

**State of Ohio**

**State Employment Relations Board**

<b>In the Matter of Fact Finding</b>	:	SERB Case Number: 2016-MED-08-0758
	:	& 0759
Between:	:	
	:	
City of Vandalia, Ohio	:	
Employer	:	
	:	Date of Hearing: April 7, 2017
And:	:	Date of Report: April 27, 2017
	:	
Ohio Patrolmen’s Benevolent	:	
Association	:	
Union	:	Felicia Bernardini, Fact Finder
	:	

**Fact Finder Report and Recommendation**

**Appearances:**

**For City of Vandalia, Ohio, Employer**

Daniel Rosenthal, Esq., Fact Finding Spokesperson

**For Ohio Patrolmen’s Benevolent Association, Union**

Joseph Hegedus, Esq., Fact Finding Spokesperson

## Introduction

### Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on March 9, 2017 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the City of Vandalia, Ohio (hereafter referred to as the “Employer” or the “City”) and the Ohio Patrolmen’s Benevolent Association (hereafter referred to as the “Union,” the “Unit” or “OPBA”).

Prior to the hearing, the parties engaged in contract negotiations and mediation. Despite the parties’ best efforts an impasse remained. At fact finding, ten contract articles remained unresolved. The fact finding hearing was scheduled for April 7, 2017. Both parties timely filed the required pre-hearing statement.

The day of the hearing, the parties and the fact finder made a final effort at mediation. No agreement was reached and the parties proceeded to hearing.

Daniel Rosenthal, Esq., Jackson Lewis P/C, represented the Employer.

Joseph Hegedus, Esq., Ohio Patrolmen’s Benevolent Association, represented the Union.

### Issues

The remaining open articles addressed by both parties at the hearing are as follows:

Article 2: Recognition

Article 3: Management Rights and Responsibilities

Article 10: Holidays

Article 11: Vacation Leave

Article 12: Sick Leave

Article 16: Overtime

Article 17: Other Compensated Time

Article 20: Compensation

Article 29: Termination

FLSA Contract Amendment

### General Background Information

The City of Vandalia is located in Southwest Ohio, just north of Dayton. Vandalia's population in 2014 was approximately 15,139; its estimated median household income in 2015 was \$57,081 and the estimated per capita income in 2015 was \$28,886.<sup>1</sup> The bargaining units represented by OPBA are made up of Police Officers, Public Safety Specialists (Dispatchers) and Clerk Typists in the Vandalia Police Department (VPD). There are approximately 30 members in the bargaining units.

### **Positions, Discussion and Recommendations**

At the hearing the parties agreed to present their respective arguments on issues grouped in the following way: Workweeks, Schedules and Overtime; Leave Benefits; Wages. Therefore, the format of this report will follow the same order and grouping of issues. Below, the parties' position on each of the three main issues, is summarized. Each is followed by a discussion and recommendation for the group of proposals that comprise each of the three main issues.

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

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<sup>1</sup> City-Data.com/city/Vandalia-Ohio

Issue 1: Workweeks, Schedules and OvertimeArticle 2: Recognition*Union Position*

The Union proposes to eliminate wording in section 2.01 that references the “normal” workweek, and wording that refers to the “term of this Agreement.” With these edits the Union’s aim is to establish both the 5/2 and 6/3 workweeks as the established regular workweeks for the bargaining unit.

Article 3: Management Rights and Responsibilities*Union Position*

The Union proposes a new section 3.02 to incorporate word-for-word the MOU on shift selection which is now an addendum on page 24 of the current contract.

Article 16: Overtime*Union Position*

The Union proposes to modify multiple sections of the Article. In Section 16.01 the Union proposes to include wording that distinguishes between workweeks and work periods. The Union proposes to add language in Section 16.02 that establishes different overtime definitions for the 5/2 and 6/3 schedules. 165 hours in the 28-day work period is the threshold proposed for the 6/3 schedule. The Union proposes to eliminate the second paragraph in Section 16.02 because it is an editing error. The Union proposes to maintain current language in Section 16.03 and 16.04. The Union proposes a new Section 16.05 that defines the work period for the 6/3 schedule as 28 days and establishes the overtime threshold as hours over 165 in the 28-day period. Additionally, this new section establishes overtime as calculated on all hours in a paid status in the work period, rather than the current practice of using actual hours worked. The proposed new section also establishes that when a 6/3 shift is split by two officers the first officer works 4.5 hours and the second officer works 4.0 hours.

