

STATE EMPLOYMENT
RELATIONS BOARD

MAY 31 12 13 PM '00

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of)
Fact-Finding Between:)
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OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)
)
)
-and-)
)
)
CITY OF WARRENSVILLE HEIGHTS)
)
)

Case No. 99-MED-07-0651

Jonathan I. Klein,
Fact-Finder

FACT-FINDING REPORT
and
RECOMMENDATION

Appearances

For Union:

S. Randall Weltman, Esq.- Attorney for Union
Colleen M. Bonk- Attorney for Union
Michael Spuzzillo- Patrol Officer

For Employer:

John T. Meredith, Esq. - Attorney for City
Brian Robinson - Attorney for City
Tom Cornhuff - Financial Consultant
Rubin Moultrie - Finance Director
Lt. Kaufman - Acting Police Chief
James Polak - OBS

Date of Issuance: May 30, 2000

I. PROCEDURAL BACKGROUND

This matter first came on for hearing on May 15, 2000 before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on August 27, 1999. The hearing was conducted between the City of Warrensville Heights ("City" or "Employer"), and the Ohio Patrolmen's Benevolent Association ("Union"), at the City's Senior Citizens Center located at 4567 Green Road, Warrensville Heights, Ohio. The bargaining unit involved in this fact-finding process consists of all regular full-time patrol officers and detectives below the rank of sergeant. There are currently twenty-seven officers in this unit. The issues, as contained in each of the parties' pre-hearing briefs dated on or about May 11, 2000, and extant after the fact-finding hearing may be summarized as follows:

1. Article 15- Premium Pay
2. Article 16- Holidays
3. Article 18- Sick Leave
4. Maternity Leave
5. Educational and Other Pays
6. Contract Duration
7. Compensation

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements reached between the parties relative to the current negotiations. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, and their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, 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 the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATION

Introduction

The City is a chartered municipality located in eastern Cuyahoga County with a population of approximately 15,500. It is bordered by the cities of Maple Heights, Shaker Heights, Beachwood, Cleveland, Solon and Bedford Heights, and North Randall, Highland Hills and Orange villages. Based on 1997 Ohio personal income tax returns by school district the median adjusted gross income per taxpayer for residents of the City is \$25,369. (City's Tab B-4. Community Income Data, Ranking). In 1997, the City ranked 413th in the State of Ohio regarding average income per taxpayer. (Id.). The modified crime index total for the City is 673. (Union Exhibit 11-B, at 4).

Generally, the positions of the parties regarding comparable jurisdictions can be described in the following manner. The Union holds the position that neighboring cities are considered to be comparable. According to the Union, the following cities are comparable, and are listed in various exhibits which it presented at the hearing: Beachwood; Garfield Heights; Independence; Maple Heights; Shaker Heights; University Heights; Bedford Heights; Cleveland; Solon; South Euclid; Highland Heights; Lyndhurst and Richmond Heights. At the fact-finding hearing, the Union presented collective bargaining agreements between patrol officers and the following cities: University Heights; Independence; Maple Heights; Bedford Heights; Garfield Heights; Shaker Heights; Cleveland; Beachwood and Solon. The Union also

presented the collective bargaining agreement between the International Association of Fire Fighters, Local 1591 and the City, effective September 29, 1996 to September 23, 1999.

The City asserts that Solon, Shaker Heights and Beachwood are not comparable jurisdictions, and are merely located in the same geographical area as the City. The City further contends that the average wages earned by the City's residents rank in the bottom one-third of the average wages earned by residents of cities located in Cuyahoga County. Thus, given its financial base, it is proper for the City to rank in the bottom one-third regarding patrol officer compensation. The City also offered the terms of the recent contract settlement reached between the City and IAFF Local 1591 both orally and in memorandum form.

Upon review of the comparable jurisdictions offered by both parties, the fact-finder determines that the following cities will be referenced for comparability purposes throughout this fact-finding report: Bedford Heights; Garfield Heights; Maple Heights; Independence and University Heights. In reaching this decision, the fact-finder specifically concludes that Cleveland and Shaker Heights are not comparable jurisdictions due, in part, to their far greater populations. Additionally, the fact-finder specifically concludes that Solon, Shaker Heights and Beachwood are not comparable jurisdictions due to the large discrepancy between the average income of taxpayers who reside in those cities and the average income of taxpayers who reside in Warrensville Heights.

