

**STATE OF OHIO**  
**STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD

2001 OCT 15 A 11:34

**In the Matter of  
Fact-Finding Between:**

**CITY OF EASTLAKE**

**-and-**

**FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.  
(Police Patrol Officers)**

**Case No. 00-MED-08-0838**

**Jonathan I. Klein,  
Fact-Finder**

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**FACT-FINDING REPORT  
and  
RECOMMENDATIONS**

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Appearances

For Union:

Charles Wilson, Staff Representative  
Richard J. Greer - Master Patrol Officer  
Don Little - Master Patrol Officer  
Michael J. Werner - Patrolman

For Employer:

Jack L. Petronelli - Attorney for Employer  
John R. Ruth - Chief of Police  
Jack Masterson - Finance Director  
Donna Vaughn - Human Resource Coord.

Date of Issuance: October 12, 2001

**I. PROCEDURAL BACKGROUND**

This matter came on for hearing on September 28, 2001 before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on December 1, 2000. The hearing was conducted between the City of Eastlake, Ohio (“City” or “Employer”), and the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”), at the Eastlake City Hall. The bargaining unit involved in the fact-finding process consists of all full-time patrol officers employed by the City of which there are approximately twenty-nine.

The eight unresolved issues addressed by the parties at hearing are, as follows:

- |    |               |   |                           |
|----|---------------|---|---------------------------|
| 1. | Article 17.12 | - | Sick Leave Conversion     |
| 2. | Article 22.01 | - | Insurance Premium Payment |
| 3. | Article 23.01 | - | Wages                     |
| 4. | Article 24.02 | - | Overtime Pay              |
| 5. | Article 24.06 | - | Overtime Definition       |
| 6. | Article 38.01 | - | Duration                  |
| 7. | Article 41.01 | - | Arbitration Procedure     |
| 8. | New Article   | - | Drug Testing              |

The fact-finder incorporates by reference into this Report and Recommendation all resolved issues and tentative agreements between the parties relative to the current negotiations not in conflict with or otherwise inconsistent with the final recommendations of this report. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties both at hearing, and in their respective position statements and briefs.

## **II. FACT-FINDING CRITERIA**

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (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.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS**

#### **Introduction**

The City of Eastlake is located in western Lake County in northeast Ohio, and has a population of approximately 21,000 residents. Upon review of the jurisdictions submitted by both parties, the fact-finder determines that the following cities will be referenced for comparability purposes throughout this fact-finding report based upon their populations, proximity to the City, department size and overall quality of available data: Willoughby, Wickliffe and Willowick. The fact-finder rejects data from the far larger City of Mentor, and far smaller jurisdictions such as Mentor-on-the-Lake, as well as the City of Painesville, Madison Township and the Lake County Sheriff Department.

#### **Issue 1: Article 17.12 - Sick Leave Conversion**

The Union proposes to change Article 17.12 of the collective bargaining agreement to be more consistent with the language contained in collective bargaining agreements between the City and AFSCME representing the service workers, and the City and its firefighters represented by IAFF Local 2860. However, the Union's offer is modified to be less generous so as to justify the fact-finder granting the Union's wage proposal. Therefore, upon the normal retirement, resignation or disability retirement of a full-time employee who has completed not less than fifteen years of continuous service, the Union seeks a cash payment equal to the employee's

hourly rate of pay multiplied by two-thirds of the total of the employee's sick leave hours, not to exceed 960 hours, and one-half of the sick leave hours in excess thereof. This an increase from the current multiplier of one-half of the total sick leave hours not to exceed 960, and twenty percent of the excess sick leave hours. The proper comparison should be with comparable units, rather than sick leave conversion offered to other bargaining units in the City.

The City's position is to maintain current language, with a minor clarification to comport with an arbitration decision concerning the intent of similar language on sick leave conversion contained in the AFSCME agreement. Its proposal is based on the fact that agreement has not been reached on the other issues before the fact-finder. It does not dispute that a substantial increase in sick leave conversion was provided to the fire fighters and service employees, but that was in conjunction with a resolution of the wage issue. Both the fire fighters and service employees with sixteen years of service and over receive one hundred percent of the employee's sick leave hours up to a maximum of 1,344 hours, and twenty percent of all hours in excess of 1,344. The issue on wages, however, has not been resolved in this set of negotiations with the patrolmen.

