

STATE EMPLOYMENT RELATIONS BOARD

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF ST. MARYS

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case Number: 2015-MED-09-0862
Full-time Patrolmen – Police Officers

Before Fact Finder: Thomas J. Nowel, NAA
February 5, 2015

PRESENTED TO:

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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 25, 2015 in accordance with Ohio Revised Code Section 4117.14 (C) (3). Hearing in the matter was held on January 19, 2016 at St. Marys City Hall.

The prior collective bargaining agreement expired on December 31, 2015, and the parties agreed to an extension of fact finding and a limited G – 11 waiver. The parties engaged in negotiations on three occasions which included one mediation session. The parties reached agreement on a number of issues during negotiations. Prior to the commencement of the evidentiary hearing, the Fact Finder discussed possible resolution of outstanding issues, and the parties were successful at settling a number of unresolved proposals. The parties agreed to the issuance of this Report and Recommendation prior to the scheduled meeting of the St. Marys City Council on February 8, 2016. The composition of the bargaining unit is approximately seven full-time police officers with one or two vacant positions which may be filled in the near future. The evidentiary hearing was convened, following settlement discussions, at 11:00 am.

OUTSTANDING ISSUES:

Article 44, Wages

Article 18, Overtime Pay

Article 19, Longevity

Article 24, Educational Incentive

Article 34, Physical Fitness Program

Article 43, Duration of Agreement

THOSE PARTICIPATING AT HEARING FOR THE EMPLOYER:

Patrick Hire, Clemans, Nelson & Associates
Susan Backs, Personnel Director
Greg Foxhaven, Safety Service Director

THOSE PARTICIPATING AT HEARING FOR THE UNION:

Mark Volcheck, Attorney for the OPBA
Randy Allmeier, Union Representative
Gary James, Union 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. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to 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. Other factors, not confined to those listed above, 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

At hearing, the parties agreed to present their proposals and evidence regarding wages as the initial issue to be considered including comment regarding the finances of the City of St. Marys.

1. Article 44, Wages, Section 44.1

The Union proposes a general wage increase of 3.5% effective the first full pay period following January 1, 2016; an additional 3.5% wage increase effective the first full pay period following January 1, 2017; and 3.5% wage increase effective the first full pay period following January 1, 2018.

The Employer proposes a general wage increase of 1% effective with the signing of the new Agreement; an additional wage increase of 1% effective the first full pay period following January 1, 2017; and an additional wage increase of 1% effective the first full pay period following January 1, 2018.

The parties agreed to current contract language in Sections 44.2 and 44.3.

EMPLOYER POSITION: The Employer states that expenditures have exceeded general revenue from 2008 to 2014 (Emp. Exb. T), but the City has finally experienced a reversal in this trend in 2015. The year end unencumbered balance

has decreased every year from December 31, 2007 until 2015. The Employer states that the general fund unencumbered balance experienced an increase at the end of 2015, \$2,160,469.01. City income tax is 1.5% with .5% set aside for capital improvements (Emp. Exb. T). Of the remaining 1%, 72% is dedicated to the general fund, 18% to street construction and maintenance and 10% to the capital improvement fund. The Employer states that its unencumbered fund balance is currently equal to 3.6 months of general fund expenditures. The Government Finance Officers Association (GFOA) recommends a minimum of two months operating expenses.

The Employer states that City finances were at a critical stage over the past four or five years as expenditures exceeded revenue. The Employer states that it developed strategies to save monies and generate additional revenue in order to contend with shrinking traditional revenue streams (Emp. Exb. S). General Fund revenues were adjusted in 2014 by first decreasing the Capital Improvement Fund to 5% and then, later in the year, to 0%. These were temporary measures. Modifications to other funds were approved by City Council in 2013 and 2014. Vacant positions went unfilled. Cleaning contracts were cancelled as employees cleaned their buildings and facilities. The Director of Public Service and Safety accepted a salary reduction. Other cost savings were enacted and additional efficiencies continue to be explored by the Employer. The Employer emphasizes that no layoffs or furloughs have been required during the period of revenue shortfalls. And the Employer indicates its appreciation in that the Union, understanding the financial condition of the City, agreed to lump sum payments in

lieu of general wage increases in 2013 and 2014 and a non OPOTA certified entry level wage. The Employer argues that City finances are gaining stability but still are tenuous at this time. Its wage proposal in these negotiations is easily justified, and the City argues that the Union's proposal is unrealistic.

