

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of Fact Finding	*	
Between	*	FINDINGS
	*	AND
OHIO PATROLMEN'S BENEVOLENT	*	RECOMMENDATIONS
ASSOCIATION	*	
	*	01-MED-04-0443
	*	01-MED-04-0444
and	*	
	*	Anna DuVal Smith
CITY OF WILLOUGHBY HILLS	*	Fact-Finder
	*	

Appearances

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I. SUBMISSION

This case concerns two police units bargaining with the City of Willoughby Hills, Ohio ("City"), the full-time Patrol Officers, of which there are twelve, and the full-time Sergeants, of which there are five. These officers were formerly represented by the Fraternal Order of Police Lodge 116, whose contracts with the City expired on December 31, 2000. Prior to their expiration, SERB was petitioned for a representation election, which was conducted in February 2001. The result of this election was selection of the Ohio Patrolmen's Benevolent Association ("OPBA") as exclusive representative for both bargaining units. Negotiations commenced thereafter, but without resolution of all differences between the parties. Accordingly, the undersigned was appointed fact-finder pursuant to R.C. Chapter 4117 on June 19, 2001. The parties subsequently waived the statutory deadlines and continued to negotiate, but without success. A fact-finding hearing was therefore convened at 10:00 a.m. on August 2, 2001, at City Hall in Willoughby Hills. Pre-hearing statements were timely filed on August 1. Twelve issues were presented: No-Strike, Seniority, Overtime Pay Adjustment, Uniform Allowance, Vacation, Holidays, Longevity, Insurance, Salary, Education, Arbitration and Injury Leave. Present for the OPBA were Duane A. Petrovich, David D. Broadwater and Brian J. Jackson. Present for the City were Finance Director Brian Condron, Chief of Police Christopher J. Collins, and Mayor Martin B. O'Ryan. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions. The oral hearing concluded at 6:00 p.m. on August 2, 2001, whereupon the record was closed. Thereafter the Fact-Finder was granted extensions until October 5, 2001.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

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

II. ISSUES

Article VI - No-Strike

Positions of the Parties

The OPBA seeks to eliminate Section 6.04, which provides as follows:

It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate discharge or other disciplinary action as determined solely by the Employer, without the employee having any recourse to any grievance or appeal procedure herein contained.

The OPBA asserts that this language is harsh in that it waives bargaining unit grievance rights. These rights are needed to protect members from discipline resulting from a false belief that an illegal work stoppage or slowdown had occurred. While this has not happened in Willoughby Hills, the fact that the City of Cleveland recently falsely accused its police of engaging in a slowdown shows it could happen. The OPBA is willing not to contest the penalty for violation of the no-strike provision, but believes the fact of an alleged violation should be appealable.

The City prefers to retain current language, which it says has existed for a long time without any problem. It should, therefore, be kept in place.

Findings and Recommendation

The Fact-Finder agrees with the OPBA that Section 6.04 is harsh in that it waives basic due process rights. On the other hand, the City has an interest in assuring uninterrupted service during labor disputes. While the Fact-Finder is loathe to alter a provision that has existed for some time without a problem, this provision has apparently never been put to the test. When it is possible to prevent a problem that would be difficult to cure once it occurred, an exception to the normal, conservative fact-finder practice may be warranted. Such exists in this case and a reasonable solution meeting both parties' interests was suggested by the OPBA. I therefore recommend that Section 6.04 be modified as follows:

The Employer's finding of violation of this provision is subject to the grievance procedure, but if an arbitrator finds a violation has occurred, the arbitrator has no authority to modify the discipline, up to and including discharge, of the employee committing the violation.

Article IX - Seniority

Positions of the Parties

The OPBA wants to replace the current Article 9.04 with what it claims the City has already agreed to in a side letter:

Unless mutually agreed otherwise, employees shall be assigned a work schedule consisting of six (6) days worked and two (2) days off with rotating days off for patrol officers.

It argues that the system has worked well and that the City's management rights are already limited by the present Section 9.04. The OPBA merely wants to incorporate the modification negotiated during the life of the current agreement and ensure that its terms cannot be changed

without mutual consent. In its view, the City has already bargained away control of scheduling. Since it has agreed to language defining a "regular schedule," the OPBA is entitled to certainty of what the "regular schedule" will be for the next three years.

The City vigorously objects to the Union's proposal because, in its view, the side letter gives the City the right to revert to a five-on, two-off schedule or any other schedule with notification to the OPBA. All three comparable jurisdictions (Kirtland, Madison Township and Mentor-on-the-Lake) retain employer scheduling. The City proposes to extend the side letter (attached as Appendix A) for three more years and would even agree to place it in the body of the Agreement as Section 9.04 but it cannot agree to the CPPA's language because it will not cede its right to change the schedule. While the six-on, two-off scheme has been beneficial, the City's need to control the schedule is particularly important because the department is a small one.