#### Findings and Final Recommendations

It is the final recommendation of the fact-finder that Article 17.12 of the collective bargaining shall provide, as follows:

17.12 Upon the normal retirement, resignation, disability retirement or normal death of a full-time employee who has

completed not less than ten (10) ten years of continuous service with the employer, such employee (or the employee's estate in the case of death) shall be entitled to receive cash payment equal to his hourly rate of pay at the time of retirement or death, based on the following schedule. All hours of sick time that an employee earns over the 1,344 hour figure will be paid at the rate of twenty (20%) of all hours in excess of 1,344.

<u>Length of Service</u>	<u>Percentage of 1,344 hours</u>
10 to 12 years	25%
13 to 15 years	50%
16 and over	100%

In recommending this contract language regarding sick leave conversion, the fact-finder has taken several factors into consideration. These include the fact-finder's rejection of both the City's proposal on modification of the current language on health insurance, and the Union's proposed wage increase. The recommended language is extraordinarily generous in the number of accumulated sick hours against which the percentages are to be applied and the rapidity with which the bargaining unit members reach one hundred percent of the total. While the Union would prefer that its members receive wage increases of a magnitude well beyond any wage increases the fact-finder has observed in recent negotiations, rather than an improvement in sick leave conversion, this report seeks to strike a reasonable balance between the economic issues based upon the totality of the evidence presented. On this question, the language which can be found in both the current agreement with AFSCME representing the service workers, and the City and the IAFF, is both generous and warranted.

**Issue 2: Article 22.01 Insurance Premium Payment**

The Union proposal is to maintain current contract language which requires the City to pay the full cost of medical/hospitalization coverage for full-time employees after the first ninety calendar days of the employees' probationary period. This is consistent with the current status of the other bargaining units within the City, and to pay any less would be the equivalent of treating the patrolmen as second class citizens. It is nothing more than the City's ploy at hearing (and during negotiations) to counter the Union's wage proposal with an offer which does not reflect the pattern in the City. The patrolmen, it reasons, are paid less than in other comparable jurisdictions when compared to service employees and firefighters.

In the City's view, it is the one being held hostage – by the benefit levels in the agreement and increases the health care providers decide to levy for the benefits which the City must provide. In 2001 the increase in premium cost was 14%. Furthermore, contracts with the firefighters and service employees were signed in December 2000, effective January 1, 2001. In the meantime, the picture of premium increases has not only not improved, but worsened. According to Donna Vaughn, the City is group rated, rather than community rated, and two medical plans are offered – HMO Health Ohio and SuperMed HMO. The experience rating for HMO renewal (standard option and \$5 drug card) for the City established the current monthly rates effective January 1, 2001, through December 31, 2001, at \$226.17 for single coverage; \$459.13 for two person coverage; and \$612.48 for family coverage. Medical Mutual of Ohio's renewal rates for January 1, 2002, through December 31, 2002, reflect increases to \$278.78 for

single coverage; \$565.94 for two person coverage; and \$754.97 for family coverage. (City Ex. 3). The total monthly cost to the City will increase from the current amount of \$84,847.35 to \$104,587.24. For SuperMed HMO the increase from 2001 to 2002 represents an additional annual charge of \$1,719.48 for family coverage. Vaughn also described the current plan, without contradiction by the Union, as a premium plan without co-pays, a \$50 emergency room fee which is often waived at the City's discretion, and a \$5 prescription card without coverage for non-formulary. Under the same terms of the current benefit package, three other health providers submitted quotes. A maximum savings of approximately \$8,400 per month could be achieved effective December 1, 2001, but that proposal was subject to change.<sup>1</sup>

In sum, the City proposes that the employees pay twenty (20%) of the cost for medical and hospitalization coverage since it can no longer afford to pay for the current level of benefits on its own. While the City agreed to language like that which the Union proposes on health insurance with the fire fighters and service employees, such contract language was achieved by agreement on wage increases of four percent, three and one-half percent and three and one-half percent over the terms of those agreements. Moreover, the City did not have the benefit of knowing at the time those collective bargaining agreements were executed of the increases in healthcare premiums noted above.

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1. This quote came from Aetna.

