

STATE EMPLOYMENT RELATIONS BOARD

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF WICKLIFFE

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Case No. 2015-MED-09-0894
Police Dispatchers

Before Fact Finder: Thomas J. Nowel, NAA
August 9, 2016

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 March 15, 2016 in accordance with Ohio Revised Code Section 4117.14 (C) (3). Hearing in the matter was held on June 30, 2016 at Wickliffe City Hall.

The matter involves a bargaining unit of Police Dispatchers. There are eight employees in the bargaining unit. The negotiations between the parties is for the initial collective bargaining agreement for this group of City employees. The parties have met on a number of occasions and reached agreement on a majority of issues. The parties agreed to the issuance of the Report and Recommendation on August 9, 2016.

OUTSTANDING ISSUES:

1. Article 14, Vacations
2. Article 17, Uniform Allowance
3. Article 18, Insurances
4. Article 22, Rates of Pay
5. Article 22, Inmate Search Pay
6. Article 22, Emergency Medical Dispatch Certification Pay
7. Article 22, Terminal Agency Coordinator Pay
8. Article 24, Workday and Workweek
9. Article 25, Overtime
10. Article 35, Arbitration
11. Duration

Those participating at hearing for the Employer included the following:
Jack Petronelli, Labor Counsel
Marty Germ, Finance Director
Randy Ice, Chief of Police

Those participating for the Union included the following:

Max Rieker, OPBA Attorney

Sandra M. Aker, Union Director and Dispatcher

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. At the

conclusion of the hearing, the parties stated that the Report and Recommendation of the Fact Finder in SERB Case Nos. 15-MED-09-0799, 0806 was to be issued within seven to ten days. This case involved unresolved issues between the City of Wickliffe and FOP Lodge 16, representing Police Officers, Sergeants and Lieutenants. The parties agreed that the Report, when issued, be provided to this Fact Finder in the instant case and be considered as a joint exhibit. Fact Finder Dennis M. Byrne issued the decision on July 11, 2016.

ANALYSIS AND RECOMMENDATIONS

Prior to discussing the specific issues at impasse, the parties engaged in a general review and discussion regarding City finances.

The Employer states that sources of revenue have been reduced over the past four or five years. Personal property tax revenues have been eliminated after a high of \$316,079 in 2004 (Emp. Exb. 1). Local government tax generated \$910,219 in 2015 after a high of \$1,812,513 in 2008, and Inheritance Tax has been eliminated. Interest on investments has significantly decreased. The Employer states that it is significant that General Fund revenue was split 80 – 20 between general expenditures and capital funds until 2014. The split was modified to 85 – 15 in 2015 in an attempt to meet increased expenditures and a decrease in revenue. The Employer emphasizes that City voters modified the distribution again in 2016 in order that 100% of revenues are dedicated to expenditures. In 2004, the fund carryover balance was \$8,284,201. In 2015 the balance was \$2,685,510. The Employer states that its estimated carryover balance at the end of 2016 is

\$2,794,982. The Employer argues that, when carryover balances were considerably greater, employees enjoyed significant pay increases. The Employer states further that area housing values have declined and the roll-back has had a negative impact on City finances. The sale of Lubrizol stabilized revenues at the time, but the City has been forced to reimburse a highly paid executive following a court challenge of income tax which this individual paid. The Employer states that its budgetary concerns are further compounded by the potential relocation of ABB, Inc. from the City to a facility in the Village of Highland Hills (Emp. Exb. 2). Approximately 450 jobs in Wickliffe are involved with the relocation. The Employer states that non-bargaining unit employees received no across the board pay increases in 2015. Over a period of time, employment in the Service Department has declined from 30 to 18 employees. There have been no new employees in the Fire Department and staffing in the Police Department has decreased. The Police Department has been unable to purchase new vehicles or other equipment. Residents of Wickliffe have recently assumed the cost of trash collection which service had been financed by the City. The Employer states that its carryover is 21% of budget, which is higher than the Government Finance Officers Association (GFOA) recommendation, but true financial stability must be determined on a case by case basis as opposed to a general template. The Employer states that each City department was scheduled for a 5% expenditure reduction. Finally, the Employer expects a \$1.5 million deficit which requires conservative budgeting and which does not allow for increases in personnel costs.

