

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
CONCILIATION BETWEEN: : CASE NOS. 2013-MED-11-1507
: 2013-MED-11-1508
: 2013-MED-11-1509

BATH TOWNSHIP, Date of Hearing: February 27, 2015
SUMMIT COUNTY, OHIO : Date of Award: March 31, 2015
Employer, :
and :
: :
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC., :
Union :

CONCILIATION AWARD

JOHN F. LENEHAN, CONCILIATOR
P.O. Box 2937
Dayton, Ohio 45401
Phone: (937) 673-2302
Email: Len289@aol.com

Appearances:

Employer:
Robin L. Bell, Esquire
Regional Manager
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road, Suite A
Akron, Ohio 44319-1907
Email: rbell@clemansnelson.com

FOP:
Charles L. Wilson
Senior Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.,
Northeast Office
2721 Manchester Road
Akron, Ohio 44319-1020
Email: cwilsonfop@aol.com

CONCILIATION AWARD

I BACKGROUND

On January 7, 2015, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the matter of the Fraternal Order of Police, Ohio Labor Council and Bath Township (Case Nos. 2013 –MED – 11-1507, 1508 and 1509). A Conciliation Hearing was held at 10:00 A.M. on February 27, 2015, at the Bath Township Hall, 3864 West Bath Road, Akron, Ohio 44333. The Fraternal Order of Police, Ohio Labor Council, Inc., (“FOP” or “Union”) was represented by Charles Wilson, Senior Staff Representative. Bath Township (“Township” or “Employer”) was represented by Robin L. Bell, Esquire, Regional Manager, Clemans, Nelson & Associates, Inc... In attendance on behalf of the FOP were: Chuck Aliff, Staff Representative, Fraternal Order of Police, Ohio Labor Council; Joyce Antonino, Police Dispatcher; and Benjamin Falconer, Police Officer; and, Richard W. Munsey, Police Officer. Township Administrator Vito Sinopoli and Senior Consultant Kevin Shebesta were present on behalf of the Township.

After discussion with the parties, it was determined that mediation of the outstanding issues would not be productive. Thus, both parties presented evidence in support of their respective positions. The parties agreed that the Conciliator’s Award would be issued via email to the parties’ representatives and SERB on March 31, 2015.

A. Description of the Bargaining Units and Employer

The Union is the certified exclusive representative for three (3) bargaining units in the Township’s Police Department. They are: 1) Patrol Officers (2013-MED- 11-1507), consisting of fourteen (14) patrol officers; 2) Lieutenants and Sergeants (2013-MED- 1508), consisting of one (1) lieutenant and four (4) sergeants); and, 3) Dispatchers, (2013–MED-11-1509), consisting of five (5) dispatchers.

The Employer, Bath Township, is located in the Western part of Summit County, in the North Eastern part of the State of Ohio near the major cities of Cleveland and Akron, off I-77. It consists of twenty-three (23) square miles with a population close to ten thousand (10,000). The Township has collective bargaining agreements with the International Association of Fire Fighters, Local 4130 covering all fulltime Fire Fighters, Fire Medics, Lieutenants and Staff Lieutenant; and, the Teamsters Local 348 for all hourly employees in the road Department.

B. History of Bargaining

These negotiations involved three newly organized bargaining units certified by SERB in June, 2013. In prior years the Township had entered into agreements with the "Bath Township Safety Forces that was not under the jurisdiction of SERB, and according to the Employer was in the general format of policy rather than a collective bargaining agreement. The last agreement the Township had with the Bath Township Safety Forces expired in 2010. Attempts to negotiate with the employer for 2011 and 2012 were unsuccessful and the employees in the foregoing bargaining units received no pay increases. As a result, a representation petition was filed with SERB, and subsequently the FOP was certified as the representative for the three (3) units.

Bargaining sessions were held on December 13, 2013, January 22, 2014, February 11, 2014, February 20, 2014, March 11, 2014, March 19, 2014, April 9, 2014, April 23, 2014, May 21, 2014, June 11, 2014 and July 23, 2014. These bargaining sessions resulted in tentative agreements on most Articles to be included in the parties initial agreements, except for the following seven Articles: Article 14, Grievance and Arbitration Procedure; Article 17, Hours of Work and Overtime; Article 19, Uniform Allowance; Article 20, Wages and Other Compensation; Article 23, Insurance; Article 24, Holidays; and Article 35, Duration. As a result, the matter was referred to the State Employment Relations Board (SERB) as required by Ohio Law. Howard D. Silver, Esquire was appointed as the Fact Finder. A hearing was held on November 19, 2015 and the Fact Finder's Report was issued December 11, 2014.

C. Summary of the Fact Finder's Recommendations

The Fact Finder in his report made the following recommendations as to the Articles that were in dispute.

ISSUE 1: ARTICLE 14, GRIEVANCE ARBITRATION PROCEDURE (All Units)

Recommendation: The Fact Finder recommends the addition of language to Article 14, Section 4, specifying an arbitrator's lack of authority to render a decision involving a grievance that does not conform to the party's negotiated time limits. The Fact Finder does not recommend the addition of other language proposed by the Employer for Article 14.

ISSUE 2: ARTICLE 17, HOURS OF WORK AND OVERTIME (Patrol and Police Supervisor Units)

Recommendation: The Fact Finder finds the efficiency proposed by the Employer that would exclude Lieutenants from the overtime rotation to fill Patrol Officers positions on an overtime basis to be non-discriminatory and intended to save money. The Fact Finder recommends that the language proposed by the Employer in this regard be included within the collective bargaining agreement for the Patrol Officers' bargaining unit.

