

FACT FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

FACT-FINDING HEARING

October 27, 2016

IN THE MATTER OF:

| | | |
|------------------------------------|---|-------------------------------------|
| THE CITY OF MANSFIELD, OHIO |) | SERB CASE NO. 16-MED-05-0567 |
| |) | (POLICE OFFICERS) (BLUE) |
| AND THE |) | |
| |) | AND |
| FRATERNAL ORDER OF POLICE |) | |
| |) | SERB CASE NO. 16-MED-05-0568 |
| OHIO LABOR COUNCIL, INC. |) | (SUPERVISORS) (GOLD) |

APPEARANCES

FOR THE UNION: (FOP)

Chuck Choate, FOP Staff Representative
Don Rhinehart, Gold Unit (Supervisor)
Jon Ailes, Gold Unit (Supervisor)
Jared Kings Borough, Blue Unit (Patrolman)
Ryan Grimshaw, Blue Unit (Patrolman)
Jacob Richland, Blue Unit (Patrolman)
Dan Martinezn, Gold Unit (Supervisor)
Shari Robertson, Gold Unit (Supervisor)

FOR THE CITY:

David L. Remy, Human Resources Director
Lori A. Cope, Safety Service, Director

BEFORE: Richard D. Sambuco, Fact Finder

Date of Hearing: October 27, 2016
Date of Decision: November 30, 2016

BACKGROUND OF THE CASE

On October 27, 2016, a Fact Finding hearing was held between the City of Mansfield, Ohio, hereinafter referred to as the “City or Employer “and the Fraternal Order of Police/Ohio Labor Council, hereinafter referred to as the “Union” or the “FOP”.

The Hearing began promptly at 10:00 am and ran continuously until 4:15 pm in the Airport Terminal at Mansfield Lahm Regional Airport in Mansfield, Ohio.

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.

BACKGROUND

Description of Bargaining Unit:

There are two bargaining units covered by this report. One unit is known as the Gold Unit of FOP Lodge 32, which consists of all Sergeants, Lieutenants and Captains within the City of Mansfield’s Division of Police. This unit currently numbers 21 sworn officers. The second unit is known as the Blue Unit of FOP Lodge 32, which consists of all Patrol Officers below the rank of Sergeant, within the City of Mansfield’s Division of Police. This unit currently numbers 61 sworn officers.

Current Collective Bargaining Agreements (CBA):

Both of the current CBA's have an effective date of August 1, 2013 through July 31, 2016.

Unresolved Issues and Action Taken Regarding Them:

There are six outstanding issues and several sub-issues relative to each CBA. All but one outstanding issue is relative to both units; therefore, they will be discussed for the most part as one collective bargaining unit. The one outstanding issue impacts the Supervisory (Gold) unit.

The first issue is Article 10 (Hours of Work & Overtime) and involves short notice overtime, as addressed in Section 10.2; payment for cancelled court time, as addressed in Section 10.4; and the elimination of Section 10.7 relative to a limitation of premium pay.

The second issue is Article 13 (Insurance) and in particular the alteration of employer/employee contribution rates as set forth in Section 13.2.

The third issue is Article 15 (Paid Leaves of Absence) and in particular Section 15.3, which addresses transitional duty and limitations while on such duty and alterations to Section 15.4 – bereavement leave. Transitional duty is the parties' terminology for light-duty work.

The fourth issue is Article 17 (Wages & Fringes Benefits) and in particular the wage rates provision which is set forth in Section 17.1. There is also an issue as to a stipend for members of the Division's S.W.A.T. team as well as instructor pay for Blue Unit members.

The fifth issue is Article 18 (Holidays/Personal Days) and in particular the pay for holidays as set forth in Section 18.2 and personal days as set forth in Section 18.4.

The sixth issue is Article 19 (Tuition Reimbursement) and in particular placing a limitation on the number of credit hours per quarter and/or academic year and a maximum hourly rate of reimbursement.

A Notice to Negotiate for each unit was filed by the FOP with SERB on May 2, 2016. The initial negotiation meeting between the parties was held on June 3, 2016. During June, July and August, 2016, the parties met five (5) times. As a result of these meetings, four (4) issues were resolved and tentatively agreed to. (A record of those agreed upon articles was presented at the hearing as part of the record.) As for the six (6) outstanding issues, it was determined by the parties at the end of a meeting on August 18th that the outstanding issues remained unresolved and needed to go to fact finding.

Following my introductory remarks and admonishment to both parties that “they do not get what they deserve, they get what they negotiate,” the parties motioned that we move directly to mediation prior to formal fact-finding.

The first issue to be resolved is Article 10 (Hours of work and Overtime) and involves short notice overtime, as addressed in Section 10.2 of the Collective Bargaining Agreement, and reads in pertinent part as follows:

“Short notice overtime (less than twenty-four (24) hours’ notice) shall be offered to on-duty personnel from the most senior to the least senior. If it is imperative that the overtime be worked, and nobody has volunteered to work the overtime, the employer will hold over the least senior employee scheduled to work the prior shift (for four (4) hours) and order the least senior employee scheduled to work the succeeding shift to start four (4) hours early. Similarly, the second four (4) hour block shall be offered to the most senior officer first on the succeeding shift. If the employer has made every effort to notify the succeeding shift officers to start work four (4) hours earlier and could not make such notification, it is understood that the prior shift officer that was held over may have to work more than four (4) hours of overtime. Every effort possible will be made to not hold a bargaining unit member over more than three (3) days in a row. The discretion to hold over lies with the Chief.”

