

APPOINTMENT

This Fact-finder was appointed by letter dated October 6, 2000, from the Ohio State Employment Relations Board. Pursuant to the appointment, this Fact-finder was bound to conduct a Fact-finding Hearing and to serve on the Parties and SERB his written report and recommendations on the unresolved issues. Subsequent to the appointment, the Parties agreed to an extension such that the Fact-finder was to serve the Parties with a written Fact-finding Report no later than November 10, 2000. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearing as above noted.

BACKGROUND

The employer is the City of Middletown ("City") and the bargaining representative is the Fraternal Order of Police, Lodge No. 36 ("Lodge"). The Lodge represents two distinct bargaining units: one, a unit of Patrol Officers ("Patrol Officers"); and two, a unit of employees who hold the rank of Sergeant or Lieutenant ("Sergeants and Lieutenants"). The first unit includes 74 Patrol Officers; and, the second unit includes 13 Sergeants and Lieutenants, all of whom are supervisors within the Police Department. The Lodge was certified as the exclusive bargaining representative for the Patrol Officers on April 26, 1984, and for the Sergeants and Lieutenants on March 28, 1985. The Parties' current contract was effective November 1, 1997, and expired on October 31, 2000. The Parties negotiated six times between September 25 and October 10, 2000. There has been no mediation.

The City is located in Southwestern Ohio, in Butler County, between the cities of Dayton and Cincinnati. Its population includes approximately 54,000 persons, according to the 1990 census. Pursuant to the City's fiscal year ended Comprehensive Annual Financial Report, "The area of the state is one of the fastest growing areas in population and in job creation in the state." The bargaining units are two of seven bargaining units in the City. The Middletown Division of Police is divided into four major components: the Administrative Office of the Chief of Police, the Patrol Division, the Investigative Division, and the Services Division.

PRIOR NEGOTIATION/MEDIATION

Prior Negotiation/Mediation: Negotiations between the Parties occurred during six separate meetings before the Fact-finding Hearing. No mediation occurred before or during the Fact-finding Hearing.

Issues Remaining at Impasse: The following twenty-two issues were identified by the Parties in their Pre-hearing Position Statements as unresolved:

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*Withdrawn during the Fact-finding Hearing.

**Settled during the Fact-finding Hearing.

STIPULATIONS

1. That only the remaining issues before this Fact-finder are in dispute.
2. That all contractual and SERB procedures/time frames preceding the Fact-finding Hearing have been met. Therefore, this matter is properly in fact-finding.

CRITERIA

Pursuant to Rule 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Report are based on reliable information relevant to the issues before the Fact-finder. In making recommendations, fact-finders shall take into consideration the following:

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

ISSUES AND RECOMMENDATIONS

ISSUE 1: LODGE'S ECONOMIC PROPOSAL -- FOUR PERCENT ACROSS THE BOARD WAGE INCREASES -- ARTICLE VII Wages (Section 1)

Lodge's Position: The Lodge proposes the following wage increases:

4% effective 11/1/00; 4% effective 11/1/01; 4% effective 11/1/02

The Lodge identified 14 comparable cities that it would use for comparison purposes throughout the Fact-finding Hearing. The Lodge explained that these cities were selected from across the State of Ohio on the basis of population (within 20,000 of the City's population) and on the basis of economic ranking. The City's economic ranking is 39. The highest economic ranking for a comparable is 59, and the lowest is 23. The highest possible ranking is 100. The Lodge's comparable Ohio cities include the following: Maple Heights, Sandusky, Fairborn, Garfield Heights, Marion, Lancaster, Findlay, Newark, Warren, Mansfield, Euclid, Lakewood, Elyria, and Hamilton.

The Lodge included both entry-level wages and top-level wages in its comparables for the wages of patrol officers, sergeants, and lieutenants. The Lodge believes that both levels are appropriate. For example, it noted that 48% of the City's Patrol Officers have achieved the top step. Thus, Officers are at various steps throughout the wage structure, and not only at the top.

The Lodge's comparables included the entry and top-level wages for **Patrol Officers**. Two comparables (Garfield Heights and Newark) were not included as the Lodge had not received that information. Of the remaining 12 comparables, the entry-level wages varied from \$48,526 (Sandusky) to \$26,650 (Mansfield), with an overall average of \$35,174. Currently, the entry-level wage for the City's Patrol Officers is \$34,225. Of the 12 comparables, the top-level wages varied from \$67,350 (Sandusky) to \$36,338 (Lancaster), with an overall average of \$43,844. Currently, the top-level wage for the City's Patrol Officers is \$43,060.

The Lodge's comparables included the entry and top-level wages for **Sergeants**. Three comparables (Elyria, Garfield Heights and Warren) were not included. Of the remaining 11 comparables, the entry-level wages varied from \$73,133 (Sandusky) to \$41,059 (Lancaster), with an overall average of \$49,296. Currently, the entry-level wage for the City's Sergeants is \$39,047. Of the 11 comparables, the top-level wages varied from \$73,133 (Sandusky) to \$41,059 (Lancaster), with an overall average of \$50,882. Currently, the top-level wage for the City's Sergeants is \$51,452.

The Lodge's comparables included the entry and top-level wages for **Lieutenants**. Six comparables (Elyria, Fairborn, Findlay, Garfield Heights, Newark, and Warren) were not included. Of the remaining 8 comparables, the entry-level wages varied from \$82,638 (Sandusky) to \$46,405 (Lancaster), with an overall average of \$56,908 (note: this is a corrected computation of the average). Currently, the entry-level wage for the City's Lieutenants is

\$44,828. Of the 8 comparables, the top-level wages varied from \$82,638 (Sandusky) to \$47,778 (Lancaster), with an overall average of \$58,275. Currently, the top-level wage for the City's Lieutenants is \$59,053.

Additionally, the Lodge presented "Percentage Wage Increases" for its comparables (excepting Garfield Heights), that they received for the years of their respective contracts. (See the Fact-finder's analysis for a summary of these data.)

Concerning health insurance, the Lodge noted that during negotiations the City stated that effective January 1, 2001, it will raise employees' contributions to \$30.00 per month for family coverage (increase of \$13.27 per month); and, to \$25.00 per month for single coverage (increase of \$11.53 per month). The Lodge's position is that these increases will effectively reduce the City's proposed 3% wage increase to smaller percentages. For example, the City's 3% proposal would effectively be 2.6% for the highest paid Patrol Officers, and 2.5% for the lowest paid Patrol Officers. Thus, to receive a net increase of 3%, an entry-level Patrol Officer would need a wage increase of 3.5%, and a top-level Patrol Officer would need a 3.4% wage increase. The Lodge asserted that the increases should be considered by the Fact-finder because they impact the entire economic package.

The Lodge submitted a copy of the "Image of City Government and Services, Final Report" dated May 1994. This report contains survey results. Among those results, 34% of residents surveyed said that they were very satisfied with the Police Department. An additional 39% said that they were mostly satisfied. In response to whether support should be increased for the Police Department, 44% indicated a positive response.

The Lodge submitted copies of the City's "Comprehensive Annual Financial Reports" for the years 1997, 1998, and 1999. Generally, these reports describe the upward growth of the City's major employers. The reports also showed increases to the City's municipal income taxes, its largest source of revenues. Those increases were as follows: 1997 -- 4.17% (\$598,254) increase; 1998 -- 6.79% (\$1,015,760) increase; and, 1999 -- 10.26% (\$1,639,758) increase. The Lodge agreed that its 4% wage increase proposal, as compared to the City's 3% proposal, would cost approximately \$50,735 per year (compounded to \$163,046), as presented in City Exhibit 8.

The Lodge acknowledged the City's unmet needs for street repairs and improvements. However, the Lodge asserts that its bargaining unit members should also receive their fair share of the City's increasing financial assets, considering the critical services provided by the Police Department. Further, the Lodge's position is that they should not be "lock-stepped" into accepting the City's 3% proposal just because it also is proposing that percentage for the Fire and other City employees. The Lodge argues that to do so would effectively deny the Lodge its statutory right to bargain with the employer over wages.