The Union argues that the Employer has the funds to finance its economic proposals. The Union states that 2011 was a windfall year, and with 100% of General Fund monies available for personnel costs, the Employer is well positioned to meet its financial bargaining demands. The Union states that the last Moody's Bond rating indicated that finances were stable (Union Exb. 7). The Union cites the GFOA recommendation of a 16% carryover, and states that the current carryover of 21% exceeds this national standard. The Union states that, while the Employer suggests a decline in the City's financial outlook, members of Wickliffe City Council, who serve on a part time basis, receive fully paid health insurance. At the same time, the Union states that the new bargaining unit received no increase in wages in 2015. The Union states that the June 1, 2016 partial year financial report indicates that revenue has increased (Union Exb. 12), and the Union states that Finance Director Germ has indicated that improved revenue projections are on target. The Union states that the FOP financial consultant, Mary Schultz, CPA, projects the cost of a 1% wage increase for a full-time Dispatcher at \$4458 (Union Exb. 14), and with roll-up costs the annual figure is \$5250. The Union states that these figures confirm that its wage proposal is clearly affordable. The Union argues that City finances are stable, and its economic proposals for this first collective bargaining agreement are within the Employer's ability to finance.

The following analysis includes the arguments of the parties and recommendations at Fact Finding. This is the initial collective bargaining agreement between the parties. Article numbers are based on projections by the parties, and

they may change when the entire Agreement is assembled following completion of negotiations.

1. Article 14, Vacations

The parties have agreed to pattern this provision of the Agreement based on the FOP collective bargaining agreement which ends at a five week step after fifteen years of service.

The Union proposes a sixth step, six years following 20 years of service.

The Employer opposes a six week step in the vacation benefit and proposes FOP language.

UNION POSITION: The Union argues that a six week step in the vacation benefit has become the industry standard for dispatchers. A regional Lake County survey indicates that seven City Dispatcher Departments allow for a six week vacation step (Union Exb. 6). The Union asks that the recommendation include its six week proposal.

EMPLOYER POSITION: The Employer states that the internal standard is critical. All collective bargaining agreements with the City end at the five week vacation step. In addition, non-bargaining unit employees max out at five weeks. The additional cost to the Employer cannot be met, and covering staffing shortfalls would be complicated. The Employer cites its position regarding City finances. The Employer states that this is the first collective bargaining agreement with the Dispatcher unit.

It is not in a position to take the lead among other bargaining units regarding negotiated benefits of this nature. The Employer argues for the language contained in the FOP Agreement.

RECOMMENDATION: The Union exhibit regarding Lake County jurisdictions is compelling. But the Employer's arguments regarding internal comparables and pattern bargaining have merit. Its argument regarding a first time negotiations also has merit. It is important to note that the FOP, in its negotiations with the Employer, also proposed a six week vacation step. Fact Finder Byrne rejected the proposal as a part of his Report and Recommendation issued on July 11, 2016. The Employer's proposal to adopt the FOP vacation language and standard which ends at the five week step, is recommended. The parties had signed off on all FOP vacation language with the exception of the vacation schedule as contained in Section 14.01. The recommendation includes all contract language contained in Article 14 of the FOP Agreement.

2. Article 17, Uniform Allowance

The Union proposes an increase in uniform allowance from \$505.00 to \$1100.00 annually. Additionally, the Union proposes a separate check, payable in February, as opposed to a voucher system.

The Employer proposes no change in the current uniform allowance amount or manner in which it is allocated.

UNION POSITION: The Union states that there has been no increase in uniform allowance for Dispatchers since 2007. Costs have increased significantly since that time. The Union argues that its proposal is one of equity and fairness and asks the Fact Finder to recommend an annual payment as opposed to the current voucher process.

EMPLOYER POSITION: The Employer states that its financial condition and future outlook precludes the granting of an increase in this benefit.

RECOMMENDATION: The Union's argument, that the cost of uniforms has exceeded the current allowance, is compelling. In recognition that there has been no increase in uniform allowance since 2007 and the current voucher system has become cumbersome, the recommendation includes an increase to \$700.00 in 2016 and an additional increase to \$750.00 for 2017 and 2018. The recommendation also includes a separate check, payable within the first pay period of February of each calendar year. Contract language is patterned after the FOP Agreement as follows.

