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**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**March 21, 2002**

**In the Matter of:** )  
 )  
**The Ohio Patrolmen's** )  
**Benevolent Association, Union** )  
 ) **SERB Case No. 2001-MED-10-0884**  
**and** ) **(Dispatchers/Jailors)**  
 )  
**The City of Barberton, Employer** )

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**FACT FINDER'S REPORT**

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**APPEARANCES**

**FOR THE UNION:**

**Merl Rich.....OPBA Negotiating Committee**  
**S. Randall Weltman.....OPBA Attorney**

**FOR THE CITY OF BARBERTON:**

**Raymond Flickinger.....Finance Director**  
**Karen Gaum.....Attorney**  
**Michael C. Kallai.....Police Chief**  
**Lisa Miller.....Director of Human Resources**  
**Leon Ricks.....Director of Public Safety**  
**William J. Rouse.....Ass't. Finance Director**  
**Gary Spring.....Attorney**

## BACKGROUND

This fact-finding report involves the City of Barberton and the Ohio Patrolmen's Benevolent Association, which represents full-time Dispatchers/Jailors, a separate bargaining unit within the police department, consisting of twelve positions when fully staffed by the City [City's Post-Hearing Brief, p.1]. At the time of this hearing, the City is staffing only eight of these positions.

The contract between the City and the Union expired on December 31, 2001, and, despite efforts to draft a new contract, the parties reached impasse on several significant issues. It is the goal of this fact-finding report to clarify the status of issues unresolved at the time of the fact-finding session, and to make findings of fact and recommendations for resolving the issues remaining in dispute.

The Fact Finding Hearing was conducted on Wednesday, February 6, 2002, at 12:00 p.m. and ended at approximately 4:00 p.m. The Fact Finder wishes to commend both parties for their preparation, informed participation, and the exemplary degree of professionalism and courtesy they exercised throughout the Fact Finding process.

In keeping with Rule 4117-9-05, the Fact Finder relied on the following criteria in making the recommendations included in this report:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public sector or private employment.

The Report follows and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

## INTRODUCTION

Each issue remaining in dispute at the time this hearing was convened will be addressed in this report. Several issues, as noted, were resolved during this hearing. For each issue remaining unresolved at the close of this meeting, the *Union's Position* and the *City's Position*, as presented at the hearing and addressed in post-hearing briefs, will be summarized and will provide the basis for the fact

finder's own *Discussion and Finding of Fact* addressing each issue.

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**ISSUE 1: ARTICLE 15 - WAGE RATES AND COMPENSATION**

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**Union's Position:**

- (a.) Increase the rate of Steps 2-7 by ten percent (10%) on January 1, 2002.
- (b.) Increase the rate of Step 1 by twenty percent (20%) on January 1, 2002.
- (c.) Increase all base rates of pay by five percent (5%) on January 1, 2003.
- (d.) Increase all base rates of pay by four percent (4%) on January 1, 2004.

**Rationale:** Unit members are asked to perform the duties of correctional officers [Union Exh. 4], a task not assigned to similar units in other towns. However, despite these additional assignments, comparison with similar Summit County Unit contracts shows that Barberton Dispatchers/Jailors are below average in base rate and economic package at every step [Union Exhs. 1,2,3].

In response to the City's assertion that it is struggling in the wake of hard economic times earmarked by the loss of tax revenue, the Union cites Barberton Mayor Randy Hart's January 23, 2002, speech to the city's Kiwanis and Rotary Clubs [Union Ex. 5] in which the Mayor gave assurances that "efforts in recent years to squirrel away money for economic doldrums, like these, will help the community weather a sharp drop in tax revenue." In that speech the Mayor refers specifically to the City's Emergency Fund, now containing \$1.1 million dollars, and to the Barberton Foundation created in 1996 by the sale of the Barberton Citizens Hospital, with more than \$90 million dollars presently in its coffers, as major sources of financial support.