Findings and Recommendation

The fact that the OPBA wants to rewrite the substance of the side letter suggests that it does not have a great deal of faith in its claim that the City has already ceded its control of scheduling. The OPBA has a place to test the City's authority, should the need arise. The Fact-Finder therefore sees no reason to disturb what has been working. She accordingly recommends continuation of the substance of the side letter.

Article XVI Overtime-Pay Adjustment

Positions of the Parties

The OPBA wants to add language to Section 16.01 requiring payment of overtime for all hours worked in excess of eight (8) in a 24-hour period. It also proposes to count sick leave in the computation of eligibility for overtime pay. The OPBA believes the 40-hour eligibility is

unfair and that excluding sick leave creates a windfall for the City. Officers who work beyond their required schedule and who miss work because of illness, lose overtime. The City opposes this change to Section 16.01, which currently provides for overtime pay after forty hours in a work week and does not include sick leave in the determination of eligibility. It points out that the OPBA did not include overtime in its comparable data because the vast majority use forty hours in one week or eighty in two weeks. As for the inclusion of sick leave, no one in the City gets sick leave included in their overtime calculation and neither do other communities' employees. The City argues this section should be retained without change for the sake of consistency.

The OPBA also brought a proposal on court time to fact-finding but withdrew it during the hearing. However, it does seek to increase call-in pay from a minimum of two hours to a minimum of four hours at straight pay, arguing that it stands last among comparable communities. The City offers three hours (which it did for the dispatchers), but also wants to include a definition of call-in and exclude minimum court time and call-in hours in the calculation of overtime because including these as hours worked for the purpose of overtime essentially double counts them. The OPBA opposes the City's proposal because the definition and restrictions sought would wipe out all opportunities to earn call-in pay, which is compensation for disruption to private lives.

Findings and Recommendation

With respect to Section 16.01, the data from other communities do not support the OPBA's proposal for overtime after 8 hours and inclusion of sick leave in determining eligibility. I therefore recommend current language.

On the other hand, the OPBA's eight Lake County comparison municipalities provide an average of 2.875 hours (straight time) call-in pay.¹ Some improvement here is therefore warranted, but the OPBA's proposal would leapfrog the City from last to first, whereas the City's proposal puts them above average. On the other hand, while the City's contract with the dispatchers does provide 3 hours call-in pay, it does not include the restrictions the City seeks herein. In the absence of an explanation for why patrol officers and sergeants should be faced with these restrictions when the dispatchers are not, the Fact-Finder cannot recommend them. The recommendation for Article XVI is, therefore, to increase call-in minimum from 2 to 3 hours and, except for the tentative agreement achieved by the parties, to leave the rest of the article undisturbed.

Article XVIII - Uniform Allowance

Positions of the Parties

The OPBA seeks to increase the annual uniform allowance from \$800 to \$1000. It says this increase is justified for two reasons. One is the increased cost of uniforms which are required for all four seasons. The OPBA believes its uniforms are more expensive than the dispatchers' because the dispatchers do not work outside and do not need duty belts and web gear, yet dispatchers receive nearly as much as the patrol officers and sergeants do. The second reason to recommend the OPBA's request is that this is a way to improve the economic package without departing from the citywide pattern and without subjecting the City to roll-up costs. The

¹The Fact-Finder was unable to find any call-in minimum in the Kirtland contract, so believes Union Ex. 11 mistakenly reports court time as call-in time.

fact that the dispatchers receive nearly as much as patrol officers shows that the City is not adverse to using this benefit as an economic sweetener.

The City came to fact-finding with a proposal for \$25 annual increases to the uniform allowance, but will agree to upfront \$75 in the first year of the agreement as it did for the dispatchers. It submits that the Union's comparables show the City does not lag in uniform allowance for its police and that its proposal constitutes appropriate inflationary increases.

Findings and Recommendations

Even considering the OPBA's choice of comparison communities, the Willoughby Hills police enjoy a higher than average uniform allowance. Indeed, of all the communities relied on by both parties, only Highland Heights and Willoughby have a higher uniform allowance. Under the circumstances, it is better to put available dollars into areas in which the City lags behind its neighbors. The Fact-Finder recommends that the allowance be increased in the same pattern as it was for the dispatchers, who received \$775/\$800/\$800. For the patrol officers and sergeants, this would be \$875/\$900/\$900.

