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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	:	2016-MED-10-1143
CONCILIATION BETWEEN:	:	**CASE NOS. ~~2016-MED-11-1043~~**
	:	
OHIO PATROLMEN'S BENEVOLENT	:	
ASSOCIATION :	:	**Date of Hearing: June 7, 2017**
	:	**Date of Award: July 10, 2017**
Union,	:	
and	:	
	:	
CITY OF ALLIANCE	:	
Employer.	:	

CONCILIATION AWARD

JOHN F. LENEHAN, CONCILIATOR
P.O. Box 751766
Dayton, Ohio 45475-1766
Phone: (937) 673-2302
Email: Len289@aol.com

Representatives:

Union:
Mark J. Volcheck, Esquire (0063252)
The Ohio Patrolmen's Benevolent Assn.
92 Northwoods Blvd., Suite B-2
Columbus, Ohio 43235
Phone: (614) 888- 7901
Fax: (614) 888-7906
Email: mvolcheck@opba.com

Employer:
Matthew B. Baker
Shareholder/Manager of Administrative Practice
Clemans, Nelson & Associates, Inc.
485 Metro Place S., Suite 200
Dublin, Ohio 43019
Phone: (330) 923-7700
Email: mbaker@clemansnelson.com

SERB Email:
Mary.Laurent@serb.state.oh.us,
med@serb.state.oh.us

CONCILIATION AWARD

I BACKGROUND

On March 30, 2017, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the matter of the Ohio Patrolmen's Benevolent Association ("OPBA", "Union" or "Association") and the City of Alliance ("City" or "Employer"), (SERB Case No. 2016 - MED -10 - 1143). A Conciliation Hearing was held at 10:00 A.M. on June 7, 2017, at the City of Alliance Municipal Building, 2nd Floor, 504 East Main Street, Alliance, Ohio. The Ohio Patrolmen's Benefit Association ("OPBA", "Union" or "Association") was represented by Mark Volcheck, Esquire. The City of Alliance was represented by Matthew Baker. In attendance on behalf of the Association were: Steve Minich, Bob Rascan and Mark Welsh. Also, in attendance on behalf of the City were: Michael Dreger, Safety Service Director and Kevin Knowles, City Auditor.

During the hearing, the parties mutually agreed to change their final offers, as set forth in the prehearing position statements, regarding Article 19, Wages and Longevity, and Article 21, Health Insurance Benefit. An agreement was reached on Article 19 for both wages and longevity, and except for the provision under Section 4 of Article 21 regarding base contribution amounts for costs above the cumulative total to be paid by the Employer and employee, the parties were also able to agree on the remainder of Article 21

Both parties presented evidence in support of their respective positions. The parties agreed to extend the time to issue the award to July 11, 2017. This Conciliator's Award is being issued pursuant to OAC 4117-9-06.

A. Description of the Bargaining Units and Employer

The Union is the certified exclusive representative for approximately twenty-seven (27) to thirty (30) full –time Patrol Officers employed by the City of Alliance with respect to wages, hours and other terms and conditions of employment as set forth in Section 4117.08 of the

Ohio Revised Code. The OPBA is also certified to represent a second bargaining unit of Alliance's Safety Department communications employees ("Dispatchers").

The City of Alliance, located in Stark County, is a municipal corporation organized pursuant to the laws and Constitution of the State of Ohio. In addition to OPBA's aforementioned bargaining units, there are other bargaining units in the City, viz., Fire, Supervisory Law Enforcement, Administrative and Municipal Services.

B. History of Bargaining

The last, or current, collective bargaining agreement ("CBA") covered the period from January 1, 2014 through December 31, 2016. The record reflects that the parties met on seven (7) occasions to negotiate a new agreement prior to mediation and fact-finding. At the time of the fact-finding hearing the parties were able to agree on and resolve all, but five Articles of the CBA. The unresolved issues submitted to Fact Finder Dennis E. Minni were:

1. Article 18- Overtime/Hours of Work
2. Article 19-Wages and Longevity
3. Article 21- Health Insurance Benefits
4. Article 28- Vacations
5. Article 43- Terms of Agreement

C. Summary of the Fact Finder's Recommendations

The Fact Finder in his report, dated March 3, 2017, made the following recommendations as to the Articles that were in dispute.

