

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : 2016-MED-09-1009
THE FACT FINDING BETWEEN : CASE NO. ~~2016-MED-10-1282~~
: :
YOUNGSTOWN POLICE RANKING :
OFFICERS (YPRO) : FACT FINDING REPORT
: Submitted by John F. Lenehan,
Union : Fact Finder, June 1, 2017
: (Via Email)
and :
: :
THE CITY OF YOUNGSTOWN :
: :
Employer. :

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FINDING AND RECOMMENDATION

I BACKGROUND

On January 4, 2017, the State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of the Youngstown Police Ranking Officers (YPRO) and the City of Youngstown (Case No. 2016 –MED-09- 1009). A Fact Finding Hearing was held on March 20 and April 24, 2017, at the Law Department Conference Room on the 4th floor of City Hall, 26 South Phelps Street, Youngstown, Ohio 44503. The Youngstown Police Ranking Officers (“YPRO”, “Union”, or “Employee Organization”) was representative by Chuck Aliff, Staff Representative, FOP/OLC Inc. The City of Youngstown (“Employer” or “City”) was represented by Sandy Conley, Employer Principal Representative, Clemans, Nelson and Associates, Inc.. Also, in attendance on behalf of the Union were: Wade Steen, CPA, Steen & Company LLC (March 20th only); Jason Simon, YPRO Treasurer (March 20th only); and David P. Sweet, (April 24th only); Ronald A. Barber Jr., YPRO President; and, John Patton, YPRO Secretary. Also, in attendance on behalf of the Employer were: Kyle Miasck, Deputy Finance Director; Martin Hume, Law Director; Rebecca Gerson, Deputy Law Director; and, Robin Lees, Chief of Police.

The parties mediated and settled ten (10) outstanding issues during the two days of hearing. At the conclusion of the hearing, it was agreed that the Fact Finding Report would be issued via email to the parties’ representatives and SERB on June 1, 2017. The following report is the Finding and Recommendation of the Fact Finder.

A. Description of the Parties and Bargaining Unit

The Union, the Youngstown Police Ranking Officers consists of forty-two ranking police officers of the following classifications; thirty (30) Detective Sergeants, eight (8) Lieutenants and four (4) Captains. A description of the bargaining unit is set forth in Article 2 of the Collective Bargaining Agreement (“CBA”) and reads as follows:

ARTICLE 2
RECOGNITION

Section 1. The City hereby recognizes the Youngstown Police Ranking Officers Organization consisting of police officers with the rank of Sergeant, Detective, Detective Sergeant, Lieutenant and Captain as the sole and exclusive bargaining agent of all such sworn police employees employed by the City for the purpose of collective bargaining about any and all matters related to wages, hours and working conditions.

Section 2. All other employees of the Youngstown Police Department shall be excluded.”

The Employer, the City of Youngstown, is a municipality organized under the constitution and laws of the State of Ohio, and provides for law enforcement through its Police Department.

B. History of Bargaining

The most current Collective Bargaining Agreement (“CBA”) covers the period from June 1, 2014 through December 31, 2016. The Union and the Employer engaged in four (4) bargaining sessions for a successor CBA during which tentative agreements were reached on the following:

Article 18 - Grievance and Arbitration

Article 39 – Hours of Work/ Overtime (excluding Section 4)

Side Letter #7 Wage Schedule Administration

In addition, to the foregoing tentative agreements, the parties during the fact finding process reached tentative agreements on the following:

ISSUE	EMPLOYER ISSUE #	UNION ISSUE #
Article 7- Union Activity, Section 5	1	1
Article 7- Union Activity, Section 6	2	2
Article 7- Union Activity, Section 7	3	3
Article 28- Longevity	8	7
Article 39- Hours of Work etc., Section 4	11	10
Article 41- Compensatory Time, Section 4	12	11
Article 41- Compensatory Time, Section 5	13	11
Side Letter #4 Shift Differential	17	15
Side Letter #5 Attrition Based Abolishment	18	16
New Article Critical Incidents	20	18

C. Unresolved Issues

The following issues remain unresolved.