Article 17: Other Compensated Time*Union Position*

The Union seeks to modify multiple sections in Article 17. In Section 17.01 the Union seeks to substitute the wording “compensated a minimum of” for the existing words, “credited with.” In Section 17.04 the Union seeks to eliminate references to Section 17.06 which addresses the use of extra hours worked as part of the ‘equity adjustment’. In Section 17.05 the Union proposes to add

language that would permit the use of compensatory time in one-hour increments and language that would provide for the option of carrying forward a comp time balance into the following year – up to the current maximum accrual of 56 hours. Also in this Section the Union seeks to eliminate the paragraph that references the application of comp time to the ‘equity adjustment’. The Union proposes to eliminate the existing Section 17.06 which refers to the ‘equity adjustment’ and replace it with a new section that would require all contract overtime be paid at the overtime rate of one and one-half, and establish a guarantee of OT should the contract engagement be cancelled. The Union also proposes to add a new Section 17.07 that would incorporate language from the existing FLSA contract amendment on page 26, item 7 pertaining to the Air Show. In this new Section, the Union proposes to add language that would establish all hours worked during the Air Show Weekend as overtime hours paid at one and one-half time, thus eliminating the need to reference specific start and end times of the Air Show.

The 6/3 workweek has long been the standard for Patrol Officers in the VPD. In fact, the 6/3 workweek goes back more than 30 years. It is a preferred shift for Patrol Officers and it has been incorporated in the CBA for 30+ years. The Employer retains the management right to involuntarily assign a Patrol Officer from a 6/3 workweek to a 5/2 workweek, but not for more than one consecutive year. In 2009 the Employer sought to make such a year-long reassignment of the Patrol Officer Section in order to reduce costs in the midst of the Great Recession. In order to maintain the preferred 6/3 workweek schedule, the Unit agreed to a contract amendment that would reduce overtime costs by calculating OT based on the FLSA 7K exemption that places the OT threshold at 171 hours in a 28-day work period. This mid-term deal was struck for the continuation of the contract term at that time – one year. This FLSA contract amendment has continued for two subsequent 3-year contracts, but that does not make it the status quo because the 30+ year history of the 6/3 workweek far outweighs the amendment. Furthermore, the Union has sought to eliminate this provision, although it has continued despite those efforts. The bargaining unit is essentially being punished for having agreed to the one-year FLSA Amendment. The overtime that the Employer sought to reduce by changing the 6/3 workweek is more accurately attributed to understaffing and one-time staffing challenges (such as extended leaves), rather than the regular operation of the 6/3 workweek. Regardless, there is no financial hardship today that necessitates continuation of the FLSA contract amendment. Ultimately, the Union’s proposal regarding the way overtime is calculated is not to eliminate the FLSA definition, simply to reduce the hour threshold

from 171 to 165 in a 28-day work period. This change is in keeping with the way the few other Ohio cities (5 cities in all) using the 28-day work period calculate overtime. Of these five other cities, four pay overtime after 160 hours and one pays overtime after 165 hours in the 28-day work period.

#### Issue 1: Work Weeks, Schedules and Overtime

With minor exceptions (noted below) the Employer seeks to maintain the current contract language in Articles 2, 3, 16 and 17.

#### Article 2: Recognition

##### *Employer Position*

The Employer opposes the Union's proposed wording changes in Article 2 because they undermine the 5/2 workweek as the normal work schedule.

#### Article 3: Management Rights and Responsibilities

##### *Employer Position*

The Employer will accept the Union's proposal to incorporate the contract amendment on shift scheduling as a new section in this Article in exchange for an overall favorable settlement, which would be a status quo contract and the Employer's wage proposal.

#### Article 16: Overtime

##### *Employer Position*

The Employer opposes the proposed changes in Article 16 pertaining to how overtime is calculated because they erode the FLSA overtime standard by reducing the threshold for overtime from the status quo of 171 hours in the 28-day work period to 165 hours in the 28-day work period. This would increase the Employer's overtime costs. Furthermore, such a change would result in the Union being able to retain the 6/3 schedule for Patrol Officers while at the same time reducing the FLSA overtime standard, which was the Employer's *quid pro quo* for not reassigning Patrol Offices to the 5/2 workweek. The 6/3 workweek and FLSA overtime are two-sides of the same coin; they are the deal struck in 2009, which continues today.