Findings and Recommendations

When evaluating the two positions presented, the fact-finder notes that under the current contract language the bargaining unit stands in a favorable position relative to comparable units. Employees in other jurisdictions make the associated contributions: Willoughby: \$10.50 for single, \$21 for family, each biweekly; Wickliffe: \$25 per month for single, \$50 per month for family coverage; and in Willowick, where there is no contribution for single, family coverage is \$16.30 per month maximum. There are also deductibles and co-pays as a general rule in the comparable jurisdictions.<sup>2</sup>

Nevertheless, the City's proposal is truly excessive, particularly with respect to the twenty percent of medical and hospitalization costs it seeks to impose on bargaining unit members for family coverage. According to its proposal, employees would pay from \$55.75 a month for single, HMO Health Ohio coverage, to as much as \$151.83 per month for family coverage under SuperMed HMO from the present configuration of insurance at no cost. The fact-finder is of the opinion that barring some reasonable justification or evidence of a *quid pro quo* for such a drastic change, not only as compared with comparable units in other jurisdictions, but also when compared to internal bargaining units within the City (service and fire) which are assessed no charge for health insurance coverage, the current contract language should be maintained.

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2. The fact-finder is aware that there are differences among the various comparable jurisdictions as to the form the coverage may take. For example, in Willoughby the plan is point of service (POS) with the potential that an employee will pay 20% of the cost when he or she uses a provider out-of-network.

Coupled with substantial savings for the bargaining unit members on this significant cost factor within the public sector for which many bargaining units bear a portion of the expense, the fact-finder has also considered the recommendation on wages. In sum, the fact-finder concludes that while the burden for health care costs may need to be adjusted by the next set of negotiations, that change should not be made for this agreement based upon consideration of all factors and other recommendations contained in this report.

**Issue 3: Article 23.01 Salary Schedule**

The Union is seeking a wage package which compares favorable to certain “peer” agencies, including those police departments in Wickliffe, Willowick, Willoughby and Painesville. (Union Exhibit 5). The top wage rate in the City is not that of the so-called Master Police Officer (MPO) rate of \$23.42 per hour since that is an earned, not guaranteed rate of pay which can be taken away every two years. In order to earn that rate of pay, the police officer must meet a number of criteria and have worked in the City for ten years. It also requires forty hours of community service each year. Even with the MPO rate the bargaining unit is paid substantially less than the comparables as evidenced from the December 2000 wage rates. The only City that pays less is Painesville.

When comparing the top rate of pay without the MPO, the bargaining unit falls 16 percent behind Willoughby, 7.94 percent behind Willowick, 6.6 percent less than Wickliffe and

2.23 percent behind Painesville, according to the Union.<sup>3</sup> The Union proposes, in its words, “to shift the entire wage scale” to make the first year training wage more lucrative and attractive to recruits. It’s proposal effectively rewrites the entire scale to mirror the so-called peer cities and make it more equitable, rather than an across-the-board increase. Moreover, the top rated patrol officers in the City based *on merit* (MPOs) remain seven percent below the average of the bordering and peer cities. When compared to other bargaining units in the City, the police fare less well as evidenced by the fact laborers earn more in the City than do laborers in Willoughby; top rated receptionists earn far more than their counterparts in Willowick. In other words, the Union rejects the notion that it should accept the so-called pattern in the City since the police are less well off relative to the comparable cities and other, internal bargaining units.

Finally, the Union seeks the elimination of the MPO position. The department policy which controls gaining MPO status requires, in the Union’s view, forty hours of free labor, re-certification every two years, and additional work responsibilities. It is an earned, rather than bargained for position and in its wage proposal the Union has eliminated the MPO and blended that position into a Step 4. The Union’s proposal on wages is, as follows:

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3. The fact-finder’s calculation of the percentages differs slightly: it is 6.7% for Willowick, 6.65% for Wickliffe and 2.28% for Painesville.

	TRAINING	STEP 1	STEP 2	STEP 3	STEP 4
	First Year	After 1 year	After 2 years	After 3 years	After 5 years
2001	18.69	19.64	20.61	23.65	24.83
2002	19.62	20.62	21.64	24.83	26.07
2003	20.61	21.65	22.72	26.07	27.38

The City argues that the pattern of settlement is 4 percent, 3½ percent and 3½ percent, including all bargaining unit and non-bargaining unit employees. As part of those settlements, there is no dispute that the affected employees received sick leave conversion which far exceeds any of the comparable jurisdictions. In addition, part of those settlements was that health care would not change. Moreover, the position of MPO was bargained for as reflected in Section 23.05 of the agreement, including incorporation of the police department’s policy number governing MPO. The police chief, John Ruth, stated that all eligible applicants to date who have applied for MPO status have qualified, and employees who have chosen to reapply have qualified. The MPO should be performing at the levels indicated in the policy, and compliance with the policy standards is not difficult. A community service component rounds out the members of the department and most police officers already provide community service. The chief suggested that non-MPOs might possibly be a problem employee with low performance standards.

