

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
July 9, 2016

In the Matter of:	)	
	)	
The Fraternal Order of Police	)	
Lodge No. 16	)	
	)	SERB Case No.
	)	15-MED-09-0799/0806
vs.	)	
	)	
The City of Wickliffe	)	
	)	
	)	

APPEARANCES

For POP Lodge No. 16:

Robert Phillips, Advocate  
Joseph Thompson, Lodge No. 16 President  
Anthony Reguier, Patrolman Representative  
Daniel Sabruno, Union Steward

For the City of Wickliffe:

Jack Petronelli, Chief Negotiator, Allain Legal, LTD  
Martin Germ, City of Wickliffe Finance Director  
Randy Ice, City of Wickliffe Chief of Police

Fact Finder: Dennis M. Byrne

## **Background**

This fact-finding involves the City of Wickliffe (Employer/City) and the 29 full time Police Patrolmen, Sergeants, and Lieutenants in the Wickliffe Police Department represented by the Fraternal Order of Police/Ohio Labor Council (FOP/Union). The parties held three negotiating sessions in an attempt to find mutually agreeable language for a successor agreement for their contract that expired on December 31, 2015. In spite of their efforts, the parties were unable to reach a final agreement; and eight (8) issues remain on the table. The open issues are: 1) Article 14: Vacation, 2) Article 18: Medical Insurance; 3) Article 20: Educational bonus; 4) Article 21:Longevity; 5) Article 22: Wages; 6) Article 26: Shift Differential; 7) Article 35: Arbitration; Article 38: Professional Pay; and 8) Article 40: Fitness.

Since the parties were unable to reach an agreement on the issues, they scheduled a Fact Finding Hearing. The Hearing commenced at 10:00 A.M. on Thursday June 16, 2016, at the Wickliffe City Hall. The hearing ended at approximately 3:00 P. M. Prior to the formal hearing, the Fact Finder attempted to mediate a settlement, but that effort was unsuccessful.

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 main difference between the parties is the Union's belief that the City can afford to fund its wage and benefit demands. The City contends that it is faced with a revenue shortfall that requires all City employees, including the members of the Police Department, to accept a wage freeze and benefit concessions. At this point it should be noted that the City's Finance Director and the Union's financial expert came to essentially the same conclusions regarding the City's financial condition. Both sides agree that the revenues coming into the City have been reduced due to the lingering effects of the Great Recession and changes in State Law regarding the inheritance tax, the personal property tax, and the Local Government Fund transfers to municipal governments.

Given the fact that both parties agree on the overall financial picture facing the City, the Fact Finder does not believe that there is any reason to discuss the City's finances in detail. However, that fact leads to the question of how the parties' positions on the outstanding issues can be so diametrically different when they agree on the underlying financial data?

The answer is that the Union and the City have different beliefs about how the City has chosen to use its financial resources. The City Council and the City's Administration have chosen to run the City on a cash basis. That is, the City has always paid cash for all of its expenditures. That has led to minimal interest cost to the City and

its residents. In good economic times when the City expenditures did not use all of the City's revenues, the City ran a surplus in its accounts and could still afford to fund wage and benefit increases for its employees.

However, the Great Recession and the resulting financial pressure began to undermine the City's ability to pay for all of its expenditures in cash. This situation was exacerbated by the changes in the law with regard to inheritance taxes and cuts in the Local Government Fund that funneled money from the State to local governments. Finally, the low interest rate environment of the past decade has led to very low returns on any money invested by the City. Consequently, as a result of all of these factors, the City's revenue picture has worsened over time. In addition, another change in State Law led to an unfortunate situation where the City was forced to reimburse one of its major taxpayers approximately one million dollars. That (re) payment was stretched over three years, and the City is currently paying three hundred and thirty-three thousand dollars per year to one individual taxpayer. Finally, the City believes that a large business currently located in Wickliffe will move out of the City within the next few years leading to a further decline in income tax revenues. Consequently, the City believes that it cannot afford to give raises to any City employee.

The City's representatives also testified that in order to save money the City changed the way that trash was collected. The City used to collect the residents' trash as a service to the taxpayers. However, as the City's financial condition worsened, the City Council voted to have the residents of Wickliffe pay for their own trash collection service. This saved the City approximately \$800,000.00/yr. Parenthetically, the citizens were incensed by this change in policy.