Article 17, Uniform Allowance

17.01 All employees shall be entitled to an annual uniform allowance according to the following schedule:

\$700.00 in 2016

\$750.00 in 2017

\$750.00 in 2018

For 2016 only, if an employee has already received uniform allowance via the voucher system, then that employee shall only be entitled to the difference from the \$700.00. Such payment shall be issued within thirty (30) days of the effective date of the new contract. If an employee has not already received his or her uniform

allowance for 2016, then the amount of \$700.00 shall be issued to that employee within thirty (30) days of the effective date of the new contract.

17.02 All newly hired employees shall be entitled to a special allowance of \$325.00 upon their satisfactory completion of their probationary period. Such allowance shall be in addition to payments provided in paragraph 17.01 above.

17.03 Uniform allowance payments made pursuant to 17.01 above, shall be paid on an annual basis and paid to the employee by separate check within the first pay period of February of each calendar year.

3. Article 18, Insurances

The Employer proposes an increase in employee premium contribution from 10% to 15% for the duration of the collective bargaining agreement. In addition, the proposal includes the elimination of the caps as contained in the FOP Agreement.

The Union proposes the insurances provision contained in the FOP Agreement with no change in employee premium cost and maintaining the caps contained in the Article.

EMPLOYER POSITION: The Employer states that the insurance plan is “rich” compared to benefits provided to employees in area jurisdictions. The Employer states that there are no deductibles, minor co-pays for office visits and urgent care and an extensive network of health care providers (Emp. Exb. 5). The insurance package includes dental and vision benefits. The Employer argues that benefit levels are high and employee premium costs low when compared to area political subdivisions and averages derived from the state health care cost survey conducted by the State Employment Relations Board. The Employer’s overarching justification

for its proposed modifications to employee costs is its financial outlook and potential loss of an anchor corporation. The Employer believes its proposals are justified and urges their recommendation in this matter.

UNION POSITION: The Union argues that a 15% increase in the employee share of the insurance premium is excessive and not supported by regional or state-wide data. The Union cites the 2015 “23rd Annual Report on the Cost of Health Insurance in Ohio’s Public Sector” which is compiled by the State Employment Relations Board (Union Exb. 16). In cities with less than 25,000 population, the average percentage of premium paid by an employee is 10.8% for a single plan and 11.6% for family coverage. SERB data indicates that state-wide average actual out of pocket costs are less than those paid by Wickliffe employees. And the Employer’s proposal far exceeds state-wide numbers. The Union states that SERB data also confirms that employees in the Cleveland region of the state pay 10.8% of premium cost for both single and family plans. The Union argues that the Employer’s proposal is just too high, and the Fact Finder is reminded that employees in the new Dispatcher bargaining unit received no increase in wages in 2015.

RECOMMENDATION: The Employer stated at hearing that bargaining unit employees wish to retain the current health insurance plan. Admittedly the plan is, as the Employer suggests, very adequate in terms of medical coverage with no or low deductibles and a comprehensive prescription drug benefit. The parties have a mutual interest in retaining an excellent benefit package. The Employer has

presented a review of its financial condition. Carryover balances have decreased; capital expenditures are greatly reduced; and the threat of the loss of a large area employer are a concern going forward. As in many collective bargaining negotiations in Ohio's public sector, and in the Cleveland region, bargaining unit employees are being asked to increase their contributions for health care benefit packages. The FOP bargaining team in Wickliffe recognized this and submitted a proposal at fact finding to increase the employee share of premium costs from 10% to 11% in 2016, 12% in 2017, and 13% in 2018. The FOP proposed the retention of the caps as contained in their collective bargaining agreement. While the Employer's proposal in the FOP negotiations was the same as in the instant case, the Fact Finder recommended a middle position regarding employee premium costs and caps. The Union's argument, that the Employer's proposal is out of line with regional and state-wide comparable data, is compelling. The proposed increase from 10% to 15% is significant and not supported by SERB data. And while the Employer expresses concerns regarding revenue going forward, it has not claimed inability to pay. The recommendation therefore in this matter is a middle ground or compromise between the hard positions taken by the parties, an increase in percent premium paid by employees in the bargaining unit from 10% to 13% effective January 1, 2017. This recommendation is in line with Fact Finder Byrne's finding in the FOP case. He also recommended a cap calculated at 15% of the premium cost for the life of the Agreement. The recommendation in the instant matter is a 15% cap effective January 1, 2017 based on the 2016 cost of total premium for each level of employee selected participation. The work of the "city-wide healthcare cost

containment committee” should be helpful in mitigating significant cost increases by seeking alternative carriers or plan re-design. With the recent unionization of Dispatchers, this bargaining unit will now have a voice in these proceedings.