Article 17 - Deferral of Income and Taxation (Pension Pick Up

Article 26 - Wages and Salaries Appendix A

Article 27, Section 4 - Insurance Benefits, Section 4, Insurance Waiver

Article 27, Section 5 – Insurance Benefits, Section 5, Employee Contributions

Article 30- Uniform Allowance

Article 36 – On Call Pay

Article 42 – Holidays

Article 43 - Vacations

Article 59 – Termination of Contract

Side Letter #6 – Wage Differential Administration

D. Tentative Agreements

All tentative agreements reach during negotiations and the two days of fact finding hearing are incorporated in this report, and are to be made a part of the final recommendations for the successor Collective Bargaining Agreement of the of the parties.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUE(S)

ARTICLE 17

DEFERAL OF INCOME AND TAXATION (PENSION PICK-UP)

Union's Position

The Union has proposed that the Employer provide a pension pick-up, fringe benefit method, for contributions to the Ohio Police and Fire Pension Fund as it currently provides for other bargaining units and non-bargaining unit employees of the Police Department. It states that the benefit would significantly raise the total compensation of the employees and substantially improve their standing among externally comparable employees and reduce the effects of the recent years of wage freezes. In support of its position for the fringe benefit method of pension pick-up, it makes the following points:

- The Employer provides this benefit to the City's non-union employees and to several other Police Department bargaining units, and it's unfair to this bargaining unit to not provide the benefit.
- The pension pick-up, fringe benefit method provides an increase to employees' total compensation without increasing the employees base wage during negotiations, the Employer repeatedly stressed that the City is in "fiscal distress" and cannot afford to provide a wage increase.
 - Referencing Fact Finding Recommendation 1998-MED- 03-0226, Ohio Police Benevolent Association (Police Dispatchers), Fact-Finder Van Pelt recommended that due to the City being in fiscal distress (officially Fiscal Watch) he recommended that the City of *Youngstown pay members' entire pension deduction beginning in 1999 is not without precedent in other city contracts and will be recommended here in lieu of an increase in base salary.*
 - The Union offered this proposal as an alternate to the Union's primary objective in raising the minimum rank differential addressed in ISSUE FIVE.

In support of its proposal the Union submits seven (7) exhibits relating to internal and external comparables.

Employer's Position

The Employer rejects the Union's proposal to change the current salary reduction method of a pension pick-up to a fringe benefit method which would create an additional 12.25% expense for the City. It argues that the City is not in a position to increase continuing personnel costs for 2017 and 2018 and has limited ability to absorb any increased costs in 2019. According to the Employer, the Union's proposal is completely unrealistic. Total base wages for this bargaining unit are approximately \$2,925,000 and the cost for the proposal is projected to be in excess of \$460,000. Finally, the internal and external comparables do not support the Union's position. (See Employer's Exhibits 4-A through 4-D.)

Finding and Opinion

Based upon the Position Statements, the exhibits, the arguments submitted at the hearing, and the criteria set forth for a fact finder in making a recommendation, the Union's position should be rejected.

First the cost to the Employer would be, according to Union Exhibit 4-3 and the Employer's Exhibits, around \$450,000 to \$460,000. This would far exceed the average cost of wage increases both internally and in comparable cities around the state.

Second, the fringe benefit pick-ups negotiated both internally and externally while a factor to consider would not be controlling here. Other factors such as financial resources, size of the bargaining units, wage scales, and in many cases the phase in of the pick-up over time would have to be given greater weight.

Third, the Union, as indicated above, offered this proposal as an alternative to its primary objective of raising the minimum rank differential addressed in its ISSUE FIVE.

Recommendation

Therefore, it is recommended that the Union's Proposal to change the Pension pick-up under Article 17 to the fringe benefit method be rejected and that there be no change in the current method under Article 17.