The cuts in funding affected all City operations; and the Police Chief, Randy Ice, testified that this was the first time in memory that the Department had no capital fund to buy new cruisers, communications equipment, etc. The Chief stated that the Department was unsure how it would handle the budget cuts that it sustained over the past few years. The Fact Finder is sure that other City Department Heads have also seen their budgets shrink.

Therefore, the City testified that the citizens of Wickliffe, the non-unionized employees of the City, and all City operations have been subject to budgetary constraints; and now the unionized employees must accept the fact that belt tightening is necessary. The City's representatives stated that it was time for the unionized employees to do their part and make similar sacrifices to those made by all other employees and citizens of the City.

The Union agrees with the facts outlined above. However, the Union also believes that many of the problems listed above are caused by the way that the City funds its expenditures. The Union believes that paying cash for all expenditures, especially in a time of historically low interest rates, is unreasonable. The discussion on this issue centered on the City Hall renovation.

A major renovation to City Hall is nearing completion. The cost of the project was approximately \$2,000,000.00, and the City paid cash for the project. The Union and its financial expert believe that the City's financial problems are exacerbated by the City's unwillingness to use the financial markets to raise cash for capital expenditures. The Union believes that the City could have financed the City Hall renovation by either a special levy or by selling bonds and paying back the principle over a number of years,

etc. The Union argues that this is reasonable course of action and that other (all) municipalities in Ohio and throughout the United States (often) use the financial markets to raise money for capital expenditures.

The Fact Finder notes that the funding of a long-term, nonrecurring capital expenditure out of current revenues is not the usual way that either public entities or private sector firms operate. In this instance, using the financial markets to raise money for the project is reasonable given the one time nature of the expenditure. If the City had funded the renovation in a different way, then the City's financial picture would look much different.

The City's representatives attempted to refute this argument by stating that the money for the renovation came from the City's capital fund and that State Law would not have allowed the City to spend the money on current operating expenses. This is true, but not really dispositive. That is, there are numerous ways that the City could have used its available resources in different ways that would have freed up funds for other uses.<sup>1</sup>

In this instance the Fact Finder is convinced that the City has operated in a way that has negatively affected both the General Fund and the Capital Fund. That is not to say, that the City does not face daunting financial issues currently and in the future, especially if a large business leaves the area. However, many of the City's current financial issues stem from the decision to pay cash for all of its expenditures. The City's financial plight is a combination of bad luck, the current economic condition of Ohio, and policy decisions at both the State and local levels.

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<sup>1</sup> There was also testimony that the City had changed the percentage of funds going into the capital account from 20% to 5% over the last few years. The 5% figure is the State mandated minimum that must go into the capital account. The money in the Capital Account is earmarked for road construction and repair.

Most cities that claim that they face financial problems have a demonstrated lack of funds necessary to keep the city operating without severe and ongoing cuts in both the kind and amount of services and manpower. Wickliffe is not in that position.<sup>2</sup> Currently the City has the necessary financial resources to continue to provide the same level of services that it has provided its citizens over the past few years. That may change in the future, but presently the City's financial condition does not preclude some wage and benefit enhancements for its employees.

The above paragraphs outline the Fact Finder's belief that the City can afford to fund a raise for its employees. However, there is another question that must be answered. That is, is there any reason that the City should pay its Police Department personnel more than they are currently making? That question will be addressed when the parties' positions on the issues are discussed.

**Issue:** Article 14.01 – Vacation Accrual

**Union Position:** The Union is demanding that the vacation scale be amended so that the officers will receive 240 hours (6 weeks) of vacation after 20 years of service. That is, there is an extra week of vacation added to the vacation schedule after 20 years of service.

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

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<sup>2</sup> Wickliffe has laid-off numerous members of the Streets Department because it no longer collects garbage. In addition, one position in the Police Department has not been filled. The manpower shortfall is covered by overtime. The Fire Department is also operating with some part-time employees.

**Discussion:** This is an issue of first impression. The Union believes that its members deserve an extra week of vacation after 20 years of service. The Union pointed out that police work is a high stress occupation and there is a need for time off. In this vein, the Union presented evidence that showed that the workload of the officers was increasing over time (Union Fact Finding Presentation – Tab 7). In addition, there was evidence put into the record that showed a number of other jurisdictions in the surrounding area had vacation schedules that topped out at 240 hours (6 weeks). Therefore, the Union argued that its demand was reasonable.

