

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 9, 2017

In the Matter of:)	
)	
The Ohio Patrolmen’s Benevolent)	
Association (OPBA))	
)	SERB Case No.
)	16-MED-10-1115
vs.)	
)	
The City of Middleburg Heights)	
)	

APPEARANCES

For the OPBA:

Randy Weltman, Attorney for the Union
Anthony Belzer, OPBA Director
Dave McCammon, OPBA Director
Yvonne Tverino, OPBA Attorney

For the City of Middleburg Heights:

Jazmyn Stover, Attorney for Middleburg Heights
Jason Stewart, Finance Director for Middleburg Heights
Bob Downey, Executive Assistant to the Mayor of Middleburg Heights

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the City of Middleburg Heights (Employer/City) and the full-time Middleburg Heights Police Patrolmen represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union). The parties held five (5) bargaining sessions in an attempt to find mutually agreeable language for a successor agreement for their contract that expired on December 31, 2016. In spite of their efforts, the parties were unable to reach a final agreement; and seven (7) issues remain on the table. The open issues are: 1) Article 5: Management Rights (Scheduling), 2) Article 17: Injury Leave; 3) Article 18: Overtime Pay and Court time; 4) Article 21: Longevity; 5) Article 22: Salary Schedule; 6) Article 24 Insurance; and (7) Article 35 Miscellaneous.

Since the parties were unable to reach an agreement on the issues, they scheduled a Factfinding Hearing. The Hearing commenced at 9:00 A.M. on Tuesday April 28, 2017, at the Middleburg Heights City building. The hearing ended at approximately 12:30 P. M.

Prior to the hearing, the Fact Finder attempted to mediate a settlement; that effort was unsuccessful. However, the Parties were able to fully discuss their respective positions on the other outstanding issues, and that discussion clarified the areas of disagreement between the parties on the open issues.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

The major disagreement between the parties was over the City's financial condition. The Union believes that the City has the ability to fund its demands. The Union testified that the City's General Fund was in good shape and that Moody's financial Services had given the City an Aa credit rating in January of this year. This rating means that based on its evaluation of the City's finances, Moody's believes that the City's credit is strong and that there is very little chance of the City defaulting on any of its obligations (Moody's Analytics website: Moody's.com/Union Exhibit 6). The Union also stated that the City's General Fund was in excellent condition and that the Carryover Balance exceeded the Government Finance Officers Association (GFOA) recommendation (City Exhibit 4-2) for the amount of Carryover that any jurisdiction needs to meet its financial obligations. Based on all of its analysis, the Union argued that the City has more than enough revenue to fund its demands.

The City argues that its finances have some fundamental weaknesses. It presented data that show that the only funding source that is growing is the city income tax (City Exhibit 4-5). The City's data show that its revenue from the estate tax, the State and Local Government Fund, and property taxes are all generating less revenue over time (City Exhibits 4-4, 4-5, and 4-6). In addition, the City argued that its income tax

collections were stagnating (growing slower) over time and that the average growth rate of income tax revenue since the Great Recession was 3.8% (City exhibit 5-3). The City's Finance Director believes that in the future there is a possibility that tax revenues will stagnate or that revenues may actually fall. Consequently, the City contends that it while its current financial condition is good, there are potential problems on the horizon. Therefore, the City believes that it must control its expenditures in the face of a projected stagnation in its revenues.

The Fact Finder has examined all of the data presented by both parties and finds that the City's financial condition does not preclude it from meeting the Union's wage demand. That is, the City can afford to meet the Union's 3.0%/yr. demand.

There are two other areas of disagreement between the parties. The City is demanding that the patrolmen as well as all other City employees, both nonunionized and unionized, begin to make contributions to the City's health plan. Currently, the City offers an excellent health plan for all of its employees and requires no employee contribution to the plan, and the employees pay only a small deductible for service. The current plan also specifies that there is a small co-pay for each time the employee visits a doctor, uses an Emergency Room, etc. The City stated that the costs associated with its medical plan were rising precipitously and that it could no longer continue to fund the plan. The City stated that it did not want to change the plan coverage, but believed that the employees should make a contribution toward their health care.