ARTICLE 36

WAGES AND SALARIES AND APPENDIX A

Union Position

The Union has proposed increasing the rank differential for each classification above the subordinate classification by one percent (1%) each year of the contract: to sixteen (16%) in the first year, seventeen percent (17%) in the second year and eighteen percent (18%) in the third or final year. It sets forth the following rationale in support of its proposal.

First, wages have been frozen in six (6) out of the past eight (8) years and to make matters worse, the employer has proposed a "wage freeze" for the next-two to three years. Over this time period, lower entry level and two intermediate lower level steps have been added to the wage scale in an effort to assist the City financially. In addition, from 2011 to 2015, the employer has reduced the bargaining unit from fifty-nine (59) members to forty-two (42) members, or approximately twenty-nine percent (29%). The years of zero wage growth, lower wage steps and combined with a significant reduction of YPRO member staffing has saved the City millions of dollars, while YPRO members do more with less and suffer obvious negative wage parity with externally comparable employees.

Second, increasing the Rank Differential incrementally by one (1%) annually provides the YPRO bargaining unit members with some slight financial improvement and at a nominal cost to the Employer.

Third, a comparison the YPRO bargaining unit with a comparable supervisor bargaining unit indicates that its members receive less compensation. For example, the Youngstown and Canton police supervisor bargaining units share many similarities, e.g., demographics, population and population loss, median household income, and median wage, poverty levels, crime statistics, department size, and budgetary resources.

Fourth, the Union claims, that Civil Service Rules prohibit YPRO members (Ranking Officers) to transfer laterally into a similar ranking police position with another higher paying

municipal police department; unlike patrol officers, who may transfer into the patrol ranks of another higher paying police department. According to the Union, all other bargaining unit employees and non-union employees of the Youngstown Police Department are able to seek similar higher paying employment elsewhere except YPRO. It claims that this fact alone should give greater weight to external comparables over internal parity for YPRO members.

Fifth, the Employer's claims that the City is in "fiscal distress", and thus not in a position to offer wage increases to the bargaining unit, are not true. The financial statements on file with the Auditor of State have consistently reported a positive fund balance.

Sixth, the Employer did not differ with the Union as to whether wages increases were merited or not, it only stressed internal parity with other employee groups and the results of past fact-finding recommendations or conciliation awards, and failed to take into account that the financial landscape is positively improving.

Seventh, there has been precedence for raising the rank differential. After YPRO split from the YPA bargaining unit the differential has been raised from 12% to 15%. No other employees group has a mandated minimum rank differential.

Eight, greater weight should be given to external comparables over internal parity, considering years of wage freezes, reduction in staffing, increased work load, the unique nature of the bargaining unit and lack of occupational mobility.

In summary, the union argues that a very modest wage proposal is both reasonable and realistic. The excess 2016 year-end Police Department fund balance is sufficient to fund the Union's entire three-year wage proposal. In support of its position on this issue, the Union submitted Union Exhibits 5-1 through 5-18.

Employer's Position

The Employer proposes to maintain the established fifteen percent (15%) wage differentials. Specifically, the differentials that exist are as follows:

- a 15% differential between the senior patrol officer and the 3rd year Detective /Sergeant
- a 15% differential between the 3rd year Detective/Sergeant and the 3rd year Lieutenant
- a 15% differential between the 3rd year Lieutenant and 3rd year Captain

The Employer rejects the Union's proposal to increase the rank differential by 1% each contract year; i.e., 16% in 2017, 17% in 2018, and 18% in 2019.

The Employer in its note book and exhibits submitted at the fact finding hearing set forth the following rationale.