Issue 1: Premium Pay

The Union proposes deletion of the language “when the employee is not on duty,” which is contained in Sections 1(c) and (d) of Article 15. Additionally, the Union proposes that language should be added to Article 15 which provides that an employee called to appear in court is entitled to the minimum hours paid or time worked, whichever is greater. Further, the Union requests in its pre-hearing statement that a provision should be added to Section 1 which provides that there will be no preclusion of two or more distinct calls to court on the same date.

According to the Union, it has filed a series of grievances since August 1999 in order to enforce the clear provision set forth in Article 15 regarding compensation for court time. Patrol officer Michael Spuzzillo testified at the hearing that the new City administration is not fully compensating the patrol officers for their court time when such court time abuts the start of the officers’ shifts. Therefore, the Union requests the deletion of any language in Article 15, Section 1 which suggests an abutment rule or condition.

Section 2 of Article 15 currently provides that specified officers shall receive an additional annual premium payment of \$480.00. The Union proposes that SWAT officers should be added to the list of specialized units that receive an additional annual premium payment. According to the Union, the additional training and duties assigned to SWAT officers warrants the additional annual premium. The Union also requests that the premium payment should be increased from \$480.00 to \$600.00 per year, payable in monthly

installments of \$50.00. The Union further proposes that a provision should be added to Section 2 of Article 15 which provides that officers shall not be precluded from receiving more than one special capacity pay.

Finally, the Union proposes that Article 15 should be amended to include a section which authorizes lieutenant's pay to any patrolman who serves in an officer-in-charge capacity. Specifically, the Union requests that a patrolman who acts as an officer-in-charge be compensated at the applicable lieutenant's hourly rate for each hour so worked. According to the Union, patrol officers should receive additional compensation due to the assumption of the duties and responsibilities of an officer-in-charge.

The City asserts that the Union's premium pay proposals are simply an attempt to increase wages, and it proposes that there should be no changes to the current contract language contained in Article 15. The City points out that training time for SWAT officers is either on the clock or the officers are offered compensatory time. Additionally, although required to carry a pager twenty-four hours per day, SWAT officers are given four hours to report for duty after they are paged. According to the City, premium pay is not warranted for SWAT officers.

The City contends that the language contained in Article 15 regarding compensation for court appearances is perfectly clear. The City argues that an officer should not be compensated twice for time when such officer would already be on duty. The City further argues that there is no reason to compensate patrol officers at a lieutenant's rate of pay when

such officers act in the capacity of an officer-in-charge. The City points out that a patrol officer has served in the capacity of an officer-in-charge for an entire shift only once during the past eleven months.

Findings and Final Recommendations

It is the final recommendation of the fact-finder that Article 15, Section 1(c) and (d) of the new collective bargaining agreement shall be amended to include the following language regarding court appearances by patrol officers on dates when such officers are scheduled for duty. Article 15, Section 1(c) shall provide as follows:

Whenever approved by the Chief, employees called in to appear in the Bedford Municipal Court, on behalf of the Employer, for a time of less than three (3) hours when the employee is not on duty, shall be deemed to have worked three and one-half (3.5) hours, for purposes of pay and overtime compensation. In the event that an employee is required to report to duty earlier than normally scheduled in order to appear in Court, following which he commences his normal shift of duty, or is required to remain on duty after his normal shift of duty, or is required to remain on duty after his normal quitting time to complete a Court appearance which begins while on duty, he shall be treated as being on overtime during those extra hours, instead of the foregoing minimums.

Article 15, Section 1(d) of the new collective bargaining agreement shall provide as follows:

Whenever approved by the Chief, employees called in to work or appearing in any court other than Bedford Municipal Court, or appearing in depositions or other hearings with respect to cases filed in that court on behalf of the Employer, for a time period of less than four (4) hours when the employee is not on duty, shall be deemed to have worked four (4) hours for purposes of pay and

overtime compensation. In the event that an employee is required to report to duty earlier than normally scheduled in order to appear in Court, following which he commences his normal shift of duty, or is required to remain on duty after his normal shift of duty, or is required to remain on duty after his normal quitting time to complete a Court appearance which begins while on duty, he shall be treated as being on overtime during those extra hours, instead of the foregoing minimums.