ISSUE 3: ARTICLE 19, UNIFORM ALLOWANCE (Detective and Dispatchers)

Recommendation: The Fact finder recommends the retention of language in Article 19, Uniform Allowance, leaving Detective Lieutenants with a clothing allowance of \$800.00 annually and a \$300.00 annual clothing maintenance allowance. The Fact Finder recommends the retention of the \$450.00 annual clothing allowance for Dispatchers. The Fact Finder finds an insufficient basis upon which to recommend an increase in these allowances as proposed by the Union. The Fact Finder prefers to recommend the expenditure of additional monies in other areas.

ISSUE 4: ARTICLE 20, WAGES AND OTHER COMPENSATION (All Units)

Recommendation: The Fact Finder recommends annual wage increases for bargaining unit members of three percent (3%), three percent (3%) and three percent (3%), effective January 1, 2015; January 1, 2016; and January 1, 2017.

ISSUE 5: ARTICLE 23, INSURANCE (All Units)

Recommendation: The Fact Finder finds the Union's objections to the Employer's proposal on spousal coverage to be as legitimate and as persuasive as the Employer's arguments in support of its proposal intended to contain very expensive and ever-increasing health care coverage costs. The Fact Finder does not recommend the Employer's proposal but fully endorses extending coverage to bargaining unit members that is equal to and uniform with the coverage of other Bath Township employees, both organized and non-organized.

ISSUE 6: ARTICLE 24, HOLIDAYS

Recommendation: Bargaining Unit members who do not work on the holiday shall receive eight (8) hours of holiday pay. Bargaining Unit members who work one of the above designated holidays shall receive an overtime rate of one and one-half (1 ½) times the employee's base hourly rate for all hours worked on the holiday. Holidays run from 12:00 a.m. through 11:59 p.m. on the actual date of the holiday.

ISSUE 7: ARTICLE 35, DURATION

Recommendation: The Fact Finder believes that the retroactive proposal from the Union that would initiate these Agreements on January 1, 2014 would cause additional expense to the Employer that would make an agreement in this case more difficult. The Fact Finder believes that initiating the Agreements on January 1, 2015 and extending the Agreements to December 31, 2017 would best serve the parties in operating under these contractual relationships.

D. Rejection of the Fact Finder's Recommendations

The parties pursuant the Ohio Revised Code and SERB's Administrative Rules rejected the Fact Finder's Report and Recommendations for the three (3) units.

E. Resolved Issues

Subsequent to the issuance of the Fact Finding Award and prior to the Conciliation Hearing the Parties reached a tentative agreement on Issue #1, Article 14, Grievance Arbitration Procedure, and Issue #5, Article 23, Insurance. These tentative agreements and the previously

agreed to tentative agreements are incorporated as being part of this Conciliation Award. The following is a list of all tentative agreements. They will not be more specifically addressed in this report.

- Preamble and Purpose
- Article 1 Recognition
- Article 2 Management Rights
- Article 3 Non-Discrimination
- Article 4 Payroll Dues Deduction
- Article 5 Fair Share Fees
- Article 6 Mid-Term Bargaining
- Article 7 Work Rules
- Article 8 No Strike-No Lockout
- Article 9 Labor Management Meetings
- Article 10 Probationary Period
- Article 11 Seniority
- Article 12 Layoff and Recall
- Article 13 Disciplinary Action
- Article 14 Grievance and Arbitration Procedure
- Article 15 Bulletin Board
- Article 16 Shift Assignment
- Article 18 Shift Differential
- Article 21 Severance of Prior Agreements/Mid-Term Bargaining
- Article 22 Court Time and Call-in
- Article 23 Insurance
- Article 25 Vacations
- Article 26 Sick Leave
- Article 27 Injury Leave/Transitional Work
- Article 28 Bereavement Leave
- Article 29 Military Leave
- Article 30 Leave of Absence with Pay
- Article 31 Family Medical Leave Act
- Article 32 Drug and Alcohol Abuse Screening
- Article 33 Waiver in Case of Emergency
- Article 34 Severability

F. Unresolved Issues

The following are the remaining unresolved issues for determination by the Conciliator.

1. Article 17- Hours of Work and Overtime

2. Article 19- Uniform Allowance
3. Article 20- Wages and Other Compensation
4. Article 24-Holidays
5. Article 35-Duration

II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator is required to give consideration to the following criteria in choosing between the Parties proposals, on an issue- by- issue basis. That statute in pertinent part reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact –finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

* * *

(G)(7) After hearing the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interests 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;
- (d) The lawful authority of the public employer;
- (e) The stipulation of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The remaining unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter choosing between each of the Parties' final settlement or last best offer on the each issue.

III ISSUES

ISSUE #1 - ARTICLE 17, HOURS OF WORK AND OVERTIME (Patrol and Police Supervisor Units)

Fact Finders' Recommendation

The Fact Finder recommended the Employer's proposal that the Detective/Lieutenant should be excluded from the patrol officers' overtime rotation.

Employer's Position

The Employer proposes as its final settlement offer to exclude the Detective/Lieutenant from the patrol officers' overtime rotation set forth in Section 6, Overtime Rotation. According to the Employer this is the only issue that has precluded an agreement on the Hours of Work and Overtime Article for the two police units. Apparently, the parties are in agreement as to the language of the other sections of this Article.

The Employer argues that it is seeking to preclude the Detective/Lieutenant position from having to be offered the overtime opportunity prior to mandating overtime by a patrol officer. It is not seeking to preclude its ability, in its discretion, to offer the overtime to the Detective/ Lieutenant. A Detective/Lieutenant's right to fill overtime in another bargaining unit is a permissive subject of bargaining because the patrol officers and the Detective/Lieutenant are in separate bargaining units. The Employer has no interest in bargaining over this matter, especially considering that at current rates, filing an entry level patrol officer open shift with a Lieutenant will cost approximately \$14.00 more per hour than filling the shift with an

equivalent level employee. The Employer has proposed that Section 6 of Article 17 – Hours of Work and Overtime for both Patrol and Police Supervisor Units read as follows:

Section 6. Overtime Rotation. The Employer will attempt to equitably distribute available overtime opportunities within each classification. The following outline will be utilized when it is determined by the Chief of Police or his designee that overtime is required.