The City countered that most jurisdictions in the surrounding area had vacation schedules that topped out at 200 hours (5 weeks). The City also contended that internal parity and its financial condition precluded it from agreeing to any changes in the vacation schedule.

The Fact Finder has examined the data presented by the parties and finds that the data show a number of jurisdictions have vacation schedules that top out at 240 hours (6 weeks). However, most of those jurisdictions require 25 years of service before the 6<sup>th</sup> week is earned. Therefore, based on both the testimony and the information in the parties' submissions, 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 current vacation schedule found in the parties' contract is substandard when compared to other jurisdictions.

**Suggested Contract Language:** Current contract language

**Issue:** Article 18 – Insurance

**Union Position:** The Union is offering to increase the employee contribution to the medical plan to an 11% contribution in the first year, a 12% contribution in the second year, and a 13% contribution in the third year of the proposed agreement. The Union also demands that the caps on the employee contribution remain in place.

**City Position:** The City is demanding that the employee contribution be raised to an uncapped 15% of the insurance premium.

**Discussion:** The City's proposal is based on three facts. First, the City claims that it is running short of money and needs an increased contribution to the medical plan from the employees. Second, the City also argues that comparables data from Northeast Ohio and around the State prove that the current employee contribution is low when compared to the required contribution in other jurisdictions. Finally, the City argued that the insurance plan is very good and that the current plan design is exceptional when compared to most other jurisdictions.

The Union does not dispute the fact that the current insurance plan is better than the plans in many other areas. However, the Union does not believe that its offer is unreasonable. The Union argues that it has agreed to an increased employee contribution, but acceptance of the City's proposal might lead to a more than fifty percent increase in the employee's contribution over the life of the new contract and that an increase of that magnitude is unwarranted.

The Fact Finder has examined all of the data submitted by the parties and agrees that the City's health care plan is better than the plans offered in many other jurisdictions. The question then becomes what is a reasonable employee contribution to the plan. The

data submitted by both parties does not support the City's contention that a 15% contribution is standard around the State. City Exhibit I based on SERB data shows that the average contribution is between 10.8% and 11.9% for cities with a population of less than 25,000. The City also presented data based on 2014 study by EBI that shows that the surrounding areas in Northeast Ohio require their employees to make a 7.2% contribution. The Union used the same SERB data presented by the City to justify its position.

The Fact Finder believes that the data presented by both parties show that the Employee contribution should rise. While the EBI data show that the employee contribution for jurisdictions in Northeast Ohio is less than the Wickliffe employees' contribution, the same data show that the Wickliffe plan is more costly and provides better coverage than the plans offered in many other jurisdictions throughout Northeast Ohio.

The second question is whether the employee contribution should be capped. The cap on contributions limits the employees' exposure to large and unexpected premium increases. For example, if the employee's contribution is capped at 10% of the premium cost, that 10% figure leads to an expected cost figure and that number is the hard cap. Assuming 1) that the projected cost of insurance when a contract is signed is \$2,000.00 per month in the final contract year and 2) that the employees have negotiated a capped 10% contribution. This means that an employee pays up to \$200.00 per month for insurance. However if the cost of insurance has risen faster than expected and is \$2,200.00 per month in the last contract year, then a 10% contribution level means that the employees' contribution should be \$220.00. However, because the cap on employee

contributions is set at \$200.00, the City is responsible for the extra \$20.00 not paid by the employees.

Therefore, the cap is a type of insurance policy that protects the employees from unexpected changes in the cost of medical insurance. It should be noted that the cap would have no effect if the assumptions about the cost of insurance and medical care use match the assumptions that the negotiators used as the basis for their projections when the contract was signed.

In this situation, the Union has agreed to increase its contribution to the health care plan by 1% per year. Using the projected rise in insurance premiums and their projected contribution levels, the Union is projecting an 11% contribution in the first year, a 12% contribution in the second year, and a 13% contribution in the third year of the projected agreement. The implicit increase in the plan cost for each year is 3.5% (City Exhibit D). Therefore the Union's cap figure in the second year of the proposed contract is calculated as 12% of 103.5% of their contribution in the first contract year.

