

FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

August 30, 2017

In the Matter of:

City of Lakewood)	
)	Case Nos. 2016-MED-09-0996
and)	2016-MED-09-0997
)	
Fraternal Order of Police, Lodge 25)	

APPEARANCES

For the City:

John Delano, Attorney
Mike Summers, Mayor
Kevin Butler, Law Director
Jean Yousefi, Director of Human Resources
Tom Malley, Police Chief
Jennifer Pae, Director of Finance

For the Union:

Joe Mando, Attorney
Mary Schultz, Financial Consultant
Steve Fiorito, Chairman, Negotiating committee
Tim Schad, Negotiating Committee
David Kapper, Negotiating Committee
Ron Burnes, Negotiating Committee
Jeff Robinson, Negotiating Committee

Factfinder:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Lakewood and the Fraternal Order of Police, Lodge 25. The city consists of 5.53 square miles, has a population of 52,131, and a median household income of \$44,098. The union represents a bargaining unit of full-time patrol officers and a unit of sergeants, lieutenants, and captains. The two units are covered by a single collective bargaining agreement.

The city has six additional bargaining units. The IAFF represents approximately 88 firefighters; the Lakewood Paramedic Association represents approximately 8 paramedics; AFSCME represents a unit of approximately 56 administrative employees and one of approximately 112 service and public works employees; OPBA represents one corrections officer; and the FOP/OLC represents approximately 17 dispatchers.

In the fall of 2016, the city and the union began negotiations for a successor agreement for the one due to expire on December 31, 2016. On February 6, 2017, the city made a final offer to the union. The offer provided for wage increases of 3% on January 1, 2017; 2% on January 1, 2018; and 2% on January 1, 2019. It also included a two-year freeze on employee health care premiums with some changes to the prescription drug plan and a reopener for health insurance to be effective January 1, 2019. The city also proposed increasing the firearms proficiency allowance from \$1250 to \$1950 effective January 1, 2017; \$1950 effective January 1, 2018, and \$2000 effective January 1, 2019.

The union rejected the city's offer and appealed the dispute to fact-finding. The Factfinder was notified of his appointment on June 5, 2017. The parties' pre-hearing statements were received on July 25, 2017, and the hearing was held on July 26, 2017.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained 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 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 standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ABILITY TO PAY

An important statutory criterion is the ability to pay. It is a relevant consideration not only for the wage and benefit changes proposed by the parties but for many of the issues placed before a Factfinder.

City Position - The city argues that it “still lives with the fallout [from] the 2008 Great Recession.” (City Pre-Hearing Statement, page 2) It points out that at the end of 2008, the State Auditor reviewed the city’s financial records and confirmed that the city was facing a \$4 million budget deficit. The city notes that it responded by laying off 80 employees and reducing or eliminating services. It reports that even after these cuts, it ended the year with a carryover balance of only \$950,000.

The city contends that it also faced cuts in state aid. It states that the Local Government Fund was cut from \$4.0 million in 2007 to \$1.8 million in 2016. (City Exhibit 5) The city adds that the Commercial Activities Tax and the Inheritance Tax were eliminated.

The city maintains that at the conclusion of 2016, the General Fund ending balance was \$6.3 million on an expenditure budget of \$38.2 million, which is the minimum balance recommended by most public finance experts. It states that this carryover was possible only because of an extra municipal income tax payment by the state and inordinately high building permit revenues.

The city argues that it faces significant financial challenges in 2017. It points out that the Cleveland Clinic ended its in-patient services at Lake Hospital, which resulted in a loss of \$500,000 in revenues. The city notes that New York Life moved its offices to Cleveland resulting in a loss of \$140,000 in taxes even after the payment under the anti-poaching agreement. It claims that despite these facts, it still estimated a 1% increase in income tax collections for 2017.

The city suggests that it will have difficulty meeting its 2017 estimated \$6.2 million year-end balance. It observes that its \$4.0 million estimated expenditures includes a 2.5% wage increase and no increase in its health insurance costs. The city reports, however, that anticipated tax revenues as of June 30, 2017, were \$500,000 below the previous year's receipts even though income tax revenues increased by 5% per year between 2010 and 2016. The city adds that insurance claims have increased by \$1.75 million over the budgeted amounts and that the Local Government Fund will be reduced by an additional \$100,000.