A. If a supervisor's position needs to be filled:

1. the supervisor rank needed
2. the next lower supervisory rank
3. qualified Full-time Officer
4. the next higher supervisory rank
5. qualified Part-time Officer
6. mandatory overtime may be ordered

B. If a police officer position needs to be filled:

1. Part-time Officer
2. Full-time Officer
3. Sergeant
4. Mandatory overtime may be ordered.

If no one responds to the offer, an employee in the classification on duty at the time the overtime is needed may be held over until a replacement arrives.

Union's Position

The FOP proposes as its final settlement offer the following language for Section 6 of Article 17- Hours of Work and Overtime for both the Patrol and the Police Supervisory Units.

Section 6. Overtime Rotation. The Employer will attempt to equitably distribute available overtime opportunities within each classification. The following outline will be utilized when it is determined by the Chief of Police or his designee that overtime is required.

A. If a supervisor's position needs to be filled:

1. the supervisor rank needed
2. the next lower supervisory rank
3. lieutenant
4. qualified Full-time Officer

5. qualified Part-time Officer
 6. Mandatory overtime may be ordered
- B. If a police officer position needs to be filled:
5. Part-time Officer
 6. Full-time Officer
 7. Sergeant
 8. Mandatory overtime may be ordered.

Discussion and Award

The Employer's Final Settlement Offer on this issue should be adopted and incorporated into the collective bargaining agreements for the Patrol Officer and the Supervisor units. While the argument put forth by the Employer regarding this issue being a permissive subject of bargaining may be questionable, the Conciliator concurs with the Fact Finder. The efficiency proposed by the Employer to exclude Lieutenants from the overtime rotation to fill Patrol Officers positions on an overtime basis is non-discriminatory and saves the Employer overtime costs. The Fact Finder's decision on the issue is reasonable and based upon fact.

Therefore, the Conciliator finds that the FOP's Final Settlement Offer is hereby rejected and the Employer's Final Settlement Offer is hereby adopted and incorporated in the Patrol Officers' and Supervisors initial Collective Bargaining Agreements. The Hours of Work and Overtime provisions of both Agreements shall read as follows:

PATROL AND PROMOTED UNITS

HOURS OF WORK AND OVERTIME

Section 1. This Article is intended to define the normal hours of work per day or per week in effect at the time of the execution of this Agreement. Nothing contained herein shall be construed as preventing the Employer from restructuring the normal workday or workweek for the purpose of promoting efficiency or improving services, from establishing work schedules of employees or establishing part-time positions. This Article is intended to be used as the basis for computing overtime and shall not be construed as a guarantee of work per day or per week.

Section 2. The work period shall begin at 12:01 a.m. on Sunday and continue for seven (7) consecutive calendar days [one hundred sixty-eight (168) consecutive hours] ending at 12:00 midnight the Saturday thereafter. Each employee's work schedule shall be determined by the

Employer. The normal work schedule for full-time bargaining unit employees shall consist of forty (40) hours of work performed during the seven-day work period.

Section 3. When an employee is required to work in excess of forty (40) hours during the seven (7) day work period, he shall be paid overtime pay for such time worked over forty (40) hours at the rate of one and one-half times his regular hourly rate of pay. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement. For purposes of determining an employee's eligibility for overtime, all hours actually worked by the employee and scheduled vacation and holiday time will be included. All other hours for which the employee is compensated but does not actually work shall not be included in determining eligibility for overtime.

Section 4. Overtime hours shall not be permitted except in case of emergency or as approved by the Chief of Police. When necessary, overtime shall properly be documented and approved by Chief of Police, or in his absence, the appropriate designee.

Section 5. Mandatory Overtime. Whenever the Chief of Police, or his designee, determines overtime is necessary to meet the operational needs of the department, any or all employees may be required to work overtime. Mandatory Overtime may take the form of call in or hold over overtime.

Section 6. Overtime Rotation. The Employer will attempt to equitably distribute available overtime opportunities within each classification. The following outline will be utilized when it is determined by the Chief of Police or his designee that overtime is required.

A. If a supervisor's position needs to be filled:

1. the supervisor rank needed
2. the next lower supervisory rank
3. qualified Full-time Officer
4. the next higher supervisory rank
5. qualified Part-time Officer
6. Mandatory overtime may be ordered

B. If a police officer position needs to be filled:

1. Part-time Officer
2. Full-time Officer
3. Sergeant
4. Mandatory overtime may be ordered.

If no one responds to the offer, an employee in the classification on duty at the time the overtime is needed may be held over until a replacement arrives. (See Employer's language attached to its Position Statement)

ISSUE 2: ARTICLE 19, UNIFORM ALLOWANCE (Detective and Dispatchers)

Fact Finder's Recommendation:

The Fact finder recommended the retention of language in Article 19, Uniform Allowance, leaving Detective/Lieutenants with a clothing allowance of \$800.00 annually and a \$300.00 annual clothing maintenance allowance. The Fact Finder recommended the retention of the \$450.00 annual clothing allowance for Dispatchers. The Fact Finder found an insufficient basis upon which to recommend an increase in these allowances as proposed by the Union. The Fact Finder prefers to recommend the expenditure of additional monies in other areas.

