

IN THE MATTER OF FACT FINDING

STATE EMPLOYMENT
RELATIONS BOARD

BETWEEN

Oct 19 9 57 AM '00

CITY OF MASSILLON, OHIO

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AND

MASSILLON FOP HENDERSON LODGE POLICE
OFFICERS ASSOCIATION

BEFORE: Robert G. Stein, Factfinder

SERB CASE NO. 00 MED 03-0207, 208

PRINCIPAL ADVOCATE (S) FOR THE UNION:

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and

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INTRODUCTION

The City of Massillon is located in northeastern Ohio. The City has a population of about 31,000 people and covers a geographic area of about 17 square miles. Massillon has a Mayor-Council form of government. Massillon is a proud city with a rich history of manufacturing, trade and commerce. It is also a city generally known for its long tradition of producing excellent high school football teams. Massillon appears to be a city that is stable economically and progressive in terms of development. Several economic initiatives have been launched in the City or are planned for the future. Its Mayor, Francis Cicchinelli, has been credited with being at the forefront of the City's progress.

The Massillon Police department has two organized collective bargaining units. The units consist of a Sergeants' and Lieutenants' unit of approximately nine officers and a Patrol Officer unit of approximately forty-five officers. The two units participated in multi-unit bargaining. In late 1999, the bargaining units chose a new bargaining agent to represent them. SERB issued a Certificate of Exclusive Representation on March 23, 2000.

Bargaining between the parties began in April of 2000, shortly after the new bargaining agent was certified by SERB. Bargaining continued for months during which time the parties met at least fifteen times.

Impasse was reached on twenty-six (26) issues and fact-finding was initiated. The bargaining process was unique in that the Employer was interested in gaining back certain management rights in exchange for better-than-average wage increases. This approach characterized the approach taken by the City with all of its bargaining units. The Factfinder, at the urging of the parties, acted as a mediator and met with the parties on four separate occasions. All but three (3) articles and a section of a fourth Article were resolved during mediation. The issues submitted to fact finding are:

1. the addition of a new article on additional days off (FOP days);
2. A proposed increase in uniform allowance under Article 37 of the Agreement;
3. The elimination of the "Me Too" language contained in Article 38 and;
4. The addition of a new article on Promotions

The Factfinder's Award is to be postmarked October 16, 2000.

CRITERIA

OHIO REVISED CODE

In fact-finding, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those related to public and private employers 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 employer to finance and administer the issues proposed, and the effect of the adjustments on the settlement for the normal standard of public service;
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Such other factors, not confined to those listed in this rule, which are normally taken into consideration in the determination of 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.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following decisions are made:

ISSUE 1 New Article FOP DAYS

CURRENT CONTRACT LANGUAGE

none

Union's Position

See UPS (Union's Position Statement)

Evidence/Argument Summary

The Union argues that in order to maintain parity with the Fire Department the bargaining unit should experience a reduction of annual time worked. As a method to accomplish this, the Union is proposing that each employee be provided six (6) paid FOP days off with pay per year. It contends that the firefighter unit members had their annual work hours reduced by 5.88% (from 2,652 to 2496 hours). The annual work hours for a member of the bargaining unit in the Police Department is 2080 hours. The Union's six (6) FOP day proposal is made to approximate the rollback in hours experienced by the firefighters. See UPS for full text of argument.

Employer's Position

See EPS (Employer's Position Statement)

Evidence/Argument Summary

The Employer is willing to add three (3) FOP days (or ½ of the amount being sought by the Union), beginning with the second year of

the Agreement. The Employer argues that more than three (3) days would provide a fiscal strain on the City's overtime budget. It also contends that the hours worked by Firefighters far outweighs those of Police bargaining unit. The Employer argues that shifts could run short and mandatory overtime may result if FOP days are used in large numbers. See EPS for full text of argument.

DISCUSSION

There is no question that the parties have agreed that the police bargaining unit shall receive the same pay increase as the fire fighter bargaining unit: 5% each year of the Agreement. The remaining difference in compensation provided to the fire fighter bargaining unit comes in the form of a reduction in required work hours. The work year for the fire fighters was reduced by 5.8% or 156 hours. It reflects a 48 work week (comparable to many municipalities), and it will go into effect in January of 2001.

This reduction in hours is equivalent to 6.5 work days (based upon 24 hours per shift). If the police unit worked a comparable number of hours per year, true parity would translate into a reduction of 19.5 shifts or work days per year. However, the two units do not have the same work year. While it is important to maintain parity between the two units, the parity that really exists can only be described as relative in nature. The fire fighters' work year is 416 hours longer than that of a police officer.

Beginning in 2001, a fire fighter will work 20% more hours than a police officer on the basis of straight time hours. Therefore, in terms of parity it appears reasonable that any reduction of hours experienced by the fire fighters' unit and applied on an equity basis to the police units should meet the test of "relative parity." It should be reduced by a factor of 20% as it applies to the police unit.

The history of bargaining in the City has mirrored the well accepted principle of maintaining "relative parity" among safety forces. The evidence also indicates that staffing has been and continues to be an important issue to both the Union and the City. The best evidence for this is the existence of a minimum staffing provision in the Collective Bargaining Agreement.

The City convincingly argues that if the bargaining unit is allowed to have more than 3 FOP days per year an increase in overtime is likely to occur. Ironically, if overtime is increased, bargaining unit employees will find it harder to take days off, including FOP days. However, the addition of only 3 FOP days off does meet the test of "relative parity" that exists between the police and fire units in the City. The additional 6.5 days off (or 156 hours) gained by the fire fighters on a relative parity basis translates into 5 days when the 20% difference between a fire fighter's work year and a police officer's work year is factored into the equation. I do not

agree with the Union that 6 days represents parity, given the differing lengths of the work years.

The issue of minimum staffing is an extremely important issue for the parties and has been at the center of the bargaining process for several years. The City argues that it can provide 3 FOP days without asking for relief on the minimum staffing requirement. The Union forcefully argued that minimum staffing must remain intact regardless of the amount of time off that is negotiated.

The principle of minimum staffing is of central importance to the parties, and there is no evidence to suggest that it should be disturbed by a reasonable reduction of hours (FOP days). Yet, the reality of manpower and additional costs must be factored into any change in a collective bargaining agreement that provides employees with more time off.

As stated above, the City's proposal of 3 FOP days does not meet the "relative parity" test. Given the reduction of hours provided to the fire fighter unit, relative parity calls for each bargaining unit member to be eligible to receive 5 FOP days per year (80% of the 6.5 day reduction provided to the fire fighters). However, if minimum staffing is to remain untouched and at the same time overtime is to be kept under control, the remaining 2 days of reduced time, that represents the difference between the City's position and relative parity, can only be reasonably addressed in terms of dollars. Using an average police wage of \$40,000

per year an officer earns approximately \$19.20 per hour or around \$150 per day (allowing for rounding). The 2 day difference represents approximately \$300 per bargaining unit member per year.