Article 18, Insurances

18.01 FOP contract language.

18.02 Based on plan level, employees will be responsible for a co-pay of ten percent (10%) of the collective total of health/prescription, dental and eye monthly premiums in 2016. Employees will be responsible for a co-pay of thirteen percent (13%) effective January 1, 2017 for the life of the Agreement. Such premium co-pay shall not exceed fifteen percent (15%) of the 2016 total premium cost for each level of participation and for the life of the Agreement. The employee’s contributions toward health care premiums should be on a pre-tax basis

Where the City contemplates any change to the hospitalization and medical plans, the healthcare cost-containment committee shall be convened by the City and the members shall meet and confer in good faith prior to any change being implemented by the City.

18.03 FOP contract language.

18.04 FOP contract language.

18.05 FOP contract language.

18.06 FOP contract language.

4. Article 22, Salary Schedule

The Union proposes the following wage increases for the life of the Agreement: 4% effective January 1, 2016; 3% effective January 1, 2017; and 3% effective January 1, 2018.

The Employer proposes the following wage increases for the life of the Agreement: 0.5% effective January 1, 2016; 0.5% effective January 1, 2017; and

wage freeze, 0%, in 2018. The Employer also proposes a one time payment of \$250.00 for 2015.

UNION POSITION: As stated in its presentation regarding the Employer's financial condition and in rebuttal to certain assertions made regarding City financial concerns, the Union emphasizes its belief that its wage proposal is affordable. The Union states emphatically that members of this new bargaining unit received no wage increase in 2015. All other unionized City employees realized wage increases in 2015. The Union states that the SERB Annual Wage Settlement Report indicates that the state-wide average wage increase in 2015 was 2.02% with increases in the Cleveland Region averaging 1.99% and all city jurisdictions averaging 2.06%. The Union argues that bargaining unit employees deserve a higher increase in wages in 2016 to make up for the loss in the previous year. The Union states that the wages of Wickliffe Dispatchers generally fall in the middle in a comparison of contiguous cities and other regional jurisdictions (Union Exb. 5). Dispatchers in Willoughby and Mentor are paid at a higher rate compared to Wickliffe bargaining unit members, and employees in these jurisdictions received wage increases of 2.5% and 2% respectively. The Union states that, in addition to the 2015 wage freeze, bargaining unit members continue to fall behind their peers, and the Employer's wage proposal will further exasperate the condition. The Union urges the Fact Finder to recommend its three year wage proposal.

EMPLOYER POSITION: The Employer states that its financial condition does not allow it to meet the demands of the Union. Dwindling carryover and the loss of a major corporate entity will create a financial crisis in the near future. The Employer asserts that being placed in “fiscal watch” by the State Auditor is a possibility in the future. The Employer states that staff reductions have already occurred in the Police and Service Departments. In a review of Lake County Dispatcher units, the Employer states that bargaining unit employees are well paid compared to their peers in the area (Emp. Exb. 10). The Employer states that Wickliffe Dispatcher wages exceed the Lake County average by \$1129.00 (Emp. Exb. 11). The Employer’s reaction to the Union’s assertion regarding the 2015 wage freeze is that Dispatchers received a total of 23% in wage increases from 2006 through 2014, and this figure is 1.5% greater than the state-wide average. The Employer argues that, when it could afford substantial wage increases, it did so, but the City budget requires a conservative approach at this time. The Employer’s wage proposal in the instant case is the same offered to all City bargaining units. The Employer states that, in recognition of the City’s financial condition, the Fact Finder is urged to recommend its three year proposal.

RECOMMENDATION: The Employer is justifiably concerned regarding its financial condition, and the potential loss of a major corporate entity to another political subdivision must be a shared concern of the parties. The Employer does not claim inability to pay, but its claim that the Union’s three year proposal is unaffordable in the overall scheme of City finances, is compelling. The Union argues that City

