

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :  
THE FACT FINDING BETWEEN : CASE NO. 2017--MED-07-0797  
:  
FRATERNAL ORDER OF POLICE, ;  
OHIO LABOR COUNCIL, INC. :  
(ON BEHALF OF LANCASTER :  
POLICE SUPERVISORS :  
ASSOCIATION) : FACT FINDING REPORT  
: Submitted by John F. Lenehan,  
Union, : Fact Finder, March 07, 2018  
: (Via Email)  
and :  
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CITY OF LANCASTER :  
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:  
Employer. :

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**Union Representative:**

Mark Scranton, Staff Representative  
Fraternal Order of Police, Ohio  
Labor Council, Inc.  
222 E. Town Street  
Columbus, Ohio 43215-4611  
Email: [markscranton.fopolic@yahoo.com](mailto:markscranton.fopolic@yahoo.com),  
[tcrawford@fopohio.org](mailto:tcrawford@fopohio.org)  
Cell: (513) 659-3290  
Office: (614) 224-5700  
Fax: (614) 224-5775

**Employer Representative:**

Marc A. Fishel, Esquire.  
Fishel Hass Kim Albrecht  
Downey LLP  
7775 Walton Parkway, Suite 200  
New Albany, Ohio 43054  
Phone :( 614)221-1216  
Email: [mfishel@fishelhass.com](mailto:mfishel@fishelhass.com)

**SERB:**

Email: [Mary.Laurent@serb.state.oh.us](mailto:Mary.Laurent@serb.state.oh.us), [med@serb.state.oh.us](mailto:med@serb.state.oh.us)

**FINDING AND RECOMMENDATION**

**I BACKGROUND**

On October 27, 2017, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of the Fraternal Order of Police, Ohio Labor Council, Inc. (Sergeants and Lieutenants) and the City of Lancaster (Case No. 2017 –MED-07-0797). A Fact Finding Hearing was held on February 22, 2018 at 10:00 A.M., at the Lancaster City Hall, 104 East Main Street, Lancaster, Ohio. The Fraternal Order of Police, Ohio Labor Council, acting for and on behalf of the Lancaster Police Supervisors Association, (“Union”, “FOP”, “LPSA “ or “Association”) was representative by Mark Scranton, Staff Representative for the FOP. The City of Lancaster (“Employer” or ”City”) was represented by Marc A. Fishel, Esquire of Fishel Hass Kim Albrecht Downey LLP. Also, in attendance on behalf of the Union were: Scott Cox, Lancaster Police Department Captain, and Mathew Poffenbarger, Lancaster Police Department Sergeant. Attendees on behalf of the Employer were: David L. Scheffler, Mayor; Adam Pillar, Chief of Police; Daniel Shupp, Deputy Chief; Randall Ullom, Law Director/City Prosecutor; Marc A. Fuhel, Attorney for the City of Lancaster; Gretchen Nihiser, H.R. Director; and, Paul Martin, Service/.Safety Director.

Although, the parties were able to reach a tentative agreement on three outstanding issues at the commencement of the hearing, they did not believe that mediation would be productive in resolving the remaining issues in dispute. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties’ representatives and SERB on March 7, 2018. The following report is the Finding and Recommendation of the Fact Finder.

**A. Description of the Parties and Bargaining Units**

The bargaining unit includes supervisory employees in the Lancaster Police Department in the classifications or ranks of sergeant, lieutenant and captain. The Union or Employee Organization is the Lancaster Police Department Police Supervisors Association. The Association has retained the Fraternal Order of Police, Ohio Labor Council, Inc.to represent it during negotiations. The FOP/OLC also represents the Lancaster patrol officers and dispatchers

for purposes of collective bargaining. The bargaining unit includes three (3) captains, four (4) lieutenants and four (4) sergeants. There are fifty-six (56) patrol officers in the department.

The Employer, the City of Lancaster is a city in Fairfield County, Ohio, United States. As of the 2010 census, the city population was 38,780. It is located near the Hocking River, approximately 33 miles southeast of Columbus and is the county seat of Fairfield County. The estimated per capita income in 2016 was \$23,321.00 (it was 17,645 in 2000). It operates a police department as a law enforcement agency pursuant to the laws of the State of Ohio.