#### Article 17: Other Compensated Time

##### *Employer Position*

The Employer also opposes the Union's proposals in Article 17 because they too undermine the status quo and would increase paid overtime. The Union's proposals in Sections 17.01 and 17.04 would require that Court Time and attendance at departmental meetings be paid at the overtime rate rather than at the straight time rate, which is the current practice. These proposals chip away at the

FLSA standard and create specific occurrences where overtime pay would be mandated by the contract. The Employer would accept the Union's proposal in Section 17.05 that provides for use of comp time in one-hour increments in exchange for an overall favorable contract settlement. However, the Employer opposes the Union's other proposal in Section 17.05 to allow an annual carry-over of unused comp time because it would increase the cost of comp time earned at an hourly rate lower than the rate at which it is ultimately paid-out. The Employer agrees with the Union's proposal to delete the current language pertaining to the 'equity adjustment', however opposes the Union's proposal to replace Section 17.06 with new language regarding contract overtime. The Union's proposed changes to current practice vis-à-vis contract overtime would increase costs for community organizations, schools and churches that hire police officers for their events. Such a change would lead to a reduction in the use of VPD officers by these entities and undermine community relations. Regarding the Union's proposal to edit the Air Show Weekend language, the Employer agrees to extend the Air Show Weekend hours so that the weekend starts at 4:00PM on Friday and continues until 7:00AM on Monday morning. This change in the hours will accomplish what the Union seeks.

In 2009, at a time of budget tightening due to economic recession, there was a deal struck between the parties to continue the bargaining unit's preferred 6/3 schedule for Patrol Officers in exchange for converting to the FLSA standard in calculating overtime. Doing away with the 6/3 schedule would result in a 5% increase in staff coverage, reduce overtime, and thereby reduce staffing costs. In order to allow the bargaining unit to retain the 6/3 workweek for Patrol Officers, and yet at the same time reduce staffing costs, the Union agreed to change overtime calculation to the FLSA standard, which puts the threshold for earning overtime at hours worked in excess of 171 in a 28-day period. This bargain from 2009 has been renewed in two subsequent CBAs. The deal has continued to achieve the original objective of reduced staffing costs by keeping overtime at a minimum; equally important however is the fact that the deal has become the parties' new normal. After eight years this 'deal', and the contract amendment that memorializes it has become the parties' status quo. Furthermore, the Employer struck this same cost-saving deal with the Sergeants' bargaining unit and with the firefighters' bargaining unit. This 'work period/FLSA overtime' deal has continued in all of Vandalia's safety-force bargaining units over multiple bargaining cycles. Any change in the way overtime is calculated would essentially render the deal null. If this were to be the

case, the Employer would seek to eliminate the contractual restrictions on assignment of bargaining unit members to the 5/2 workweek.

*Discussion and Recommendation*

The parties have acknowledged that the 6/3 workweek is the longstanding practice for Patrol Officers. The 6/3 workweek is such an established norm that the Employer's right to make an involuntary change to an Officer so scheduled is limited to no greater than one consecutive year.

Section 2.01 which sets forth the 6/3 workweek as the norm for Patrol Officers states, "For the term of this agreement, police officers assigned to the Patrol Section will normally work a 6/3 schedule with an 8.5 hour workday." The limiting language, "for the term of this agreement" is uncommon in contract language where provisions are understood to extend beyond the term of the current agreement. This same phrase is found in the overtime contract amendment, where one might expect to find such wording given that the amendment was originally a mid-term amendment to the CBA. Both could be said to expire at the end of the contract term even though one is part of a contract section and the other is in a contract amendment. Since 2009 the 6/3 workweek and the overtime amendment have been linked, and despite the phrase, "for the term of this agreement" the parties have allowed both provisions to continue in effect through multiple rounds of negotiations. As a result of the bargaining history and the operational relationship between scheduling and overtime, modifying one provision without giving due consideration to modifying the companion provision would disrupt the stasis that currently exists for the parties – as dissatisfying as this current condition may be. In this matter, change would be best served through the process of negotiation, which brings with it an understanding of the costs and benefits associated with the mutually agreed outcome.

The Union's proposal is to reduce the regular-hours threshold in a 28-day work period beyond which overtime is paid. The crux of the matter for the Union is that using the FLSA standard is simply unfair. The Patrol Officers work many more hours than their regular schedule requires, and yet because the overtime threshold is so high in a 28-day work period, these extra hours are rarely paid at the overtime rate. By comparison, Officers in the same bargaining unit assigned to the Detective Section work a 5/2 workweek and therefore get overtime for all of their extra hours over 40. The Union further contends that the Employer's current financial situation does not warrant continuation of the FLSA contract amendment, which was a cost-saving arrangement specific to the economic conditions in 2009.