The Fact Finder believes that the data show that the City's proposal for a 15% contribution level is not supported by the data presented at the hearing and is also not supported by the City's financial condition. Therefore, the Fact Finder is recommending that the employee's contribution be increased to 13% of the premium cost for each year of the prospective agreement. This number is slightly higher than the premium share for cities with less than 25,000 residents; but it is fixed for 3 years, and the premium share for municipal employees around the state will undoubtedly rise in the coming years.

The question of the cap is more problematic. If the assumptions made by the parties during their negotiations are correct, then the cap makes no difference. However,

it the parties' assumptions are incorrect and the cost of insurance rises faster than the parties anticipated, then the cap may become a binding constraint on the employees' cost share. Because the cost of insurance is determined by the cost of medical care throughout the State and Nation and the medical care used by the City's employees, both of which have a stochastic element, projections about the cost of insurance are not exact.

Therefore, the cost of insurance may rise faster than the parties projected, and the cap may become binding.

Looked at it the way described above, a cap on the cost of insurance borne by the employee is a type of insurance policy against an unexpected event, i.e., an unexpected cost increase. There are many types of insurance policies. One is a plan that covers all eventualities. Another is a catastrophic coverage plan. This is a plan that kicks in to protect individuals from having to pay an exorbitant amount in order to protect the policyholder from a financial catastrophe. In this situation that would imply a cap on the employee's cost, but a cap that higher than the employee's contribution to their insurance.

This is what the parties negotiated into their last contract because the caps listed in Article 18 of the expired contract are 15% for the single, employee and spouse, and the employee and children plans. The only cap less than 15% is for the family plan where the cap is 12%. Therefore, the Fact Finder is recommending cap of 15% for the employees in this contract in line with their past practice.

The Fact Finder also is aware that the City's financial condition is deteriorating for a number of reasons. This means that the City has an incentive to keep the cost of the insurance plan manageable. A change in the cost of insurance will ripple across the City

and cause serious financial problems. In recognition of this fact, the City has an Insurance Committee that is comprised of all the stakeholders covered by the City's insurance plan. If there is an unexpectedly high increase in the cost of insurance, then the Committee's charge is to find ways to mitigate the situation. This means that all cost increases will not be simply passed on to the employees. The Committee will look for ways to change the plan design, etc., to minimize the cost of the plan. Therefore, there is an institutional safeguard set up charged with trying to keep the cost of insurance reasonable. The Fact Finder's experience is that Health Care Committees work well.

**Finding of Fact:** The City's demand for an employee cost share of fifteen percent is high when compared to other jurisdictions. The average in Ohio is approximately 12% or 13%. The Fact Finder recommends that the employee's cost share for insurance should be 13% for the life of the contract. In addition, the Fact Finder is recommending a cap calculated at 15% of the premium cost for the life of the agreement.

**Suggested Language:**

18.02: Based on plan level, employees will be responsible for a Co-pay of the collective total of health/prescription, dental and eye monthly premiums, in 2016, 2017, and 2018 of thirteen percent (13%). Such Premium co-pay shall not exceed the following figures:

	Single	Employee/Child	Employee/Spouse	Family
2016	85.75	162.92	180.07	257.27
2017	88.75	168.63	186.38	266.25
2018	91.86	174.53	192.90	275.57

**Issue:** Article 22 – Wages

**Union Position:** The Union's demand is for a 2.5% wage increase for each year of the proposed contract.

**City Position:** The City is offering 0.5% in years one and two of the proposed contract, and 0% in year three.

**Note:** The Union's position statement listed that the wage differential between the patrolmen and the officers should remain 10%. The City's position statement was silent on this issue. Therefore, the Fact Finder is recommending current contract language for the rank differential.

**Discussion:** The City presented evidence and testimony by Martin Germ, the Finance Director, on the state of Wickliffe's finances (Employer's Exhibits D – G). In addition, the Union presented testimony by their expert, Mary Sargent (Union Exhibits under Tabs 3 – 5 in the Union Fact Finding submission). Without going into too much detail, the evidence shows that the City is facing some financial uncertainty in the coming years. However, the data also show that, at least a portion of the City's current financial conundrum is because the City pays cash for all of its expenditures. That fact and the items that the City has prioritized as necessary expenditures have contributed to the financial problems facing the City, at least in part.

An examination of the City's financial data presented by the parties does not prove that the City has any inability to pay for wage and benefit increases. It should also be noted that the City never claimed an inability to pay. Rather, the City claimed an unwillingness to pay based on two factors: 1) that its finances precluded it from making new financial commitments, and 2) that the Police Department personnel are already well compensated for their efforts. The first factor has been discussed. However, the second has not.