RECOMMENDATION

Effective January 1, 2001 each bargaining unit member shall receive 3 FOP days off per year.

NEW ARTICLE FOP DAYS

Section 1 Effective January 1, 2001, each bargaining unit member who has completed one year of service shall receive three (3) FOP days off per year.

Section 2 An employee who completes his first year of service after the beginning of a calendar year shall receive one (1) FOP Day for every complete four (4) month period remaining in that calendar year.

An employee who separates from the Police Department after the beginning of a calendar year shall receive one (1) FOP Day for every complete four (4) month period he works during that calendar year.

No partial time shall be credited for periods of less than four (4) full months.

Section 3 FOP Days shall be pre-scheduled by the Chief of Police or his designee. FOP Days must be taken off and may not be turned in for pay. If an employee voluntarily works on his scheduled FOP Day, he forfeits that FOP Day. Employees may not trade scheduled FOP Days.

Section 4 FOP Days must be taken off in one (1) day (24 hour) increments.

Section 5 Only one (1) employee per shift shall be permitted off on an FOP Day at one (1) time.

ISSUE 2 Article 37 UNIFORM ALLOWANCE

CURRENT CONTRACT LANGUAGE

The current language provides for an annual uniform allowance of \$600 per year.

Employer's Statement

See EPS

Evidence/Argument

The City proposes an annual increase of \$150 in the uniform allowance. It ties this increase with the concept of FOP Days. It argues that the fire fighter unit currently receives \$550 dollars per year and that this offer provides police officers with a benefit that is \$200 above each fire fighter's current allowance for uniforms. See EPS for full text of its position and arguments.

Union's Position

See UPS

Evidence/Argument

The Union argues that the uniform allowance has not been increased for approximately 10 years and during that period inflation has increased 20.55 % (CPI-U). It is proposing an increase of \$600 to a total of \$1200 per year. The Union also argues that even a \$1200 uniform allowance does not come close to the actual cost experienced by bargaining unit members to buy and maintain their uniforms and

equipment. The Union points out that comparable police departments provide for \$1000 or more in allowances for uniforms (See UPS for details: Canton \$1400, Euclid \$1300, Alliance \$1000, etc.).

Discussion

The Union's argument is persuasive in terms of the relative value of the uniform allowance when inflation over the past 10 years is taken into account. The current \$600 allowance adjusted for inflation should be approximately \$720.00 (allowing for rounding). Arguably, this represents an upward adjustment of \$120 in order to maintain the same level of spending power that existed in 1990. The fire fighter unit has a uniform allowance of \$550 per year. Therefore the current relative parity factor between fire fighters and police officers is that the fire fighters' uniform allowance is approximately 90% of that provided to police officers (allowing for rounding).

The additional two (2) FOP Days (converted to cash) are worth approximately \$300 (See figures in Issue 1 above). When this figure is added to the current uniform allowance adjusted for inflation (or \$720), the new uniform allowance that achieves relative parity is \$1020.

However, the figure of \$1020 does not take into account the effects of inflation for the life of the Agreement. Uniforms and equipment continue to increase in price from year to year. It is reasonable to adjust the \$1020 figure by a factor of 3% each year for each of remaining two

years of the Agreement as a hedge against inflation (or a total of 6% x \$1020). This figure is approximately \$1100 (allowing for rounding) and should be phased in to mirror the gradual effects of inflation.

RECOMMENDATION

The annual uniform allowance shall be increased to \$900 effective with the December 2000 payment. The December 2000 payment shall be a total of \$510 to account for inflation in the first half of 2000 along with the one-half (1/2) payment of the recommended increase). Effective January 1, 2001 the annual uniform allowance shall be increased to \$1000. Effective January 2002 the annual uniform allowance shall be \$1100.

Section 37.3 shall reflect the language contained in the EPS.

ISSUE 3 Article 38 "ME TOO" PROVISION

CURRENT CONTRACT LANGUAGE

"During the term of the Agreement, if negotiations with any other City employee bargaining groups receive financial benefits from the City which are more liberal than those within this Agreement, the City and the FOP shall meet to work out comparable benefits for the Union."

Employer's position

See EPS

Evidence/Argument

The Employer argues that its position on this issue reflects the pattern of bargaining that existed in the current round of bargaining in the City and its success in trading higher wages (5% each year of the Agreement

verses 3.5%) for managerial control. The City also points out that the Police Unit is the last major unit to conduct bargaining and is not disadvantaged by not having a "me too" clause because they have the advantage of knowing what the other units settled for before they have to bargain their next contract. See EPS for detailed rationale.

Union's position

See UPS

Evidence/Argument

The Union asserts that the current "me too" language has been part of the Agreement since 1984. It argues that the language represents fairness and the status quo should prevail. See UPS for detailed rationale.

Discussion

The police unit, by keeping the "me too" language has something that the fire fighter unit gave up in order to secure a higher wage increase. This Fact finder has always maintained (and the Union pointed it out) that a major change (or deletion) in language requires sufficient evidence and documentation. In other words there must be a compelling reason.

In this case such a reason exists in the powerful concept of relative parity. Fairness is an important concept, as articulated by the Union; however, it is a concept that must apply to all bargaining units, especially

ones who are aligned, such as safety forces. The fire fighters through the bargaining process gave up "me too" language in exchange for monetary gain. The police unit secured the same monetary advantages, including time off and the equivalency in uniform increases. It is only reasonable that the police unit accept what the fire unit accepted. Additionally, the police unit should bargain last in the next round of negotiations in order to provide it with greater assurance that they will not be bargaining from a position of uncertainty regarding the gains made by other bargaining units in the City.

RECOMMENDATION

Remove the current 38.2 language and replace with language contained in the EPS.

New Article

The parties agree that the police bargaining unit shall be the last unit to bargain with the City in the next round of negotiations.

ISSUE 4 NEW ARTICLE PROMOTIONS

CURRENT LANGUAGE

None

Union's position

See UPS

Evidence/Argument

The Union argues that there is no reasonable basis for the Factfinder to deal with this issue. See UPS for detailed rationale.

Employer's position

See EPS

Evidence/Argument

The Employer argues that it has met in good faith with the Union and agreed upon concepts for promotion that are reasonable and fair. See EPS for detailed rationale

Discussion

The evidence reveals that the parties have been struggling with this issue since its introduction by the City in the fall of 1998. The parties met several times and discussed a fair and equitable promotion system. They reached tentative agreement on a promotion system and the Union membership narrowly voted it down. Obviously, the language contained in the Employer proposed promotion article is a controversial subject. It has been the subject of legal wrangling and is now scheduled to be arbitrated before the Honorable Calvin Sharpe on October 20, 2000.