Union Position - The union argues that the city's financial condition has improved for the past several years and that the city can afford its wage proposal.¹ It points out that income tax receipts have grown from \$18.8 million in 2011 to an estimated \$23.3 million in 2017. The union notes that year-end cash balances have increased from \$5.4 million in 2011 to an estimated \$7.0 million in 2017. It adds that in 2014, the city received \$7.8 million in estate tax payments and transferred \$5.0 million to a Land Acquisition Fund, where it remains.

The union recognizes that portions of the General Fund carryover balance are designated as reserves for specific purposes. It observes that on December 31, 2016, these reserves were \$1.0 million for economic development, \$450,000 for severance payments, \$100,000 for a 27th payroll in 2026, and \$1.9 million for budget stabilization. The union reports that these reserves constitute \$3.4 million of the \$11.6 million cash balance.

The union contends that the General Fund year-end balance should be well above the projected \$7.0 million. It states that as of June 30, 2017, income tax collections were \$13.5 million or 62% of the estimated \$23.3 million to be collected, which suggests that 2017 income tax receipts should be \$26.9 million compared to the estimated \$23.3 million. The union indicates that at the same time, general fund expenditures as of June 30, 2017, were 46% of the budgeted amount, which suggests \$1.8 million less spending in 2017.

The union maintains that the city's Comprehensive Annual Financial Report indicates that the city is "very fiscally healthy." (Union Exhibit 6, pages 2-3)

The union argues that the city has an adequate carryover balance. It points out that the Government Finance Officers Association recommends a carryover balance of 16% of

¹ The union's position regarding the city's ability to pay is based on a report prepared by Mary Schultz, an experienced financial consultant, and her testimony at the fact-finding hearing.

expenditures. The union adds that the GFOA recognizes that smaller unrestricted balances are necessary in larger jurisdictions. It emphasizes that the city's carryover percentage exceeds the recommended amount.

The union concludes that the city can afford its wage demand. It calculates the cost of a 1% wage increase, including pension, Medicare, and workers compensation payments, to be \$99,098 for members of the FOP. The union estimates the cost of its proposal for the FOP is \$346,842 in 2017, \$654,540 in 2018, and \$760,183 in 2019. It emphasizes that its wage proposals exceeds the city's offer by only \$49,000 in 2017, \$153,106 in 2018, and \$50,525 in 2019. (Union Exhibit 6, Attachment 2)

ISSUES

The parties submitted nine issues to the Factfinder. For each issue the Factfinder will present the positions of the parties, summarize the arguments they offered in support of their positions, and provide his analysis of the issue and recommendation. Where a change in the current contract language is recommended, the recommended contract language is provided.

1) Article 9 - Wages, Sections 9.1, 9.2, 9.3, & 9.4 - The current contract establishes a top annual rate of \$66,725.58 for patrolmen and \$79,400.64 for sergeants. The union demands a 3.5% increase effective January 1, 2017; 3.0% effective January 1, 2018; and 1.0% more than any increase in healthcare costs effective January 1, 2019. The city offers 2% increases effective July 1, 2017, January 1, 2018, and January 1, 2019.

Union Position - The union argues that the wages of Lakewood police officers have lagged behind neighboring communities. It observes that at the entry level, Lakewood's police officers rank next to last among nine comparable cities and last at the top rate.² The union claims that "even with [its] proposed wage increase the City's officers would continue to lag behind in most cases." (Union Pre-Hearing Statement, page 10)

The union contends that the use of body-worn cameras have led to increased duties. It points out that extensive department correspondence, policies, and memorandums deal with BWCs. (Union Exhibit 11) The union notes that police officers are subject to discipline related to BWCs while other city employees are not.

The union maintains that the city's requirement that police officers carry and administer Narcan also justifies its wage demand. It states that police officers are keenly aware of the impact of heroin and other opiates on the general public and "have come to terms with the necessity of incorporating Narcan into their daily policing activities." (Union Pre-Hearing Statement, page 14) The union indicates that "when officers encounter a situation where opiates are involved, they are often times exposed to both an overdosing 'victim,' as well as his/her environment and the drugs/chemicals within." (Union Pre-Hearing Statement, page 15) It claims that while police officers have some training in the use of Narcan, they do not have the same level of training as the city's paramedics and fire medics.