Article XIX Vacation

Positions of the Parties

The current benefit provides for vacation after one year according to the following schedule on a "use it or lose it" basis:

<u>Years</u>	<u>Hours</u>
After 1 year and 1 day, less than 2	40
2 but less than 8	80
8 but less than 12	120
12 but less than 16	160
16 or more	200

The OPBA seeks elimination of the forfeiture rule, replacing it with the right to carry over up to two weeks of vacation per year. It also proposes that new hires earn vacation at the rate of 1 hour/52 hours worked up to 40 hours per year and that after one year of employment, vacation be earned by the following schedule:

<u>Years</u>	<u>Hours</u>
After 1 year	80
5	120
10	160
15	200
20	240

The OPBA argues that the schedule improvement is justified by its comparables. In addition, because there is no compensatory time in the department, it is important to add vacation accrual for new hires so they have some time off besides sick leave and personal time. With respect to the City's argument on overtime, the OPBA points out that unfilled positions and the forfeiture rule create overtime. Filling positions and allowing some carry-over would thus alleviate the impact on the City.

The City rejects all the OPBA's demands on vacation, saying first that the current plan is consistent with that for all City employees whether unionized or not. The dispatchers have agreed to it and service department employees did not even have it on the table. A different plan is not warranted for a small segment of employees. Moreover, it is not justified under the overall package and increases proposed. What is more, employees in Willoughby Hills reach the top step sooner than employees in other communities do. With respect to accrual for new hires, the City points out that each employee may use up to four sick days per year for personal use, therefore new employees do have paid time off in their first year of employment. Regarding the

absence of vacation carry-over, the City says this was bargained at length in the last round of negotiations. The Union agreed with the City that the job is a stressful one and time off from it is important. Carryover can create a bookkeeping nightmare and make it difficult to fill positions with overtime when the time is eventually taken.

Findings and Recommendation

In the area of vacation, Willoughby Hills is woefully lacking at the lower steps. Every other comparison community cited, including the smaller ones used by the City, provide 2 weeks after a year of employment and 3 weeks after 5 or 6 years. Most grant 4 weeks after 10. It is only at 5 weeks where Willoughby Hills is a little better than its neighbors. On the other hand, the top step sought by the OPBA (30 days) is earned in only three other communities and so has not yet become the norm. In addition, this is a small department and the Fact-Finder is loathe to recommend longer vacations without knowledge of the likely impact on staffing. Improvement on the existing schedule is warranted even though it was a nonissue for other bargaining units, but only at the lower steps. With respect to new hires, they are currently provided for by personal use of sick leave. As for the forfeiture rule, the Fact-Finder sees no good reason to disturb it at this time. Accordingly, the Fact-Finder recommends changes only for Section 19.01.

<u>Years</u>	<u>Hours</u>
After 1 year	80
5	120
10	160
16	200

Article XX - Holidays

Positions of the Parties

Employees presently have eleven paid holidays. The OPBA wishes to increase this to twelve by adding Martin Luther King Day. It also wants all worked holidays paid at the overtime rate, and that overtime worked on holidays be paid at double overtime (i.e., three times the straight rate). Further, the OPBA wishes to accelerate holiday payment by vesting all employees with paid holidays at the beginning of the year rather than having them cash in unused holidays at the end of the year. While it concedes that Willoughby Hills is not as bad off in this benefit as it is in others, it submits that it is still below average. Moreover, this is another way to improve the overall economic package.

The City resists adding holidays. Eleven paid holidays is citywide practice. The police dispatchers agreed to it and it was a nonissue for the firefighters. The service department union proposed to increase the number of holidays, but ultimately agreed to the current benefit. Similar communities do have 12-13 paid holidays, but only Willoughby Hills employees are paid overtime when they work on selected holidays and the City is willing to increase the number of eligible holidays from six to eight. This is generous, argues the City, and should be looked at in light of the complete package offered by the City. Regarding the vesting issue, the City points out that new hires earn no paid holidays during their first year and then holidays are taken as earned or cashed in at the end of the year. In the City's view, it would be inequitable to grant holidays at the first of the year before they are earned.

Findings and Recommendations

In light of the vacation recommendation, the Fact-Finder is unable to recommend additional paid time off. Moreover, eleven paid holidays is not far off the average of the OPBA's six comparison contiguous communities. In addition, although all the City's comparison communities have more holidays than Willoughby Hills, the City is the only jurisdiction in that group paying overtime for worked holidays. In light of this, the Fact-Finder recommends the City's offer to increase to eight the number of overtime holidays. As for the so-called vesting issue, the Fact-Finder agrees with the City that this results in holidays being granted before they are earned. I therefore recommend current language for Sections 21.01, 21.02 and 21.03, but that effective in 2002, eight holidays be eligible for overtime pay.