The Lodge's position is that the Police must respond to increasing numbers of calls. The Lodge cited the annexation of substantial areas to the City, new retail establishments, and that these

trends are expected to continue. According to the Lodge, during 1998, 4% of the Department's calls were from the newly annexed areas. In 1999, that percentage was 3.98%, and during the year to date 2.22% have originated from the new area -- with the busy holiday season yet to occur. Overall, the Lodge estimated that about 4% of the Department's calls are in connection with the east-end annexation. The Lodge noted that the increased workload has been handled with no net increase to the number of Officers on the street.

City's Position: The City proposes the following wage increases:

3% effective 11/1/00; 3% effective 11/1/01; 3% effective 11/1/02

The City's position is that while its financial condition was good in 1999, it is only recently recovering from difficult financial times that date back to the mid to late 1980s. As a result, the City has adopted strict successive five-year spending plans. A major component of the plans is to limit wage increases to City employees to about 3% per year. The City Manager's budget for 2000 limits inflationary adjustments to salaries in the union contracts to between 3% and 4%. However, the City noted that there would be no 4% adjustments, unless it was necessary due to other major concessions. A second major component of the five-year spending plans is to sharply increase the monies dedicated to capital improvements, and particularly to street repairs. The City noted that it is not broke, it is not poor, but that it is not wealthy.

The City explained that in 1986, a charter amendment eliminated a requirement that 50% of income tax revenues be dedicated to capital projects. As a result, monies were redirected toward operating costs, and the streets fell into substantial disrepair. Currently, the City estimates that it will need at least \$4 million per year just to keep existing streets in good repair. This amount does not include any monies for street improvements.

In 1999, the City implemented a "Capital improvement Plan." This plan requires that in each year from 1999 through 2004, the City transfer to the Capital Improvement Fund successively higher amounts. These amounts started at \$800,000 in 1999, and will increase until the annual contribution is \$4 million per year by 2004.

The City presented data (City Exhibit 9) comparing wage increases within the City's various bargaining units (Police, Fire, Public Works, Transit, Correction, Dispatch), and for its non-union employees. These data cover the years 1989 through 2000 for all, and also reflected increases for the years 2001 and 2002 for some units. The City also included Consumer Price Index data for Urban Wage Earners and Clerical workers (CPI-W) for the years 1989 through 2000. The City's chart shows the total percentage increases received by each unit for the years 1989 through 2000. Those totals are as follows: Police 46.00%; Fire 43.50%; Public works 45.25%; Transit 42.75%; Correction 42.90%; Dispatch 43.15%; and, Non-Union employees 41.75%. The City notes (City Exhibit 8) that the cost difference between its proposal (3%) and the Lodge's proposal (4%) is \$50,735 for the first year, or \$163,046 (compounded) for a three-year contract.

The City identified its 14 comparable cities as follows: Kettering, Fairborn, Beavercreek, Fairfield, Miamisburg, Huber Heights, Springfield, Oxford, Hamilton, Butler County, Mansfield, Lima, and West Chester. For the comparables, the City included the top-pay for each city, broken down by Patrol Officers, Sergeants, and Lieutenants. The City asserted that top-pay is the most appropriate because most Police Officers will spend most of their careers at the top-pay levels. The City selected its comparables based on similar populations and on geographic proximity, with all being within 150 miles of the City, and most being within 60 miles of the City, and otherwise being comparable.

The City's comparables included the top-level wages for **Patrol Officers** (City Exhibit 10). Of the 14 comparables, the top-level wages varied from \$50,627 (Kettering) to \$37,008 (Lima), with an overall average of \$42,724. Currently, the top-level wage for The City's Patrol Officers is \$43,060.

The City's comparables included the top-level wages for **Sergeants** (City Exhibit 11). Of the 14 comparables, the top-level wages varied from \$58,469 (Kettering) to \$42,973 (Lima), with an overall average of \$49,944. Currently, the top-level wage for the City's Sergeants is \$51,452.

The City's comparables included the top-level wages for **Lieutenants** (City Exhibit 11). Two (Fairborn and Newark) of the City's 14 comparables do not have Lieutenants. Thus, of the remaining 12 comparables, the top-level wages varied from \$64,522 (Hamilton) to \$48,755 (Lima), with an overall average of \$56,199. Currently, the top-level wage for the City's Lieutenants is \$59,053.

Additionally, the City included data (City Exhibit 10) as to percentage increases received by the police forces of each comparable city for the years 1997 through 2002, but with some missing or not yet available data. The averages for each of the following years are: 1997 -- 3.71% (11 comparables); 1998 -- 3.27% (13 comparables); 1999 -- 3.98% (13 comparables); 2000 -- 3.48% (11 comparables); 2001 -- 3.39% (7 comparables); 2002 -- 3.58% (3 comparables).

In summary, the City's position is that the bargaining unit's members have wages comparable to other cities and that they have enjoyed increases equal to or better than the cost of living index and better than other City units.

The City objected to any consideration of the health insurance premium increase as a basis for a higher wage increase. It stated that there is no issue on the table regarding the bargaining unit's members contribution to health insurance premiums. The maximum contributions were previously negotiated and are included in the current contract.

Regarding the Lodge's discussion of increased work load, the City explained that the Chief of Police is working toward achieving the national goal for Patrol Officers to have 33% uncommitted patrol time. The City noted that this goal has been achieved for the first and third shifts. The Chief is still working on the second shift (3:00 to 11:00 p.m.) which is the

Department's busiest shift. Further, the City disputed the Lodge's focus on the east-end annexation. Overall calls for service throughout the entire City need to be considered. For example, the City compared calls received during the months of January through September 1996, with those received during the same period in 2000, and the net increase was only about 500 calls.

Finally, the City contended that the City's comparables reflect that the City's Police Officers are being paid at about the mid-point or slightly higher as contrasted to the Lodge's comparables.

Analysis and Recommendations: Initially, the issue concerning the increase to employees' contributions to health insurance premiums needs to be considered. According to the Lodge, the increase should be factored into the overall economic package to be ultimately recommended. The City avers that the increases should not be considered since they were agreed to in the 1997 negotiations and are provided for in the current contract. Clearly, the increases to the maximums (single and family) allowed under the contract (Appendix A) are not issues properly before this Fact-finder, and thus should not be considered in evaluating and making wage increase recommendations.

The Lodge's comparables for **Patrol Officers** show that the Lodge's Patrol Officers are within -2.7% of its comparables' average entry-level wage. The same analysis discloses that the Patrol Officers are within -1.8% of the average top-level wage. Further, the Lodge's comparables show that 6 of the comparables have entry-level wages higher than that of the City's Patrol Officers, and 6 have lower entry-level wages. Four of the comparables have top-level wages higher than that of the City, and 8 have lower top-level wages.

The Lodge's comparables for **Sergeants** show that the Lodge's Sergeants are within -21.0% of its comparables' average entry-level wage. The same analysis discloses that the Sergeants are within +1.1% of the average top-level wage. Further, the Lodge's comparables show that all the comparables have entry-level wages higher than that of the City's Sergeants. Five of the comparables have top-level wages higher than that of the City, and 6 have lower top-level wages. According to the Lodge's comparables, there appears to be a substantially lower entry-level wage for the City's Sergeants. However, the Lodge's computation of its average entry-level wage is distorted. Five of the eleven comparables have a single rate for their sergeants. An average entry-level wage, eliminating the single-rate comparables, is \$46,566. Thus, the City's entry-level Sergeants are within -16% of the average comparables. This difference suggests that the City's step system may be creating a pay inequity problem for entry-level Sergeants. If such a problem exists, it is separate from and not part of the wage increase issue.

