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**IN THE MATTER  
OF  
FACT FINDING  
DETERMINATION & RECOMMENDATION**

<b>BETWEEN</b>	<b>CASE NO: 98-MED-07-0665 (Police Officers)</b>
<b>The Ohio Patrolmen's Benevolent Association and the City of Barberton, Ohio</b>	<b>FACT FINDER: JOHN S. WEISHEIT</b>
	<b>HEARING DATE: JANUARY 19, 1999</b>
	<b>AWARD ISSUED: February 22, 1999</b>

**REPRESENTATION**

by

<b><u>Employer Representatives</u></b> Lawrence W. Vuillemin, Esq. Att. For City	<b><u>Union Representatives</u></b> Randy Weltman, Esq. Att. For the Union
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**AUTHORITY**

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

## **BACKGROUND**

The City of Barberton, Ohio, hereinafter called the "City" and/or the "Employer", recognizes the Ohio Patrolmen's Benevolent Association, hereinafter called the "OPBA" and/or the "Union" as the bargaining representative of its full-time employees in the Division of Police in the position of Police Officers. There are currently 32 probationary & full-time officers in this bargaining unit. The parties have engaged in good faith bargaining to attain a successor agreement to the one expiring December 31, 1998. The parties have agreed that the successor agreement will be of a 3-year duration. In the course of bargaining, impasse occurred. The above named Fact Finder was assigned in keeping with provisions of the ORC 4117 and SERB Rules & Regulations. A Fact Finding Hearing was convened on January 19, 1999. The parties timely provided the Fact Finder with pre-hearing documents as required under ORC 4117. Before adjourning the Hearing, the parties indicated sufficient opportunity to introduce such documents and testimony considered relevant. The Fact Finding Report, inclusive of recommendation, was agreed to be issued within 30 days of the Hearing..

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
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, the ability of the public Employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
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 public service or in private employment.

The parties have tentatively agreed to the provision that the Agreement will be in effect from January 1, 1999 - December 31, 2002.

The following Report is based on information provided in documents and testimony introduced at that time and in keeping with statutory consideration cited above..

**ISSUES OF TENTATIVE AGREEMENT**

The following issues were at tentative agreement between the parties prior to impasse.

Article 1 Purpose	Article 13 Equalization of Overtime
Article 2 Recognition	Article 14 Waiver in Case of Emergency
Article 3 Headings	Article 15 Union Rights
Article 4 Interpretation of Agreement	Article 18 Overtime and Court time
Article 5 Conformity to Law, Legislative Approval	Article 19 Out of Classification Pay
Article 6 Management Rights	Article 21 Vacation
Article 7 Employee Rights	Article 22 Uniform & Safety Equipment Payment
Article 8 Union Dues & Fair Share Fees	Article 23 Educational Benefits/Incentives
Article 9 Grievance Procedure	Article 24 Life Insurance
Article 10 Join Labor Management Committee	Article 26 Probationary Period
Article 11 No Strike Clause	Article 27 Professional Liability
Article 12 Disciplinary Procedure	Article 28 Sick, Personal, and Funeral Leave
	Article 29 Injury Leave

**ISSUES OF TENTATIVE AGREEMENT**

**AT FACT FINDING**

The following issues reached Tentative Agreement at the Fact Finding Hearing:

Article 16, Wage Rates & Compensation, Section 16.3
Article 17 Hours of Work, Section 17.2
Article 20 Holidays
Article 25, Sections 25.1, 25.2, 25.3, 25.5, 25.6, 25.7
Article 30, Sections 30.2, 30.3, 30.4, 30.5
Article 31 Duration

**ISSUES AT IMPASSE**

The following issues

Article 16 Wage Rates & Compensation Sections 16.1, 16.2, 16.4, 16.5,	Article 25 Medical Ins., Section 25.4
Article 17 Hours of Work, Section 17.1	Article 30 Severance & Retirement Benefits Section 30.1
Article 23 Educ. Ben./ Incentives, Section 23.1	(New)___ Promotions