The Employer states that police officers, represented by the OPBA, received the highest wage increases of other City employees over the past three years. Elected officials wages were frozen and non bargaining unit employees received one lump sum and a two percent increase this year. In addition, all bargaining units at the City received similar increases over the past three years, two lump sums and a percentage increase. In a comparison to six regional cities with comparable populations, the wages of St. Marys police officers rank in the upper half (Emp. Exb Q). External comparables indicated that, over a two year period, wage increases in the region averaged in the two percent range. The lump sums received by the bargaining unit averaged 2% the first year of the previous Agreement and 3% in the second year. And, of course, bargaining unit employees received a 3% general wage increase in 2015. The Employer states that any argument, suggesting that bargaining unit employees must receive a catch-up wage increase, is not justified. The Employer states that the OPBA bargaining unit fared the same or better than the four other bargaining units at the City over the past three years. The Employer emphasizes that police officer wages are significantly greater than the St. Marys per capita income and argues that the Fact Finder must take this into consideration. The Employer states that the three year cost of the Union's proposal is \$53,317.74, while the cost of its proposal over three years is \$17,792.23 (Emp. Exb. W). The

Employer states that its proposal is clearly in line with the current state of City finances and asks the Fact Finder to recommend its position.

UNION POSITION: The Union states that the Fact Finder should recognize that a catch-up increase is justified. During the previous negotiations, the parties reached impasse regarding wages, and a Fact Finder recommended percentage wage increases for each year of the three year agreement. St. Marys City Council rejected the Report and Recommendation of the Fact Finder, and the Union then worked with the City to resolve budgetary shortfalls by agreeing to the two lump sum payments in the first two years of the Agreement. The catch-up aspect of the proposal is completely justified. In addition, the Union argues, police officer wages in St. Marys are 22.5% behind the average wage as determined by the State Employment Relations Board (SERB) in the Dayton region (Un. Exb. 14). And in a comparison to Ohio cities with a population of 5,000 to 10,000 population, St. Marys police officer wages are generally 14.5% behind the average based on SERB benchmarks dated November 24, 2015 (Un. Exb. 16). Police Officer wages, in a comparison to regional cities, those utilized by the Union during the previous fact finding hearing, are generally comparable although lagging behind a number of jurisdictions (Un. Exb. 17). The bargaining unit lost ground with the agreement to accept two lump sum payments in lieu of general wage increases. The Union argues that its proposition of catch-up is justified and must be considered by the Fact Finder. The Union argues that historically police officer bargaining with the City sets the standard for other bargaining units (Un. Exb. 18). The Fact Finder must

take note that one bargaining unit received a 3% general wage increase in 2016 and another will receive 3% in 2017. Union exhibit 19 illustrates the recommendation of the Fact Finder during the last negotiations when an agreement was reached to accept the two lump sum payments. The Fact Finder recommended a 2% general wage increase for 2013; 2% for 2014; and 3% for 2015. The Union argues that its proposal in the instant negotiations is one of equity, fairness and catch-up. The Union cites an article in the regional news media which indicates that the 2016 City budget includes wage increases of 3% percent for non bargaining unit employees and a 2% increase in general fund expenditures (Un. Exb. 21).

The Union states that the Employer has realized increased revenue in 2015. A substantial portion of the “kilowatt tax” will be placed in the general fund in 2016. The Union cites the 2014 State Auditor’s Report which indicates that St. Marys’ finances are generally stable (Un. Exb. 23). The audit points out that the City enjoys a “diversity of the manufacturing, retail, and service sectors” which “bodes well for the economy of the City.”

The Union argues that comparing wages of police officers to private sector wages earned by citizens of St. Marys is “apples to oranges.” Police officers are exposed to a variety of dangers and working conditions not experienced in any other occupation. The Employer’s assertion in this respect lacks relevance in the instant matter.

The Union cites an improving economy, shifting of revenue to the general fund, regional wage comparables and the catch-up aspect as reasons the Fact Finder should recommend its three year wage proposal.