There is no question that a fair and equitable promotion system is critical to the Police Department. I find that the City has attempted to act in good faith in this matter. The Union also appears to have bargained in good faith, but clearly this issue is a very divisive one for its membership. Given the legal entanglements and the grievance filed over this issue, it would not be appropriate at this time for a factfinder to make a recommendation that would further "muddy the waters." However, it is not unheard of for the parties in a similar situation to agree on a separate fact finding session (as a part of the current bargaining process) on this issue once the legal and arbitration proceedings have been concluded.

RECOMMENDATION

It is recommended that the parties include a provision in the Collective Bargaining Agreement that addresses promotions when the legal and arbitration proceedings are concluded. It is recommended that the parties hold a one day fact-finding hearing on this matter. The current Factfinder shall be available to conduct such a hearing. The conduct of the hearing and the recommendations of the Fact finder shall be in accordance with the impasse provisions contained in ORC 4117.

TENTATIVE AGREEMENTS

All tentative agreements reached by the parties prior to and during the fact-finding hearing are incorporated in this Award.

Respectfully submitted to the parties this 16th day of October, 2000.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Factfinder

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

THE CITY OF MASSILLON,

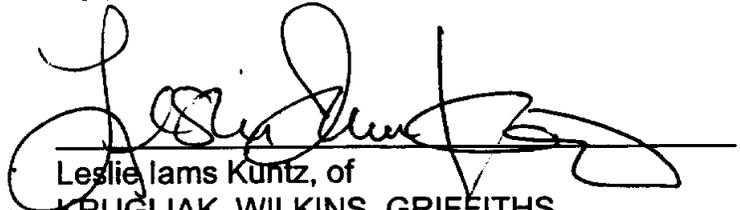
And.

**MASSILLON FOP HENDERSON
LODGE POLICE OFFICERS
ASSOCIATION.**

CASE NO. 00-MED-03-0207
00-MED-03-0208

FACTFINDING POSITION STATEMENT CITY OF MASSILLON

Pursuant to the direction of the State Employment Relations Board, Ohio Revised Code Section 4117.14, and Ohio Administrative Code 4117-9-05(F), the City of Massillon submits the foregoing Fact-finding position statement to Arbitrator Robert Stein.



Leslie Jams Kuntz, of
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& DOUGHERTY CO., L.P.A.

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PRINCIPAL REPRESENTATIVE FOR CITY
OF MASSILLON

I. BACKGROUND INFORMATION

The City of Massillon is a statutory municipality located in Stark County, Ohio. The City of Massillon encompasses approximately 18.172 Sq. miles with the City aggressively seeking annexation over the last fifty years. (See Map of Annexations attached as Exhibit 1). Despite the aggressive annexation achieved by the City, the population of Massillon has remained consistently between 31,000 to 30,000 since the 1960's. The latest projected population by the US Census being approximately 30,671. (See January 25, 1991 Article from Massillon Independent and 1990 Census and 1991 through 1996 Estimate of Census by City attached as Exhibits 2 and 3).

The City of Massillon has an income tax that funds many of its city services, including the police services. The amount of income tax collected over the most recent years has increased. However, the current projected increase for the Year 2000 in income tax collection is only a 0.54% increase from collections of 1999. The collection of the income tax is as follows:

1998	\$10,964,424 Actual collection
1999	\$11,448,320 Actual collection
2000	\$11,510,500 Projected collection

(See City of Massillon Income Tax Projection June - December 2000 attached as Exhibit 4). The projected figures for the year 2000 collections are based upon collections as of September 12, 2000. These figures show that despite the growth of four percent (4%) from 1998-1999, the growth in the tax base has slowed dramatically for the Year 2000.

The Massillon Police Department has two units organized for collective bargaining purposes. The first unit consists of Sergeants and Lieutenants and is approximately nine (9) officers. The second unit consists of Line staff officers and is approximately forty-five (45) officers. These two units are multi-unit bargained by the consent of both parties.

II. BARGAINING HISTORY

In late 1999, the City representatives were verbally notified that the exclusive representative for the Police units, the Fraternal Order of Police, would be voluntarily disclaiming interest for purposes of representing the Police units. The prior collective bargaining agreement then expired on December 31, 1999. After the City consented to recognize a new collective bargaining agent without election, the State Employment Relations Board issued a Certification of Exclusive Representation to Massillon FOP Henderson Lodge Police Officers Association on March 23, 2000. (See Certification of Exclusive Representative attached as Exhibit 5).

Following receipt of the Certification of Exclusive Representation, the City representatives met for purposes of negotiations with representative of the Massillon FOP Henderson Lodge Police Officers Association (hereinafter Union) approximately seven (7) times. The parties also met two (2) times with Mediators appointed by the State Employment Relations Board (hereinafter SERB). The parties have also met three (3) times to discuss the Rules and Regulation of the Police Department in order to bargain over the effect of these policies. Finally, the parties have met approximately four (4) times with the Factfinder in order to mediate those issues remaining prior to Factfinding. As part of the mediation process, the City proposed a package deal to the Union that was based upon an attempt to achieve parity with the Fire Department who had previously concluded their negotiations. (See Conciliation Award for City of Massillon and Massillon Professional Fire Fighters Association IAFF Local 251 attached as Exhibit 6).

The result of these negotiations is that the parties have come to Tentative Agreements on forty-three (43) articles, and a partial tentative agreement on one (1) article. (See Tab under Tentative Agreements). The parties have agreed that three (3) articles and a section of the fourth article will be submitted to this Factfinder for resolution. The issues remaining for the Factfinder are:

1. The addition of an Article on FOP days.
2. A proposed increase in the uniform allowance under Article 37;
3. The elimination of "Me Too" language from Article 38; and
4. The addition of an Article on Promotions.

III. UNRESOLVED ISSUES

After extensive discussion through mediation, the parties have narrowed the outstanding issues to four (4). Three of these issues (FOP days, uniform allowance, and "me too" language) together with the 5%-5%-5% increase in wages and the elimination of past practices clause in Article 38 previously agreed to through tentative agreement reflect an attempt by the City to offer a form of parity with the Massillon Fire Department. All five (5) of these items are part of the "package" proposed by the City that seeks to provide that parity.