City's Position:

Staffing is at a premium. While the City's fiscal situation has vastly improved, prudence is still required. This is evident in the fact that hiring caps are being put in place for 2017. With the Division of Police, that is going to be 85 sworn personnel. While the City recognizes the position of the Union in limiting consecutive overtime duty shifts, short notice overtime involves a management right to be able to deploy and man shifts adequately for the protection of all. The City is willing to do everything possible to limit consecutive overtime duty shifts and is willing to indicate so by inserting the language it proposes. An absolute limitation on consecutive overtime shifts is an infringement on management rights that the City is not willing to bargain for.

Union's Position:

Issue #1 ARTICLE 10 – Hours of Work and Overtime

Section 1. The FOP is proposing a language change that further explains the method by which “short notice” overtime is to be offered by way of seniority, in advance of it being ordered upon the least senior member.

In the same paragraph, the Union seeks to add a safeguard sentence protecting the least senior among us from being ordered to work overtime to more than two (2) consecutive days in a row.

The City's Counter Proposal: According to the Union.

In the proposal from the City dated June 20, 2016, they seem to agree with the first change.

Regarding the safeguard language, their counter **DOES NOT** guarantee any protection from multiple days of being ordered to work; it merely states that the Employer will try not to do that to a junior member.

The Union has a concern with the language that states “Every effort possible will be made to not hold a bargaining unit member over more than three (3) days in a row. (Emphasis added.)

After much discussion and after the Union agreed to accept the City’s position on Article 13, Insurance, as a trade-off for including the highlighted language contained in the “short notice” overtime paragraph along with the following language change: “At no time shall a Bargaining Unit Member be ordered over more than **three (3)** consecutive days in a row. The following language will be inserted into the new Collective Bargaining Unit at the appropriate place in Section 10.2:

“Short notice overtime (less than twenty-four (24) hours’ notice) shall be offered to on-duty personnel from the most senior to the least senior. If it is imperative that the overtime be worked, and nobody has volunteered to work the overtime, the employer will hold over the least senior employee scheduled to work the prior shift (for four (4) hours) and order the least senior employee scheduled to work the succeeding shift to start four (4) hours early. Similarly, the second four (4) hour block shall be offered to the most senior officer first on the succeeding shift. If the employer has made every effort to notify the succeeding shift officers to start work four (4) hours earlier and could not make such notification, it is understood that the prior shift officer that was held over may have to work more than four (4) hours of overtime. At no time shall a Bargaining Unit Member be ordered over more than three (3) consecutive days in a row. The discretion to hold over lies with the Chief.”

Article 10, Hours of Work and Overtime

The language in dispute in this section is the second paragraph of Section 10.4, Court Time, on Page 16 of the current Collective Bargaining Agreement (CBA) that reads as follows:

“An off-duty officer who is required to appear in court on matters arising from police business and extend his time beyond his normal shift shall be paid at the

rate of time and one-half for time beyond his regularly scheduled shift. An off-duty officer who is required to appear in court shall call a telephone number designated by the Chief of Police no later than 1700 hours on the day preceding the appearance to ascertain if the action is still pending. If told the action is still pending, the officer shall appear and shall be provided the applicable court time pay (even if the action is cancelled).”

The problem here is the phrase “even if the action is cancelled.” The Union points out that on occasion the prosecutor’s office cancels the scheduled hearing or reschedules the hearing for a later date and the off-duty officer is not told of the cancellation or rescheduling. This anomaly occurs after 1700 hours (5:00 pm). The off-duty officer, who is under subpoena, shows up for the originally scheduled hearing and is told there is no hearing.

The City’s Position

While the Union desires to add language to Section 10.4 regarding payment for court time, the City opposes such language change and desires to maintain current language. As proposed, the Union is asking for work not performed (i.e., you don’t get a timely call, you don’t have to appear to get paid – doesn’t make sense and is in violation of FLSA).

The City’s position is that since the hearing was cancelled, the off-duty officer did not participate in a court hearing that was cancelled, the officer should not be paid for time not worked.

Union’s Position

Here, the Union seeks language to force the Employer to do a much better job than their current practices regarding holding the Employer (and the Prosecutor) accountable for court appearances that the officers show up for, often on their own time and day off, often foregoing their normal sleep cycle, only to discover upon their arrival at court, that the case has settled, been rescheduled, or otherwise deviated completely without the officer being notified.

The Employer rejects this language without so much as a “we shall try to do better” counter.

To complicate this matter even further, the City requires the subpoenaed officer to secure documentation from the prosecutor that the originally scheduled court hearing was, in fact, settled, cancelled or rescheduled for a later date. This required documentation is necessary to satisfy purposes of the Auditor.

After much deliberation, the parties have agreed to the original Collective Bargaining Agreement language. The modified language will appear as follows:

Section 10.4 Court Time

“An off-duty officer who is required to appear in court on matters arising from police business and extend his time beyond his normal shift shall be paid at the rate of time and one-half for time beyond his regularly scheduled shift. An off-duty officer who is required to appear in court shall call a telephone number designated by the Chief of Police no later than 1700 hours on the day preceding the appearance to ascertain if the action is still pending. If told the action is still pending, the officer shall appear and shall be provided the applicable court time pay. If the court action has been cancelled and the Bargaining Unit Member was not notified until after 1700 hours on the day before, then they shall be entitled to court-time pay so long as such cancellation (documentation) is provided through the prosecutor’s office or the law director’s office.”

During the mediation session, the City pointed out that the bargaining unit member does not have to get the prosecutor’s signature on the cancellation authorization. An appropriate designate from the Prosecutor’s office would suffice. Also, the cancellation authorization does not have to be submitted immediately for example the same day or the next day, just so long as it is done within the same pay period.

ARTICLE 13 – INSURANCE

Following a brief discussion, the Union states that they will accept the City’s proposal as it applies to Section 13.1 and Section 13.2 of Article 13, Section 13.1 and Section 13.2.