Consequently, the City demands that the patrolmen begin to pay a deductible of \$500.00 dollars for an individual plan and \$1,000.00 for a family plan. The current deductible is \$100.00 for a single plan and \$200.00 for a family plan. The Union

recognizing that it must begin to make a contribution to the plan has agreed to a change in the co-pay amount, but wants to phase in the change over the life of the prospective contract.

The City is also demanding that the employees pay an uncapped 10% premium share. The City argues that this is reasonable compared to the contributions made by employees of other jurisdictions throughout Northeast Ohio in particular and the entire State in general based on SERB data (Employer Exhibit: Cost of Health Insurance in Ohio's Public Sector). The Union has agreed to pay something toward its health insurance but demands that its membership's contributions be capped at \$60.00 in year one, \$100.00 in year two, and \$140.00 in year three of the prospective contract.

The only evidence presented on the cost of the current plan was the City's COBRA payment scale for the three contract years. The City's COBRA payment in the first year is \$2,200.00, in year two the payment is \$2,400.00, and the payment is \$2,600.00 in year three. Consequently, the City's demand appears to be for an employee monthly contribution of \$220.00 in year one, \$240.00 in year two, and \$260.00 in year three. The Union argues that the cost of the City demand is excessive, and believes that its contribution should be capped at the lower levels outlined in the paragraph above.

There are also two peripheral items that are causing problems for the parties. The Union is demanding a change in the scheduling system, and it is also demanding that one Department General Order be inserted into the contract. The City is unwilling to meet these demands for a number of reasons, and this has created a somewhat hostile environment between the parties. As a result, it has been hard for the parties to agree on

issues that on their merits do not seem to need a third party's opinion and/or recommendations.

Issue: Article 5: Management Rights - Scheduling

Union Position: The Union demands that the schedule be changed to a 12 hour per day shift.

City Position: The City's position is that scheduling is a management right and it refuses to change the current 8 hour per day, 40 hour per week schedule *at the present time*. (Emphasis added)

Discussion: This is a very divisive issue in these negotiations. The patrolmen are adamant that they wish to have a 12-hour schedule. They testified that many other police departments in the surrounding area work 12 hour schedules and that the officers in those departments prefer the 12-hour schedule to the traditional 8-hour schedule. The current Middleburg Heights Police Chief does not believe that the 12-hour schedule maximizes efficiency in a Police Department, and he does not want (refuses) to change the current scheduling pattern. Consequently, the parties are seemingly entrenched in their positions; and both refuse to budge.

This problem may be less than it appears. The current Police Chief is going to retire, and the City is actively searching for a new Chief. The City testified that it was unwilling to change the current scheduling practice until the new Chief is hired, and then it is willing to discuss the issue and perhaps change the current 8 hour schedules to 12 hour schedules depending on the new Chief's position on the issue. In other words, the City believes that the new Chief should have a significant role in deciding schedules.

The City did state that the Mayor and the Safety Director were willing to meet with the patrolmen to further discuss the issue, but that they were unwilling to tie the new Chief's hands on this issue without any input from him/her.

The Union countered that this is a mandatory issue of bargaining because the scheduling pattern is already in the contract and that the patrolmen are demanding that the scheduling pattern be changed during the current negotiations.

The Fact Finder believes that, given the current circumstances in Middleburg Heights, that the City's stance is reasonable. The City is not rejecting the Union's demand out of hand. The City did not take a position that the 8-hour schedule must remain in the contract for the duration of the agreement; rather the City has indicated a willingness to discuss the issue in a Labor-Management setting before the new Chief is hired and to keep an open mind on the issue when the new Chief is on board. However, at this time the City is unwilling to commit to making the change. The Fact Finder understands that the Patrolmen's position is that they want a 12-hour schedule regardless of who is the Chief of Police. However, to change the long-standing scheduling practice without the input of the incoming Chief is unreasonable.

Consequently, the Fact Finder is recommending that the parties attach a letter of understanding to the contract that states that the City is willing to discuss the issue with the patrolmen both before and after the new Chief is hired. This will allow the parties to explain their positions without the time pressure associated with negotiations. If the new Chief is not willing to change the schedule, then the next round of negotiations is the forum for the Union to press its demand. However, since there was no evidence presented on the impact that a new 12-hour schedule would have on the operations of the

Department, etc., the Fact Finder does not believe that the Union met its burden of proof on this issue. That is, the fact that the patrolmen want a different scheduling pattern does not mean that the City must agree to that demand.

