

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

BETWEEN	CASE NO: 98-MED-07-0666 (Sergeants & Lieutenants)
The	
Ohio Patrolmen's Benevolent Association	FACT FINDER: JOHN S. WEISHEIT
and the	HEARING DATE: JANUARY 19, 1999
City of Barberton, Ohio	AWARD ISSUED: February 22, 1999

**REPRESENTATION
by**

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

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 ranking officers of Lieutenant and Sergeant in the Division of Police. There are currently 8 members 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 reached tentative agreement on 23 of 32 articles for a successor agreement. 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.

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 12 Disciplinary Procedure
Article 2 Recognition	Article 13 Equalization of Overtime
Article 3 Headings	Article 14 Waiver in Case of Emergency
Article 4 Interpretation of Agreement	Article 15 Union Rights
Article 5 Conformity to Law, Legislative Approval	Article 18 Overtime and Court time
Article 6 Management Rights	Article 19 Out of Classification Pay
Article 7 Employee Rights	Article 21 Vacation
Article 8 Union Dues & Fair Share Fees	Article 22 Uniform & Safety Equipment Payment
Article 9 Grievance Procedure	Article 26 Probationary Period
Article 10 Join Labor Management Committee	Article 27 Professional Liability
Article 11 No Strike Clause	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 Medical Insurance, Sections 25.1, 25.2, 25.3, 25.5, 25.6, 25.7
Article 30 Severance and Retirement Benefits, Sections 30.2, 30.3, 30.4, 30.5
Article 31 Duration

ISSUES AT IMPASSE

The following issues remain unresolved and are considered at impasse:

Article 16 Wage Rates & Compensation Sections 16.2, 16.4	Article 24 Life Ins.
Article 17 Hours of Work Section 17.1	Article 25 Medial Ins. Section 25.4
Article 23 Educ. Benefits/ Incentives Section 23.1	Article 30 Severance & Retirement Benefits Section 30.1

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

Employer	Issue	Sgts & Lts
Delete current provision.	Article 16 Wage Rates & Compensation 16.4 & 16.5	Inc. Shift Differ rate \$0.60/afternoon \$0.65/midnight
Change shift starting time to be 40 min. earlier. Reject Add lang. To allow the Chief to establish other shifts as deemed necessary.	Article 17 Hours of Work 17.1	Reject Shift bidding set by seniority Reject
Reject Union proposal	Article 23 Educ. Ben. Incentives 23.1	Current Language 2yr. Deg. +1.5% 4 yr. Deg. +.75%
Increase life ins. to \$25,000 and drop further benefit to retirees as a cond of inc.	Article 24 Life Ins.	Inc. ins. to \$20,000 Retain current lang. for retirees.
Delete requirement for the City to pay the deductible of retired employees as a condition to add RK/LK corrective eye surgery. Reject Union prop.	Article 25 Medial Ins. 25.4	Retain current lang. Add RK/LK Corrective eye surgery coverage. Inc. Gen spending cap to \$200/fam. Member
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.

FACT FINDER'S DISCUSSION

General

While the issues at impasse were considered independently, as required to comply with ORC 4117, consideration was given to the totality of each economic issue's impact on the Agreement. The recommendation takes into account effect of items at tentative agreement as well as the issues 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.

This Fact Finder has been called upon to make Fact Finding Recommendations and Reports for the 3 bargaining units in the Police Departments; Dispatcher/Jailers, Patrol Officers; and Lieutenants/Sergeants. The parties understand that in certain cases, relevant finding of fact for one bargaining unit is applicable to other units. This is particularly true regarding terms in the Police Officer Agreement and Lieutenant/Sergeant Agreement. Some provisions in these 2 agreements are directly related. Though much language is the same in the respective Agreements, a number of provisions are significantly different in language as well as expressed priority and issues at impasse before the Fact Finder. In part, this is reflected in distinction in function and role between the command responsibilities of ranking officers in this Agreement as contrasted to line officers and the dispatcher/jailers specific language stating similar terms in their respective agreements.

In some cases applicable recommendations considered appropriate to reflect the same or similar terms in other Police Department bargaining unit Fact Finding Reports and Recommendation. Review of that fact finding report may provide additional rationale to recommendations set forth in this Report. This is particularly true in the case of the Police Officer's Fact Finding Report.

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.

Recognizing other safety force units' issues and priorities particularly effect the economic terms, it is recognized that recommendations for this bargaining unit may not directly parallel the Fact Finding Report and Recommendations for other bargaining units in the City currently before this Fact Finder.

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 & Comp. Sec. 16.2	The wage schedule structure is recommended to be retained in the Police Officer Agreement. It is determined, to be consistent, retention of current language is relevant to this Agreement as well.
Recommendation	It is recommended that the current language in Section 16.2 be included in the Agreement.

ISSUE

ITEM BY ITEM DISCUSSION

Sec. 16.4 & 16.5

It was recommended that the current wage schedule structure be included as currently stated in the Police Officer Agreement. As such, retention of current language in Section 16.4 is appropriate in this Agreement.

The parties have established a shift differential pay. The facts are not persuasive to recommend the deletion of such a provision. To retain relative comparability in the totality of wage benefits, a modest increase in shift differential pay is considered appropriate.