1. The modifications proposed by the Employer merely clarify the continuation of the differentials and remove an out dated reference to Side Letter #6 (specific to calendar year 2016) as well as references to increases for 2015 and 2016 which have already transpire.
2. As the first differential is based upon the top Patrol Officer rate, it must be noted that it has been determined that wage rates of Patrol Officers will not increase for the period from January 2017 through November 30, 2018.
3. In the YPA dispute resolution procedures, both Fact Finder Dennis Byrne and Conciliator Robert Stein found that the City of Youngstown was not in a position to increase wage costs. (Exhibit 5-A) (Exhibit 5-B)
4. Fact Finder Byrne stated the following: “Finally is the Fact Finder’s own analysis of the financial data presented by the parties which show that the City has severe revenue problems , especially with the collapse of the oil industry.” Moreover, Conciliator Stein determined that: “The City, according to evidence has serious structural economic expenditures to continue to exceed revenue.”
5. Additionally, the City has reached agreement with the IBT Local 377 bargaining unit and they also will receive no wage increases for 2017 and 2018; the Employer seeks the continuation of this pattern.
6. The external comparisons do not support the Union’s proposal to increase the rank differential (Exhibit 5-C), and this bargaining unit is well compensated relative to comparable jurisdictions (Exhibit 5-D)
7. As previously indicated the internal comparisons do not support an increase for 2017 and 2018 (Exhibit 5-E)
8. YPA will be negotiating for another successor agreement starting in the latter part of 2018, and if any increase for 2019 (or as early as December 2018) is agreed to or awarded, this bargaining unit would obviously benefit by way of the rank differentials.
9. For reasons of internal equity and consistency, the pattern of no wage increases for 2017 and 2018 must be continued.

The Employer concludes its rationale by stating:

“Increasing the wage differentials would grant these bargaining unit employees a wage increase when other City employees are faced with or have agreed to zeros. The City cannot be placed in the position of having to treat one group more favorably than all others.” (Exhibit 5-F)

Finding and Opinion

Based upon a review of the exhibits and testimony submitted at two days of hearing, it is the opinion of the Fact Finder that the following facts have been established.

1. While the financial condition of the City is dire, it is not hopeless. The cost of the Union's proposal would be, according to the financial review document presented through the testimony of Mr. Steed on behalf of the Union, approximately \$221,601.16. The Employer Exhibit 6 L and testimony of Mr. Miasek, Deputy Finance Director estimates the cost to be approximately \$270,382.37. Considering the City's financial situation either estimate is a substantial sum, even if such would be within the financial resources of the City.
2. Assuming that the City would have the ability to pay the "modest" increases proposed by the Union, other factors must be given greater weight. Parity and the pattern bargaining with the eight (8) other bargaining units in the City are essential to the financial wellbeing of the City at this time. All bargaining units, including YPRO, have gone without wage increases for the 2017 and 2018 and recognized the need to do so.
3. Also, there is insufficient evidence to justify the Union's position that external comparables should be given greater weight than internal comparables, parity or pattern bargaining. An examination of the exhibits clearly indicates while the employees in this bargaining unit are not necessarily the highest paid in all classifications compared to other comparable jurisdictions, their wages are competitive.
4. The Employer's proposal and the modifications to clarify the continuation of the differentials and remove an out dated reference to Side Letter #6 (specific to calendar year 2016) as well as references to increases for 2015 and 2016 which have already transpired should be adopted.
5. The Union's proposal to increase the rank differentials should be rejected.
6. Since other bargaining units have gone without wage increases only for 2017 and 2018, it appears 2019 wages for the YPRO bargaining unit are open for discussion, and there should be a reopener for wages, only, for 2019.

Recommendations

Therefore, it is recommended:

- 1) the Union's proposal to increase the rank differentials for 2017, 2018 and 2019 be rejected;
- 2) that The Employer's proposal and the modifications to clarify the continuation of the differentials and remove an out dated reference to Side Letter #6 (specific to calendar

- year 2016) as well as references to increases for 2015 and 2016 which have already transpired be adopted and incorporated in the successor CBA;
- 3) that Appendix A be up dated (See Employer's submission for Fact Finding dated March 17, 2017) and incorporated in the successor CBA; and,
 - 4) that in November, 2018 there be a reopener for wages for calendar year 2019.

ARTICLE 27

INSURANCE BENEFITS

Section 4 Insurance Waiver

Employer's Position

The Employer proposes to add clarifying language regarding ineligibility for the insurance waiver if the employee's spouse or parent also works for the City and the employee receives coverage under the City's group plan elected by the spouse or parent. The Employer also rejects the Union's proposal to increase the monthly waiver amount from &168.00 to \$200.00.

