are in agreement to delete the chart regarding years 2007 through 2009.

## **6. Article 35, Duration**

The Employer proposes a three year Agreement with an effective date commencing with the execution of the new Agreement.

The Union proposes a three year Agreement effective January 1, 2016.

RECOMMENDATION: The parties are in agreement that the 1% pay increase for 2016 is retroactive to January 1, 2016. The Union states that the effective dates of new Agreements have always been January 1 when negotiations continued past the first of the year. The effective date of the most recent Agreement is January 1, 2013.

The Union's proposal is recommended as follows.

### Article 35, Duration

Section 1. This Agreement shall become effective January 1, 2016, and shall remain effective for three (3) years thereafter terminating on December 31, 2018. Prior to the expiration date, negotiations may be commenced upon no more than one hundred eighty (180) and no less than sixty (60) days notice by either party in accordance with the provisions of the State Employment Relations Act. Matters covered in the terms and conditions of this collective bargaining agreement can be reopened during the term of this agreement only by mutual agreement of the parties.

## CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties and all facts presented at hearing including exhibits presented during the evidentiary

hearing. The Fact Finder has carefully reviewed the positions and arguments presented by each party and the criteria enumerated in Ohio Revised Code section 4117.14 (G) (7) (a-f).

In addition to the recommendations contained in this Report, all tentative agreements reached by the parties during negotiations and immediately prior to the commencement of the evidentiary hearing and all unopened articles of the Agreement are hereby incorporated in this Report and Recommendation by reference.

Respectfully submitted and issued at Cleveland, Ohio this 17<sup>th</sup> Day of June 2016.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

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Thomas J. Nowel, NAA  
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 17<sup>th</sup> Day of June 2016, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Robin L. Bell, Clemans, Nelson & Associates, representing Springfield Township; Hugh C. Bennett representing the Fraternal Order of Police, Ohio Labor Council, Inc.; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

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Thomas J. Nowel, NAA  
Fact Finder