

ALAN M. WOLK
IMPARTIAL FACT-FINDER
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2002 MAY 10 A 10: 26

IN THE MATTER BETWEEN:

OHIO PATROLMAN'S)
BENEVOLENT ASSOCIATION)
)
Union) NO. 2001-MED-10-0904
)
and) FACT-FINDER'S
) RECOMMENDATIONS
CITY OF WARRENSVILLE HEIGHTS)
)
Employer)

APPEARANCES:

FOR THE UNION:

S. Randall Weltman, Esquire, of Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co. L.P.A.

FOR THE EMPLOYER:

Otha M. Jackson, Esquire

History of the Proceedings

Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14(C), and by letter issued by SERB, the undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral Fact-Finder to hear and decide issues presented pursuant to Ohio law.

Except to the extent that parties mutually agree otherwise, or wish to pursue mediation first, in compliance with Ohio Administrative Regulations, particularly 4117-9-05, position statements were timely submitted to the opposing party and to the Fact-Finder prior to the hearing.

Hearings commenced at 10 a.m. at Warrenville Heights City Hall, 4301 Warrenville Center Road, Warrenville Heights, Ohio on Thursday, March 14, 2002 and on Friday, April 12, 2002. A court reporter was not present.

SUBMISSION

I. Parties

The Union is the Ohio Patrolman's Benevolent Association.

The Union's principal representative is S. Randall Weltman, Esquire, 9th Floor, The Halle Building, Cleveland, Ohio 44115. Phone: 1-216-621-8484; FAX: 1-216-771-1632.

The Employer is the City of Warrenville Heights, Ohio; Warrenville Heights is located in Cuyahoga County, Ohio approximately 4 square miles, with approximately 15,500 residents. The City of Warrenville Heights is located at 4301 Warrenville Center Road, Warrenville Center, Ohio 44120. Phone: 1-216-587-6500; Fax: 1-216-587-6594.

The City of Warrenville Heights is located in eastern Cuyahoga County abutting the eastern edge of Cleveland, Shaker Heights on the North, and parts of Garfield Heights, Highland Hills (formerly Warrenville Township), the Village of North Randall, Maple Heights, and Bedford Heights.

The Employer's principal representative is Otha M. Jackson, Esquire, Law Director, 1422 Euclid Avenue Suite 711, Cleveland, Ohio 44115. Phone: 1-216-861-6633; FAX: 1-216-861-4638.

II. Description of the Bargaining Unit

One bargaining unit consists of approximately 28 full-time Patrol Officers and Detectives, below the rank of Sergeant.

The Ohio Patrolman's Benevolent Association became exclusive representative in 1995. The employees are responsible to protect the safety and rights of citizens in Warrensville Heights, Ohio.

III. Current Collective Bargaining Agreement

The current Collective Bargaining Agreement expired December 31, 2001, however, the parties stipulated that the Recommendations herein would be effective retroactively beginning January 1, 2002.

IV. Current negotiation history

Negotiations for the parties 3rd contract commenced in September 2001 and the parties have met at least a total of 4 times prior to the hearing.

IV. Resolved Issues

Certain understandings were reduced to writing. [See Exhibit "A"].

ARTICLE 6 EMPLOYEE RIGHTS

Section 8 [Settled] POLYGRAPH and VOICE STRESS TEST

In the course of an internal affairs investigation, a polygraph examination or voice-stress test may be administered at the sole discretion of the Chief or his designee. If, in the course of an internal investigation, an employee has been given a polygraph examination or voice-stress test, such examination and/or its results shall not be admissible in any arbitration hearing or any other court action unless mutually agreed upon by the parties.

ARTICLE 14, VACATIONS

Section 3. [Settled]

In order to schedule vacations, for the next calendar year, according to seniority, all bargaining unit employees shall be entitled to bid, between December 1st and December 25th of each year, for up to eighty (80) hours (consecutive) of vacation time during the months of May through September. Once this bid is completed, then another bid shall occur allowing employees to reserve their remaining vacation hours (consecutive or split). The City shall be prohibited from forcing any employee to take off or otherwise expend any of his or her accrued paid leave, including vacation leave. In addition, once leave time-off has been approved; such approval shall not be revoked unless mutually agreed otherwise.