The Employer claims that its proposed language is consistent with the language found in other City bargaining agreements (Employer's Exhibit 6-A) and a City Ordinance covering Management employees (Employer's Exhibit 6-B). According to the Employer the issue is a matter of fundamental fairness. An employee should not receive a monetary benefit for waiving individual insurance while simultaneously receiving coverage under the City's group plan through a spouse or parent.

As to the rejection of the Union's proposal to increase the monthly waiver amount to \$200.00, the Employer submits that all full-time bargaining units have a waiver amount of less than the proposed \$200.00 per month. All but one of the units is at \$168.00 per month or less (Employer's Exhibit 6-C). Finally, the Employer claims that even the Union's comparables do not support its proposal to increase the insurance waiver amount.

Union's Position

The Union proposes to increase the monthly waiver amount from \$168.00 to \$200.00. The Union states that members who opt-out of the employer provided healthcare insurance save

the City thousands of dollars each year. Further, the insurance waiver is a means of sharing a portion of that saving with members who do not use the benefit. Since the monthly premium has not increase significantly, the benefit has been reduced by the effects of inflation. There are currently only six members in the bargaining unit who receive the waiver and the increase only amounts to about \$2,300.00 per year for City while it saves tens of thousands of dollars each year.

Finding and Opinion

The Employer's proposal, to add clarifying language regarding ineligibility for the insurance waiver if the employee's spouse or parent also works for the City and the employee receives coverage under the City's group plan elected by the spouse or parent, should be adopted. Fact Finder Dennis M. Byrne in the case of the *Ohio Patrolmen's Association vs. The City of Youngstown* (SERB Case No. 15-MED-09-0753, stated:

"The Fact Finder believes that there is no justification for allowing the YPA members to enjoy a benefit that no one else in the City enjoys. Moreover, many of the other employees had the same benefit as the four (4) members of the YPA bargaining unit, but acceded to the City's demand. The reason probably is that these other individuals recognized that it is unrealistic for an Employee of the City to be covered by the same City's insurance and to be paid by the City for not using that insurance at the same time...."

The Union's proposal to increase the waiver amount from \$168.00 to \$200.00 should be rejected. All full-time bargaining units have a waiver amount of less than the proposed \$200.00 per month. All but one of the units is at \$168.00 per month or less. (Employer's Exhibit 6-C). The Union's comparables do not support its proposal to increase the insurance waiver amount.

Recommendations

Therefore it is recommended that Article 27, Section 4 should read as follows:

Section 4. Insurance Waiver . If any employee elects to refuse the coverage provided in Section 1, then that member shall be paid the premium saved by the City, not to exceed the amounts set forth below. Such election is contingent upon the employee documenting any and all existence of alternative health care coverage executing a waiver of the City's group plan and further waiving any action for damages and reimbursement resulting from such election. Payment for those employees making such an election shall be one hundred and sixty-eight dollars (\$168.00) per month, payable in monthly increments. Where a bargaining unit employee has a spouse or parent who works for the City, and the

employee receives coverage under the City's group plan elected by the spouse or parent, the employee shall not be eligible for this incentive.

It is further recommended that the Union's proposal to increase the waiver amount to two hundred dollars (\$200.00) be rejected.

ARTICLE 27

INSURANCE BENEFITS

Section 5 Employee Contributions

Employer's Position

The Employer proposes that the amount of the employee contribution toward health care be increased from 10% to 11 %, effective May 1, 2019. Originally the Employer sought an increase to 12% commencing January 1, 2019. It gives the following rationale for the increase.

1. The cost of healthcare continues to increase (Employer Exhibits 7-A) (Employer Exhibit 7-B)
2. This is the first labor agreement to carry into the health coverage plan year commencing in 2019. A slight increase in employee cost sharing in the 2019 plan year is warranted in consideration of ever increasing costs and the average employee contributions statewide.
3. The 2016 State Employment Relations Board (SERB) Health Care Report establishes a 13.9% average employee contribution for those who elect family coverage and are employed by cities with a population between 25,000 and 99,000 (Employer Exhibit 7-C)
4. Notably, also found within Exhibit 7-C is the fact that the statewide average for the total cost of single and family coverage is considerably lower than that experienced by the City.

