

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2003 SEP 30 A 10: 19

In the Matter of)
Fact-Finding Between:)

CITY OF STREETSBORO, OHIO)

Case Nos. 03-MED-04-0440
03-MED-04-0441
03-MED-04-0442

-and-)

Jonathan I. Klein,
Fact-Finder

FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC.)

**FACT-FINDING REPORT
and
RECOMMENDATIONS**

Appearances

For Union:

Hugh Bennett – Staff Representative
Charles Wilson – Sergeant
James Wagner – Patrol Officer

For Employer:

Timothy D. Wood, Esq.
Ronald Schmid – Police Chief
Joseph Collica – Mayor

Date of Issuance: September 28, 2003

I. PROCEDURAL BACKGROUND

This matter first came on for hearing on July 7, 18 and 28, and August 26, 2003, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on May 30, 2003. The hearing was conducted between the City of Streetsboro (“City” or “Employer”), and the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”), at the Streetsboro City Hall. The bargaining units involved in the fact-finding process consist of police officers, sergeants, and dispatchers. There are currently seventeen police officers, five sergeants and seven dispatchers. The aforementioned units are engaged in multi-unit bargaining.

The following sixteen issues were submitted to fact-finding by the parties as contained in each of their pre-hearing position statements dated on or about August 19, 2003:

1. Article 9 - Grievance Procedure
2. Article 11 - Overtime Assignment and Equalization
3. Article 15 - Probationary Period
4. Article 20 - School Cost Reimbursement
5. Article 22 - Vacations
6. Article 23 - Holidays
7. Article 15 - Show Up
8. Article 26 - Uniform Allowance
9. Article 28 - Compensation
10. Article 29 - Shift Differential
11. Article 31 - Sick Leave
12. Article 35 - Insurance
13. Article 38 - Savings Clause
14. Article 41 - Personnel Files
15. Article 43 - Promotions
16. New Article - Unpaid Leaves of Absences

The fact-finder incorporates by reference herein all tentative agreements between the parties relative to the current negotiations not otherwise modified by this Report and Recommendations. In making the recommendations which follow, the fact-finder has carefully reviewed in detail the arguments and evidence presented by the parties at hearing, and in their respective position statements.

II. FACT-FINDING CRITERIA

In determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, 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) 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 service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The City of Streetsboro is a charter city pursuant to the provisions of the Ohio Constitution. It is located in northeast Ohio and has a population of approximately 12,311 residents. The City's primary source of revenue is derived from property and income taxes. As noted above, the bargaining units involved in this fact-finding consist of the police officers, police sergeants and dispatchers. The collective bargaining agreements between the City and the Union expired on June 30, 2003.

Upon review of the comparable jurisdictions offered by both parties, the fact-finder determines that the following jurisdictions will be referenced for comparability purposes throughout this report: Ravenna, Kent, Twinsburg, Aurora, Hudson and Macedonia. The fact-finder has also considered other bargaining units within the City in his evaluation of evidence of the statutory criteria.

Issue 1: Article 9 - Grievance Procedure

Article 9 of the parties' collective bargaining agreement currently provides, in pertinent part, that "[t]he cost of the Arbitrator shall be borne by the losing party." The Union seeks to change such language for the following reasons.

According to the Union, the ultimate resolution of a grievance is a benefit to both parties. Thus, the parties should equally share the cost of arbitrations. The Union also asserts that the cost of arbitration should be shared for the following reason:

. . . by the losing party being responsible for the total cost of the arbitration, matters that should be resolved, may not be resolved if one of the parties is not willing or able to pay the entire cost of the arbitration. So issues that could be resolved and enhance the relationship between the Union and the Employer continue to fester and destroy the relationship. (Union's position statement).

Accordingly, the parties should share the cost of any matter which proceeds to arbitration in order to foster healthy labor-management relations. The Union points out that it has prevailed in all of the recent grievances which have proceeded to arbitration. Therefore, it is not requesting a change in the current contract language for reasons of financial self-interest. At the fact-finding hearing, the Union asserted that its position is one of equity. The Union noted that the contract between the City and the part-time firefighters provides that the parties shall share equally the cost of arbitration.

The City agreed to the Union's proposal dated July 28, 2003, to change the first sentence in the last paragraph of Section 2 to read as follows: "Failure by the City to respond to any steps

results in the grievance automatically proceeding to the next step of the grievance process.”

However, the City did not agree to the Union’s proposed change to the arbitration process. In contrast to the Union’s position, the City seeks to maintain the current contract language which provides that the “loser pays for the cost of the arbitrator.” It asserts that the Union has presented no overriding reason to change the aforementioned provision. The City also points out that the “loser pay” provision is contained in its contracts with the full-time firefighters and AFSCME. Additionally, there are “loser pay” provisions set forth in the collective bargaining agreements for the police officers employed by Twinsburg and Aurora.