ARTICLE 15 PREMIUM PAY

Section (6) [Settled]

An officer whom management designates to act as a Field Training Officer (FTO) shall be paid one (1) Hour of straight time for each training shift. Such compensation may be taken as compensatory time.

ARTICLE 16, HOLIDAYS

Add:

Section 2. [Settled]

Each of the holidays set forth above must be earned. Holidays are earned for the last half of a year, may be carried over into then next year, provided, however, they must be used by June 30^h of the following year.

ARTICLE 18 - SICK LEAVE [Settled]

ADD Section 11.

Employees who are off on sick leave are not entitled to court time premium pay.

ADD: Section 12 - Conversion of Sick Leave and Vacation

Employees who have a minimum of twenty-two (22) years of service credit with PFPDF may request to convert the sick leave and vacation leave hours earned in each year of the three (3) years prior to retirement to paid wages. Conversion of such leave shall be limited to a maximum of one hundred twenty (120) hours of sick leave per year and a maximum of two hundred forty (240) hours of vacation leave per year.

Employees wishing to participate in this conversion shall submit a letter of intent to the Employer with the date of retirement confirmed and the date they wish the benefit to begin. The date to begin installments shall be the beginning of a pay period and a year shall include twenty-six (26) pay periods. Such letter of intent shall not be considered irrevocable, but in no circumstances may the employee participate in this conversion program more than once during the duration of employment.

SICK LEAVE DONATION [Settled]

Employees shall be allowed to donate sick days to fellow employees who have prolonged illness (not a duty-related injury) and who are no less than a week away from exhausting all their accrual time and need to extend their sick leave. Employees must have exhausted their sick leave to be eligible for sick leave donation. When an employee or someone on his behalf requests sick leave donations, that request shall be made to the Union's representative who shall then notify the Chief in writing of the request. The Chief will then post a notice for twenty (20) working days informing employees about the request for sick leave donations. No donations shall be made after twenty (20) working days. All donations are voluntary and limited to sixteen (16) hours per donating employee. An employee may donate hours or sick leave to a specific recipient by signing and submitting to the Chief a Sick Leave Donation Form. The recipient shall retain all donated sick leave.

ARTICLE 26 MISCELLANEOUS

ARTICLE 24 UNIFORM ALLOWANCE [Settled]

Section 1. Uniform and maintenance allowances shall be as follows: \$1,200.00 per annum for allowance and maintenance to be paid in four (4) equal installments of \$300.00 to be paid quarterly. The City reserves the right to require officers to present receipts to establish that the allowances were spent for their stated purposes. The City shall not unreasonably exercise this right.

Section 2. The Chief of Police shall prescribe the clothing and equipment to be purchased by newly-hired police officers. Each newly-hired officer will be sent to an authorized vendor, who in turn shall direct bill the City for required clothing and equipment purchased. Newly hired officers shall not be eligible for Uniform and/or Maintenance Allowance until the first anniversary date of said officer's second year.

Section 3. Any probationary Officer leaving the department for any reason within a one (1) year period from date of appointment shall reimburse the City for all allowances expended in the purchase of clothing for the party upon termination of employment. The City shall be authorized to deduct from any pay allowance yet due such employee, any allowances advanced or paid by the City for said officers clothing. Employees leaving in the first or second year of employment because of illness or injury occurring on the job is exempt from reimbursement requirements.

Section 4. Any Police Officer leaving the department for any reason within a four (4) year period from date of appointment shall reimburse the City one half (1/2) of all allowances expended for the purchase of clothing for the party upon termination of employment. The City shall be authorized to deduct any pay or allowance yet due such employee, any allowance advanced or paid by the City for said officer's clothing.