Finding of Fact: The parties should agree that they will continue to discuss this issue both before and after the new Police Chief is hired. However, the Fact Finder does not find that the Union proved that there is any need to change the current scheduling pattern. It is obvious that the patrolmen want a different scheduling pattern; but given the facts of the matter and the City's position on the issue, the Fact Finder does not find the Union proved its suggested change should be incorporated into the contract.

Suggested Language: Current contract language.

Issue: Article 17: Injury Leave

City Position: The City demands that the wage continuation language (wages paid by the City to an injured worker) contained in the contract be modified to require that a patrolman must miss a minimum of two tours of duty before the wage continuation language becomes applicable. The Employer is also demanding that any payment from the Bureau of Workers' Compensation be forfeited if a patrolman is receiving wage continuation payments.

Union Position: The Union rejects the City's demand.

Discussion: There was very little discussion on this issue. The city prehearing statement discussed this issue. Wage continuation payments are payments from the City for patrolmen injured on duty, but not so severely that the officer is off duty for an extended period of time. It is a way that officers who suffer some injury can be compensated

without going on injury leave. The result is that an injured officer does not use his accumulated sick leave because he is still on the job. The City's position is that the officer must miss at least two turns for the wage continuation language to become operative. The Employer's proposed language also requires that the officer's injury must be certified by a licensed medical provider.

The Employer's position is reasonable. The proposed language does not change any of the procedures that an officer who is severely injured on duty and applies for Workers Comp must follow. Nor does it impact the payments received by an injured officer. The Employer's language affects only those officers who suffer an injury that requires a brief period away from their jobs. As such, it is unobjectionable.

Finding of Fact: The Fact Finder believes that the Employer proved its point on this issue.

Suggested Language:

Injury Leave

17.01 When an employee is injured in the line of duty while actually working, the Employer may, at its options, enter into a wage continuation agreement with the employee. The wage continuation agreement will allow the employee to continue to receive his regular pay and benefits without charge to leave time, in lieu on the State of Ohio Bureau of Worker's Compensation loss time benefits.

In order to qualify for a wage continuation plan, the injury must have resulted in an absence from work for a minimum of five (5) consecutive working days or 40 hours in a single workweek, whichever is less, in which the employee is certified by a qualified medical provider, of the Employer's choosing, that he is medically unable to work. The employee must apply for and receive an allowed medical-only claim form the Bureau of Worker's Compensation for the specific on-the-job injury. Under the wage continuation plan, the employee shall be eligible for a paid leave not to exceed ninety (90) calendar days. The employee shall be required to sign a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this Article. If the injury is verified as on duty, the two (2) tours of sick leave shall be reimbursed to the employee.

17.02 If at the end of the ninety (90) day period the employee is still disabled, the leave may, at the Mayor's sole discretion, be extended for additional ninety (90) calendar day periods, or portions thereof.

Issue: Article 18: Overtime Pay and Court Time

City Position: The City demands that the definition of overtime as hours worked be changed from over 8 hours per day to over 40 hours per week. The 40 hours per week for overtime pay requirement is found in the Fair Labor Standards Act.

Union Position: The Union rejects the City's demand.

Discussion: This is another issue that was not discussed in detail during the hearing. The problem that the City is referencing is related to the definition of time worked. In this situation, the definition must include paid time off; e.g. Vacations, etc. This means that an officer can work for over 8 hours in one day, but work less than 40 hours because he is taking a personal day, etc., during the same work period. The result is that the City pays overtime in a work period where the employee is on the job for less than 40 hours.

This is an issue that requires some analysis by the parties. What seems like a minor demand may impact a number of contract provisions and affect all members of the bargaining unit. There are myriad questions surrounding the definition of time worked and/or paid in all contracts.

Given the lack of specificity about both the reasons for the demand and the impact of the suggested change in the language proposed by the Employer, the Fact Finder does not believe that the City provided enough information for the Fact Finder to recommend the City proposed language change(s) into the contract. Therefore, the Fact Finder does not believe that the City met its burden of proof on this issue.

Finding of Fact: The City did not provide proof that its suggested language change is necessary.