I cannot view the lack of overtime opportunities for the 6/3 workweek schedule as a true hardship because the Employer is not obligated to provide overtime work. In the public sector, absent contract language to the contrary, the Employer has a fiduciary duty to tax payers to make every effort to avoid overtime costs. The overtime arrangement in Vandalia is unique, and perhaps at one time it was intended to be only temporary, but the parties have chosen to continue the amendment for eight years. Therefore the recommendation is to continue the current practice for the term of this new agreement. The current overtime arrangement for this bargaining unit is the same arrangement that both the Sergeants and the firefighters are operating under in their contracts, so there is comparability across bargaining units in this jurisdiction. In this matter there is no case made that the reduction in overtime worked by this bargaining unit comes at the detriment of any individual employee or the Unit as a whole.

### **Recommendation**

In deference to the bargaining history of the parties and in light of internal comparables, current language is recommended except for those changes that the parties mutually accepted in Article 3, Section 16.02, Sections 17.05 and 17.06, and the FLSA contract amendment.

Relevant contract language shall read in part as follows:

Article 2: Recognition – Current contract language

Article 3: Management Rights and Responsibilities

Section 3.01 – Current contract language

Section 3.02 – The Division will solicit shift preferences for the following year during a two-week period in September. Shift assignments will be awarded by preference based upon VPD seniority within a position classification. Seniority for shift preference is established from the date an employee is appointed to their current job classification.

Every effort will be made to accommodate and sustain shift preferences. Nonetheless, the Chief of Police, or his designate, reserves the prerogative and authority granted to the Chief by the Ohio Revised Code, the Vandalia City Charter, and the collective bargaining agreement. The Chief may station, [re]schedule, or [re]assign police personnel at any time as

circumstances, public safety needs, staffing consideration or the best interests of the City or Division may require.

Article 16: Overtime – Current contract language

*(Note: the parties agreed to delete the second paragraph in Section 16.02 because it is an editing error.)*

Article 17: Other Compensated Time

Section 17.01 – Current contract language

Section 17.02 – Current contract language

Section 17.03 – Current contract language

Section 17.04 – Current contract language *(note: delete both references to Section 17.06)*

Section 17.05 – Compensatory Time. Compensatory time will be accumulated at a time-and-one-half rate and will be taken at a time mutually agreed upon by the employee and supervisor. Except for CIS personnel, compensatory time will not be scheduled more than 24 hours in advance. Compensatory time off may not be scheduled if it would create an overtime situation. Employees may take up to 20 hours of time, per occasion, in one hour increments. They may accrue no more than 56 hours annually.

Accrued comp time will be paid off at the employee’s hourly rate of pay—as of their final pay—in the year in which it was incurred. Payment will be made no later than the second pay in January following the year in which it was accrued. Employees may carry over eight hours of compensatory time to the next calendar year.

*Delete the third paragraph*

17.06 – Equity Adjustment in Hours Worked – *Delete the entire section*

Contract Amendment

Items 1 – 6: Current contract language

Item 7. However, any bargaining unit member who works during the weekend of the Air Show, including the Air Show Parade, from 4:00PM Friday through 7:00AM Monday morning, wherever assigned, shall be paid at a rate of one and one-half times regular pay for any hours worked

in cases where the employee was not regularly scheduled to work these days, or shall be paid at a rate of one and one-half times regular pay for any hours worked in excess of eight and one-half hours, at any time during this time frame, in all cases where the employee is regularly scheduled to work.

## Issue 2: Holidays and Leave Benefits

### Article 10: Holidays

#### *Union Position*

The Union seeks to add language in Section 10.01 under item 10 – Personal Days, that defines a Personal Day as 8.5 hours for unit members on the 6/3 workweek and 8 hours for unit members on the 5/2 workweek. In addition, the Union proposes to add language that allows probationary employees to start accumulating a prorated amount of Personal Days upon hire, rather than upon completion of half of the probationary period, which is the current contract language.

### Article 11: Vacation Leave

#### *Union Position*

The Union seeks to add language in Section 11.01 that defines a vacation day as 8.5 hours for unit members on the 6/3 workweek and 8 hours for unit members on the 5/2 workweek. In Section 11.02(b) the Union proposes language to allow unit members to use vacation leave in one-hour increments as long as no overtime is created by doing so. Additionally, the Union seeks to modify the vacation scheduling provision to allow supervisory approval of vacation requests, of less than a full week, at any time as long as the request does not create a hardship for the Employer. The adoption of the Union's proposed language changes would render the existing provision that allows 16 hours of vacation leave to be used as if it were Personal Days null and therefore the Union proposes to delete it from the Section.