Section 5. Body armor issued to any officer, shall be subject to inspection and replacement at the option of the City, at anytime. Any Officer deeming; his/her body armor worn, damaged and/or in any other manner not functional may, at any time consistent with department procedure, request the Chief of Police, Executive Officer and Shift officer to inspect such garment with a view to immediate replacement, The decision of the Chief of Police and Safety Director being dispositive of the issue, unless the manufacturers suggested life has been exceeded, in which case the body armor shall be replaced.

Section 6. Uniforms and equipment shall be replaced at City expense when shown to have been damaged in the line of duty.

Section 6 [new][Settled]

In the good-faith discretion of the Chief, which will not be unreasonably withheld, and work schedules permitting, employees may be released from their normal work activity, with pay, in order to attend self-initiated law enforcement related training, even though such training is not mandated by the Department.

ARTICLE 28 DURATION OF AGREEMENT

Section 1

This agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and, except as otherwise noted herein, shall be effective January 1, 2002 (retroactively) and remain binding upon the parties and shall remain in full force and effect until 11:59 p.m., December 31, 2004. If either party desires to make any changes in the Agreement for a period subsequent to its expiration, notice of such desire shall be given prior to the applicable statutory deadlines. If no notice seeking modification is given, then the Agreement shall remain in effect for another year.

LABOR-MANAGEMENT COMMITTEE [SEE ATTACHED]

EXHIBITS:

Joint

JX A Partial tentative agreement

JX-B Expired Collective Bargaining Agreement

CITY

CX-1 2002 Appropriation and Estimated Revenues
CX-2 2002 Revenue Projections General Fund
CX-3 2002 Revenue Projections Bond Retirement
CX-4 ORD 20011-0114 Appropriate Measure
CX-5 City proposed 2002-2004 Agreement with underlining
CX-6-A CCA for January 2002 \$839,089.73
CX-6-B CCA for February 2002 \$626,144.79
CX-6-C CCA for March 2002 \$588,040.46
CX-6-D CCA for January 2001 \$968,929.55
CX-6-E CCA for February 2001 \$547,637.23
CX-6-F CCA for March 2001 \$758,034.37
CX-7 letter dated January 15, 2001 reflecting sick days taken/earned
CX-8 letter dated January 1, 2002 reflecting sick days taken/earned

Union

UX-1 Initial Union Proposal for a Successor Collective Bargaining Agreement
UX-2 Contract negotiation bullet points
UX-3 Comparison of Benefits 10 year employees – injury on duty & holiday pay Contiguous Cities
UX-4 Comparison of Benefits 10 year employees – Contiguous Cities
UX-5 Comparison of Benefits 10 year employees – Non-Contiguous East Side Cities
UX-6 Comparison of Benefits 10 year employees – Cuyahoga County Cities
UX-7 SERB First Quarterly 2001 No. 55 Annual wage settlement data 10-year cycle
UX-8 5/24/00 letter to Jonathan L. Klein, Esq.
UX-9 List of new businesses within last two years
UX-10 Plain Dealer article 11/6/01 reporting on Brad Sellers, city community liaison director
UX-11 Akron Beacon Journal article 1/31/02 re: national economy
UX-12 Plain Dealer article 3/8/02 re: proposed rec. center

Firefighters Collective Bargaining Agreement 00-02

Criteria

The FACT-FINDER, in making recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

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

Articles remaining in dispute (as underlined):

FINDINGS AND RECOMMENDATIONS

All evidence such as exhibits, testimony, and all arguments, have been duly received and given such weight as deemed appropriate by the fact-finder.

ARTICLE 5 MANAGEMENT'S RIGHTS

City Proposal

Section 1:

The Employer shall have the exclusive right to manage the operations, control the premises, direct the working force and maintain efficiency of operations. Among the Employer's management rights are the right to hire, transfer, discipline, discharge, layoff and promote; to promulgate and enforce work rules and the special operations and procedures of the Warrensville Heights, Police Department (Warrensville Heights Police work rules include, but are not limited to, special operations and procedures as set forth in the Special Operations and Procedures Manuel); to introduce new equipment, methods of performing work, or facilities; to determine the size, duties and qualifications of the workforce, and work schedules. The Employer reserves without limitations all of the rights and authority to manage the City and the Police Department to the full extent permitted by law, and to use discretion in exercising such rights.