Employer's Position

The Employer proposes as its Final Settlement Offer to continue the practice of providing an annual uniform allowance of \$800 for all police officers (an issue not in dispute). In addition, the Employer proposes to provide all detective bureau personnel with sufficient clothing allowance to maintain two uniforms and also provide annual clothing allowance cash payments of \$800. After considering the Fact Finder's recommendation, the Employer also proposes to make the uniform maintenance allowance (dry cleaning and tailoring) of \$300 available to all officers, including plain clothes.

The Employer argues that paying plain clothes detectives \$1,600 per year for street clothes is nothing short of absurd. It has recognized the need for plain clothes officers to maintain some uniform by proposing to provide sufficient clothing allowance to maintain two uniforms and provide them with \$300 in maintenance allowance for those uniforms. Finally, the Employer believes that \$800 cash payment to plain clothes officers for some reimbursement for their street clothes is generous and is in line with external comparables.

For the dispatchers, the Employer proposes an annual clothing allowance payment of \$450.00. It maintains that its proposal is reasonable in light of the fact that the Township is moving toward a more standardized uniform for dispatchers, and that dispatchers' uniforms are not subjected to the same conditions as a police officer's uniform.

The Employer submitted into evidence exhibits comparing the uniform allowances granted to other police departments in the area.

Union's Position

The Union proposes as its Final Settlement Offer to retain the current amounts for the Uniform Allowance for all bargaining units. According to the Union, the Fact Finder's Report was in error in that it stated the Union was seeking an increase of \$800 in the uniform allowance for the Detective/Lieutenant, and of 56% (\$250.00) for the dispatchers. The Union claims that the Fact Finder's Award on this issue reduced the Uniform Allowance for the Detective/Lieutenant from \$1600.00 to \$800.00 and for the Dispatchers from \$700.00 to \$450.00. The current practices of the parties were covered by the Bath Safety Forces Association Agreement with the Bath Township Trustees, and continued to be the custom as it was adopted in the "Bath Township Manual".

To support its position the Union submitted into evidence documents tracing the history of the uniform allowances paid by the Township for the classifications of Patrol Officer, Detective and Dispatcher from 1990 through the present. That document indicates that since 2007 the Uniform Allowance for the Detective/Lieutenant has been \$1600.00 and for the Dispatchers \$700.00. (Union Submission Statement and Bath Safety Forces Agreement, Book 1, Tab-Current Agreement)

Discussion and Award

The evidence clearly indicates that the Union was not seeking a change in the amount the Employer had been paying for uniform allowances. While a false assumption or error of this nature could justify a Conciliator ignoring, or not deferring to, the Fact Finder's Finding and Recommendation, such is not warranted here. Based upon the evidence submitted, the Conciliator concurs with the Fact Finder's recommendation as to the amounts of the Uniform Allowance for each bargaining unit. Although under a false assumption of the past practice of the parties and the provisions set forth in the agreement between Bath Township and the Bath Safety Forces Association, the Fact Finder's final recommendation was reasonable and

supported by the evidence of external comparables (See Exhibits #2 and #3 under "Employer's Position Statement", Employer's Note Book).

Therefore, the Conciliator finds that the FOP's Final Settlement Offer is rejected and the Employer's Final Settlement Offer is hereby adopted and incorporated in the Patrol Officers', Promoted and Dispatch Units initial Collective Bargaining Agreements. The Uniform Allowance provisions of those Agreements shall read as follows:

PATROL AND PROMOTED UNITS

UNIFORM ALLOWANCE

Section 1. Bargaining unit employees shall receive an annual clothing allowance of eight hundred (\$800.00) dollars. The allowance may be used by employees to purchase and/or replace authorized uniform items and equipment as established by the Chief of Police. The Employer shall either establish a dedicated account with an approved vendor by which the allowance can be redeemed or payments will be made when receipts are provided by the employee to the Township.

Section 2. The authorized list of uniform items for Full-Time uniform police officers shall be established by the Chief of Police. The current list of authorized uniforms/equipment is attached hereto as Appendix A. Equipment and other items not issued or required by the Employer may be utilized or worn only with the permission of the Chief of Police or his designee.

Section 3. All Full-Time police officers shall receive an annual clothing maintenance allowance of three hundred dollars (\$300.00), to cover dry cleaning and tailoring of uniform items not adaptable to general usage as ordinary clothing.

Section 4. All Detective Bureau personnel shall, in lieu of the clothing allowance in section 1 be provided with a sufficient clothing allowance to maintain two uniforms and shall also be provided with a yearly clothing allowance check in the amount of eight hundred dollars (\$800.00) issued no later than April 1, of each year.

Section 5. The Township shall provide newly hired full-time police officers with frisker gloves, ballistic (non-tactical vest), and approved flashlight, a duty use handgun, and Taser. Ballistic (non-tactical) vest maintenance and recommendation will generally be in accordance with the manufacturer's recommendation; however, any officer must receive written pre-approval by the Chief of Police before a ballistic vest replacement is purchased.

Section 6. In the event of damage to an employee's personal property (e.g. prescription eye glasses (including frames), watch, cell phone), which damage occurs in the active discharge of the employee's duties, the Employer shall pay the difference, if any, between the amount of

reimbursement from Workers' Compensation and the actual cost of repair or replacement, up to a limit of one hundred and twenty dollars (\$120.00).

Section 8. All uniforms, equipment, and/or weapons issued by the Township or purchased with the allowance are and shall remain the property of Bath Township.

APPENDIX A

(To be attached)

DISPATCH UNIT

Section 1. Bargaining unit employees shall receive an annual clothing allowance of four hundred fifty dollars (\$450.00). The allowance may be used by employees to purchase and/or replace authorized uniform items and equipment as established by the Chief of Police. The Employer shall provide payment of the full uniform allowance to each dispatcher by March 1, of each year.