1. Article 18- Overtime/Hours of Work

   The adoption of all the City's proposals regarding Article 18 which provided, *inter alia*:

   a) Overtime based upon hours worked over forty (40) in a week, rather than hours paid;
   b) Delete under Section 3 overtime for hours worked more than eight (8) hours in one day;
   c) Delete under Section 4 overtime pay for call-ins;
   d) Delete under Section 5 overtime pay for court time;

e) Delete under Section 7 overtime pay for training; and,

f) Delete Section 8 Compensatory Time.

2. Article 19 – Wages and Longevity

a) For the 2017 calendar year (thus, retroactively) a two per cent(2%) general wage raise;

b) Commencing with the first pay period in January, 2018 the units general wage increase will be two percent (2%);

c) Commencing with the first pay period in January, 2019, the unit's general wage increase will be two per cent (2%);

d) A two-tier longevity making longevity benefits unavailable to new employees.

3. Article 21- Health Insurance Benefits

a) Move to a 60-40 contribution split from the current 70-30 split making all City bargaining units subject to a 60-40 per cent scheme; and,

b) Requiring the spouse of a unit member to accept his or her employer's insurance plan at least for single coverage rather than becoming a covered dependent on the City-OPBA plan.

4. Article 28- Vacations

a) Convert the current language for vacations from "days" to "hours";

b) Eliminating the twenty (20) years of service benefit level of six (6) weeks of paid vacation; and,

c) Using vacation leave in one (1) hour blocks as per current practice

5. Article 43 – Term of Agreement

a) Three (3) year duration effective from January 1, 2017 and end at midnight on December 31, 2019 subject to the proposed economic re-opener should the City be placed into Financial Caution or worse.

D. Rejection of the Fact Finder's Recommendations

The Union, pursuant to the Ohio Revised Code and SERB's Administrative Rules, overwhelming rejected the Fact Finder's Report and Recommendations by a vote of twenty-seven (27) to zero (0). It appears that the Fact Finder's Report was rejected primarily because of the recommendations on Article 18 – Overtime/ Hours of Work, Article 21 – Health Insurance Benefits and Article 43 – Term of Agreement.

The Employer to the contrary believes that the Fact Finder's recommendations on Article 18 - Overtime, Article 21, the 60-40 contribution split, and Article 43, the reopener for economic reasons should be adopted.

E. Resolved Issues Post Fact Finding and at Conciliation

Both parties in their Position Statements listed the following as unresolved issue for consideration of the Conciliator:

1. Article 18, Overtime/Hours of Work;
2. Article 19, Wages and Longevity;
3. Article 21, Health Insurance Benefit; and,
4. Article 43, Term of Agreement.

The Union in its Position Statement also listed as additional items:

5. Attachment A;
6. Side Letter #1, Lump Sum Payment;
7. Side Letter #2, Insurance Committee Composition; and,
8. Side Letter #3, Filling Unscheduled Overtime

Post Fact Finding Tentative Agreements were reached on May 30, 2017 on Article 28, Vacations, and Side Letter #3 Filling Unscheduled Overtime. Side Letter #1 listed by the Union is moot because no lump sum payment has been proposed. Side Letter # 2 was incorporated into the body of Article 21, Section 5 of the Union's Final Offer, and thus, it is also moot.

As indicated above, the parties at the Conciliation Hearing reached agreement on Article 19-Wages and Longevity and Article 21 Health Insurance Benefits, except for the proposed contribution rate being increased to 60-40. These agreed to provisions at the Conciliation Hearing are incorporated herein, along with all tentative agreements and unchanged provisions of the current agreement, as being part of this Conciliation Award and are made part hereof by reference. They will not be more specifically addressed in this report.

F. Unresolved Issues

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

1. Article 18 – Overtime/Hours of Work
2. Article 21 – Health Insurance Benefits, Section 4 Cost Sharing –costs above employer and employee base contribution amounts
3. Article 43 – Term of Agreement – Economic Re-opener

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 each issue.