This provision is *RECOMMENDED*, provided that the following modification to be inserted in the last sentence: beginning: *Except for subjects that are mandatory subjects of bargaining, [the Employer reserves without any other limitations...]*

City Proposal

Section 2 [new]

In order to protect its work force and the residents of the City of Warrensville Heights the Administration reserves the right to exercise its management rights to conduct drug tests and also as set forth in Section 2.

The Administration reserves the right to conduct random drugs tests.

The Administration also reserves the right to conduct drug tests Warrensville when:

- a. Hiring
- b. After a vehicular or other accident
- c. After any discharge of firearms by an employee
- d. After any critical incident as determined at the sole descretion of the Administration
- e. As otherwise provided by the Standard Operations and Procedures Manuel

Discussion:

The Union rejects, contends drug testing and overtime call-out procedures are mandatory subjects of bargaining and the City contends that this a matter of reserved management's rights.

The City contends that it has the right to implement a drug program *ex. Parte.* allowing that only penalties issued pursuant to such program would conform to collective bargaining.

The City cites *Southwest Ohio Regional Transit Authority (SORTA) v Amalgamated Transit Union, Local 627 (3/7/01)*, 91 Ohio State 3d 108, 742 N.E.2d 630. In this case, an arbitration panel found a drug policy facially valid, but automatic discharge for testing positive violation the "sufficient cause"

discharge standard in the collective bargaining agreement. The Hamilton County Court of Common Pleas confirmed the panel's award, but the Court of Appeals reversed.

Ohio's Supreme Court (Justice Lundberg Stratton) 6-1, overruled the Court of Appeals and held that: (1) drug prevention's automatic dismissal sanction violated CBA's sufficient cause requirement for dismissal, and (2) the arbitration award reinstating the employee was not against public policy, thus confirming the arbitration panel's findings.

It is significant that *SORTA* acted in accordance with the "drug policy pursuant to a provision of the CBA.

This differs from the matter before me, wherein historically there has been no such CBA provision. Here, the City of Warrensville Heights is insisting upon injecting a drug testing policy into the CBA, contending that issuance is a matter of management rights.

Although a drug testing policy is necessary and the City's proposal may be fair and reasonable, without evidence of good faith bargaining, this proposal regarding drug testing must be deferred.

The Union cites: *In re: Findlay City School District Board of Education, SERB 87-031 (12-17-87)* wherein SERB unanimously (written by Judge Jack Day, Chairman) issued a Cease and Desist Order upon the Employer after finding among other factors: [the school board's] adoption of *its personnel drug/alcohol policy is a mandatory subject of bargaining* [Emphasis added], and held that the Employer's refusal to bargain was a violation of ORC 4117.11(A)(1) and (A)(5). It ordered the Employer to immediately engage in good faith bargaining.

The Union also cited *Lorain City Bd. of Edn. V. State Employment Relations Board (1988)*, 40 Ohio St.3d 257, a 4-3 Ohio Supreme Court decision (written by Justice Andrew Douglas) hold that a public employer must bargain with its employees regarding a management decision to the extent such decision "affects wages, hours, terms and conditions of employment."

While *SORTA* supports the City's reliance on CBA penalties as a mandatory subject, in light of *Findlay I* find that all drug testing is a mandatory subject of bargaining. It is not solely a management right to impose.

It is **RECOMMENDED** that the City's proposed Section 2 be *rejected* at this time. It is further **RECOMMENDED** that the parties immediately begin to negotiate in good-faith to develop a fair, reasonable and mutually agreed upon drug testing policy to protect the public and other members of the Police Department from harm.

ARTICLE 6 EMPLOYEE RIGHTS

Section 7

Union Proposal: Delete *two (2) years* and substitute with *eighteen (18) months*
The City rejects.

The union position is not persuasive and *rejected* at this time.

City Proposal: Delete Section 2 The Motorcycle Unit has been discontinued

NO RECOMMENDATION necessary.