The City did, however, make changes in the salary schedule under its proposal. It would eliminate the current Step 1 and Step 3, while retaining the MPO status. This is in line with the comparable jurisdictions and wage rate increases generally. (City Ex. 5). When comparing the City's ten year employee (MPO) with a BA to other jurisdictions for the year 2000, including Painesville, Mentor and other cities not considered for this report, the City's patrol officers are earning \$2,396 more than the average base wage, and in total compensation are earning \$2,163 more each year. In the year 2001 for available contracts, the City would be \$3,379 above the average of base wages incorporating the City's proposal.<sup>4</sup> These figures drop to \$2,163 and \$3,156, respectively, when shift differential, longevity, uniform allowance, education allowance and firearm proficiency are taken into consideration. This is a fair wage proposal when all factors are taken into consideration, including cost of living.

The Union countered that townships and deputy sheriffs should not be used for comparison purposes for obvious reasons. Moreover, the Union reasons that MPO qualifications are not bargained for as reflected in the number of revisions made to the policy itself – it is subject to change at will. The language is problematic and simply fails to work. According to patrolman Michael Werner, even though MPOs receive merit based pay, the top rate has fallen so far below other jurisdictions the result is less in actual pay to MPOs. The Union reasons the City has a large carryover balance and significant investments. If ability to

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4. This difference in base wage rates does not include Willoughby or Willoughby Hills for which such data was unavailable.

pay were an issue, the City would not be paying well over market value for property on which it plans to build a stadium for a AAA baseball team.

The City reasons this language was suggested by the Union in 1995 as an effort to reward the career patrol officer who elects not to become a lieutenant. Moreover, population is not the only component of comparability, and there is no jurisdiction which is exactly comparable. An example is Willoughby with a far larger total budget and general fund than the City. Instead, the City used all law enforcement jurisdictions within Lake County.<sup>5</sup> The carryover is used for the first three months of the year to pay for operating expenses when there is no cash flow into City coffers. According to Jack Masterson, the City's finance director for the past eleven years, monies must be available for various projects for which funds must be advanced. He also indicated that most of the \$6.3 million in total investments shown on the City's financial statements as the carrying amount is non-general fund money. The City invests conservatively, and monitors its budget every month.

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5. Donna Vaughn, the City's human resource coordinator, provided financial information from Willoughby, Mentor, Kirtland, Painesville, Willowick, Wickliffe, Willoughby Hills, and Madison Township. Of the comparables noted by the fact-finder, the City appears to fall approximately mid-way between Wickliffe and Willoughby.

Final Recommendation

It is the fact-finder's final recommendation that the salary schedule to be included in Article 23 shall contain the City's proposal with important modifications. The salary schedule shall contain the following provisions:

23.01 The following rates of pay shall become effective at the beginning of the first full pay period in January 2001:

<u>Patrolman</u>	<u>Training</u>	<u>Step 1</u>	<u>Step 2</u>	<u>M.P.O.</u>
Hourly	\$16.51	\$19.35	\$23.42	\$24.48

23.02 The following rates of pay shall become effective at the beginning of the first full pay period in January 2002. Effective January 1, 2002, the position of M.P.O. shall cease to exist and those employees who are M.P.O.s as of that date shall be paid at the Step 3 rate.

<u>Patrolman</u>	<u>Training</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
Hourly	\$16.51	\$20.03	\$24.24	\$25.34

23.03 The following rates of pay shall become effective at the beginning of the first full pay period in January 2003:

<u>Patrolman</u>	<u>Training</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
Hourly	\$16.51	\$20.73	\$25.09	\$26.23

23.04 All newly hired employees shall be hired at the Training rate unless the employee has sufficient experience in police work to justify hiring at a greater rate of pay. In such a case, the employee may be hired at or subsequently advanced to the step 1, 2 or 3 rates, providing such step is approved of in advance by the Chief, Safety Director and Mayor. Subsequent to each employee's initial hire, the employee shall advance to the next greater Step on each successive anniversary date of hire until Step 3 is reached, except that employees hired at the "Training" rate shall

advance to Step 1 upon completion of basic training and field training and advance to Step 2 on his or her anniversary date.

