



## PRELIMINARY COMMENTS

The State Employment Relations Board appointed the Fact-Finder who was duly notified by George M. Albu, Administrator, Bureau of Mediation, by letter on December 29, 2000.

The fact-finding proceedings were held at the Community Service Building located at 418 South Main Avenue, Warren, Ohio 44481. The hearing was held on Wednesday, March 1, 2001.

The bargaining unit comprises those full-time employees in the Police Department in the clarification of Captain, Lieutenant or Sergeant. There are approximately twenty-four (24) employees in the bargaining unit.

The parties met three (3) times in negotiations. Unresolved issues referred to fact-finding are as follows:

<u>ARTICLE</u>	<u>SUBJECT</u>
11.06	Shift Selection
12.00	Term of Agreement
15.01	Wages
15.05	Longevity
15.06	Shift Differential
15.07	Vacancies
16.01	Uniform Allowance
16.02	Uniform Maintenance

16.04	Educational Allowance
<b><u>ARTICLE</u></b>	<b><u>SUBJECT</u></b>
17.05	Bereavement
22.01	Holidays
22.02	Holidays
24.00	Exemplary Attendance
25.02	Vision Care
New Article	Critical Incidents

These issues are addressed in the above order. Along with the testimony and exhibits, consideration was given to the criteria set forth in the Ohio Administrative Rules and the Ohio Revised Code.

The Fact-Finder would be remiss if he did not compliment the parties on the preparation and presentation of their respective positions and the degree of professionalism displayed throughout the proceedings.

### **ISSUES AND RECOMMENDATIONS**

#### **ARTICLE 11 - SENIORITY**

##### **SECTION 6 - SHIFT SELECTION**

**Issue:** This issue, proposed by the Union, seeks to permit officers to select shifts based on seniority and rank.

**Position of the Union:** It is the position of the Union that such a provision is necessary because of practices in the past in which shift assignment by the Chief was

not a tool of management, but rather a means to vent either personal or union animus. Examples of such conduct were presented.

It is also the position of the Union that such a provision would establish parity with the Patrol Unit.

**Position Of The City:** It is the position of the City that management needs the flexibility to choose where the supervisors work.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that this situation may well be illustrative of the old saying that “bad facts make bad law.”

It is also the opinion of the Fact-Finder that the proposal of the Union comes dangerously close to conflicting with Article 3 of the Collective Bargaining Agreement and Section 4117.08 of the Ohio Revised Code. However, the evidence was uncontraverted that the City permitted the former Chief to improperly use his authority in shift assignments. Furthermore, the Collective Bargaining Agreement with the Patrol Unit has provisions permitting the use of seniority in shift selection.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 11, Section 6 read as follows:

## **ARTICLE 11, SECTION 6**

### **SENIORITY - SHIFT SELECTION**

**Section 6:** E.S.D. shift selection shall be by seniority. The Chief of Police shall post a shift selection schedule for each of the terms to be completed by December 17<sup>th</sup> and June 16<sup>th</sup> of each year. The senior most Lieutenant shall choose his term by

seniority in rank followed by the next most senior Lieutenant and so on down the line until all shifts are filled.

After all Lieutenants have selected their shift by seniority in rank, the most senior Sergeant in rank shall choose his turn and so on down the line.

Days off shall be determined by Department Seniority.

#### **ARTICLE 12 - TERMINATION OF AGREEMENT**

**Issue:** This issue, proposed by the Union, seeks a thirty five (35) month Collective Bargaining Agreement ending December 31, 2003. The City, on the other hand, is seeking a full three (3) year agreement.

**Position Of The Union:** It is the position of the Union that it agreed to a “non-raise” thirteen (13) month Collective Bargaining Agreement expiring January 31, 2001 in consideration of the financial status of the City at that time.

It is further the position of the Union that the Patrol Unit and this bargaining unit have a common expiration date in order to minimize disparate treatment on comparable items.

It is also the feeling of the Union that the City might possibly be encouraging rivalry between the two (2) bargaining units which are represented by competing unions.

**Position Of The City:** It is the position of the City that it is acting in good faith in seeking an expiration date of January 31, 2004.