Article XXIII - Longevity Compensation

Positions of the Parties

The Union wishes to add five more steps to the current schedule at \$100 each, topping off at \$2750 for 25 years. In its opinion, there is no reason to cap longevity before employees are eligible for retirement at 25 years of service. This is also another way to improve the overall economic package.

The City is willing to add three more steps to longevity, arguing this is very generous when compared to other communities and is the same as agreed to by the police dispatchers.

Findings and Recommendation

Even looking at just the municipalities used by the OPBA for comparison, Willoughby Hills' longevity benefit is adequate, exceeding the average (at the 10-year level) of the six contiguous communities and of the eight Lake County communities. Moreover, the only other

jurisdiction (for which steps were provided) having increases beyond the twentieth year tops out at less money than Willoughby Hills does at 15 years (Madison Twp, \$1,700 after 25 years). In light of this, the recommendation is the City's offer to add three steps: \$2,350 after 21 years, \$2,450 after 22 years, \$2,550 after 23 years.

Article XXV - Insurance

Background

The previous contract provided for major medical with a \$30/month employee contribution, a \$4 employer reimbursement on prescription drugs, \$100/month opt-out incentive and \$25,000 term life insurance. It also included a reopener on health insurance. At the reopener, all unions representing city employees participated, looking for major medical, dental and vision insurance, and the right to select the plan. Led by the F.O.P., which then represented the patrol officers and sergeants, the unions proposed a SuperMed Multiple Option Plan with vision and optional dental at premiums of \$181.17/\$362.82/\$504.84 (single/single + 1/family). The City was leery of the proposal, expecting significant increases in the second year in a "hook-and-reel" game by the new carrier, but it eventually went along with the proposal when the unions agreed to limit the City's potential exposure. The final agreement was a three-tiered system depending on whether the employee selected single, single + 1, or family coverage. Beginning March 1, 2001, at the family level, the City paid 100% up to \$490 per month, the employee paid the next \$50, if any, and they split "premium costs in excess of \$540" and the optional dental on a 90%/10% basis. The City says the cost to an employee electing the whole plan with family coverage was \$15.70 at first.

But, as predicted by the City, insurance premiums went up in the second year by 24.9 percent. The City applied the 90%/10% contractual language to yield an employee cost of fully-loaded family coverage of \$62, but it also got the carrier to agree to an alternative HMO plan which would cost the employee with family coverage \$56 per month.² When negotiations for the police patrol officers and sergeants contract commenced with the new representative, insurance was a major issue for both parties.

Position of the OPBA

The OPBA wants the City to pay all premium costs, implement a comprehensive dental plan, and double the life insurance benefit from \$25,000 to \$50,000. It maintains that the City's insurance costs are below the norm. In the Cleveland area, SERB data show average total family premiums to be \$641, probably in 1999 or including part of 2000. The City's \$505 premium was below the average. The unions did agree to contribute above \$540, but that was still below the Cleveland average and back in 2000. Today, the City is unwilling for 2002 to go above the \$540 it agreed to for 2000, yet the communities around it manage to pay all health insurance costs and they have better plans. The OPBA would be more willing to see things the City's way if it were part of an economic package that was not substandard, but the City's insistence on maintaining the \$540 cap in light of other communities' 100% employer-paid provisions chokes in the OPBA's craw.

Position of the City

The City proposes the current HMO major medical and vision plan (or similar plan selected by the City) and to cap its own contributions at \$185/\$375/\$520 per month through

²A grievance on the meaning of the 90%/10% language is outstanding.

March 31, 2002, \$195/\$390/\$540 effective April 1, 2002, and \$205/\$405/\$560 effective April 1, 1993. It would not reimburse employees for prescription drug costs not picked up by the HMO. Employees choosing dental insurance would do so at their own expense. Further, the City would retain the right to change carriers or to self insure. It would increase the opt-out incentive to \$135 and maintain the present level of term life insurance.

The City submits that it cannot do what the OPBA wants, which is to cover the entire cost of health insurance, now at \$622 per month for the PPO family plan with dental. The OPBA's proposal would guarantee layoffs. The day of fully-paid health coverage is over. SERB data shows that state-wide, public employees pay a portion of their insurance costs and the figures reflect the same as the current plan. The City tried splits from 80/20 to 90/10, and all it got from the OPBA was "No." Even Mentor-on-the-Lake has a buffer of \$75. Highland Heights has more money, so can afford more. When the last insurance agreement was negotiated, the City knew its cost would go up, but it never expected it to be by 25 percent. It could not negotiate rates with the carrier. All it could do was seek another plan, and that meant a smaller network. The OPBA has selected the last three plans and still it complains when costs go up. Both parties want to cap costs. The City prefers a 90%/10% split because the City can better afford 90 percent than the employees can afford more than 10 percent, but employees are going to have to pay something.