Final Recommendation

It is the fact-finder’s final recommendation that Article 9 - Grievance Procedure, contained in the collective bargaining agreement between the parties shall retain the “loser pay” provision regarding the cost of arbitration. The fact-finder notes that such a provision is also contained in the City’s contracts with the full-time firefighters and employees represented by AFSCME. Additionally, other comparable jurisdictions have collective bargaining agreements with their police departments which contain “loser pay” arbitration provisions.

The Union has presented no overriding reason to change the current contractual provision. In fact, based upon the representations of the Union’s win/loss record in arbitration, it is perplexing that the City would not agree to such a change. However, the fact-finder notes that there is no evidence that any issues which could have been resolved under a provision that

provides for the equal sharing of arbitration costs between the parties have otherwise festered and destroyed the Employer-Union relationship due to the current language. This fact-finder generally views so-called “loser pay” provisions with disfavor, but at least for the term of the new collective bargaining agreement this provision shall be retained.

Issue 2: Article 11 - Overtime Assignment and Equalization

Both parties have proposed a number of changes to Article 11 of the collective bargaining agreement. In Sections 1 through 4 of the contract, the Union has proposed to codify the present practice of fixed shifts. The use of fixed or steady shifts on the basis of seniority has been in place for a number of months, and the Union asserts that fixed shifts have worked to the satisfaction of both parties and should be incorporated into the new collective bargaining agreement. The Union points out that most of the bargaining unit employees desire a stable work schedule.

The Union asserts that the trend in personnel scheduling “clearly falls on the side of steady work schedules.” It points out that officers employed by the following jurisdictions work steady schedules: Kent, Ravenna, Aurora, Portage County Sheriff’s Department, Hudson, Stow, and Tallmadge. The Union also maintains that the frequent rotating of shifts is harmful to the health of police officers and is a primary cause of stress and social isolation. The Union specifically notes that shift work causes employees to miss social events with their families.

Furthermore, the rotation of shift assignments makes it very difficult to hold officers accountable for much more than responding to calls for service and other activities that occur within the time frame of one shift. The Union contends that constantly rotating shifts is a major obstacle to developing the necessary relationships with residents and businesses in the patrol areas. It further points out that there are educational benefits associated with a steady work schedule. The Union is seeking an opportunity for officers to further their education by being afforded steady work schedules. At the fact-finding hearing the Union acknowledged that ten and twelve hour shifts do not rotate.

The Union asserts that the SERB decision in City of Bedford Heights, SERB 87-016 (1987), aff'd City of Bedford Heights v. SERB, Case No. 134084 (Cuy. Ct. C.P.), aff'd Case No. 54484 (8th Dist. Ct. App., Cuy. Cty.), sets the stage for shift scheduling to become a mandatory subject of bargaining. Thus, shift scheduling is not a true management right, according to the Union. The Union argues that its proposal takes the needs of Police Chief Schmid into consideration because it “permits swing shift officers to cover other shifts by moving members from their designated shifts for conditions beyond the control of management.” Furthermore, the Union’s proposal excludes newly hired or newly promoted employees from being designated to permanent shifts during their probationary periods.

The City argues that the anticipated reduction in sick time did not occur when the shifts became permanent. However, the type of sick leave utilized under the steady shift schedule is “not the one and two day occurrences.” In reality, sick time usage remained static or decreased,

according to the Union. The Union also notes that a work force complement with a range of seniority has been maintained on each of the shifts under the steady work schedule.

The Union has also proposed contract language in Article 11 regarding minimum manning requirements. Specifically, the Union proposes that there should be a minimum of three sworn police officers per shift for patrol duties. It points out that the City's population has rapidly increased, and therefore, the number of service calls has also increased. Minimum manning is not an incursion into management rights, but rather a "safety factor for police officers."

The Union further proposed language which provides that the City must offer full-time employees the right of first refusal for any overtime work prior to offering such work to part-time employees. It asserts that the excessive use of part-time officers could create a safety risk for full-time officers.

Finally, the Union has proposed an increase in the compensatory time bank from the current forty hours to eighty hours. The Union maintains that its proposal does not create an excessive comp time bank, and it points out that the bargaining unit employees are afforded less compensatory time than employees in comparable jurisdictions. It asserts that the "norm" for compensatory time is 480 hours. The Union notes that the compensatory time bank is a known liability for the City. The Union also reasons that the words "departmental policy" contained in the section regarding compensatory time would be changed to "collective bargaining agreement" if the fact-finder grants the Union's proposal for a minimum manning requirement.