City Position - The city argues that its proposal is "reasonable and warranted given the fiscal challenges it now faces." (City Pre-Hearing Statement, page 8) It acknowledges that its February 6, 2017, final offer called for a 3% wage increase effective January 1, 2017, and 2%

² The cities are Avon, Avon Lake, Berea, Cleveland Heights, Lakewood, Mentor, North Olmsted, North Royalton, and Rocky River.

increases effective January 1 of 2018 and 2019. The city claims, however, that significantly lower income tax receipts than expected; a \$100,000 cut in the Local Government Fund; a \$1.7 million increase in insurance claims beyond what was budgeted; and fact-finding expenses have forced it to reevaluate its wage offer. It states that “the window for acceptance of the City’s eminently generous former proposal has closed.” (Ibid.)

The city contends that despite the challenges it faces, its offer of a 6% wage increase over three years is very reasonable. It states that it is also offering a \$300 increase in the firearms proficiency bonus, which mirrors the increase in the firefighters’ HazMat bonus. The city indicates that “when viewed in the context that hospitalization plan design and premium contributions will not be modified for two years, [its] proposal becomes even more reasonable.” (Ibid.)

The city suggests that the Factfinder should ignore its previous package proposal. It acknowledges that its final offer during negotiations increased wages by 3% on January 1, 2017, and raised the firearms proficiency bonus by \$750. The city claims, however, that it “had presented the proposal as an enticement to the FOP to accept [its] overall package proposal.” (City Pre-Hearing Statement, page 9)

The city maintains that the Factfinder’s recommendations for the AFSCME administrative and service units support its position. It observes that their reports, which were issued in late-May and early-June and accepted by the unions, called for 3% wage increases effective June 1, 2017, for the clerical workers unit and July 1, 2017, for the service workers unit and 2% increases effective January 1 of 2018 and 2019 for both units. The city adds that the Factfinders also recommended its health insurance proposal.

Analysis - There are three issues related to wages. The first issue is the wage increase for 2017 and 2018. The union demands a 3.5% increase in 2017 and a 3.0% increase in 2018. The city proposes 2% wage increases in 2017 and 2018.

The Factfinder recommends a 3% wage increase in 2017 and a 2% increase in 2018. First, while the city did not claim an inability to pay the union's wage demand, 2017 may be more challenging than anticipated. Lakewood hospital ended in-patient operations, New York Life moved its operations to Cleveland, the Local Government Fund was cut, healthcare claims through June 30, 2017, were significantly greater than projected, and year-to-date income tax receipts were less than in 2016.

Second, the union's demand for a 3.5% wage increase in 2017 and 3.0% in 2018 would exceed wage increases in other jurisdictions. The State Employment Relations Board's 2016 Annual Wage Settlement Report indicates that average wage increases are 2.04% in the Cleveland region, 2.22% for cities, and 2.36% for police units. The union's demand exceeds all of these increases.

Third, while the union's data showed that the city's top rate for police officers' wages ranked last among nine selected, the union failed to take into account other types of compensation or the differences in ability to pay. It also did not consider the impact of the city's proposed 2017 and 2018 wage increases on Lakewood's ranking.

Most important, the city's six other bargaining units settled for increases of 3% in 2017 and 2% in 2018 and 2019. Four of the unions, including the IAFF, agreed to these increases in negotiations. The two AFSCME units accepted Factfinders' recommendations for the 3% and 2% increases.

The second issue is the wage increase for 2019. The union proposes a wage increase of 1% more than the increase in employee healthcare costs in 2019. The city proposes a 2% wage increase.

The Factfinder recommends a 2% wage increase in 2019. First, just like the 2017 and 2018 wage increases, the 2% increases in 2019 were either agreed to in negotiations or accepted when recommended by a Factfinder. While no one would question that police officers have a challenging job and have had some additional duties related to Narcan and body cameras, the union was not able to establish that there was sufficient justification to depart from the established wage pattern.

Second, the union's wage proposal for 2019 is problematic. In some years healthcare costs have risen sharply and in other years healthcare costs have declined. If 2019 happened to be a year when health care costs did not rise, police officers would be left with a much smaller wage increase than in comparable cities.

The final issue is the effective date for the 2017 wage increase. The city proposes that the increase be effective July 1, 2017. The union demands the increase be effective January 1, 2017.

