

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	19-MED-10-1043
	*	
Fact-finding between:	*	
	*	Martin R. Fitts
The City of Aurora	*	Fact-finder
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	July 15, 2020
(Dispatchers)	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Aurora (the Employer):

Sarah Moore, Attorney for the City
Brian Byard, Chief of Police
Dean DePiero, Law Director

For the Ohio Patrolmen's Benevolent Association (the Union):

Daniel Leffler, OPBA
Kathy Peak, Union Representative
Katie Orosz, Union Representative

PRELIMINARY COMMENTS

The bargaining unit has approximately six (6) members and consists of all full-time Dispatchers.

The last Collective Bargaining Agreement expired on December 31, 2019. The Employer and Union participated in negotiating sessions on October 16, 2019; November 6, 2019, November 11, 2019, and November 13, 2019. This Fact-finder was appointed by SERB on November 25, 2019. The parties subsequently filed three extensions for Fact-finding, and a Fact-finding Hearing was ultimately held on July 1, 2020 at the Bertram Inn Hotel & Conference Center, 600 North Aurora Road, Aurora, Ohio. Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective positions. There were eight unresolved issues submitted for Fact-finding: Article 17 – Use of Deadly Force and Weapons; Article 21 – Holidays; Article 22 – Vacations; Article 23 – Sick Leave; Article 29 – Salary; Article 31 – Uniform Allowance; Article 33 – Over Time Pay; and Article 37 – Shift Supervision. At the hearing, the parties requested mediation, which was conducted by this Fact-finder. Mediation was successful, and the parties reached agreement on all eight outstanding issues. Further, the parties requested that these settlements be memorialized in the form of a Fact-finding Report.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually

agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the July 1, 2020 hearing prior to the commencement of mediation. All recommendations reflect the exact language reached in the parties' mediated settlement at the hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 17 – Use of Deadly Force and Weapons

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to remove the entire Article 17 from the collective bargaining agreement. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 17 in its entirety be struck from the Agreement.

ARTICLE 17 – USE OF DEADLY FORCE AND WEAPONS

Section 1:

~~Bargaining unit members using force in the course of their duty shall promptly notify their superior officer. An Employee shall not be compelled to provide a written report unless the officer is given and afforded his/her Garrity rights, and then said employee shall make a written report giving full particulars. A complete investigation shall be made of the incident and reports forwarded through channels. Any bargaining unit member who causes injury or death of another person in the line of duty will be required to undergo a psychological examination and evaluation, at the City's expense when the cost exceeds payment by City insurance coverage and workers' compensation. If treatment shall be required, the City shall be responsible to pay for the treatment when the cost exceeds payment by City insurance coverage and workers' compensation for a period not to exceed thirty (30) days.~~

Section 2:

~~Should a paid administrative leave of the employee pending investigation of use of force be implemented, the employee shall continue to receive full pay and benefits during such administrative leave or until such time as it is determined, following a hearing by City officials, that said employee's use of force was unwarranted.~~

Issue: Article 21 – Holidays

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 21. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 21 – Holidays should read as follows:

ARTICLE 21 – HOLIDAYS

Section 1.

The following holidays are designated as paid holidays for all bargaining unit members:

New Year's Day
Memorial Day
July 4
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve
Christmas Day

Employees shall also receive two (2) personal holidays and the use thereof is subject to the Chief's/Designee's approval. Personal holidays may not be carried over from year to year.

Section 2.

Bargaining unit members working on the federally recognized date of a holiday listed in the previous paragraph, the day after Thanksgiving, or December 24, may elect to receive one and one-half (1-1/2) times the employee's base rate of pay, or the employee's base rate of pay and a half-hour (1/2) of compensatory time, for each hour of holiday worked, up to eight hours of pay. Additionally, the employee shall earn either one (1) hour of compensatory time or one (1) hour of base rate of pay for each hour of holiday worked. For this benefit, base rate of pay includes shift supervision pay described in Article 37, if the employee is acting as a head dispatcher.

Employees whose normal work schedule day off falls on the described holiday, shall receive eight (8) hours of compensatory time or eight (8) hours of their base rate of pay for the holiday. If an employee is assigned to a ten (10) hour shift, the employee shall receive ten (10) hours of compensatory time or ten (10) hours of their base rate of pay for the holiday. The use of compensatory time in this section shall be subject to the current discretionary leave policy.

Employees shall not receive holiday pay while on any other form of leave, including sick time, compensatory time, personal holiday, administrative leave, vacation, or leave of absence.

Section 3.

In order for the bargaining unit member to be eligible for the holiday premium pay, he/she must have worked his/her normal scheduled shift the day before and the day after such holiday, unless he/she has failed to work because of a scheduled day off, sickness or injury verified by a medical doctor's certificate, or because of a death in the employee's immediate family, scheduled vacations or use of approved compensatory time.

Issue: Article 22 – Vacations

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 22. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 22 - Vacations should read as follows:

ARTICLE 22 - VACATIONS

Section 1.