The Lodge's comparables for **Lieutenants** show that the City's Lieutenants are within -21.2% of its comparables' average entry-level wage. The same analysis discloses that the Lieutenants are within +1.3% of the average top-level wage. Further, the Lodge's comparables show that all the comparables have entry-level wages higher than that of the City's Lieutenants. Three of the comparables have top-level wages higher than that of the City, and 5 have lower top-level wages. According to the Lodge's comparables, there appears to be a substantially lower entry-

level wage for the City's Lieutenants. However, the Lodge's computation of its average entry-level wage is distorted. Four of the eight comparables have a single rate for their lieutenants. An average entry-level wage, eliminating the single-rate comparables, is \$52,035. Thus, the City's entry-level Lieutenants are within -13.9% of the average comparables. This difference suggests that the City's step-system may be creating a pay inequity problem for entry-level Lieutenants. If such a problem exists, it is separate from and not part of the wage increase issue.

In summary, with the exception of the possible step-system inequities, the Lodge's comparables show that the City's Patrol Officers, Sergeants, and Lieutenants are all within + or - 2.7% of the averages of the comparables. At most, these comparisons show only slight variations among the City's Police Officers and those of the Lodge's comparable cities.

The City's comparables for **Patrol Officers** (City Exhibit 10) show that the City's Patrol Officers are within +0.8% of the average top-level wage. Further, the City's comparables show that 6 of the comparables have top-level wages higher than that of the City's Patrol Officers, and 8 have lower top-level wages.

The City's comparables for **Sergeants** (City Exhibit 11) show that the City's Sergeants are within +3.0% of the average top-level wage. Further, the City's comparables show that 6 of the comparables have top-level wages higher than that of the City's Sergeants, and 8 have lower top-level wages.

The City's comparables for **Lieutenants** (City Exhibit 11) show that the City's Lieutenants are within +5.1% of the average top-level wage. Further, the City's comparables show that 4 of the comparables have top-level wages higher than that of the City's Sergeants, and 8 have lower top-level wages.

In summary, the City's comparables show that the City's Patrol Officers, Sergeants, and Lieutenants are all within +5.1% of the averages of the comparables. At most, these comparisons show only slight variations among the City's Police Officers and those of the City's comparable cities.

Analysis of both the Lodge's and City's comparables suggest that the City's Police Officers are competitively paid relative to officers in the comparable cities. However, further analysis is necessary before formulating a recommendation.

The current contracts provided for a 3% across-the-board wage increase in each of the three years. Further, the Police Officers have received 3% increases for the past five years (City Exhibit 9). The City's Exhibit 8 shows that, over the twelve years from 1989 through 2000, the Lodge members received 11% more than the CPI-W for the same time period. And, it shows that they received more in wage increases than any other City units shown. The Police Officers, over the 12 years, received a total of +2.78% more than the average for the City's other units, or an average of .23% more per year. Finally, the City's Exhibit shows that for

the five units for which 2001 increases are included, the average is 3.1%. For the three units for which a 2002 increase is included, the average is 2.8%.

The City's Exhibit 10 included percentage increases received by the police officers of each comparable city for the years 1997 through 2002, but with some missing or not yet available data. The averages for each of the following years are: 1997 -- 3.71% (11 comparables); 1998 -- 3.27% (13 comparables); 1999 -- 3.98% (13 comparables); 2000 -- 3.48% (11 comparables); 2001 -- 3.39% (7 comparables); and, 2002 -- 3.58% (3 comparables).

The Lodge's exhibit "Percentage Wage Increases" reports wage increases for its comparables' varying contract years. That data may be summarized by using average increases for each of the following years: 1997 -- 3.67% (3 comparables); 1998 -- 4.00% (8 comparables); 1999 -- 3.59% (11 comparables); 2000 -- 3.53% (8 comparables); and, 2001 -- 3.0% (4 comparables).

Ohio's State Employment Relations Board publishes wage settlement information, and its most recent data is contained in SERB's publicly available "Wage Settlement Breakdown 1991 - 1999." The data is reported by year and by unit type. For police units, SERB reports the following wage increases: 1997 -- 3.52%; 1998 -- 3.56%; and, 1999 -- 4.25%.

Using the yearly wage increases for the three years 1997 thru 1999, for the City's comparables, the Lodge's comparables, and for SERB's statewide police averages, the following are the averages: 1997 -- 3.63%; 1998 -- 3.61%; and, 1999 -- 3.94%. When these averages are compared to the 3% per annum increases received by the City's Police Officers for each of the same years, it becomes apparent that the City's Police Officers lagged behind their fellow officers throughout the State. This condition is pertinent to formulating a recommendation for the new contract. It is generally accepted that the best and most effective use of wage dollars is to place and maintain one's employees generally at the mid-point of comparative external units. A mid-point position best enables an employer to remain competitive in hiring, retention, and employee satisfaction and performance. Overall, the Lodge's and City's comparable data indicate that the City's Police Officers are currently at a sound mid-point. Yet, this position is notwithstanding the 1997 through 1999 lower wage increases. However, to maintain a mid-point position, the City's Police Officers must receive more than 3% over the next three contract years.

Using the yearly wage increases for the two years 2000 and 2001, for the City's comparables and for the Lodge's comparables, the following are the averages: 2000 -- 3.51%; and, 2001 -- 3.20%. These analyses further support the need for the City's Police Officers to receive more than 3% per year. Finally, there was no compelling evidence that the City cannot afford to pay annual wage increases of more than 3% to its Police Officers.

The Fact-finder recommends the following percentage wage increases: 3.5% effective November 1, 2000; 3.5% effective November 1, 2001; and, 3.5% effective November 1, 2002. The wage increase shall be retroactive to November 1, 2000.

ISSUE 2: LODGE'S ECONOMIC PROPOSAL -- CHANGE STARTING TIME FOR SHIFT DIFFERENTIAL, ELIMINATE TWO-TIER SHIFT DIFFERENTIAL, AND CHANGE DIFFERENTIAL RATE -- ARTICLE VII Wages (Section 3 Shift Differential)

Lodge's Position: The Lodge proposes the following wage changes to the contract:

Change the shift differential starting time from 2:45 p.m. to 2:00 p.m.; eliminate the current two-tiers for shift differentials; and, increase the shift differential to \$.90 per hour.

The Lodge explained that shift differentials are commonly provided to police officers to recognize and to compensate for the disruption shift work creates for personal and family lives. The Lodge's comparables ("Shift Differential") on this issue revealed the following information: 8 of the 14 comparables provide no shift differential; of the remaining 6 comparables, 3 have one rate (average \$.58), and 3 have more than one rate (second shift average \$.45; and, third shift average \$.63). The Lodge's position is that the differential rates have not been increased since the current rates (\$.60 and \$.45) became effective in 1994. Originally, from 1984 until 1991, the rates were \$.35 and \$.37. Then, in 1991, the rates were increased to \$.50 and \$.40.

City's Position: The City expressed its position that there is no need to adjust the differentials. The City explained that originally the Police Officers had permanent shift assignments, and that the differentials were added as inducements for the Officers to take the less desirable shifts. However, currently there are no permanent shift assignments. The City acknowledged that the second shift continues to be the least desirable. The City averred that, based on the Lodge's comparables, the City's shift differentials are as good or better than most of the comparables.

Analysis and Recommendations: There is no compelling evidence to support the proposed change to the shift differential starting time of 2:45 p.m. to 2:00 p.m. Further, based on the Lodge's shift differential comparables, it appears that the current shift differentials being paid are consistent with the comparables. Finally, regarding the proposed elimination of the two-tier shift differential system, there was no dispute but that the second shift is the least desirable of the three shifts. Additionally, the City noted that the Chief of Police has attained the national goal of 33% uncommitted patrol time for the first and third shifts, but has not yet achieved it for the busier second shift. Thus, it appears that there is a continuing need to distinguish between the second and third shifts.

The Fact-finder recommends that no changes be made to Article VII, Section 3 -- Shift Differential.