Section 2. The authorized list of uniform items for dispatchers shall be established by the Chief of Police. Equipment and other items not issued or required by the Employer may be utilized or worn only with permission of the Chief of Police or his designee.

Section 3. All uniform items issued by the Township or purchased with the uniform allowance are and shall remain the property of Bath Township and shall be returned to the Township.

ISSUE 3: ARTICLE 20, WAGES AND OTHER COMPENSATION (All Units)

Fact Finder's Recommendation: The Fact Finder recommended annual wage increases for bargaining unit members of three percent (3%), three percent (3%) and three percent (3%), effective January 1, 2015; January 1, 2016; and January 1, 2017, and those other provisions regarding wages and compensation remain unchanged.

Union's Position

The Union proposes as its final Settlement Offer that the Fact Finder's Finding and Recommendations for the three units be adopted and incorporated into the initial collective bargaining agreements. In support of its position the Union submitted numerous exhibits relating to the financial condition of the Township and both external and internal comparables.

Employer's Position

The Employer proposes general wage increases of 2%, 2%, and 2% for the three years of the agreement with the initial increase January 1, 2015. In addition to the twenty-four exhibits, many of which relate to the financial condition of the Township and external and internal comparables, the Employer sets forth the following rationale in support of its position.

1. The Employer's wage proposal is reasonable. Its Final Settlement Offer is a significant increase from its Fact Finding Position of one percent (1%) effective January 1, 2015 and lump sum bonuses of \$500.00 in 2016 and 2017.
2. The Employer's proposal is reasonable in the light of the history of increases provided to other safety units within the Township. (Exhibit #4) The Fact Finder's Award of 3%, 3% and 3% was based upon inaccurate information presented by the Union during Fact Finding which portrayed historic raises received by other Township safety forces units being higher than what was actually received by those units.
3. The accurate historical information regarding police and fire department raises supports the Employer's proposal.
4. SERB'S Wage Settlement Breakdown Report supports the Employer's proposal (Exhibit 5)
5. Bath Township has been adversely impacted by the recent cuts to local government funding and the estate tax elimination. The Employer's proposal of fiscal restraint therefore best comports with the interest and welfare of the public, despite the fact that some of the Township's population is more affluent than most.
6. Bath Township, like all Ohio Townships has limited sources of funding available to support its operations. Its primary source of funding is property taxes. (Exhibit 6)
7. The Township has seen General Fund Revenues decrease from 2011 to 2014. This decrease is a result of stagnant property tax collections and cuts to local government funding. (Exhibit 7).
8. With an eye on further potential cuts to local government funding and the elimination of the Estate Tax, the Township has worked hard to reduce General Fund Expenditures. This has resulted in total revenues and expenditures being largely in line with one another over the three (3) year period prior to 2014. (Exhibit 8). However, the 2014, General Fund substantially decreased, and reserves were drawn upon.
9. Over the last four (4) year period (2011-2014) total property tax collections have been stagnant. (Exhibit 9).
10. As a whole over the four (4) year period the Township has lost more than \$420,000 in local government funding. Going forward it expects further cuts to this source of revenue. (Exhibit 10)

11. With the elimination of the estate tax the Township is looking at a loss of approximately \$950,000 in annual general fund revenue. (Exhibit 11)
12. While the Township has been dealing with the decreased general funding, the current Police District Property Tax Levy has been unable to keep up with expenditure levels in the Police Department. (Exhibit 12; Exhibit 13, Exhibit 14) On average over the 2011-2013, Police Department Expenditures have exceeded levy revenue by almost \$700,000.
This has forced the Township General Fund to (which is facing revenue decreases of its own going forward) to supplement the Police Department Operations. (Exhibit 15) In 2014 despite a decrease in Department Expenditures, expenditures exceeded the levy by approximately \$400,000.
13. As a result of all these factors, General Fund Carryover has decreased this last year. However, with the Estate Tax elimination the Township will lose \$900,000 in average annual income, and thus it is reasonable for the Township to expect carryover to decrease significantly in the next couple of years. (Exhibit 6)
14. ***Keeping in mind that Bath Township is not truly comparable to other townships in terms of all economic demographics;*** the employees in the bargaining unit are reasonably situated in consideration of external comparisons. (Exhibit 17) The Township's safety forces are paid very well when compared with other external townships. (Exhibit 19; Exhibit 20; Exhibit 21)
15. Data from the Ohio Labor Market Index also supports the conclusion that the Township bargaining unit members are well compensated. (Exhibit 22)
16. Special consideration must also be given to the wage reopeners in the labor agreement with the IAFF that will be triggered if an award over 2% is given to the police unit in 2015. (Exhibit 23) Those agreements were entered into prior to organization by these police department bargaining units.
17. As a result, until that wage reopener expires the bargaining unit members will continue to be unable to make up the gap they assert is present. Providing general wage increases to these members will only serve to whipsaw the Township, nothing more.

Discussion and Award

The Union's position is persuasive. The FOP's final settlement offer on Article 20 should be adopted and incorporated into the successor Collective Bargaining Agreements. Deferral to the Fact-Finder's Finding and Recommendation is appropriate in this case. As SERB Conciliator Dennis Byrne stated in *City of Lakewood and Local 382, IAFF*, SERB 00-MED-09-0952, May 1, 2002, p.4:

A conciliator is not bound to follow the fact finder's recommendations, but only a foolish or naive conciliator will change the fact finder's recommendations without an overriding reason. In general, the party that disagrees with the fact finder must prove that the neutral made some mistake in fact or logic. If the moving party cannot adequately prove that the fact finder made a mistake, then there is no reason for a conciliator to make a different recommendation than the fact finder... Whether or not a conciliator agrees with the recommendation is somewhat beside the point. The conciliator must be deferential to the fact finder unless it can be proved that the fact finder made a serious error in his/her report. This means that the bar has been set very high for the party that wishes to have the fact finder's recommendations modified.