Suggested Language: Current contract language.

Issue: Article 21 Longevity Pay

City Demand: The City demands that Longevity payments be ended for all employees hired after January 1, 2017. That is, current employees would continue to receive longevity pay.

Union Position: The Union rejects the City's demand.

Discussion: The City claims that its financial situation means that it must begin to control expenditures, and that ending longevity for new hires is a somewhat painless way to lower the City's future spending by bifurcating benefits paid to current employees and future employees. This demand has little impact on the current bargaining unit members. However, the mantra of "equal pay for equal work" applies to this situation. Therefore, all unions reject demands for bifurcated wage and benefit clauses.

This Fact Finder has recommended bifurcated wage and benefit clauses in the past. However, in those situations, the jurisdiction involved in the fact finding was usually in severe financial distress. Middleburg Heights' financial picture is much brighter than the jurisdictions that usually are involved in situations where the City is attempting to cut benefits. Therefore, the Fact Finder recognizes that the City is attempting to "get out ahead" of any impending financial problems; but given all of the evidence in the record, the Fact Finder does not believe that the City proved its point on this issue.

The City made a second argument on this issue. The City contends that its employees are well paid and that it does not have to offer longevity payments as an inducement to potential employees to join the Department. This argument, if true, can be used to support the Union's position on this issue. That is, currently the City can find and attract good candidates for any open positions in the Police Department. However, if the City begins to cut (bifurcate) benefits to the members of the Department based on tenure, this may lead to a situation where new hires feel discriminated against. This has obvious morale implications. Consequently, changing the compensation package without an overwhelming reason to do so, may have unintended consequences. If the City's finances do deteriorate to a situation where the City is facing financial distress, then the question of cutting compensation will be the subject of future negotiations.

Finding of Fact: The City's financial position does not necessitate changing the current wage and benefit package over the objections of the Union.

Suggested Language: Current contract language.

Issue: Article 22: Wages

City Position: The City is offering 1.0% in each year of the prospective contract.

Union Position: The Union is demanding 3.0% in each year of the prospective contract.

Discussion: There are a number of issues that must be discussed before the Fact Finder makes a recommendation on wages. First: ORC 4117 states that the Fact Finder must

ORC 4117-9-05 (2) (make) 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.

This language gives rise to the “comparables list” submitted by the parties in all public-sector negotiations. That is, a list of other jurisdictions that both parties use as evidence in support of their demands. In this case, the Union submitted a general list of all Cuyahoga County jurisdictions and three other lists drawn from the same data but only including a subset of the entire County list. The Union’s four comparables lists are 1) all jurisdictions in Cuyahoga County (with the exception of East Cleveland); 2) all Westside jurisdictions; 3) all contiguous jurisdictions; and 4) prosperous Cleveland area suburbs (Union Exhibit 1). The jurisdictions on the City’s comparables list include Berea, Brook Park, N. Royalton, Parma, Parma Heights, and Strongsville (Union Exhibits 4-8 through 4-12).

An extensive examination of this data shows that with the exception of the Union’s list of prosperous suburbs, that there is no evidence that the Middleburg Heights patrolmen are in any way underpaid with respect to comparable jurisdictions. They are not paid the highest wages and/or total compensation, but the patrol officers are well compensated compared to other jurisdictions’ patrolmen.

If the prosperous suburbs are used as the comparison group, Middleburg Heights patrolmen are paid approximately the same as Shaker Heights and Brecksville and worse than Mayfield Heights, Highland Heights, Solon, Willoughby, Beachwood, and Mentor.¹ Therefore, the Fact Finder believes that the conclusion reached above is correct. That is, the data does not support a finding that the Middleburg Heights Patrolmen are underpaid compared to other comparable jurisdictions. Depending on the comparables list selected,

¹ Most of the cities in the prosperous suburbs have larger populations (tax bases) than Middleburg Heights.

they may not be the best paid patrolmen in the surrounding area, but they are among the better paid police officers in Cuyahoga County.