ISSUE 3: LODGE'S ECONOMIC PROPOSAL -- DOCUMENT CURRENT PRACTICE REGARDING PAYMENT OF 1-1/2 TIMES RATE FOR VARIOUS OFF-DUTY ASSIGNMENTS -- ARTICLE VII Wages (Section 4 Pay Policy Additional Pay Provisions, Paragraph a)

Lodge's Position: The Lodge proposes to add as the last sentence of Paragraph a the following language:

Off-duty incident, court time, holiday leave, injury leave, funeral leave, call-out and stand-by shall be paid at one and one-half times the employee's regular hourly rate of pay.

The Lodge explained that it wanted to include in the contract the Parties' practice that has been followed for at least the duration of their current contract. The Lodge acknowledged that the current practice does **not** pay for holiday leave, injury leave, or funeral leave at one and one-half times the regular rate, as it originally proposed. The Lodge further explained that it wished to document the current practice so that new payroll clerks will have clear guidance as to how these off-duty assignments are paid, without the Lodge members needing to "educate" the new payroll person concerning the Parties' practice.

City's Position: The City acknowledged that the Parties' current practice is for off-duty incident, [off-duty] court time (Paragraph c), [off-duty] call-out (Paragraph d), and [off-duty] stand-by (Paragraph e) to all be paid at one and one-half times the employee's regular rate, regardless of whether or not the employee has worked 40 hours in the respective work week.

Analysis and Recommendations: The Parties agreed that their current practice is for the City to pay one and one-half times the employee's regular rate for each of the following off-duty situations: off-duty incident, off-duty court time, call-out, and stand-by. The Parties acknowledged that this is their current practice, regardless of whether or not the employee has worked 40 hours in the respective work week. The Parties further acknowledged that "off-duty court time" refers to Paragraph c; that "call-out" refers to Paragraph d; and, that "stand-by" refers to Paragraph e. Thus, the Fact-finder recommends that the Parties' current practice be added to Article VII, Section 4, Paragraph a, as follows:

Off-duty incident, off-duty court time, call-out, and stand-by shall be paid at one and one-half times the employee's regular rate of pay.

ISSUE 4: CITY'S ECONOMIC PROPOSAL -- TO CHANGE CURRENT PRACTICE AND TO PAY COURT TIME, CALL-OUT, AND STAND-BY AT STRAIGHT TIME -- ARTICLE VII Wages (Section 4 Pay Policy Additional Pay Provisions, Proposed New Paragraph f)

City's Position: The City proposed that the following language be inserted as a new Paragraph f:

Payment under paragraphs (c), (d) and (e) of this Section will be at the member's regular hourly rate of pay.

The City said that of the three off-duty assignments for which it is currently paying overtime, the most expensive is for court time. The City disclosed (City Exhibit 13) that the following expenses were incurred for court time: 1998 -- \$93,766; 1999 -- \$71,407; and, for the year to date 2000 -- \$67,346. The City, by its handout "Crt Time," noted several facts. First, for the month of January 2000, the City paid for 237.75 court hours, when the number of actual court hours worked was 132.25 hours. For July 2000, the City paid for 219.5 court hours, when the number of actual court hours worked was 103.75 hours. Also, the handout reflects the number of court hours that would have been paid at straight pay in January, under the City's proposal, as 25.25 hours. In July, the number would have been 26.25 hours. Hence, the City noted that the net effect of its proposal would be minimal.

The City argued that in many cases an employee receives a "windfall" because the Officer is in court for a short time, but receives overtime pay. The City noted that court time is paid from the Police Department's overtime budget, and that savings under the City's proposal will stay with the Department to use for other policing.

The City disagreed with the Lodge's position that overtime pay for court time, call-out, and stand-by are needed as compensation for the disruption to the Officers' personal lives. The City said that the minimum times provided for such situations in Paragraphs c, d, and e adequately compensate the Officers.

In summary, while the City agreed that the Parties' current practice is to pay overtime for court time, call-out, and stand-by, it is proposing to change that practice to provide for straight-time pay until the employee reaches the 40 hour breakover point. Note: the City is not proposing any changes to the minimum number of hours currently provided for in Paragraphs c, d, and e.

Lodge's Position: The Lodge "vehemently" objected to the City's proposal. The Lodge said that overtime has been paid for these off-duty assignments since their first contract in 1984, and that the practice has continued to date. The Lodge maintained that overtime is necessary in order to compensate the Officers for the disruption to their personal lives incurred in connection with these off-duty assignments. The Lodge disagreed that the minimum number of hours for such activities is adequate compensation, that is, without the overtime.

The Lodge presented its comparables for this issue. With the exception of Euclid, all of the Lodge's comparable cities provide for overtime pay (at 1-1/2 times) for court time and for call-out (with varying minimum numbers of hours).

Analysis and Recommendations: The City acknowledged that its proposal would have a minimal effect on its court time expense. As shown by the Lodge's comparables, payment of overtime for court time and for call-out is a well established practice among the Police Departments in the comparable cities. Further, payment of the overtime for the three off-duty assignments is a long-standing practice between these Parties.

The Fact-finder recommends, consistent with the recommendation under Issue 3 above, that no changes be made to the current practice.

ISSUE 5: LODGE'S ECONOMIC PROPOSAL -- INCREASE MINIMUM HOURS FOR COURT TIME -- ARTICLE VII Wages (Section 4 Pay Policy Additional Pay Provisions, Paragraph c)

Lodge's Position: The Lodge proposed to increase the minimum number of hours' pay for off-duty court appearances from 3 to 4.

It also proposes to insert the following language into Paragraph c:

If a court appearance is outside of Middletown, the member shall receive a minimum of five (5) hours' pay. If a court appearance is on the member's day off, the member shall receive a minimum of six (6) hours' pay.

Finally, the Lodge proposes to change "three (3) hours" to "the appropriate minimum number of hours."

The Lodge asserted that its proposed changes are appropriate at this time because the number of minimum hours has not been increased since 1994. It describes the Police Officers' jobs as unique in our workforce, in that very few jobs entail the types and number of off-duty assignments that are inherent with police work. The Lodge presented its comparables. Excepting Euclid, of the remaining 13 comparables, 4 provide for 4 hours minimum court time; 6 provide for 3 minimum hours; and, 3 provide for 2 hours of minimum court time.

City's Position: The City maintained that the Lodge's comparables do not support any increase to the minimum number of hours for off-duty court time. It noted that the average minimum time for the Lodge's comparables is 3 hours. While the City agreed that Officers' personal lives are disrupted by off-duty court appearances, it asserted that there were no documented needs for any increases.

Analysis and Recommendations: The average number of minimum hours allowed by the

Lodge's comparables is 3.08 hours. None of the Lodge's comparables provided higher minimums for out-of-town court appearances or for court appearances on an officer's day off. With no compelling evidence that changes are warranted, the Fact-finder recommends no changes to Paragraph c.

ISSUE 6: LODGE'S ECONOMIC PROPOSAL -- INCREASE MINIMUM HOURS FOR CALL-OUT -- ARTICLE VII Wages (Section 4 Pay Policy Additional Pay Provisions, Paragraph d)

Lodge's Position: The Lodge proposed to increase the minimum number of hours' pay for call-out from 3 to 4.

The Lodge asserted that its proposed change is appropriate at this time because the number of minimum hours has not been increased since 1989. It describes the Police Officers' jobs as unique in our workforce, in that very few jobs entail the types and number of off-duty assignments that are inherent with police work. The Lodge presented its comparables. Excepting Euclid, of the remaining 13 comparables, 4 provide for 4 hours minimum call-out; 5 provide for 3 minimum hours; and, 4 provide for 2 hours of minimum call-out.

City's Position: The City maintained that the Lodge's comparables do not support any increase to the minimum number of hours for call-out. It noted that the average minimum time for the Lodge's comparables is 3 hours. While the City agreed that Officers' personal lives are disrupted by call-out situations, it asserted that there were no documented needs for any increase.