Recommendation

It is recommended the current Section 16.4 language be modified to reflect hourly increases pursuant to the wage increases recommended in the Police Officers Agreement.

It is recommended the language in the current Section 16.5 be included in the Agreement with the amounts reflecting a \$0.10/hr increase.

Article 17 Hours
of Work
Sec. 17.1

The current agreement has specific language setting the beginning and ending of each shift. This contractually defines the hours of work for employees. Any recommended modification or change to the current provisions are made only with strong and compelling finding of fact..

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.

ISSUE

ITEM BY ITEM DISCUSSION

Sec. 17.1
Cont'd

The second issue at impasse is the City's proposal to add a provision giving the Chief of Police the authority to add such shifts as he determine. This is also considered a significant modification of the current provision. The City's major concern on this point relates to providing a swing shift during crucial hours for better serve the community. The City's major argument on this issue to include one swing shift to increase the number of patrol officers on duty during crucial hours as a means to 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. While persuaded that such a provision can benefit the service to the community, particular details need to be further discussed between the parties.

The third issue regarding shift bidding by seniority is not viewed in the same context for ranking officers as for line officers. First is the responsibility of command and second, the number of ranking officers available to cover all shifts.

Section 17.1
cont'd

Recommendation

It is recommended that current language in Section 17.1 be included in the Agreement with the following revisions/additions:

{Revise)	1st Shift	0600 - 1400
	2nd Shift	1400 - 2200
	3rd Shift	2200 - 0600

(Add) The Chief of Police may establish, in addition to the three established shifts one swing shift. Such shift may occur after attaining sufficient additional necessary officers and after discussion with the Union .

Article 23 Educ.
Benefits/Incentives
Section 23.1

Recommendation

There is found no persuasive basis in facts presented to cause a recommendation to alter current language in Section 23.1.

It is recommended that current language in Section 23.1 be included in the Agreement.

ISSUE

ITEM BY ITEM DISCUSSION

Article 24 Life
Insurance

The fact that the City and Union have established a practice of providing life insurance for retiree is considered as part of the total economic package of the Agreement. It is determined that a 2-tier benefit provision may better serve active and retired unit employees.

Recommendation

It is recommended that current language in Section 24.1 be modified to provide \$25,000 instead of \$10,000.

It is further recommended that Section 24.2 be modified to read as follows: "...When an employee retires, he/she will be continue to be covered for \$10,000 life insurance benefit at the City's expense. Said retired employee may purchase additional coverage, up to the maximum provided active employees, by paying the additional monthly premium costs. Such will be allowed if the insurance carrier will so allow. Upon retirement or seventy (70) years of age, ..."

Article 25 Medical
Insurance

Facts and testimony are not found persuasive to recommend change to the terms currently set forth in Article 25. Cost factor of insurance benefits are considered in total of the economic package set forth in the recommended Agreement

Recommendation

It is recommended that current language in Article 25 be included in the Agreement and reflect such modifications as tentatively agreed to by the parties. 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

“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.

RECOMMENDATIONS

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

It is recommended that the current language in Section 16.2 be included in the Agreement.

It is recommended the current Section 16.4 language be modified to reflect hourly increases pursuant to the wage increases recommended in the Police Officers Agreement.

It is recommended the language in the current Section 16.5 be included in the Agreement with the amounts reflecting a \$0.10/hr increase.

Article 17 - Hours of Work

It is recommended that current language in Section 17.1 be included in the Agreement with the following revisions/additions:

{Revise)	1 st Shift	0600 - 1400
	2 nd Shift	1400 - 2200
	3 rd Shift	2200 - 0600

(Add) The Chief of Police may establish, in addition to the three established shifts one swing shift. Such shift may occur after attaining sufficient additional officers determined necessary and after discussion with the Union .

Article 23 - Education Benefits/Incentives

It is recommended that current language in Section 23.1 be included in the Agreement.

Article 24 - Life Insurance

It is recommended that current language in Section 24.1 be modified to provide \$25,000 instead of \$10,000.

It is further recommended that Section 24.2 be modified to read as follows: "...When an employee retires, he/she will be continue to be covered for \$10,000 life insurance benefit at the City's expense. Said retired employee may purchase additional coverage, up to the maximum provided active employees, by paying the additional monthly premium costs. Such will be allowed if the insurance carrier will so allow. Upon retirement or seventy (70) years of age,

Article 25 - Medical Insurance

It is recommended that current language in Article 25 be included in the Agreement and reflect such modifications as tentatively agreed to by the parties. 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

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

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **12 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 **February 22, 1999**.



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

Ohio Patrolmen's Benevolent Association

Case No.

98-MED-07-0666

(Lieutenants & Sergeants)

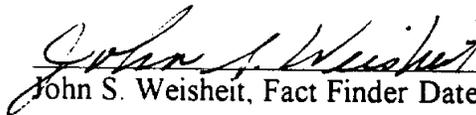
was served to the below named parties at the stated addresses

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

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

by 1st Class U.S. Postal Service Mail, on February 18, 1999.

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

 February 18, 1999
John S. Weisheit, Fact Finder Date