ARTICLE 13 INSURANCE

Section 13.1. For all employees covered by this Agreement, the City shall provide comprehensive major medical/hospitalization health care insurance and ancillary coverage. The plan offering will be reduced to writing and set forth in Appendix A and will be updated to reflect changes made pursuant to this Article.

Section 13.2. Employees, beginning January 1, 2017, shall contribute to the cost to the City of both the single and family plan as follows by means of a monthly payroll deduction. A Section 125 premium conversion plan will permit employee contributions be made on a pre-tax basis.

Monthly Medical, Prescription, Dental & Vision Cost

| PPO Plan Coverage | Employer | Employee | Total Base Contribution |
|-------------------|------------|----------|-------------------------|
| Single Plan | \$584.21 | \$46.93 | \$631.14 |
| Family Plan | \$1,497.98 | \$78.22 | \$1,576.20 |

Should the plan costs exceed the total base contribution amounts set forth above or as modified utilizing the inflation factor set forth herein effective January 1st of each year of this Agreement, the participating employee shall be required to contribute fifty percent (50%) of the amount in excess of the total in order to continue participation. An inflation factor shall be added to the Employer and Employee contributions on an annual basis. The inflation factor shall be equal to the one year increase in medical premiums, when prescriptions is included in the medical premiums, found in the SERB Annual Report on the Cost of Health Insurance in Ohio's Public Sector.

Determination of the Plan Cost:

For January 1, 2017 rates, actual healthcare plan cost will be determined using a retrospective formula that uses twelve (12) months of plan expenses (Exhibit B) using data from the period of July 1, 2013 through June 30, 2016. Should the plan costs (Exhibit B) exceed the total base contribution amounts set forth in Exhibit A, participating employees shall be required to contribute fifty percent (50%) of the amount in excess of the total base contribution in order to continue participation. The same process shall be repeated for the January 1, 2018 rates, comparing the July 1, 2016 to June 30, 2017 actual plan costs to the total base contribution amounts set forth in Exhibit A; and so on for subsequent years.

Exhibit B: Plan Costs:

Carrier Claim Expense (net of claims minus stop loss reimbursements for the period)

Medical

Prescription (again – paid prescription claims minus rebates received)

Dental (for employee only)

Vision (Basic)

Chiropractic and Massage Therapy

Carrier Administrative Expense

Medical

Prescription

Dental (for employee only)

Vision (Basic)

Chiropractor and Massage Therapy

+ Stop Loss Insurance premium and costs

+Outside Expenses

Consultant fees (e.g., C-Bix and E.S. Beverage)

Wellness Program Fees

HRC Fees and taxes. (to be discussed)

= Total plan cost for the period

Note: If any of the above plans are fully insured, the premium expense for that plan shall be substituted.”

The foregoing language, which is the City’s proposal (Section 13.1 and 13.2) and accepted by the Union is to be inserted into the contract language at the appropriate Article 13.

This Fact-Finder observes that the City’s proposal that begins with the phrase “The City is self-insured from a health plan standpoint” is omitted from my recommendation.

I omitted those two bracketed paragraphs in the City's position, because I concluded that they were extensions of the City's position (i.e., argument) and not intended to be a part of the Collective Bargaining Agreement. My conclusion is based on the fact that the language is not included in the previous Collective Bargaining Agreement, Joint Exhibit No. 1.

ARTICLE 15, PAID LEAVES OF ABSENCE

The specific language at issue in Article 15 is Section 15.3 (A), Subsection 1.4, which the present CBA language reads as follows:

“1.4 While on transitional duty, the employee will:

- Not be required to use paid leave for medical appointments;
- Not be eligible for overtime or special duty (except court duty);
- Not be permitted to respond to emergencies, drive marked safety vehicles, or wear any part of the uniform of the day;
- Be assigned to a day off schedule, watch or shift and bureau/section/unit as determined by the Chief of Police;
- Be paid the compensation the employee would have received had they continued to perform their regular duties;
- Be off on scheduled holidays, or be eligible to reschedule same; and
- Be eligible to reschedule vacation or be paid for any vacation which cannot be rescheduled within the calendar year.”

It must be pointed out that “transitional duty” is the parties’ unique reference to the usually accepted term of “light duty” resulting from a workplace illness or injury.

City's Position

The City wants to add to the third Bullet Point above, the phrase, “other than a concealed duty weapon.” So, the sentence would read as follows:

- “Not be permitted to respond to emergencies, drive marked safety vehicles, or wear any part of the uniform of the day **other than a concealed duty weapon.**”

Union's Position

The first change here is that the Employer wants to add the phrase, "... other than a concealed duty weapon ..."

The Union can agree with that.

The second change is the Union's proposal in the next bullet point.

The Union seeks very specific language here to guarantee that an officer who is on workplace injury or illness has the opportunity to work transitional duty, also known as "light duty" on his/her bid position or at the officer's option, the T-1 shift (day shift). This has occurred in the past with much success for both the officer as well as the Employer. However, the City does NOT want language that guarantees this option to the Union.

The mediated language that the parties agreed to reads as follows:

"Be returned to their bid position or T-1 shift at the members' request. Such request shall not be unreasonably denied."

So, the CBA language of Article 15, Section 15.3 A, Subsection 1.4 should read as follows:

Article 15, Section 15.3 (A) 1.4

While on transitional duty, the employee will:

- Not be required to use paid leave for medical appointments;
- Not be eligible for overtime or special duty (except court duty);
- Not be permitted to respond to emergencies, drive marked safety vehicles, or wear any part of the uniform of the day, **other than a concealed duty weapon.**
- **Be returned to their bid position or T-1 shift at the member's request. Such request shall not be unreasonably denied.**
- Be assigned to a day off schedule, watch or shift and bureau/section/unit as determined by the Chief of Police;
- Be paid the compensation the employee would have received had they continued to perform their regular duties;
- Be off on scheduled holidays, or be eligible to reschedule same; and

- Be eligible to reschedule vacation or be paid for any vacation which cannot be rescheduled within the calendar year.”