The Factfinder recommends that the 2017 increase be effective January 1, 2017. First, while signing a G11 waiver does not require a Factfinder or Conciliator to make wages retroactive, the Factfinder believes that in the instant case, it would be inappropriate to penalize police officers by delaying the wage increase until July 1, 2017.

Second, the Factfinder recognizes that the decision of Factfinders Jack Buettner and David Stanton in the AFSCME disputes support the city's position and might lead another neutral to deny retroactivity. This Factfinder, however, has carefully weighed the extensive

financial data provided by the parties and has concluded that there is no basis to deny the union's request for the 2017 wage increase to be effective January 1, 2017.

Finally, the parties have made parity between police and firefighters the general rule. In the instant case, the firefighters' 3% wage increase was effective January 1, 2017. The Factfinder sees no reason to significantly reduce police officers' 2017 wages simply because, unlike the firefighters, they failed to accept the city's last best offer and opted to go to fact-finding.

Recommendation - The Factfinder recommends the following contract language:

9.01 Effective January 1, 2017, all Patrol Officers Grade I shall receive a three percent (3%) wage increase on base wages.

9.02 Effective January 1, 2018, all Patrol Officers Grade I shall receive a two percent (2%) wage increase on base wages.

9.02 Effective January 1, 2019, all Patrol Officers Grade I shall receive a two percent (2%) wage increase on base wages.

2) Article 14 - Vacation, Section 14.01 - Accrual - The current contract provides that police officers receive between 100 and 250 hours of vacation based on years of service.

The union proposes increasing vacation entitlement as follows:

<u>Years</u>	<u>Current Hours</u>	<u>Proposed Hours</u>
1 - 6	100	114
7 - 12	150	171
13 -18	200	229
19+	250	286

The city opposes the union's demand.

Union Position - The union argues that its proposal should be recommended. It acknowledges that since firefighters and paramedics worked 24-hour schedules, their "vacation

accrual methodology must reflect this scheduling reality.” (Union Pre-Hearing Statement, page 17) The union asserts, however, that “the percentage of vacation hours earned/total hours worked and the value of accruals should not have a significant variance between the City’s police officers, and its firefighters, and its paramedics.” (Union Pre-Hearing Statement, pages 17-18)

The union contends that its proposal is designed to correct an inequity. It points out that firefighters’ vacation entitlement in terms of the percentage of total hours and total pay, based on 2620.8 hours per year and a wage of \$25.46 per hour, is as follows:

<u>Years</u>	<u>Tours</u>	<u>Hours</u>	<u>% of Hours</u>	<u>Pay</u>
1-6	6	144	5.49%	\$3666.24
7-12	9	216	8.24%	\$5499.36
13-18	12	288	10.99%	\$7332.48
19+	15	360	13.74%	\$9165.60

(Union Exhibit 4)

The union notes that police officers’ current vacation entitlement and its proposed vacation schedule, based on receiving the same percentage of annual hours as vacation as the firefighters, and the resulting vacation pay, based on a wage of \$32.08 per hour, are as follows:

<u>Current Vacation Schedule</u>				<u>Proposed Vacation Schedule</u>			
<u>Years</u>	<u>Hours</u>	<u>% of Hours</u>	<u>Pay</u>	<u>Years</u>	<u>Hours</u>	<u>% of Hours</u>	<u>Pay</u>
1-6	100	4.81 %	\$3208.00	1-6	114	5.49 %	\$3663.28
7-12	150	7.21 %	\$4812.00	7-12	171	8.24 %	\$5498.26
13-18	200	9.62 %	\$6416.00	13-18	229	10.99%	\$7333.23
19+	250	12.02 %	\$8020.00	19+	286	13.74%	\$9168.21

(Union Exhibit 4)\

The union maintains that its proposal is reasonable. It states that the cost of increasing its vacation benefits is relatively minor; that the other safety forces would not be entitled to any increase in their vacation because they already receive the same level of benefits; and that under its proposal, firefighters and paramedics would still get more vacation hours than police officers.

City Position - The city rejects the union's demand. It claims that its police officers enjoy vacation benefits that rank among the best in the County. The city complains that despite this fact, the union "seeks more based on an apples-to-oranges comparison to [its] firefighters who work 24 hour shifts ... even when ... the number of vacation weeks allowed for the two groups are nearly identical." (City Pre-Hearing Statement, page 10) The city adds that police officers' vacation benefits are supplemented by their receipt of 112 hours for 14 days of holiday time off each year.