RECOMMENDATION: Both parties present compelling data and arguments for their respective positions. And the parties are to be commended for resolving the wage portion of the previous negotiations in a proactive manner following the rejection of the Fact Finder's Report and Recommendation. The Employer and Union collaborated to design a wage settlement which allowed the City to work through a shortfall of revenue while expenditures exceeded incoming monies. In addition to the lump sum payments, the settlement included a non-OPOTA certified entry level rate which is creative and a bit unique. The Employer's argument, that, in spite of improving revenue, it must continue to pursue a conservative approach to wage increases and overall expenditures, is well taken. The Employer's plan to increase revenue sources is creative and proactive. It is noted that no layoffs or furloughs occurred during the economic downturn. The Union argues that it must recoup lost monies from the previous wage settlement due to the two lump sum payments. This argument is understandable, but many bargaining units saw 0% wage increases during and immediately following the recession, and lump sum payments were common rather than the exception in many Ohio jurisdictions. The Employer's argument, that this bargaining unit's wage settlement established the internal pattern, is valid. While the Employer argues for a conservative approach to wage increases, it has not claimed "inability to pay" for wage increases during the term of the new Agreement. Its proposal of three one percent wage increases reflects its conservative approach, but the increase in revenues, shifting revenue streams and improvement in the bottom line, unencumbered fund balance, suggests wage

increases greater than those proposed by the Employer during negotiations. It is possible that the parties could have developed a compromise, beyond their existing wage proposals, had other issues been resolved prior to hearing at Fact Finding. The parties submitted a number of external comparables for review. The Employer limited its comparable externals to six regional cities with similar population bases. The Union submitted a list of regional comparable jurisdictions with varying population bases. St. Marys police officer wages compare reasonably well with both sets of data. Employer and Union exhibits indicate wage increases in 2016 and beyond ranging from 1% to 3% in both sets of comparable data from regional cities. The Union also suggests that St. Marys wages are comparable to those listed by SERB in the Dayton Region, but a more realistic comparison is reflected in Union Exhibit 17 and Employer Exhibit Q. The data in these exhibits reflect police officer wages in the rural region in which St. Marys is located.

The previous collective bargaining agreement provided for a 3% general wage increase in 2015. The recommendation therefore for the new Agreement is a 2% general wage increase effective the first full pay period following January 1, 2016. Consistent with certain external comparable wages illustrated by above named exhibits, the recommendation includes a general wage increase of 2.5% effective the first full pay period following January 1, 2017. Finally, in line with certain comparables and a less clear picture of the City's finances, the recommendation includes a general wage increase of 2% effective the first full pay period following January 1, 2018. The parties agreed to current contract language in Sections 2 and 3 of Article 44. The recommendation for Section 1 is as follows.

Article 44, Wages

Section 44.1. The following wage schedules will apply during the term of this Agreement:

Effective the first full pay period following January 1, 2016, the wage scale shall be increased by two percent (2%).

The parties to calculate the pay scale for 2016.

Effective the first full pay period following January 1, 2017, the wage scale shall be increased by two and one half percent (2.5%).

The parties to calculate the pay scale for 2017.

Effective the first full pay period following January 1, 2018, the wage scale shall be increased by two percent (2%).

The parties to calculate the pay scale for 2018.

2. Article 18, Overtime Pay

The Union proposes new Section 18.10. This section would limit Auxiliary Officers from working paid details or events which are served by the Police Department unless regular bargaining unit employees have first been offered the work and have turned down the assignments. The Union modified its proposal at Fact Finding to state that full time Police Officers must first be offered the work if the event or details are paid by the City.

The Employer rejects the proposal to include new Section 18.10.

UNION POSITION: The Union states that the Employer initiated a program for Auxiliary Officers a number of months ago, in the fall of 2015, allowing for these individuals to work eight hours per month for no pay. The Union states that these individuals have worked at parades, festivals, and high school sports events. The

Union states further that this work had previously been performed by bargaining unit employees for many years and since the OPBA and City have engaged in collective bargaining. Work for these events has generally been overtime assignments for bargaining unit Police Officers. The Union argues that its proposal is made to preserve bargaining unit work by requiring the Employer to offer these assignments first to full time police officers prior to assigning Auxiliary Officers.

The Union states further that the Police Chief stated, prior to the commencement of the Auxiliary Officer plan, that those details and opportunities, which had been offered as overtime to full time Police Officers, would continue to be offered in this manner prior to the utilization of the Auxiliaries. The Union emphasizes that it does not propose an elimination of the program but wishes to preserve bargaining unit work by making certain that bargaining unit employees have the right of first refusal. The Union argues that the Fact Finder should recommend its modified proposal.