Analysis and Recommendations: The average number of minimum hours allowed by the Lodge's comparables is 3.0 hours. With no compelling evidence that changes are warranted, the Fact-finder recommends no changes to Paragraph d.

ISSUE 7: LODGE'S ECONOMIC & NON ECONOMIC PROPOSAL -- INVOLUNTARY OVERTIME -- ARTICLE VII Wages (Section 4 Pay Policy Additional Pay Provisions, Paragraph b)

Lodge's Position: The Lodge proposes the following language be inserted into Paragraph b:

Any involuntary hold over shall be paid at the member's time and one-half rate.

Further, the Lodge proposes that the following language be added to Paragraph b:

An employee shall not be ordered to work two (2) consecutive calendar days of overtime. An employee voluntarily working overtime on their day off shall not be ordered to work any time over the amount the employee has volunteered to work on that day.

City's Position: The City agreed to the concept, and after discussion, the Parties agreed to refine the language.

Analysis and Recommendations: The Parties should cooperate to refine the language to modify Paragraph b.

ISSUE 8: LODGE'S ECONOMIC PROPOSAL -- LONGEVITY -- ARTICLE VII Wages (Section 5 Longevity, Paragraph a)

Lodge's Position: The Lodge proposes to increase each of the three rates as follows:

10th through 15th anniversary	from 1% to 2%
15th through 20th anniversary	from 2% to 3%
20th +	from 3% to 4%

The Lodge advanced two reasons to support their proposal. First, the percentages had not been increased since the first contract in 1984. Second, it presented its comparables. Of its 14 comparables, 13 (excepting Marion) provide for longevity pay. The calculation methods vary greatly among the 13. The comparables compute longevity as follows: percentage -- 5; per hour -- 2; and, lump sums -- 6.

A summary of the 4 comparables that compute longevity using a percentage method is as follows: one starts with the first year, and three start at five years. The percentages at 10, 15 and 20 years are as follows:

	10 years	15 years	20 years
Elyria	10.0%	15.0%	20.0%
Euclid	5.0%	6.5%	8.0%
Fairborn	1.0%	1.5%	2.0%
Maple Heights	2.23%	2.55%	2.87%

City's Position: The City asserted that there is no need to increase the percentages since they are taken against the Officers' base wages, and thus longevity is effectively adjusted with every wage increase. The City explained that regarding its other bargaining units, all receive the same percentages as longevity pay, and that its non-union employees, hired since 1995, receive no longevity pay benefit.

The City presented its comparables on this issue. Of the 13 comparables, 9 provide for a longevity benefit and 4 do not. Of the 9, longevity is computed as follows: percentage -- 4; per hour -- 0; and, lump sums -- 5.

All of the City's comparables that compute longevity using a percentage method start at 5 years. The percentages at 10, 15 and 20 years are as follows:

	10 years	15 years	20 years
Butler Co.	2.5%	2.75%	2.75%
Fairborn	1.0%	1.5%	2.0%
Fairfield	4.0%	6.0%	8.0%
Hamilton	4.0%	6.0%	8.0%

Analysis and Recommendations: Both the Lodge's and the City's comparables reveal that longevity pay is a common practice among those comparable police forces. Both sets of comparables also disclose that various methods are used to compute longevity pay, there being no commonly accepted computational method. Thus, comparison with the City's longevity pay benefit becomes difficult. For example, regarding both sets of comparables, and considering those that provide for a percentage computation, additional information would be needed for analyses before concluding that the City's longevity pay should be increased. For example, information describing how the longevity pay system relates to the regular pay system, *i.e.*, number of steps, maximum pay, and other incentives would be necessary. A comparison of the naked percentages contained in both sets of comparables, or of their averages, is insufficient to conclude that there is a need to recommend an increase to the City's longevity benefit.

Based on the evidence presented, there does not appear to be a compelling need to increase longevity pay, and thus the Fact-finder recommends no changes to Paragraph a.

ISSUE 9: LODGE'S ECONOMIC PROPOSAL -- UNIFORMS -- ARTICLE VII Wages (Section 7 Uniforms, Paragraph b Non-Uniformed Police Personnel, and Paragraph c Clothing and Equipment Maintenance Allowance)

Lodge's Position: The Lodge proposes to change the amount paid for non-uniformed Police Officers for individual expenditures for wearing apparel from \$400 to \$500 annually.

Further, the Lodge proposes to change the amount of each equal payment installment from \$200 to \$250 semi-annually.

Finally, the Lodge proposes to change the amount paid for clothing and equipment maintenance from \$175 to \$250 semi-annually.

The Lodge explained that there has been no change to these allowances since 1989. It suggested that costs have risen for acquisition of clothing and for maintenance, such as costs for cleaning. Of the Lodge's 14 comparables, 4 provide an allowance for plainclothes officers. One, Euclid, provides \$1,999 per year. The Lodge acknowledged that this high allowance was most likely not only for clothing, but was a way to give officers a raise without increasing base wages.

City's Position: The City noted that it is difficult to compare the Parties' current allowances to the Lodge's comparables, since the comparables provide for uniforms, other clothing, equipment, and cleaning in many different ways. The City said that, unlike Middletown, many cities do not provide uniforms at no cost to the officers. Further, in regards to its allowance for maintenance, the City explained that its uniforms are all made from easily washable materials, thus avoiding dry cleaning expenses.

Analysis and Recommendations: Considering the 3 Lodge comparables (Fairborn, Findlay, and Marion) that provide plainclothes allowances, the average of the 3 is \$583 per year. Regarding the Lodge's 4 comparables (Hamilton, Maple Heights, Sandusky, and Warren) that provide for a maintenance allowance, the average amount is \$356 per year, or, \$178 per semi-annual payment. Costs have risen during the intervening years since 1989 when the allowances were first provided. Additionally, based on the Lodge's comparables regarding the allowance for non-uniformed Officers, it clearly appears that an increase is justified from \$400 to \$500 per year. However, based on the Lodge's comparables for maintenance allowances, it appears that the City's maintenance allowance is right in line.

The Fact-finder recommends that Paragraph b be amended to increase the total allowance from \$400 to \$500 per year, and that the equal payment amounts be increased from \$200 to \$250 each. The Fact-finder further recommends that no changes be made to Paragraph c.

ISSUE 10: LODGE'S ECONOMIC PROPOSAL -- PERSONAL DAY -- ARTICLE IX VACATION (Paragraph C Personal Day)

Lodge's Position: The Lodge proposes to increase the current one personal day to two personal days. The Lodge also proposes certain grammatical changes to Paragraph C to reflect their proposed increase.

The Lodge said that the current one day has been part of the contract since 1991. Of the Lodge's 14 comparables, 11 provide for personal days. The Lodge computed the average number of personal days, for those providing personal days, to be 2.4 days. The lowest number of personal days in the Lodge's comparables is 1 (Maple Heights) and the greatest is 5 (Lancaster).

City's Position: The City averred that an additional personal day is not needed. The City said that all of the City's Officers' days off must be considered. The City referred to its Exhibit 15 and to its Exhibit 12.

The City summarized its Police Officers' banked paid leave time in Exhibit 15. The City averred that an additional personal day is not warranted for two reasons. First, because the vast majority of Officers have banked substantial holiday time, which is available to them should they need time off for personal or other reasons. Second, the City maintained that an additional personal day will only increase the shortage of Officers because the City does not typically

substitute an Officer when another Officer takes a day off.

Pursuant to Exhibit 12, of the City's 13 comparables, 10 provide for personal days. The number of days range from 2 (Huber Heights) to 9 (Hamilton). Note: the 9 days may be in error as the Lodge list of comparables shows zero personal days for Hamilton. Excluding Hamilton, and also excluding Butler Co. which is based on attendance, and excluding Oxford which appears to use personal days in lieu of holidays, the average number of personal days for the remaining 7 comparables is 3.3 personal days. The City's number of personal days is 1 -- excluding the Officer's birthday, which is identified in the contracts as a holiday.