**B. History of Bargaining**

The current Collective Bargaining Agreement (“CBA”), covering the bargaining unit expired October 31, 2017. The parties met to negotiate on September 18<sup>th</sup> and 28<sup>th</sup>, 2017, and reached tentative agreement on the following articles.

- 24 Discipline
- 26 Vacation and Promotion
- 46 Health Insurance
- 62 Shift Differential
- 63 FTO Compensation

The following Articles remained unchanged in the course of negotiations:

- Preamble
- 1 Purpose
- 2 Recognition
- 3 Non-discrimination
- 4 Reasonable Accommodations
- 5 Grammar
- 6 Conformity to Law
- 7 Severability
- 8 Waiver of Negotiations
- 9 Management Rights
- 10 Stationing and Transfer of Personnel
- 11 Trading Shifts
- 12 No Strike/No Lockout
- 13 \*Open\*
- 14 Departmental Rules
- 15 Dues and Fair Share Fee
- 16 Bulletin Boards and Ballot Boxes
- 17 Labor Council Release Time
- 18 Residency
- 19 Retirement

20	Mandatory Retirement
21	Probation
22	Investigations
23	Personnel Files
25	Grievance Procedure
27	Tenure
28	Seniority
29	Layoff and Recall
30	Police Reserve Unit
31	Hours of Work and Overtime
33	Holidays
35	Personal Leave
36	Sick Leave
37	Family Medical Leave
38	Funeral Leave
39	Injury Leave
40	Disability Leave
41	Military Leave
42	Leave of Absence
43	Health and Safety
44	Physical Exams and Physical Fitness
45	Drug Testing
47	Life Insurance
48	Professional Liability Insurance
50	Body Armor/Vests
51	Weapons Purchase
52	Temporary Promotions
53	Demotions
54	Re-Appointment and Re-Employment
55	*Open*
56	Payout of Unused Sick and Vacation Leaves
57	Annual Payout of Sick-Leave Bank
58	Conversion of Sick Leave to Vacation Leave
59	Catastrophic Sick Leave Donation Program
61	Longevity
64	On-Call Compensation
65	Educational Incentive (Professional Pay)
66	Retirement Pickup
67	Copies of Agreement
68	General Outline for Future Negotiation Meetings

In their prehearing statements the parties submitted the following Articles as being in dispute.

32	Use and Carry Over of Compensatory Time
34	Vacation

- 49 Uniform Allowance
- 60 Wages
- 69 Duration

At the Fact Finding hearing on February 22<sup>nd</sup> the parties reached tentative agreements on the following Articles.

- 32 Use and Carry Over if Compensatory Time
- 34 Vacation
- 69 Duration

**C. Incorporation of Articles not in Dispute and Tentative Agreements**

All Articles of the Collective Bargaining Agreement that expired October 31, 2017 not in dispute, and all tentative agreements are hereby incorporated into this Fact Finding Report and Recommendation.

**D. Unresolved Issues**

The only issues remaining in dispute for consideration during this fact finding are: Article 49 Uniform Allowance and Article 60 Wages.

**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)**

#### **FIRST ISSUE - ARTICLE 49**

#### **UNIFORM ALLOWANCE**

##### **Union's Position**

The Union proposes to increase amount for uniform allowances to eleven hundred dollars (\$1,100.00). It states that this proposal was originally part of a package offered by the City, and it is already part of the patrol officers CBA. Apparently, the City chose not to carve this out of its proposal, but opted to bring the matter to hearing for consideration.

As was the case with compensatory time and vacation time, this, according to the Union, was another area in which the City does not have a consistent policy. Those requiring uniforms that are part of the AFSME agreement do not receive an allowance, instead their uniforms are provided by the City. Those covered by the IAFF agreement receive a \$900.00 uniform allowance.

The Union further states that the benefit set forth in the CBA has been at the \$900.00 level since January of 2003. According to the Union, data from the U, S, Bureau of Labor Statistics, indicates that the amount would need to be raised to a minimum of \$1,221.09 as of December of 2017 for the employees to have the same purchasing power as existed when originally negotiated. As shown in the Union's proposal, it is only seeking to raise the Uniform Allowance to the same amount (\$1,100.00) as was originally offered as part of a package and agreed to in the patrol officers' settlement.