The City has proposed to modify Article 11, Section 2 to provide as follows:

The City shall make a good-faith effort to equalize scheduled overtime among bargaining unit members within the classification(s) and shift(s) as much as is practicable under the circumstances. Scheduled overtime is overtime that is available and scheduled at least one week in advance. Bargaining unit members who are offered scheduled overtime and for any reason refuse or fail to work, shall be credited as if they had worked.

According to the City, its proposed modification to Section 2 is necessary in order to make it clear that unscheduled overtime that occurs at the last minute cannot be equalized since it occurs based upon unexpected events. At the fact-finding hearing, Police Chief Schmid testified that the City will make a good faith effort to equalize overtime. The Union contends that the City is “playing with semantics,” and “all overtime is scheduled, some just with more notice.” The Union argues that the current contract language has worked in the past, and there is no need to change that language.

The City opposes the Union’s proposal which requires the parties to remain on the fixed shift schedule, and it notes that it agreed to follow such a schedule on a trial basis for a one-year period. The City contends that the Union’s proposal requires that it relinquish its management right under Ohio Revised Code Section 4117 and the collective bargaining agreement to schedule its workforce. According to the City, there are problems with the fixed shift schedule and the expectation of lower absenteeism under such a schedule has not materialized. It is also important to rotate officers among the various shifts in order to ensure effective law enforcement and reduce employee turnover and burnout.

At the hearing, Police Chief Schmid testified that fixed shifts are detrimental because it “takes away from an officer’s family life.” Additionally, complacency sets in on fixed shifts. Furthermore, officers assigned to the afternoon shift perform the most work, according to Police Chief Schmid, and they are subject to “burnout.” He further stated that fixed shifts are only acceptable if the rest of an officer’s family are on “corresponding fixed shifts.”

Chief Schmid did acknowledge that there is a “semi-dispersal” of senior officers on each shift under the current fixed shift schedule. Additionally, he confirmed that the vast majority of the Union’s comparables utilize fixed work schedules. However, he also stated that it is difficult to rotate twelve hour shifts due to scheduling issues. Finally, Chief Schmid agreed that he did not analyze the specific reasons why employees utilized sick leave in 2003, and compare them with the reasons for sick leave usage in 2002.

The City also opposes the Union’s proposal regarding a fixed manning requirement on the basis that it has the management right to determine the size and manning of its workforce. It is not willing to relinquish that right. The city points out that only one of the five surrounding communities has a minimum manning provision set forth in a contract with its police officers. Police Chief Schmid discussed the minimum manning policy utilized by the City, and he stated that three or four officers per shift are on duty during the summer.

The City further opposes the Union’s proposal set forth in Article 11, Section 7 on the basis that it is simply an attempt to usurp the City’s statutory right to hire and determine the

qualifications for hire. The Union's proposal is also a back door attempt to limit or prohibit the City's use of part-time officers and obtain more overtime opportunities for full-time officers.

Finally, the City opposes the Union's proposed increase in the amount of compensatory time afforded bargaining unit members. According to the City, the Union's proposed language would create scheduling problems and ultimately result in increased overtime costs.

Additionally, such a proposal increases the City's monetary liability in the future.

Final Recommendation

It is the fact-finder's final recommendation that the City's proposal regarding the equalization of "scheduled overtime" shall not be incorporated into the collective bargaining agreement. The City has failed to demonstrate a sufficient reason why the equalization of overtime opportunities should be limited to "scheduled overtime," or why the current language has failed to work.

The fact-finder further determines that the Union's proposal to add language to the contract which requires the City to offer overtime assignments to full-time employees prior to offering such work to part-time employees shall not be adopted by the parties. The Union failed to present any evidence to warrant such an addition to the contract, including probative evidence that part-time employees are being utilized in such a way as to erode the bargaining unit's work. The fact-finder notes that the Union presented no evidence of any safety risks involved with part-time officers performing overtime work.

Based upon the evidence of record, the fact-finder also concludes that the compensatory time bank afforded the bargaining unit employees should be increased as proposed by the Union. Such an increase in the compensatory time bank is clearly warranted as evidenced by the data for comparable jurisdictions.

With respect to whether minimum manning language should be incorporated into the new collective bargaining agreement, the fact-finder is unconvinced that such a change is required at this time. No evidence of similar contract language in comparable jurisdictions was provided to the fact-finder. The fact-finder finds no evidence management's adjustment of manning levels, including seasonal adjustments, was inadequate or posed a safety risk to officers or to the public.