The current relative language of the current CBA reads as follows:

“Section 15.4 Bereavement Leave

A. Pay for Bereavement Leave. A leave of absence of five (5) days (with full normal pay) to attend the funeral of a member of the immediate family, to include spouse, child, parent, parent-in-law or other relatives or persons with whom the employee maintains a spousal relationship or to whom the employee stands in loco parentis, living in the same household as the employee at the time of the relative’s death, shall be granted to an employee by the Chief of Police. Bereavement leave as provided in Section A, B and C herein shall not be deducted from the employee’s sick leave nor count against the employee’s sick leave attendance bonus.

B. A leave of absence of three (3) days (with full normal pay) to attend the funeral of other immediate family members, to include brother, sister, grandparent, grandparent-in-law, grandchild, half-brother, half-sister, brother-in-law, and sister-in-law (spouse’s sibling or sibling’s spouse), shall be granted to an employee by the Chief of Police.

C. Leave of absence of one (1) day (with full normal pay) shall be granted to an employee to attend the funeral of an employee’s aunt or uncle, niece or nephew. Proof of death and relationship of the deceased shall be provided to the City by the employee, if so requested.

D. Extended Bereavement Leave. Upon approval of the Chief of Police, bereavement leave in excess of that provided for in Section 15.4A of this Article will be charged to the employee’s accrued sick leave balance and not count against sick leave bonus.

Bereavement Leave: The City proposes to add the loss of brother, sister, grandparent, grandparent-in-law, grandchild, half-brother, half-sister, brother-in-law, sister-in-law (spouse’s sibling or sibling’s spouse) to those relatives who are entitled to five (5) days of bereavement leave. The loss of these relatives currently entitles one to three (3) days of leave. Also, the loss of other relatives, such as an uncle, aunt, niece or nephew, currently entitles an employee to one day of bereavement leave. The City proposes increasing that to three (3) days. This position is the same as adopted and made part of the IAFF CBA.”

The Union position is silent on this matter. Therefore, Section 15.4 for purposes of the CBA should read as follows:

“Section 15.4 Bereavement Leave

A. Pay for Bereavement Leave. A leave of absence of five (5) days (with full normal pay) to attend the funeral of a member of the immediate family, to include spouse, child, parent, parent-in-law or other relatives or persons with whom the employee maintains a spousal relationship or to whom the employee stands in loco parentis, living in the same household as the employee at the time of the relative’s death, shall be granted to an employee by the Chief of Police. Bereavement leave as provided in Section A, B and C herein shall not be deducted from the employee’s sick leave nor count against the employee’s sick leave attendance bonus.

B. A leave of absence of five (5) days (with full normal pay) to attend the funeral of other immediate family members, to include brother, sister, grandparent, grandparent-in-law, grandchild, half-brother, half-sister, brother-in-law, and sister-in-law (spouse’s sibling or sibling’s spouse), shall be granted to an employee by the Chief of Police.

C. Leave of absence of three (3) days (with full normal pay) shall be granted to an employee to attend the funeral of an employee’s aunt or uncle, niece or nephew. Proof of death and relationship of the deceased shall be provided to the City by the employee, if so requested.

D. Extended Bereavement Leave. Upon approval of the Chief of Police, bereavement leave in excess of that provided for in Section 15.4A of this Article will be charged to the employee’s accrued sick leave balance and not count against sick leave bonus.”

This concludes the mediation session.

ISSUES FOR FACT-FINDING AND RECOMMENDATIONS

ISSUE #5 Article 17 – Wages

Section 1

For the Patrolmen, the Union is proposing an annual five percent (5%) increase for each year of the contract. The Union also proposes the same wage increase and SWAT stipend to appear in both contracts (gold and blue).

The City proposes the same three (3) years but at 2.5%/3%/3% and an annual stipend of \$300.00/\$350.00/\$400.00.

Section 5

The Union proposes a \$500 annual SWAT stipend.

The Employer countered with a \$200 stipend.

In Section 17.9, the Union wants language that pays one and one-half (1-1/2) times the regular rate for all time worked as an instructor.

The Employer has rejected this proposal.

City's Position

At the beginning of 2009, the City requested an audit by the State Auditor, pursuant to Chapter 118 of the Ohio Revised Code. On December 15, 2009, the State Auditor placed the City in a fiscal watch status because of an audit finding that the City's general fund was in excess of \$2.9 million in the red. The audit analysis determined that this deficit was in large part due to expenditures within the City's safety forces that exceeded revenues by more than \$3 million.

During 2009, in an effort to stem and/or stop the bleeding, the City took numerous measures including, among other things, severed contractual service agreements and reduced the workforce, through layoffs and attrition, from 546 in January 2009 to 475 in August 2010. Despite good faith attempts of the City, on August 19, 2010, the City was placed in fiscal emergency by the State Auditor because of an aggregate deficit in its funds balance in excess of \$3.8 million as of April 30th of that year. The greatest portion of this deficit was attributable to the City's Safety Fund.

Through grit, determination, sacrifice and sound re-tooling of the City's finances and the implementation of financial plan/policy, the City was able to right the ship, eliminate the deficit spending and be removed from fiscal emergency in July 2014. Nevertheless, while the City is operating in the black, CAUTION is the operative word in moving forward.