Union's Position

The Union rejects the Employer's proposal to increase the employee's contribution to 11% for health care premiums. It states that in addition to the aforementioned wage freezes, entry and intermediate level wage cuts and staffing reductions, the YPRO bargaining unit members have

assumed greater financial burden and responsibility for health care insurance costs, and when taken together, represent a reduction in an employee's total compensation.

During the past year of the current CBA, the bargaining unit agreed to an uncapped ten percent (10%) share of the monthly insurance premium which is about the average employee share in the Youngstown/Warren area. The 10% is standard across the board for the City's other bargaining units. The Union strongly believes no increase in the employee percentage share of healthcare insurance premiums is merited. In consideration, that annual healthcare costs easily outpace annual wage increases, it is expected that employee healthcare costs over the life of this agreement will increase and therefore employee total compensation will decrease even further.

The Union further argues that the Employer recently sought to increase the YPA's employee healthcare insurance premiums to 11% and was unsuccessful at both fact-finding and conciliation.

Finding and Opinion

Based upon the exhibits, the recent Fact Finding and Conciliation Reports, and the local standard for healthcare premiums, the Employer's proposal should be rejected.

Recommendation

Therefore, the Employer's proposal to increase an employee's premium contribution for healthcare is hereby rejected.

ARTICLE 30

UNIFORM ALLOWANCE

Union's Position

The Union proposes to increase the uniform allowance provided under Section 1 of Article 30 from \$1050.00 to \$1200. According to the Union the allowance for years was increased annually. Since 2009, however, the allowance has been decreased and in 2010 payment of the allowance was suspended for that year. In 2011, the allowance was reduced to its current amount of \$1050.00 and is thirty-five dollars (\$35) less than the YPA allowance of \$1,085.00 received annually. A significant of YPRO members in addition to being required to regularly

wear the duty uniform are required to wear business attire, and therefore required to maintain two sets of clothes suitable to the Employer.

Employer's Position

The Employer rejects the Union's proposal to increase the amount of the uniform allowance from \$1050.00 per year to \$1200. It argues that other bargaining units have had to forego economic improvements for 2017 and 2018. Any economic improvement for the bargaining unit could create a perception of favoritism and or unfairness. There is no justification for treating this bargaining unit differently by granting economic improvement. Also, the Union's proposal is not support by external comparables.

Finding and Opinion

The Employer is correct. There should be no point in treating a bargaining unit differently. Both the YPA and the YPRO perform law enforcement duties and have uniform allowances. The allowances should be the same.

Recommendation

Therefore, it is recommended that the uniform allowance for YPRO should be \$1085.00. Article 30, Section should read as follows:

Section 1 Each police officer shall receive an annual uniform allowance in the amount of one thousand eighty-five dollars (\$1085.00). The City shall attempt to make the payment by April each year.

ARTICLE 36

ON CALL PAY

Union's Position

The Union proposes to increase the on call pay from \$91.00 to \$105.00. It claims that like other supplemental pays it increased with wage increases. From 2000 through 2007, on call pay had increased twenty-seven and two tenths percent (27.2%). Since 2008 the on call pay of \$91.11 has remained unchanged. As a result of inflation the benefit has eroded. The on call pay when factored for inflation from 2010 and projected through to 2019, the last year of the successor agreement, would need to be raised to \$107.50 to maintain the 2010 value. Only eight

members of the bargaining unit receive the on-call pay each week and the unions modest increase results in \$5,824 dollars added to the budget per year.

