

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

STATE EMPLOYMENT  
RELATIONS BOARD

Nov 17 10 20 AM '99

<b>BETWEEN</b>	<b>CASE NO: 99-MED-06-0575 (Police Officers)</b>
<b>The Ohio Patrolmen's Benevolent Association and the City of Wapakoneta, OH</b>	<b>FACT FINDER: JOHN S. WEISHEIT</b>
	<b>HEARING DATE: October 5, 1999</b>
	<b>AWARD ISSUED: November 15, 1999</b>

**REPRESENTATION  
by**

<b><u>Employer Representatives</u></b>	<b><u>Union Representatives</u></b>
Pete Lowe, Clemens, Nelson & Associates	Joseph M. Hegedus, Esq. Att. for OPBA

**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 matters before the Fact Finder are 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 Wapakoneta, 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 about 10 patrol officers in this bargaining unit. The bargaining unit specifically excludes the Police Chief, officers of the rank of Sergeant and above. The parties have engaged in good faith bargaining to attain a successor agreement to the one that expired April 30, 1999.

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 October 5, 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 on or about November 15, 1999..

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 a number of provisions to be included in the Agreement.

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 the declaration of impasse.

	Preamble/Purpose	Article 28	Funeral Leave
Article 1	Management Rights	Article 29	Payment of Accumulated Sick Leave Upon Retirement
Article 2	Recognition		
Article 3	Dues Deduction/Fair Share Fee	Article 30	Payment of Accumulated Sick Leave to an Estate
Article 4	Union Business	Article 31	Injury Leave
Article 5	Labor/Management Comm	Article 32	Military Leave
Article 6	Non-Discrimination	Article 33	Personal Leave Days
Article 7	Policies/Work Rules	Article 34	Unpaid Leaves of Absence
Article 8	Bulletin Boards	Article 36	Damage to Personal Property
Article 9	Health & Safety	Article 37	Expense Reimbursement
Article 10	Probation	Article 38	Training
Article 11	Seniority	Article 39	Physical Exams
Article 12	Reduction in Force	Article 41	Drug/Alcohol Testing
Article 14	Grievance Procedure	Article 42	No Strike/No Lockout
Article 15	Application of Civil Service	Article 43	Waiver in Case of Emergency
Article 16	Vacancies and Promotions	Article 44	Severability
Article 18	Longevity	Article 45	Waiver of Negotiations
Article 20	Educational Incentive	Article __	Canine Unit
Article 22	Call-in/Court Time		Letter of Agreement #1
Article 26	Vacation		Letter of Agreement #2
			Letter of Agreement #3
			Letter of Agreement #4

### ISSUES AT IMPASSE

The following issues were at impasse at time of the Fact Finding Hearing:

Article 13	Discipline	Article 25	Holidays
Article 17	Wages	Article 27	Sick Leave
Article 19	Shift Differential	Article 35	Insurance
Article 21	Uniform Allowance	Article 40	Trading Shifts
Article 23	Hours of Work/Overtime	Article 46	Duration
Article 24	Officer in Charge Pay	Article __	Working Outside of Class.

**ISSUES OF TENTATIVE AGREEMENT**  
**AT FACT FINDING**

The following issue(s) reached Tentative Agreement at the Fact Finding Hearing:

Article 13      Discipline

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

Employer	Issue	Union
Eff. Oct. 15, 1999 - 3% inc. Eff. Oct. 15, 2000 - 2% inc. Eff. Oct. 15, 2001 - 2% inc.	Article 17 Wages	Eff. May 1, 1999 9.5% inc. Eff. May 1, 2000 5.0% inc. Eff. May 1, 2001 3.0% inc.
Agree to Union original proposal as part of total econ. package.	Article 19 Shift Differential	Inc. Shift Differ rate by \$0.05/hr.
Inc. \$50.00 per year.	Article 21 Uniform Allowance	Inc. by \$50.00/yr. to \$485.00/yr.
Retain current language.	Article 23 Sec. 23.3 Hours of Work/Overtime	Provide use of Comp Time in FLSA.
Increase current rate OIC rate by \$0.05/hr to \$0.55/hr.	Article 24 Officer in Charge Pay	Inc. OIC by \$0.25/hr. to \$0.75/hr.
Retain current language.	Article 25 Holidays	Inc. one (1) floating Holiday .
Retain current sick leave accrual rate formula of .0462 hrs./ 12 days a year.	Article 27 Sick Leave	Inc. accrual rate of sick leave formula .0575 hr./ 14.97 days a year.
Retain current coverage at \$15,000.	Article 35 Sec. 35.1 Life Insurance	Increase life. insurance to \$20,000 from current rate of \$15,000.
Retain current language.	Article 40 Sec. 40.2 Trading Shifts	Language to limit change of shift resulting in the shortening period of prior scheduled days off.