Dispatchers have been unfairly treated by the Employer in a number of respects, most importantly by being forced to take a wage freeze in 2015, but all non-bargaining unit employees, which at the time included Dispatchers, were subjected to the wage freeze in consideration of the Employer's concern over its financial condition especially going forward. Dispatchers have organized and will now have a voice at the bargaining table. The Employer, to its credit, has offered a cash payment to members of the bargaining unit in an effort to make up for the 2015 wage freeze. This recommendation will include a one time payment upon execution of the Agreement. While the Union's proposal is beyond what prudent budgeting would dictate at this time, the Employer's proposal falls below the various external comparables, both state-wide and regionally, and evidence indicates that it is able to afford more than its proposal at fact finding. There was no evidence at hearing that the City may be in "fiscal watch" in the near future. Fact Finder Byrne, in his Report and Recommendation regarding Police Officers represented by the FOP, provides a timely analysis of the competing wage proposals. He recommends 1.5% wage increases in 2016 and 2017. The recommendation in the instant matter mirrors that of Fact Finder Byrne. In addition, his recommendation includes a wage re-opener in 2018. This Fact Finder generally recommends the resolution of all issues for the full term of an Agreement, avoiding re-openers. But there are times when a re-opener may be appropriate. In this case, a re-opener makes complete sense based on the unknown which the potential departure of a major corporate entity may create.

The recommendation for Article 22, Wage Schedule, is as follows. 1.5% wage increase effective January 1, 2016; 1.5% wage increase effective January 1, 2017; \$400.00 one time payment to all bargaining unit employees effective upon execution of the Agreement; wage reopener for 2018 wages.

The parties have not developed specific language or the wage schedule format regarding Article 22. The parties will develop appropriate language for the Dispatcher bargaining unit which should include the legally permissible salary reduction method as is found in the FOP Agreement.

5. Article 22, Salary Schedule, Inmate Search Pay

The Union proposes an annual stipend of \$500.00.

The Employer opposes the proposed stipend.

UNION POSITION: The Union states that Dispatchers are, from time to time, required to search incoming female inmates. The Union argues that “matron” supplemental pay is not unusual in the Dispatcher “industry” for this additional responsibility and therefore asks that the Fact Finder recommend the pay supplement.

EMPLOYER POSITION: The Employer emphasizes its financial condition and stresses its inability to finance additional personnel costs in the Department.

RECOMMENDATION: It is unclear what percent of each Dispatcher's work schedule involves this additional responsibility. It does not appear that this is a significant part of a Dispatcher's regular duties. In addition, the Employer's argument regarding financial constraint is compelling. The recommendation does not include Inmate Search Pay.

6. Article 22, Salary Schedule, Emergency Medical Dispatch Certification Pay

The Union proposes a \$1000.00 annual stipend for Dispatchers who are certified as EMD.

The Employer opposes the proposed stipend.

UNION POSITION: The Union states that achieving the certification allows a Dispatcher to provide limited medical advice on the telephone while EMS and Police are travelling in response to a medical emergency. The certification allows the Dispatcher to provide instructions over the telephone regarding CPR. Certification training occurs face to face and online. The Union states that a number of City Dispatch Departments in the region provide payment for the certification (Union Exb. 5). The Union states that the City of Mayfield Heights provides a \$1750.00 annual stipend for the EMD.

EMPLOYER POSITION: The Employer states that its financial condition does not allow for additional personnel costs in the Department.

RECOMMENDATION: Dispatchers devote time and effort to achieve a certification which potentially, in any given medical crisis, allows for medical advice which could be life saving. Regional jurisdictions recognize the value of the certification. Union Exhibit 5 illustrates that the region based Cities of Mentor, Lyndhurst, Mayfield Heights and Willowick provide a stipend for Dispatchers who are so certified. The recommendation in the instant matter is a small annual stipend in recognition of the Employer's financial constraints but also the valuable service enjoyed by the citizens of Wickliffe. Article 22 will include a provision for an annual stipend of \$300.00 for those Dispatchers who possess an EMD beginning on February 1, 2017 and each February 1 thereafter for the term of the Agreement.

7. Article 22, Salary Schedule, Terminal Agency Coordinator Pay

The Union proposes a \$.35 per hour increase in wages for Dispatchers who are designated as a TAC or Assistant TAC.

The Employer opposes the proposal.

UNION POSITION: The Union states that one Dispatcher currently is responsible for working with LEADS data. One Police Officer is also tasked with the responsibility. The Union states that LEADS administration is critical and deserves additional compensation.

EMPLOYER POSITION: The Employer states that LEADS administration has always been included in the position description and does therefore not qualify for additional pay.

RECOMMENDATION: The Employer's argument regarding the Dispatcher position description has merit. The Union's argument regarding the critical nature of LEADS administration is also compelling. This is the first collective bargaining agreement for Dispatchers. The Employer's concerns regarding its financial condition are legitimate. This is a pay issue to be considered by the parties in the future. Recommendation is to not include this pay supplement in the Agreement.

