

**EXECUTIVE SUMMARY OF THE FACT-FINDER'S
REPORT AND RECOMMENDATIONS**

**THE CITY OF CLEVELAND
AND
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (Chief Dispatcher Unit)
SERB 2016-MED-01-0035**

(Approximately 8 employees currently in this bargaining unit)

Fact-Finding Hearing:	December 6, 2018
Fact-Finding Report Issued:	January 7, 2019
City Council Vote Required by:	January 14, 2019
Notice of Council Vote to SERB by:	January 15, 2019

1. WAGES – ARTICLE 38

Increase top tier of rank differential from 14.8% to 15% (based on CPPA Civilian Contract Dispatcher rate).

No \$500 ratification bonus unless CPPA Civilian unit does not receive an equity adjustment.

2. HEALTH COVERAGE/HOSPITALIZATION - ARTICLE 20 (Recommended City pattern terms)

Employee Premium Payment Increases Effective January 1, 2019:

	WELLNESS		NON-WELLNESS	
	Individual Coverage	Family Coverage	Individual Coverage	Family Coverage
MMO Plus (including Rx, dental and vision coverage)	15%	14%	19%	18%

*Out-of-network plans will continue to be set by the carrier.

MMO Plan Design Changes Effective January 1, 2019:

- Increase single coverage deductible from \$500 to \$750
- Increase family coverage deductible from \$1,000 to \$1,500
- Increase single coverage out of pocket maximums from \$1,250 to \$1,500.
- Increase family coverage out of pocket maximums from \$2,500 to \$3,000.

The City shall have the discretion to implement and offer a voluntary, optional, high-deductible hospitalization plan for employees with benefit levels as outlined in Addendum B.

	WELLNESS		NON-WELLNESS	
	Individual Coverage	Family Coverage	Individual Coverage	Family Coverage
Employee Premiums (including Rx, dental and vision coverage)	6%	5%	10%	9%

The City reserves the right to implement a smoking-cessation incentive policy during the life of this Agreement.

3. EQUALIZATION OF OVERTIME – ARTICLE 19

- a. Eligibility for 1.5 hours of compensatory time for training newly hired Chief Dispatchers and Sergeants during probation (current practice).
- b. Memorialize current practice of offering employees 8 hours of in-service training.

4. PAY DAY – ARTICLE 21 (Tentative Agreement with the Union)

Allow the City to pay via direct deposit or, with the employee’s approval, payroll debit card (no hand delivery of checks).

5. COMPENSATORY TIME – ARTICLE 22

- a. Memorialize current practice of allowing employees to schedule up to two shifts off per month on compensatory time if operations will allow.
- b. City will budget up to \$6,500 annually to convert accrued compensatory time to cash (pro-rata version of existing language in the CPPA Contract).

6. UNIFORM ALLOWANCE – ARTICLE 24

Increase uniform credit to \$350 and uniform maintenance payment to \$400.

7. DISCIPLINE – ARTICLE 28

Expand City timeframe to issue discipline from 5 to 14 working days.

8. DURATION – ARTICLE 39 (Tentative Agreement with Union)

From April 1, 2016 through March 31, 2019.

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF FACT FINDING: SERB Case # 2016-MED-01-0035

BETWEEN THE

**CITY OF CLEVELAND : THE OHIO PALTROLLMEN'S BENEVOLENT
Employer : ASSOCIATION
: Union**

**Date of Fact Finding Hearing: December 6, 2018
E. William Lewis, Fact Finder**

APPEARANCES:

For the City:

Mr. Patrick J, Hoban, Esq.
ZASAIN & RICH Co., LPA
950 Main Avenue, 4th floor
Cleveland, Ohio 44113

For the Union:

Mr. Jeffrey Perry, Business Agent
OPBA
10147 Royalton Road, suite J
P O Box 338003
North Royalton, Ohio 44133

AUTHORITY

This matter was brought before Fact Finder, E. William Lewis, in keeping with applicable provisions of the Ohio Revised Code 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 the Ohio Revised Code 4117, and mutual directives of the parties.