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**The City's Position:**

- (a.) The City proposes a three percent (3%) increase in 2002.
- (b.) The City proposes a three percent (3%) increase in 2003.
- (c.) The City proposes a three percent (3%) increase in 2004.

**Rationale:** The City is unable to modify its proposal due to the bleak economic situation it is currently facing and anticipates it will face in the foreseeable future. Even after budget cuts of five percent (5%) to all departments, the City still faces a deficit of \$903,000 in its General Fund [City Exh. 2]. The deficit arises in the wake of a 3.24% decrease in income tax collection for 2001 [City Exh. 3].

In response to the Union's argument that the City has the money needed to fund the Union's proposal, the City argues that the "*minimum balance fund* only sets aside enough money to pay the City's bills for one month." Similarly, *the emergency fund* (\$1.1 million) is to be used only in the event of a severe economic downturn or

financial emergency.” The City maintains that neither fund is available for routine expenditures like salaries. Similarly, the City asserts that the Barberton Citizens Foundation, with resources of over \$90 million, “does not act as a funding source for the City to meet its operating needs.” The Foundation is a private, 501(c)(3) organization, providing grant funding for “discrete specific projects.”

The City also challenges the Union’s choice of comparable municipalities, noting that Barberton is an older industrial city that has suffered economic reversals. The Union’s comparable municipalities, Twinsburg, Cuyahoga Falls, Stow, Norton, Fairlawn, and Wadsworth differ in both size and economic status. The City offers Alliance, Massillon, and Stow as its own comparables [City Exhs. 7, 8, and 9], maintaining that these towns mirror Barberton’s experience with loss of business and tax base.

**Discussion:**

The Union supports its position by citing six comparable cities, all, like Barberton, within Summit County. In contrast, the City has selected only three comparables to support its position, and two of these cities, Alliance and Massillon, are in Stark, not Summit County. The use of comparables plays an important role in determining the fairness of each party’s proposals, and therefore should indeed be comparable, that is, cities compared should be located within the same geographic area, be of similar size and structure, and with comparable tax bases and fiscal resources/prospects.

The comparables offered by the City in support of its position do not fit this description. Alliance is a much smaller city, not in Summit County, and without the fiscal resources of Barberton. The City of Massillon also is not in Summit County, and, as testified, is part of a governmental consortium that shares dispatch services with several other communities. Of the City’s three comparables, only Stow is in Summit County. However, while Stow’s Compensation Schedule for 2001 [City Exh. 7] shows that Barberton’s 2001 hourly rates slightly exceed those of Stow for the first three years of service, Stow’s hourly rates take the lead in year four, increasing that lead significantly at the Dispatcher II level [after four (4) years], and at the Dispatcher Coordinator level [after six (6) years]:

<b><u>STOW:</u></b>	1	2	3	4	<b><u>BARBERTON:</u></b>	1	2	3	4
	10.61	12.12	13.54	15.63		11.24	13.06	13.80	14.50
<b><u>STOW:</u></b>	5	6			<b><u>BARBERTON:</u></b>	5	6	7	8
	16.02	16.42				15.73	15.82	15.96	16.10

The Union supports its proposal with a comparison of wages for 1, 3, and 5-year employees in each of six comparable cities, including Stow, all located in Summit County [Union Exhs.1, and 2]. This analysis shows that when compared to the

average of salaries for 1, 3, and 5-year employees, Barberton lags behind considerably [Union Exh. 2]:

<b><u>AVERAGE:</u></b>	1-year employee	3-year employee	5-year employee
	\$29,286	\$31,567	\$33,786
<b><u>BARBERTON:</u></b>	\$27,165	\$30,160	\$32,718
<b><u>% BELOW AVG.:</u></b>	7.3%	4.5%	3.2%

This difference in pay, particularly for 1-3 year employees may account for the City's difficulty, as noted in the testimony of both Chief Kallai and Union Representative Merl Rich, in acquiring and retaining Dispatcher/Jailers. Barberton Dispatchers/Jailers are paid less to do more as indicated by the summary of Current Duties and Responsibilities [Union Exh. 4]. Testimony and evidence show that Barberton Dispatchers/Jailers must perform the duties of Corrections Officers in addition to the dispatching duties. The resultant personnel shortage cited by both parties is not in the best interest of the City's safety needs.