Fiscal emergency caused the City to take a drastic look at its revenues versus expenditures and its overall financial future. It led to a completely different paradigm for assessing revenues, expenditures and budgeting in building financial stability and insure against future fiscal emergencies in the event of a downturn in the economy. It is a paradigm that has caused a lot of anxiety and consternation, one that has not been met with equanimity; but, one that needed to occur and must continue in place.

The key to the City's recovery was the implementation of a financial recovery plan that included the creation of four new funds. Between October 2012 and April 2014, these funds, with the insistence of Fiscal Emergency Commission and the State Auditor, were established.

The key one, being the Budget Stabilization Fund, was created by City Council in January 2013. It is funded by general fund transfers and such transfers in any fiscal year are limited to five percent (5%) of the total annual revenue credited to the general fund in the preceding fiscal year. That fund currently stands at \$4,534,892, which is 93% of its allowable capacity. These funds are restricted to use for unanticipated, nonrecurring needs and not recurring annual operating expenditures such as salaries.

A second fund that was created was the Separation Fund for the purpose of paying out all separation payments for sick leave, vacation leave and accumulated compensatory time upon the retirement of City employees. This fund currently has a balance of \$2,044,084.21. It is funded utilizing the criteria established in conformance with Governmental Accounting Standards Board (GASB) guidelines and its use is restricted to separation payouts and can only be used for salaries when the pay periods during any given fiscal year exceed the usual and customary number of pay periods (i.e., in excess of 26) R.C. 5705.13(B).

The third fund created is known as the Health Insurance Fund. The City is self-insured for medical and prescription health plan coverage. It also picks up on the cost of some dental coverage and chiropractic and massage therapy coverage. It is an internal service fund and the amount appropriated for it is established annually in conformity with R.C. 9.833, R.C. 5705.13(A) and the guidance of health plan consultants. In the 2016 budget, there has been appropriated the sum of \$8,133,139. As with the Stabilization Fund and the Separation Fund, monies in this fund are not available for salaries.

The fourth fund created is known as the Workers' Compensation Fund. It too is an internal service fund and was created to ensure a continuing resource for workers' compensation claims and costs. The 2016 budget has appropriated \$616,557 for this fund. Like the other three funds, these funds are not available for salaries.

The City's primary source of revenue is income tax. In addition to the 1% permanent levy allowed by state statute, the City has a 0.25% levy known as the Street Resurfacing Levy. It is levied exclusively for the purpose of street resurfacing. An additional .50% levy, known as the safety levy, is dedicated to safety service operations. There is also an additional 0.25% levy, known as the PRIDE levy, that is dedicated to parks, recreation, street lighting, demolitions and safety service operations. The Resurfacing, Safety and PRIDE levies are voter approved levies subject to renewal every four years.

In 2015, the City collected \$28,827,785.61 in income tax. Broken down, collections were as follows:

| | |
|------------------------------|-----------------|
| • General Fund (1%) | \$14,450,058.25 |
| • Safety-Services (0.50%) | 7,225,031.60 |
| • PRIDE (0.25%) | |
| Parks & Recreation (0.55%) | 778,839.20 |
| Street Lighting (0.020%) | 283,214.13 |
| Demolitions (0.050%) | 708,035.75 |
| Safety Service (0.125%) | 1,770,090.77 |
| • Street Resurfacing (0.25%) | 3,612,515.91 |

In 2015, revenue dedicated to the Safety Service Fund, which funds both the police and fire divisions, was \$22,461,955.51. This number was comprised of \$7.225 million from the Safety Service Levy, \$1.770 million in PRIDE Levy funds, outside revenues of \$2.269 million and \$11.050 million in General Fund support, which is mostly from the \$14.450 million derived from the 1% permanent tax levy.

In fact, an analysis of General Fund transfers to the Safety Service Fund from 2013-2015 conducted by the City's Finance Department reflects an increased dependency on General Fund revenue in order to meet Safety Force expenditures. The analysis indicated that the percent of total General Fund transfers to the Safety Service Fund were 44.58% in 2013, 47.54% in 2014 and 46.36% in 2015. The same analysis reflected that the percent of the 1% permanent levy transferred to the Safety Service Fund was in 2013 – 77.38%, in 2014 – 77.38% and in 2015 – 76.48%.

The yearend numbers for 2015 do reflect an increase in General Fund revenues of 6.98% with a cash balance as of December 31st of \$4,804,229.61. However, these numbers are tempered by the fact that the 2015 budget had minimal capital expenditures, built into it. It is the philosophy of the Finance Department that one-time expenditures, including capital acquisitions, supplementing a financial reserve or paying down on an existing debt should come from yearend surpluses. Consequently, the \$4.8¹ million carryover was appropriated as part of the 2016 budget for capital outlays in amounts as small as \$250 for the Clerk of Council to \$310,348 for Street Maintenance equipment. Other portions of the carryover were appropriated for various operational needs, outside resources and the Budget Stabilization Fund. Left unappropriated was \$1,448,243.64.

As for the Safety Service Fund, the 2015 yearend numbers also reflect an increase in revenue of 1.95% and a cash balance in the fund as of December 31st of \$1,908,951.26. As with the General Fund, these numbers are tempered by the fact that, in keeping with Finance Department's philosophy, minimal capital

¹ The actual unencumbered General Fund cash balance that was available was \$4,248,596.64

expenditures were built into the Safety Services budget in 2015. Consequently, the \$1.9² million carryover, with an infusion from the General Fund carryover, was appropriated as part of the 2016 budget for capital outlays in both the Police and Fire Divisions.

While only 2016 financial reporting through August is available, trending for this year appears to be similar to that of 2015.