Each member of the bargaining unit shall receive paid vacations each year of this Agreement as follows.

Length of Service	Hours
0-1 year	0 hours
1-3 years	80 hours
4 years	88 hours
5 years	96 hours
6 years	104 hours
7 years	112 hours
8 years	120 hours
9 years	128 hours
10 years	136 hours
11 years	144 hours
12 years	152 hours
13-19 years	160 hours
20 years and thereafter	200 hours

Any member who has been employed by the City for at least two (2) years will receive vacation hours on January 1st of each year, including any additional hours that will be earned on anniversary date. In the event the employee leaves service with the City prior to reaching his anniversary date,

he will owe the additional hours not yet earned back to the City. All vacation must be used during the calendar year or it will be forfeited unless the Mayor allows carry-over due to extenuating circumstances.

For any probationary member who reaches his first year anniversary with the City, he will receive allotted vacation on that day and will have until December of the following year to use. Additionally, payroll will calculate accrued hours in January following employee's first anniversary that will also need to be used by December 31st of same year.

EXAMPLE: Employee is hired on June 30, 2020 shall receive 80 hours vacation on June 30, 2021 which must be used by December of 2022. Additionally, payroll will calculate accrued and earned hours from the first anniversary to December 31, 2021 that will also need to be used by December 31, 2022.

Section 2.

Compensation during the vacation periods herein granted shall be as follows:

1. Employees who are paid on an hourly basis shall have vacation pay calculated by multiplying the current hourly rate by the number of hours to which the person is entitled.
2. Employees transferring from another municipality or governmental agency shall be entitled to vacation pay based on their accumulated seniority, regardless of the period service was performed, but not to exceed the limits of this regulation. However, vacation time off shall not be taken prior to the completion of twelve (12) months service with the City of Aurora.

Section 3.

In no event shall more than four (4) consecutive weeks of vacation be taken at one time by employees on a normal forty (40) hour average work week. In the event that five (5) or more consecutive scheduled work days of vacation is requested, at least thirty (30) days notification shall be given, in advance of the first anticipated day of vacation to the Chief so that the services of the Department shall not be unduly impaired. In the event that four (4) or less consecutive scheduled work days of vacation are requested, at least seven (7) days notification shall be given. Employees shall forfeit their right to take, or to be paid for, any vacation leave to their credit which is in excess of the accrual for one (1) year. Such excess leave shall be eliminated from the employee's leave balance.

Section 4.

Any employee whose employment with the City is severed by reason of discharge or who leaves of his own accord, shall be paid for vacation accrual remaining to his last year of service.

Section 5.

In the event of an employee's death, the Director of Finance is authorized to pay unused vacation hours to the Estate or Beneficiary of the employee as specified by IRS regulations.

Issue: Article 23 – Sick Leave

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 23, Section 4. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 23 – Sick Leave, Section 4, should read as follows:

Article 23 – Sick Leave, Section 4

Section 4. Qualifications for Use of Sick Leave

An employee eligible for sick leave with pay may be granted such leave with the approval of the Chief for the following reasons:

- A. Personal illness or physical incapacity resulting from causes beyond the employee's control.
- B. The illness or disability of a member of the employee's immediate family that requires the care or attention of the employee. The employer will not unreasonably interpret what constitutes an immediate family.
- C. Quarantine of the employee.
- D. Medical, dental, or optical consultation or treatment of the employee.

Issue: Article 29 – Salary

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 29. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 29 - Salary should read as follows:

ARTICLE 29 - SALARY

Section 1. The salary schedule for full-time dispatchers shall be based upon the following schedule:

WAGE RATES	JANUARY 1, 2020	JANUARY 1, 2021	JANUARY 1, 2022
DISPATCHER I			
HOURLY RATE	\$30.05	\$30.80	\$31.57
ANNUAL SALARY	\$62,510.24	\$64,073.00	\$65,674.82
DISPATCHER II			
HOURLY RATE	\$29.14	\$29.87	\$30.62
ANNUAL SALARY	\$60,612.76	\$62,128.08	\$63,681.28
DISPATCHER III			
HOURLY RATE	\$27.74	\$28.43	\$29.14
ANNUAL SALARY	\$57,691.92	\$59,134.22	\$60,612.57

Section 2. Safety Forces Stipend

Each employee shall also receive a "Safety Forces Stipend" in the amount of \$1,200.00 per year. This amount shall be payable in two (2) separate checks of \$600.00 each payable not later than the second pay in January and not later than the second pay in July of each year. In the event an employee does not continue his or her employment for six (6) months after receiving the stipend for any reason other than retirement, the employee shall reimburse the City the appropriate prorated share of the stipend.

Section 3. Section 125 Plan

During the term of this Agreement a section 125 tax savings program under the Internal Revenue code provisions shall be made available for employees. Maintenance costs of the 125 Plan shall be borne by the Employer.