The aforementioned provisions are supported by language which is contained in the collective bargaining agreements for patrol officers who are employed by comparable cities. Moreover, the fact-finder reasons that a patrol officer should not be compensated twice for time worked when such officer would already be on duty.

Based upon the evidence presented by each party, the fact-finder also recommends that SWAT patrol officers should receive an additional annual premium payment of \$480.00 due to the additional training and responsibilities required for such a position, but that the special capacity premium should not be increased. Article 15, Section 2 of the new collective bargaining agreement shall provide as follows:

Those officers officially assigned to the Police "Accident Investigation Unit," the "Motorcycle Unit," and as "K-9 officer(s)" and "SWAT officers," as designated by the Chief of Police, shall receive additional annual premium pay of \$480.00, payable in monthly increments of \$40.00, or such pro rata bases thereof, as will evidence the time officially on duty in such capacity.

The fact-finder further recommends that patrol officers who act in the capacity of a higher ranking officer shall receive the higher ranking officer's pay for all hours served in such a capacity due to the additional duties and responsibilities assigned to an officer-in-charge.

This finding is supported by provisions contained in the collective bargaining agreements for patrol officers who are employed by comparable cities. Article 15, Section 5 of the new collective bargaining shall provide as follows:

A lower ranking officer who is required to act in a higher rank on a temporary basis shall be entitled to receive the applicable pay rate of the higher rank for all hours served in such a capacity commencing on the first hour in service at the higher rank.

Issue 2: Holidays

At the fact-finding hearing, the Union withdrew all proposals concerning Article 16- Holidays, except its proposal regarding overtime pay on holidays. The Union proposes that officers who work more than eight hours on a holiday should be paid time and one-half of the time and one-half rate for all such hours worked over eight. There shall be no change to the current language concerning compensation for the first eight hours worked by an officer on a holiday. According to the Union, an officer who works more than eight hours on a holiday should be fairly compensated by the City for the inconvenience of working an extended period on a special day. Additionally, the Union points out that the City is in control of overtime costs because it schedules the manpower.

The City is opposed to any changes in Article 16 of the collective bargaining agreement. The City points out that only four or five officers are called in to work for four to five hours on approximately two holidays per year.

Findings and Final Recommendations

It is the fact-finder's final recommendation that there should be no changes to Article 16 of the new collective bargaining agreement. An analysis of the holiday overtime pay which is received by patrol officers who are employed by comparable cities does not support the Union's proposed Article 16 language. The Union has presented no evidence which would warrant the adoption of its proposed holiday overtime pay provision.

Issue 3: Vacations

At the fact-finding hearing, the Union's proposals regarding Article 17 - Vacations were withdrawn.

Issue 4: Sick Leave

The Union proposes changes to three sections contained in Article 18- Sick Leave. Currently, Section 2 of Article 18 provides that officers may accumulate up to 120 days of sick leave. First, the Union proposes that the cap on accumulated sick leave should be removed in the new collective bargaining agreement. Second, the Union also proposes that the forty-day cap on the cash out of sick leave upon retirement should be removed from Section 8 of Article 18.

Finally, the Union requests that the sick leave bonus plan contained in Section 10 of Article 18 should be amended to provides as follows:

Sick Days Used Within Calendar Year	Compensation Days	Bonus
0	7	\$1,000.00
1	5	\$800.00
2	3	\$600.00
3	2	\$400.00

The Union also proposes that the sick leave bonus benefit should be prorated for new hires, and the accrual point for proration should be the first of the month in which the new employee is sworn in as a patrol officer.

The Union contends that its proposals regarding sick leave are supported by both internal and external comparable bargaining units. The Union points out that the firefighters employed by the City enjoy a greater sick leave cash out benefit than the patrol officers. (Union Exhibit 2). Additionally, patrol officers employed by most of the comparable cities located in the surrounding geographical area do not have a cap on the amount of sick leave which may be accumulated. (Union Exhibit 3). Furthermore, the cash value for accumulated sick leave upon retirement is greater for patrol officers employed by comparable cities. (Union Exhibit 4). Finally, the Union points out that the firefighters employed by the City are afforded a more lucrative sick leave bonus plan than the sick leave bonus plan currently in effect for the patrol officers. (Union Exhibit 5).