In summary, while the City is once again operating in the black and seemingly to the untrained eye more than “flush” and in a position to make up for zero or near zero wage increases over the last several contract periods, such is simply not the case. While the City’s financial condition has certainly improved and it is willing to remunerate its employees with wage increases, prudent fiscal management must control as is evident by recent admonitions from the Finance Department relative to the City’s mandated five year forecast.

In June, Fact-Finder Margaret Nancy Johnson recommended in a report that the City’s IAFF Local 266 be granted wages exactly like those put forth in the City’s proposal. Both sides accepted this recommendation and it has been implemented with one exception. The Ohio Police & Fire Pension Fund has reviewed the report and recommendation and determined that the “readiness bonus” is in fact pensionable.

The City’s offering herein is also similar over the life of the contract to that received by its AFSCME bargaining unit in May 2015 – 6.5%. In 2015 and 2016, non-bargaining personnel under the mayor’s control received 2% raises as did non-bargaining personnel within the Finance Department³. The Law Department also granted 2% pay raises in 2016. Moreover, SERB’s Annual Wage Settlement Report for the period covering 2006 through 2015 reflects a general statewide wage rate for 2015 of 2.02% and one of 2.22% for police personnel. The City’s offer is clearly within these parameters and with respect to police in excess of the state average.

Mansfield, with a population of 46,830⁴ is the county seat of Richland County, whose population is 121,707⁵ and the population hub of North Central Ohio. In 2010, based on U.S. Census information, the median household income for the county was \$41,575. Currently, it is \$42,042, which represents over a four year period an increase of 1.1%. The current base salary for a police officer at Step 5 is \$54,743. Using the City’s offer of 8.5%, at the end of the new contract, this would be \$59,528. Bargaining unit members of the Mansfield Police Department

² The actual unencumbered Safety Service Fund cash balance that was available was \$1,434,032.40

³ Raises under the Mayor and Finance Director were not retroactive and the case of the Mayor there were additional lump sums paid.

⁴ This represents a decline of nearly 1,000 from the 2010 census figure.

⁵ This represents a decline of over 2,750 from the 2010 census figure.

are clearly above the median income level for the county and the City’s offer is far in excess of the growth pattern in general for the county.

The City’s position with respect to the percentage differential in the Gold CBA is that it should remain at 17% for the rank of sergeant. All parties concerned are going to directly benefit from any wage increase for patrol officers.

The City is alright with a stipend for SWAT so long as it is \$200 per year.

As for any increase in the Instructor pay for Blue Unit personnel, the City sees no valid reason to change current language.”

Fact-Finder’s Analysis

The most recent fact-finding/conciliation wage statistics published by the SERB for the last four quarters reveals the following:

| | 2015 | | 2016 | | | |
|--|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| | 3 rd Quarter | 4 th Quarter | 1 st Quarter | 2 nd Quarter | 3 rd Quarter | 4 th Quarter |
| Employee Organization Average Wage Request | 2.99% | 3.04% | 2.81% | 3.07% | | |
| Wage Award – Annual Average | 2.01% | 1.82% | 1.97% | 2.05% | | |
| Wage Award – 1 st Year Average | 1.95% | 1.92% | 2.05% | 1.96% | | |
| Wage Award – 2 nd Year Average | 1.95% | 1.72% | 1.96% | 2.05% | | |
| Wage Award – 3 rd Year Average | 2.14% | 1.81% | 1.90% | 2.16% | | |
| Conciliation Average Wage Award | 1.33% | 1.97% | 2.16% | 2.00% | | |

In a most recent fact-finding proposal for the City of Steubenville, Ohio, the fact-finder proposed a 2.2% pay raise for each year of the proposed contract.

As previously indicated, the Union (FOP) is proposing a 5% increase for each year of the contract.

The City of Mansfield proposes a two and one-half percent (2.5%) increase effective August 1, 2016, a three percent (3%) increase effective August 1, 2017 and a three percent (3%) increase effective August 1, 2018. The City also proposes that each unit member shall receive a non-pensionable annual Readiness Bonus of \$300, \$350 and \$400 for the first, second and third years of the new agreement, respectively.

Based on the foregoing information and the fact that the parties have initialed approval of the City's proposal, this Fact-Finder also recommends the City's proposal as written.

“ARTICLE 17
WAGES AND FRINGE BENEFITS

Section 17.1 A. Wage Scale. Bargaining unit members shall receive general wage increases as follows: Effective August 1, 2016, two and one-half percent (2.5); effective August 1, 2017, three percent (3%); effective August 1, 2018, three percent (3%). Additionally, each unit member shall receive a non-pensionable Readiness Bonus of \$300, \$350 and \$400, for the first, second and third years of this Agreement, respectively. (See wage scale, appended hereto as Exhibit “B”).

Section 17.4 Each permanently appointed officer covered by this Agreement, with one or more years of seniority, shall receive a uniform maintenance allowance of one thousand dollars (\$1,000.00) per year. Such allowance shall be paid in four (4) installments of two hundred and fifty dollars (\$250.00) each and shall be payable for the prior three (3) month period on the first day of November, February, May and August of each year. The employer shall provide each member with body armor.

The City will replace or repair any damaged property or equipment, including member's uniforms, provided the damage is not the result of the member's negligence or that of ordinary wear and tear. However, the maximum reimbursement for watches shall not exceed one hundred dollars (\$100.00). An employee covered by an applicable policy of insurance must submit a timely claim to his insurance company for any damage to his personal property and reimburse the City out of any proceeds received.

A newly appointed officer of the Police Department shall be provided with a uniform and equipment pursuant to Departmental Procedure and Policy. If such an employee does not complete his probationary period, the City shall deduct from his pay the total cost of such uniform and equipment; provided however, that such an employee may reduce his liability by selling the equipment and remitting the proceeds of such sale to the City. In addition, upon a City required change in uniform style, the City will provide employees with any such newly required parts of uniforms and equipment pursuant to Departmental Procedure and Policy.