The City also reported holidays for its comparables (City Exhibit 12). Excluding Oxford, the average number of holidays for the City's comparables is 10.3 holidays. The Parties' contracts currently provide for 11 holidays (including the Officer's birthday).

Finally, the City reported vacation days for its comparables (City Exhibit 12). The methods for computing vacation time, and the breakpoints for various numbers of vacation days, vary widely among the comparables. However, using one year of employment (representing new hires) and using 20 years of employment (representing long-term employees) the average number of vacation days for the City's comparables are: at one year -- 9.6 days; and, at 20 years -- 24.4 days of vacation.

Analysis and Recommendations: The Lodge's comparables disclose that the average number of personal days for its comparables is 2.4 personal days.

In reviewing the City's Exhibit 15, it is true that many Officers have substantial paid leave time banked and available to them. However, there are a significant number who do not have substantial time banked. For those, and for newer hires, personal days (which are not bankable) are an important benefit for them and for their families. Additionally, the City's argument that there should be no increase to personal days because it will aggravate any shortage of Officers available for duty is misplaced. The contract provisions provide for the banking of certain paid leave time. Banking is a well-established practice in the public safety area.

The City's comparables disclose that the average number of personal days for its comparables is 3.3, the average number of holidays is 10.3, and the average number of vacation days is 9.6 (one year) and 24.4 days (20 years). Thus, using City Exhibit 12, its comparables receive a total average of 23.2 days for personal, holidays, and vacation days (one year) -- as compared to the City's total number of personal days, holidays, and vacation days (one year) of 22 total days. Next, using the comparables' average number of vacation days for long-term employees, the City's comparables receive a total average of 38.0 days for personal, holidays, and vacation days -- as compared to the City's total number of personal days, holidays, and vacation days (20 years) of 37 total days.

Thus, it appears that the City's combined personal, holiday, and vacation package is one day less than its comparables. The Fact-finder recommends that the number of personal days be

increased from one to two days and that Paragraph C be so amended.

**ISSUE 11: LODGE'S ECONOMIC PROPOSAL -- SICK LEAVE CONVERSION --
ARTICLE IX VACATION (Paragraph D Sick Leave Conversion Provisions, (1) & (2))**

The Lodge withdrew its proposal to amend these Paragraphs.

**ISSUE 12: LODGE'S ECONOMIC PROPOSAL -- TO ADD VISION CARE -- APPENDIX
A -- HEALTH INSURANCE (New Paragraph)**

Lodge's Position: The Lodge proposes that the City provide the same vision care to its Police Officers that is received by other City employees.

The Lodge expressed its belief that almost all of the City's other bargaining unit members receive vision care. The Lodge said that the City pays a flat rate of approximately \$4,000 to cover all of its employees for the vision care, or about \$50 per employee. The vision benefit is primarily an eye examination.

City's Position: The City related that no bargaining unit members receive the vision care benefit. The City said that it is provided to about one-half of the City's non-bargaining employees. Further, the City indicated that the day before the Fact-finding Hearing, it received notice from its vision insurer that the premium for vision care may increase by as much as 300%. The City is not sure that it will continue vision care for any of its employees.

Analysis and Recommendations: Neither Party presented comparables regarding vision care. A persuasive argument was not forthcoming that the City's Police Officers are being denied a benefit that most other bargaining unit members receive. Thus, the Fact-finder recommends that no change be made concerning vision care.

**ISSUE 13: CITY'S ECONOMIC PROPOSAL -- TO REDUCE THE NUMBER OF
INJURY LEAVE DAYS -- ARTICLE XX INJURY LEAVE (Paragraph B)**

City's Position: The City proposes to amend Paragraph B to reduce the number of injury leave days from 150 to 120 days.

The City presented Exhibit 14. This Exhibit contains a copy of the current provision for non-bargaining unit employees, reflecting that the maximum injury leave is 120 work days. Exhibit 14 also contains the current injury leave provision for the Fire-Fighters bargaining unit, which shows a maximum of the first six consecutive months of time off. The next portion of the Exhibit was offered by the City to show the history of the number of injury leave days for the City's Police Officers. As of the 1991 contract, injury leave was identified as the "first six (6)

consecutive months of time off." The copy of the injury leave provisions from the 1994 contract shows that the language was amended to, "up to one hundred and fifty (150) working days of injury leave." This language continued into the current contracts. The City explained the reason for the change. It said that a dispute arose over the 1991 language. The dispute involved whether injury leave was 180 work days, or 180 calendar days. The Parties compromised and resolved the dispute with the current 150 days.

The City presented a report (City Exhibit 16) of injury leave usage by Police Officers during the past three years (1998, 1999, 2000 to date). The report was offered to show that during this time period, only four Officers -- out of 35 Officers who utilized injury leave -- exceeded the City's proposed 120 days. Those four Officers exceeded the 960 hours (120 days) as follows: 1200 hours, 1052 hours, 1,040 hours, and, 1,016 hours. The City suggested that if its proposal is adopted, then Officers on injury leave will have an incentive to return to work sooner. The incentive being that if they exceed the proposed 120 days, then they will then need to use sick leave or other banked time.

Additionally, the City noted that there is a safety valve under its next proposal. Under the City's next proposal, the Chief would have discretion to extend injury leave for Officers who are on light duty and who will return to full duty within a reasonable time. Thus, the City argued that the reduction to 120 hours of injury leave will not harm its Police Officers.

A review of the City's 13 comparables (City Exhibit 12) reveals the following: all provide injury leave; one (Kettering) is at management's discretion; and, the specific provisions vary greatly among the comparables. The minimum number of injury leave days is 87 (Huber Heights) and the maximum is one year. Three comparables require that some sick leave be used before starting injury leave. The sick leave requirement varies from 5 to 15 days. Overall, the average number of injury leave work days provided by the City's comparables (excluding Kettering) is: 186 days.

Lodge's Position: The Lodge voiced its serious concern regarding any changes to the "sacred cow" of injury leave. The Lodge asserted that the dispute referenced by the City was resolved in 1994, and that any further changes to the number of injury leave hours should be through negotiation and not with a Neutral.

The Lodge averred that Police Officers, due to the nature of their work, have a much higher risk of injury than do other City employees. It referred to City Exhibit 16. The Lodge suggested that since only four Officers would have exhausted the City's proposed 120 injury leave days, that the current provision for 150 days is working and that no change is needed. The Lodge provided a handout "Summary of Injury Leave Provisions" for its comparables. All of the comparables provided injury leave, but one (Findlay) is at management's discretion. Thus, the average for 12 of the Lodge's 13 comparables is: 177 days.

Analysis and Recommendations: The current 150 days for injury leave is substantially less than the average of the City's and Lodge's comparables. Absent any other compelling reason

for a reduction, the Fact-finder recommends no reduction to the number of injury leave days.

ISSUE 14: CITY'S ECONOMIC PROPOSAL -- FOR LIGHT DUTY TO APPLY TOWARD INJURY LEAVE -- ARTICLE XX INJURY LEAVE (Paragraph B)

City's Position: The City proposes to add to Paragraph B the following language:

Any time spent in a light duty assignment in connection with injury leave will count towards the 150 (120) days of injury leave. Should injury leave expire while the employee is on light duty, the Chief in his sole discretion, may grant an exception to this provision where it appears from the circumstances that the employee will return to regular duties in a reasonable amount of time.

The City maintained that charging light duty time against injury leave will not endanger the City's Police Officers who are injured in the line of duty because the Chief has discretion to extend injury leave for those Officers who will return to regular duty within a reasonable time. That is, if an Officer on light duty has used all their injury leave, the Chief can continue them on light duty, past the maximum number of injury leave days, until the Officer returns to regular duty.

Lodge's Position: The Lodge refuted any need for the City's proposed change to Paragraph B. The Lodge argued that there is already protection for the City against malingerers in Paragraph D, which provides for physical examinations at the City's request. Further, there is a process to resolve differences of opinion between the injured Officer's physician and the City's physician.