That being said, the City maintains that it is in "poor economic condition" and unable to go beyond its initial proposal for three percent (3%) increases in 2002, 2003, and 2004. Ray Flickinger, the City's Finance Director, testified that revenues have decreased as businesses leave the City and income tax collection falls. Even after budget cuts of five percent (5%) in all departments, the City projects a \$903,000 deficit in its General Fund [City Exh.2].

However, the City has, by its own testimony and that of its Mayor [Union Exh. 5] planned for such "economic doldrums." Specifically, testimony shows three major funds that do enhance Barberton's fiscal status in these hard economic times:

- 1. The Minimum Balance Fund** is designed to ward off the designation of "fiscal emergency" by assisting the City in maintaining the security of other funds, such as the General Fund, the Water Operating Fund, and the Sewer and Operating and Solid Waste Disposal Fund. The Minimum Balance Fund sets aside approximately enough money to pay the City's bills for one month [City's Post-Hearing Brief, p. 4].
- 2. The Emergency Fund** is a "rainy day" fund of sorts, to be used only in the event of a "severe economic downturn or financial emergency." With interest this fund currently stands at approximately \$1.1 million dollars, and "is to be used only when the City is faced with no alternative except completely running out of funds [City's Post-Hearing Brief, p. 4]."
- 3. The Barberton Citizens Foundation** is a fund created by the sale of Barberton Citizens Hospital in 1996 which was wisely invested and now has coffers totaling more than \$90 million [Union Exh. 5]. The Foundation is a private 501(c)(3) organization

which the City maintains has no connection to the City government, although the Mayor and City Council President sit on the fifteen-member board. The City describes the relationship between the Foundation and the City as one of Foundation to Grant-Seeker [City's Post-Hearing Brief, p. 5]. The City argues that the Foundation is not a funding source for the City to meet its operating needs, but rather a funding source for discrete, specific projects, such as the fingerprinting equipment described by Chief Kallai [City's Post-Hearing Brief, p. 5].

The existence of these three funds, over and beyond the existing operating budget, bring the City's claim of economic distress into question. Even if one accepts the fact that the Barberton Citizens Foundation was not designed to meet the City's operating needs, it was designed to fund grants for "discrete and specific" projects that, but for the existence of the Foundation, would have to be covered somewhere in the General Fund. For example, fingerprinting equipment is essential to effective law enforcement. If its purchase had not been funded by the Foundation, funding would have had to come from the Police Department's operating budget. Because funding for this equipment was provided by the Foundation, one must assume that the Police Department's budget was essentially credited with monies that would have been earmarked for this purchase.

With respect to both the Minimum Balance Fund, designed to pay one (1) month of the City's bills, and the Emergency Fund, designed to protect the City during a severe economic downturn, together these funds total well over \$1.1 million dollars, and, to date, remain untouched by the City despite claims of just such an economic downturn.

### **Findings of Fact:**

1. Alliance and Massillon, two of the comparables cited by the City are not Summit County cities of size, structure and financial resources similar to Barberton.
2. The City of Barberton is not in a state of economic emergency at this time. It has three distinct funds over and above its General Fund designed to assist and protect it in the event of an economic downturn. To date, the City has not had the need to tap either its Minimum Balance Fund or its Emergency Fund, and it has enjoyed additional grant funding for "discrete and specific projects" from the sheltered coffers of its Barberton Community Foundation. A city with well over \$90 million dollars in three distinct, untapped funds is far from insolvent. Barberton must be congratulated for its foresight in planning ahead for future hard times, however, it has an equally important obligation to provide for needed city services in the present, and to pay a fair, equitable, and competitive wage for those services in order to ensure hiring prospects at all steps and workplace retention. The fact that the Dispatchers/Jailers Unit is designed to employ twelve, and is presently staffed by only eight employees indicates a need for adjustment in the wage structure, particularly at Step 1.