### Article 12: Sick Leave

#### *Union Position*

In Section 12.01 the Union seeks a language edit that would allow unit members to use sick leave for the care of an immediate family member in accordance with current Employer policy. In Section 12.02 the Union proposes to establish different accrual rates – one for unit members on the

5/2 workweek and a slightly higher accrual rate for unit members on the 6/3 workweek. This distinction would allow those on the 6/3 workweek to accrue leave at a rate that is consistent with their 8.5 hour workday. In conjunction with the proposed change in accrual, the Union proposes a change in utilization so that unit members on the 6/3 workweek would be required to use 8.5 hours of accumulated sick leave for a full day of absence. Section 12.04 contains a related proposal that would maintain the requirement for a doctor's note when a unit member on the 5/2 workweek uses 24 hours of consecutive sick leave, but modifies the requirement somewhat to require unit members on the 6/3 workweek to provide a doctor's note when 25.5 consecutive hours of sick leave are used.

The Union's proposals regarding leave benefits are designed to fix a discrepancy between the 6/3 and 5/2 workweeks. For the 6/3 Officer, a day off on leave results in the pay check for that pay period being docked by 0.5 hour of pay. The notion that by not requiring the 6/3 Officer to use an extra half-hour of leave 'saves' the leave in the Officer's leave bank defies logic. The unpaid half-hour is a genuine material loss to the 6/3 Officer, and it is a loss that adds up over an extended absence and can cause significant hardship. In fact, just such a situation has occurred in this bargaining unit. Another way of considering the cumulative effect of the current practice is to consider the total number of leave hours used by the 6/3 cadre of Officers in 2016. The total number of hours used was 5,660.8 hours of leave. Since these Officers may only use eight hours of leave for an 8.5 hour workday, they were not compensated for 353.8 hours (Union Exhibit 2). Far from being equitable, the current provisions create an inequality within the same Unit, putting the 5/2 workweek schedule at a distinct advantage. The Union's proposals on Holidays and leave benefits are written such that by defining the word 'day' as 8.5 hours for the 6/3 workweek, leave benefits would not only be credited at 8.5 hours, but they would be used at 8.5 hours, thus creating parity with the 5/2 workweek benefits. Under the Union's proposals the 6/3 and 5/2 workweeks would continue to get the same number of leave 'days' off. The other aspects of the Union's proposals in these Articles regarding changes to utilization increments and requirements for prior notice before using leave benefits are written in such a way as to acknowledge the Employer's legitimate concerns for staffing and other operational hardships. They should all be adopted.

#### Issue 2: Holidays and Leave Benefits

With one exception (noted below) the Employer seeks to maintain the current contract language in Articles 10, 11 and 12.

### Article 10: Holidays

#### *Employer Position*

The Employer opposes the Union's proposal to define Personal Days as 8.5 hours for unit members on the 6/3 workweek. If the Union's provision were to be adopted those working the 6/3 workweek would annually earn an additional 2.5 hours of Personal Leave more than their coworkers on the 5/2 workweek. The status quo treats all bargaining unit members the same regardless of workweek schedule. The Employer further rejects the Union's proposal to allow probationary employees to begin earning a monthly prorated amount of Personal Days during the first six months of the probationary period. Probationary employees are expressly excluded from the CBA by language in Section 2.01 of the Recognition Article.

### Article 11: Vacation Leave

#### *Employer Position*

The Employer opposes the Union's proposal to define a day of Vacation Leave as 8.5 hours for unit members on the 6/3 workweek and 8 hours for those on the 5/2 workweek. The Union's proposal would result in bargaining unit members receiving differing amounts of Vacation Leave based on his/her assigned schedule. Unit members on the 6/3 workweek would receive anywhere from 6-13 more hours of Vacation Leave than their coworkers on the 5/2 workweek. The status quo is to provide the same leave benefit to all bargaining unit members regardless of their workweek schedule. The Union's proposal to decrease the increment of use for Vacation Leave to one hour and to decrease the amount of prior notice required before taking Vacation Leave both create an administrative burden on the Employer and will complicate scheduling and coverage. Furthermore, these new provisions are unnecessary because an absence of one hour can be covered with Personal Days, or the current provision for emergency vacation. In terms of comparability, Sergeants do not have these proposed provisions in their contract and are required to operate under the same current provisions as this Unit has.

### Article 12: Sick Leave

#### *Employer Position*

The Employer agrees to the Union's proposal in Section 12.01 to allow Sick Leave utilization for family care in accordance with the Employer's policy, if the terms of the CBA settlement are

favorable for the Employer and preserve the status quo and grant the Employer's wage proposal. In Sections 12.02 and 12.04 the Employer opposes increasing the accrual rate and the threshold for a doctor's note for those on the 6/3 workweek because they would treat members of the same bargaining unit differently, whereas current practices treats all bargaining unit members equally. Under the Union's proposal those on the 6/3 workweek would annually earn 7.5 more hours of sick leave than their coworkers. As for comparability, Sergeants do not have these proposed revisions in their contract and operate under the same current provisions as are found in this CBA.