III ISSUES

ARTICLE 18– OVERTIME/HOURS OF WORK

Employer's Position

The Employer has adopted the Fact Finder's Recommendation as its final position on this Article. The Employer is proposing to pay overtime as provided by the minimum set by the Fair Labor Standards Act, i.e., only after forty (40) hours actually worked in a standard work week. To effect this change, it proposed that overtime for hours worked in excess of eight (8) in a day be eliminated. Likewise overtime provisions for a call in while off duty, or for court and training time, be deleted from current language in the CBA.

In addition to proposing the elimination of all provisions for overtime, except for hours worked over forty (40), the Employer also proposed the elimination of compensatory time under Section 8 of Article 18.

In support of its position, the Employer sets forth the following rationale.

> "First it must be considered that the baseline for earning pay is found in the Fair Labor Standards Act ("FLSA"). First, the FLSA establishes that only hours "actually worked" count toward the calculation of overtime; no forms of paid leave or other absence count as hours worked for the purposes of calculating overtime. The current CBA excludes only sick leave and compensatory time from the calculation of hours that count toward overtime. Second, the FLSA establishes that a law enforcement officer must actually work in excess of 171 hours in a 28 day work cycle before over time is earned or an equivalent ration based on hours i.e. 85 hours in a 14 day work cycle or 42 hours in a 7 day work cycle. The current CBA grants overtime hours for all hours worked in excess of eight in a day and 40 in a week. For three decades or more the City has contractually agreed to be more and more generous with the employee's ability to earn overtime and now that lean times have come to the City they can no longer afford this enhanced benefit. The Employer's proposals are meant to reign in this runaway benefit while not eliminating it completely. The current CBA has resulted in the average patrol officer receiving an additional 40% of his annual salary in overtime pay. The Employer's proposal remains much more generous than the base line that the FLSA provides."

In addition to the foregoing rationale, the Employer submitted six (6) exhibits. Employer's Exhibit #1 is an internal comparison of the overtime thresholds among the Employers bargaining units. Of the twelve (12) units listed, only three (3) had the requirement of hours actually worked as hours counting toward overtime. Ten (10) had forty (40) hours per week, and two (2) had eight (8) hours per day.

Employer's Exhibit #2 is a U.S. Department of Labor, Wage and Hour Division Fact Sheet regarding the overtime provisions for Law Enforcement and Fire Protection Employees under the Fair Labor Standards Act (FLSA). Exhibit #3 is a comparison the City's Payroll overtime for the years 2011 through 2016. This exhibit reflects an increase in overtime from 2011 to 2012; a decrease from 2012 to 2013; a slight increase from 2013 to 2014; no change from 2014 to 2015; and increase from 2015 to 2016.

Employer's Exhibit #4 is titled, 'Alliance Police Overtime History for the period 2012 through 2016. This exhibit indicates increases in overtime payments in 2014 and 2016 from the previous year, and decreases in overtime payments in 2013 and 2015 from the previous year.

Exhibit #5 is the Compensatory Time Bank Comparison of employees in the bargaining unit. It also reflects a value of $67,099 of total compensatory time.

Exhibit #6 is the final exhibit submitted by the Employer on the issue of overtime... It is titled 2016 Wages vs. Earnings and lists the salary of each member of the bargaining unit and the overtime earnings paid over and above the base salary. The average reflected is 41.16%

Union's Position

The OPBA's final offer for Article 18, Overtime Hours of Work, is current contract language with the exception of Section 8, where its final offer proposes a reduction in compensatory time from 480 hours to 240 hours. OPBA contends that the Fact Finder's Recommendation to adopt the final offer by the City is unjustified in consideration of the statutory factors for review. According to OPBA, it constitutes a significant reduction of benefits that cannot be supported by the pertinent evidence submitted in this matter. In support of its position OPBA sets forth the following arguments.

First, as to the City's proposal to eliminate Section 3 mandating that overtime be paid for hours worked by an employee in excess of eight (8) hours in one day is unjustified. The City made the same proposal in the last round of negotiations for the last contract. Such was rejected by Fact Finder Meredith. Although the City rejected his report, such proposal was not adopted and incorporated in the contract. The fact that the City's position was deemed unjustified only three (3) years ago, does not support adopting it now.