The City has offered a compromise concerning the sick leave issue in its proposal dated March 6, 2000. As part of its compromise, the City has offered to amend Article 18 to include language which provides that sick leave may be accumulated prospectively on an unlimited basis. The City has also proposed to increase the number of accumulated sick leave days which may be cashed out upon retirement to fifty days. The City believes that its proposed contract language is fair and allows it to maintain a limit on severance payouts to patrol officers. The City also points out that the new collective bargaining agreement for the firefighters employed by the City eliminated compensatory time from the sick leave bonus plan, and increased the maximum sick leave bonus from \$300.00 to \$660.00.

Findings and Final Recommendations

It is the fact-finder's final recommendation that Article 18 of the new collective bargaining agreement should be amended to provide that there shall be no cap on the accumulation of sick leave by patrol officers. Such a provision is supported by language contained in collective bargaining agreements for patrol officers employed by comparable cities. Additionally, the City has agreed, as part of a compromise, to amend Article 18 to include language which provides that sick leave may be accumulated prospectively on an unlimited basis. Therefore, Article 18, Section 2 of the new collective bargaining agreement shall provide as follows:

All full-time employees shall earn sick leave at the rate of one and one-quarter (1 1/4) days per month and, commencing with

this Agreement, may accumulate prospectively an unlimited amount of sick leave; provided, however, that an employee shall not earn sick leave for any month unless he is in full pay status at least twenty (20) work days during such monthly period. Unlimited accumulation begins with actual accumulated sick leave for each officer on the effective date of the contract. That is, if an employee has 22 days accumulated sick leave on the effective date of the contract, he shall continue to accrue from the 22 day base; if an employee has the prior maximum 120 days accumulated sick leave on the books on the effective date of the contract, he shall continue to accumulate from 120 days; etc. Officers who have accumulated more than 120 days before the 120 day cap was negotiated in 1985 shall retain all sick leave they had accumulated up to that point in time, unless such sick leave is used or a severance payment is received in accordance with this Article.

The fact-finder further recommends that Article 18 of the new collective bargaining agreement should be amended to provide a fifty-day cap on the number of accumulated sick leave days which may be cashed out by patrol officers upon retirement. The fact-finder notes that although slightly higher than the cap on the number of accumulated sick leave days which may be cashed out upon retirement by patrol officers employed by comparable cities, the City has agreed to accept a fifty-day cap as part of its compromise with the Union. Article 18, Section 8 of the new collective bargaining agreement shall provide as follows:

Upon retirement of a full-time employee who has not less than ten (10) years of continuous service with the Employer, such employee shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement multiplied by 30% of the total number of accumulated but unused sick days earned by the employee as certified by the Finance Director, providing that such resulting number of days to be paid shall not exceed fifty (50) days.

Finally, the fact-finder recommends that no changes be made to the sick leave bonus plan contained in Article 18, Section 10 of the collective bargaining agreement. The fact-finder concludes that the Union has presented inadequate evidence which would warrant an increase in the number of compensatory days and the amount of cash payments which are provided to patrol officers under the current sick leave bonus plan. The fact-finder notes that the firefighters employed by the City no longer receive compensatory time as part of the sick leave bonus plan contained in their new collective bargaining agreement with the City, and the increase in their bonus failed to fully compensate for the loss of compensatory time off. Additionally, the fact-finder notes that the patrol officers have a fifty-day cap on the number of accumulated sick leave days which may be cashed out upon retirement, while the firefighters employed by the City have a forty-five day cap on the number of sick leave days which may be cashed out upon retirement or termination. Moreover, the current sick leave bonus plan provided to the patrol officers compares favorably to the sick leave bonus plans afforded patrol officers employed by comparable cities.

Issue 5: Personal Time

The issue regarding personal leave was withdrawn by the Union at the fact-finding hearing.

Issue 6: Maternity Leave

The Union proposes that language should be added to the new collective bargaining agreement which provides that officers, both male and female, shall be entitled to seven days of paid maternity leave per year for child care when the officer is the parent or custodian of the child. Notification of maternity leave shall be provided to the City at least seven days prior to the commencement of such leave by the officer, except in cases of family emergency. According to the Union, this proposal merely simplifies the procedures for obtaining a benefit already granted to the employees under the Family and Medical Leave Act (FMLA). The Union points to the City's contract with the firefighters, which contains a maternity leave provision, as support for its contention that the patrol officers should also receive maternity leave. (Union Exhibit 6).