As to the conflicting proposals over fixed and rotating shifts, the fact-finder concludes that each side's proposal contains certain meritorious provisions. The City expresses legitimate concerns regarding the need for shift rotations to eliminate complacency and to encourage development of a well-rounded police officer. Similarly, the Union has also presented evidence regarding the benefit of fixed shifts for the bargaining unit members, including several comparable jurisdictions utilizing fixed shifts of eight hours per day. Taking all the evidence into consideration, the fact-finder recommends the parties incorporate into the new collective bargaining agreement language which requires the City to rotate shifts of eight hours duration each, three times each year on a fixed schedule.

In sum, the fact-finder recommends a change in the title of Article 11 to "Shift Assignment, Overtime Assignment and Equalization;" that the current language in Sections 1, 2,

3, and 5 be maintained; that Section 4 stay the same but for a modification which shall provide that “[a]ccumulation of compensatory time shall not exceed eighty (80) hours;” that a new Section 6 on shift rotation shall be incorporated into the agreement as set forth below, together with new Sections 7 and 8 identified as Union’s final proposed Section 3 and 4, respectively.

New Section 6: Commencing November 30 of each year, the Employer shall post a shift schedule to take effect on the following January 1 which schedule shall consist of three, eight (8) hour shifts. This schedule shall remain in effect for a period of four (4) months until April 30 of each year. No later than March 31 of each year, the Employer shall post a new shift schedule consisting of three, eight (8) hour shifts effective May 1 through August 31. No later than July 31 of each year, the Employer shall post a new shift schedule consisting of three, eight (8) hour shifts effective September 1 through December 31 of each year.

New Section 7: The union recognizes the needs of management to have the ability to move members from their designated shifts to cover other shifts in certain circumstances beyond the control of management (i.e. illness/injury leave, military leave, other leave), and the emphasis of this article is to accommodate that need. The Police Chief or his designee may designate up to three (3) patrol officers, (1) Sergeant, and two (2) dispatchers as “swing” upon the posting of the schedule, with seniority being the determining factor in this designation, absent a request by a more senior member to hold that designation.

Further, should it be necessary to move a member off his designated shift beyond management’s use of swing shift members and/or part-time employees, seniority shall be the determining factor, absent a more senior member accepting the shift move.

New Section 8: The provisions of this Article shall not apply to newly hired or newly promoted bargaining unit members during the probationary period, or to officers placed into the special assignment of Investigators. Officers placed in a special that does not last the entire calendar year and are returned to Road patrol duties will be covered under the provisions of this Article.

Issue 3: Article 15 - Probationary Period

The Union has proposed the elimination of *promotional* probation language contained in Article 15, Section 1, and it seeks to add a new section to Article 15 regarding the promotional probationary period. Specifically, the Union has proposed to reduce the promotional probationary period from one year to six months. The purpose of the promotional probationary period is to examine the ability of a police officer to supervise other personnel and make first level management decisions. The Union points out that bargaining unit members must have at least three years of service before they are permitted to sit for the promotional test.

According to the Union, the City has a great deal of time to evaluate a police officer prior to his or her promotion, and the only evaluation which is necessary after promotion concerns the officer's ability to supervise. The Union asserts that six months is a sufficient period of time to perform that evaluation. It is the Union's position that the current contract language should prevail in the event that its proposal is not adopted by the fact finder.

The Union's proposed language for Sections 1 and 3 of Article 15 is as follows:

Section 01. The probationary period for all newly hired bargaining unit members shall be one (1) year from

the date of hire. Newly hired bargaining unit members shall have no seniority during probationary periods, however, upon completion of the probationary period, seniority shall start from the date of hire.

* * *

Section 03. Any employee promoted into a higher level position shall be required to successfully complete a probationary period of six months. An employee serving in a promotional probationary period whose performance is judged unsatisfactory may be returned to his/her former classification. The probationary period shall begin on the first day for which the employee receives compensation from the Employer at the rate of the promoted position and shall continue for a period of six months. An employee serving this promotional probationary period may be returned to his/her former classification at any time.

The City strongly opposes the Union's position, and proposes the following contract language for Article 15 of the collective bargaining agreement:

The probationary period shall begin on the first day for which the employee receives compensation from the employer at the rate of the promoted position and shall continue for a period of one (1) year. An employee serving this promotional probationary period may be returned to his/her classification at any time.

The City argues that the Union has presented no valid basis for its proposal, and the one-year promotional probationary period has been in effect for many years. Moreover, such a probationary period is common among police departments and public employers. The one-year

promotional probationary period provides the City with an opportunity to observe an officer under a variety of conditions and to determine whether or not the officer's initial performance level can be sustained over a year's time. The City is also unwilling to relinquish its right to remove an employee during his or her probationary period without being subject to the grievance and arbitration procedure.