Employer's Position

The Employer rejects the Union's proposal to increase the amount of on-call pay from \$91.00 per week in on-call status to \$105.00 per week. The YPA has a similar on-call pay provision in the amount of \$91.00 per week (Employer Exhibit 10 –A) The Employer argues that as with the union's other economic improvement demands, there is no justification for treating this bargaining unit differently and creating a new disparity between the Rank and Patrol bargaining units. Also, the Union's proposal is not supported by the external comparables (Employer Exhibit 10-B)

Finding and Opinion

The Employer's position is more persuasive. There is no justification for treating YPRO differently than the YAP. The Union's proposal for an increase in the on-call pay should be rejected.

Recommendation

Therefore, it is recommended that the Union's proposal be rejected and that the on call pay remain at \$91.00 for the term of the CBA.

ARTICLE 42

HOLIDAYS

Union's Position

The Union has proposed to change the language of Section 4 of Article 42 to read as follows:
Section 4 Holidays Observed Upon execution, holidays will be observed on the actual day of the holiday. **An employee assigned to the Patrol Division will not be mandated off on their regularly scheduled workday.**

The Union states that its proposal addresses the long standing practice of Union members who are assigned to the Patrol Division to have the right to work their normal duty schedule,

without Employer adjustment due to the holiday. It has been a long standing benefit to YPRO members assigned to the Patrol Division and the Union desires to memorialize the practice. Arbitrarily mandating some employees off their normal duty schedule solely to avoid paying some members premium holiday pay is unfair and an erosion of compensation.

The cause for Union concern arose in the past year when a Captain was mandated off on the holidays resulting in a grievance having been filed over the matter. The Employer's directive resulted in a reduction of benefits otherwise enjoyed for ranking officers who are assigned to the Patrol Division. The parties amicably settled the grievance. However, the Union demands language preserving the benefit for the bargaining unit.

Employer's Position

The employer rejects the Union's proposal to restrict the Employer's ability to determine appropriate staffing levels for designated holidays with the following language:

"An employee assigned in the Patrol Division will not be mandated off on their regularly schedule work day."

The Employer sets forth the following arguments in its rationale for rejecting the Union's proposal.

1. City, County and State offices and Courts are closed on the majority of the ten (10) designated holidays set forth under this Article. Not all rank positions are necessarily needed on such days, particularly those position with administrative responsibilities.
2. The current provisions define the compensation to be paid for a holiday when worked or not worked as follows:
 - When not worked- 8 hours of holiday pay (e.g., \$329.38 at the current Captain 3rd year rate)
 - When worked – 8 hours of holiday pay plus pay at time and three quarters (1.75) for actual hours worked (e.g., \$950.80 at the current Captain 3rd year rate when 8 hours are worked on a holiday)
3. No provision exists within the Article, or the Agreement, that affords any employee an automatic entitlement to work a designated holiday.
4. The right and responsibility to assign, schedule, determine the adequacy of the work force, and effectively manage the work force etc., are reserved to the Employer under

ORC 4117.08. (Employer's Exhibit 14-A) The Union's proposal to limit these rights is therefore permissive in nature and not mandatory.

5. An annual structural deficit of approximately 5 million dollars demands cost control. It would be fiscally irresponsible if the employer failed to evaluate and balance operational and service needs against costs for premium pay staffing. A difference of more than \$575 per holiday, per Captain, is not insignificant. (Obviously, the positions of Lt. and Det./Sgt. Would represent less of a cost factor)

Finding and Opinion

The Employers position must prevail on this issue. There is no provision within Article 42 or the CBA that grants an employee automatic entitlement to work a designated holiday. The determination to staff or to assign employees to work remains with the Employer, not the employees. Once that determination is made to assign or have employees work, other factors, such as seniority or rank, may determine who to assign.

ORC 4117.08 (C) in pertinent part provides:

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117, of the Revised Code impairs the right and responsibility of each public employer to: (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted.

As the Employer indicated in its Position Statement on this issue, staffing on a holiday is expensive. If employees are not needed, they should not be scheduled. It's a more responsible use of public funds.

In addition, to there being no right to be scheduled to work on a holiday, the proposal submitted by the Union is considered a permissive **subject** of bargaining, and the Employer is not obligated to bargain unless it agrees to do so.