EMPLOYER POSITION: The Employer argues first that the Fact Finder must recommend its position on this matter on the basis that the Union's proposal is a permissive subject of bargaining. The Employer solely makes the decision regarding overtime assignments. The Employer states that the Auxiliary Officer program is not designed to replace bargaining unit employees. The Employer states further that Auxiliary Officers perform assignments which are not generally performed by full time Police Officers. Many of the services were provided in the past by the County Sheriff Department. The program allows local individuals to engage in

training opportunities. The Employer states that its Exhibit B illustrates that a significant number of bargaining unit employees choose to not accept overtime assignments in any event. There is therefore no real loss of overtime assignments and pay. The Employer states further that the Union claimed that the Employer failed to bargain over what it considers a mandatory subject of bargaining.

Employees were aware of the implementation of the Auxiliary Program, and the Union failed to request mid term bargaining. The Employer argues that the Union “sat on its rights” if it considered this to be a mandatory subject of bargaining. For numerous reasons, the Fact Finder must not recommend the proposal of the Union.

RECOMMENDATION: Considering the rationale for the positions of the parties, this is a fairly complex issue. The Employer argues that the Union proposal is a permissive subject of bargaining. The definitive answer to this proposition lies with the State Employment Relations Board. But this Fact Finder will offer an opinion and recommendation. The Union’s initial proposal required the Employer to offer potential overtime assignments to bargaining unit employees regardless of the funding source whether the City or another party. There is greater weight to the Employer’s argument if the proposal included outside funders. The Union modified its proposal to require offering the potential overtime assignment to the bargaining unit when payment is made from City funding sources. It is suggested that the parties are required to bargain regarding this issue, that this is a mandatory subject of bargaining. The Union argues that its modified proposal concerns wages and conditions of employment which require bargaining between the parties. This

argument has merit. The Union position regarding this issue is further strengthened by the communication from the Chief of Police in his email communication which was issued at the commencement of the Auxiliary Program. He wrote in part regarding Auxiliary Officer assignments the following:

I will offer these events to full time officers first and then auxiliary. There should be no complaints about the auxiliary as your opportunity for overtime should increase not decrease as we work to take over Sheriff Auxiliary events.

(Email from Mark Ernst to Police Officers, 9-25-2014. Union Exhibit 1)

This statement suggests a recognition, that work normally performed by the bargaining unit, whether overtime or not, must continue to be performed or offered first to full time Police Officers. The Employer submits data to indicate that a number of bargaining unit employees turned down overtime assignments in 2014 and 2015 (Emp. Exb. B). This being the trend, the implementation of the Union's proposal should not adversely affect Auxiliary Officers opportunities. The Union's modified proposal is hereby recommended as follows:

Article 18, Overtime Pay

Section 18.10. Auxiliary Officers shall not work any paid details/events served by the St. Marys Police Department and paid by the City of St. Marys, unless the work for such has been offered for acceptance to all bargaining unit employees.

3. Article 19, Longevity

The Employer proposes new Section 19.5 which states that the longevity benefit will not apply to any employees in the bargaining unit who have been hired after January 1, 2016.

The Union proposes the maintaining of current contract language and opposes the Employer's position.

EMPLOYER POSITION: The Employer states that its proposal impacts only new employees and has no effect on current bargaining unit employees. This allows the Employer to reduce costs without harming current employees. The Employer states that there is a history of bargaining reduced benefit levels for new employees across the various bargaining units at the City, and, during the last negotiations between the parties, the Union agreed to a lower wage for entry level employees (Emp. Exb. C). The Employer states that the IAFF agreed to discontinue longevity benefits for new employees hired after January 1, 2014. The Employer states further that a number of regional jurisdictions have discontinued longevity benefits for its new employees (Emp. Exb. D) and illustrates savings of \$38,770.20 if the proposal is adopted by the parties (Emp. Exb. E). The Employer states that it has illustrated cost savings implemented and proposed as it moves forward with reduced expenditures and increased revenue streams.

UNION POSITION: The Union states that the longevity benefit has existed since the 1998 – 2000 Agreement. The Union argues that a two-tier benefit is not in the best interest of either party as the Police Department is a small and close knit unit. The Union states that its collective bargaining agreements with the City of St. Marys representing Dispatchers and Sergeants provide for longevity benefits for all bargaining unit members. The Union states that the Employer fails to show a clear operational need for its proposal.