It is also the position of the City that its wage offer for the first year of the Collective Bargaining Agreement would necessarily be reduced if it agreed to the expiration date proposed by the Union.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder when an employer such as the City has several bargaining units it is not uncommon to experience what we refer to as “intramural bragging rights.”

This situation can become exacerbated when, as is the case of the City of Warren, bargaining units are represented by competing unions.

The Union’s perception of the course of action pursued by the City may or may not be accurate. However, the perceived advantage to an employer so acting is invariably temporary at best and destroys the credibility of management. The realization that what can be done for you can be done to you begets distrust. Furthermore, such action by the City could result in a violation of §4117.11 of the Ohio Revised Code.

It is in the best interests of the City to treat all bargaining units as uniformly as is possible and, like Caesar’s wife, be beyond suspicion.

The contention of the City that the wage offer for the first year of the Collective Bargaining Agreement would necessarily be reduced if it agreed to the expiration date proposed by the Union will be addressed when we discuss wages.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 12 read as follows:

## **ARTICLE 12**

### **TERMINATION OF THE AGREEMENT**

A. Except as otherwise provided elsewhere in this Agreement, this Agreement shall terminate at the expiration of ninety (90) days after either party shall

give written notice of termination to the other party, and the State Employment Relations Board but, in any event, shall not terminate earlier than midnight, December 31, 2003. This notice shall also be given to local representation.

## **ARTICLE 15 - PAY PROVISIONS**

### **SECTION 1 - WAGES AND DIFFERENTIALS**

**Issue:** This issue, prepared by the Union, seeks to increase the base rates four (4) per centum each of the three (3) years of the Collective Bargaining Agreement. The City, on the other hand, offers a 4-4-3 pattern.

The Union also seeks to increase the differential between ranks. The City wishes to eliminate any contractual differential.

**Position Of The Union:** It is the position of the Union that when it agreed to a thirteen (13) month Collective Bargaining Agreement, it put the Bargaining Unit behind the curve.

It is also the position of the Union that since the City would not permit any future Conciliator (if one is required) to have any wage impact on year 2001 it would be necessary to change its position at that time to a pattern of 0-10-4.

**Position Of The City:** It is the position of the City that its wage offer is consistent with other bargaining units representing employees of the City of Warren.

It is also the position of the City that this bargaining unit should not benefit from another bargaining unit's negotiations.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder, as indicated previously, that the term of the contract be thirty-five (35) months in order to achieve a common expiration date with the Patrol Unit.

It is also the opinion of the Fact-Finder that an increase effective February 1, 2001, January 1, 2002 and January 1, 2003 results in a short-fall as opposed to other employees inasmuch as January, 2001 is at old rates. This fact, coupled with the statistics from comparable communities justifies an adjustment.

It is further the opinion of the Fact-Finder that neither party presented convincing evidence that the differentials should be changed.

It is also the opinion of the Fact-Finder that pursuant to §4117.08 of the Ohio Revised Code the City did not wish to negotiate concerning the number of ranking police officers.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 15, Section 1 read as follows:

## **ARTICLE 1 - PAY PROVISIONS**

### **SECTION 1 - WAGES AND DIFFERENTIAL**

**Section 1: Wages:** The following increases shall be made:

Effective February 1, 2001	-	4%
Effective January 1, 2002	-	4%
Effective January 1, 2003	-	4%

N.B. Calculation of hourly rates is delegated to the parties.

**Section 1A.**

**NO CHANGE**

**ARTICLE 15 - PAY PROVISIONS**

**SECTION 4 - LONGEVITY**

**Issue:** This issue, proposed by the Union, seeks to increase longevity pay to \$2.77 per bi-weekly for each full year of service.

**Position Of The Union:** It is the position of the Union that it is merely seeking parity with the Patrol Unit and other bargaining units of the City of Warren.

**Position Of The City:** The City presented no compelling argument against this proposal.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that this proposal is reasonable and consistent with the treatment afforded other bargaining units.

**Recommendation Of The Fact-Finder:** Full time bargaining unit employees will be paid longevity on the basis of the following formula:

Two Dollars and seventy-seven cents (\$2.77) for bi-weekly pay period for each full year of service.

**ARTICLE 15 - PAY PROVISIONS**

**SECTION 5 - SHIFT DIFFERENTIALS**

**Issue:** This issue, proposed by the Union, seeks to increase the shift differential for hours worked on afternoon and midnight shifts to forty-five cents (0.45¢) and fifty cents (0.50¢) respectively.