At the fact-finding hearing, Police Chief Schmid testified regarding the various reasons for a one-year promotional probationary period. According to Police Chief Schmid, it is unfair to judge a candidate for promotion too quickly. He also pointed out the differences between the duties assigned to sergeants and officers-in-charge.

Final Recommendation

It is the fact-finder's final recommendation that the Union's proposal to modify the promotional probationary period as set forth in Article 15 of the contract should not be incorporated into the collective bargaining agreement. The Union has presented insufficient evidence to alter contract language which has effectively worked for many years. The fact-finder determines that a one-year promotional probationary period, as opposed to a six-month period, affords the City an appropriate opportunity to observe an officer's performance under a variety of conditions. The maintenance of a one-year promotion probation period also coincides with the recommendation on shift rotation in Article 11, above. Accordingly, the current contract language shall be maintained.

Issue 4: Article 20 - School Cost Reimbursement

Article 20 of the collective bargaining agreement currently provides as follows:

Section 01. The City will reimburse the costs incurred by a bargaining unit member who attends and obtains certification of satisfactory completion from the school or training facility attended by the bargaining unit member at the request of the City and/or authorized by the Police Chief.

The Union has proposed the addition of a new section in Article 20 which would compensate bargaining unit members for travel time if they must travel more than 50 miles from the City for training. The Union asserts that the City's argument for rejecting its proposal on the basis of "elective schools rather than assigned schools" is disingenuous. It contends that both the City and the employees benefit from training sessions. According to the Union, its proposal provides the City with approximately "one (1) hour of travel time free."

The Union has also proposed a new provision which would afford employees compensatory time for any training which lasts more than eight hours per workday. The City rejected the proposal on the basis that mandated training in excess of eight hours in a workday is compensated at the overtime rate. However, an employee is not eligible for overtime pay for any training which exceeds eight hours in a workday if the training is voluntary. Additionally, the City asserts that employees are granted time off with pay for attending voluntary, rather than mandated training schools. The Union counters that "[i]f that is indeed the case then the same rules would apply; any time spent over eight (8) hours in a workday would qualify for overtime.

Not to pay the overtime rate would be an FLSA violation.” According to the Union, its proposal is both fair and equitable.

The Union’s proposed additions to Article 20 are as follows:

- Section 02. Travel time will be granted in the form of compensation or compensatory time if the employee has to travel more than fifty (50) miles from the employer for training.
- Section 03. Should an employee be required to attend any school or training that lasts more than a standard eight (8) hour workday, they shall be entitled to compensatory time for such time over the eight (8) hour time period provided they submit to the Employer a time sheet signed by the instructor summarizing the time worked.

The City opposes the Union’s proposals and it asserts that the current contract provides that employees *required* to attend training or a school receive their regular pay and are paid for mileage and travel time. Furthermore, such employees are compensated under Article 11, Section 4 of the contract if overtime is involved with the training. The City currently pays for the cost of the school and expenses incurred by employees when their requests to attend a school or particular training sessions are approved. The City also affords employees time off with pay to attend the aforementioned training sessions. According to the City, the Union’s proposal for overtime pay for travel time and for time over eight hours in the school day is excessive and will result in fewer schooling and training requests being approved due to the increased costs.

At the fact-finding hearing, the City reiterated that the current contract covers those situations where the training is mandatory. It contends that the Union's proposal is simply a request for more overtime. According to the City, no other collective bargaining agreements contain language which is comparable to the Union's proposal. Nonetheless, the Union maintained that employees voluntarily attending schools or training sessions should be paid for any time over eight hours in a day. Police Chief Schmid confirmed that employees are afforded time off with pay to attend voluntary training sessions, however, they do not receive overtime pay.

Final Recommendation

It is the fact-finder's final recommendation that the Union's proposal to modify Article 20 of the collective bargaining agreement should not be incorporated into the new contract between the parties. The contract currently provides that the City will reimburse the cost incurred by an employee who attends and completes a school or training session at the request of the City and/or authorized by the Police Chief. The Union has failed to present sufficient evidence of a necessity to incorporate its proposed language into the collective bargaining agreement in light of the current language and existing policies regarding training expenses and compensation.

Issue 5: Article 22 - Vacations

Article 22, Section 3 of the collective bargaining agreement provides as follows:

Vacation may be taken off in minimum segments of eight (8) hours, not to exceed five (5) days annually. Thereafter, only forty (40) hour segments of vacation may be taken as time off from work. An employee may request a one day selection of vacation or more although another bargaining unit member is approved for a 40 hour block or is presently on vacation. Such approvals shall be at the discretion of the Chief or his designee. Forty (40) hour blocks or more of vacation supersede any request for individual days off.