There is another question to be addressed. The Union's representative testified that the Middleburg Heights patrolmen had negotiated wage increases during a number of prior negotiations based on a tacit understanding that the patrolmen would accept lower raises as a quid-pro-quo for continuation of the health plan offered by the City. The Union submitted SERB data on wage increases negotiated throughout Ohio to support its position. The data show that the patrol officers in Middleburg Heights did receive raises somewhat lower than other jurisdictions, but the difference was usually less than one-half of one percent and sometimes less than that. Regardless, now that the City is proposing changing the health insurance plan, the Union believes that it should receive a wage increase commensurate with the fact that the tacit agreement on a wage/health care nexus is no longer operative.

The Union's position may be true, but times have changed. The time when all health insurance is provided by the Employer with minimal deductibles and no co-pays is passing.² The question is what is a reasonable wage increase for the patrolmen today? The City has offered 1.0% per year. The City claims that the patrolmen are well paid and that their offer is reasonable given all of the data. The Fact Finder does not find that 1.0% is reasonable given the City's financial condition and the information in the comparables data that most jurisdictions have negotiated 2.50% to 3.0% increases for three-year contracts negotiated in 2016 and 2017.2017. The Union has demanded 3.0% per year. That is similar to the amount negotiated in many communities based on the

² The Health Insurance Plan will be discussed in the next section of the report.

SERB data. However, that does not take into account that the Middleburg Heights officers are among the highest paid patrolmen in the area. The Fact Finder believes that given all of the data in the record that a 2.5% per year wage adjustment is reasonable.

Finding of Fact: The Middleburg Heights patrolmen are not underpaid when compared to the surrounding area.

Suggested Language: The wage scale shall be amended to show a 2.5% increase in each year of the prospective contract.

Issue: Article 22 – Wages

City Position: The City demands language be inserted into the contract that specifies that the pay period is two weeks and runs from Saturday to Friday.

Union Position: The Union rejects the City's demand.

Discussion: The City testified that the pay period varies between individuals and that means that a separate payroll statement is generated for each officer. That is, there are 30 officers, and payroll is run for each officer. The City stated that this situation was causing unusually high costs for the payroll office. The stated reason for the conundrum is that an officer cannot be paid for work until the work is actually performed. This is most probably the result of the fact that the patrolmen were hired at different times. The Union rejected the City's proposal and countered that the current system worked well from its point of view.

The Fact Finder is unaware of any other jurisdiction that has the same problem. The language proposed by the City is standard. Sometimes language on the pay period is included in the contract, and sometimes it is simply listed in the Department's Policy

Manual. Regardless, this is standard practice. In this case, the City also testified that the changeover will be instituted in such a way that no patrol officer will suffer any delayed checks (pay). Given the facts of the matter and the cost to the City, the Fact Finder is recommending the City's position on this matter. That is, there is no (minimal) cost to the patrolmen and a significant gain to the City.

Finding of Fact: The current payroll system is out of date, and the City is trying to reduce its costs and replace an unwieldy system.

Suggested Language:

Salary Schedule

24.05 Each pay period will cover two weeks, beginning with Saturday and ending of Friday. Pay for the pay period will normally be issued to each employee on the Friday following the pay period. (the rest of the Article is unchanged).

Issue: Article 24: Insurances

City Position: The City demand is for an increase in the deductible amount paid by the patrolmen from \$100.00 for a single plan and \$200.00 for a family plan to a \$500.00 deductible for a single plan and a \$1,000.00 deductible for a family plan by the end of the contract. In addition, the City demands a 90% - 10% premium share for the patrolmen. That would be approximately \$260.00/mo. in the last contract year based on the City's COBRA charge to employees who are no longer employed by the City.

Union Position: The Union agrees that it will have to pay more for health insurance. The Union wants to phase in the co-pay increase over the life of the contract and offers to pay a capped co-pay of \$60.00 in the first year, a capped \$100.00 in the second year and a capped \$140.00 in the third year of the prospective contract.

Discussion: The City's current health care plan was referred to as a "dinosaur" during the Fact-Finding Hearing. Unfortunately, the days when a fully paid plan was reasonably priced and could be afforded by Employers seems to be vestige of an earlier time. Health insurance has become prohibitively expensive even for self-insured Employers. The health care system can sometimes cure patients in what seems to be miraculous ways, but the cost of miracles has sky-rocketed. The City argues that it is caught in the same high cost health care environment as all other Employers and must get some relief. It has decided to ask its Employees to share the cost. The Union has accepted the fact that its members will have to pay more for their health insurance. The question is how much?