Therefore the Union respectfully requests that its position on this matter be granted.

**Employer's Position**

In its Position Statement, the employer argues that the Union is proposing to double the annual uniform allowance. Currently, bargaining unit employees receive \$900.00 per year. In addition, employees who are promoted to a higher rank receive a one-time payment of \$900.00 as do employees transferred to the detective bureau. The uniform allowance is paid in a check to the employees and they are not required to justify the purchases made with this payment. The Union according to the Employer proposes to increase these payments to \$1,800 per year. The Employer proposes to maintain current language.

The Employer claims that the Union offered no justification for any increase in the uniform allowance during negotiations. According to the Employer the captains have benefitted from the one-time payment on three occasions; the lieutenants received it twice and the sergeants one time.

The Employer further argues that the current uniform allowance compares favorably to other City employees and those in other jurisdictions. While the patrol officers received a \$200 increase for uniform allowance, that agreement was reached as part of the overall wage package. Any increase awarded to the bargaining unit, states the Employer is only justified with the same wage increase received by the patrol officers.

**Finding and Opinion**

Both the Union and the Employer have done a superb job in presenting their positions. Based upon the Position Statements, the evidence and arguments submitted at the hearing, and the criteria set forth for a fact finder in making a recommendation, the following has been established.

First, either the Union changed its position from its proposal in negotiations to a lesser demand in its Position Statement, or the Employer was mistaken as to the Union's position at the time it submitted its position statement. It is now clear that the Union is seeking a \$200.00 increase, rather than a \$900.00 increase.

Second, ability to pay is not an issue as to this proposal by the Union. .

Third, the evidence submitted as to the history of bargaining and external and internal comparables favors the Union's position. Especially compelling is the settlement with the Patrol Officers' bargaining unit. Historically, the Patrol Officers and the Supervisors bargaining units

have received the same dollar amount in uniform allowance. The amount has been consistent each year for the employees in both units and upon promotion from patrol to a supervisory position and to a higher rank in the supervisors' unit.

In consideration of the foregoing, it is opinion of the Fact Finder that the Union's proposal should be adopted and incorporated into the successive bargaining agreement.

### **Recommendation**

Therefore, it is recommended that Article 49 Uniform Allowance read as follows:

#### **Article 49**

#### **UNIFORM ALLOWANCE**

##### **Section 49.1 Standardization of Uniforms**

In an effort to provide a professional and unified appearance, the Department shall create a policy standardizing the uniforms. Each member must comply with this policy.

##### **Section 49.2 Annual Allowance**

Each employee covered by this agreement shall receive a uniform allowance in the amount of **eleven hundred dollars (\$1,100.00)** per year. The regular uniform allowance shall be payable to each employee on or before January 31 of each year. **Payment will be made by way of separate check.** The employer shall replace, at no cost to the employee, any uniform/equipment or pieces thereof, which is damaged or destroyed in the line of duty or scope of employment, unless negligence of the employee causes the damage. Any such incident shall be reported to the Employer or the Employer's designee who shall make the appropriate allowance to replace the uniform or part of the equipment.

##### **Section 49.3 Allowance Upon Promotion**

Within ten (10) days of being promoted to a higher rank, employees covered by this Agreement shall receive an additional uniform allowance of **eleven hundred dollars (\$1,100.00)**, in recognition of being promoted to a higher rank. **Payment will be made by way of a separate check.**

##### **Section 49.4 Allowance for Detectives**



Employees who are transferred to the City of Lancaster Detective Bureau shall receive an additional uniform allowance of **eleven** hundred dollars (\$1,100.00) within ten (10) days of such transfer. **Payment will be made by way of a separate check.**

#### **Section 49.5 Vests**

The employer shall provide body armor for all employees requesting a ballistic vest. Employees requiring a vest shall be required to wear the vest while on duty. The City agrees to replace vests in accordance with the manufacturers' recommendations.