3. Based on their job descriptions and a comparison of wages for Dispatchers in six comparable districts within Summit County in 2001, the members of Barberton's Dispatchers/Jailers Unit of the OPBA are underpaid. They are asked to do more than comparable units and are paid less. However, the Union's proposal for a twenty percent (20%) increase in the base rate for Step 1 in 2002, a ten percent (10%) increase in the base rates for Steps 2-7 in 2001, a five percent (5%) increase in all base rates for 2003, and a four percent (4%) increase in all base rates for 2004 is simply too much. The Union admits as much in its Pre-Hearing Brief stating that:

*"The OPBA was prepared to modify downward its wage proposals during negotiations with the City. When the City announced that it would not be able to add to its wage proposal, no further negotiations occurred; hence, the OPBA's initial proposal remains intact."*

### **Recommendations:**

In light of the differences cited between the 2001 Wages of Barberton Dispatchers and the Wages of Dispatchers in Comparable Cities [Union Exh. 2] and the *SERB Quarterly Annual Wage Settlement Breakdown (1991-2000)*, and the additional duties which are part of the Barberton Dispatchers' Job Description, the following wage increases are recommended:

- A ten percent (10%) increase in the base rate for Step 1 in 2002.
- A five percent (5%) increase in the base rates for Steps 2-7 in 2002.
- A four percent (4%) increase in all base rates for 2003.
- A four percent (4%) increase in all base rates for 2004.

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## **ISSUE 2: ARTICLE 17 - OVERTIME AND COURT TIME**

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### **Union's Position:**

The OPBA states in its Post-Hearing Brief that it wishes the current language to be retained. In doing so, the OPBA is eliminating its Pre-Hearing request that compensatory time limits be increased from one hundred twenty (120) hours to four hundred eight (480) hours, and that employees ordered-in to work on their days off be paid at the rate of "double time." Current language states that:

*"Compensatory time earned as a result of overtime hours worked shall not be confused or combined with holiday compensatory time. Compensatory time shall be accumulated to a maximum accumulation of one hundred twenty (120) hours and may be utilized by taking four (4) continuous days off of scheduled duty days. After accumulation of one hundred twenty (120) hours of accumulated compensatory time, all hours worked shall be paid in cash at a current rate of overtime*

*and holiday pay rates. Accumulated compensatory time, not to exceed one hundred twenty (120) hours, other than holiday compensatory time, shall be paid in cash on the death or separation from employment. Any employee desiring to use such hours shall request the approval of supervision of such time off. The request shall be granted if supervision determines it is reasonable to do so in relation to the staffing requirements.*

**Rationale:** The OPBA maintains that the City's current difficulty with administering this long standing benefit stems from the City's inadequate staffing of the Unit, and the City's reluctance to exercise the supervisory discretion given the City in the last two sentences of the current language [see underlined]. The OPBA further contends that Article 17, the Overtime and Court Time clause has been successfully retained and administered through several prior negotiations.

**The City's Position:**

The City proposes to eliminate compensatory time altogether and to pay overtime at the rate of time and a half, with double time on Sundays and holidays. The City maintains that the compensatory time system presents a financial dilemma for the City in that the City must pay twice. First, the City must pay for a person to cover the shift, usually at an overtime rate; and secondly, it must pay the employee choosing to take compensatory time.

The City admits in its Post-Hearing Brief that compensatory time is rarely denied [citing the testimony of Merl Rich, Dispatcher/Jailer], and further admits that "tight staffing contributes to the problem." Citing its own Exhibit 5, the City illustrates the impact of compensatory time, noting that it accounts for "more than one-half of the full-time equivalent of an employee per month, and, when coupled with the utilization of vacation, necessitates the hiring of an additional dispatcher."