The City is opposed to the Union's proposed maternity leave language, and it will continue to provide leave in accordance with the requirements set forth in the FMLA. In the event that the Union's proposal is recommended to be added to the new collective bargaining agreement, the City requests that the seven-day maternity leave should be applied toward any other leave provisions and should be unpaid.

Findings and Final Recommendations

It is the fact-finder's final recommendation that the Union's proposed maternity leave provision should not be added to the new collective bargaining agreement for the following

reasons. First, a separate maternity leave provision is not contained in the majority of collective bargaining agreements for patrol officers employed by the cities listed in Union Exhibit No. 7. Second, the Union has presented no evidence that the leave currently provided under the FMLA is inadequate. Third, while the Union's proposal provides for a seven-day paid maternity leave, the maternity leave provided to female firefighters by the City is unpaid leave. Therefore, the Union's maternity leave proposal is not supported by the language contained in the collective bargaining agreements of internal and external bargaining units. The fact-finder concludes that the Union has failed to demonstrate the necessity of a maternity leave provision in the new collective bargaining agreement.

Issue 7: Educational and Other Pays

Currently, there is no provision in the collective bargaining agreement regarding reimbursement for educational expenses incurred by patrol officers. The Union proposes that the City reimburse patrol officers for tuition and book expenses incurred in the completion of educational courses in any subject matter offered at any public or private college, university, or other post-secondary educational institution. The Union further proposes the following reimbursement scheme:

Reimbursement for tuition and book expenses will be at one hundred (100%) for courses where a grade of C or better is achieved. Reimbursement will be at fifty percent (50%) where a grade of D is obtained. There will be no reimbursement for courses or books where a grade lower than a D is obtained.

Employees will provide proof of course, book purchase and grades within thirty (30) days of receiving said grades.

(Union's Pre-Hearing Statement, at 8).

The Union contends that the addition of educational reimbursement language to the collective bargaining agreement is necessary because patrol officers need to be highly trained in order to adequately handle the day-to-day situations which they encounter.

The City rejects the Union's "Educational and Other Pays" proposal, and points out that no other internal bargaining units are provided with this benefit. The City also asserts that the Union's proposal creates an open-ended scholarship opportunity for patrol officers and would be extremely expensive.

Findings and Final Recommendations

For the following reasons, the fact-finder recommends that the new collective bargaining agreement should not be amended to include the language proposed by the Union regarding an educational reimbursement for patrol officers. First, the fact-finder concludes that the language proposed by the Union presents an "open checkbook" for the patrol officers, and would be extremely costly for the City. Second, the Union's proposal requires no rational nexus between the work of bargaining unit members and the type of education for which the City would be required to make tuition reimbursement. Third, the Union's proposal is not supported by the educational reimbursement provisions contained in the collective bargaining

agreements for patrol officers employed by comparable cities, nor is it supported by provisions contained in the contracts for other City employees.

Issue 8: Proration of Benefits

At the fact-finding hearing, the issue regarding proration of benefits was resolved by the parties and withdrawn from further consideration by the fact-finder.

Issue 9: Contract Duration

The Union proposes that the term of the new collective bargaining agreement should be twenty-eight (28) months, August 19, 1999 to December 31, 2001. The City proposes a three-year contract with an expiration date of August 18, 2002. Additionally, the City proposes that any contract changes will be effective upon ratification of the new collective bargaining agreement, unless the parties expressly agree to make a particular provision retroactive. However, the Union argues that it should not be penalized because, as occurred in this set of negotiations, it cooperated when the City requested a delay in commencing negotiations over the terms of a new collective bargaining agreement.