In order to buy back similar provisions in the Fire contract, the City was willing to exceed the standard percentage raises in the market (3.5% vs. 5%), and give a reduction in the work week that was calculated to be the equivalent of another 5% wage increase. The difficulty that presents itself in giving the same type of benefits to buy back the same provisions herein is that the police contract contains an article requiring a certain level of minimum staffing that the fire contract does not contain. Therefore, while the fire employees are receiving a benefit of a shorter workweek, the reduction in work hours does not cost the City because these individuals do not have to be replaced. This is not the case with the Police. In fact, a similar 5% reduction in work hours for the police would force the City to expend a great deal of money in mandatory overtime without waiver of the manning article.

Therefore, in order to achieve some type of parity without elimination of the minimum manning article, the City is proposing the following "package" deal. The City is proposing the elimination of the "me too" language and the previously tentative agreement on "prevailing rights" language of Article 38 in exchange for the previously tentative agreement of a 5% wage increase per year, an increase in uniform allowance by \$150 per man, and the creation of three (3) FOP Days without the waiver of the minimum manning article.

The fourth issue, Promotions, involves a proposal from the City to establish a collectively bargained procedure for promotional testing. As set forth more fully below, this Article had been bargained over in good faith with the predecessor union. The present Union has proposed no language but instead seeks seemingly to block any type

of contract article that would change how promotions had been done by past practice. This approach should be rejected and the language proposed by the City adopted.

A. FOP DAYS

The parties have both agreed in principal to the allowance of some type of days off in order to achieve parity with the Fire Department over their reduction in work week from 50.66 to 48 hours. The major dispute between the parties has been over how many days, and whether the minimum manning requirements of Article 15 should be waived. It is the position of the City that three (3) FOP days together without any waiver of the minimum manning and an increase in uniform allowance achieves that parity.

The City proposes three (3) FOP days rather than more for a number of reasons: (1) the fiscal impact these additional days will continue to have on the City's overtime; (2) the Fire employees still work a great deal more hours per week than the police; and (3) the City is willing to increase the uniform allowance to employees that the Fire employees did not receive in order to offset the difference. The impact of FOP days is that each day may cause the shifts to run short thereby mandating overtime. Simply put, more days off, more potential overtime. Under the City's proposal, with 52 members of the bargaining unit, there is the potential for 1248 additional overtime hours (52 members X 3 days at 8 hours). An additional 1248 overtime hours at the rate of approximately \$29.25 (\$19.50 per hour average wage rate) per overtime hour is an additional \$36,504 out of the City coffers that the Fire employees did not get. The City should not be asked to bear any additional cost that any more FOP days necessarily would cause.

Therefore, the City's proposal for a New Article titled FOP Days is as follows:

Section **.1 Beginning with the second year of this agreement, each bargaining unit member who has completed one year of service will receive three (3) FOP Days off per calendar year.

Section **.2 An employee who completes his first year of service after the beginning of a calendar year shall receive one (1) FOP Day for every complete four (4) month period remaining in that calendar year.

An employee who separates from the Police Department after the beginning of a calendar year shall receive one (1) FOP Day for every complete four (4) month period he works during that calendar year.

No partial time will be credited for periods of less the four (4) full months.

Section **.3 FOP Days will be pre-scheduled by the Chief of Police or his designee. FOP Days must be taken off and may not be turned in for pay. If an employee voluntarily works on his scheduled FOP Day, he forfeits that FOP Day. Employees may not trade scheduled FOP Days.

Section **.4 FOP Days must be taken off in one (1) day (24 hour) increments.

Section **.5 Only one (1) employee per shift will be permitted off on a FOP Day at one (1) time.

B. ARTICLE 37 UNIFORM ALLOWANCE

As set forth above, the parties have also agreed to some form of increase in the uniform allowance in addition to the FOP days in order to achieve parity with the Fire Department over their reduction in work hours. The only dispute between the parties presented here at Factfinding is centered on how much of an increase should be granted. It is the City's position that this amount should be an increase of \$150 per man.

The Fire Department employees did not receive any increase in their uniform allowance. It is \$550 per man pursuant to Article 36 of their agreement. Under the proposal set forth by the City, the Police Department would be receiving \$200 more than the Fire employees would.

An increase of \$150 also is consistent with comparable jurisdictions in Ohio. In the police agencies in Stark County and in Municipalities of comparable population size, the many of them have uniform allowances of \$750 or less. (See Chart of Comparable Benefits attached as Exhibit 7). These facts together with the reasons for the package set out above, dictates that the City's proposal on Uniform Allowance is more than fair.

Therefore, the City's proposal is that Article 37 read as follows:

Section 37.1 Bargaining Unit Members are authorized a uniform allowance for the purchase and maintenance of Police uniforms in the sum of Seven Hundred Fifty Dollars (\$ 750.00) per year of this Agreement. Said allowance is payable semi-annually in installments of Three Hundred Seventy Five Dollars (\$375.00) each in the first paydays in June and December.

Section 37.2 Each newly hired Bargaining Unit Member shall be entitled to an advance on his uniform allowance of Seven Hundred Fifty Dollars (\$750.00) upon the date of his appointment. In the event that the new Member does not complete one (1) full year of service, then any uniform allowance advanced to him shall be refunded to the Employer.

Section 37.3 The Employer shall continue to provide the protective clothing required by the Police Department that has been provided in the past. The Employer shall continue to provide the fund of Seven Thousand Five Hundred Dollars (\$7,500.00) per year for protective clothing and equipment replacement, to replace worn out and out dated equipment, which will be determined annually by the Lodge Committee and the Chief of Police.

C. ARTICLE 38 "ME TOO" PROVISION

As set forth above, the City proposes the removal of the following language in Article 38 as part of its package proposal:

"During the term of this Agreement, if negotiations with any other City employee bargaining groups receive financial benefits from the City which are more liberal than those within this Agreement, the City and the FOP shall meet to work out comparable benefits for the Union."

When the City made its package proposal during mediation, it contemplated that Article 38 would be eliminated in total and replaced with a severability clause. Article 38 consisted of two (2) provisions, a "prevailing rights" clause, and a "me too" clause. Both of these clauses had been removed from the Firefighters contract. The parties herein have tentatively agreed to eliminate the "prevailing rights" clause together with the 5% per year wage increase. In order to receive the remainder of its side of the "package" proposal, the City proposes that this Factfinder eliminate the "me too" clause in exchange for granting the additional FOP days and increase in uniform allowance.

Additionally, the elimination of the "me too" clause will have little to no adverse effect on the bargaining unit. The only other large group to collectively bargain with the

City are the Fire Department who do not have "me too" language in their agreement. The Fire Department's contract expires on November 21, 2002, before the expiration of the Agreement herein. This Union will have many opportunities to determine what proposals the City is making to the Firefighters, and determine if they wish to seek a similar benefit. As these negotiations clearly demonstrate, the City is willing to take steps to insure that each unit is treated both fairly and equitably.