- 23.05 Eastlake Police Department Policy Number 240.02, as revised effective February 1, 1999, shall be incorporated into this agreement and shall govern MPO status until January 1, 2002, when it shall be null and void with respect to any employee within the bargaining unit. No changes or modifications shall be made to Policy Number 240.02.

The fact-finder's decision is supported by the statistical data concerning the comparable jurisdictions of Willoughby, Wickliffe and Willowick. As evidenced by City Exhibit 5, the base wage for the patrol unit in 2000 was approximately 4.7% below the average of these named comparables. When total compensation is considered, however, this percentage drops to 3.8%. After taking a deduction for the costs of medical insurance at the family coverage rate from the comparable jurisdiction's total wages, the percentage difference from the average drops to 3.04 percent for the year 2000. Recognizing that the wage package for Willoughby had not been set as of the date of hearing in this matter, the 2001 total compensation after deduction for costs of medical insurance places the percentage difference at 1.43%. The fact-finder recognizes, however, that both parties have separate and distinct views on the correct comparables to use in this dispute.

Second, the fact-finder recognizes the pattern of wage increases in the City, which combined with the maintenance of health insurance coverage in its current format is a most generous package in the public sector at this time. Further, the fact-finder concurs with the Union's position to eliminate the MPO classification. Despite its protestations to the contrary,

the Union had negotiated the department policy governing the MPO into the collective bargaining agreement, and it cannot now be heard to complain that it is merely an earned, rather than a bargained for position with a specified wage rate. However, the fact-finder is of the opinion that the Union's position has merit justifying the elimination of this rather unique position, and recommends that MPOs be blended into the scale at a regular step effective as of January 1, 2002. Finally, the fact-finder concludes that the wage package shall be retroactive to January 1, 2001. The parties stipulated at hearing that a waiver of retroactivity had previously been agreed upon, and the fact-finder sees no justification or rationale to punish the members of the bargaining unit by making the new rates of pay effective only upon execution of the collective bargaining agreement.

**Issue 4: Article 24 Overtime Pay (Court and Call Outs)<sup>6</sup>**

The Union proposes two basic changes to this section of the agreement. First, it seeks an increase in the two hour minimum to three hours in compensatory time (or 1½ times actual time) for court, call-outs, re-certifications, qualifications, administrative hearings and all training. Under the current language, only mandatory training is to be paid at one and one-half times compensatory time. The Union submitted language from comparable jurisdictions evidencing the quantum of court time they receive. (Union Ex. 20). It also seeks to eliminate what it refers

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6. The parties agreed to a new provision for this article, §24.05, and the same is incorporated herein by reference.

to as a two tier comp time program – some functions are performed at traditional, one and one-half compensatory time and others at a straight time comp time rate. The latter category includes roll call, voluntary training, departmental meetings and other administrative functions. Due to the police department's extensive police related programs above and beyond basic patrol, such as PAL, DARE, Motorcycle patrol, etc., a whole group of functions and programs is falling under straight time comp time. The Union agreed with the police chief to work these programs at straight time comp time as beneficial programs for the City, but only until January 1, 2001. Its proposal seeks to clarify the language so that every assignment over eight hours per day, forty per week shall be paid at one and one-half compensatory time with permissive language to flex their schedules when given less than two weeks notice of a non-primary assignment.

In contrast, the City asserts that the Union is taking a distorted view of this issue. The chief acknowledged that the police department is performing a large number of functions accomplished by use of flexibility in scheduling. Nobody is forced to perform any of the other projects, and there is no two tier comp time system. Straight time comp time is already in the contract for roll call, training and departmental meetings, and the chief agreed he took the liberty of expanding the straight time comp time to perform functions he would not otherwise be able to do if they could not be performed on duty. The flexibility of the schedules, such as with the canine unit, were set up to have the necessary flexibility to work the job. The Union is correct that the members were told to flex their schedules based upon the activities of the position so as to avoid overtime situations. The memorandum of December 27, 2000 (Union Ex. 11) merely

reiterates what has always been the chief's position – many assignments are not overtime jobs and if they cannot be performed on duty, do not do the job as extra hours will not be available. The comp time issue is now a moot point, because if the jobs cannot be performed on duty, they won't be performed. Moreover, any assertion of a violation of Fair Labor Standards Act (FLSA) has never been raised before.