Findings and Final Recommendations

The fact-finder's final recommendation is that the duration of the new collective bargaining agreement shall be approximately twenty-eight months with an end date of

December 31, 2001. Absent an agreement by the parties consenting to retroactivity, there is an express statutory limitation on a conciliator's authority to order retroactivity on economic issues (Ohio Rev. Code §4117.14(G)(11)). Moreover, the fact-finder has concerns over unintentionally creating a partial or invalid MAD which, together with the factors that appear to have created the delay leading up to this very dispute, compels the fact-finder to recommend the Union's proposal for a traditional December 31 expiration date for collective bargaining agreements covering safety forces. The fact-finder also bases this decision on the demonstrated uncertainty of the bargaining unit obtaining retroactive increases in compensation and other economic benefits through the conciliation process with the expiration date currently contained in Article 28.

Issue 10: Compensation

The Union contends that the compensation package for the patrol officers fares poorly compared to the compensation received by employees in both external comparable bargaining units and internal bargaining units. The Union asserts that there should be no wage disparity between the patrol officers and the firefighters employed by the City. In support, the Union points to the 1998 fact-finding report issued by Dana Castle who held that the compensation disparity between patrol officers and firefighters employed by the City of Lyndhurst should be narrowed. (Union Exhibit 10). According to the Union, the City's patrol officers are fighting

a greater amount of crime than patrol officers who are employed by cities located in the surrounding geographical area.

The Union argues that the annual wage received by patrol officers employed by the City is six percent below the annual wage received by patrol officers employed by contiguous jurisdictions. (Union Exhibit 13). Further, the total compensation package received by the City's patrol officers is 4.9 percent below the total compensation package received by patrol officers employed by contiguous jurisdictions. (Id.). Additionally, the Union points out that the total compensation received by the City's patrol officers is 9.58 percent below the total compensation received by patrol officers employed by comparable cities located in the same geographical area. (Union Exhibit 14). Finally, the City presented evidence which indicated that patrol officers statewide received a 4.25 percent wage rate increase in 1999. (Union Exhibit 15).

The Union further argues that the City has recently created five new positions, and has the resources to fund the Union's proposed wage rate increase for patrol officers. (Union Exhibit 16). Further, the City's inability to pay argument has been rejected by prior arbitrators. For each of the aforementioned reasons, the Union proposes a series of raises effective August of each year, beginning August 18, 1999, at five percent per year.

The City contends that the last collective bargaining agreement for the patrol officers was termed a "catch up" award, and the Union received significant gains in compensation. According to the City, a "catch up" award is not warranted under the present circumstances.

The City points out that it is ranked 29th out of 31 area cities regarding the average wages earned by its residents. Therefore, it is proper for the City to rank in the bottom one-third of area cities regarding the salary received by its patrol officers.

The City asserts that the general fund disbursements exceeded receipts by approximately \$500,000 in 1999. Further, the City projects only a modest increase in general fund receipts for the fiscal year 2000. Additionally, the City points out that it sustained a \$400,000 loss in tax revenues due to the closing of a BP facility located in the City. In 1999, income tax revenue was \$8,438,478. However, revenues from tax receipts have decreased in the first quarter of 2000. The City also claims that it received approximately \$10,000 in revenue from the Highland Hills project during 1999, and has received approximately \$13,000 from the Highland Hills project through the first four months of 2000. However, the City asserts that it is difficult to project future revenues from this project.

The City's budget includes a two percent retroactive wage rate increase for the patrol officers. Firefighters and service employees also received two percent retroactive wage rate increases in the first years of their most recent collective bargaining agreements. The City contends that it is already spending one hundred percent of the revenues which it expects to receive during the year. The City points out that several patrol officer positions are currently funded, in part, by federal grants. For each of the aforementioned reasons, the City proposes annual wage rate increases for the patrol officers of two, three and four percent over the next three years.

At the fact-finding hearing, the City discussed the recently ratified collective bargaining agreement for its firefighters. This contract is in effect for thirty-nine and one-half months, and contains wage rate increases of two percent from September 23, 1999 through December 31, 2000, four percent for the period January 1, 2001 through December 31, 2001, and five percent from January 1, 2002 through December 31, 2002. There is also an increase in the rank differential and officer-in-charge pay for firefighters. However, the firefighters accepted a reduction of three paid holidays and altered their vacation schedules from weeks to tours of duty. The City anticipates lower costs as a result of the altered vacation schedules. Additionally, the firefighters agreed to changes in their sick leave bonus system which will result in a cost savings for the City.