Second, the City's proposal to eliminate all paid time to constitute hours worked for the purpose of calculating overtime cannot be justified. During the last round of negotiations, Fact Finder Meredith recommended that all paid time shall be considered hours worked except for sick leave and compensatory time. Prior to that all paid time was considered hours worked for purposes of calculating overtime. Since OPBA granted this concession during the last negotiations, there is no justification for further concessions now.

Third, the Factfinder's recommendation based upon no violation of the Fair Labor Standards Act and cost containment is flawed logic. The FLSA provides minimum protections

for employees. Unions and employers are free to agree on benefits and protections greater than those provided by the Act. Based upon the Fact Finder's logic, any economic benefit exceeding the minimum protections mandated under the FLSA should be diminished when requested by an employer. The Factfinder's analysis, states the Union, completely disregards relevant considerations such as bargaining history, the duration of such benefit, the length of time such benefit has been part of the bargaining unit's economic package, and/or whether such change is justified by a *quid pro quo.*

Fourth, the OPBA argues that the Factfinders cost containment theory fails. There is no finding or evidence as to what costs and/or what amount of costs will be saved as a result of the recommended cuts. Nor is there a finding or evidence as to what impact it would have on the employees in the bargaining unit. Similar to the FLSA theory, the Factfinder's argument is that so long as the proposal is not illegal and can potentially cut costs, it is justified.

Fifth, the benefits under Article 18 are long standing. It is essential that all economic factors be considered when addressing this issue. One such factor is the bargaining unit is the lowest paid in Stark County. Also, it is accepting below average pay increases, and significant increases to health insurance costs which negate the pay increases.

Sixth, the Union states that the final offer of the Employer on Sections 4, 5 and 7 to adopt the Factfinder's recommendation should be rejected.

Seventh, the Factfinder's recommendation to eliminate Section 8 is without justification. Although the Factfinder concluded that compensatory time is a high cost item, he offered no explanation of whether or not the amount of compensatory time held by employees of the bargaining unit actually affects the City's bond or credit rating. Also, there was no itemization of the cost of compensatory time. No evidence received.

Eighth, the settlements by the Employer with other bargaining units did not result in a reduction in overtime benefits. The settlement with the OPBA for full time Dispatchers did not result in a reduction in overtime benefits. Likewise, the City's attempts at reducing overtime in the firefighter negotiations were unsuccessful.

In addition to the foregoing arguments in support of its position, the Union submitted numerous exhibits at the hearing. The first six (6) Tabs of the Binder submitted by the Union

into evidence contained exhibits in support of its position on Article 18. Those exhibits include: 1) the current overtime language going back to 2006; 2) a comparison of overtime computation provisions in comparative city police departments, along with their contract provisions on overtime; 3) a comparison of payment for call-ins and court time in comparative city police departments; and, 4) a comparison of compensatory time provisions in comparative city police departments.

Discussion and Award

The OPBA's final settlement offer on Article 18 should be adopted and incorporated into the successor Collective Bargaining Agreement. While the Conciliator recognizes that deference should be given to the Fact-Finder's Award, such would not be appropriate regarding the provisions of Article 18. The extent to which a conciliator is compelled to adhere to the recommendation of a fact-finder depends upon the facts presented. The deviation from the recommendation of a fact-finder could be due to error or flawed data or the inability of the conciliator to discern the factual or statutory basis upon which recommendations have been made or how it is to be implemented.

In addition, there is a presumption of maintaining current contractual benefits whether at fact finding or conciliation. Pertinent to a neutral's consideration as to whether such presumption can be overcome are the following factors: 1) the length of time such benefit has been provided; 2) the length of time such benefit has been a part of the bargaining unit's economic package; 3) whether any significant consideration or *quid pro quo* is offered or provided by the employer for diminishing or eliminating the benefit; and, 4) whether the employer can prove that it cannot afford to pay the benefit.

While the Fact Finder's recommendation may be legal under the FLSA, it is not a justification for reducing overtime pay provisions under the CBA. Nor would a fact finder's recommendation to pay minimum wages be a justification for reducing hourly wages or compensation. The presumption of maintaining current contractual benefits is not outweighed by the City's need to fine tune its contractual commitment to economic items.