Analysis and Recommendations: By definition, when injured Officers are performing light duty, the City is receiving the benefit of the injured Officer's work. Under the City's proposal, the City would also receive the benefit of the injured Officer reducing his or her injury leave days. The City's proposal effectively reduces the number of injury leave days. As noted in the immediately preceding issue, the current 150 days for injury leave is less than the average of the City's comparables. Absent any other compelling evidence that the City's comparables charge light duty against injury leave days, the Fact-finder recommends that light duty not be counted toward injury leave.

ISSUE 15: CITY'S ECONOMIC PROPOSAL -- NO SICK LEAVE WHEN INJURY LEAVE CONTINUES IN 7 DAYS -- ARTICLE XX INJURY LEAVE (Paragraph B 1)

City's Position: The City proposes to insert the following language into Paragraph B 1:

... except where such nonconsecutive use occurs within seven (7) calendar days of the date of injury.

The City proposed this addition for the benefit of its Police Officers. It also proposed it in conjunction with its two proposals to insert and add to Paragraph B. (See two immediately preceding issues.)

Lodge's Position: The Lodge did not object to this proposal.

Analysis and Recommendations: The Fact-finder acknowledges that the City made this proposal in conjunction with its proposals for the insertion and addition to Paragraph B. Nevertheless, the proposed insertion to Paragraph B 1 makes sense. If an injured Officer briefly (here within seven or fewer days from the date of the injury) goes off injury leave, and then needs to return to injury leave, it is almost as though the injured Officer never left injury leave. Such is a mere brief interruption in the injury leave. The City's proposal is consistent with its desire to encourage injured Officers to return to work in a timely manner. Without the City's proposal, in some situations, an injured Officer may be penalized for trying to return to work.

The Fact-finder recommends that the City's proposal be inserted into Paragraph B 1.

ISSUE 16: CITY'S NON ECONOMIC PROPOSAL -- UNABLE TO RETURN/DISABILITY RETIREMENT -- ARTICLE XX INJURY LEAVE (New Paragraph G)

City's Position: The City proposes to add the following as a new Paragraph G:

If, in the opinion of a physician selected by the City, the member will never be able to return to his normal duties, the member shall immediately apply for a Disability Retirement.

The City maintains that the proposal is necessary to prevent abuses regarding accumulated sick leave. The situation described by the City is where an injured Officer uses all injury leave and then begins to use accumulated sick leave until it is essentially consumed. The abuse in this situation occurs when the injured officer knows that he or she will not return to duty. The current system for using sick leave, after the expiration of injury leave, is linked to the conversion rate for sick leave upon retirement. The contracts (Article X Sick Leave, Paragraph 9 Conversion to Terminal Leave) provide for a three-for-one conversion of accumulated sick leave to terminal leave pay, with a maximum of 25 working days (200 hours). Thus, an injured Officer, who will not return to duty, benefits by receiving pay for every 8 hours of accumulated sick leave, and by receiving those hours without any cap on the number that can be used and paid.

The City asserts that injured Officers, who might be prematurely required to take disability retirement, are protected by an Ohio Revised Code provision that provides for reevaluation, and if found fit for duty, for return to duty.

The City emphasized that it has no problem with an injured Officer using accumulated sick leave, after exhausting injury leave, if the Officer is returning to duty.

Lodge's Position: The Lodge objects to the City's proposal. The Lodge does not understand the City's apparent perception that there is abuse under the current contract provisions.

Essentially, the Lodge's objection centers on both the concept and on the proposed procedure. The Lodge objects to the use of the City's chosen physician to make the medical determination of whether the injured Officer will never be able to return to his normal duties. The Lodge sees the possibility for abuse with the decision in only one physician, and that being the City's physician. Additionally, the Lodge believes that the possibility of one or more physicians making such a "career ending" determination is punitive and inherently unfair to an injured Police Officer. The Lodge noted that "police work is a young person's job" and that older Officers may need more time to heal. Further, older Officers are more susceptible to old injuries creating problems. The Lodge noted that the current injury leave provisions limit such leave to within two years of the injury. It suggests that this limitation sufficiently protects the City.

The Lodge said that some injuries may require many months to determine a final prognosis. Additionally, the Lodge noted that substantial time can be consumed by the medical profession. For example, the Lodge said that it can take 90 days just to schedule an MRI. Then, an injured Officer may have to wait for surgery, followed by substantial time for physical rehabilitation. The Lodge suggested that this type of process can easily consume more than 150 days for injuries that are not "career ending."

Analysis and Recommendations: Neither Party presented comparable data regarding the City's proposal. Police work is inherently dangerous. Typically, injury leave is somewhat unique to public safety forces and is an important benefit to help offset the inherent risks of police work. The City's proposal may expedite the identification of injured Officers who will not return to duty. If so, then presumably the City could replace the Officer sooner than under the current situation. Faster replacement of Officers is a benefit to the Community and to the Police Department. Thus, the concept is worthy of consideration. However, as proposed, the procedure for making such "career ending" decisions is inherently unfair. The unfairness stems from the decision being made solely by a physician selected by the City. Further, any such process must consider the extensive time that can be consumed in making a prognosis, obtaining appropriate medical treatment, and completing physical rehabilitation.

Therefore, the Fact-finder recommends that the proposed new Paragraph G not be adopted.

ISSUE 17: CITY'S NON ECONOMIC PROPOSAL -- NO INJURY LEAVE IF VIOLATION OF RULE -- ARTICLE XX INJURY LEAVE (New Paragraph H)

City's Position: The City proposes to add the following as a new Paragraph H:

If a member becomes injured on duty while in violation of a Police Department or City rule, regulation or policy, injury leave will not be granted if, in the opinion of the Police Chief, the injury was caused by or aggravated by the failure to follow such rule, regulation or policy.

The City explained that the goal of this proposal is to prevent injuries that would not have occurred, or would not have been as severe, if the injured Officer had followed applicable rules, regulations or policies. For example, the City noted that an injury associated with an automobile accident may have been avoided or minimized if the Officer had been wearing a seat belt as required by the Department. The City considers it unfair if it has to pay for injury or sick leave, when the injured or sick Officer did not follow the Department's rules, regulations or policies. Finally, the City noted that if it were to deny injury leave to such an Officer, that they could apply for workers' compensation benefits. So, the Officer is not without income while recovering.

The City noted that if the injured Officer had a good reason for not following a Department rule, regulation or policy, then the Chief would understand. Also, if the Lodge disagreed with the Chief's determination, then it could grieve. Finally, the City noted that if an injured Officer was denied injury leave pursuant to this proposal, that the Officer would still be able to use his or her sick leave. If sick leave were exhausted, the City noted that there is a catastrophic leave bank with thousands of hours accumulated. The City said that this bank would be available as a safeguard to an injured Officer who has exhausted sick leave.

Lodge's Position: The Lodge considers the City's proposal to be "draconian." It perceives the proposal as punitive. While the Lodge agrees that Officers should follow the Department's rules, regulations and policies, it conceives of many situations where such compliance may realistically not be possible or not occur. The Lodge gave examples. In the situation of an Officer in danger, the Lodge said that other Officers may instantaneously respond without taking even five seconds to buckle a seat belt. Recently, an Officer suffered a serious eye injury while with a supervisor. Neither Officer remembered that protective eye-wear should be used in that type of situation. That is, the omission was merely negligent and not reckless or intentional. The Lodge argued that an injured Officer in such situations should not lose his or her injury leave. The Lodge suggested that there are other methods for encouraging compliance with the Department's rules, regulations and policies. The Lodge suggested that the Parties should continue dialogue to try to resolve preventable injuries associated with violations.

Finally, the Lodge disagreed with the City's proposal that the Chief can accurately determine when injuries (or the extent of injuries) are caused by violations. The Lodge suggested that such a provision would lead to disputes over causation, requiring the Parties to hire accident scene

and medical experts. In summary, the Lodge does not perceive that the proposal is workable.