Employer	Issue	Union
October 15, 1999 - October 14, 2001	Article 46 Duration	May 1, 1999 - December 31, 2001
Reject inclusion of new term to the Agreement.	Article __ Working Outside Classification	Delete dispatch work from outside duty assignments.

## DISCUSSION & DETERMINATION

### General

The issues at impasse are considered collectively. Economic impact was reviewed in context of total cost estimate related issues tentatively agreed to and issues at impasse. Consideration was given to the totality impact of the issues at impasse as well as those issues of tentative agreement. Recommendation were made on an item by item basis, as called for under ORC 4117.

It is noted that a wage increase has an additional proportionate cost to the City. This is particularly significant in City contribution to the Police and Fire Pension Fund. Other pay and economic benefits are a fixed dollar rate, or no fixed additional cost to the City. The current annual base pay for bargaining unit members is approximately \$305,000. Cost to increase the base rate of pay by 1% annually is about \$3,500.

The City's current, past, and projected financial picture is found stable. The City's Financial Report for 1998, the last fiscal year of actual record, reflects a General fund income of about \$3,200,000, and a year end balance of about \$1,100,000. The later figure does not reflect a breakdown of encumbered vs. unencumbered monies.

### Comparables

Comparables are taken into consideration to the extent determined relevant. . Such economic information was submitted relative to other City employee groups and bargaining units, various demographic units from the State to selective local governmental agents and local private sector. Each bargaining unit and/or employee group of City employees is recognized as having unique differences in matters of employment consideration and priorities. Differences exist in specific terms and priorities that may well result in differences in the ultimate terms of the respective agreements. Greater consideration was given to those employee units of similar duty, size, purpose and function in like or similar geographical settings. No one set of comparables submitted by either party was given greater consideration.

The comparables submitted are limited in weight and influence due to the fact that they reflect selective comparative criteria. It is difficult, if not impossible, to obtain a comprehensive detailed listing of comparables. Regardless, such information does give a basis for consideration; however, it will not necessarily be controlling in ultimate determination.

### **Department Bargaining Unit Relationship With Other City Employee Groups**

Reference was raised regarding the historical pattern of wage and economic benefits granted all city employees, within and outside of collective bargaining. There is usually a significant difference between terms of conditions for employees under a labor agreement and those not covered by such a document. It is also notable that the bargaining unit, in this instant situation, is bargaining its first labor agreement with a new bargaining agent. A large portion of employees are not represented in wage and benefit bargaining.

### **Financial Atmosphere**

Inability to pay was not raised as an issue. Rather, it contends appropriateness and relevancy of wage and economic benefits of this bargaining unit to other employee groups should be controlling. The Union argues a disparate wage situation due to lack of greater wage increases over the previous years. As noted previously, totality of economic terms are given consideration while final recommendations give consideration to priorities expressed by the parties in the course of this Fact Finding Hearing.

### **Effective Date of Contract/duration**

Time is money. As such a price is due appropriate consideration when, and if, there is a change in the effective date of terms of a new Agreement. In the private sector, it is common to tie the new agreement to the expiration of the old, since to do otherwise would make a possible break in certain contract terms and provisions. Under ORC 4117, terms of the expiring agreement continues in full force and effect with the effective date of implementation of new economic benefits being a part of the bargaining process. While ORC 4117 does not stipulate the minimum duration of a labor agreement, it does set a maximum term of three years. It is also noted that the predecessor agreement expired April 30, 1999. The Union seeks the Agreement to be effective from May 1, 1999 - December 31, 2001. The City proposes an agreement effective from October 15, 1999 - October 15, 2001. In either case, the increased wage and economic benefits are directly related to the effective date of the Agreement affecting related funding of continued and new benefits.

**Issue**

**ITEM BY ITEM  
DISCUSSION**

**Article 17  
Wages**

The Union argues its wage schedule is, and has been, low for similar work in various comparable situations and a significant wage increase is necessary in order to attain parity. The City contends its last wage offer is in line with what has been granted other City employees, including a different unionized department. The City considers its position fair, particularly in light of the other economic increases proposed by the Union.

The Union documentation supports its contention that City police officer wages are comparatively low to other departments.

The City raises two significant basis to justify its position. First, the pattern of wage increases granted other City employee groups and, Second, its offer is fair in light of other economic demands of the Union.

Flaws exist in both parties' arguments. While merit is found in the Union's argument that unit employees deserve a wage increase to attain parity with other similar employees, its proposal is found too aggressive and lacks sufficient rationale to justify such an increase as a part of the total economic package.

The City's final offer rests heavily on continuing the predetermined pattern wage increase granted other city employees and argues it should be included in the Agreement . While reference is made to cost factors of "other Union demands", no City counter proposal was presented that included an offer addressing the totality of Union economic demands.