RECOMMENDATION: Although two tier wage or benefit packages may cause internal tension years after implementation, there are occasions when their adoption make good bargaining sense. This is one of those occasions. The Employer's plan to reduce costs and increase revenue without layoffs and furloughs is a progressive way forward. The Employer is in a position to fill a number of Police Officer vacancies following recovery from lost revenues and diminishing unencumbered fund balances. This is a benefit to the bargaining unit and public. The Employer's proposal has no impact on current bargaining unit employees and is recommended as follows:

Article 19, Longevity

Section 19.5 This article shall not apply to bargaining unit employees hired on or after January 1, 2016.

4. Article 24, Educational Incentive

The Employer proposes to modify the current educational incentive for new employees hired on or after January 1, 2016. The current incentive reflects \$1.05 per hour additional compensation for attainment of an associate degree or higher in a number of areas of study. New employees who attain an associate degree will receive a yearly payment of \$200.00, and new employees who attain a bachelor degree will receive a yearly payment of \$400.00.

The Union proposes current contract language and rejects the proposal of the Employer.

EMPLOYER POSITION: The Employer states that the current benefit is expensive and not necessary for the recruitment of Police Officers. Its proposal is a substantial cost savings over time, and it does not impact current employees. The Employer states further that there is no comparable benefit in other City bargaining units. The current benefit of \$1.05 per hour rolls over into overtime payment which compounds the high cost for the City. The proposed benefit for new employees is an adequate incentive, and the Employer emphasizes that the attainment of a degree is not a minimum qualification. The Employer suggests that the OPBA Sergeants bargaining unit agreed to this proposal during their last negotiations, and external comps are in line with its proposal (Emp. Exb. F).

UNION POSITION: The Union states that the \$1.05 incentive has been in the collective bargaining agreements between the parties since 1998. The Union argues that a two tier system is counter productive and a morale issue. The Union emphasizes that the OPBA Sergeants Agreement contains the \$1.05 incentive. And the Union's list of comparable jurisdictions indicates that the \$1.05 incentive at St. Marys is in line with similar education benefits provided by a number of regional cities (Un. Exb. 8). The Union states that the Fact Finder, during the previous negotiations, rejected the Employer's proposal to reduce the incentive. But, the Union argues, it agreed to end the tuition and expense reimbursements for new employees effective January 1, 2013 in an effort to work with the Employer during the economic downturn. The Union objects to further concessions in the Educational Incentive provision of the Agreement.

RECOMMENDATION: The arguments of both parties are compelling. The cost savings aspect of the Employer's proposal has merit. But the Union's argument, that a two tier incentive program is counter productive, also makes sense. Surely the Employer benefits from the highest qualified members of the Police Department especially during this time of increased public and media scrutiny. The Employer asserts, in its pre-hearing statement, that the OPBA Sergeants bargaining unit accepted its proposal on the table in the instant negotiations. A close reading of the Sergeants current Agreement indicates that this is not accurate. The term of the Sergeants Agreement is January 1, 2015 through December 31, 2017. It contains the \$1.05 incentive, the same that is contained currently in the Police Officers Agreement. The Sergeants Agreement also contains the exclusion of tuition and other expense reimbursement for new employees effective January 1, 2012. This is consistent with the provisions contained in the Police Officers Agreement. The Union's argument, that the \$1.05 incentive represents the bargaining pattern, is compelling. The OPBA, in both negotiations, agreed to significant concessions during the previous negotiations presumably as a response to the Employer's financial concerns. With an improved economy and positive budgetary outlook, a further concession in this area is impractical. The highest qualified Police Department is a benefit to the Employer, Union and community. This must have been what the parties intended when this provision was initially incorporated in the collective bargaining agreement. The Union proposed to cleanup Section 24.1 by substituting "additional compensation" for the word "reimbursement." This is an

accurate description of the benefit and consistent with language contained in the Sergeants Agreement. The recommendation is current contract language with the cleanup modification to Section 1 as follows.

Article 24, Educational Incentive

Section 24.1 In addition to the wages as otherwise provided herein, employees who have attained an Associate Degree or higher in either law enforcement, police science, criminology or criminal justice shall receive \$1.05 per hour additional compensation, subject to the rules, regulations and conditions specified in this Article. Newly-hired employees shall not be eligible for such additional compensation until they have successfully completed their training period.

5. Article 34, Physical Fitness Program

The Employer proposes to delete progressive discipline language in Section 34.3 and the provision which directs the parties to develop the physical fitness and agility program, also contained in Section 34.3.

The Union proposes current contract language and rejects the proposal of the Employer.