8. Article 24, Workday and Workweek

The Union proposes to memorialize in the collective bargaining agreement the current practice of twelve hour work days. In addition, the Union proposes to retain the current practice of employees receiving one eight hour "Kelly Day" off every 56 days.

The Employer is open to the twelve hour day schedule but proposes to eliminate the "Kelly Day" benefit and maintain its management rights to make changes to the schedule as necessary.

UNION POSITION: The Union argues that there is no justification to modify the current work schedule of employees. The Union believes that the Employer wishes to end the twelve hour work days and eliminate "Kelly Days." The Union is emphatic

regarding the inclusion, in the collective bargaining agreement, of the current work week and work day schedule.

EMPLOYER POSITION: The Employer states that it cannot relinquish its management right to scheduling. In the event there were less than eight full time employees at any given time, it would be impractical to continue with twelve hour shifts. The Employer makes reference to contract language in the collective bargaining agreement between the OPBA and the City of Willoughby Hills as a possible starting point to language which may be included in the new Agreement.

RECOMMENDATION: Both of the parties make compelling arguments for their positions and productive suggestions. The recommendation includes twelve hour shifts but with the elimination of the “Kelly Days” system as proposed by the Employer. In addition, the Employer’s argument, that twelve hour shifts are impractical when there are less than eight full-time Dispatchers, is well taken. The recommendation includes the Employer’s right to modify work day schedules in the event the full-time complement of Dispatchers falls below eight employees although with a “meet and confer” with the Union. Recommended language, based on specific day and night shift details and based on the respective positions of the parties, is as follows.

Article 24, Workday and Workweek

24.01 The normal work day for all employees shall not exceed twelve (12) working hours, and the normal fourteen (14) day cycle shall not exceed eighty (80) working hours. The normal work week shall consist of working days.

24.02 Dispatchers assigned to a twelve-hour work day shift schedule will have a work week that starts and ends at 11:00 a.m. Saturday, and Dispatchers assigned to a twelve-hour night shift schedule will have a work week that starts and ends at 11:00 p.m. Saturday. This allows the Department to maintain compliance with overtime pay requirements of the Fair Labor Standards Act.

This article does not have any impact on Article 5, Management Rights of the Employer, to determine the starting and quitting time and the number of hours to be worked by its employees. Any changes to scheduling of hours is under the exclusive control of the Employer.

24.03 As long as the number of employees in the bargaining unit is eight (8) or more, the Employer shall maintain twelve (12) hour shifts for Dispatchers. If the number of Dispatchers falls below eight (8), then the Employer may, at its discretion, alter the twelve (12) hour shift schedule. However, the Employer and the Union shall meet and confer prior to any changes, unless exigent circumstances exist. The practice of "Kelly Days" as paid time off is abolished.

24.04 This Article shall not be construed as a guarantee of hours of work per day or per week. In the event it is necessary to modify the hours of work, the Employer will meet with the Union and discuss the situation and attempt to reach an agreement on the action to be taken. Changes in hours of work resulting from unusual or emergency situations shall not require any discussions with the Union.

9. Article 25, Overtime

The Union proposes an increase in compensatory time accrual from 100 hours to 140 hours and the ability to cash out the comp time bank in December of each year.

The Employer proposes current contract language as found in Section 25.03 of the FOP Agreement.

UNION POSITION: The Union states that its proposal regarding an increase in the compensatory time bank is standard among Dispatcher collective bargaining agreements across the state and urges the Fact Finder to recommend the increase.

EMPLOYER POSITION: The Employer states that the standard in the Department is 100 hours which should continue for the duration of the agreement.

RECOMMENDATION: The Union makes a compelling argument regarding compensatory time banks in comparable jurisdictions. Evidence indicates that a 140 hour compensatory time bank is administratively manageable and is therefore recommended. The parties had not reached tentative agreement on a general overtime provision. The recommendation is the adoption of language contained in the FOP Agreement with the Employer which includes cashing out of up to one-half of compensatory hours in January of each year of the Agreement.

Article 25, Overtime

25.01 All employees when performing assigned work will be entitled to receive pay at the rate of one and one-half (1 ½) times their regular rate for all hours actually worked in excess of their regularly scheduled workday or in excess of eighty (80) hours in a fourteen (14) day cycle.