The Union argued that accepting the City's proposal would cost the patrolmen \$920.00 in 2017, \$1,942.00 in 2018, and \$2763.00 in 2020 (Union Fact Finding submission). That is, the patrolmen's wage increase would be entirely used to pay for health care; and even then, the patrolmen would see a fall in their take home pay. The Union argues that this is unnecessarily harsh. The Union believes that its counteroffer is reasonable.

The Fact Finder agrees that the employees will have to bear some of the cost of the health insurance plan. Throughout the State of Ohio, many employees pay a significant portion of their health insurance premium and cost shares of 11% to 15% are a part of life in many jurisdictions. Moreover, most jurisdictions and their employees have had a cost sharing arrangement in place for years. In that sense, the Middleburg Heights patrolmen have been fortunate. However, the imposition of the cost sharing plan is new to the City, and it will have an impact on the living standard of the employees. The Fact

Finder agrees with the Union's contention that an immediate 10% cost share in unreasonable given all of the facts in the record.

Taking into account the City's finances and all of the data introduced by the parties, the Fact Finder is recommending that the deductible be raised to \$250.00 for a single plan and \$500.00 for a family plan in 2017, the amounts will go to \$375.00 for a single plan and \$750.00 for a family plan in 2018, and \$500.00 for a single plan and \$1,000.00 for a family plan in 2019.

In terms of the co-pay, the difference in the parties' positions is immense; but the main difference is that the Union agrees that it will pay up to 10% of the premium subject to a cap. In each year, the cap would limit the employee's contribution to the plan to an amount less than 10%. The City demand is that the 10% cost share be uncapped. That is, each employee would pay a full 10% of the cost of their insurance.

According to the COBRA amounts put into the record by the City, an employee with a family would pay \$220.00/mo. in 2017, \$240.00/mo. in 2018, \$260.00/mo. in 2019.³ This number seems somewhat high. The SERB data put into evidence by both the Union and the City shows that the average monthly premium for a family in a smaller city is approximately \$1,500.00 to \$1,600.00. Based on that figure the 10% contribution demanded by the City is approximately \$155.00 per month. This figure is for 2016 and will surely increase in the future. However, it is significantly less than the \$2,200.00 figure based on Middleburg Heights COBRA figure.

³ Unfortunately, there was no information given on the cost of a single or family plan. The only information was the COBRA cost. That cost should be somewhat higher than the cost for an employed person.

The question is what is a realistic premium contribution for the patrolmen. The Fact Finder is recommending a 3.0% uncapped premium share in the first contract year and an uncapped 5.0% in the second and third contract years. If the family plan does cost the City approximately \$2,000.00, this comes to a \$100.00 contribution. If the cost of the plan rises by approximately \$2200.00/yr., then the employee contribution will rise by \$10.00/mo. In effect, this is a premium split of 95% - 5%. This is less than the City demanded, but going from a plan with a 0% premium share to a 10% share all at once is a drastic change; and the City's financial position does not require that drastic a change over the life of one contract. If the City's finances deteriorate, then future negotiations are the venue to address any issues that arise.

Finding of Fact: The employees should contribute to their health insurance.

Suggested Language:

Insurances

24.01 For the term of this Agreement, the Employer agrees to provide full-time bargaining unit employees health insurance, inclusive of medical, hospitalization and prescription coverage ("Health Care") under a group insurance plan with the insurance coverage being subject to such co-pays and provision as provided for in the plan document and summary of benefits for the health insurance plan. Such group insurance may be provided through a self-insurance plan or an outside provider.

24.02 Employees shall be required to share in the cost of health care coverage. Effective January 1, 2017 (*For the first contract year the cost share component of this award will be effective on the signing date of the contract.*) Employees enrolled in the health insurance program shall contribute three percent (3%) of the monthly cost of health insurance. Effective January 1, 2018 Employees enrolled in the health insurance program shall contribute five percent (5.0%) of the monthly cost of health insurance. Employee contributions shall be withheld in equal installments from the first two payrolls paid each month. Contributions withheld for each month will be for that month's enrollment (i.e., amounts withheld in January will be for January health care coverage). The Employer shall have the right to change insurance carriers, providing the new coverage is comparable to, or improved relative to the present coverage.