The Union's proposals to insert 8.5 hours as the definition of a 'day of leave' for those unit members on the 6/3 workweek in the Holiday, Vacation Leave and Sick Leave Articles introduces a distinct advantage for the 6/3 workweek by increasing the number of leave hours available to this group of employees. The 6/3 schedule is desirable to this bargaining unit in part because it results in annually working approximately 12 fewer hours than the normal 5/2 schedule. The desire of the Employer has always been to equalize benefits between the 6/3 and 5/2 schedules in order to not create even more advantages for the 6/3 schedule. The Union's proposals in this matter proceed from a false premise, which is that those on the 6/3 workweek schedule lose every time they take time off. That is only true in a single day snapshot, for over the course of the year, the 6/3 Officer accrues exactly the same amount of time off as the 5/2 Officer. If a particular paycheck is a little less because of the use of 8 hours of leave, the employee hasn't actually lost anything because the time is still in that employee's leave bank. By granting the Union's proposals, the 6/3 Officers will have a distinct advantage over the 5/2 Officers. Adding up all of the additional leave hours represented in the Union's proposals will give those on the 6/3 workweek schedule anywhere from an additional 16 - 23 hours of time off depending on vacation accrual tiers. This defies the parity that has existed between the two schedules, and it will cost more each time an Officer on the 6/3 workweek schedule takes time off.

#### *Discussion and Recommendation*

On the issue of Holidays, Vacation Leave and Sick Leave I am persuaded that the Union's proposals, as they pertain to distinguishing between the 8.5-hour day and the 8-hour day, should be recommended. The additional changes in operational language proposed by the Union are recommended in some instances and not in others. Each proposal is addressed individually below.

I understand the Employer's concern that they not be seen to favor one assignment over another by allowing a particular group of bargaining unit members to be advantaged over another. I respect that concern, but in this instance I believe the Employer's concern is ill-placed based on how the leave benefits are actually credited and utilized. The employees on the 6/3 workweek are losing pay each time they use a day of leave, whereas employees on the 5/2 workweek are made whole each time they use a day of leave. In practice, an equal amount of leave for all becomes an inequitable leave benefit for some. This is easily corrected by the Union's proposals. The suggestion that a half-hour of uncompensated time on a leave day, translates to 'reserved' or 'saved' time remaining in the employee's leave bank does not add up. It would only constitute a 'savings' if the employee was permitted to use 8 hours of leave on an 8.5 hour day and receive regular pay for the extra half-hour, thereby not having to use 8.5 hours ('reserving a half hour of leave in the leave bank) yet being made whole. This however is not the practice.

The Union, as the exclusive representative of the bargaining unit, has the duty to fairly represent all unit members. In this case, the Union's proposals are an expression of what the Unit has deemed to be a fair approach to crediting and utilizing leave benefits. I believe they have hit the nail on the head. Similarly, the Employer's duty is to promote equitable treatment, which does not have to translate to strictly equal treatment.

An additional point of reference that works in favor of recommending the Union's proposals on defining a day as 8.5 hours for some and 8.0 hours for others is the fact that this is precisely what the Employer appears to do when crediting a holiday. Based on the holiday hours listed for each Officer on the Patrol Payroll Summary (Union exhibits 3, 4 & 5) the Employer is defining a 'day' as 8.5 hours when crediting a holiday.

Finally, with respect to this matter of how a 'day' of leave is credited and utilized, the Employer has pointed to two additional concerns. One, that it would be administratively burdensome to implement the Union's proposal; and two, the Sergeants would end up with a different practice on this matter from those they supervise because the provision would not extend to the supervisory unit. It is true that adopting the Union's proposals will require some computer coding changes in the Employer's payroll system, however in this day and age changes to computer programs are part and parcel of our daily lives and such costs simply do not outweigh the equity achieved for the Unit. As for the Sergeant's, they are in a separate bargaining unit by virtue of the way the statute is written, but they retain a strong community of interest with those they supervise.

The Employer always has the option of offering the Sergeants the same practice as that of the Officers' Unit.