Analysis - The Factfinder must deny the union's demand. First, he rejects the union's suggestion that equity requires him to recommend its demand. While it is true that firefighters receive more hours of vacation per year than police officers with the same years of service, the disparity is a function of their different work schedules. If vacation is viewed as weeks off from work, police officers and firefighters receive approximately the same amount of vacation. For example, a police officer with 10 years of service receives 3.75 weeks of vacation while a firefighter receives 3.00 to 4.50 weeks, depending on whether he is scheduled to work two or three days during his vacation weeks.

Second, police officers already receive more vacation than most police officers in the County. Among 33 cities in Cuyahoga County, the average vacation for a ten-year police officer is 3.3 weeks compared to 3.5 weeks in Lakewood and the city ranks ninth among the 33 cities. (City Exhibit 13) The maximum vacation entitlement in Lakewood is 6.25 weeks compared to an average of 5.8 weeks in the County and only one city in the County offers more vacation than Lakewood. (Ibid.)

Third, if the police union's demand were granted, the IAFF and the city's other unions would view it as an increase in vacation. Any increase in the vacation granted to the police, would be sought by the other unions who would have a ready-made argument to support their demands.

Finally, the novel rationale the union offered in support of its demand changes the long-established vacation arrangements bargained by Ohio police and fire unions. If the customary practices are to be changed, it should be bargained by the parties who created the existing arrangement.

Recommendation - The Factfinder recommends the current contract language.

3) Article 14 - Vacation, Section 14.03 - Vacation Week - The current contract states that vacation weeks and pre-selected holiday weeks shall consist of seven consecutive days off plus all abutting Regular Days Off. The city seeks to amend the contract by limiting the abutting RDOs to regularly-scheduled RDOs. The union opposes the city's demand.

City Position - The city argues that its demand should be recommended. It states that it is "simply seeking a means to avert additional overtime expenses where officers couple their vacations with scheduled days off." (City Pre-Hearing Statement, page 10) The city asserts that "the Union's incredibly unreasonable proposal cannot be sustained." (Ibid.)

Union Position - The union opposes the city's proposal. It charges that "the city's proposal is unnecessary and it would create confusion among bargaining unit members seeking to exercise their right to take vacation time under the collective bargaining agreement." (Union Pre-Hearing Statement, pages 18-19)

Analysis - The Factfinder cannot recommend the city's proposal. He believes that a party seeking to change a long-standing contract provision is obligated to show that the change is justified. In the instant case, the city did not do this.

Recommendation - The Factfinder recommends the current contract language.

4) Article 16 - Health Insurance, Section 16.02 - 90/10 Plan - 2017 & 2018 -

The current contract requires employees to pay 10% of the premium for family coverage and 13% for individual coverage with monthly caps of \$125 and \$180 and hospitalization coverage and benefits with modest changes in the prescription drug plan. The city proposes to maintain the current premium contributions and caps for 2017 and 2018 and the hospitalization coverage and benefits with modest changes in the prescription drug plan. The union did not oppose the city's proposal.

City Position - The city argues that it took "an extremely reasonable and employee-friendly approach" to health care coverage. (City Pre-Hearing Statement, page 9) It states that it proposes only modest changes to prescription drug coverage and leaves other benefits and premium contributions the same for two years with a reopener for 2019. The city claims that "the reasonableness of [its] proposal is confirmed by external comparables." (Ibid.) It stresses that its proposal was negotiated with the firefighters, paramedics, dispatchers, and the corrections officer and was recommended by two Factfinders for the AFSCME bargaining units.

Union Position - The union argues that the existing healthcare provision is "fair and equitable" and should be retained.

Analysis - The Fact finder must recommend the city's proposal. The city negotiated the adoption of its proposal with four bargaining units and it was accepted after fact-finding by the two AFSCME bargaining units. The FOP should not expect a different healthcare arrangement than other city employees.

Recommendation -The Factfinder recommends the following contract language:

Effective January 1, 2017, the premium contributions for employees electing coverage under the 90/10 Plan monthly shall be ten percent (10%) for family coverage and thirteen percent (13%) for single coverage, based on COBRA rates (medical and prescription drug), with the cap of \$180 per month for family and \$125 per month for single coverage.