Union Proposal: add new Section 2 Replace: \$480 with *1 ½% of their base pay payable 1/12 each month.*
The City rejects.

The Union proposal is *rejected* at this time as there was insufficient supporting evidence presented to be persuasive.

Union Proposal:
Section 7

Overtime opportunities shall be rotated amongst bargaining unit members on the basis of seniority. If the Employer is unable to fill a vacancy pursuant to the above, then it shall fill the vacancy according to an overtime equalization list.

The union position was not presented to the union until hearing of the within matter. Nor is the union position persuasive as presented. The Union position is *rejected*.

Section 8.

Union Proposal: Add: *Records of suspensions shall be removed and sealed three (3) years after such was given.*
The City rejects.

It is noted that removing and sealing may not comply with Ohio's open records statute. However, the union position is persuasive and

the following is RECOMMENDED: Records of suspensions shall be removed and sealed, and no longer be considered in discipline and discharge matters, three (3) years after such was given.*

*[*NOTE: There was no evidence that prior discipline can affect other administrative considerations.]*

ARTICLE 15 PREMIUM PAY

Bargaining unit members who are regularly assigned to special capacities (i.e. DARE, Detective Bureau, etc.) shall not be offered overtime opportunities that arise from vacancies created by the absence of officers regularly assigned to the patrol function, except for emergencies.

The union position was not presented to the union until hearing of the within matter. Nor is the union position persuasive as presented. The Union position is *rejected*.

ARTICLE 16 HOLIDAYS

Union Proposal: Section 1. Add: *Veterans Day*

The Union proposal for this change is not persuasive and is rejected at this time.

ARTICLE 20 INJURY LEAVE

Section 1

Union Proposal: Replace *120 days* with two hundred sixty (260) workdays.

The parties are awaiting a binding arbitration award momentarily being issued by Arbitrator Paul Gerhart regarding injury leave.

Rather than delay these Findings further, it is *RECOMMENDED* that the issue of any contractual change in the existing injury leave provision be reopened (within thirty (30) days of the date such award is issued) in order to incorporate such award.

ARTICLE 22 COMPENSATION

Section 1

City Proposal:	offers	3%-3%-4% or 10% over three years
Union Proposal:	seeks	5 ½ %-5 ½ %-5 ½ % or 16 ½ % over three years

Economics generally

Among the considerations for compensation it is appropriate to review the parties' historical experience, current situation and best estimate of future trends with respect to the employers capacity to pay and comparable market compensation rates. [There are a number of economic indicators that economists usually consider e.g. balance of payments, the exchange rate of the U.S. dollar, trade deficits, budget deficits, productivity, industry growth rates, fiscal policy, monetary policy (interest rates, etc.)].

Government operations differ from the private sector particularly in that, rather than setting prices to produce revenue to cover direct and indirect costs and allow for a profit margin, governments generally rely primarily on various forms of taxation and various other highly structured and sometimes--inflexible revenue sources, while concurrently determining a budget for expenditures as well as appropriating the necessary funds within that budget.

Taxation systems are generally sensitive to changing global, national, statewide and local conditions. When businesses leave a city and/or when unemployment rises, real estate values and income tax revenues decline. When businesses move into a city and/or unemployment subsides, real estate values income tax revenues rise. Such economic changes occur at differing rates in differing communities.

Market rates of compensation (including hourly or salaried rates and all direct and indirect fringes e.g. health cost protection, longevity premiums, retirement benefits, vacations, holidays, etc.) can be compared with what has occurred or occurring in similar geographical districts.

Local Finance

Taxation, particularly at the local level, is authorized by various constitutionally permitted legislation (e.g. statutes and ordinances). Thus, some revenue is derived from a portion of somewhat static real estate taxes calculated on the basis of a portion of the value of real estate situated in the community (evaluated periodically over a multi-year period) at rates subject to a vote of taxpayers when in excess of a constitutional limit.

However, most local governments in Ohio derive their primary revenue from income taxes on individuals and businesses within a community.

Comparable Communities

Of direct application here, what makes another area similar or comparable can be complex.