Analysis and Recommendations: Neither Party presented comparable data regarding the City's proposal. As proposed, the concept creates an unjustifiable potential for unfairness (intentional or unintentional) to an Officer who was injured while performing his or her job. Further, vesting the sole decision making authority with the Chief is inherently unfair. The City did not show that being an accident and medical expert are required qualifications for the Chief's position.

Finally, the City did not present any data to show that injuries associated with rule, regulation or policy violations are a problem within this Department.

The Fact-finder recommends that the City's proposed new Paragraph H not be adopted.

ISSUE 18: CITY'S ECONOMIC PROPOSAL -- HIGHER SICK LEAVE CONVERSION WITH PRIOR NOTICE -- ARTICLE X SICK LEAVE (Paragraph 9)

The City proposes to add the following as an insertion to Paragraph 9:

Upon retirement of a member with twenty-five (25) or more years service, and at least 48 years old, all unused sick leave credit will be converted to terminal leave pay on the basis of sixteen (16) sick leave hours for eight (8) hours pay to a maximum of 500 hours, provided, the member gives six (6) months notice. The notice must be in writing with a specific date, with the understanding this is a valid resignation date, which the city is not obligated to extend.

If a member chooses to take a disability retirement, due to injury or illness, the same provisions will apply if the member files for the disability pension within 60 days of the injury or illness, and the disability retirement is granted within 120 days of the injury or illness.

The Lodge accepted the City's proposal, subject to possible inclusion of any current personnel who are retiring without sufficient time to meet the six months.

ISSUE 19: CITY'S NON ECONOMIC PROPOSAL -- PROBATIONARY EMPLOYEE/GRIEVANCE -- ARTICLE VI GRIEVANCE PROCEDURE (New Section 2)

The City proposed the following as a new inserted Section 2:

A probationary employee who is disciplined shall have no right to appeal the discipline through the Grievance or Arbitration Procedure.

The Lodge accepted the City's proposal.

**ISSUE 20: CITY'S ECONOMIC PROPOSAL -- TO PROVIDE A CANINE ALLOWANCE
-- ARTICLE VII WAGES (New Section 8 Canine Allowance)**

The City proposed that an additional Section be added to Article VII as Section 8 -- Canine Allowance, to read as follows:

Members who are designated as canine officers shall be paid \$4.00 per day as compensation for expenses associated with the care of their dog while at home. In recognition of the fact that canine officers spend time caring for their dogs while at home, they will be required to be physically present at the police division for only 7.5 hours of their 8 hour shift.

The Lodge accepted the proposal.

**ISSUE 21: CITY'S NON ECONOMIC PROPOSAL -- FITNESS FOR DUTY -- NEW
ARTICLE ___ FITNESS FOR DUTY**

City's Position: The City proposes the following new Article:

The parties recognize that members must regularly perform activities requiring agility, strength and physical conditioning.

Effective January 1, 2001, all members must, at least once bi-annually, participate in the same departmental physical fitness evaluations required of new recruits. (Attached as Appendix "B"). Members who pass the evaluation will not be re-evaluated for two years.

Members who fail the fitness evaluation on the first attempt will be re-evaluated in six months. If the member fails the physical evaluation on the second attempt, he will be re-evaluated again in six months. If, upon the third attempt, the member fails the evaluation, he will be re-evaluated in six (6) months. A member who fails the fourth attempt will be subject to termination.

No member who is on sick leave, injury leave or light duty will be required to undergo a physical agility evaluation until he has returned to regular duties.

Notwithstanding the above referenced termination provision, no employee who is a member on November 1, 2000 shall be subject to termination pursuant to this article before October 31, 2003.

The City said that the proposed physical agility test is currently being used to test recruits, and that 95% (male and female) have passed. The City said that current Officers should also be required to pass the test every two years since Police work is a physically demanding job throughout each Officer's career. According to the City, if an Officer does pass the proposed minimal physical agility test, then that Officer is a danger to self, to other Officers, and to the public. Additionally, an unfit Officer is a financial liability to the City because of an increased risk for injury and illness.

The City described its development of the proposed test. The development process included consideration of the law (Americans With Disabilities Act), current job duties, and comparable tests. The City considers passing the proposed test as a job requirement for its Police Officers.

The City recalled that as part of the negotiations for the current contracts, the Parties informally agreed to try to develop a mutually acceptable testing process. The City then showed a video of one of its Deputy Chiefs successfully completing the proposed test. The Deputy Chief is 46 years of age, and has had three knee surgeries since 1991, with the most recent one in 2000. He confirmed that the test is not very difficult. He said that in his opinion, only the very obese or those with very weak upper body strength, would fail the test. He said that he regularly works out on his lunch break.

The City described the proposed test as a "bare minimum" and not at all like the tests used by the LA Police Department or by the US Army, as mentioned by the Lodge in its opposition to this proposal. Further, the City noted that most "incentive" programs, as mentioned by the Lodge, have to do with such factors as body fat, heart rate, and the like. The City does not feel that an incentive "bonus" is proper for asking Officers to perform their jobs. The City indicated that it is serious about this issue, even though it and the Lodge have not discussed it since the negotiations for the current contract.

Finally, the City considers the proposed test to be job-related and that it will successfully defend against any future adverse impact claims. The City said that Officers frequently need to run in their jobs and that foot pursuits occur weekly within the Department. The City noted that many of the City's apartment buildings have more than six steps (as provided for in the test), and that Officers frequently need to scale fences and other obstacles higher than the four-foot test requirement.

Lodge's Position: The Lodge said that it believes that the City's proposal is punitive. The Lodge further said that most such physical fitness programs are designed as incentive programs or as improvement programs, and not as termination programs. It expressed its belief that the Parties should negotiate this issue, rather than have a Neutral make a recommendation. The Lodge said that since the negotiations for the current contract, the City has not approached the Lodge on this issue. Therefore, it must not be a "burning issue."

The Lodge noted that no on-duty workout time is provided by the City. Thus, preparation for the testing would have to be done on the Officers' own time. The Lodge perceives that there

may be a legal problem if time is not set aside for the Officers to workout in preparation for the test. The Lodge prefers to work with the City toward a non punitive program. Then, if problems persist, perhaps discuss a proposal more in line with the City's proposal.

The Lodge expressed its concern that any physical testing be carefully considered so it does not have a disparate impact on women. The Lodge noted that the tests used by the OHP and by the US Army are graduated for age and gender. The City's proposal does not address these considerations.

The Lodge expressed its opposition to the City's proposal. It is opposed to the termination feature. There is no evidence that there is a problem. There are other ways to better manage possible increases to injury leave. Not all components of the proposed test are job-related, for example, the distances and the climbing. Finally, the Lodge said that many Officers do not participate in the City's current voluntary wellness program because the entrance questions are unnecessarily intrusive of the Officers' privacy.

Analysis and Recommendations: Neither Party presented comparable data regarding physical agility testing. The Parties acknowledged that during the 1997 negotiations they informally agreed to discuss this issue and work toward a mutually agreeable program. Yet, neither has approached the other. The City unilaterally moved forward to develop its test that was not presented to the Lodge until the current negotiations.

The Fact-finder has no problem with the concept or with the objective of the proposal, both of which are meritorious. However, the unilateral action by the City to develop the test and its proposal to impose it on current Officers, contradicts the informal agreement for a bilateral process to which the Parties agreed in 1997. Therefore, the Fact-finder recommends that the City's proposed new Article not be adopted. The Fact-finder further recommends that the Parties begin discussing physical agility testing.

ISSUE 22: CITY'S NON ECONOMIC PROPOSAL -- LENGTH OF CONTRACT -- ARTICLE XXI TERMINATION

The City proposed the following revised Article:

This contract shall become effective November 1, 2000 and shall terminate on October 31, 2003.

The Lodge did not object to the City's proposal. The Fact-finder recommends that the length of the contract be as proposed by the City.