In Section 10.01 the proposal to allow Probationary employees to accumulate personal leave immediately upon hire is not recommended. This proposal is not supported by a demonstrated need. In Section 11.02 proposed changes to how vacation leave is scheduled are not recommended because no hardship has been demonstrated. The Employer has assented to the Union's proposal (and it is recommended in this Report) to allow the use of comp time in one-hour increments, in addition there are personal days and an existing provision for 'emergency vacation'; therefore the status quo is recommended. In Section 12.01 the recommendation is to adopt the Union proposal to reference the Employer's policy for using sick leave to care for an immediate family member. In Section 12.04 the recommendation is to adopt the Union proposal concerning a Certificate of Illness after 25.5 hours of consecutive sick leave for those on the 6/3 workweek.

### Recommendation

The statutory criteria require the fact finder to consider factors normally taken into consideration in dispute resolution, and the Employer's ability to administer and fund the recommendations. In light of these factors, the fact finder recommends the following:

In Article 10 Holidays, adoption of the Union's language under item 10 - Personal Days pertaining to the definition of 'day' for the different workweek schedules. The remainder of the paragraph is retained as existing language. In Article 11 Vacation Leave, adoption of the Union's proposal in Section 11.01. In Article 12 Sick Leave, adoption of the Union's proposal in Section 12.01, Section 12.02 and Section 12.04.

Relevant contract language shall read in part as follows:

Article 10: Holidays

Section 10.01 (10) Personal days – On January 1 of each calendar year, employees having attained career status will be eligible for five (5) personal days for personal business or family emergency, or as additional holidays. **Personal days will be defined as 8.5 hours for employees working a 6/3 shift and 8 hours for those working a 5/2 shift.** *(The remainder of this paragraph continues as existing language.)*

Section 10.02 – Current contract language

Section 10.03 – Current contract language

Article 11: Vacation Leave

Section 11.01 No one hired on or before January 1, 1996 shall have their rate of vacation accrual diminished during the term of this Agreement. Employees who have received vacation credit for past service with an Ohio governmental entity will receive prospective vacation credit for past service effective after the effective date of the contract if the employee has provided the information the City requires as evidence of prior service within 90 days of the effective date. Vacation time shall be allotted in the following manner. For purposes of this Article, a day shall be defined as 8.5 hours for employees working a 6/3 schedule and 8 hours for employees working a 5/2 schedule. *(The remainder of this Section continues as existing language.)*

Section 11.02 – Current contract language

Section 11.03 – Current contract language

Article 12: Sick Leave

Section 12.01 Employees may utilize sick leave when unable to perform their work by reason of illness or injury. The Union supports the City's efforts to reduce and control excessive use of sick leave.

When the use of sick leave becomes necessary, the employee or some member of his household shall notify his immediate supervisor or department office by telephone or message not later than two (2) hours before normal starting time, or as soon as possible, if two (2) hours' notice cannot be given. Unless notification is given, no sick leave will be approved except in unusual cases, and then only if approved by the Chief of Police.

Sick leave utilization for care of an immediate family member will be granted in accordance with City policy.

Section 12.02 Rate of Accumulation. Sick leave with pay shall be accumulated at the rate of 4.616 hours per pay period for employees on a 5/2 schedule and 4.903 hours per pay period for employees on a 6/3 schedule, equaling fifteen (15) days per year. An employee shall accrue no sick leave during a leave of absence without pay. Employees on a 6/3 schedule shall utilize 8.5 hours per scheduled day and employees on a 5/2 schedule will utilize 8 hours.

Section 12.03 – Current contract language

Section 12.04 Certificate of Illness. After the loss of twenty-four consecutive hours of paid sick leave for an employee on a 5/2 schedule and twenty-five and one-half hours for an employee on a 6/3 schedule for a single illness or injury, an employee is required to submit a physician's statement confirming the illness and the anticipated date of return to work. However, the supervisor may, at his discretion, require a physician's statement at any time, provided the employee has had prior written notification that such a statement will be required.

Section 12.05 – Current contract language

Section 12.06 – Current contract language

Section 12.07 – Current contract language

### Issue 3: Wages

#### Article XX: Compensation

##### *Union Position*

The Union seeks the following pay increases:

- 3% effective the first pay period of 2017
- 3% effective the first pay period of 2018
- 3% effective the first pay period of 2019

In addition, in Section 20.02 the Union proposes to delete references to increases in pay and movement along the pay scale based on reasons of merit. In its place the Union proposes language that would provide for step movement along the pay scale based on the employee's anniversary date. In Section 20.03 the Union proposes to increase the Acting Watch Supervisor pay supplement from \$1.50 per hour for each hour of service, to the probationary rate of pay on the Sergeant's wage scale for each hour of service. In Section 20.05 the Union proposes to increase the Field Trainer Pay supplement from \$1.00 to \$2.00 for each hour of active service with a new employee.