Therefore, the City requests that this Factfinder adopt the City's proposal to eliminate the "me too" clause of Article 38.

D. PROMOTIONS

In the fall of 1998, the City of Massillon determined that it desired to expand the qualifications for promotional examinations beyond a mere written test. Consequently, the City in good faith invited the exclusive representative to enter mid-term negotiations over the adoption of a promotional process that would go beyond the written civil service exam. After extensive discussions and at least four draft proposals, the parties agreed to language that was to be submitted to the union membership. (See Drafts of Memorandums of Understanding attached as Exhibit 8).

After a meeting of the union membership, the City was notified that the membership had voted against the Memorandum of Understanding. Since the City had bargained in good faith over the adoption of the promotion policy, the City decided to implement the bargained for proposal through the civil service commission and began the process of screening to fill several vacant Sergeant positions. After the written assessment and one day before the scheduled oral portion of the examination, several members of the bargaining unit obtained an injunction through the Stark County Common Pleas Court blocking the oral assessment. This injunction prevented completing the oral assessment portion of the testing until a grievance filed over the issue was arbitrated. This injunction was granted one (1) year ago, and the City still has vacant Sergeant positions that need to be filled.

While the foregoing facts do not directly bear on the language proposed by the City, it is instructive of the refusal of the Union to come to the table and bargain an

acceptable method of promotional testing. The Union has made no proposal, and has resisted any effort to discuss a fair and equitable method to test. The City met and negotiated in good faith with the employees' exclusive representatives at that time, and has developed an acceptable method of promotional testing using language proposed by the predecessor union. Finally, the testing proposed by the City seeks to ensure that individuals who have well-rounded supervisory skills are promoted rather than just those individuals who are good test takers.

For these reasons, this Fact-finder should adopt the foregoing language. The City proposes the following language for promotions:

1. Promotional examinations in the Massillon Police Department shall be competitive, and include a written examination and an assessment process.
2. Candidates for promotion must first pass the written examination with a minimum score of 70% to be eligible to participate in the assessment process. After both the written examination and the assessment process have been completed, the relative weight of each component shall be computed as follows:

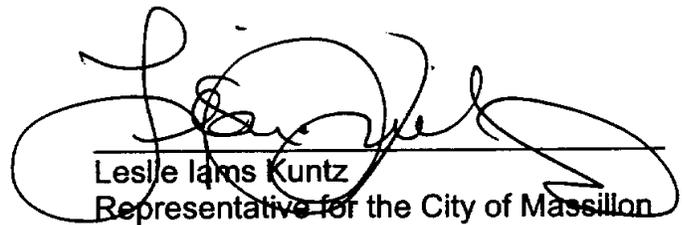
Sergeant	60% written	40% assessment
Lieutenant	50% written	50 % assessment
Captain	40 % written	60% assessment

3. Both the written examination and the assessment process shall be developed and administered by a provider selected by the Civil Service Commission. The provider shall determine the appropriate exercises to be included in the assessment process for each rank.
4. After the written examination has been administered and prior to the grading of the examination papers, each candidate shall have a period of five (5) days, exclusive of Saturday, Sunday and holidays, to review the questions, the rating keys or answers to the examination and to file any protest that he/she may deem appropriate. The protests shall be in writing and remain anonymous to the commission. All protests with respect to rating keys or answers shall be forwarded to the examination provider for review and response to the Commission. The Commission shall determine whether to accept the response of the provider, and the Commission's decision shall be final. Once the Commission has made such determination, the provider will grade the examination papers and provide the answer key and the candidates answer sheets to the Commission.

After the grading of such examination, any participant who deems his/her examination to have been erroneously graded, may appeal to the Commission within seven (7) days from the date of the mailing of the test results by the Commission, exclusive of Saturday, Sunday and holidays. The decision of the Commission shall be final.

5. No challenge or appeal shall be permitted to the assessment process.
6. Credit for seniority shall be awarded in accordance with ORC 124.31 and ORC 124.44. Seniority credit shall be added to the final aggregate score of the combined written examination and assessment process. Seniority credit shall be computed as of the date that the written examination is conducted.
7. Grievances filed by candidates not selected shall be restricted to issues involving computation of scores, and shall not be allowed on issues related to the content of the written or oral assessment, grading of the oral assessment, or the response to any challenges to written test questions and answers. All challenges provided in this section must be exhausted prior to the filing of any grievance. Grievances filed under this section shall begin at step three (Director of Public Safety & Service).

Respectfully submitted,

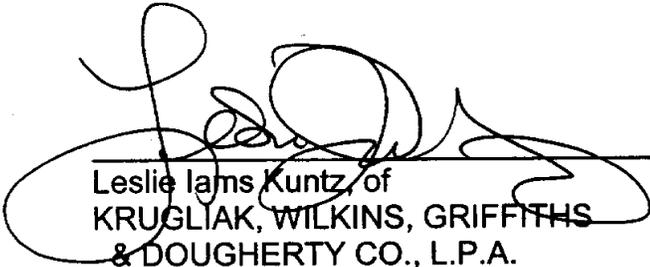


Leslie James Kuntz
Representative for the City of Massillon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. mail
this 15 day of September 2000 to the following counsel and/or parties of record:

Larry S. Pollak
PO Box 9681
Columbus, Ohio 43209



Leslie Iams Kuntz, of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Phone: (330) 497-0700
Fax: (330) 497-4020
Canton, Ohio 44735-6963
Representatives for the City of Massillon

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF
CITY OF MASSILLON,
Employer,

and

MASSILLON F.O.P. HENDERSON
LODGE POLICE OFFICERS'
ASSOCIATION

Case Nos. 00-MED-03-0207
00-MED-03-0208
FACTFINDER ROBERT G. STEIN

POSITION STATEMENT OF EMPLOYEE
ORGANIZATION MASSILLON F.O.P.
HENDERSON LODGE POLICE
OFFICERS' ASSOCIATION

Now comes the Employee Organization, by and through its undersigned attorney, who hereby submits the following written statement pursuant to Ohio Revised Code section 4117.14(C)(3)(a) and Ohio Administrative Code Rule 4117-9-05(F).

1. The name of the party is Massillon F.O.P. Henderson Lodge Police Officers' Association (hereinafter referred to as "the Union"). The principal representative and counsel for the Union is Larry S. Pollak, Esq., P. O. Box 9681, Columbus, Ohio 43209; telephone number (614) 222-0512; Fax number (614) 222-0536, and Pager number (614) 673-0241.