**Rationale:** It is the City's position that bargaining unit members get ample time off without additional compensatory time. The City also opposes paying double time to an employee who is ordered to work on a day off. The City bases its position on its current financial problems [Post-Hearing Brief, p.9].

**Discussion:**

In his testimony at the fact-finding hearing, Police Chief Michael Kallai admitted that the Dispatchers/Jailers Unit, designed to employ twelve (12) Dispatchers/Jailers is presently understaffed with only eight (8) Dispatchers/Jailers. The City echoes Chief Kallai's testimony in its reference to City Exhibit 5 in the City's Post-Hearing Brief, stating that:

*"Exhibit 5 presented by the City shows that the Dispatchers utilize an average of 89.52 hours per month of compensatory time. This is more than one-half of the full-time equivalent of an employee*

*per month, and, when coupled with the utilization of vacation, necessitates the hiring of an additional dispatcher. (City Exhibit 5, at 3).*

If the City fully staffed the Unit as it was designed to be staffed, with eleven (11) Dispatchers, by its own calculations seen above, there would be no problem. Compensatory time is earned when one Dispatcher is required to work for another in order to minimally staff the Unit. The City's cavalier conclusion in its Post-Hearing brief that "... Bargaining Unit members get ample time off without this additional compensatory time," gives the impression that the City expects Unit members to solve a problem the City itself has created by inadequate pay and understaffing.

**Findings of Fact:**

1. The Dispatchers/Jailers Unit is presently understaffed with only eight (8) employees in a Unit designed to function with twelve (12).
2. Understaffing has created the need for Dispatchers/Jailers to cover for one another as vacation, sick leave, and earned compensatory time contract are used.
3. Under the existing Contract, Article 17, Section 17.4, the City has the power to deny requests for Compensatory Time if unreasonable in relation to the staffing requirements. Testimony quoted by the City in its Post-Hearing Brief [p. 8] shows that this power is rarely used to deny requests for use of compensatory time.
4. Entry level pay scales for Barberton Dispatchers/Jailers in 2001 were 7.3% below the average entry level pay scales in six comparable Summit County Cities.

**Recommendations:**

In response to the findings of fact cited above, The language in Article 17, Overtime and Court Time, including Section 17.4, Compensatory Time, should be retained in its current form. The City should fully staff the Unit and exercise its supervisory prerogative to deny when unreasonable with relationship to staffing requirements.

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**ISSUE 3: ARTICLE 20 - UNIFORM AND SAFETY EQUIPMENT**

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**Union's Position:**

The OPBA proposes that the current uniform allowance of five hundred dollars (\$500.) be increased to six hundred fifty dollars (\$650.).

**Rationale:** Barberton's present uniform allowance of \$500. is 10% lower than the average uniform allowance of five hundred fifty dollars (\$550) in six comparable Summit County Cities [Union Exhibit 1]. The Uniform allowance is an annual lump sum payment that can be used to increase a substantially inadequate wage package without requiring the City to make a pension or workers' compensation contribution.

**City's Position:**

The City proposes that the current uniform allowance of five hundred dollars (\$500) remain unchanged.

**Rationale:** Dispatcher uniforms are wash and wear, and the clerical nature of the job prevents heavy wear and tear on any piece of the uniform. Thus, the five hundred dollar (\$500.) current annual maintenance payment is more than enough to repair or replace worn or damaged uniforms.

In addition, the City argues that the Union has produced no evidence, other than reference to uniform allowances in comparable districts, to justify a one-third increase in the present benefit. The City maintains that any increase should be based on the actual or projected cost of uniform maintenance.

The City rejects the Union's suggestion that the Uniform Allowance should be a vehicle for increasing the Unit's economic package, referring the Fact-Finder to earlier City arguments based on its own economic distress at this time.