5) Article 16 - Health Insurance, Section 16.07 - Insurance Reopener and

Committee - The city proposes the creation of an Insurance Committee and a reopener process for health insurance in 2019. The committee is to consist of one to three representatives of each bargaining unit and at least one city representative. It is to review the city's current health care plans and vote on recommendations for a health care plan with each bargaining unit and the city entitled to one vote. Under the city's proposal, a plan that receives unanimous support becomes the 2019 health care plan. If no plan receives unanimous support, the city can reopen the contract to address changes in healthcare insurance. The union opposes the city's demand and seeks to maintain the status quo for 2019.

City Position - The city argues that its proposal is reasonable and should be recommended. It points out that its proposed Insurance Committee, which will have at least one representative from each bargaining unit, will review the existing health insurance plans and recommend one or more new or revised plans in order to contain costs and minimize employee

premium contributions. The city notes that no later than September 1, 2018, the committee will vote on recommendations for a new plan with each bargaining unit having one vote. It indicates that if no plan receives a unanimous vote, the city will negotiate with the union okay's s regarding health insurance for 2019.

Union Position - The union opposes the healthcare reopener for 2019 and the creation of an Insurance Committee. It asserts that the current premium contributions and plan design features are "fair and equitable." The union contends that the city's proposal, which grants every bargaining unit one vote, is unfair because a bargaining unit with one member would be able to block the adoption of a health insurance plan supported by the other bargaining units.

Analysis - The Factfinder recommends that the city's proposal be adopted. First, he believes that in a number of cities, healthcare committees have been successful in making changes in health insurance plans that have been strongly supported by both the city and its unions. While success is never guaranteed, at the very least, employees will have an opportunity to make their preferences known.

Second, the city's other unions have agreed to the creation of an Insurance Committee and a reopener for 2019 and. The union cannot expect the Factfinder to recommend a significantly different health insurance provision from what other union members have accepted either during negotiations or through the fact-finding process.

Recommendation - the Factfinder recommends the following contract language:

The employer shall establish an Insurance Committee of one (1) to three (3) representatives from each of the City's bargaining units and a minimum of one (1) representative of the employer. The parties agree to apply a reopener process regarding 2019 insurance benefits. The reopener process and the Committee's operation shall be governed by Appendix C.

Appendix C
Insurance Committee Rules

At the conclusion of the bargaining units' current collective bargaining negotiations, an employee-management committee ("the Committee") represented by between one and three employees from each of the City's bargaining units and at least one representative of management shall be formed. The Employer shall and the members of the Committee may provide advisors or facilitators to assist the Committee regarding health care issues. The Committee will meet as often as necessary to complete its work, with a target of at least one meeting per month.

The Committee shall be required to review the Employer's current health care plans, including its plans for medical and prescription, and recommend one or more new or revised plans that will achieve the goals of promoting cost containment within the plan and minimizing premium contributions by employees.

In fulfilling its mission, the Committee shall consider office co-pays, prescription drug rates, deductibles, maximum out of pockets, wellness programs and such other plan attributes and other related matters that may help the City achieve the goals set forth above.

No later than September 1, 2018, the Committee shall vote on recommendation(s) for a health care plan or plans that meet the goals set forth above. Each bargaining unit shall be entitled to cast one vote, no matter the number of employees representing the bargaining unit on the Committee. The Employer shall be entitled to cast one vote, no matter the number of representatives of management or non-union employees serving on the Committee. If the Committee unanimously approves such proposed new or revised plan or plans, then such plan or plans shall become the Employer's plan or plans, and the Employer shall be authorized and directed to implement the plan or plans. If the Committee, however, fails by September 1, 2018 to approve unanimously a new plan or plans, the City will have the right to engage the reopener provisions in this Agreement with respect to hospitalization coverage for the year 2019 and the parties to this Agreement will then separately engage in negotiations on that subject.

In 2019 the Committee shall meet when appropriate to consider further and additional revisions to the Employer's plan or plans in order to meet the goals set forth above. When meeting in 2019, the Committee and the Employer shall continue to follow the procedures set forth above for recommending appropriate additional revisions to the Employer's health care plan or plans. However, the "reopener" provisions referenced above will not apply to these follow-up meetings convened in 2019 per this paragraph. Neither party shall unreasonably refuse to participate in any Committee meetings.