2. The Union is certified as the sole and exclusive bargaining agent for City of Massillon police officers, excluding probationary employees, the Chief of Police, and Captains. There are two (2) units, composed of patrolmen in the blue unit and sergeants and lieutenants in the gold unit. The Union and the City of Massillon have agreed to engage in multi-unit bargaining with a single collective bargaining agreement applicable to members of both the blue and gold units. There are approximately fifty (50) employees currently in these units.

3. A copy of the tentative agreements and Letter of Understanding is being sent to the Factfinder under separate cover and is incorporated herein as Exhibit "A." The Factfinder has already been provided with a copy of the current collective bargaining agreement which was scheduled to expire on December 31, 1999 but remains in full force as provided by Article 42, until a successor agreement takes effect pursuant to the instant process.

4. The Union sets forth the following as its Statement defining all unresolved issues and summarizing its positions on said issues as required by Ohio Administrative Code section 4117-9-05(F)(4):

INTRODUCTION

Because of widespread dissatisfaction with its previous representation, the Union sought to disassociate itself from the FOP/OLC in late 1999. The FOP/OLC did not contest the issue and the City did not either. The Union reconstituted itself as an independent bargaining unit representative and filed with SERB for recognition on January 21, 2000. The Union was certified by SERB in March, 2000 and on March 3, 2000 filed a Notice to Negotiate.

Negotiations began on April 4, 2000. The parties undertook fifteen (15) separate negotiating sessions through September, 2000, dealing with dozens of proposed contract changes preferred by both sides. Prior to factfinding, twenty-six (26) articles remained unresolved. Factfinder Robert G. Stein engaged in mediation and after concessions and compromises were made by both parties, four (4) issues were still in dispute, for consideration by him. The Union's position summaries on each of these issues are presented below.

Two of the outstanding issues are economic in nature; to-wit, the amount the Uniform Allowance will be increased, and the number of "FOP Days" bargaining unit members will receive each year. The other two issues relate to the City's insistence on including a Promotional

Assessments article in the contract for the first time despite the Union's continuing objection to negotiating about the matter, and the City's desire to delete the "Me Too" clause currently contained in Article 38.2 of the contract.

It should be noted at the outset that the major compromise agreed to by the parties was the City's agreement to pay annual five percent (5%) raises in base wages over the course of the new contract in return for important concessions made by the Union on the key subject of Past Practices and Prevailing Rights. The same compromise was made in other Massillon bargaining units. The other safety forces in the City, Massillon Professional Firefighters Association/IAFF Local 251 made the compromise in Past Practices and Prevailing Rights for the same 5-5-5 wage increase, but also received a diminution of working hours that the City itself calculated at an additional 5.5% value. This reduction in their workweek was the basis for the Union's proposal in these negotiations for the "FOP Days," as a way of maintaining the rough parity that has traditionally existed between the two unions.

The City of Massillon is benefiting from a booming economy. Much of the credit for the City's prosperity goes to Massillon's dynamic Mayor, Francis Cicchinelli. Reelected in November, 1999 with 72% of the vote, the Mayor is serving his fourth term and is the longest serving Mayor in Massillon's history. He has dramatically expanded the size of the City during his tenure in office through annexation, but has not increased the size of the police department at all. This has had a substantial impact on the members of the chronically understaffed department, with corresponding increases in forced overtime, insufficient manning at critical times, and inevitably more stress and frustration on the job. All of this takes place in the context of police work becoming harder across the nation, as law enforcement officers face greater threats to their safety, less respect from too many of the citizens they serve and protect, and more

scrutiny of their every action. It is uncontroverted that the members of this bargaining unit provide excellent service to the Massillon community.

ORC 4117.14(C)(4)(E) sets out the factors the factfinder should consider in recommending the disposition of disputed issues. Subsection 3 of this statutory provision involves the employer's ability to finance the settlement. The City has candidly stated at the negotiating table that it is not raising the City's ability to pay. However, the Union wants to emphasize this by citing several newspaper articles.

In a December 4, 1999 story in The Canton Repository, "Massillon's 2000 Budget Projected at \$33.8 Million," it was reported that the Mayor's budget projected 9.3% more spending in 2000 over 1999. On January 12, 2000, "City Income Tax Sets Record" was the banner headline in the Massillon Independent. City Tax Collector Kirk Albrecht announced a 4.36% increase in income tax receipts, stating "It means the city is healthy and growing." The Mayor's aggressive annexation policy was featured in a February 8, 2000 Massillon Independent article. Mayor Cicchinelli was quoted saying "This brings us up to 18.2 square miles in total area. That's just two square miles less than Canton, which has 20.2 square miles of territory. We're catching up with them."

The fact is that the City of Canton has more than three times as many policemen as Massillon.

Massillon's financial success is well known throughout the region. The Akron Beacon Journal, in an October 3, 1999 front-page story titled "Massillon On The Move," noted "Massillon has turned itself into a mecca for industrial, commercial, and residential growth. And there is more to come as the 21st Century unfolds." A similar headline appeared in the April 12, 2000 Massillon Independent, "City In Good Fiscal Shape." That story pointed out "Cicchinelli

said the city is in fine shape, as attested by the county's property valuation for Massillon, which is now \$400 million, having increased by almost \$80 million since 1995, mostly due to new construction and companies moving into the city." The same newspaper's headline on August 10, 2000 expressed local pride about "Pepsi Bottling Company Moving to Massillon." Mayor Cicchinelli bragged "The fact that Massillon can attract a nationally known company should be good news for all the residents of the city."

As previously demonstrated, Massillon's expansion has not extended to its police force. After all the growth, the city has the same size police department it had twenty years ago. At that time, Massillon was a far different city, in dire straits. In 1983, the then Mayor offered police and firefighters a choice between wage reductions or layoffs. The firefighters took a wage rollback to prevent layoffs. The police union took the layoffs – at great pain, to maintain its wages. Now, ironically, the firefighters have actually surpassed Massillon police in wages earned for hours worked, despite the layoff trauma suffered by policemen but not firefighters. It is this contract history that compels a fair settlement to restore at least parity between the city's safety forces.

Before delving into the specific issue position summaries below, the Union asks that the Factfinder review the following calculations and draw the appropriate conclusions as to the propriety of our proposals on the unresolved economic issues.

The firefighters received a 5% annual raise in salary over three years. They also received a rollback in the number of hours worked. The number of hours a firefighter had worked was 2,652 per year. Beginning in 2001, firefighters will work 2,496 hours per year. The actual reduction in the number of hours firefighters will work is 156 hours, or 5.88%. However, the

City argued (to Factfinder Stein, then a conciliator) that the figure was 5.5%. In using that figure, we are already losing .38%, “rounding down” to use the figure that the City used.