**Position Of The Union:** It is the position of the Union that it is merely seeking parity with the Patrol Unit.

**Position Of The City:** It is the position of the City that not all of the bargaining units in the City enjoy a shift differential such as proposed by the Union and specifically directs our attention to AFSCME Local 74.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the Patrol Unit is far more comparable to this bargaining unit than that represented by AFSCME Local 74.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 14, Section 5 reads as follows:

## **ARTICLE 15 - PAY PROVISIONS**

### **SECTION 5 - SHIFT DIFFERENTIALS**

**Section 6 - SHIFT DIFFERENTIALS.** All bargaining unit employees who work the afternoon or midnight shift shall receive in addition to their regular pay forty-five cents (0.35¢) and fifty cents (.50¢) per hour respectively as additional compensation paid in each pay period.

The differential payments provided for in this Section shall be added to the total wages and shall not increase the hourly rates. Further, the differentials provided for in this Section shall not apply to call out time.

**ARTICLE 15 - PAY PROVISIONS**

**SECTION 6 - VACANCIES**

**Issue:** This issue proposed by the Union, seeks to provide that Captains when working in the capacity of Chief receive the capacity of Chief receive the same pay as the Chief.

**Position Of The Union:** It is the position of the Union that this proposal is consistent with the practice followed in the case of Sergeants and Lieutenants when they temporarily perform the duties of a superior rank.

**Position Of The City:** It is the position of the City that the pay structure of the Chief is unlike that of the other ranking officers, e.g., overtime pay and allowances. Therefore, if the City paid a Captain at the hourly rate of the Chief, continued overtime pay, and full allowances, this would result in the Captain temporarily receiving a total compensation package exceeding that of the Chief.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the position of the City is well taken. The position of the Union has fundamental merit but the structure and mechanics of the pay adjustment need attention.

**Recommendation of the Fact-Finder:** The recommendation of the Fact-Finder as to Article 15, Section 6 is as follows:

**NO CHANGE**

**ARTICLE 16 - MISCELLANEOUS ALLOWANCES**

**SECTION 1 - UNIFORM ALLOWANCES**

**Issue:** This issue, proposed by the Union, seeks an increase of \$100.00 in the annual uniform allowance.

**Position Of The Union:** It is the position of the Union that the allowance has not been recently adjusted and has not kept pace with costs.

**Position Of The City:** It is the position of the City that no increase is warranted and that the current allowance is consistent with other bargaining units.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the position of the City is well taken.

**Recommendation Of The Fact-Finder:** The recommendation of the Fact-Finder as to Article 16, Section 1 is as follows:

**NO CHANGE**

## **ARTICLE 16 - MISCELLANEOUS ALLOWANCES**

### **SECTION 2 - UNIFORM MAINTENANCE ALLOWANCE**

**Issue:** This issue, proposed by the Union, has two (2) facets, i.e., an increase of \$150.00 in annual uniform maintenance allowance and a provision for replacement due to damage in the line of duty.

**Position Of The Union:** It is the position of the Union that the allowance has not been recently adjusted and has not kept pace with costs. It is also the position of the Union that the Patrol Unit has a provision for replacement costs.

**Position Of The City:** It is the position of the City that the current provision is identical to all other City of Warren bargaining units.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the Patrol Unit enjoys a damage provision and, therefore, the current contract provision is not equal or identical. However, it also the opinion of the Fact-Finder that no persuasive argument was presented in favor of an increase in the annual uniform maintenance allowance.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Section 2A be added to Article 16 and read as follows:

**Section 2A Damage Allowance:** Any uniform component or personal item (i.e., glasses, contact lenses, watches) damaged in the line of duty, without negligence on the part of the officer, shall be replaced at the expense of the City to a maximum of one hundred dollars (\$100.00) per year per officer, except that glasses and contacts shall be replaced at full cost.

## **ARTICLE 16 - MISCELLANEOUS ALLOWANCES**

### **SECTION 4 - EDUCATION ALLOWANCE**

**Issue:** This issue, proposed by the Union, seeks an increase in the allowance for education as it applies to Associate, Bachelor, and Master Degrees.