The Conciliator does not find any mistake in fact or logic in the Fact Finder's Award regarding wages for the bargaining units. Thus, there is no overriding reason to change the Fact Finder's recommendation. The evidence submitted for the Fact Finding and the Conciliation Hearings support the Fact Finder's recommendation. The parties have submitted numerous exhibits into evidence regarding the finances of the Township. Those exhibits show there are sufficient funds to increase base wages from reserves, as claimed by the FOP. Such would not be contrary to the public interest.

As is the case with all Ohio townships, Bath Township is primarily funded through property taxes levied on real property within the township. Other sources of revenue include levies and motor and lodging taxes. In recent years other sources of revenue have been eliminated or reduced. In this regard, the Employer points to the elimination of the estate tax and the reduction of local government funds.

Bath Township operates from a General Fund that is used to account for all financial resources available to the Township except those funds required to be accounted for a different fund. General Fund balances are available to Bath Township for any purpose, provided the funds are expended or transferred according to the general laws of the State of Ohio.

The Township also has a Police District Fund that receives property tax money for providing police services to township residents. The levy for this fund was first passed in 1987 and passed again in 1994. Police operations are paid primarily through this fund. A small

portion of the resources available for police operations is received from various charges for services, fees and fines, along with an allocation from the Township's General Fund.

Police District Fund cash receipts from 2008 through 2013 were: 2008 - \$2,653,570; 2009 - \$2,672,330; 2010 - \$2,747,983; 2011 - \$2,619,621; 2012 - \$2,556,097, 2013 - \$2,601. The Police District disbursements from 2008 through 2013 were: 2008 - \$2,816,748; 2009 - \$2,666,887; 2010 - \$2,823,187; 2011 - \$2,569,889; 2012 - \$2,524,289; and, 2013 -- \$2,592,635.

The Police District Fund balances from 2008 through 2013 were: 2008 - \$581,916; 2009 - \$587,359; 2010 - \$512,155; 2011 - \$561,887; 2012- \$593,695; and, 2013 - \$602,431. The 2013 Police District Fund balance comprises 23.2% of the annual disbursements from the fund in 2013.

As to the Township's General Fund, the following were the cash receipts from 2008 through 2013: 2008 - \$2,706,818; 2009 - \$2,586,856; 2010 - \$2,557,364; 2011 - \$2,828,990; 2012 - \$2,909,747; and, 2013 - \$2,540,556. The General Fund disbursements from 2008 through 2013 were: 2008 - \$1,849,355; 2009 - \$1,634,632; 2010 - \$2,646,882; 2011 - \$2,820,472; 2012 - \$2,408,015; 2013 - \$2,485,971. The Townships General Fund ending balances for fiscal years 2008 through 2013 were: 2008 - \$3,437,644; 2009- \$4,275,452; 2010 - \$4,159,594; 2011 - \$4,183,863, 863; 2012 - \$4,552,115; and, 2013 - \$4,473,561.

According to Union Exhibit 1A, page 4, the Government Finance Officers' Association (GFOA) conservatively recommends that a public entity maintain an unrestricted General Fund balance of approximately two months of expenditures or approximately 16.7% of annual general operating expenditures as a cushion for emergencies and unexpected expenditures.

The Township's reserve policies set a goal of maintaining a General Fund balance reserve of forty-five percent (45%) of the general Fund's annual operating budget. From 2008 through 2013 the amounts of unreserved/unassigned funds in comparison to General Fund operating disbursements for these years were: 186% in 2008, 262% in 2009, 157% in 2010, 148% in 2011, 189% in 2012, and 180% in 2013. These annual unencumbered carryovers are

obviously far in excess of the 16.7% suggested by the GFOA and the 45% called for by the Township's reserve policy.

The Conciliator, as did the Fact Finder, does not cite the above substantial annual carryovers to question the policies of the Township Trustees, but only to reflect what is in the record. The wage increases proposed by both parties are reasonable and do not threaten in any substantial or significant way the very impressive unreserved/unassigned funds that have been carried over annually from 2008 through 2013.

The Employer states in the "Rationale" of its Submission Statement (Item 2) that the Fact Finder's Award of 3%, 3% and 3% was based upon inaccurate information presented by the Union during Fact Finding which portrayed historic raises received by other Township safety forces units being higher than what was actually received by those units. In support of this claim, it submits Employer's Exhibit 4, which is a comparison of police and fire department wage increases from 2006 through 2017. The exhibit depicts the police units receiving 23.72% and fire unit receiving a paltry 22%. This comparison, however, is misleading. It does not project any wage increases for 2016 and 2017 for the fire unit. A more accurate comparison would be through 2015. In such a case the police units would have received only 19.72% or 20.72% and the fire unit 22%.

The Employer also argues that special consideration must be given to the wage reopeners in the labor agreement with the IAFF that will be triggered if an award over 2% is given to the police unit in 2015. (Employer Exhibit 23) Those agreements were entered into prior to organization by the police department bargaining units, and they contain "me too" language that could be interpreted to require wage increases be granted to other bargaining units. The Fact Finder responded to this concern by recommending that the Union's wage proposal and initial agreements begin January 1, 2015, rather than being retroactive to January 1, 2014. This according to the Fact Finder would avoid one year "me too" language in the other bargaining unit agreements. Although, the three percent (3%) wage increase recommended by the fact finder to begin January 1, 2015 would produce a one percent (1%) wage increase under

other contracts, the absence of a three percent (3%) wage increase in 2014 saves sufficient funds to mitigate if not eliminate the extra expense under the “me too” language.