Meanwhile, a policeman works 2,080 hours per year. Using the City’s 5.5% figure, a 5.5% rollback for police would be 114.4 hours, or approximately 14.3 days. Assuming we got the full six (6) “FOP Days” we propose, this would be equivalent to only 2.3%. Using an average police wage of \$40,000.00 per year, our bargaining unit members earn \$19.23 per hour. Therefore, a \$600.00 increase in the uniform allowance, as we propose, would equal 31.3 hours per year. This 31.3 hours is the equivalent of an additional 1.5%. The total of both of our proposals only adds up to 3.8%, as compared to the 5.5% reduction in hours for firefighters. Thus, even if we receive our full proposal of six “FOP Days” and a \$600.00 increase in the uniform allowance, we will still be 1.7% behind the firefighters, or 35.36 hours short. If we use the actual figure of the firefighters’ reduction in work – 5.88%, we would remain more than 2% behind the firefighters even if we receive our economic proposals *in full*.

This Union is being more than reasonable in its economic proposals – and to compensate us for not seeking even more economic benefits, we ought to receive favorable consideration on the two non-economic issues before the Factfinder.

UNRESOLVED ISSUES AND POSITION SUMMARIES

1. **UNIFORM ALLOWANCE**

Currently, Article 37, Section 1 provides for “a uniform allowance for the purchase and maintenance of Police uniforms in the sum of Six Hundred Dollars (\$600.00) per year of this Agreement.” The Union proposes to double this sum to \$1,200.00, or an increase of \$600.00 per year. As previously shown, this increase, together with our proposal on “FOP Days” would not even bring us to parity with firefighters. The cost to the City would be \$30,000.00.

It should also be noted that this benefit is paid in June and December. The parties' agreement on retroactivity is limited to base wages, so there will be no retroactive increase in the June, 2000 uniform allowance.

Although the uniform allowance has been part of our contract since 1984, the amount has not been increased at all since 1990. According to the Consumer Price Index of the U.S. Department of Labor inflation between 1990 and today has been 20.55%. That means, in spendable dollars our members can buy less than four-fifths of the uniforms now than they could then with this benefit. Furthermore, the State of Ohio decided in 1994 that uniform allowances for policemen were taxable as if they were base wages, diluting the value of this benefit substantially. Paradoxically, the U.S. government does not consider uniform allowances to be like base wages for computing overtime. Under 29 CFR 778.217, uniform allowances are specifically exempt from the Fair Labor Standards Act requirement to include all compensation in the hourly rate before calculating time and a half for overtime. The federal regulation exempts "the actual or reasonably approximate amount expended by an employee in purchasing, laundering, or repairing uniforms or special clothing which his employer requires him to wear." The underlying assumption, according to the Wage and Hour Division of the U.S. Department of Labor, is that the uniform allowance constitutes a reimbursement, so it is not considered compensation for purposes of computing overtime.

The problem of course, is that the \$600.00 uniform allowance does not come close to reimbursing bargaining unit members for their actual costs. An informal poll of our membership indicates that policemen spend upwards of \$4,000.00 initially and between \$500.00 and \$1,600.00 annually thereafter to maintain and update their uniforms.

It is not surprising that the cities that Massillon cited as “comparables” in the recent firefighter negotiations all pay substantially more in uniform allowances to their policemen. Barberton pays \$1,000.00. Alliance pays \$1,000.00. Stow pays \$900.00 plus an additional \$1,000.00 following a promotion. Stark County’s Jackson Township paid \$1,000.00 in the contract that expired in August and may pay even more in the new contract. In Canton, the uniform allowance is \$1,400.00 per year. Cleveland Heights pays \$1,228.00. Euclid pays \$1,300.00. Parma pays \$1,200.00. It is clearly not excessive for Massillon to pay \$1,200.00 per year. This increase is more than justified by the comparisons under ORC 4117.14(C)(4)(E)(2) as well as Massillon’s ability to pay.

2. “FOP DAYS”

As previously shown, receiving an additional \$600.00 in uniform allowance and Six (6) “FOP Days” would still not bring this Union to parity with firefighters. However, the Union initiated this proposal to minimize the City’s “out of pocket” costs, while redressing the unbalance caused by the City’s dramatic decrease in the other safety forces’ working hours. We are proud of our creativity in this matter, where we came to the table “thinking outside the box.” This creative provision would not take effect until year 2 of the three year contract.

We would agree to have “FOP Days” pre-scheduled by the Chief of Police once every two months, and agree that these days could not be turned in for pay. We would also agree that these days be taken off in eight (8) hour increments, and that only one (1) employee per shift, per day be scheduled for “FOP Days.” However, we contend that employees should be able to voluntarily trade such days, which would cost the City absolutely nothing. We also want to have “FOP Days” substituted within the same two-month period if there is an involuntary conflict such as court duty which is unavoidable. Finally, and most importantly, we vigorously oppose any dilution of the minimum manning standards which have already been agreed upon. We

object to carving out any exceptions to the important minimum manning standards, not just because it is an important principle that we want to be held inviolate, but particularly because it is a safety issue that is even more compelling because of the chronic understaffing of the Massillon Police Department.

The arithmetic would justify more than six (6) "FOP Days." We hope and expect that our moderation on this issue will redound to our benefit on the other issues, set forth below.

3. PROMOTIONAL ASSESSMENTS

At the table, and in written correspondence, the undersigned has repeatedly and consistently asserted the Union's position that we are not interested in bargaining about this issue.

"The subject of promotions is simply a permissive, and not a mandatory subject for bargaining under Ohio law." United Black Firefighters vs. City of Akron, 976 F.2d. 999 (Sixth Circuit, 1992).

In a decision by the Ohio Supreme Court, Justice Herbert R. Brown wrote: "A permissive subject of collective bargaining is one whose inclusion in the agreement is not prohibited by law, but which is not one of the mandatory subjects of bargaining listed in R.C. 4117.08(A). While parties to a collective bargaining relationship are required to bargain over mandatory subjects, they are not required to do so with regard to permissive subjects. Cincinnati vs. Ohio Council 8, AFSCME, 61 O.S.3d. 658 (1991). Justice Brown continued, "The only constraint on permissive bargaining is that it is impermissible to insist to the point of impasse on inclusion of a permissive subject in an agreement." Id at 664. See also, "To Bargain, or Not to Bargain? Identifying Mandatory and Permissive Subjects of Collective Bargaining in Ohio," 30 Toledo Law Review 215 (1999).

One reason the Union is not interested in bargaining on this issue is that it has been previously scheduled to be arbitrated by Calvin William Sharpe of Case Western Reserve Law School. The City previously agreed to have the matter decided by arbitration in FMCS Case No. 99-13023. At this point, we intend to attend the arbitration hearing on the morning of October 20, 2000.