7) Article 24 - Training, Section 24.09 - Firearms Proficiency Stipend - The current contract includes an annual stipend of \$1250 for firearms proficiency. The union seeks to increase the stipend to \$1900 in 2017; \$1950 in 2018; and \$2000 in 2019. The city offers to increase the stipend to \$1550 in 2018.

Union Position - The union argues that its demand should be recommended. It reports that in the recent round of negotiations, the city granted paramedics a 3% increase in wages after 20 years of service; provided an additional payment of \$1.00 per hour for the corrections officer for Intoxilyzer Certification; and gave the dispatchers a \$1.00 per hour stipend for Emergency Medical Dispatch Certification.

The union contends that during negotiations the city offered to increase the firearms proficiency stipend to \$2000 and that it is bound by the offer. It indicated in its Pre-Hearing Statement:

It is anticipated that the City may attempt to secure recommended contract provisions at fact-finding that are worse than those contained in its Final Offer. In anticipation of this, the FOP is raising a standing objection to any City proposal that falls below that which it offered through its Final Offer, which the City neither: (i) extended as a “take it or leave it package;” nor (ii) reserved the right to withdraw or change its proposal in response to changes proposed by the FOP. The FOP contends that such a change in position would constitute regressive bargaining and be unlawful under Section 4117 of the Ohio Revised Code ... The FOP would urge the fact-finder to reject any City proposal introduced at fact-finding that is below that which was offered through the Final Offer. (Union Pre-Hearing Statement, page 7, footnote 2)

City Proposal - The city argues that its proposal should be adopted. It states that its offer is the same as the \$300 increase in the firefighters’ hazmat allowance and corresponds to the 3% wage bump for paramedics after 20 years of service; the \$1.00 per hour increase for Emergency Medical Dispatching and Intoxilyzer certifications for the dispatchers and the

corrections officer; and the wage enhancement granted to the AFSCME units. The city adds that its offer of a larger increase in the firearms proficiency allowance during negotiations was part of a package offered to avoid fact-finding, which was rejected by the union.

Analysis - The firearms proficiency stipend issue involves two questions. The first question is the amount of the increase in the stipend. The Factfinder recommends that the increase be \$300. First, while the Factfinder acknowledges that the city agreed to larger “enhancements” for three other bargaining units, those increases do not call for granting the union’s proposal to increase the firearms proficiency stipend by \$750. The 3% wage increase given to paramedics after 20 years of service, mirrors the 3% received by patrolmen after 21 years of service and offsets to some extent, the pension reduction experienced by paramedics due to their being employees of Lakewood Hospital for some period of time. The \$1.00 per hour payment the corrections officer received for Intoxilyzer certification appears to be an attempt to boost the top wage of \$20.54 per hour. The dispatchers were given a \$1.00 per hour stipend for maintaining an Emergency Medical Dispatcher Certification but it will be paid only “as long as the certificate remains appropriate in the employer’s judgment.” In any event, as suggested above, the “enhancements” provided to other bargaining units reflect different considerations than for the police officers.

Second, the Factfinder rejects the union’s claim that the city is bound by the offer it made during negotiations and that by changing its position, it engaged in regressive bargaining and violated chapter 4117 of the Ohio Revised Code. It is the norm in Ohio public sector bargaining for employers and unions to attempt to better position themselves for fact-finding by retreating

from the positions they took during negotiations. In any event, the union did not provide any support for its claim that the parties' usual strategy is contrary to law.

Finally, the most important consideration is the fact that the firefighters agreed to a \$300 increase in the stipend for the HazMat Operations Certificate. If the Factfinder were to recommend the union's proposed \$750 increase in its firearms proficiency stipend, the parity between the firefighters and police officers would be upset and it would trigger a demand from the firefighters for an additional \$450 increase in their HazMat Operations Certification stipend.

The second question is the effective date of the increase in the firearms proficiency allowance. The Factfinder recommends that the increase be effective in 2017. Just like parity requires the increase in the police officers' fire arms proficiency stipend be the same as the increase in the firefighters HazMat Operations Certification and the effective date of the 2017 wage increase be the same as for the firefighters, parity requires the increase in the firearms proficiency stipend be effective in 2017.