The Union has proposed to modify the aforementioned provision to provide that employees may take up to fifteen days vacation in eight hour increments. The City countered the Union's proposal with an offer to increase the number of vacation days which may be taken in eight hour increments to ten. However, the City also added the following language: "Requests for individual days off are subject to the minimum staffing needs of the department. Such requests must be made to and approved by the employee's scheduled shift OIC." At the hearing, Police Chief Schmid stated that he does not like to circumvent the authority of the shift OIC.

The Union has agreed to the language proposed by the City which provides that requests for individual days off are subject to the department's minimum staffing needs. However, it asserts that the language which requires such requests to be approved by an employee's scheduled shift OIC is unworkable. Unless the scheduled shift OIC is at the station, the work schedule would not be available to him and he would be reluctant to approve time off without the schedule. The Union claims that it is difficult to locate a scheduled shift OIC who is off duty. The contract language would be acceptable to the Union if the duty OIC was permitted to

approve time off requests. The Union notes that there is currently a department policy which permits the shift OIC to approve time off requests if they are made less than forty-eight hours but more than twenty-four hours before the requested time off.

The Union has also proposed to modify Article 22, Section 9 so that employees on special assignments (DARE and Investigators) are not included in the maximum number of officers permitted to be on vacation at any time. The rationale for this proposal is that employees on special assignments are displaced from their normal patrol duties for up to nine months during the year. In the case of the DARE officer, he or she is precluded from utilizing vacation time during the school year. Thus, a DARE officer takes three or four weeks of vacation in the summer. As a result, another employee may be prohibited from utilizing vacation time during that period if the DARE officer is included in the maximum number of employees that may be on vacation at any time. According to the Union, the DARE officer and investigator are ancillary officers and should “not be a part of the maximum calculation.”

The City is opposed to the Union’s proposal because it will result in incurring additional overtime to cover various shifts if officers on special assignment are not included in the number of employees allowed to be off at the same time. It also points out that special assignment officers will “get first choice over other patrol officers for vacation time, even though they are not performing the special assignment at the time.” Chief Schmid pointed out that the DARE officer is not counted in the number of employees who may be on vacation at a given time if he or she takes a vacation while on the DARE assignment.

The Union has proposed the following new section for Article 22:

Section 10. For the purpose of vacation selections among the bargaining unit members, selection slots will be based on Streetsboro Police Department full-time seniority, with three (3) officers and one (1) dispatcher permitted on vacation at a given time.

The City countered the Union's proposal with the following provision:

Section 10. For the purpose of vacation selections among the bargaining unit members, selection slots will be based on Streetsboro Police Department full-time seniority, with two (2) officers and one (1) dispatcher permitted on vacation at a given time.

According to the Union, the record establishes that its proposal was the practice in the department at one time. The number of employees permitted to be on vacation at a given time was reduced to the current number due to a manpower shortage. Presently, there is no manpower shortage and the department is adequately staffed. The Union also asserts that the assignment schedules indicate that there is a "defacto acceptance of the 3 and 1 since that ratio depicts the personnel off at any given time and date," and the City is not incurring overtime in those situations.

The City has advised the Union that it is willing to prepare a letter of understanding to the effect that a third officer may be permitted time off at the same time, but that approval for the third officer cannot be complete until one week prior to the requested time off provided that it does not interfere with operations or result in additional overtime work. Under the Union's

proposal, the City asserts that it will incur additional overtime costs to cover the various shifts.

The Union maintains that most vacations take planning, up front expenditures and down payments, and do not lend themselves to short term approval.

Final Recommendation

The fact-finder's final recommendations regarding Article 22 are as follows:

1. The current language in Sections 1 and 2 shall be maintained.
2. The data presented on comparable jurisdictions indicates that the number of vacation days which may be utilized by bargaining unit employees in single day segments should be increased to fifteen (15) days in accordance with the Union's proposal for Section 3.
3. The evidence of record also supports the inclusion of the following language in Article 22: "Requests for individual days off are subject to the minimum staffing needs of the department. Such requests must be made to and approved by the employee's scheduled shift OIC, or the duty OIC if the shift OIC is unavailable." This language shall be included in the modified Section 3 to be contained in the new collective bargaining agreement.
4. The Union presented insufficient evidence to justify its proposed modification of Article 25, Section 9. The fact-finder notes that there are no indications of any significant problems associated with the application of the current contract language.
5. The Union's proposed language for Article 22, Section 10 shall be incorporated into the parties' new collective

bargaining agreement. The fact-finder determines that there is no evidence of the temporary manpower shortage that existed in December 1999, which necessitated a reduction in the number of employees permitted to be on vacation at any given time. The City presented no probative evidence that overtime costs would increase if three officers were allowed to be on vacation at the same time as opposed to only two officers. As such, the fact-finder determines that the Union has presented sufficient evidence to allow for three officers to be on vacation at any one time.