The City presented data that show that the Patrolmen are among the top paid police officers in Lake County. Among the jurisdictions listed, Wickliffe is behind only Willoughby and Mentor. Willowick pays its patrolmen approximately the same wage as Wickliffe. Eastlake, Kirtland, the Lake County Sheriff, Mentor-on-the-Lake, Painesville and Willoughby Hills all pay their patrolmen less than Wickliffe. The City and the Union also presented data from the SERB survey Annual Wage Settlement Report. That data shows that cities in the Cleveland area (which includes Lake County) negotiated wage increases of 1.96% in 2014 and 2.06% in 2015.

The Union also presented SERB data (Wage Increase Report) for police departments in the area that listed the range of negotiated wage increases for various years (Tab 5 of the Union's Fact Finding Submission). The settlements ranged from a low of 0% to a high of 3.85%. The median and the mode were both 2.0%. The Union also testified that the work load of the Police Department was increasing dramatically over time and that the officers were already being asked to do more with less (Tab 7 of the Union's Fact Finding Submission).

The City's contention that the FOP members are among the best paid in Lake County was cited as a justification for its modest wage offer. There are many reasons that any firm or municipality would want to be characterized as a high wage employer. High wages usually lead to more qualified individuals applying for jobs. In addition, turnover is usually less. Many studies have shown that high wage employers actually have lower overall labor costs when all employment costs are considered. Therefore, the fact that the Police Department personnel are among the best paid in Lake County is not

necessarily a reason for the City to try to negotiate a wage freeze or a minimal increase if it is trying to minimize its total labor costs.

The Fact Finder is faced with a difficult decision in this matter. He has recommended an increase in the police personnel's contribution to their health insurance. Furthermore, the data support a finding that the City can afford to pay an increase to their employees especially because the workload of the officers is increasing. However, the City is facing a potential lose of a major employer in the near to intermediate future and that will undoubtedly have a negative on the City's finances. In light of that fact, the Fact Finder is recommending a wage reopener in the third year of the prospective contract.

With regard to the first two years of the new contract, given all of the data in the record, the Fact Finder is recommending an increase of 1.5% per year. If the City's financial condition continues to deteriorate and the third year wage reopener leads to a 0% increase, then the recommendation is for 1.0% per year for the life of the contract. This amount is less than the SERB data show is the State Average pay increase for 2015. The figure is also lower than the numbers reported in the Union's data for Cities in the Northeast Ohio area who have reported 2016 – 2018 settlements. However, the City does currently face problems with the General Fund and a greater percentage increase does not seem warranted at this time.

**Finding of Fact:** The City's financial condition means that the Union's wage demand cannot be met.

**Suggested Language:** The wage scale in Article shall be amended to show a 1.5% increase in years 1 and 2 of the proposed agreement. There shall be a wage reopener provision in year 3 of the new agreement.

**Note:** The Sergeants and lieutenants wage scale shall be amended to show a 10.0% Rank Differential.

**Issue:** Articles – 20 (Educational Pays), 21 (longevity), 26 (Shift Differential), and 38 (Proficiency Pay)

**Union Position:** The City demands that a two-tier pay system be instituted for the four payments listed above. The Union rejects that demand.

**City Position:** The City demands that the phrase “hired before December 31, 2015” be added to the language of each clause, i.e.. this is a demand for a two-tier pay system. That is, individuals hired after December 31, 2015 will not receive the same pay as their more senior colleagues.

**Discussion:** These 4 items are discussed together because the City’s demand is exactly the same in each article. Two tier pay scales are an anathema to Unions. The mantra of Unions has always been “equal pay for equal work”, and that is the Union’s position in this case. The Union agreed with the City’s contention that two tier pay scales do not impact hiring, but stated that after a brief period the junior officers begin to complain about the lack of equity in the pay system and that affects morale. The Union believes that two tier pay scales usually cause more problems than they are worth.

The City’s demands are to eliminate educational pays, longevity for new hires, shift differential, and all Pro Pays. In addition, the City demands a freeze on longevity for the life of the proposed contract for currently employed officers. The City’s position is that these demands do not harm the current employees and that over time these changes would save the City a significant amount of money. The City contends that its finances

require that it try to save as many dollars as is possible. The City agrees that its demands will save almost nothing in the short run, but that there will be significant savings over time.