Recommendation - The Factfinder recommends the following contract language:

The City will provide a stipend of \$1550 for all full-time employees of the Lakewood Division of Police for proficiency in firearms to be paid in the first pay of the year.

8) Article 28 - Sick Time, Sections 28.01 - Accrual & Accumulation, 28.06 - Cash-Out at Retirement, and 28.07 - Annual Cash-Out - The current contract provides that police officers can accumulate up to 1200 hours sick time (Section 28.01); cash-out one-quarter of their unused sick time up to 1200 hours at retirement (Section 28.06); and cash-out on a three-to-one basis accumulated sick leave in excess of 960 hours at the end of each calendar year (Section 28.07). The union seeks to increase the maximum accumulation of sick time to

2400 hours; allow police officers to cash out up to 2400 hours of sick time at retirement; and limit police officers' annual cash-out of sick leave in excess of 1500 hours. The city opposes the union's demands.

Union Position - The union argues that police officers should have parity with firefighters. It states that there is "no legitimate reason why the City's firefighters and paramedics are entitled to accrue two (2) times the number of sick hours as its police officers [and that limiting hours that police officers can cash out at retirement] places an officer and/or his/her family in financial constraints." (Union Pre-Hearing Statement, pages 20-21) The union indicates that its proposal regarding the annual cash out "actually places new restrictions on a member's ability to sell back time while in service." (Union Pre-Hearing Statement, page 23) It adds that its sick leave proposals would have a minor economic impact on the city and would streamline contract administration by making contractual sick leave provisions the same for police officers, firefighters, and paramedics.

City Position - The city argues that the union's proposals for sick time should be rejected. It points out that the union "once again proposes a benefit change which no other union has negotiated, or any fact-finder has recommended." (City Pre-Hearing Statement, page 10) The city notes that its contracts with two AFSCME units, the FOP/OLC, and the OPBA have the same sick leave benefit as the current FOP contract.

The city contends that the union's sick leave proposals are misguided. It observes that "the Union ... points to the fire unions differing contract terms which apply to members, who are regularly scheduled to work over 2500 hours per year, as some sort of comparator." (City Pre-Hearing Statement, page 11) The city claims that "the Union's efforts to compare their hours-

based benefits to those of firefighters are misplaced.” (Ibid.) It adds that the ability of the firefighters and the paramedics “to carry a larger [sick leave] balance [than police officers] from year to year ... is ... counterbalanced by the equally-applied benefit of annual sick leave cash out.” (Ibid.)

Analysis - The fact finder must reject the union’s sick leave demands. First, he dismisses the union’s contention that there is no legitimate reason for the difference in the sick leave entitlements of police officers and firefighters. This claim ignores the fact that police officers and firefighters work different schedules. Among other things, this means that a one-day illness costs a firefighter 24 hours of sick time while the same one-day illness costs a police officer only 12 hours of sick time.

Second, the differences in the sick leave provisions the union challenges have existed for many years. In Lakewood, for example, for many years the maximum sick leave accumulation for firefighters has been 2400 hours compared to 1200 hours for police officers.

Third, as the city pointed out, none of the other bargaining units sought or achieved any improvement in the existing sick leave arrangements. Thus, the union cannot argue that changes in its contract are justified or supported by the negotiations of the other bargaining units.

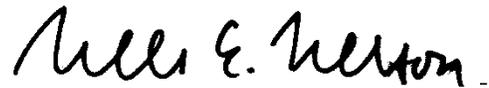
Finally, to the extent it is relevant, the Factfinder is not convinced that the union’s proposal would improve its position. Currently, Section 28.07 provides for an annual cash out of sick leave in excess of 960 hours on a three-to-one basis. The union is proposing to limit the annual cash out of sick leave to time in excess of 1500 hours, just as provided for in the firefighters’ contract. This reduction in the number of hours that can be cashed out annually on a

three-to-one basis may more than offset the increase in the number of hours that can be cashed out at retirement on a four-to-one basis.

Recommendation - The Factfinder recommends the current contract language.

9) Tentative Agreements - During negotiations the parties reached tentative agreements on a number of issues.

Recommendation - The Factfinder recommends the tentative agreements reached by the parties.



Nels E. Nelson
Factfinder

August 28, 2017
Russell Township
Geauga County, Ohio