Findings and Recommendation

Although the problem here arose because of the explosive growth in the City's insurance premiums, a related issue is the quality of health care coverage. Faced with rapidly rising health care costs, the City wants to realize savings by moving to an HMO. The OPBA does not want the HMO because of its limited network of providers, but it is unwilling to pay more to get the

plan it favors. It wants the City to pay all costs for the kinds and quality of insurance desired by its members. The OPBA cannot have its cake and eat it, too. Unless it is willing to put its money where its mouth is, it cannot expect to have the kind of insurance it seeks.

There is enormous variety in insurance provisions across the state, but one thing is clear: the majority involve some kind of cost sharing (63% in 2000, according to SERB). In the Cleveland region, which includes Lake County, the SERB data published in 2000 show average employee contributions of \$18.03/\$48.33 or 8.8%/8.9% (single/family). For small cities (under 25,000), the average is \$20.51/\$47.06 or 9.4%/8.4%. The local data supplied by the parties is difficult to interpret, but of all those in the Fact-Finder's combined list of comparison communities (see Salary Schedule below), all (except Highland Heights which has a large carryforward) have dollar-per-month cost sharing by employees, at least of increases in premiums. A review of the Mancini-brokered agreement shows the parties agreed to roughly a 90%/10% split, assuming a base of \$540/month in 2000. The City was to have picked up the first 91% of \$540 at the family level (\$490), the employees would pick up the next 9% (\$50), and they would share after that on a 90%/10% basis. It is my recommendation that they maintain approximately the same practice of sharing future risk, using \$540 as the employer's initial contribution:

The employer shall contribute \$540 per month for family major medical and vision insurance. To the extent that premiums exceed \$540, employees shall contribute the next \$54 per month. To the extent that premiums exceed \$594 per month, the employer and employee shall split the amount exceeding \$594 on a 90%/10% basis.

I further recommend that the base figure for single + 1 be fixed at \$390 per month and for single at \$195 per month, with the employees picking up the next \$39 (single +1)/\$19.50(single), then

splitting 90%/10% the amounts exceeding \$429 (single + 1) or \$214.50 (single). Optional dental insurance should be made available at a 90%/10% split. Assuming the insurance carrier will make both the HMO and PPO available, employees should have the option of selecting their preferred plan. Finally, I recommend there be no increase in term life insurance and that there be no employer pick-up of employees' out-of-pocket expenses for prescription drugs.

Article XXVI - Salary Schedule

Position of the OPBA

The OPBA proposes to increase the differential between sergeants and patrol officers from 10% to 12%. It also wants to increase base rates 5% per year retroactive to January 1, 2001, and to establish a Step 4 rate 5% above the Step 3 rate. Further, the OPBA proposes a new economic benefit in the form of special capacity pay of 2% of base salary for proficiency in six different areas.

The OPBA argues that a substantial pay increase in Willoughby Hills is warranted by an unfavorable wage position relative to surrounding communities. It objects to the City's reliance on Kirtland, Mentor-on-the-Lake, and Madison Township because those are rural communities. Instead, it offers two sets of comparable communities, a group of seven contiguous ones and another of eight in Lake County. It then compares them to Willoughby Hills on top pay, rank differential, general wage increases through 2003, and other economic benefits. Even when the highest and lowest paid departments are eliminated, the City is 3-4% behind its comparables and officers in the other departments have higher rank differentials and general wage increases in the immediate future of 3.5-4% per year.

The OPBA urges the Fact-Finder to discount the City's position that it is hamstrung by the dispatchers contract. The firefighters and service department have not settled. One group does not a pattern make. Moreover, clerks, who are unrepresented, were given raises of 8% or above. The OPBA argues that not only is a substantial raise justified by the comparables, but the City has the ability to pay a fair wage. The OPBA's proposal merely presents alternative ways to address the economic inequity and so the Finance Director's cost figures are overstated. In the opinion of the OPBA, the cost of any one of its proposals is not terribly far apart from the cost of the City's offer.

Position of the City

The City rejects an increase on the rank differential and any form of special capacity bonus. Its offer on wages is an increase of 3% in each of the contract years. It argues this offer should be recommended for several reasons. First, Willoughby Hills is a small residential community of about 8,800 residents. Its principal source of income is tax revenue. Last year general operating revenues were \$5.1 million. As of July 31, 2001, collections were running a little behind last year's. Compared to the rest of Lake County where 2% is the norm, the income tax rate in Willoughby Hills is 1½%. Investment income is declining as the Federal Reserve lowers interest rates. The finance director hopes the City's finances will stay on an even keel, but rising fuel prices, an increase in the City's workers compensation rate and a possible major sewer project are concerns. In short, the City has a limited ability to pay.