**Position Of The Union:** It is the position of the Union that it is merely seeking parity with the Patrol Unit as it applies to the Associate and Bachelor Degrees. It is further the position of the Union that the allowance for work in pursuit of a Masters Degree has not been adjusted to meet rising costs.

**Position Of The City:** The City presented no compelling argument against achieving parity.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the position of the Union as it applies to the Associate and Bachelor Degrees is not only reasonable but also is consistent with the treatment afforded the Patrol Unit. However, it is the opinion of the Fact-Finder that no persuasive evidence was presented to support the increase in the allowance for studies in pursuit of a Masters Degree.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 16, Section 4 should read as follows:

**ARTICLE 16 - MISCELLANEOUS ALLOWANCES**

**SECTION 4 - EDUCATION ALLOWANCE**

**Section 4. Education Allowance:** Bargaining Unit members who obtain a law enforcement or related Associate, Bachelor's or Master's Degree shall be for the highest degree obtained as follows:

Associate Degree	\$16.16 per bi-weekly pay period
Bachelor Degree	39.39 per bi-weekly pay period
Master Degree	46.15 per bi-weekly pay period

Related degrees shall be decided by an agreement between the Police Chief and the Director of Public Service and Safety.

**ARTICLE 17 - SICK LEAVE**

**SECTION 5 - BEREAVEMENT LEAVE**

**Issue:** This issue, proposed by the Union, seeks to add a section providing for bereavement paid leave.

**Position Of The Union:** It is the position of the Union that other bargaining units within the City of Warren receive this benefit. It is also the position of the Union that this type of benefit is almost universally present in comparable jurisdiction.

**Position Of The City:** The City presented no compelling argument against this proposal.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the proposal is not only reasonable but consistent with provisions within the City but also in comparable communities.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 17, Section 5 read as follows:

**ARTICLE 17 - SICK LEAVE**

**SECTION 5 - BEREAVEMENT LEAVE**

**Section 5. Bereavement Leave:** In the event of a death in the employee's family, (spouse, parent, stepparent, child, stepchildren, brother, sister, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law or sister-in-law), the employee shall be granted no less than three (3) days and up to five (5) days of bereavement leave and must include the day of the funeral. Such leave shall be paid, but not deducted from

the employee's accumulated sick leave. Additional time may be approved by the Director of Public Service and Safety or his/her designee for special circumstances and emergencies. Any additional time shall, with the agreement of the Director of Public Service and the employee, be charged to the employee's accumulated sick leave or vacation leave.

Two (2) days of accumulated sick leave may be used when the death of a non remote relation.

## **ARTICLE 22 - HOLIDAYS**

### **SECTION 1 - PAY FOR HOLIDAYS WORKED**

**Issue:** The issue, proposed by the Union, seeks to add Police Memorial Day (May 15) as a paid holiday.

**Position Of The Union:** It is the position of the Union that it is merely seeking parity with the Patrol Unit.

**Position Of the City:** It is the position of the City that it is willing to grant the additional holiday, but wishes to reserve the right to schedule the officer to work or equal work that day.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that if he is reading the exhibits correctly all paid holidays are subject to scheduling in the Patrol Unit. This restriction, therefore, does not appear unreasonable.

**Recommendation Of The Fact-Finder:** It is the recommendation of the Fact-Finder that Article 22, Section 1 read as follows:

**ARTICLE 22 - HOLIDAYS**

**SECTION 1 - PAY FOR HOLIDAYS WORKED**

**Section 1: Pay for Holidays Worked:** Hours worked by a number of the bargaining unit under this Agreement on any of the holidays specified below shall be paid at the rate of time and one-half (1-1/2) for each hour of work plus eight (8) hours of additional holiday pay. These worked hours shall be deemed overtime.

The First Day of January	The First Monday of September
The Third Monday of January	October 12
The Third Monday of February	November 11
May 15	The Fourth Thursday of November
The Last Monday of May	December 25
July 4	

Officers may be scheduled off on May 15<sup>th</sup> as exclusively by the City.

**ARTICLE 22 - HOLIDAYS**

**SECTION 2 - PAY FOR HOLIDAYS NOT WORKED**

**Issue:** This issue, proposed by the Union, has two facets. The first deals with abandoning the calendar year cycle in favor of adopting a 365 day cycle commencing after each illness. The second deals with the award being granted in cash rather than time.