**Discussion:**

The Barberton Dispatcher/Jailer Unit is understaffed, and Chief Kallai's testimony admits to difficulty finding acceptable recruits for the Unit, and, once found, in retaining those employees. One reason for this difficulty may be that Barberton's existing economic package, including the Uniform Allowance, is significantly less, i.e., five percent (5%) less than the average economic package of comparable Summit County Cities with similar Units competing for employees.

This staffing problem has led to increased accumulation and use of Compensatory Time, resulting in the double pay problem the City cites in its arguments regarding Issue 2. The City's own study of the costs of compensatory time to make up for understaffing indicates that those costs are the equivalent of an additional full-time Dispatcher [City's Post-Hearing Brief, p. 9]. It would seem that the City is being penny-wise and pound-foolish in failing to develop a competitive economic package that would attract and keep trained and loyal employees to serve the Barberton Community.

**Findings of Fact:**

Barberton's Uniform Allowance is presently ten percent (10%) lower than the average of comparable Summit County cities. The City proposes keeping the present allowance, thus increasing the likelihood of a growing gap between its own allowance and that of competing communities in subsequent contract years. The Union proposes a thirty percent (30%) increase in the present allowance to six hundred fifty dollars (\$650.). A compromise position would probably best serve the interests of both parties.

**Recommendations:**

It is suggested that the Barberton Dispatcher/Jailers Uniform Allowance be increased to six hundred dollars (\$600.) bringing it in line with the Uniform Allowance of comparable Summit County Cities, in particular, its own cited Summit County comparable, Stow, which, in its 2001 contract has a five hundred ninety-five dollar (\$595.) Uniform Allowance.

**ISSUE 4: ARTICLE 27 - INJURY LEAVE****Union's Position:**

The Union is not willing to accept changes to the current language without some economic incentive [Union Post-Hearing Brief, p. 5].

**Rationale:**

The City was not able to demonstrate any justification for the modifications it seeks, nor evidence that the existing language has created a problem.

**City's Position:**

The City proposes three changes to the existing language:

1. The addition of language entitling employees to their full rate of pay during six months of injury leave if the employee does not file a workers' compensation lost wage claim.
2. The addition of language that entitles the City to recover lost wages from a third party in subrogation; and,
3. The deletion of language that allows an employee to reinstate sick days after the employee exhausts three months of injury leave. [It should be noted that the City's Post-Hearing proposal, although in Statement 1 gives injured employees *six (6)* months of injury leave at full pay rate, in Statement 3 the City distinctly asks that sick days not be reinstated after *three months (3)* of injury leave. The Fact-Finder was uncertain if this was a typographical error, or an intentional provision in the revised Post-Hearing Brief proposal].

**Rationale:** The City was recently penalty-rated, leading to a higher cost for workers' compensation premiums. In order to enjoy the discount on premiums afforded by a "group rating pool," the City seeks to reduce the workers' compensation claims leading to its penalty-rating [City's Post-Hearing Brief, p. 10]. In return for the Dispatcher/Jailers Unit's agreement not to file workers' compensation claims that might increase the City's premiums, the City proposes to ensure employees injured on the job full pay for six months following the report of said injury. The City contends that this change assures the injured employee full wages, but protects the City's fiscal interests.

With respect to its request for language entitling the City to recover lost wages from a third party in subrogation, the City argues that the City is entitled to recover the money it has paid out. To allow the employee injured by a third party to recover lost wages from both the City and the third party would be an injustice, essentially a double recovery for the injured employee. A subrogation clause would allow the City to recover lost wages already provided for by a court judgment, insurance settlement, or other source.