The Conciliator concurs with the Fact Finder’s belief that forgoing a wage increase for calendar year 2014 is a substantial and significant sacrifice, following three years without a wage increase. Foregoing wage increases over a four-year period was helpful and a significant benefit to the Township. An examination of both external and internal comparables indicates that most bargaining units received some increase on base wages during the last four (4) years.

Therefore, based upon the evidence submitted, the submission statements of the parties, the Fact Finder’s Findings and Recommendations and stipulations of the parties, the Conciliator finds that the Employer’s Final Settlement Offer is hereby rejected and the FOP’s Final Settlement Offer is hereby adopted and incorporated in the Patrol Officers’, Promoted and Dispatch Units initial Collective Bargaining Agreements. The wage provisions of those Agreements shall read as follows:

PATROL UNIT

ARTICLE 20- WAGES AND OTHER COMPENSATION

Section 1. The following pay scale, which reflects a three (3%) pay increase for current employees, shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Position		Hourly Rate:	<u>2015</u>	<u>2016</u>	<u>2017</u>
Hire on or before	Hired after				
June 30, 2014	June 30, 2014				
	0-12 Months		\$20.4566	\$21.0703	\$21.7024
	13-24 Months		\$22.1801	\$22.8455	\$23.5309
0-12 Months	25-36 Months		\$23.9035	\$24.6206	\$25.3529

13-24 Months	37-48 Months	\$25.6273	\$26.3961	\$27.1880
25-36 Months	48-60 Months	\$27.3512	\$28.1717	\$29.0169
37-48 Months	61-72 Months	\$29.0750	\$29.9473	\$30.8457
After-48 Months	After 72 Months	\$30.7988	\$31.7228	\$32.6745

New employees shall be assigned to the starting rate and shall advance to the next succeeding pay step during the pay period which includes their anniversary date of hire as a full-time employee of the department, until they reach the 48 month rate.

Section 2. Officer in Charge (OIC). Retain current language.

Section 3. Longevity. Retain current language.

Section 4. Incentive Stipends. Retain current language.

PROMOTED UNIT

ARTICLE 20- WAGES AND OTHER COMPENSATION

Section 1. The following pay scale, which reflects a three percent (3%) pay increase for current employees shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Rank	Time in Rank	Hourly Rate:	2015	2016	2017
Sergeant	0-12 Months		32.9547	33.9433	34.9616
	After 12 Months		34.6185	35.6571	36.7268
Lieutenant	0-12 Months		37.2126	38.3290	39.4788
	After 12 Months		39.0482	40.2197	41.4263

Section 2. Longevity. Retain current language.

Section 3. Incentive Stipends. Retain current language.

DISPATCH UNIT**ARTICLE 20- WAGES AND OTHER COMPENSATION**

Section 1. The following pay scale, which reflects a three percent (3%) pay increase for current employees shall be effective for bargaining unit employees beginning with the first full pay period after January 1, 2015; the first full pay period after January 1, 2016; and the first full pay period after January 1, 2017.

Position	Hourly Rate:	2015	2016	2017
0-6 Months		16.8962	17.4031	17.9252
7-12 Months		17.7232	18.2549	18.8026
13-24 Months		18.5917	19.1495	19.7239
25-36 Months		19.5035	20.0886	20.6913
37-48 Months		20.4610	21.0748	21.7070
After 48 Months		21.4662	22.1102	22.7735

Section 2. Longevity. Retain current language.

Section 3. Incentive Stipends. Retain current language.

N.B. The employer has raised the issue of the Union not providing contract language, or complete contract language, and cited, *Fraternal Order of Police, Queen City Lodge No. 69 vs. City of Cincinnati* 168 Ohio App.3rd 537, which held that a Conciliator could not draft a remedy for a deficiency in a final settlement offer. It is the opinion of the Conciliator in this case that the Union complied with the statute and SERB's rules in making its final settlement offer on wages and other compensation. Certainly, the language dealing with the wage increases is clear. As to the references to "retain current language" contained in the Union's wage proposal this is also clear. It was obvious that the parties understood what "current language" meant. An examination of the Employer's proposed contract language on wages, and particularly the sections where the Union proposed to "retain current language" and the agreement with the Bath Township Safety Forces (Union Book 1, Tab "Current Contract") indicates the parties were referring to the same provisions and desired to continue the same practices. The Employer acknowledged the existence of "current language" in its position statement where it stated the following:

"In prior years the Township had entered into an agreement with the "Bath Township Safety Forces" that was not under the jurisdiction of SERB and was in the general format of policy rather than a labor contract. That agreement expired in 2010 and was renewed for one year, although the parties have generally been operating under its terms."

ISSUE 4: ARTICLE 24, HOLIDAYS

Fact Finder's Recommendation: Bargaining Unit members who do not work on the holiday shall receive eight (8) hours of holiday pay. Bargaining Unit members who work one of the above designated holidays shall receive an overtime rate of one and one-half (1 ½) times the employee's base hourly rate for all hours worked on the holiday. Holidays run from 12:00 a.m. through 11:59 p.m. on the actual date of the holiday.

Employer's Position

The Employer proposes as its final offer to adopt the recommendation of the Fact finder for pay at one and one-half times the employee's regular rate of pay for hours worked on the holiday but modifies the language slightly to eliminate the word "overtime" from that section. Holiday premium pay at one and one-half times the base rate of pay should not be confused with overtime pay. Also, the employer argues since the language allowing for the election to bank holiday time was not proposed by the Union or recommended by the Fact Finder, its proposal cleans up the language and eliminates the confusingly oblique reference to banked holiday time that was contained in Section 4.