Section 4. Certified Field Trainers

Employees who are certified field trainers and who are assigned by the Chief to train a less experienced employee shall receive an additional Two Dollars (\$2.00) per hour for each hour assigned.

Section 5. Emergency Medical Dispatch Certified

Effective January 1, 2020 and each year thereafter, an Employee who is being trained toward a certificate or has received a certificate for Emergency Medical Dispatch (EMD) shall receive Nine Hundred Dollars (\$900.00) paid in November of each year.

Issue: Article 31 – Uniform Allowance

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 31. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 31 – Uniform Allowance should read as follows:

ARTICLE 31 - UNIFORM ALLOWANCE

Section 1.

The uniform allowance shall be One Thousand Four Hundred Dollars (\$1,400.00) per bargaining unit member, per year.

Section 2.

If a bargaining unit member's employment is terminated for any reason except reduction in safety force or retirement during a calendar year for which he has received the aforesaid uniform allowance, then he shall reimburse the City for a percentage of the allowance he received that year to be determined by dividing the amount received by fifty-two (52), taking that "weekly rate" number and multiplying it by the number of weeks remaining in the calendar year after his employment is terminated. The result of this calculation is the amount of uniform allowance which the employee shall reimburse to the City. Reimbursement and repayment shall be accomplished through payroll deductions to the extent possible.

Section 3.

No employee shall draw two (2) uniform allowances in any one (1) fiscal year.

Section 4.

Any clothing or equipment damaged in the line of duty or contaminated by exposure to hazardous materials or chemicals shall be replaced by the City at no cost to the employee, as long as such damage is legally reimbursable to the City and the City actually receives reimbursement. The employee shall receive replacement value after the City receives said reimbursement.

Section 5.

Each bargaining unit member shall receive a check for the full uniform allowance in January of each calendar year to be used for work related clothing and supply purchases directly related to their employment with the City of Aurora.

Issue: Article 33 – Over Time Pay

Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 33. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 33 – Over Time Pay should read as follows:

ARTICLE 33 - OVER TIME PAY

Section 1.

An average of forty (40) hours shall be the standard work week for all full-time employees whose salary or wage is paid by the City of Aurora. When any employee is required by an authorized administrative authority to work more than forty (40) hours in any calendar week, he shall be compensated for such time worked at one and one-half (1-1/2) times his regular rate or shall receive compensatory time computed at the rate of one and one-half (1-1/2) times the amount of work for which he seeks compensatory time off, which shall be taken in the future as approved. Any payment for overtime shall be paid no later than at the conclusion of the next succeeding pay period.

Section 2.

Bargaining unit members are paid time and one-half (1/2) for all hours worked in excess of forty (40) hours in one week. Overtime pay is based on actual hours worked and does not include hours taken for other reasons, with the exception of sick leave, compensatory time, vacations and holidays. Sick leave, compensatory time, holidays and vacation shall be considered actual hours worked for the purpose of computing overtime.

Section 3.

Exceptions to the use of a forty (40) hour work week as a basis of computation of overtime:

During any twenty-four (24) hour period at the start of the bargaining unit member's shift, overtime begins after eight (8) hours of work, or ten (10) hours of work if employee is assigned to a ten (10) hour shift, and must be verified by time sheets. For the purposes of this section only, sick leave shall not be considered hours of work

Section 4.

The complete cycle for employees working on swing shifts will determine whether or not overtime should be paid, but the principle set forth above will prevail.

Section 5.

The maximum combined compensatory time bank cannot exceed 320 hours. Separate compensatory time banks whereas compensatory time earned by way of the holidays/2 personal holidays cannot be used if it's going to create overtime on the schedule (Non-FLSA compensatory time). Employee's current compensatory time balances remain the same, however, employees cannot collect compensatory time worked until their balances fall under 320 hours. Individuals must take cash payment until compensatory time balance falls to 320.

Issue: Article 37 – Shift Supervision

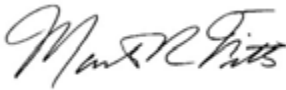
Findings and Recommendation

During mediation at the hearing the parties reached an agreement to modify Article 37. The Fact-finder agrees. Therefore, the Fact-finder recommends that Article 37 – Shift Supervision should read as follows:

ARTICLE 37 - SHIFT SUPERVISION

Head Dispatcher. One dispatcher, who shall be designated as "Head Dispatcher" by the Chief, shall receive One Hundred Seven Per Cent (107%) of the rate assigned as Dispatcher I.

The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.



Martin R. Fitts
Fact-finder
July 15, 2020

Certificate of Service

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: OPBA Representative Daniel Leffler (dleffler@opba.com); City of Aurora Representative Sarah Moore (smoore@fisherphillips.com); and the Bureau of Mediation, State Employment Relations Board (med@serb.state.oh.us).

A handwritten signature in black ink, appearing to read "Martin R. Fitts". The signature is written in a cursive, flowing style.

Martin R. Fitts
Fact-finder
July 15, 2020