If the grant currently received by the City to pay for these vests is eliminated or reduced, the city may reopen this section of the Agreement for negotiations between the parties. The dispute resolution procedure under 4117 shall apply.

### **SECOND ISSUE – ARTICLE 60 WAGES**

#### **Union's Position**

The Union in its Position Statement presents the following description and history of the rank differential method of compensating employees in the bargaining unit.

Under the current CBA wages for the employees in the bargaining unit are set by way of a rank differential tied to the salary of a top paid patrol officer. Sergeants are paid at a rate fourteen percent (14%) higher than the highest paid patrol officer; Lieutenants are fourteen percent (14%) higher than a Sergeant; and, Captains are fourteen percent (14%) higher than a Lieutenant.

Rank differential has been the method by which bargaining unit employees salaries have been established since the initial CBA effective as of January 1985. At that time the differential was at 8.5%. It was increased to 10% in 1986 and 11.5 % in 1987. Between January of 1999 and December 31, 2002, the differential was increased to 13% for Sergeants and Lieutenants, and 10% for Captains. From January 2003 through the end of 2009, the differential changed to 13% between each rank. Starting January 1, 2010 to date, the differential increased to 14% between each rank.

While the Union maintains that the rank differential put in place starting January 1, 2010 was probably representative of the industry norm at that time, such is no longer the case. For this reason, the Union is seeking to increase the rank differential between the ranks of Patrol Officer to Sergeant by an additional two (2%) making the rank differential 16%, 14 %, 14% .The

evidence will show that comparable cities through the region have a rank differential between patrol and Sergeant on average at just over 16%.. The Union's proposal keeps Sergeants at a rank differential slightly below average but more competitive than the current rate. The Union seeks no change in the differential of Lieutenants and Captains as those rates are believed to be competitive. According to the Union, the cost of its proposal is \$51,500.00 for the duration of the Agreement. The Employer has never claimed an inability to pay

### **Employer's Position**

The City proposes to maintain the current 14% differential. Although the CBA expired on October 31, 2017, both parties propose wage increases effective January 1, 2018. The City and FOP reached agreement with the patrol officers on a wage increase of 3.1% in 2018, 2.5% in 2019 and 2.5% in 2020. Under the Union's proposal for this bargaining unit, all supervisors would receive a 5.1% increase in 2018 followed by 2.5% increase in 2019 and 2020.

According to the Employer, the Union's proposal cannot be justified under any of the statutory factors. No employees are receiving a 5.1% increases in one year and more than 10% over the term of a CBA. Such wage increase is not justified by the bargaining history between the parties or external or internal comparable wages. In addition, awarding eleven (11) supervisory employees higher increases than any other city employees received in 2018 is unfair. Finally, such a recommendation would also undermine future negotiations for the city since it would discourage the various unions from agreeing to a new contract at the bargaining table.

Further, the Employer argues that its proposal is extremely fair. It would result in the highest increase for any City employees in 2018. Only patrol officers received a 3.1% increase in 2018. The IAFF employees received a 2.86 % and the AFSCME bargaining unit received a 2% increase. Thus, the internal comparable pay increases would require the Employer's proposal be recommended.

Nor do the historical wage increases for this bargaining unit require a catch-up which is what a 5.1% increase would represent. Between 2007 and 2017, the employees in this bargaining unit received a total increase of 29.5 %. At the same time patrol officers received a 28.5% increase, IAFF increase was 26%, AFSCME was 24% and the communication technicians was 23%.

Also, bargaining unit employees fair even better when compared to increases received by bargaining unit employees in Ohio. The Lancaster supervisor wage increases between 2007

2016 are 8% to 10% more than other unionized employees in law enforcement, cities, the Columbus region and statewide. In 2018, Lancaster sergeants will rank 7<sup>th</sup> out of eleven jurisdictions and be paid more than \$4,000.00 above the average of other cities. Lieutenants will rank first out of the comparable jurisdictions and be paid \$16,000 above average. Captains will rank 2<sup>nd</sup> and be paid approximately \$10,000 above the average. In 2017 sergeants in the Lancaster police department were paid almost \$12,000 more than sergeants in the Fairfield County Sheriff's Office and lieutenants were paid more than \$14,000 than lieutenants in the Sheriff's Office.