Union's Position

The Union proposes that the bargaining unit members receive eight hours of holiday pay and one and one-half times their regular rate of pay for all hours worked on the holiday. The Union argues and the Fact Finder awarded that requiring an employee to be away from his or her family on a holiday, especially the holidays that otherwise would have found a bargaining unit member participating in family activities, is deserving of the premium pay expressed in the Union's proposal.

Discussion and Award

While it appears clear that the parties have a mutual understanding that an employee who works on a holiday should receive his holiday pay plus be paid for hours worked on the holiday at one and one-half times his base hourly rate, the language proposed by the Fact Finder does not clearly state this understanding. His proposed language provides for holiday

pay for employees not working on the holiday; however, there is no mention of holiday pay for those working. Certainly it was not the parties' intent that employees working on the holiday only receive time and one-half pay, and no holiday pay. This is an obvious oversight, and for this reason, the Conciliator believes he should not defer to the Fact Finder's Finding and Recommendation on this issue, but should adopt the Employer's proposal which clearly states the intent of the parties.

Also, the Conciliator agrees with the Employer that holiday premium pay and overtime pay should not be confused.

Therefore, the Conciliator finds that the FOP's Final Settlement Offer is hereby rejected and the Employer's Final Settlement Offer is hereby adopted and incorporated in the Patrol Officers', Promoted and Dispatch Units initial Collective Bargaining Agreements. Article 24-Holidays' provisions of those Agreements shall read as follows:

ALL UNITS

ARTICLE 24 HOLIDAYS

Section 1. Recognized Holidays. The following days are designated as paid, eight (8) hour holidays for full-time bargaining unit members. Bargaining unit members will receive eight (8) hours of holiday pay for each recognized holiday provided they meet the eligibility criteria listed below and have been employed at least six (6) consecutive months after original date of hire.

1. New Year's Day – January 1
2. Martin Luther King Day – Third Monday in January
3. President's Day – Third Monday in February
4. Memorial Day – Fourth Monday in May
5. Independence Day – July 4
6. Labor Day – First Monday in September
7. Columbus Day – Second Monday in October
8. Veterans Day—November 11
9. Thanksgiving – Fourth Thursday in November
10. Christmas Day – December 25

Section 2. Bargaining unit members who do not work on the holiday shall receive the eight (8) hours of holiday pay. Bargaining unit members who work one of the above designated holidays

shall receive pay at one and one-half times (1.5 x) their base rate of pay for all hours worked on the holiday in addition to the eight (8) hours of holiday pay. Holidays run from 12:00a.m. through 11:59 p.m. on the actual date of the holiday.

Section 3. Holiday Pay Requirements. In order to be eligible to receive holiday pay under Section 1, the employee must work his last regularly scheduled shift before the holiday, the holiday if scheduled, and the first regularly scheduled shift following recognized holiday.

Section 4. Personal Holidays. In addition to the above holidays, each bargaining unit member shall receive two (2) personal holidays. Employees may take personal holiday time off upon the advance approval of the Chief of Police.

ALL UNITS

ISSUE 5; ARTICLE 35, DURATION

Fact Finder's Recommendation: The Fact Finder believes that the retroactive proposal from the Union that would initiate these Agreements on January 1, 2014 would cause additional expense to the Employer that would make an agreement in this case more difficult. The Fact Finder believes that initiating the Agreements on January 1, 2015 and extending the Agreements to December 31, 2017 would best serve the parties in operating under these contractual relationships.

Employer's Position

The Employer proposes prospective three year agreements effective upon execution, and expiring December 31, 2017. The Employer's final offer includes retroactive wages to January 31, 2017.

Union Proposal

The Union proposes a three (3) year agreement beginning January 1, 2015.

Discussion and Award

Although the parties are in agreement as to retroactive wage increases and the expiration date of these first agreements, there is no agreement as to their effective date. While the Employer's position on this matter has merit, it would delay the implementation of the terms of these agreements until such time as the parties could meet, review and sign same.

This would further delay the implementation of the agreements and create greater uncertainty. Enough time has passed without collective bargaining agreements being in place. It is for this reason that the Conciliator concurs with the Fact Finder on this issue. The parties need to prepare, sign and implement these agreements, immediately.

Therefore, the Conciliator finds that the Employer's Final Settlement Offer on Duration is hereby rejected and the FOP's Final Settlement Offer is hereby adopted and incorporated in the Patrol Officers', Promoted and Dispatch Units initial Collective Bargaining Agreements. Article 35- Duration in these agreements shall read as follows:

ALL UNITS

DURATION

This Agreement shall be effective January 1, 2015, and shall remain in full force and effect through midnight, December 31, 2017. Either party may give notice to modify or amend this agreement no earlier than one hundred fifty (150) calendar days and no later than sixty (60) calendar days prior to the expiration date.

CERTIFICATION

The Conciliation Report and Award are based on position statements, and the evidence and testimony presented to me for the hearing conducted February 27, 2015. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan

John F. Lenehan
Conciliator

March 31, 2015

PROOF OF SERVICE

This Conciliation Report was electronically transmitted this 31st day of March, 2015, to the persons named below.

Employer:

**Robin L. Bell, Esquire
Regional Manager
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road, Suite A
Akron, Ohio 44319-1907
Email: rbell@clemansnelson.com**

FOP:

**Charles L. Wilson
Senior Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.,
Northeast Office
2721 Manchester Road
Akron, Ohio 44319-1020
Email: cwilsonfop@aol.com**

SERB

**Donald M. Collins, SERB General Counsel
Assistant Executive Director and Administrator over Bureau of Mediation
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
Email: Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us**

**/s/ John F. Lenehan
John F. Lenehan**