#### Final Recommendation

Based upon all the evidence and argument presented, the fact-finder recommends an adjustment be made to court time in Article 24.02. An increase to three hours is fully justified based upon evidence from comparable jurisdictions which all provide for a four hour minimum. The two hour minimum shall remain in effect for call-outs, re-certifications, qualifications and administrative hearings. The absence of probative evidence fails to warrant, at this time, the sweeping proposal of the Union with respect to time and one-half compensatory time for such functions as bomb squad, SWAT, bicycle patrol, motorcycle patrol. However, the language proposed by the Union with respect to flexing of schedules appears fully justified, and will help avoid unnecessary overtime. In making this recommendation, the City is cautioned that an overly broad reading of the existing contract language, "administrative function," as a means to pay straight time compensatory time for functions that are, in balance, not true administrative functions will require modification of the contract language in the future.

The fact-finder recommends that Article 24.02 contain the following language:

24.02 Employees who are required to appear in court shall receive a three (3) hour minimum, and employees whose appearance is required for call-outs, re-certifications, qualifications, or administrative hearing(s) as approved by the Chief, shall receive a two (2) hour minimum, or one and one-half (1½) times the actual time spent at such functions or compensatory time as requested by the employee. Roll call, voluntary training, departmental meetings and other administrative functions, shall be paid with straight time compensatory time. Mandatory training shall be paid at one and one-half (1½) times the actual time spent at such training in compensatory time. Employees shall not be required, but may flex or alter their schedules with less than two (2) weeks notice except in the event of an emergency or for medical reasons having duration of five (5) days or more.

**Issue 5: New Article 24.06 Overtime Definition**

By this new provision, the Union seeks to add language defining overtime as hours worked in excess of the standard period and/or continuous hours worked in excess of eight (8) hours in any twenty-four hour period. It reasons this is standard language in police agreements, and is present in the contract between the City and AFSCME. The City counters that unlike the AFSCME unit which works day shift, the police work three shifts. While such language may be present in some police agreements, it is not all that common. It is simply an attack on the ability of police officers to flex their schedules, which permits officers to engage in proactive approaches to crime prevention. This represents an inhibition on the ability of the bargaining unit members to flex their schedules, and will hamper the City in its efforts to continue on with many projects.

Final Recommendation

The fact-finder concludes that the evidence fails to warrant the addition of the Union's proposed language to the collective bargaining agreement. There is no evidence of the prevalence of such language in the comparable jurisdictions, and the proposed language may unduly impede the flexing of employees schedules, including the language recommended to be added to Article 24.02.

**Issue 6: Article 38.01 - Duration**

The City proposes that the agreement shall be effective only upon its execution, whereas the Union reasons the agreement's effective date should be January 1, 2001.

Final Recommendation

It is noted that the parties both brought a large number of issues to the bargaining table, and actively engaged in bargaining to resolve the disputed issues. They engaged in mediation efforts in March and April of 2001, and had a final negotiating session as late as July 16, 2001. The fact-finder also notes that in the midst of the negotiation process an unfair labor practice was filed and later resolved while the ULP was in process at SERB. The City rejects the Union's contentions, and submits that retroactivity is unwarranted – that it be effective upon execution. If the Union desired the agreement to be effective as of January 1, an agreement would have been

negotiated prior to the expiration of the current agreement in December 2000. The ULP was settled and plays no role here.

After careful review and consideration of the positions of both parties, it is the fact-finder's final recommendation that the collective bargaining process in this case, which process appears to have been extended by the positions and actions of both parties, should not preclude the agreement from containing an effective date of January 1, 2001. To hold otherwise would, in the circumstances presented, result in an unjustifiably harsh and unwarranted penalty to the patrolmen covered by the collective bargaining agreement. Article 38.01 shall provide:

38.01. This Agreement shall become effective at 12:01 a.m. on January 1, 2001, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2003.