Applying the foregoing factors for overcoming or eliminating current contractual benefits, the following has been considered by the Conciliator. First, the overtime benefits which the Employer seeks to eliminate have been in place for a number of years, according to the Employer, "For three decades or more. . ." Second, the overtime benefits which the Employer seeks to eliminate have been part of the bargaining unit's economic package at least since 2006. Third, there is no significant consideration or *quid pro quo* offered or provided for eliminating the benefit. Fourth, the Employer has not proved that it can't afford the benefit.

Considering the criteria under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator finds (G)(7) that the exhibits submitted into evidence establish that the overtime provisions set forth in the bargaining agreement, while generous, are not unique. Other bargaining units both internal and external have like provisions.

While the overtime for this bargaining unit appears to be extraordinary, it is not caused by the contract provisions in dispute. Usage is based upon need for services and steps taken by the Employer to satisfy that need. What steps could be taken to reduce or eliminate that need, is speculative at this time. The Employer may argue that it's cheaper to have more overtime than to hire new employees. However, no evidence was submitted to establish that argument. It may be possible to reduce over time with more effective scheduling. Also, it is not known whether the cost of some overtime is reimbursed due to providing services for events outside City's legal obligations?

The Fact Finding Report *In the Matter of Alliance Professional Fire Fighters Association, IAFF Local 480 and the City of Alliance,* issued January 26, 2017, is relevant to this Conciliation.

In that case Fact Finder Daniel G. Zeiser, on page 29, stated the following.

> "The Employer's proposal here is significant. It proposes to change the way overtime is currently earned and follow the FLSA as to overtime. Because Firefighters earn a significant amount of overtime based on their schedules, they have come to rely on it as part of their earnings. Changing the method of calculating overtime could be a significant cut in their overall earnings. No evidence was introduced as to how much or

how little this would affect earnings. Without this information, it is difficult to properly assess the Employer's proposal."

"Additionally, the Employer also proposes to eliminate all references to compensatory time and follow the FLSA, which would also affect the Firefighters current ability to earn and take time off. The Fact Finder has recommended a number of the Employer's cost savings proposals in the hope it can save enough money to stave off fiscal caution, watch, or emergency without dramatically affecting the work force, particularly current employees. He does not believe that this is an area where a two-tiered system would work, so the options are either to recommend it or not in its entirety. He does not believe it should be recommended at this time. **Recommendation:** No change. "

Not only was there no evidence submitted in this case as to how much or how little the Employer's proposal would affect patrol officers earnings, there was no evidence submitted as to the cost savings in overtime that would result. There was no comparison of overtime costs under the current contact with the cost savings that would result under the Employer's proposal. It is not known whether any cost savings would be significant. Even assuming the City's dire economic future, there is insufficient evidence to support the Employer's proposal.

Therefore, the Conciliator finds that the Employer's Final Settlement Offer is hereby rejected and the OPBA's final settlement offer is hereby adopted and incorporated into the successive Collective Bargaining Agreement. The provisions of Article 18 shall be unchanged, except for Section 8 which shall be changed to read as follows:

" **Section 8. Compensatory Time.** Each bargaining unit member may, at his discretion, elect to take compensatory time off in lieu of compensation for any overtime worked and compensatory time may be accumulated up to a total of 240 hours. Upon reaching the 240 hour limit, the bargaining unit member will either be paid for additional hours of overtime worked or may use some compensatory time in order to bring the compensatory time accumulated below the 240 hours. Employees with accumulations of over 240 hours at the time of the execution of this collective bargaining agreement may retain such time until they have used enough time such that their bank drops below 240 hours. At that time, such employees shall not accumulate more than 240 hours per the terms of this Section.

Upon termination of employment, a bargaining unit member shall be paid for his compensatory time at the average regular rate received by such bargaining unit member during the last three (3) years of the bargaining unit member's employment, or

the final regular rate received by such bargaining unit member, whichever is higher. Such payments will be made within thirty (30) days of termination of employment."

ARTICLE 21- HEALTH INSURANCE BENEFIT

As has been indicated, the parties reached a tentative agreement on the terms of this article at the Conciliation Hearing on June 7, 2017, except for the following provision under Section 4, Cost Sharing.