With respect to the City's request for the deletion of language that would reinstate sick days after an employee exhausts three (3) months of injury leave, one must first review the existing language in question [See prior concern for numbers, 3 or 6?]:

*"Upon the exhaustion of the three(3) month period, . . . , the employee shall have the option to use accrued sick leave, or of relying solely upon workers' compensation weekly benefits. Should the employee elect to use sick leave, days used shall be reinstated upon return to duty. Should the employee retire under the disability provisions of the PERS, such sick days shall be reinstated for purposes of severance as provided in this agreement."*

As noted, in its Post-Hearing Brief, the City has amended its original proposal so that injured employees would be entitled to six months of injury leave if the employees did not file workers' compensation lost wage claims [ Page 10]. Thus the existing paragraph cited above would become:

*"Upon the exhaustion of the six (6) month period, . . . , the employee shall use accrued sick leave."*  
[The arbitrator is assuming that the City's Post-Hearing Revision 3 should, by virtue of Revision 1 refer to the reinstatement of sick leave after six (6) months.]

#### **Discussion:**

Workers' Compensation Insurance is intended to protect the interests of employees injured in the course of employment. Under existing contract language [Exh. 1], Dispatchers/Jailers who are injured or incapacitated in the scope and performance of their duties or work and are entitled to workers' compensation insurance are also entitled to the difference between the weekly industrial workers' compensation benefit and the employee's regular rate of compensation without reduction in sick leave status for a three (3) month period beginning on the date of injury. Under the City's proposed new language, Unit members injured will still be entitled to their full rate of pay, but compensation will come solely from the City, and will last six (6), not three (3) months.

However, while Unit members are assured six months of essentially the same benefit, i.e., their full rate of pay, which they enjoy for three months under the present contract, the question that must be resolved is what happens should an injured employee's incapacitation continue beyond six (6) months. Under the present

contract, the injured employee has the option of using accrued sick leave or of relying solely upon workers' compensation weekly benefits. Under the City's Post-Hearing Brief proposal, after six months, injured employees who have forgone the right to Workers' Compensation, would have only one option, i.e., to use accrued sick leave; and, should that sick leave be exhausted before the employee is capable of returning to work, the injured employee would have no option but to retire under the disability provisions of the PERS, or remain on injury leave without pay.

The City further proposes the deletion of present contract language allowing an employee to reinstate sick days after the employee exhausts *six* months of injury leave:

*"...Should the employee elect to use sick leave, days used shall be reinstated upon return to duty. Should the employee retire under the disability provisions of the PERS, such sick days shall be reinstated for the purposes of severance as provided in this agreement..."*

Under the City's proposal to eliminate Workers' Compensation claims for lost wages in return for six months of wages at full rate paid by the City, injured employees will be forced to use sick leave after six (6) months. If, as the City proposes, these sick days are then not reinstated, injured employees who are not able to return to work after six months will lose not only sick days, but severance pay as per Article 28, Section 28.1, dealing with the calculation of severance pay at the time of retirement. The purpose of the provision for reinstating sick days appears to be based on this concern as noted in Section 27.2 of the existing contract:

*"Should the employee elect to use sick leave, days used shall be reinstated upon return to duty. Should the employee retire under the disability provisions of PERS, such sick days shall be reinstated for the purposes of severance as provided in this agreement."*

Under the City's revised plan, employees with job-related injuries that incapacitate them for more than six months, or with injuries that prevent a return to work, will lose not only their sick days, but severance pay as well.

#### **Findings of Fact:**

1. In return for an injured employee's agreement not to file a Worker's Compensation claim at the time of injury, the City proposes to grant the injured employee six (6) months of injury leave at full pay rate.
2. Employees who do not file a Worker's Compensation claim at the time of injury, and who are unable to return to work after six months because of that injury will be forced to use accrued sick leave in order to continue to be paid at the full pay rate during this time of incapacitation, or to apply for PERS disability retirement.

3. Section 27.2 of the existing contract requires the reinstatement of exhausted sick leave if an injured employee opts to retire under the disability provisions of the PERS, because severance pay at time of retirement [See Article 28, Section 28.1] is based on unused sick leave days.