25.02 The basic hourly rate of pay for purposes of overtime calculation and payment shall equal the respective employee's annual salary, including longevity and educational pay divided by two thousand eighty (2080) hours.

25.03 Employees shall be allowed to accrue overtime as compensatory time, not to exceed one hundred forty (140) hours, which may be used as time off with pay upon the prior approval of the Chief. By December 1 of any year, an employee may notify the Employer of his or her desire to cash out up to one half (1/2) of compensatory time hours which that employee has in his or her compensatory time bank.

Thereafter, the Employer shall pay that amount to the employee at the employee's current rate of pay by January 30 of the following year.

25.04 Any employee who is recalled to work after leaving work or on a day when he or she is not scheduled to work, shall be given a minimum of two (2) hours work or two (2) hours pay at his or her regular hourly rate, providing that the time worked or paid for does not abut the employee's work day.

25.05 To the extent that travel to training school or similar function is required beyond the employee's scheduled shift, such time shall be paid as compensatory time. Any employee required by the City to use his or her personal vehicle for official business, shall be compensated at thirty-two cents (\$0.32) per mile.

10. Article 35, Arbitration Procedure

The parties have reached tentative agreement on all sections of the Grievance Procedure and Arbitration Procedure by utilizing the FOP Agreement with appropriate modifications except for Section 35.09 which limits arbitration to disciplinary matters which exceed three day suspensions. The Employer proposes including this language in the new Dispatcher Agreement. The Union proposes to remove this section.

UNION POSITION: The Union argues that the deletion denies employees their due process rights. The Union states that it has never agreed to limit the right of appeal of any disciplinary action in its many collective bargaining agreements across the state and asks the arbitrator to uphold this employee right.

EMPLOYER POSITION: The Employer states that collective bargaining agreements with Police Officers and Service Department employees limit arbitration to

disciplinary matters which exceed three day suspensions. The Employer states that the Fact Finder should make a recommendation based on this pattern of bargaining.

RECOMMENDATION: This Fact Finder, and many others on the roster of neutrals, give significant consideration to the “pattern of bargaining” argument. The statute implies its importance. The statute also suggests the right of bargaining unit employees to a grievance procedure which generally includes appeal of discipline. In addition, the principle of progressive discipline, as contained in the just cause principle, may be impacted if appeal of lower level discipline at arbitration is barred. In the past, civil service rules and commissions often limited the right to appeal discipline to three day suspensions and greater. Appeal procedures developed through collective bargaining generally did away with this limitation. In the case of the FOP and Service Department bargaining representatives, the right to appeal discipline of less than a four day suspension to arbitration was voluntarily relinquished through the bargaining process, and there may have been a quid-pro-quo. The OPBA in the instant case is adamant regarding its position. Neither party provided data regarding disciplinary history in the Dispatcher Department. The parties are unable to agree to this limitation of employee appeal rights, and the Fact Finder therefore is not in a position to recommend the limitation. The recommendation is therefore the deletion of Section 35.09 from the Dispatcher collective bargaining agreement.

11. Article Duration

The Employer's pre-hearing statement included its position regarding the new Duration provision. During the evidentiary hearing, it was determined that the parties had actually reached an agreement on this provision. This language is included in the recommendation as follows.

Article Duration

.01 This Agreement shall become effective upon execution, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight December 31, 2018.

.02 Written notice shall be given at least ninety (90) days but not more than one hundred twenty (120) days prior to expiration of the contract by either party requesting a change or termination of this Agreement. If written notice is given in a timely fashion, negotiations shall commence not later than thirty (30) days from the receipt of such notice. If written notice is not given, this Agreement shall continue in full force and effect from year to year until such notice is given at least ninety (90) days, but not more than one hundred twenty (120) days prior to December 31 of any subsequent year.

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 and Recommendation, all tentative agreements reached by the parties during negotiations are incorporated herein.

Respectfully submitted and issued at Cleveland, Ohio this 9th Day of August 2016.

A handwritten signature in black ink that reads "Thomas J. Nowel". The signature is written in a cursive style and is positioned above a light gray rectangular background.

Thomas J. Nowel, NAA
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th Day of August 2016, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Jack L. Petronelli, Esq., Allain Legal LTD, representing the City of Wickliffe; Max Rieker, 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 light-colored background.

Thomas J. Nowel, NAA
Fact Finder