**SUMMARY OF THE PARTIES RESPECTIVE POSITION  
ON ISSUES AT IMPASSE**

**Case No. 98-MED-07-0665  
(Patrol Officers)**

<b>Employer</b>	<b>Issue</b>	<b>Union PO</b>
Inc.: 4-4-4% with compression of steps	Article 16 Wage Rates & Compensation 16.1	5% 5% 5% Current steps
Change re: new steps. Related to 16.1.	16.2	Current Lang.
Delete current provision.	16.4 (new)	Inc. Shift Differ rate \$0.60/afternoon \$0.65/midnight
Lang. change, re: 16.1	16.5	Current Lang.
Change shift starting time to be 40 min. earlier than current.  Reject Union proposal  Add lang. To allow the Chief to establish other shifts as deemed necessary.	Article 17 Hours of Work 17.1	Reject  Shift bidding by seniority  Reject
Delete requirement for the City to pay the deductible of retired employees as a condition to add RK/LK corrective eye surgery.	Article 25 Medial Ins. Sections 25.1/25.4  Section 25.5	Retain current lang. for retirees.  Add RK/LK Corrective eye surgery coverage, not conditional.
Severance pay eligibility tied to taking retirement benefits under PFDF	Article 30 Severance & Retirement Benefits 30.1	Severance Pay eligibility related to becoming vested in PFDF.
Reject Union prop.	(New)____ Promotions	Prohibit use of oral assessment as a component in the promotion process.

## **DISCUSSION & DETERMINATION**

### **General**

While the issues at impasse are considered independently, as required to comply with ORC 4117, consideration was given to the totality impact of the issues at impasse as well as those issues of tentative agreement. The recommendation takes into account effect of items at tentative agreement as well as the issue at impasse.

The issue of "Ability/Inability to Pay" is not raised. The issue of salary is argued from a basis regarding "appropriateness" of rate. The City's financial history reflects a stable base for operation in providing services to the community.

### **Comparables**

Comparables give a basic direction in consideration of economic issues. This includes references to other City bargaining units, including those within the same or similar division. Each bargaining unit of City employees is recognized as having unique differences in matters of employment consideration and thus priorities. Differences exist in specific terms and priorities that may well result in differences in the ultimate terms of the respective agreements.

### **Department Bargaining Unit Relationship**

Other departmental employee units are at impasse and before this Fact Finder. The issues and priorities are given consideration to priority of each respective bargaining unit. Recommendations for this bargaining unit are therefore primarily influenced by the priority communicated to a greater extent than the Fact Finding Report and Recommendations for other bargaining units in the Barberton Police Department. In some respects, pattern recommendations are made where they are determined relevant.

**Issue**

**ITEM BY ITEM  
DISCUSSION**

Article 16  
Wage Rates &  
Compensation  
16.1

Wage increase consideration includes facts presented on comparisons to other departments, municipalities, and general economic conditions and trends. The compounding cost effect over the life of the contract is also taken into consideration. The Union's shift in position at Fact Finding regarding compression of the current wage structure significantly changes the relative cost difference in the parties' respective positions at time of impasse. A significant arguing factor recognized by the parties deals with maintaining comparable wage rates with other area law enforcement agencies. The following wage recommendation is made in consideration of the financial facts presented, statutory mandated considerations, and total economic benefits included in the Agreement.

**Recommendation**

**It is recommended that the current wage schedule in Section 16.1 be increased by 4.75% at each step effective January 1, 1999. Effective January 1, 2000, the wage schedule be increased 4.75%. Effective January 1, 2001, the wage schedule be increased 4.75%.**

16.2

Based on the recommendation to retain the current wage schedule structure in Section 16.1, it is determined that Section 16.2 language proposed by the City not be included in the Agreement.

**Recommendation**

**It is recommended that proposed changes in this Section, related to the City's compression proposal, not be included in the Agreement.**

**Issue**

**ITEM BY ITEM  
DISCUSSION**

Section 16.4 &  
Section 16.5

Section 16.4 & Section 16.5 are considered together. The deletion of current Section 16.4 would be appropriate and addition of the Employer's new Section 14 if the Employer's compression proposal were adopted. Since that concept is not recommended in this Report, retention of current Section 16.4 language is recommended to avoid potential question regarding past bargaining history or bargaining intent during the life of the Agreement..

Section 16.5

In concert with the recommendation in Section 17.1, shift differential can be an enticing element in attaining voluntary desired shift staffing. As a part of the total economic package, the following recommendation is made.