6. The Union's proposal for a new Section 11 is reasonable, and is hereby recommended.

Issue 6: Article 23 - Holidays

Under the current contract, all full-time bargaining unit members are paid time and one-half for hours worked on various holidays currently listed in Article 23, Section 1. The City proposes to eliminate seven (7) holidays from the list of holidays for which employees receive time and one-half pay. In support of its position, the City argues that police work is a twenty-four hour, seven days per week job which requires work on holidays. However, it is willing to pay an overtime premium to employees who work on the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. The City's proposal is consistent with the practice under some of the police labor agreements in surrounding communities. (City Ex. LL).

The Union asserts that the City has provided no rational reason for its proposal. According to the Union, a top paid police officer would lose approximately \$624 per year if the City only paid straight time for work performed on seven holidays. Such a loss would constitute a one and one-fourth percent wage rate deduction for a top paid police officer. The Union contends that the burden of proof for a concession of this magnitude is upon the City because the current provision is mature contract language. The Union points out that the City's initial proposal sought to eliminate 112 hours of holiday compensatory time from each bargaining unit member. The Union maintains that the City's proposals are clearly concessionary, unwarranted, and an unjustified degradation of employee wages and benefits. Accordingly, the fact-finder should reject the City's proposal.

Final Recommendation

It is the final recommendation of the fact-finder that the City's proposal to reduce the number of holidays for which employees are compensated at the time and one-half rate shall not be incorporated into the parties' collective bargaining agreement. Currently, the bargaining unit employees are afforded more holidays for which they are compensated at the time and one-half wage rate than employees who work at comparable jurisdictions. However, the fact-finder notes that the bargaining unit employees are also compensated at a significantly lower wage rate than comparable bargaining units. The record also reveals that the bargaining unit employees and the full-time firefighters employed by the City are provided with approximately the same number of

holidays. Finally, the fact-finder notes that the City's proposal, if adopted, would result in a significant pay cut for the bargaining unit members. The City has failed to present any substantive justification for its proposed contract language. For each of these reasons, the fact-finder recommends that Article 23 remain unchanged.

Issue 7: Article 25 - Show-Up

Article 25 of the collective bargaining agreement entitled, "Show-Up," currently provides as follows:

Section 01. All bargaining unit members who are required to report outside of their scheduled shift shall be given a minimum of three (3) hours of pay or work at time and one-half (1½) their regular hourly rate, except when such call-out starting time overlaps into their regular scheduled starting time, then time and one-half rate (1½) shall be paid for the actual hours worked prior to regular scheduled time.

The City proposes to add the following language to Article 25 of the contract: "The above provision does not apply when the required reporting occurs two (2) hours prior to or two (2) hours after the employee's regularly scheduled tour hours." According to Police Chief Schmid, the current provision contains "two hours before" language, and he seeks to add "two hours after" language to the contract. He asserts that it is unreasonable for an employee to receive three hours of show-up time when they are already on duty and never leave the station. Currently, employees do not receive show-up time if they are held over their shift.

The Union rejected the City's proposal and asserts that it does not even make sense. The Union questions which part of the current provision does not apply under the City's proposal - the three hours pay at the time and one-half rate or the time and one-half rate. According to the Union, it is a clear violation of the FLSA to require an employee "to hang around in the work place after a tour of duty." The City has offered no reason or rationale for its proposal, and such a proposal is clearly concessionary and a degradation of current benefits. Accordingly, the Union requests that the fact-finder not adopt the City's position.

Final Recommendation

It is the fact-finder's final recommendation that the City's proposal to modify Article 25 should not be incorporated into the collective bargaining agreement. The purpose of the "show-up" provision is to compensate employees for the inconvenience of being required to report to work outside of their regularly scheduled shifts, and represents a guarantee that they are assigned to work and/or paid for a minimum number of hours under such circumstances. The City presented insufficient evidence to justify its position that employees who are required to report either two hours prior to or two hours after their regularly scheduled shifts are not entitled to the "show up" benefit currently provided under the contract. Accordingly, Article 25 of the collective bargaining agreement shall remain unchanged.