Bargaining unit employees are paid more than the supervisors in the fire department. No other City employees have even the current pay differential received by the police department supervisors. In fact, only supervisors in the fire department have any type of automatic rank differential. Under the IAFF agreement, the two supervisor positions are lieutenant and captain. The lieutenants are paid 12% more than the next lowest rank and captains are paid 12 % higher than lieutenants. During negotiations for a new collective bargaining agreement, the IAFF sought to increase the differential to 14% because it is what the police supervisors have. The parties agreed to maintain the current rank differential.

The Employer also argues that automatic differentials are rare in comparable collective bargaining agreements. Under most agreements, the parties negotiate an across the board wage increase for all ranks instead of giving the supervisors an automatic increase.

Finally, argues the Employer, there is no evidence that the Lancaster Police Department is having trouble retaining employees in the supervisory ranks.

Therefore, the facts in this case and the statutory considerations require that the current 14% differential remain in place for the term of the successor CBA.

### **Finding and Opinion**

As with the first issue set forth above, the parties have done a superb job in presenting their positions. Based upon the Position Statements, the evidence and arguments submitted during the hearing, and the criteria set forth for a fact finder in making a recommendation, the following has been established.

First, the ability to pay is not an issue. The Employer conceded this at the hearing and the financial statements and audit reports submitted into evidence clearly establish that the Employer would have the financial resources to pay for the Union's proposal. (See Union's Exhibits on Flash Drive)

Second, the system of rank differentials as provided in the parties CBA is not common practice throughout the State. (See Employer Exhibit 12).

Third, where rank differentials exist, the evidence shows that comparable cities throughout the region have a rank differential between patrol and Sergeant on average at just over 16%.

Fourth, the internal and external comparables establish that the bargaining unit employees are competitively paid compare to employees performing the same or similar work (See Employer's Exhibits 7 through 10).

Fifth, the percentage increase based upon the current rank differentials is at the high end of the percentage increases granted to comparable bargaining units and throughout the State of Ohio (See Employer's Exhibit 11, 13 through 16).

Sixth, the evidence submitted does not establish that other units receive 5.1 % increase.

While the rank differential for sergeants may be lower than other jurisdictions, it is not relevant here because it does not provide an accurate comparison of actual wages paid. The Union's focus on the percentage differential is misplaced in this case. The wage rates and percentage increases are competitive and at the high end of percentage increases in wage settlements. An increase in the rank differential to 16% for Sergeants cannot be justified at this time.

It is the opinion of the Fact Finder that the Union's proposal to increase in the rank differential for Sergeants to 16% should be denied and not included in the successor CBA.

### **Recommendation**

Therefore, it is the recommendation of the Fact Finder that there be no increase in the rank differential as proposed by the Union and that the differential remain the same as set forth in the CBA that expired October 31, 2017.

**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 February 22, 2018. 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

March 7, 2018

V  
**PROOF OF SERVICE**

This fact-finding report was electronically transmitted this 7th day of March 2018 to the persons named below.

**Union Representative:**

**Mark Scranton, Staff Representative  
Fraternal Order of Police, Ohio  
Labor Council, Inc.  
222 E. Town Street  
Columbus, Ohio 43215-4611  
Email: [markscranton.fopolic@yahoo.com](mailto:markscranton.fopolic@yahoo.com),  
[tcrawford@fopohio.org](mailto:tcrawford@fopohio.org)  
Cell: (513) 659-3290  
Office: (614) 224-5700  
Fax: (614) 224-5775**

**Employer Representative:**

**Marc A. Fishel, Esquire.  
Fishel Hass Kim Albrecht  
Downey LLP  
7775 Walton Parkway, Suite 200  
New Albany, Ohio 43054  
Phone :( 614)221-1216  
Email: [mfishel@fishelhass.com](mailto:mfishel@fishelhass.com)**

**SERB:**

**Email: [Mary.Laurent@serb.state.oh.us](mailto:Mary.Laurent@serb.state.oh.us), [med@serb.state.oh.us](mailto:med@serb.state.oh.us)**

**SERB:**

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

March 7, 2018