**Recommendation**

**It is recommended that Section 16.4 of the Agreement include current language.**

**It is recommended that Section 16.5 reflect a \$0.10/hr increase of the current shift differential for shifts 2 & 3.**

**Issue**

**ITEM BY ITEM  
DISCUSSION**

Article 17  
Hours of Work  
Section 17.1

The current agreement has specific controlling language regarding hours of work. Such contractual provision is the exception rather than the rule. Thus, any modification or change to current provisions are made only with strong and compelling persuasion.

The first issue at impasse in this Section is the City's proposal to start the shifts 40-minutes earlier than the times stated in the expiring contract. This was to provide for greater patrol road coverage in relationship to the start of the school day. On this point, no major resistance was voiced by the Union. It is persuasive that such a change can provide added service to the community and does not appear to cause any major negative impact on bargaining unit members.

The second issue at impasse is the City's proposal to add a provision giving the Chief of Police authority to add such shifts as he may unilaterally determine. This is considered a significant modification of the current contractual provisions. The City's major objective, regarding this point, was to provide for the potential of adding a swing shift. Such would increase the number of patrol officers on duty those hours that would provide greater service to the community. The City indicates the need to attain additional Patrol Officers to staff such a swing shift. Union opposition reflects concern of impute to such a provision rather than opposition to the concept or recognition of benefit of a swing shift.

**Issue**

**ITEM BY ITEM  
DISCUSSION**

Section 17.1 cont'd

The third issue at impasse in Section 17.1 is the proposal by the Union to include language regarding shift staffing based on bidding by seniority. Considerable evidence and testimony was introduced regarding this subject. The facts demonstrate that seniority has traditionally controlled staffing needs for each shift. This is noted as a significant different issue than the seniority being the controlling factor regarding promotion. It is also recognized that the inclusion of contractual language on this point is a greater contractual right than is the reliance of a controlling past practice. The City's primary opposition to Union's proposal is its concern of a potential shift staffed by probationary and less experienced officers.

Other facts taken into consideration on this section include:

\*The department currently consists of 43 sworn officers, with an average of 9.43 years of service. 17 officers (40%) have less than 5 years of experience with the City.

\*Seniority is derived from service to the City. It is not uncommon for officers employed by the City to have prior law enforcement experience in prior employment.

\*Each shift includes at least 2 command officers who are with greater experience.

\*Probationary officers serve for a period of one year.

\*The current 7 probationary officers will end such status by October, 1999. The City indicates its intent to hire an additional 4 officers this year.

The following recommendation revises the shift hours and provides for an additional swing shift to meet service needs of the community while contractually providing patrol officer seniority rights in shift bidding in a manner that assures a balance in shift assignments for less experienced officers.

**Issue**

**ITEM BY ITEM  
DISCUSSION**

**Section 17.1 cont'd  
Recommendation**

**It is recommended that current language of Section 17.1 be included with the following revisions and additions**

<b>(Revised)</b>	<b>1<sup>st</sup> Shift</b>	<b>0600 - 1400</b>
	<b>2<sup>nd</sup> Shift</b>	<b>1400 - 2200</b>
	<b>3<sup>rd</sup> Shift</b>	<b>2200 - 0600</b>

**(Add)**

**“One swing shift may be added by the Chief of Police. Such shall occur after attaining increased staffing levels to adequately operate such a shift and discussion with Union representatives regarding related details.”**

**“All shift staffing shall be achieved by unit officers by annual assignment. Seniority shall be controlling in filling such positions or shift vacancies that occur within the year. For purposes of this Section, these seniority rights shall be extended to patrol officers with 4 or more years of service to the City.”**

**Article 25  
Medial Ins.  
Section 25.4**

**The City’s proposal to delete the contractual medical benefits for retired employees is recognized as an economic cost to the City. It is determined that this is a part of the total economic benefits.**

**Recommendation**

**It is recommended that the Agreement retain current language in Section 25. In addition, it is recommended that RK/LK corrective eye surgery coverage be added to the plan for active bargaining unit members.**

**Issue**

**ITEM BY ITEM  
DISCUSSION**

Article 30  
Severance & Retirement  
Benefits  
Section 30.1

“Severance pay” is directly related to retirement in current Section 30.1. Current language provides a formula “buy-out” of accumulated and unused sick leave. Such provisions are common in Ohio public sector. Service credit for retirement under the State of Ohio’s PFPDF are transferrable from applicable employers. The PFPDF is subject to State control and regulations independent of the collective bargaining agreement. The City’s proposed change in Section 30.1 is editorial in nature rather than substantive of current language. The finding of fact does is not persuasive to make substantive change as proposed by the Union.