In attendance for the Union:

Mr. Jeffrey Perry	Advocate-Business Agent
Mr. Felipe Davila	Union Rep. A Platoon(witness)
Ms. Renee Foley	Union Director

In attendance for the City:

Mr. Patrick Hoban	Advocate-Labor Counsel
Commander Debra Cavett	Commander, Bureau of Communications
Lt. Edward Lentz	Executive Officer in Charge, Bureau of Communications
Mr. Austin Opalich	Labor Relations Manager

The following were submitted as Union Exhibits:

UE-1	Three ring binder, composed of: TB-1- Union Pre-submittal Statement TB-2- Employer Pre-submittal Statement TB-3- Cains Cleveland's Business & Christian Science Monitor, regarding US economy and low Unemployment TB-4- SERB wage data and Dispatcher area wage Comparisons
UE-2	OPBA bargaining unit overtime analysis January through October 2018.

The following were submitted as City Exhibits:

- CE-1 Large three ring binder composed of:
35 Tabs covering the financial history of the City for
The last fifteen years and Contract data.
-TBs. 19-22, identifying the City's 32 bargaining units
Contracts status.
-TBs. 23-25, Demographics & Tax data; Wage comparisons
And rank differentials.
-TBs. 26-28, Health Insurance information.
-TBS. 29-35, recent TA's with other City bargaining units
And referenced SERB Awards contained in the City's
Pre-submittal Statement.

BACKGROUND:

The City of Cleveland, hereinafter known as the Employer/City, provides municipal and safety services to its nearly 400,000 citizens. Cleveland has Collective Bargaining Agreements(CBA) with thirty two units. The Ohio Patrolmen's Benevolent Association, hereinafter known as the Union/OPBA, represents this bargaining unit composed of eight Chief Radio Supervisors. These Chief Radio Supervisors work in the City's Department of Public Safety. They supervise the City's Bi-Lingual Communications Specialists, Police Radio Dispatchers, and Safety Telephone Operators. The employees supervised by the bargaining unit members are represented by the Cleveland Police Patrolmen's Association(Civilian Unit)(CPPA).

According to the Employer's Pre-submittal and Hearing evidence, the City has had a rocky thirteen-year history. The General Fund year end balances became dangerously low on numerous occasions in the last thirteen years. Eighty percent of the City's expenses are consumed by personnel costs, per the City Advocate.

The City addressed these issues by implementing cost cutting procedures and by reducing personnel. By 2016, the City had reduced the number of General Fund staffing by 1,235 persons.

Fortunately, the City was able to get a ½ % income tax increase passed in 2016. This tax increase became effective in 2017. Thus, the City was able to offer their bargaining units a modest increase in years 2017 and 2018. All but five of the bargaining units have settled their CBA's with across the board increases of 0% in 2016, 1 or 2% in 2017, and 2% in 2018.

This Collective Bargaining Agreement expires on March 31, 2019. Because of all the bargaining going on with other much larger units, these represented employees began bargaining in January 2017. They have had four bargaining sessions to date. Twenty four of the City's twenty seven civilian bargaining units have already settled (City Pre-sub., pg.1). However, the bargaining unit that is supervised by these members is still in bargaining (CPPA-Civilian Unit)(CE-22).

The City and OPBA extended this Contract in accordance with dispute resolution procedures contained in Ohio Revised Code 4117.14. Unable to reach agreement, the parties petitioned SERB to appoint a Fact Finder. This Fact Finder was appointed on July 23, 2018. Due to other City bargaining activities and scheduling issues, the Hearing was postponed until December 6, 2018. By mutual agreement between the parties and the Fact Finder the Hearing was convened at 9:30am. The Hearing was held at Cleveland Lake Front Airport. All witnesses were sworn.

THE HEARING:

The Hearing commenced with the Fact Finder reviewing the unresolved issues with the parties. Their Pre-submittals identified the following open Articles:

ARTICLE 12 LEAVES OF ABSENCE

ARTICLE 20 HEALTH COVERAGE/HOSPITALIZATION

ARTICLE 21	PAY DAY
ARTICLE 22	COMPENSATORY TIME
ARTICLE 24	UNIFORM ALLOWANCE
ARTICLE 26	FURLOUGHS
ARTICLE 27	CALL-IN PAY AND COURT PAY
ARTICLE 28	DISCIPLINE
ARTICLE 38	WAGES
ARTICLE 39	DURATION

At the conclusion of the open issue review the parties agreed to attempt mediation. During the mediation session tentative agreements were reached on five of the unresolved Articles. They are as follows:

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|------------|---|
| ARTICLE 12 | LEAVES OF ABSENCE---Current Language. |
| ARTICLE 21 | PAY DAY—First paragraph—Current Language
Second paragraph, to read as follows: At the employee’s option, the employee may be paid either by direct deposit, or if approved by the
the
employee, payroll debit card.
Delete third and fourth paragraphs.
Last paragraph—Current Language. |
| ARTICLE 26 | FURLOUGHS—Current Language |
| ARTICLE 27 | CALL-IN PAY AND COURT PAY—Current Language |
| ARTICLE 39 | DURATION—Current language, except change expiration date to
March 31, 2019. |

Following the mediation session, the Fact Finding Hearing was reopened at 3:05pm. During the Hearing the parties introduced their evidence and testimony on the remaining open issues. The Union called one witness to testify. The Fact Finding Hearing was closed at 4:15pm.

The Ohio Revised Code 4117.14(C)(4)(e), establishes the criteria that is to be used by the fact finder. The criteria are listed below and were given weight by the Fact

Finder in making his recommendations in this matter. The criteria are:

- Past collectively bargained agreements, if any, between the parties;
- 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;
- The interest and welfare of the public, the ability of the public employer to finance and administer the issue proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the public employer;
- Any stipulations of the parties;
- Such other factors not confined to those above, which are normally or traditionally taken into consideration in the determination of the public service or in private employment.

The format of this Report will be to list each parties position on the unresolved issues followed by the fact finder's discussion and recommendation.

ARTICLE 19 EQUALIZATION OF OVERTIME

Union Position:

1st Paragraph: Where a Chief Dispatcher is assigned to train any employee, the Chief Dispatcher will be compensated with one and one-half (1 ½) hours of compensatory time whenever the Chief Dispatcher is so assigned for more than 30 minutes during a single eight(8) hour shift.

2nd Paragraph(new): The Chief Dispatchers shall receive all of the training provided to the dispatchers and call takers, including any training received during the last three (3) years. The training shall include all in-service training and shall

never be less than three (3) days annually even if the dispatchers don't receive any training.

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City Position: Current Language.

Discussion:

This type of restrictive language (thirty minute training window) would create an administrative nightmare, and "contract language police". Language of this nature would be detrimental to good labor/management relations. However, Advocate Hearing discussion did reveal that established Chief Dispatchers actually trained newly assigned Chief Dispatchers throughout their probationary period. Training of these bargaining unit employees is not currently addressed in this Agreement.

Recommendation:

First sentence of first paragraph to read as follows: Where a Chief Dispatcher is assigned to train a newly appointed Sergeant or during a newly appointed Chief Dispatcher's probationary period assignment to the Communications Control Section, the Chief Dispatcher will be compensated with one and one-half (1 ½) hours of compensatory time whenever the Chief Dispatcher is so assigned for more than four hours during a single eight (8) hour shift.

-Last sentence of this paragraph—Current Language.

2nd Paragraph(new) to read as follows: The Chief Dispatchers shall receive in service training of not less than eight (8) hours annually.

ARTICLE 20 HEALTH COVERAGE/HOSPITALIZATION

Union Position: --Current Language.

City Position: Amend the relevant paragraphs of ARTICLE 20 and Contract appendices to reflect the following:

- Effective January 1, 2019, premium contributions will be increased to fourteen (14%)/family and fifteen (15%)/single for those employees

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participating in the City-defined wellness initiatives. Non-wellness premium contributions will be eighteen (18%) family and nineteen (19%) single coverage.

- * Effective January 1, 2019, modify plan-design on Plus plan as follows:

- Modify annual deductible to \$750 single and \$1500 family

- increase out-of-pocket maximums to \$1500 single and \$3000 family for in-network

- Out-of-network terms to continue to be set by carrier

- Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%)/family and ten percent(10%)/single of the City's monthly premium cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to five percent (5%)/family and six (6%)/single for those employees participating in City-defined wellness initiatives.

- Eliminate HMO options Smoking Cessation. The City reserves the right to implement a smoking-cessation policy during the life of the contract.

(see exhibits A and B for details).