Bargaining Unit Members assigned to SWAT shall receive an additional two hundred dollars (\$200.00) per year for uniform and equipment items payable on the first day of November of each year.”

The Fact-Finder recommends the following language clarification to read as follows:

“Section 18.2 Pay for Holidays. Employees shall be paid eight (8) hours pay at the applicable straight-time rate for each of the holidays declared in Section 1 above whether or not they worked the holiday. Payment shall be made for such holiday provided the employee was in active pay status on his last scheduled shift preceding the holiday and his first scheduled shift following the holiday. An employee on wage continuation, sick leave, and vacation shall be eligible for holiday pay.

Employees covered by this Agreement who work on a holiday designated in Section 18.1 shall be compensated at the rate of one and one-half (1-1/2) times their normal rate of pay in addition to eight (8) hours of holiday pay; provided however, that an employee entitled to holiday pay under this Section, who works the holiday or who does not work the holiday because the holiday is celebrated on the employee’s regularly scheduled day off instead of receiving the pay assigned under this Section for working the holiday or receiving the holiday pay for the holiday being celebrated on the employee’s regularly scheduled day off, may receive eight (8) hours compensatory time, with the approval of the Chief of Police, within a one (1) year period from the date of the actual holiday (or the employee will be paid the holiday pay entitlement). It will be the employee’s discretion to work the holiday or take it off if scheduling permits.”

The current language of Article 17, Section 9 reads as follows:

Section 17.9 Any employee who 1) has completed a division-sponsored or approved course of instruction related to training, 2) is certified to conduct training of other certified police officers, and 3) is assigned in advance by the division to conduct on-site training of other police officers shall receive the appropriate rate of pay for all time worked as an instructor hereunder.

City’s Position:

Maintain present above language.

Union’s Position

The Union wants language that pays one and one- and one-half (1.5) times the regular rate for all time worked as an instructor.

Fact-Finder’s Recommendation:

As I understand the situation the Instructor is currently receiving his/her regular straight-time rate for time worked as an Instructor. In Section 17.6, (Joint Exhibit No. 1) the Field training officer is receiving pay at the rate of 1.5 times their normal base rate for all hours worked as a Field Training Officer.

Given the requirements of (1) and (2) in Section 17.9, and the payrate to the Field Training Officer in Section 17.6 it would only seem fair to grant the “Instructor “an additional half-time pay rate for the Instructor in Section 17.9.

Fact-Finder's Recommendation:

Section 17.9 Any employee who 1) has completed a division-sponsored or approved course of instruction related to training, 2) is certified to conduct training of other certified police officers, and 3) is assigned in advance by the division to conduct on-site training of other police officers **shall receive pay at the rate of 1.5 times their normal rate for all hours worked as an Instructor.**

ARTICLE 18 HOLIDAYS/PERSONAL DAYS

City's Position

The City's position relative to Article 18 is that current language be maintained as to all sections of said article. While the Union's position is that Section 18.2 incorporates, concessions given in 2011 to aid the City in the midst of its fiscal troubles and they desire previous language be restored in the contract

The City's position is that the current language remains a viable tool for maintaining fiscal prudence. Allowing departmental administrative personnel and other non-patrol section personnel to electively work major holidays is not good fiscal management, especially in light of admonitions of the Finance Department that a lack of fiscal prudence will cause the City to be \$8,000,000 in the red by 2020.

Union's Position

Section 2. The Union proposes a rewrite of this section for the purpose of returning the contract language to how it existed prior to giving the Employer significant concessions in 2008. The Employer fell in love with the concession language and wants to keep it in the new contract.

Section 18.3. Both parties have been working on two (2) sentences in this Section that this Advocate believes can be resolved during mediation.

Fact-Finder's Analysis

The key phrase in the City's position above is, "Allowing departmental administrative personnel and other non-patrol section personnel to electively work major holidays ... "

Absent much detail on this issue, I must draw some conclusions.

The Patrol Section operates on a seven (7) day 24-hour cycle. They do not have the opportunity to electively work or not work major holidays. They must work their schedule. If they are scheduled off on a holiday, they do not have the opportunity to electively work the holiday.

Departmental personnel and other non-patrol personnel probably work a five-day per week schedule and off on Saturday and Sunday. When a holiday falls during the week, they get paid holiday pay in accordance with the language of the CBA. To allow the administrative personnel and other non-patrol section personnel to ELECTIVELY work major holidays is not prudent management policy. Besides that, the patrol officers are continuously exposed to the weather elements while the Departmental Administrative personnel normally work indoors.

This Fact-Finder agrees with the City's position on Section 18.3. I don't recall discussing this issue in mediation.

Fact-Finder's Recommendation, Article 18

Current language be maintained in all Sections of Article 18.

ARTICLE 19 – TUITION REIMBURSEMENT

City's Position

The City proposes to eliminate the last sentence of Section 19.1 (A) in the current CBA.

That language reads as follows:

“Any bargaining unit member currently enrolled (as of September 1, 2006) in a degree program shall be permitted to complete such program in accordance with the provisions of the previous collective bargaining agreement.”

Union's Position

Keep the current contract language. In other words, do not eliminate the quoted language cited above in the City's proposal.

As I interpret the City's proposal, the "provisions of the **previous** collective bargaining agreement" will be the language contained in the **current** CBA (Joint Exhibit No. 1) once the new CBA is approved by the parties. The remaining current language in Section 19.1 (A) still provides for tuition reimbursement up to a four (4) year bachelor's degree.

I agree with the City's proposed changes to eliminate the last sentence of Section 19.1 (A).