**Recommendation**

**It is recommended to include Section 30.1 as proposed by the City.**

(New)\_\_\_\_  
Promotions

Based upon review of the facts and consideration of the revised promotional process, it is recommended that this provision not be included in the Agreement.

**Recommendation**

**It is recommended that the Union proposed provision not be included in the Agreement.**

## **DETERMINATION AND AWARD**

It is recommended that all items of tentative agreement be included in the Agreement. If not otherwise addressed, it is recommended all provisions of the expiring agreement be included in the Agreement.

It is recommended that all items tentatively agreed to at the Fact Finding Hearing be included in the Agreement.

It is recommended that the following terms be included in the Agreement:

### **Article 16 - Wages & Compensation**

- 16.1 It is recommended that the current wage schedule in Section 16.1 be increased by 4.75% at each step effective January 1, 1999. Effective January 1, 2000, the wage schedule be increased 4.75%. Effective January 1, 2001, the wage schedule be increased 4.75%.
- 16.2 It is recommended that proposed changes in this Section, related to the City's compression proposal, not be included in the Agreement.
- 16.4 It is recommended that Section 16.4 of the Agreement include current language.
- 16.5 It is recommended that Section 16.5 reflect a \$0.10/hr increase of the current shift differential for shifts 2 & 3.

### **17 Article- Hours of Work**

- 17.1 It is recommended that current language of Section 17.1 be included with the following revisions and additions

(Revised)	1 <sup>st</sup> Shift	0600 - 1400
	2 <sup>nd</sup> Shift	1400 - 2200
	3 <sup>rd</sup> Shift	2200 - 0600

(Add)

"One swing shift may be added by the Chief of Police. Such shall occur after attaining increased staffing levels to adequately operate such a shift and discussion with Union representatives regarding related details."

"All shift staffing shall be achieved by unit officers by annual assignment. Seniority shall be controlling in filling such positions or shift vacancies that occur within the year. For purposes of this Section, these seniority rights shall be extended to patrol officers with 4 or more years of service to the City."

### **Article 25 Medical Insurance**

It is recommended that the Agreement retain current language in Section 25. In addition, it is recommended that RK/LK corrective eye surgery coverage be added to the plan for active bargaining unit members.

**Article 30 Severance & Retirement Benefits**

30.1 It is recommended to include Section 30.1 as proposed by the City.

**Article \_\_\_ Promotions**

It is recommended that the Union proposed provision regarding promotions not be included in the Agreement.

## **TOTALITY OF AGREEMENT**

This will affirm the foregoing report, consisting of **14 pages**, inclusive of this page, and recommendations contained herein, are made in this matter of Fact Finding by the below signed Fact Finder.

All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, that language in the Recommendations shall prevail.

All matters of tentative agreement are recommended to be included in the Agreement.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this **20<sup>th</sup> Day of February, 1999**.



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**John S. Weisheit, Fact Finder**

# CERTIFICATE OF SERVICE

*This will affirm that the Fact finding Report in the Matter of Fact finding between*

City of Barberton, Ohio

v

The Ohio Patrolmen's Benevolent Association

Case No.

97-MED-07-0665

(Patrol Officers)

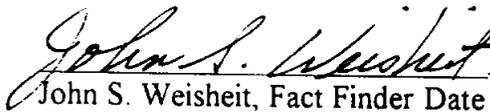
*was served to the below named parties at the stated addresses*

Lawrence W. Vuillemin, Esq.  
1 Cascade Plaza  
Akron, OH 44308

Randy Weltman, Esq.  
The Halle Building, 9<sup>th</sup> Floor  
1228 Euclid Avenue  
Cleveland, OH 44115

*by 1st Class U.S. Postal Service Mail, on February 20, 1999.*

*I affirm, to the best of my knowledge that the foregoing is true and accurate.*

 February 20, 1999  
John S. Weisheit, Fact Finder Date