24.03 Employees shall be required to pay an annual deductible for the insurance

- a. For 2017 the deductible will be \$250.00 single and \$500.00 for family coverage
- b. For 2018 the deductible will be \$375.00 single and \$750.00 for family coverage
- c. For 2018 the deductible will be \$500.00 for single and \$1,000.00 for family coverage.

Note: With the proposed changes in the Health Care Plan, the Fact Finder is also recommending that the City institute a Health Care Committee. The Committee should have a member from each City bargaining unit, one or two members from the non-organized employees, and a member of the Administration. The Committee should be charged with finding ways for the City to save and at the same time provide a quality health care plan for all employees.

Issue: Article New (Inclusion of a General Order into the Contract).

Union Position: The Union demands that the parties add General Police Order No. G.P.O 04-091 to the contract.

City Position: The City rejects the Union's demand.

Discussion: This is a somewhat unusual demand. The Union stated, and the City agreed that for a period of time that the City was not following its own General Order on overtime scheduling. According to the testimony a patrolman is supposed to be offered overtime when there is an unfilled shift in the patrol division. However, for some number of months, the Chief was not following the General Order and was scheduling a member of the Department who was not a patrolman to work shifts in the patrol division. The patrolmen complained, and the Chief began to follow the General Order. However, the patrolmen demand that the General Order be added to the contract in order to insure overtime scheduling follows established Department policy.

The Fact Finder is sympathetic to the patrolmen's concerns on this issue. However, under the Management's Rights Clause, the Department retains the right to promulgate work rules. In this instance, adding the General Order to the contract would codify a rule that may be changed sometime in the future for any number of reasons. As a rule, General Orders do not belong in a contract.

This is really an internal management issue in which the Department's Administration disregarded their own rules and followed a course of action that adversely affected the bargaining unit. It should not have happened, and it should never happen again. However, if it does, the Union has contractual, administrative, and legal remedies available to contest the Department's actions.

Finding of Fact: The labor agreement is a contract between labor and management, it is not the place for correcting internal management issues.

Suggested Language: None

Issue: Article 35 – Miscellaneous

Union Position: The Union demands that the City pay for the entire cost of a single or family membership to the Middleburg Heights Recreation Center for all patrolmen.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: Currently the City pays for 50% of a membership. The patrolmen want the City to pick-up the other 50%. The Patrolmen argue that the cost of the benefit is small and that there is a benefit to the City from agreeing to the demand. That is, the Union members believe that there is a significant benefit to the citizens of Middleburg Heights if

the officers are in good physical condition. The Union contends that the patrolmen are able to perform their duties in a more efficient way and there is less chance of injury on duty when the officers are physically fit. The Union also contends that there is a benefit to the citizens of the City if there are police officers working out in the building because of the extra security that is provided.

The City rejects the Union's demand because it believes that the building is used by all the City's residents and the patrolmen are also citizens. The City believes that the citizens are paying for the use of the building; and if the citizen patrolmen use the building, they should pay their fair share for the use of the facility.

This is an issue of first impression. The Union testified that a number of the officers use the building either before or after their shifts. The Union contends that the cost is minimal. The City contends that all citizens, including the patrolmen, should pay for the building. The Fact Finder understands both positions and believes that this is an issue of cost for the City and a benefit for the patrolmen. There was no discussion of either the cost of a membership or the finances of the building. Therefore, the Fact Finder is unsure if the building pays for itself in terms of its operating budget or if the City must underwrite some of the operating costs. The Fact Finder also does not know the cost to the City of meeting the Union's demand.

The City and the Union have agreed to discuss the question of 12 hour shifts in a Labor-Management setting. This is another issue that should be addressed in that setting. A conversation on an issue like this might lead to some agreeable solution to the problem.

Finding of Fact: There was not enough information presented at the hearing for the Fact Finder to make an intelligent decision on this issue. Therefore, the Union did not meet its burden of proof on this matter.

Suggested Language: Current Contract Language.

Note: All other tentative agreements are included in this recommendation by reference.

Signed this 9th day of May 2017, at Munroe Falls, Ohio.

Dennis M. Byrne, Fact Finder