Furthermore, an Agreed Entry was filed by Hon. Sara Lioi, Judge of the Stark County Common Pleas Court on November 18, 1999 in Case No. 1999CV02318. Assistant City Attorney John H. Simpson signed the entry on behalf of the City of Massillon. It states:

The parties agree that Defendant, City of Massillon, Ohio shall not conduct assessments or make any promotions in the police department until the pending grievance/arbitration in the matter is resolved.

The City of Massillon is enjoined from conducting said assessments or making said promotions until said arbitration award is decided. It is so ORDERED.

A copy of the Agreed Entry is attached hereto and marked Exhibit "B."

There is no reasonable basis for the City to insist that the Factfinder deal with this matter. First of all it is arguably an unfair labor practice for the City to do so to the point of impasse, as the Supreme Court has specifically held. Secondly, there is a duly filed court injunction in effect, which the Massillon Law Department agreed to. Thirdly, the long-scheduled arbitration hearing is literally days before the vote on the Factfinder's report will take place. Finally, this is a new proposed article that the City has not demonstrated with any evidence is needed. The burden should be on the City to show that this is necessary and that is a burden that has not been met, and cannot be met.

As a matter of fact, I have not been able to find a single collective bargaining agreement anywhere in the state that contains language similar to the City's proposal. While it is true that I

did not read every contract in the SERB Clearinghouse, I did read quite a few of them, including all of the “comparable cities” cited by the City of Massillon in their Factfinding brief submitted in the firefighter negotiations, and all of the law enforcement contracts in Stark County jurisdictions. None has any provision concerning promotional assessments. Not one. The only references were in Jackson Township and North Canton, both of whose contracts required promotions to be by examination, not by assessments. That is the status quo in Massillon. It is also the only way to insure that there is a fair process without any preferential treatment or subjective evaluations by the City.

Incidentally, when our Factfinder served as conciliator for the Massillon firefighter contract (99MED-08-0702) last year it says on page 29 “The parties agreed to accept the Factfinder’s recommendation to not include a new article on promotions.” (Emphasis added)

Based on all of the factors set forth in ORC 4117.14(C)(4)(E) the City’s proposal should be left out of the Massillon police contract as well.

4. THE “ME-TOO” CLAUSE

In the current contract, Article 38, Section 2 provides a “Me-Too” clause that has been part of the Massillon police contract since 1984. The language states “if negotiations with any other City employee bargaining groups receive financial benefits from the City which are more liberal than those within this Agreement, the City and the FOP shall meet to work out comparable benefits for the Union.”

Nothing could be fairer. How can the City possibly justify reopening other bargaining units economic packages to give them additional benefits while denying these to its policemen? What possible reason is there for our members to accept less than the status quo on this issue?

This does not effect “management rights.” It is completely in the City’s control whether to give additional benefits, “more liberal than those within this Agreement,” to others, and if they

do so they ought to give us comparable benefits. Per ORC 4117.14(C)(4)(E), this has been in all of the past collective bargaining agreements between the City and this Union; the comparison factor is inherent; and this is in the interest and welfare of the public, which surely doesn't want its policemen to be given less than other city employees receive.

The provision at issue should not be confused with the major concessions this Union made in connection with 38.1 of the contract. We gave up a lot by deleting the requirement "that all rights, privileges, and working conditions ... shall remain in full force ... unless changed by mutual consent." That was the management rights section that was the City's priority in these and the firefighter negotiations. It was disingenuous for the City to claim that 38.2 was their priority, particularly since there was no analogous provision in the previous firefighter contract. What the City "bought" it got – and that was substituting "meet and agree" for any changes with "sole discretion of the City" to modify or discontinue anything that is not "specifically and expressly set forth in the express written provisions of this Agreement." We don't even retain a "meet and confer" substitute like the firefighters received. It is nothing less than greedy for the City to seek another concession and give-back in exchange for what they've already bought. This Union has paid an exorbitant price already. Balancing the legitimate needs of the City and the Union, the status quo should prevail on the "Me-Too" clause.

There has simply been no showing whatsoever that the "Me-Too" clause compromises the ability of the City to discharge its statutory responsibilities or manage the department.

As Factfinder Stein wrote about other issues in the Jackson Township sergeants factfinding report, 97-MED-05-0614 on October 29, 1997 and the Willowick Firefighters' Association factfinding report, 97-MED-10-1188 on December 15, 1997:

"A change of this magnitude requires sufficient evidence and documentation in order for a factfinder to undo what the parties have lived with for years."

CONCLUSION

For all of the foregoing reasons, the Union respectfully requests that the Factfinder recommend that the Union receive a \$600.00 increase in the annual uniform allowance and Six (6) "FOP Days," together with the status quo on Promotional Assessments and the "Me-Too" clause.

Respectfully submitted,

Larry S. Pollak

LARRY S. POLLAK (0020431)
P. O. Box 9681
Columbus, Ohio 43209
(614) 222-0512
Attorney for Massillon FOP Henderson
Lodge Police Officers' Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Position Statement of the Union was served by regular U.S. mail, postage prepaid, upon Robert G. Stein, Factfinder, at 3250 West Market Street, Suite 105, Akron, Ohio 44333-3310, together with a copy for the Factfinder to forward to Leslie Iams Kuntz, Esq., Attorney for the City of Massillon, this 15th day of September, 2000.

Larry S. Pollak

LARRY S. POLLAK (0020431)
Attorney for Massillon FOP Henderson
Lodge Police Officers' Association

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

FILED

NOV 18 1999

PHIL G. GIAYASIS
STARK COUNTY OHIO
CLERK OF COURTS

MASSILLON HENDERSON LODGE
POLICE OFFICERS' ASSOCIATION

Plaintiff

vs.

CITY OF MASSILLON, OHIO,

Defendant.

Case No. 1999CV02318
JUDGE LIOI

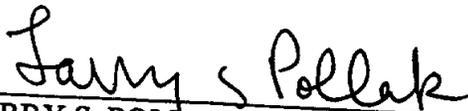
AGREED ENTRY

The parties agree that Defendant, City of Massillon, Ohio, shall not conduct assessments or make any promotions in the police department until the pending grievance/arbitration in the matter is resolved.

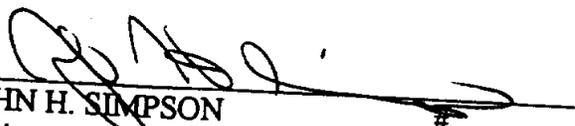
The City of Massillon is enjoined from conducting said assessments or making said promotions until said arbitration award is decided. It is so ORDERED.

APPROVED:

HONORABLE SARA LIOI



LARRY S. POLLAK #0020431
Attorney for Massillon Henderson Lodge Police
Officers' Association



JOHN H. SIMPSON
Assistant City Attorney