EMPLOYER POSITION: The Employer states that the utilization of progressive discipline for failure to meet minimum physical standards is inappropriate. The Employer also states that a recent court decision runs contrary to the theory behind this language, and an Employer may not promulgate different standards for current employees and applicants for the position. The Employer further cites an unfair labor practice determination of the State Employment Relations Board ((99-ULP-09-0506) regarding physical fitness testing for bargaining unit Fire Fighters (Emp. Exb. M). The Employer states further that its proposal to delete the last sentence

regarding the collaborative development of the physical fitness and agility program is offered due to the fact that the parties have never met to discuss the issue during the term of the previous Agreement. The Employer suggests that the Fact Finder consider its proposal as one of practicality.

UNION POSITION: The Union believes that the retention of the progressive discipline language is necessary for the protection of bargaining unit employees. The Union argues that the Employer is to blame for the failure of the parties to meet to develop the program. The initiative to convene meetings is the responsibility of the Employer, and blame cannot be placed on the Union. Therefore retention of the last sentence is critical. The Union argues for the retention of current contract language in Article 34.

RECOMMENDATION: The Employer's position regarding the progressive discipline wording makes sense. An employee is either physically qualified or not, and the Employer stated that any employee, who would fail minimum physical standards, would be provided ample opportunities to re-qualify. In any event, disciplinary action, including termination of employment, is appealable by the Union to the Grievance Procedure with or without the specific language currently contained in Section 34.3. It is suggested in the instant matter that bargaining unit employees forfeit no rights with the deletion of the progressive discipline sentence. The deletion of the second to last sentence of Section 34.3, per the Employer's proposal, is hereby recommended.

It is important that the parties collaborate regarding issues of the physical fitness program. Section 34.1 is an example of the parties developing a win-win program for employees and the Employer. It is therefore important that the parties continue to collaborate in the development of “the physical fitness and agility program.” It appears that the focus of the parties during the term of the previous Agreement, and in particular the Employer, has been the resolution of budgetary concerns. The parties may now be able to re-focus on this provision of the Agreement. The recommendation is the retention of the last sentence in Section 34.3 and submission of this issue to the labor management meeting provision of the Agreement, Article 12, with a start date. The recommendation for Section 34.3 is as follows.

Article 34, Physical Fitness Program

Section 34.3 The Employer and the Union recognize the Employer’s right to require employees to participate in physical agility testing to allow for determining the employee’s physical ability to perform the essential functions of the position. The Employer, with approval of a physician, reserves the right to establish the criteria for such testing and the minimum standards to be met. The Employer and the Union will work together and cooperate to develop the physical fitness and agility program and agree to commence discussions no later than July 1, 2016 pursuant to Article 12, Labor-Management Meetings.

6. Article 43, Duration of Agreement

The Employer proposes a three year Agreement commencing with the signing of the new collective bargaining agreement by the parties.

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

RECOMMENDATION: The Employer's proposal, that the new Agreement become effective on date of signing, is essentially based on its companion proposal that any wage increase be effective with the signing of the new Agreement. The Union proposed any wage increase be retroactive to the first full pay period following January 1, 2016. Neither party delayed bargaining for a new Agreement, and the Fact Finder is aware that both parties made an effort to schedule fact finding and/or finalize negotiations prior to the end of 2015. The recommendation of the Fact Finder is a wage increase effective January 1, 2016. Therefore the recommendation regarding the Duration provision is a three year collective bargaining agreement commencing January 1, 2016 and terminating December 31, 2018. The recommendation for Section 43.1 is the following:

Article 43, Duration of Agreement

Section 43.1 This Agreement represents the total and complete agreement on all matters subject to bargaining between the Employer and the Union, and shall be effective January 1, 2016 and shall remain in full force and effect until 12:00 midnight on December 31, 2018, provided, however, it shall be renewed automatically on its termination date for another year in the form in which it has been written, unless one party gives written notice as provided herein.

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.

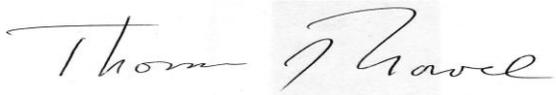
Respectfully submitted and issued at Cleveland, Ohio on this 5th Day of February 2016.

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

Thomas J. Nowel, NAA
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th Day of February 2016, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Patrick Hire, representing the City of St. Marys; Mark J. Volcheck, Esq. representing the Ohio Patrolmen's Benevolent Association; and Donald M. Collins, Esq., 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.

Thomas J. Nowel, NAA
Fact Finder