Discussion:

In the last thirty plus years the "elephant in the room" at the bargaining table has been the dramatic increased cost of health coverage. In the last twenty years family health care premiums have increased by 157%. Wage increases have only increased by one-third as much, per the SERB Health Care Report. Employers and Unions in both private and public sectors have been seeking creative ways of controlling health care costs. Some of the creative ways have been health savings

accounts, wellness programs, increased deductibles, economy of scale, and ever-increasing employee premium contributions. The City has already established a pattern for Health Insurance, by settling with 26 of their 32 bargaining units, in the Fact Finder's opinion. The insurance coverage agreed to, covers 5000 of the City's

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5700 unionized employees(City Pre-submittal). Furthermore, there are no retroactive premium increases. The Statewide average monthly family percentage premium contribution for 2017 was 14.5%(SERB). This percentage is above what these employees (wellness) will pay in 2019.

Recommendation:

City Position for HEALTH COVERAGE/HOSPITALIZATION, including Exhibits A and B attached.

ARTICLE 22 COMPENSATORY TIME

City Position: Current Language.

Union Position:

First paragraph: Current language.

Second paragraph to read as follows: Compensatory Time may be accumulated at each employee's discretion up to a maximum of 480 hours. Compensatory Time shall be used upon reasonable request by the employee and if operational needs can be met, but at least three (3) shifts each month, even if it causes overtime. Compensatory Time shall be paid out at the employee's then prevailing wage rate:

- a) Current language.
- b) Current language.

- c) (new) The City agrees to budget \$45,000 in each calendar year from which employees may cash out their accumulated Compensatory Time. If the requests exceed the amount budgeted in any calendar year the requests shall be granted on a pro rata basis.:

Discussion:

Evidence and testimony showed that these bargaining unit employees work an

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extensive amount of overtime. Union Exhibit #2 identified that each Platoon (A,B,C) member worked more than one additional week to two weeks of overtime, on average, per month. The Union argued that due to the lack of a competitive wage structure and the overtime burden, it was difficult to hire and maintain bargaining unit employees.

This issue was discussed at length in the mediation session. Although there was no tentative agreement reached, the fact finder's recommendation reflects his understanding of what should be a realistic solution to this issue.

The Union cash out proposed amount is based on another bargaining unit's provision. Therefore, the recommendation amount will reflect what the Fact Finder believes is a commensurate amount for this size bargaining unit.

Recommendation:

ARTICLE 22 COMPENSATORY TIME to read as follows:

1st paragraph: current language.

2nd paragraph to read as follows: Compensatory Time may be accumulated at each employee's discretion up to a maximum of 480 hours. Compensatory Time shall be used upon a reasonable request by the employee and if operational needs can be met. However, each employee shall receive two (2) shifts off for Compensatory Time each month, even if it causes overtime and if operational needs can be met.

- a) Current language.

- b) Current language.
- c) New—The City agrees to budget \$6,500 in each calendar year, effective January 1, 2019, from which employees may cash out their accumulated Compensatory Time. If the requests exceed the amount budgeted in any calendar year the requests shall be granted on a pro rata basis.

ARTICLE 24 UNIFORM ALLOWANCE

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City Position: Current Language.

Union Position: Change first paragraph to read as follows:

All regular full-time employees in the job classification of Chief Radio Dispatchers shall receive an annual uniform credit of three hundred-fifty dollars (\$350) and a cash uniform maintenance payment of four hundred dollars (\$400). Uniform maintenance payment to retirees may be prorated based upon the employee's date of retirement.

Current language for the remainder of ARTICLE 24.

Discussion:

Advocate discussion in mediation and during the Hearing identified that employees supervised by these employees do receive a larger uniform credit and maintenance allowance(Union Pre-sub, pg.15). This bargaining unit has not had a uniform allowance adjustment in the last ten years. The OPBA argues that these employee's white shirts are more susceptible to soil, stains and wear than the Dispatchers' blue shirts. Considering the passage of time since the last uniform increases an increase is in order, in the Fact Finder's opinion.

Recommendation:

Increase dollar amounts in accordance with Union Position.

ARTICLE 28 DISCIPLINE

Union Position: Current Language.

City Position:

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Amend the third sentence of the first paragraph to read as follows: An employee who is to be disciplined must be charged within fourteen (14) calendar days of the event(s) upon which the discipline is based or within a reasonable time from the date the City had knowledge of said event(s).

Discussion:

The City's Pre-submittal identified a fourteen-day time limit for written notice to be given when an employee is suspended or discharged. However, this was in error and quickly clarified to the Fact Finder and Union. The fourteen-day requirement only applies to the notice regarding an alleged charge, and not the implementation of the discipline. Once the disparity was clarified neither the Union nor the fact finder had an issue with the change.