" Upon ratification of this Agreement, any costs above the cumulative total of the Employer and employee base contribution amounts set forth above shall be paid seventy percent (70%) by the Employer and thirty percent (30%) by the participating employee."

Employer Position

The Employer adopted the Fact Finder's recommendation as its final position on this provision, i.e., a 60/40 split on cost sharing. According to the Employer it will bring this bargaining unit into line with all of the other bargaining units on cost sharing, except the IAFF, which recently concluded Fact Finding and accepted a 70/30 split awarded by the Fact Finder.

Union Position

OPBA maintains as its final position that there should be no change in the foregoing language of Section 4. It states that the City proposed the 40% rate during the last round of negotiations, but that proposal was rejected by Fact Finder Meredith. Most recently, the Firefighters went to fact finding, and the Fact Finder in that case recommended the 30% rate which was accepted by the City.

According to the OPBA, under the City's final offer in these negotiations, employee monthly contributions would be as follows for contributors without surcharges or incentives effective upon execution of the CBA in2017.

Employee:	**$106.22**
Employee plus children:	**$186.55**
Employee plus spouse:	**$223.09**
Family:	**$345.27**

In addition, OPBA argues that the disparity between monthly contributions of this bargaining unit and the City's final offer is the difference between the City's proposed 60/40 spread for premiums over the base contribution amount and the current 70/30 spread. Assuming the same base contribution amounts from 2014, employees without surcharges or incentives would pay more monthly under the 60/40 spread compared to the 70/30 spread in 2017 as follows:

Employee:	**$15.49**
Employee plus children:	**$28.67**
Employee plus spouse:	**$32.54**
Family:	**$50.36**

Also, according to the OPBA the difference between employee costs under the 70/30 spread and 60/40 spread will be exacerbated in 2018 and 2019 as the COBRA rates already exceed the base contribution rates on the table.

OPBA notes that the City proposed the 40% rate during the last round of negotiations but such was rejected by Fact Finder Meredith. Also, most recently, the firefighters in the City went to fact finding. The Fact Finder in that case recommended the 30% rate. Such was accepted by the City

Discussion and Award

The OPBA's final settlement offer on Section 4 of Article 21 should be adopted and incorporated into the successor Collective Bargaining Agreement. No deference should be given

to the Fact-Finder's Award, on this section of Article 21. Current contract language should remain at 70/30 split for contributions.

First, it should be noted that contrary to the Fact Finder's recommendation granting the 60/40 split for cost sharing as proposed by the Employer would not make all City bargaining units subject to a 60/40 percent scheme. Nor is there sufficient evidence that it would be a significant cost reduction measure for the Employer.

Greater weight should be given to the recommendation to maintain the 70/30 split in the firefighters' fact finding case and the City's and Union's acceptance of that rather than the negotiations with other City bargaining units. It is the Conciliator's experience that police and firefighter bargaining units have more in common and are more comparable than other city bargaining units.

In addition, applying the criteria previously discussed under Article 18 for maintaining current contractual benefits. The 70/30 split was in the previous CBA and part of the economic package. During the negotiations for the previous CBA the Employer proposed a 60/40 split, but it was rejected by Fact Finder Meredith. Also, there is no significant consideration or *quid pro quo.* Finally, there is insufficient evidence that the employer cannot afford to pay the benefit at this time.

Therefore, the Conciliator finds that the Employer's Final Settlement Offer to change Article 21, Section 4 to provide base contributions amounts to be paid sixty percent (60%) by the Employer and forty percent (40%) by the employee is hereby rejected, and the OPBA's final settlement offer to maintain the current contract language on this matter is hereby adopted, and incorporated into the successive Collective Bargaining Agreement. The applicable provisions Section 4 of Article 21 shall be unchanged and shall read as follows:

> " Upon ratification of this Agreement, any costs above the cumulative total of the Employer and employee base contribution amounts set forth above shall be paid seventy percent (70%) by the Employer and thirty percent (30%) by the participating employee."