Except for the service department, all employees are paid out of the general fund and the City treats all employees alike with respect to wage increases and general benefits like vacations. The City has already settled with the dispatchers, who are also represented by the OPBA, and has

a tentative agreement with the firefighters for 3.75%/4%/4%. The finance director thinks the City can afford this for the police, but cannot go higher. The difference between the City's offer of 3%/3%/3% and the OPBA's demand for 5% per year general wage increases, an additional step, larger rank differential and proficiency bonuses amounts to \$219,214 (including roll-ups) over the three year period. These demands are excessive and would result in layoffs.

The City further agrees that its police are amply paid when compared with the few other municipalities similar to Willoughby Hills. The City submits that the appropriate comparison communities are the similarly-sized Madison Township, Mentor-on-the-Lake, and Kirtland, which also have carryforwards under \$1 million and general operating revenues in the \$3.5-\$5.5 million range. Except for Kirtland, none have special capacity pay, but even when that is taken into account, Willoughby Hills' top patrol officer pay of \$46,238 exceeded all others by \$3,400 or more in 2000. It also ranked first when other forms of compensation, such as longevity and uniform allowance are taken into account. Willoughby Hills' sergeants, too, earned more than sergeants in the other communities, although two have higher rank differentials. In sum, argues the City, the demands of the OPBA are not justified when Willoughby Hills' police officer compensation is compared with other jurisdictions with similar spending abilities.

Findings and Recommendation

To begin with, because of Willoughby Hills' size and geographic location, it is difficult to determine an appropriate comparison group of communities. The OPBA offers two groupings, one of Lake County municipalities, another of communities contiguous to Willoughby Hills. The City offers a smaller grouping of similarly-sized communities. The City's omits contiguous departments with whom Willoughby Hills' police interact and with whom they would naturally

compare themselves, but the OPBA's groupings include a number of much larger jurisdictions and some whose economies are quite different from the City's. Eastlake, Mentor and Willoughby are far larger than Willoughby Hills, and Mayfield Village is much smaller. The Fact-Finder, while observant of their compensation, gives them little, if any, weight. Wickliffe has much larger general operating revenues (\$12 million compared to \$5.1 million) and Highland Heights enjoys a \$3.2 million carryforward compared to Willoughby Hills' \$0.5 million. These characteristics, too, must be taken into account. No matter what grouping one uses, however, it is clear that the City's police have come a long way since the 1989 factfinding when Prof. Graham found the police to be "well below the going rate." Total compensation of \$48,939 (including educational pay) is 94.9% of the OPBA's own contiguous group's average of \$51,595 (excluding Willoughby Hills) and 97.8% of the Lake County's average of \$49,941 (excluding Willoughby Hills). A blended grouping that excludes the larger Eastlake, Willoughby and Mentor and the smaller Mayfield Village, but includes Madison Township (similarly-sized and with approximately the same general operating revenue) from the City's list, puts Willoughby Hills nearly equal to the average (99.5% of \$49,186). I conclude that Willoughby Hills no longer lags its similarly-situated neighbors. With general wage increases in the area running 3.5%-4% per year, the dispatchers' settlement of 3.75%/4.0%/4.0% (and what was extended to the firefighters) would maintain their relative position and keep them ahead of inflation. It is also affordable, according to the finance director and what the City felt it could pay other units.

With respect to rank differential, 10 percent sill remains the norm in the area, except for the larger municipalities of Eastlake, Mentor and Willoughby. Highland Heights has 12 percent,

but it also has a much larger carryforward than the others. Mentor-on-the-Lake has 13 percent, but no longevity. No increase is recommended.

I also recommend no special capacity pay or an additional step inasmuch as the former is still not the norm in this region and the general wage increase will maintain the department's relative wage position.

Article XXVII - Educational Pay

Positions of the Parties

The present provision, which currently applies to three people, grants 3% for an associate degree in a field related to criminal justice and 5% for a bachelors, capped at \$450 and \$750 per year respectively. The OPBA proposes to eliminate the caps and to roll the bonus into the wage rate. The City rejects this proposal, saying that most contracts in the area provide separate educational bonuses and that the City already includes it in the "total rate" for purposes of overtime pay calculations in accord with FLSA. The City sees no reason to change what is reasonably fair and working reasonably well.