While it is true that changing the bargaining relationship may be at a price, such should be tempered to the situation within the control of the parties. Statute and related rules greatly influence the bargaining relationship in this situation. The facts indicate no extraordinary delay in initiating bargaining arose from either party. Cost of implementation is considered in relationship to date of implementation. The effective date for Agreement implementation also relates to the wage recommendation.

**Issue**

**ITEM BY ITEM  
DISCUSSION**

<b>Recommendation</b>	<b>It is recommended that the current wage schedule be increased by 5.5% effective November 1, 1999; Effective November 1, 2000, the wage schedule in effect be increased 3%; Effective November 1, 2001, the wage schedule in effect shall be increased 2%.</b>
<b>Article 19 Shift Differential</b>	The parties have expressed a common position on this issue. As such, that position is included in the recommendation.
<b>Recommendation</b>	<b>It is recommended the shift differential be increased by \$0.05/hr. to the current rate.</b>
<b>Article 21 Uniform Allowance</b>	The parties have expressed a common position on this issue. As such, that position is included in the recommendation.
<b>Recommendation</b>	<b>It is recommended the Uniform Allowance be increased by \$50.00 to \$485.00 per year.</b>
<b>Article 23 Sec. 23.3 Hours of Work/Overtime</b>	There is a cost factor related to the Union proposal on this matter. Evidence and testimony is not persuasive to recommend a change in current language at this time.
<b>Recommendation</b>	<b>It is recommended Section 23.3 shall be retained in the Agreement as in the expiring agreement.</b>
<b>Article 24 Officer in Charge Pay</b>	OIC pay, like other premium pays tend to be periodically adjusted. Rationale for amounts for appropriate amount of increase is not necessarily the same as used to support base wage increase. However, any increase in the amount will increase cost to the City. As noted previously, the recommendation is part of the total economic issues.
<b>Recommendation</b>	<b>It is recommended that the Officer in Charge pay rate shall be increased by \$0.10/hr. to \$0.60/hr.</b>

**Issue**

**ITEM BY ITEM  
DISCUSSION**

**Article 25  
Holidays**

Evidence and record indicate the number of paid holidays provided similar employees is 10-11 days compared to the bargaining unit's 7. It is also recognized that a one day increase will have a determinable increased cost factor. Again, total economic cost of the Agreement is considered in this recommendation.

**Recommendation**

**It is recommended that the number of paid holidays be retained in the Agreement as provided for in expiring agreement.**

**Article 27  
Sick Leave**

It is unrefuted that current language in question, was a result of the bargaining process at an earlier date. It was attained by the City through the bargaining process. It is not determined the appropriate time to modify this term.

**Recommendation**

**It is recommended that the Agreement include the same formula for accumulating sick leave as in the expiring agreement.**

**Article 35  
Sec. 35.1  
Life Insurance**

The rate of life insurance provided bargaining unit members is considerably below average of similar employees. The annual increase in cost to meet the Union demand is projected to be about \$150.00 for the bargaining unit.

**Recommendation**

**It is recommended that the Agreement provide for life insurance in the face amount of \$20,000.**

**Article 40  
Sec. 40.2  
Trading Shifts**

While it is understandable that the Union would propose retaining a minimum period of time off in a shift change, it is not determined that such, in and of itself, causes a loss of scheduled time off to an employee.

**Recommendation**

**It is recommended that the Agreement include terms on this provision as set forth in the expiring agreement.**

**Issue**

**ITEM BY ITEM  
DISCUSSION**

**Article 46  
Duration**

The parties have not established a pattern for the implementation or expiration date for agreements. Regardless, as previously noted, such does effect economic benefit adjustment costs. This provision heavily influences the economic recommendations in this Report.

**Recommendation**

**It is recommended that the Agreement become effective November 1, 1999, and remain in effect through October 31, 2002.**

**Article \_\_  
Working Outside  
Classification**

This Fact Finder is not persuaded that inclusion of this provision is appropriate at this time.

**Recommendation**

**It is recommended that the Agreement not include this proposed provision.**

**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 the issues at impasse be included in the Agreement in as set forth in the preceding section of this Award.

**TOTALITY OF AGREEMENT**

This will affirm the foregoing report, consisting of **11 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 date of **November 15, 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 Wapakoneta, Ohio

v

The Ohio Patrolmen's Benevolent Association

Case No.

99-MED-06-0575

(Patrol Officers)

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

Pete Lowe, Vice President  
Clemens, Nelson & Associates  
417 N. West St.  
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Columbus, OH 43215-5134

*by U.S. Postal Service Mail, overnight express, on November 15 , 1999.*

*I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations..*

  
John S. Weisheit, Fact Finder

November 15, 1999  
Date