ARTICLE 43 – TERM OF AGREEMENT

Employer's Position

The Employer has adopted the Fact Finder's position as its final position on this Article. It is proposing a three (3) year Agreement effective January 1, 2017 through December 31, 2010, with a proviso the Employer may re-open the Agreement on economic issues if the City is placed in Fiscal Caution, Fiscal Watch or Fiscal Emergency.

The Employer argues that the City is in financial decline and has been forestalling Fiscal Emergency with various stop-gap measures that are failing and cannot be continued. Revenue to the General Fund continues to drop and simply cannot keep up with expenses from the General Fund.

In the IAFF Fact Finding the Fact-Finder recommended a retroactive Agreement to commence at the expiration of the Former Agreement which was June 30, 2015 and to expire June 30, 2018. The City will be back in negotiations with the IAFF in about one (1) year.

While the City recognizes the stability affected by a three (3) year Agreement, it must retain the flexibility to address economics if it is placed in Fiscal Caution, Fiscal Watch or Fiscal Emergency.

Union Position

The Union proposes as its final position for the agreement to be effective upon execution through December 31, 2019, with wages retroactive to January 1, 2017. It objects to the Employer's proposal made at fact-finding to reserve the right to re-open the Agreement on economic issues in the event the Employer is placed in fiscal caution, fiscal watch, or fiscal emergency. Also, it maintains that the Agreement, even by OPBA's final offers, is concessionary. The employees are losing money when health care concessions are figured into an employee's total economic package. There isn't any room for any further concessions than those presented by the final offers of OPBA. Thus, there should be no re-opener until the time comes to negotiate the successor agreement.

OPBA has reached tentative agreement with the City and the full-time Dispatcher unit for the collective bargaining agreement effective January 1. 2017 to December 31, 2019. The parties agreed that no such language regarding re-opening the agreement be included in the agreement. Thus, such should not be added here.

Discussion and Award

The Employer's final settlement offer on Article 43- Term of the Agreement should be adopted and incorporated into the successor Collective Bargaining Agreement. While City may be able to handle its current obligations, the evidence establishes that it is in fiscal decline. The exhibits presented demonstrate a decline in revenue to the General Fund. If it continues to drop the City would have difficulty keeping up with its expenses. Police and Fire Departments are major costs to the General Fund. Considering these facts, flexibility needs to be provided to deal with the situation should the City be placed in Fiscal Caution, Watch or Emergency.

Therefore, the Conciliator finds that OPBA's Final Settlement Offer on Article 43, is hereby rejected and the Employer's Final Settlement Offer is hereby adopted, and incorporated into the successive Collective Bargaining Agreement. Article 43- Term of Agreement shall read as follows:

"**Section1. Term of Agreement.** This Agreement shall be effective for the period of January 1, 2017, through midnight on December 31, 2019, and shall continue from year to year thereafter unless written notice of a desire to modify or terminate this Agreement is served by either party upon the other and upon the State Employment Relations Board not less than sixty (60) days prior to the expiration date. In the event that the Employer is placed in Fiscal Caution, Fiscal Watch or Fiscal Emergency by the State Auditor's Office the Employer may re-open the Agreement on any or all economic issues for negotiation with the dispute resolution procedure identified in R. C. 4117 available in the event impasse is reached."

CERTIFICATION

The Conciliation Report and Award are based on position statements, and the evidence and testimony presented to me for the hearing conducted June 7, 2017. 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
P.O. Box 751766
Dayton, Ohio 45475-1766
Phone: (937) 673-2302
Email: Len289@aol.com

July 10, 2017

PROOF OF SERVICE

This Conciliation Report was electronically transmitted this 10th day of July, 2017, to the persons named below.

Representatives:

Union:
Mark J. Volcheck, Esquire (0063252)
The Ohio Patrolmen's Benevolent Assn.
Practice92 Northwoods Blvd., Suite B-2
Columbus, Ohio 43235
Phone: (614) 888- 7901
Fax: (614) 888-7906
Email: mvolcheck@opba.com

Employer:
Matthew B. Baker
Shareholder/Manager of Administrative
Clemans, Nelson & Associates, Inc.
485 Metro Place S., Suite 200
Dublin, Ohio 43019
Phone: (330) 923-7700
Email: mbaker@clemansnelson.com

For 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