The Union contends that Vandalia is an affluent community and that other affluent communities in the geographic area are the best comparables. The data show that among surrounding municipalities that are similar to Vandalia, the Police Officer top-step wage is simply average. The same is true for the Dispatchers. Given this salary data it is reasonable to seek a cost of living increase in each of the three years of the CBA that is a little above what other jurisdictions

have done. The wages for Vandalia will be that much more competitive in the area if the Units receive 3% pay raises. The other proposals in this article are each included to both maintain and improve the competitiveness of the compensation package.

#### *Employer Position*

The Employer seeks the following wage settlement:

- 2.5% upon signing in 2017
- 2.5% effective the first pay period in 2018
- 2.5% effective the first pay period in 2019

The Employer opposes the Union's proposal in Section 20.02 to change the current contract language pertaining to step movement based on merit. In Sections 20.03 and 20.05, the Employer opposes the Union's proposal to increase the pay supplements for acting as the Watch Supervisor and as Field Trainer.

It is the Employer's contention that the Vandalia Police Officers are paid a very competitive base wage. In comparison to a selection of other municipalities in the area that are of similar population (population range from 10,000-30,000), Vandalia is the highest paid. Currently, at the top step, where 17 out of 20 bargaining unit members are paid, the base annual salary is \$75,711. The average base salary for the selection of comparable municipalities is \$66,111. Given the Employer's generous base salary for this bargaining unit an annual cost of living adjustment that is in keeping with general inflation is adequate. Both internal and external comparable data support the Employer's proposal. In the survey group of area municipalities wage settlements for 2017 and 2018 are between 1.25% and 2.5%. As for internal comparisons, both the Sergeants' unit and the Firefighters' unit settled for 2.5% increases, and non-unionized employees received an average increase of 1.5%.

#### *Discussion and Recommendation*

In this proceeding, the Employer did not make a traditional inability to pay argument. Both parties acknowledge that the City of Vandalia is in a healthy and stable financial condition. The primary focus of the compensation debate is what constitutes a reasonable cost of living adjustment.

Both parties provide a group of regional municipalities for comparison purposes. Between the two sets of comparables there are 17 nearby cities included in the survey data. Not a single

survey city is common to both the Union's and Employer's survey groups. The Employer's data puts the Vandalia Police Officer salary significantly above average; the Union's data puts the Officers just slightly below the calculated average. For purposes of analysis I have combined the two sets of data and find that the Vandalia Police Officer annual wage is \$4,069 above the combined survey data calculated average, or 5.6% above average. Based on this, I conclude that the existing base wages for the Police Officers is very competitive. The Dispatcher base salary appears to be average for the local labor market.

All of the data pertaining to cost of living raises (both internal and external comparables, and CPI-U figures), place the typical and reasonable raise at 2.5%. Both the Vandalia Sergeants and Firefighters have received 2.5% raises in 2017. For the municipalities in the survey data, the calculated average pay raise is 2.3% in both 2017 and 2018. The range of external pay raises is 1.25% - 2.75%. In recent years the CPI-U has increased as follows: 3.2% in 2011, 2.1% in 2012, 1.5% in 2013, 1.6% in 2014, 0.7% in 2015, and 2.5% in 2016.<sup>2</sup> This is an average of 1.93% per year over the last six years. Over the past ten years the average annual CPI trend has been 2.3% and over the past 20 years the trend has been 2.5%.<sup>3</sup>

I recommend current contract language for the remaining Union proposals in Article XX. In these matters, the hearing record does not support changing from the status quo. The merit provisions have been in place in prior contracts, and while uncommon in labor agreements, it does not appear to have created a hardship. There is no evidence that the language has created a barrier to advancement to the top-step of the pay scale. As for the wage supplements for Field Trainer and Acting Watch Supervisor the current rates do not appear to be outliers among the surveyed municipalities, and no particular hardship or compelling need was presented to support the proposals.

### **Recommendation**

The statutory criteria require that the fact finder consider comparable public jurisdictions, and the Employer's ability to pay. In light of these criteria the fact finder recommends the following wage settlement:

- 2.5% effective the first pay period of 2017

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<sup>2</sup> US Bureau of Labor Statistics, Consumer Price Index, 12-month percent change data tables

<sup>3</sup> Ibid

- 2.5% effective the first pay period of 2018
- 2.5% effective the first pay period of 2019

#### Article 29: Termination

#### **Recommendation**

In deference to the bargaining history of the parties, the recommendation is to retain current contract language with effective dates of January, 1 2017 thru December 31, 2019.

#### **Conclusion**

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 27<sup>th</sup> day of April 2017.



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Felicia Bernardini,  
Fact Finder

## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on April 27, 2014 to:

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