Comparability of specific duties required involves the extent of geographical territory serviced, the nature of responsibilities and risks, shift scheduling system.

Comparability of *capacity to pay* evaluates revenue arising from all sources including the real estate tax base, income taxes, and other revenue resources. It also involves appropriate prioritization of citizens needs e.g. safety via department's safety forces, and other mandated or selected city services (Cities provide building and construction monitoring, waste disposal and other services).

There was evidence that the global and national economies have been in a recession, but cities show signs of bottoming out (UX-11). Assuming the economy improves, there will likely be an increase in new business investment (UX-9) and employment will rise resulting in an increase in tax revenues.

However, it is noted that the White House projects a budget deficit for a number of years, and the balance of payments for imports in excess of exports is also an increasing deficit. Furthermore, the State of Ohio has a severe budget crises This dynamic should become clearer by the end of 2002 or beginning of 2003, but, in the near term, local governments cannot anticipate increases in state - funded aid.

THE CITY:

Warrensville Heights does not assert a total inability to pay, but contends, in effect, that its limited resources are stretched. It notes that a new administration was elected to office on 1-1-00 and has been diligently working to correct financial complications left over from the previous administration, after discovering previously unrecognized debt between \$1 million and \$1.25 million. The blue-collar population lost a number of businesses in the middle of 2001 following which income tax revenues noticeably dropped and the number of new businesses decreased. However, the citizens passed an income tax increase as proposed by the Mayor and Council, and the City asserts that it is just beginning to get reasonable control over its financial operations, Warrensville Heights. (One significant need is to thoroughly computerize all operations).

The City presented estimates that for 2002:

The City's Unencumbered Fund beginning balance of \$423,916.00 will be reduced by appropriations for Capital Improvements \$139,000, and by \$69,084 due to appropriations in excess of Special Revenue resources (\$1,526,961.00 - \$1,452,877.00). (CX-C-1; C-2-A; CX-C-4); bond retirement will be lower (\$1,029,356.00 v \$1,374,967.00 for 2001) (CX-C-3). The City's provided records indicating actual receipts for the first quarter of 2002 are being received at approximately 10% lower rate than for the same period in 2001. (CX-C-6). The City also presented evidence that health insurance costs, now wholly paid for by the City, may double by the end of 2002.

The City denies it is comparable to Solon, Beachwood and Bedford.

The Union argues:

The last contract between the parties also went to fact-finding *and* conciliation, as a result of Warrensville Heights was forced to increase wages above the average in order to gain on its lag of comparable compensation in relation to other cities.

The union presented three exhibits and listed Warrensville Heights reflecting top pay comparisons

UX-4 Comparison of Benefits 10-year employees – Contiguous Cities
Shaker Heights, Solon, Bedford Heights, and Maple Heights

UX-5 Comparison of Benefits 10-year employees – Non-Contiguous East Side Cities
Highland Heights, Lyndhurst, Mayfield Heights, Beachwood, University Heights, South
Euclid, Richmond Heights, Bedford, Cleveland Heights, Pepper Pike, Garfield

UX-6 Comparison of Benefits 10-year employees – Cuyahoga County Cities

It is noted that in each of these exhibits, the Union determined the average of all each city listed and concluded that Warrensville Heights currently pays between 96.47% and 97.02% of the average of the cities listed. [The City denies it is comparable to Solon, Beachwood and Bedford].

UX-8 Warrensville Heights IAFF raise was 4% for 2001 and 4% for 2002 unused comp time 240 hours; holiday pay accumulation up to 240 hours –Vacation up to 120 use or lose by year's end

The City has taken steps (i.e. initial stages of eminent domain proceedings) to seek full or almost full funding from Cuyahoga County for a "rec center" (UX-10, UX-12) (Testimony of Brad Sellers).