Recommendation:

City Position as amended above.

ARTICLE 38 WAGES

Union Position: Change wage differentials over Police Dispatcher as follows:

Start: 12%

After 1 Year: 14%

After 2 Years: 16%

Second and third paragraphs: Current Language.

New last paragraph to read as follows: The non-probationary employees shall all receive an equity adjustment in the form of a quarterly bonus starting in the first full pay period in January 2019. The quarterly bonus shall be equal to two and one-half percent (2 ½ %) of each employee's annual salary.

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City Position:

A. Wage Increase:

1. Amend Article 38 to reflect the following across-the-board wage increases:

First Year—0% wage increase effective April 1, 2016.

Second Year—2% wage increase effective April 1, 2017 and in accordance with current Contract language.

Third Year—2% wage increase effective April 1, 2018 and in accordance with current Contract language.

2. Ratification Bonus:

Add the following provision to Article 38:

If employees receive no wage equity adjustment, employees will receive a \$500, one-time lump sum payment, not rolled into the base pay, payable within a reasonable time following ratification.

Discussion:

The current extended Agreement which expires on March 31, 2019, is the first CBA that addresses a wage differential increase. Although the City argues that a wage pattern has been set, and rightly so, it is not germane here, in the Fact Finder's opinion. Neither party is proposing to leave the Rank Differential System. Therefore the 0-2-2% "pattern" established by 21 of the other civilian bargaining

units, is not applicable here. The Rank Differential is triggered by the Police Dispatchers' (CPPA-Civilian) ultimate wage settlement(CBA). This bargaining unit's wage increase is yet to be determined since the triggering bargaining unit is still negotiating(City Pre-sub).

Additionally, the OPBA has proposed that an equity bonus be granted to these members. This equity bonus would provide these bargaining unit members a quarterly bonus of 2.5% of the individual's annual salary. This proposed bonus

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would give the individual member a 10% bonus annually. The 10% bonus would, as discussed at the Hearing, be unending. This is not a realistic proposal in the fact finder's opinion, given the City's economic situation, per submitted evidence.

The City has indicated its willingness to consider an equity adjustment for these members if in compliance with the established Rank Differential with the CPPA Civilian Unit. In fact, per City's Fact Finding Statement, page 7, they have explored an equity adjustment for the Police Dispatchers in their negotiations. An equity adjustment, if there is to be one for this Unit, should come through the application of the Wage Differential between this OPBA Unit and the CPPA Civilian Unit.

Is there merit to increase the Wage Differentials of 10%, 12.5%, 14.8% established in the current Agreement? There were no differential increases granted or negotiated with other bargaining units, either supervisory or non-supervisory(City Exbs.) The current wage differentials for this bargaining unit are higher than all other City bargaining units other than the First Responder units (CE-Tb.25). However, there was no evidence or testimony explaining the discrepancy in the step differential being less for the over two (2) years employee. The step differential between the Start rate and the After one year is 2.5%, but the After two Year is 2.3%. An employee with over two years' service should be entitled to not less of an increase than his junior counterpart. In the Fact Finder's opinion, the wage differential should be uniformly applied within this bargaining unit's wage scale.

Recommendation:

Current language except increase the After 2 Years Differential by .2%(to 15%), effective April 1, 2017.

If these bargaining unit members receive no wage equity adjustment through the triggering unit(CPPA-Civilian), these members will receive a \$500, one-time lump

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sum payment, not rolled into the base pay, payable within a reasonable time following ratification.

CONCLUSION

The Fact Finder recommendations contained herein were arrived a giving consideration to the positions of the parties, and the criteria enumerated in ORC 4117.14(C)(4)(e). Additionally, the Fact Finder incorporates into this Report, as part of his recommendations, any tentative agreements reached between the parties and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact-Finding Report.

Respectfully submitted this 7th day of January 2019.

E. William Lewis
Fact Finder
/s/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by e-mail upon Mr. Patrick Hoban, Advocate for the City of Cleveland, 950 Main Avenue, 4th floor, Cleveland, Ohio 44113, and Mr. Jeffrey Perry, Advocate for the Ohio Patrolmen's Benevolent Association, 10147 Royalton Road, suite J, North Royalton, Ohio 44133, and Mr. Donald Collins, Esq., General Counsel, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215, this 7th day of January 2019.

E. William Lewis
Fact Finder
/s/