In sum, the City asserts that it has offered the patrol officers a fair compensation package which is commensurate with its ability to pay. The City contends that it can only afford a two percent wage rate increase in the first year of the new collective bargaining agreement. The City points out that a mere difference in benefits received by its patrol officers and employees of other bargaining units does not translate into an unfair compensation package for the patrol officers because various trade-offs have occurred over the prior years. The patrol officers "caught up" regarding wages in their last collective bargaining agreement, and the City is doing at least as well as could be expected concerning the compensation of its patrol officers.

Findings and Final Recommendations

The fact-finder’s final recommendations regarding compensation for the patrol officers are as follows. First, based upon the record presented, the fact-finder concludes that the City has not demonstrated an absolute inability to pay the patrol officers more than the wage rate increases which it has proposed. The fact-finder notes, in particular, that the evidence is uncertain regarding the exact size of the revenue stream which the City will receive in the future from the Highland Hills project. However, it is clear that the City is receiving revenue in the current year from this project at a rate which will significantly exceed the amount received in 1999.

The SERB Benchmark Report, dated May 11, 2000, in combination with the latest data from the comparable jurisdictions which greatly change SERB’s salary figures for Bedford Heights and Garfield Heights, reveal the following wage levels paid to the top level patrol officers:

CITY	TOP LEVEL P. O. SALARY
Bedford Heights	\$47, 524.00
Garfield Heights	\$46, 165.00 ¹
Maple Heights	\$45,166.78
University Heights	\$45,470.00
Independence	\$49,581.00
Warrensville Heights	\$43,715.00

1. The top level in Garfield Heights is established by ordinance which ties the increase in salaries to the average paid members of the police division of suburban cities with a population of 25,000 or more.

The average top level patrol officer salary for patrol officers employed by the cities of Bedford Heights, Garfield Heights, Maple Heights, University Heights and Independence is approximately \$46,781 per year. Thus, the top level salary for a patrol officer employed by the City is approximately \$3,066, or 6.5 percent less per year than the average top level patrol officer salary for officers employed by comparable cities.

However, the median adjusted gross income in 1997 for residents of the following school districts reveals that the income for residents of the City is less than the income for residents of comparable jurisdictions:

Independence	\$33,653.00
Cleveland Hts.-University Hts.	\$33,569.00
Bedford	\$27,681.00
Maple Hts.	\$27,219.00
Garfield Hts.	\$27,111.00
Warrensville Hts.-	\$25,369.00

The average income for taxpayers of the City is approximately \$4,477.00 less per taxpayer than the average income for taxpayers who reside in the school districts for the comparable jurisdictions.

The record also indicates that patrol officers employed by the comparable cities have received wage rate increases over the prior five years which range from approximately three and one-half percent to five percent. Patrol officers employed by Maple Heights received a 3.25 percent wage increase on July 25, 1999. The record further reveals that public sector employees in the Cleveland area received an average wage rate increase of 3.88 percent during 1999. Additionally, employees who work for cities located in Ohio received an average wage

rate increase of 3.63 percent in 1999. Finally, police officers employed by jurisdictions located within Ohio received an average wage rate increase of 4.25 percent in 1999.

Based upon the above statistical evidence regarding salaries for patrol officers employed by comparable cities and the bargaining unit's low salary relative thereto; the average wage rate percentage increases for patrol officers employed by comparable cities; local and statewide wage rate increases for public sector employees; the level of crime in the City; the median adjusted gross income in the City; the partial loss of income tax revenue due to the closing of the BP's facility located in the City; and the rising yet not fully realized revenue from the Highland Hills development project, the fact-finder recommends that the bargaining unit receive a 2.75 percent wage increase effective as of August 19, 1999, a 3 percent wage increase effective as of January 1, 2000, and a wage increase of 4 percent on January 1, 2001.


JONATHAN I. KLEIN, FACT-FINDER

Dated: May 30, 2000

CERTIFICATE OF SERVICE

Originals of this Fact-Finding Report and Recommendations were served upon John T. Meredith, Esq., Squire, Sanders and Dempsey, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114-1304, and upon S. Randall Weltman, Esq., Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., 1228 Euclid Avenue, Suite 900, Cleveland, Ohio 44115-1891, and upon George M. Albu, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215, each by express mail, sufficient postage prepaid, this 30th day of May 2000.


JONATHAN I. KLEIN, FACT-FINDER