It must be pointed out that these items were negotiated into the contract as a quid-pro-quo for something of value to the City during previous negotiations. While the City's demands do not affect current employees, the entire set of demands rewrites a significant portion of the contract. These demands taken as a whole would cost new employees thousands of dollars and eliminate some contract provisions, e.g., shift differential and longevity, found in (almost) all police contracts.

For the Fact Finder to recommend these changes, he would have to be convinced that 1) the City was in dire financial condition, and that 2) the proposed changes would help ameliorate the problem. There can be no argument that, at least, the second condition does not apply in this case. The Fact Finder agrees that the City has some current and looming financial problems, but it is not a financial crisis. However, these demands rewrite significant portions of the contract, but will do nothing to save the City any over the life of the proposed contract .

Given the magnitude of the proposed changes and in light of the Union's adamant rejection of the demands, the Fact Finder cannot recommend the City's position on these issues. If the City's financial situation declines to the point that it must demand concessions from the Union, then future negotiations are the arena to demand these types of concessions.

**Finding of Fact:** The City's demands do not help the City through its current financial problems, but the demands do change a significant number of economic issues with no

quid-pro-quo, and the concessions will have no effect on the City's finances for the life of this contract.

**Suggested Contract Language:** Current Contract Language

**Issue:** Article 35 – Grievance Procedure

**Union Position:** The current language states that the losing party pays for the arbitration. The Union demand is for a fifty-fifty split of the costs of the arbitration.

**City Position:** The city demands that the language in 35.01 be amended to state that the Union rather than the “aggrieved party” may submit a grievance to arbitration.

**Discussion:** The City's position on 35.01 is unobjectionable. The Union must be informed and agree to take an issue to arbitration as the exclusive representative of the union membership. The Union's demand is also reasonable. A fifty-fifty split of the costs and expenses of an arbitration hearing is found in most labor agreements. However in this instance, the City objects to changing the current language. The City pointed out that the parties have never arbitrated any issue during the period covered by the contract, and the City believes that if “it ain't broke, don't fix it”. The Arbitrator might personally prefer a fifty-fifty split. However, given the facts of the situation and the Employer's objection to the change, the Fact Finder is recommending current contract language.

**Finding of Fact:** Substituting the word Union for the term “aggrieved party” simply recognizes that the Union is the sole representative of the employees. Furthermore, the Union did not prove a need for its suggested changes in Section 35.05.

**Suggested Language:** The work “Union” shall replace the words “aggrieved party” in Section 35.01.

**Issue:** Article 40 – Fitness for Duty

**Union Position:** The Union rejects the City’s demand on this issue and wants to maintain the current contract language.

**City Position:** The City demand is that if an officer is found to be unfit for duty he/she may be subject to progressive discipline. This is a change from the current situation where the officer will not be subject to progressive discipline

**Discussion:** The parties’ contract has a rather lengthy article on Fitness for Duty. The language in that article mandates that each officer who is medically fit participate in a yearly fitness-testing program. According to the current language, any officer who is not in the top 50<sup>th</sup> percentile of the OPATA fitness standards will be:

... given training and an opportunity to pass the test in a subsequent evaluation.  
Failing the fitness test will not subject the employee to progressive discipline.

The City demands that the phrase *will not* be changed to the word *may*. The Union objected to this change and countered with the phrase *may not*.

The Fact Finder notes that the standard is based on the Cooper Institute Standards and is not simply someone’s idea of what level of Cardiovascular, Strength, Endurance are necessary to safely perform the duties of a police officer.. Moreover, the standard is age and gender specific, i.e., not one size fits all. Finally, the language suggested by the Employer would allow any individual who was not able to pass the test access to the grievance procedure. Under these circumstances, the Fact Finder agrees with the Employer’s demand on this issue.

**Finding of Fact:** The Employer’s demand is reasonable.

**Suggested Language:** The phrase “will not” will be deleted from the last sentence of 41.03 and replaced with the word “may”.

**Note:** The contract will expire on December 31, 2018 and become effective when it is signed. In addition, all other tentative agreements between the parties are included in this recommendation by reference.

Signed this 11th day of July 2016, at Munroe Falls, Ohio.

*/Dennis Byrne/*

Dennis M. Byrne, Fact Finder