The remainder of Article 19 has no other changes. Article 19, Section 19.1 (A) should read as follows:

**"ARTICLE 19
TUITION REIMBURSEMENT**

Section 19.1 Reimbursement Program. Each employee who is subject to the provisions of this Agreement and who has completed his probationary period shall be eligible for a reimbursement of tuition in courses of instruction involuntarily undertaken by him and subject to the following conditions:

A. In order to receive tuition reimbursement, the degree program pursued and courses taken must be directly related to the duties and responsibilities of the employee's present position or to the next higher position in the normal career path for advancement within the City's Police Department. All courses must be taken during the employee's non-scheduled working hours. All scheduled hours for courses of instruction must be filed in advance with the Chief of Police and the Safety-Service Director. All courses and scheduled time of courses must be approved by the Chief of Police and the Safety-Service Director. Any situation which in the discretion of the Chief of Police would require an employee's presence on the job shall take complete and final precedence over any time scheduled for courses. Bargaining unit members shall only be eligible for tuition reimbursement up to a four (4) year bachelor's degree.

B. Any financial assistance from any governmental or private agency available to an employee, whether or not applied for, and regardless of when such assistance may have been received, shall be deducted in the entire amount from the tuition reimbursement the employee is eligible for under this section. If an employee's tuition is fully covered by another governmental or private agency, the employee is not entitled to payment from the City.

C. Only accredited colleges and universities will be made available for tuition reimbursement. The maximum number of credit hours which may be reimbursed

is eight (8) per quarter and twenty (20) per academic year. The maximum reimbursement amount per credit hour shall be the current rate per credit hour charged by The Ohio State University for full-time continuing students at the main (Columbus) campus at the time of application. Applications for approval of institutions, projected courses and estimated costs for reimbursements by the City must be made by September 1 of each year in order to accommodate budgetary and funding requirements of the City. Furthermore, the maximum annual tuition reimbursement for all of the members of the patrol officers and supervisors bargaining units shall be a total of forty-five thousand dollars (\$45,000.00).”

I have compared the remainder of Article 19 of the present CBA (Joint Exhibit No. 1) against the City’s proposed language and it appears there is no difference in the language other than what is shown above.

The City’s rationale for the changes in Paragraph “C” above is as follows:

“The City desires to make educational reimbursement uniform throughout its collective bargaining units. This credit hour limitation would put these contracts in line with those we have with the IAFF and AFSCME.”

As Fact-Finder, I have no problem with uniformity across bargaining units if possible in certain areas.

The current language of the CBA of the Gold Unit (Joint Exhibit No. 2) reads in pertinent part as follows:

“ARTICLE 17 WAGES AND FRINGE BENEFITS

Section 17.1 Wages. Sergeants, Lieutenants, and Captains in the City Police Department shall receive the wages set forth in Exhibit A (attached hereto and made a part hereof).

A. For the duration of this Agreement, a minimum of seventeen percent (17%) range wage differential shall remain between the base rate of the highest paid Patrol Officer and the base rate of the Sergeant, and a ten percent (10%) rank wage differential shall remain between the base rate of the Sergeant and the base rate of the Lieutenant and between the base rate of the Lieutenant and the base rate of the Captain.

B. This pay specification is subject to enactment of these wage scales and provisions into appropriate Ordinance by the City Council.”

Union’s Position

The Command (Gold) unit is submitting a one-time 1% rank differential increase from the current 17% to 18% from Senior Patrol Officer to Sergeant. This rank differential has not been changed or requested for change in the past 20+ years or at least the last 7 contracts negotiated with the City of Mansfield. Mansfield supervisors are the lowest paid of agencies similar in size and have been forced to complete work outside their job description which was previously performed by AFSCME employees resulting in a significant savings for the city. Below I will highlight these areas with full explanations and supporting documentation.

Some of the cities referenced in the provided documents show a specific increase in pay between senior patrol officer and sergeant to include The City of Lakewood which currently has a 19% differential and The City of Newark which has an 18% differential. Some of those cities which are a lower differential rate have a significantly higher pay scale ranging into the \$85,000.00 range.

In addition to the foregoing argument, the Union submitted seventeen (17) pages of documents in support of its position. (See Union Exhibit NXT (Last)). These documents are too numerous to reproduce in this report, but they represent a very cohesive and detailed synopsis of the Union’s position.

City’s Position

The City rejects this proposal.

Fact-Finder's Recommendation

I recommend the Union's request for a one-time one percent (1%) rank differential increase from the current 17% to 18% from Senior Patrol Officer to Sergeant. The language of Article 17, Section 17.1 (A) should read as follows:

ARTICLE 17, Section 17.1 (A)

“A. For the duration of this Agreement, a minimum of eighteen percent (18%) range wage differential shall remain between the base rate of the highest paid Patrol Officer and the base rate of the Sergeant, and a ten percent (10%) rank wage differential shall remain between the base rate of the Sergeant and the base rate of the Lieutenant and between the base rate of the Lieutenant and the base rate of the Captain.”

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The Fact-Finder respectfully submits the above recommendations to the parties this 30th day of November, 2016 in Belmont County, Ohio.

I would be remiss to not compliment the chief spokesman and everybody in attendance at this hearing. I compliment all in attendance for their professional conduct and cooperation.

Richard D. Sambuco
Richard D. Sambuco
Fact-Finder

CERTIFICATE OF SERVICE

I certify that on the 30th day of November, 2016, I served the foregoing report of Fact-Finding upon each of the parties to this matter by Electronic Mail at their respective email addresses as shown below:

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I further certify that on the 30th day of November, 2016, I submitted this report by Electronic Mail to the State Employment Relations Board, 65 East State Street, Columbus, OH 43215.5213.

Richard D. Sambuco
Richard D. Sambuco, Fact-Finder