In consideration of the foregoing reasons, the Union's proposal should be rejected.

Recommendation

Therefore, it is the recommendation of the Fact Finder that the Union's proposal be rejected.

ARTICLE 43

VACATIONS

Employer's Position

The Employer proposes to eliminate the six (6) weeks vacation level for officers entering the bargaining unit on or after May 1, 2017. The Employer argues that considering all of the paid time off received by bargaining unit employees as well as operational and service needs, the six weeks of vacation is excessive and not supportive of the "interest and welfare of the public". To date, three of the eight City bargaining units have already abolished the sixth week of vacation for new employees. Further, considering declining revenues and increases in costs, necessary adjustments must be made.

Union's Position

The Union finds the Employer's proposal outrageous in that it is another attempt at a bite of the apple. The Employer's proposal to bifurcate the YPRO vacation schedule to eliminate the sixth week of vacation is only applicable to newly promoted members from the YPA Union effective January 1, 2017. The employers proposal is completely without merit and unnecessary.

The Union claims that its insistence on maintaining current contract language is fair and reasonable. The vacation schedule to include a sixth (6th) week of vacation is normal in Ohio. The City has tried and failed to win this same proposal with the YPA bargaining unit; this occurred recently at fact-finding (SERB Case # 2015-MED- 09-0753) and again at conciliation (SERB Case # 2016 –MED- 09-0753) where conciliator Stein awarded current contract language.

Currently, the vast majority of YPA members are low in years of service and therefore the majority is at the bottom three-fourths of the vacation schedule. There is no merit or justification for eliminating the sixth week for new members promoted into the YPRO bargaining unit.

The YPRO, YPA and Dispatcher (OPBA) bargaining units all share the same vacation schedules to include a sixth week of vacation earned after twenty- three years of service.

Finding and Opinion

The Employers rationale to reduce vacation time on a bilateral basis was insufficiently supported to render a change in language. Based upon the trend in Ohio and the Fact Finder and Conciliator's findings with the YPA bargaining unit, the Employer's proposal should be rejected.

Recommendation

Therefore, it is recommended that the Employer's proposal be rejected and that there be no change to the current contract.

SIDE LETTER #6

Recommendation

To be deleted. See Recommendations under Article 26, Wages & Salaries and Appendix A.

ARTICLE 59
TERMINATION OF CONTRACT

Union's Position

The Union proposes that Section 1 of Article 59 read as follows:

Section 1. This Contract shall be effective January 1, 2017, subject to ratification by both the Union membership and by City Council, and shall remain in effect through midnight December 31, 2019.

The Union believes that the three year term is in line with the practice of negotiating three (3) contracts and is fairer to the employees.

Employer's Position

The Employer proposes that the agreement be effective prospectively upon ratification/acceptance by both parties of a final tentative agreement/fact finder's recommendation [date of latest acceptance], or upon issuance of a conciliator's award and that it terminate on December 31, 2019.

The Employer states that its proposal does not preclude the parties from agreeing to different dates with regard to specific economic improvement, if any, The Employer's proposed expiration date of December 31, 2019, maintains the three year cycle for the bargaining unit.

Finding and Opinion

While there's compelling arguments to be made as to the effective date of a collective bargaining contract being retrospective or prospective, it usually doesn't matter. There is no contract until the parties ratify or a conciliator issues an award. The Fact Finder believes that in this case there is merit in maintaining a three (3) year cycle for the collective bargaining contracts, and that the Union's proposal is more effective in doing that.

Recommendation

Therefore it is recommended that Section 1 of Article 59 should read as follows:

Section 1. This Contract shall be effective January 1, 2017, subject to ratification by both the Union membership and by City Council, and shall remain in effect through midnight December 31, 2019.

IV
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted on March 20, and April 24, 2017. Recommendations contained herein are developed in **conformity** to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

June 1, 2017

V
PROOF OF SERVICE

This fact-finding report was electronically transmitted this day 1st of June 2017 to the persons named below.

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/s/ John F. Lenehan
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June 1, 2017