**Issue 7: Article 41.01 - Arbitration Procedure**

The City has proposed a change from the current language so as to provide for a permanent panel of arbitrators, rather than utilizing the services of the Federal Mediation and Conciliation Service (FMCS) and its roster of neutrals. It reasons its position is consistent with language in the City's agreements with the fire fighters, dispatchers and the service department employees. FMCS now charges a fee for providing a panel of neutrals, and takes far too long to supply the panel lists which are filled with arbitrators from far outside Northeast Ohio. This delay and additional costs mandates that a change in Article 41.01 be made.

The Union proposes to continue with current language. The question is what was negotiated for the permanent panel in any prior agreement, and while the Union had previously

agreed to a permanent panel, that provision was negotiated out of the agreement. In the Union's view, the FMCS provision has worked well and should be maintained.

#### Final Recommendation

The fact-finder is well aware of some of the problems of which the City speaks concerning FMCS's arbitration services, although recently improvements have been made. The Union itself is unopposed to the names of those arbitrators proposed for the permanent panel to be contained in Article 41.01. The fact-finder also notes that in the event the parties cannot mutually agree upon an arbitrator from the designated permanent panel of neutrals that the FMCS remains part of the process and will be contacted to supply a panel of arbitrators. The arbitrator shall then be selected by the alternative strike method. In sum, the City's arguments outweigh the Union's position by the slightest of margins, and its proposal is recommended as part of an effort to seek the most expeditious and efficient method of resolving disputes between the parties. Accordingly, the fact-finder incorporates into this report the City's proposed language for Section 41.01 as provided in City Exhibit 1.

#### **Issue 8: New Article - Drug Testing**

Under the current collective bargaining agreement, the only provision relating to drug testing is contained in Article 14, entitled "Medical Exams." This permits the employee to be tested for the use of illegal and controlled substances as part of an annual medical examination in

accordance with mutually agreed upon drug testing procedures contained in the police department's rules and regulations. The issue raised by this article is the question of random testing, rather than one of reasonable suspicion. The City's proposal for drug testing is premised on the current City policy on alcohol and drug testing which contains a random testing requirement for employees holding a commercial driver's license. The random draws are performed by an outside company which performs the testing itself on site.

The language which the Union is proposing is currently contained in the dispatcher's agreement with the City. It calls for pre-employment, annual physical and reasonable suspicion testing. It affords the City adequate protection to insure a drug free workplace. The annual physical is scheduled by the City and is, in many ways, random in nature. To have random testing as the City proposes is overly intrusive and unwarranted.

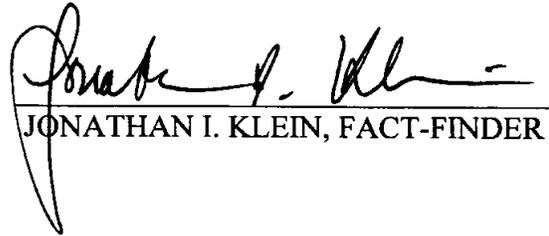
#### Final Recommendation

Upon review of the parties respective positions, the fact-finder recommends incorporation of a new article on drug testing which mirrors the language on drug testing contained in the dispatchers collective bargaining agreement.<sup>7</sup> There is simply inadequate evidence at this time to

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7. Flowing naturally from this recommendation is the employee assistance program contained in the City's agreement with the dispatchers. This recommendation incorporates the dispatcher's EAP program into the collective bargaining agreement.

warrant inclusion in the collective bargaining agreement of a specific random drug testing procedure of the nature proposed by the City.

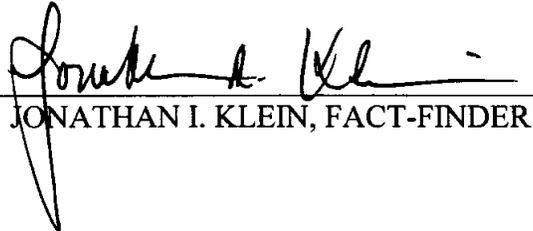


JONATHAN I. KLEIN, FACT-FINDER

Dated: October 12, 2001.

**CERTIFICATE OF SERVICE**

Originals of this Fact-Finding Report and Recommendations were served upon Chuck Wilson, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., NE Office, 2721 Manchester Road, Akron, Ohio 44319, and upon Jack L. Petronelli, Esq., Johnson & Angelo, 1700 North Point Tower, 1001 Lakeside Avenue, Cleveland, Ohio 44114, and upon Dale Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 12<sup>th</sup> day of October, 2001.

  
JONATHAN I. KLEIN, FACT-FINDER