Findings and Recommendation

Unless the City has a preference for degreed police and is having difficulty attracting them, there is no reason to improve this incentive. Assuming the money to fund the OPBA's proposal were available, it would be better spent where it would affect more of the bargaining unit or targeted to solve a specific problem. I therefore recommend no change to Article XXVII.

Article XXXV - Arbitration Procedure

Positions of the Parties

The OPBA proposes to eliminate the current Section 35.07 which establishes a permanent panel of arbitrators for hearing grievances. In its place it seeks an FMCS or AAA selection process. It objects to the current provision for several reasons. First, the panel members are unacceptable to the OPBA, too busy to provide timely hearing dates, or are lacking in exposure to the bargaining unit. Second, there is too little volume to warrant a permanent panel.

The City wants to retain the present system and its panel members. There have been no arbitrations in the past three years and perhaps not in the last fifteen. Since the system is without problems, it does not need revision. A permanent panel provides regularity and stability, and at lower cost than AAA-administered arbitrations. Within the City, the dispatchers, firefighters and Teamsters all use three-arbitrator panels with considerable overlap of panel members. Madison Township also has such a system. In the City's view, the Union's only objection—that it does not like the arbitrators or the system—is not sufficient reason for change. The City would, however, agree to adding two more members with one chosen by each side.

Findings and Recommendation

Successful arbitration depends on the mutual acceptability of the neutral chosen by the parties. The current permanent panel system does not provide any mechanism for replacing panel members except when both parties agree. However, it takes only one party's loss of confidence in a neutral to destroy the mutual agreement necessary for effective functioning of arbitration. The parties are thus left with a panel that is not mutually acceptable. It is true that the parties have not used arbitration for some years (for which they are to be commended), but

the time to restore mutual acceptability is before arbitration, not after. In light of the OPBA's lack of confidence in the present permanent panel which was agreed to by the predecessor representative, I recommend that the parties deal with the issue now. However, I see little reason to change the permanent panel system. Even when there is low volume, as there is here, there are advantages of speed and cost to pre-selecting a group of neutrals known to be knowledgeable and fair. For this reason, I recommend refreshing the panel only, leaving the underlying system intact:

35.07 Within thirty (30) days of execution of this Agreement, the parties will meet and attempt to agree on no less than three (3) arbitrators to serve as permanent panel members for the duration of this Agreement. If all necessary panelists cannot be mutually agreed upon, the parties shall request a list of fifteen (15) arbitrators from the American Arbitration Association. The parties shall then select by alternate striking of names until the panel is filled. A coin toss shall determine which party strikes first.

Article XXXVI - Injury Leave

Current Provision

The current provision provides for 90 days of injury leave if the employee is entitled to temporary total disability, but if the employee's workers compensation claim is disallowed, the employee reimburses the City. There is no deduction from sick leave unless the employee's claim is disallowed, but if benefits are approved, then the employee assigns them to the City. Employees do not earn sick leave while out but do accrue seniority up to one year.

Positions of the Parties

The OPBA wants to increase the maximum leave to 120 days, which it says is not even as high as the average of 154 days it calculates for its comparison group. It also proposes to delete the rule that injury leave stops when workers compensation benefits are received and to

substitute language granting accumulation of all benefits during the injury leave and/or workers compensation period. The OPBA argues that the probability of on-job injury is high in this occupation and that the present provision is unusually and unjustifiably short, and exposes injured employees to paid loss of contractual benefits.

The City opposes extending mandatory injury leave but offers to extend it on a discretionary basis for an additional 90 days as part of a redesigned injury leave provision. Under this plan, employees would not file for temporary total disability while on injury leave, but would be required to file an allowance/medical benefits-only application. All contractual benefits would continue during those 90 days. Denials of injury leave after the initial 90 days would not be grievable, but the employee would then be able to file for temporary total disability or wage loss benefits under workers compensation. The City argues that this proposal is substantially more than what is currently provided, that the other bargaining units liked it, and that it benefits the City as well as employees because it helps the City with its rating system. In response to the OPBA's complaint that the scheme would lead to discontinuity in the affected employee's income because of the delay between filing for and payment of benefits, the City says it would look at a proposal permitting employees to file for workers compensation before their injury leave is exhausted.

Findings and Recommendation

The Fact-Finder finds the City's proposal as set forth in City Ex. 23 (attached hereto as Appendix B) to be a reasonable improvement on the present injury leave benefit (which is shorter than average). She therefore recommends it, with the addition of language permitting the

employee to file for workers compensation benefits to commence upon exhaustion of approved injury leave.

IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Article VI - No-Strike	6.04 Penalty for violation not arbitrable
Article IX - Seniority	Continue substance of side letter (Appendix A)
Article XVI - Overtime-Pay Adjustment	16.01 Current language 16.03 Call-in pay: 3 hours minimum at straight time
Article XVIII - Uniform Allowance	\$875/\$900/\$900
Article XIX - Vacation	1/5/10/16 years = 80/120/160/200 hours
Article XX - Holidays	20.01 Add 2 holidays eligible for overtime 20.02 & 20.03 Current language
Article XXIII - Longevity	Add 21/22/23 years = \$2,350/\$2,450/\$2,550
Article XXV - Insurance	\$195/\$390/\$540 as described on p. 16
Article XXVI - Salary	3.75%/4%/4% retroactive to 1/1/2001
Article XXVII - Educational Pay	Current language
Article XXXV - Arbitration Procedure	Refresh permanent panel
Article XXXVI - Injury Leave	Redesigned system as proposed by the City with modification to avoid discontinuity in injured employee's income stream

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

October 5, 2001
Cuyahoga County, Ohio

APPENDIX A

ADDENDUM TO THE AGREEMENT
BETWEEN
FRATERNAL ORDER OF POLICE, LODGE #116 (PATROL OFFICERS)
AND
THE CITY OF WILLOUGHBY HILLS

Whereas, the following is an Addendum to the collective bargaining agreement between the City of Willoughby Hills and the Fraternal Order of Police Lodge #116, Patrol Officers, for the three year term commencing September 18, 1998; and

Whereas, this Addendum shall be attached to the original Agreement, and shall be considered part thereof, and any inconsistencies herewith shall be resolved in favor of the Addendum; and

Whereas, the parties have mutually bargained over the issues relative to a work schedule (re: Article IX - 9.04) consisting of six days worked and two days off with rotating days off, and the various effects that same will have on the balance of the contract between the parties; and

Whereas, the parties fully understand that the employer, the City of Willoughby Hills is not giving up its management rights which allow the Chief of Police to schedule all employees; and, the parties further recognize that the Chief of Police and the City of Willoughby Hills are willing to allow a work schedule of six days worked and two days off with rotating days off on an experimental basis only, same being terminable by the City of Willoughby Hills with thirty days advance notice; and

Now, therefore, based upon the mutual agreements between the parties, it is agreed as follows:

1. Effective on or about _____, 2000, a work schedule consisting of six days worked and two days off with rotating days off for patrol officers will be implemented by the Chief of Police.
2. The six days worked and two days off with rotating days off will be on a trial basis only, with the understanding that if there are any problems or difficulties with the scheduling of such shifts, or the performance of the officers thereunder in the exclusive opinion of the Chief, that the Chief of Police can unilaterally, and without any further bargaining or discussions with the FOP or its members, discontinue such six day work schedule, and revert back to an assigned regular five day work schedule with two consecutive days off, with thirty days advanced notice to the Fraternal Order of Police.

IN WITNESS WHEREOF, the parties have hereunto signed by their authorized representative this _____ day of _____, 2000.

FOR THE F.O.P.:

Fraternal Order of Police
Lodge No. 116 (Patrol Officers)

FOR THE EMPLOYER

City of Willoughby Hills

Mayor / Safety Director

APPENDIX B

ARTICLE XVII INJURY LEAVE

17.01 Add new provision as follows: "In the event an employee suffers a service connected injury while in the active duty and for which the employee would have been entitled to receive temporary total disability benefits from the Workers Compensation Bureau, the employee shall receive his full pay for a maximum of ninety (90) calendar days. This injury benefit may be extended at the sole discretion of the Employer. The employee will file an allowance/medical benefits only workers compensation application. If the workers compensation claim is disallowed by reasons of not being work related by the bureau of workers compensation and/or the Ohio Industrial Commission, then the Employer is entitled to reimbursement by that employee, which employee may make the reimbursement by case or paid leave, at the election of the employee. Denials of extended injury leave (after 90 calendar days) shall not be grievable."

17.02 Add new provision as follows: "During the time an employee is on injury leave, such employee shall not file for temporary total benefits or wage loss benefits under the workers compensation laws."

CERTIFICATE OF SERVICE

I certify that on the 5th day of October, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

S. Randall Weltman, Esq.
Attorney for the Ohio Patrolmen's Benevolent Association
Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A.
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James A. Budzik, Esq.
Attorney for the City of Willoughby Hills
Johnson & Angelo
1001 Lakeside Avenue, Ste. 1700
Cleveland, Ohio 44114

I further certify that on the 5th day of October, I submitted this Report by mailing it to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.



Anna DuVal Smith, Ph.D.
Fact Finder