Discussion and Analysis

The union presented a stronger case to bring the bargaining unit compensation closer to that paid by neighboring and/or comparable communities. Concurrently, the city, although honestly presented, under the circumstances of a major change in the elected administration, provided less focused and/or unaudited information regarding past financial history, as well as mixed documentation regarding estimated revenue reductions or increases. The city did not establish a clear case of inability to pay. Although "rec" center may not be costly for the city to build, it will have some budgetary impact during construction as well as after it becomes operational. While such an effort may be desirable and laudable, fair and competitive compensation of safety forces is also necessary.

There was credible evidence that health costs, which are currently paid by the City with some deductible paid by the employee, are likely to rise significantly. However, accurate figures were not available at the hearing and are not likely to be available until the fall of this year. On the other hand, there was evidence that the economy appears to be on the brink of at least a modest recovery by the end of 2002 or mid 2003. Even if there is a lag in reemployment among laid off or unemployed residents of Warrensville Heights, there was evidence that more incoming commercial and industrial employers are likely to replace reductions in real estate and income taxes, during this recovery.

There was no evidentiary basis to accept *pattern bargaining*, therefore internal salary structures for other municipal employees e.g. fire department or service department, have less weight than external evidence of compensation to employees of comparable communities performing comparable duties.

There was very little evidence offered by either party, *other than geography*, to identify cities that are comparable to Warrensville Heights. Cities outside of the east side of Cuyahoga County present variables that were not shown to apply to Warrensville Heights. Cities with a significantly higher revenue base and/or comparatively less police risks and/or significantly different geography, cannot be presumed to be automatically comparable merely because of geography. Additionally, the City position that Warrensville Heights is not comparable to Solon, Beachwood and Bedford is adopted.

Never-the-less, an analysis of all of the *non-contiguous east side cities* listed on UX 5 reflects some rationale for finding the bargaining unit in Warrensville Heights is lower than the average by 3.66%. This is very similar to the SERB Quarterly issued for the first quarter of 2001 (UX7) summarizing the Cleveland region at 3.61 %.

Considering the *contiguous cities* of Shaker, Bedford Heights and Maple Heights, the Warrensville Heights bargaining unit is arguably lower by 3.92%. Combining both groups would reflect a lag in compensation to Warrensville Heights police of between 3.61% and 3.92%. Furthermore, almost all of the 2002 contracts, to the extent presented in evidence, reflect increases of 3.5% or higher.

If Warrensville Heights were not still in recovery from its huge deficit, a larger wage increase would be justified to bring the compensation closer in line with other communities as somewhat supported by the Union.

However, solely because of the City's current unusual problems, it is *RECOMMENDED* that compensation be increased 3½ % for 2002, 4 ¼ % for 2003 and 4 ½ % for 2004.

[It is suggested that, in the next negotiation, every effort should be made by the parties to agree upon a proper rationale to any disparity in compensation of bargaining unit members compared to comparable communities].

ARTICLE 23 LONGEVITY

City Proposal

Section 1. Insert: sixth (6th) between *first day of the* and *anniversary year of employment*

Change percentage formula to fixed amounts increasing from and after the 6th year
The city position was not presented to the Union until hearing of the within matter. Nor is the union response persuasive as presented.

NO RECOMMENDATION is made. The previous terms remain.

ARTICLE 25 INSURANCE

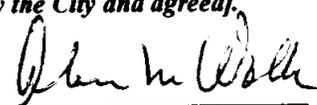
Section 1.

City Proposal: Delete: The City shall pay the full cost of such coverage
Insert: *The City may require co-pay contributions from the employees for medical insurance coverage*
The Union rejects.

The evidence at this time lacked any reliable comprehensive information. Therefore, Management's position seeking a change is not persuasive and *rejected* at this time.

The addition of a contract reopener is RECOMMENDED, providing for good faith negotiations to be mutually undertaken by the parties commencing on or before April 1, 2003, or when the Employer presents the Union with full and complete and reliable figures, regarding the cost of health insurance increases and the financial impact of such increases on the City of Warrensville Heights, whichever time is earlier.

Section 3. Delete \$25,000 and insert \$40,000 [*Voluntarily provided by the City and agreed*].


ALAN M. WOLK, Fact-Finder

Made effective in Cuyahoga County, Ohio,
this 8 day of *May*, 2002.