**Recommendations:**

1. Injured employees should have the option of filing Workers' Compensation claims at the time of injury, or of choosing not to file Workers' Compensation claims in return for the City's grant of six (6) months of injury leave at full pay rate.

Assuming that serious injuries are rare, most injured employees are likely to opt for the City's grant of six (6) months injury leave at full pay rate, and the drop in Worker's Compensation claims will help the City overcome its penalty-rating and lower premiums. However, in the event of serious injury necessitating leave beyond six (6) months, injured employees should, at the time of injury, have the option of recouping their losses through Workers' Compensation, a benefit that will not expire at the end of six (6) months.

2. Injured employees who choose not to file Worker's Compensation claims in return for the City's grant of six (6) months of injury leave at full pay rate, should not have sick leave reduced during that six (6) month period.

3. Neither Employees with serious injuries that entail periods of incapacitation beyond six (6) months who've opted out of Worker's Compensation, nor those employees with serious injuries who have chosen to file Workers' Compensation claims should have the sick leave used reinstated. Sick leave is intended to provide an employee with full pay during periods of illness or injury, and is accrued at the rate of four and six-tenths (4.6) hours for every eighty (80) hours worked or compensated [Exh. 1, Article 26]. It would be unfair to expect the City to continue to reinstate sick leave when an employee is incapable of working and has exhausted accrued sick leave.

4. Language should be added to this section of the contract allowing the City to recover lost wages from a third party in subrogation because it would be unfair to have injured employees be compensated twice for lost wages, i.e., by both the City and the third party responsible for the injury.

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**ISSUE 5: NEW ARTICLE - DRUG TESTING POLICY**

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**Union's Position:**

The City hopes to drive down Workers' Compensation premium rates by instituting a Drug-Free Workplace Program, but has produced no evidence to show that the Dispatchers/Jailers Unit is responsible for the alleged rise in Workers' Compensation

premium rates, or will benefit from the plan. Therefore the union is opposed to the City's proposal.

**The City's Position:**

The Ohio Bureau of Workers' Compensation has instituted a Drug-Free Workplace Program [City Exh. 15]. If employers institute a 25% random drug-testing program within the workplace, the employer will receive a 20% discount on premiums which would amount to a \$62,000 savings for the City. With this savings in mind, the City is seeking this provision in all union contracts negotiated this year. In addition to this economic incentive, the City is also concerned with increasing safety in the workplace, especially in police department units.

The City proposes developing a program that would promote a safe, drug-free environment, but, at the same time be sensitive to the rights and needs of employees. The program would call for "reasonable suspicion" testing coupled with 25% random testing of all employees. Employees testing positive would be given counseling and a last-chance agreement before further disciplinary action is taken.

**Discussion:**

The City should be given every opportunity to institute policies and procedures that would ensure a drug-free, safe workplace, and the Union should take an active role in supporting the City in this effort. In addition, the Union should cooperate in any City effort to reduce insurance premiums and enhance its fiscal position. Earlier findings of fact have supported the Union's position that the Dispatchers/Jailers economic package must be more competitive, however, it behooves the Union to do everything within its power to help the City fund such an economic package without requiring the City to place itself in a state of fiscal emergency. Adoption of a policy and procedures to ensure a drug-free, safe workplace is an easy and ethical way of supporting the City in its effort to save \$62,000.

**Findings of Fact:**

1. The City can save \$62,000. by developing and implementing a drug-free, safe workplace program.
2. A drug-free, safe workplace is an admirable goal for every City.
3. The Union has both an ethical and fiscal interest in helping the City develop a drug-free, safe workplace program.

**Recommendations:**

1. The parties should negotiate a Drug-Free, Safe Workplace Policy.
2. Procedures should include:
  - a. A provision for 25% random testing of all employees in the Unit.
  - b. A provision for testing when "reasonable suspicion" exists.

- c. Arrangements for counseling employees who test positive.
- d. A provision for a last-chance agreement for employees who test positive that would encourage employee rehabilitation.