**Position Of The Union:** It is the position of the Union that an illness in the early part of the calendar year unduly prolongs the time in which the employee may earn an award.

As to the cash basis rather than the time basis, the Union points to the audit conducted by the State of Ohio for support; i.e., maintaining levels.

**Position Of The City:** It is the position that the present system is similar to all other bargaining units with which it deals.

It is also the position of the City that this present system is similar to all other bargaining units with which it deals.

It is also the position of the City that this proposal could be an administrative nightmare.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that the adoption of this proposal could result in additional cost to the City inasmuch as a new benefit year would begin immediately after an absence due to illness.

It is also the opinion of the Fact-Finder that the adoption of this proposal would result in disparate treatment among the various bargaining units.

It is further the opinion of the Fact-Finder that the adoption of its proposal would place an administrative burden on the City with possibly some attendant cost.

As to the change to a cash basis from a time basis, the Fact-Finder does not feel that the State of Ohio had this unit in mind when it mentioned maintaining staffing levels inasmuch as the audit was critical of the number of rank officers.

**Recommendation Of The Fact-Finder:** The recommendation of the Fact-Finder as to Article 24 is as follows:

**NO CHANGE**

**ARTICLE 25 - HEALTH CARE BENEFITS**

**SECTION 2 - VISION CARE**

**Issue:** This issue, proposed by the Union, seeks a Seven Dollar (\$7.00) a month vision care benefit.

**Position Of The Union:** It is the position of the Union that it is merely seeking parity with the Patrol Unit.

**Position Of The City:** It is the position of the City that it did not wish to bargain a new benefit.

It is further the position of the City that vision care coverage could be obtained at that amount.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that this proposal is reasonable and consistent with that of the Patrol Unit which has been receiving \$6.75 towards vision care.

**Recommendation Of The Fact-Finder:** The recommendation of the Fact-Finder as to Article 25, Section 2 is as follows:

## **ARTICLE 25 - HEALTH CARE BENEFITS**

### **SECTION 2 - VISION CARE**

**Section 2 - Vision Pay:** The City shall contribute Seven Dollars (\$7.00) per month per employee towards vision care insurance coverage. Each employee shall be responsible for all costs in excess of the contribution made by the City. The insurance carrier to be selected by the City and the Union.

### **ARTICLE ?? - DETRIMENTAL FORCE/ CRITICAL INCIDENT**

**Issue:** This issue, proposed by the Union, seeks to provide counseling in the case of unusually traumatic incidents.

**Position Of The Union:** It is the position of the Union that the Ohio Labor Council has provided service through its Critical Incident Response Service Program (CIRS).

It is also the position of the Union that at least one former Chief had promised some policy in this regard.

**Position Of The City:** It is the position of the City that it did not wish to expand its benefit programs.

**Opinion Of The Fact-Finder:** It is the opinion of the Fact-Finder that although ordinarily police and fire personnel are not as easily traumatized as the general public, there are situations in which counseling or other therapy is necessary and should be available.

It is also the opinion of the Fact-Finder that any such plan should be administered in such a manner as to avoid possible abuse.

**Recommendation Of The Fact-Finder:** The recommendation of the Fact-Finder as to Article ?? is as follows:

**ARTICLE ?? - DETRIMENTAL FORCE/ CRITICAL INCIDENT**

If the City, in its sole discretion, places an employee on administrative leave due to detrimental force or critical incident, it shall be without loss of pay or benefits.

The City will provide counseling for any such employee on administrative leave.

  
ROBERT C. DEVLIN  
FACT-FINDER

Dated: March 21, 2001

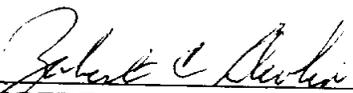
**CERTIFICATE OF SERVICE**

A copy of the foregoing Report and Recommendations has been sent to the following individuals by Overnight Express (unless otherwise indicated) on this 21<sup>st</sup> day of March, 2001.

Jeffery J. Taylor (By Regular U.S. Mail)  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215

Gary C. Cicero  
Director of Human Relations  
City of Warren  
391 Mahoning Ave., N.W.  
Warren, Ohio 44483

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ROBERT C. DEVLIN  
FACT-FINDER