Issue 8: Article 26 - Uniform Allowance

The Union has proposed an increase in the uniform allowance for police officers from \$800 to \$1000 per year, and an increase in the uniform allowance for dispatchers from \$375 to \$425 per year. According to the Union's comparables, police officers employed by the City receive the second lowest uniform allowance. The requested increase in the uniform allowance is justified due to the rising cost of uniforms in addition to higher maintenance costs.

The Union also proposes language which provides that employer mandated equipment would be phased in over a twelve-month period prior to becoming mandatory. Additionally, the City would be responsible for the initial cost of the changes if it mandated any uniform modifications. In the past, employees have been responsible for obtaining and paying for uniforms and equipment. However, some of the equipment changes have been expensive. According to the Union, three out of the seven comparable jurisdictions have contract provisions which provide that the employer must pay for the required uniform and equipment changes,

The Union has also proposed new contract language which permits employees to utilize a portion of their uniform allowance to purchase an off-duty weapon. The Union notes that the duty weapon is too large and cumbersome to be carried by employees while they are off-duty. The City has countered with contract language which would permit a one time purchase of an off-duty weapon utilizing \$250 of the uniform allowance. However, the ancillary concessions sought by the City prevented the adoption of that proposal by the Union.

The City seeks to entirely eliminate the language contained in Section 3 on the basis that uniforms which are damaged in the line of duty should be replaced with the uniform allowance. The Union contends that the uniform allowance is for the replacement of uniforms that become unserviceable through normal wear and tear, rather than being damaged in the line of duty. The City has failed to cite any abuses or excessive use of the current replacement policy.

The City contends that the current uniform allowance is the same or better than that provided in other surrounding communities and should not be increased as proposed by the Union. The City also proposes to eliminate Section 3 for the reason that the uniform allowance is sufficient to cover items that may be damaged in the line of duty.

The City's counterproposal to the Union's proposed Section 6 is as follows: "Should the employer mandate uniform modifications, said modifications shall be phased in over a twelve (12) month period prior to becoming mandatory." The City has also proposed the following language for Section 7 provided that no change in the uniform allowance is recommended.

Section 07. Sworn members of the Police Department may use up to \$250 of the uniform allowance for the purchase of an off duty firearm provided the dealer is approved in advance by the police chief or his designee and the firearm complies with department policy. This may only be done once during the officer's employment with the City.

Final Recommendation

It is the fact-finder's final recommendation that there shall be no change in the uniform allowance currently provided under Article 26, Section 1 of the contract. The fact-finder

determines that the Union has failed to present sufficient evidence which would indicate that the current uniform allowance is inadequate. Furthermore, there shall be no change in the language contained in Article 26, Section 3 of the contract regarding the replacement of uniforms which are damaged in the line of duty. The fact-finder notes that several other comparable jurisdictions provide their employees with the benefit of uniform replacements under similar circumstances.

The fact-finder determines that the City shall be responsible for the initial replacement cost of uniforms and equipment in excess of the initial \$100.00 in the event that it decides to implement any changes or modifications to the current clothing and/or equipment. Such changes or modifications shall be implemented over a twelve month period to reduce the financial impact upon both the City and members of the bargaining unit. The fact-finder notes that certain items such as leather to accommodate new weapons can be very expensive, and that a fixed portion of the cost of such modifications shall be borne by the individual officers out of the uniform allowance up to \$100 annually. This new Section 6 shall provide, as follows:

Section 6. Should the Employer mandate uniform or equipment replacement/modifications it shall be responsible for the cost in excess of the initial \$100, and such changes shall be implemented over a twelve month period. The Employees shall pay for the initial costs of any such mandated uniform or equipment modification out of their uniform allowance up to a maximum of \$100 annually.

The fact-finder also determines that the City's proposal regarding the purchase of off-duty weapons by officers shall be incorporated into the collective bargaining agreement. This

proposal is reasonable, the fact-finder concludes that such a provision will not be excessively costly to the City, and no change to the uniform allowance in Article 26, Section 1 has been recommended . This new section should read, as follows:

Section 7. Sworn members of the Police Department may use up to \$250 of the uniform allowance for the purchase of an off duty firearm provided the dealer is approved in advance by the police chief or his designee and the firearm complies with department policy. This may only be done once during the officer's employment with the City.

Issue 9: Article 28 - Compensation

The Union has proposed the following wage rate increases for all bargaining unit members:

July 1, 2003	-	5 % retroactive to July 1, 2003
July 1, 2004	-	5 %
July 1, 2005	-	5 %

The City has proposed the following wage rate increases for the bargaining unit members:

Upon ratification of the contract	-	2 %
July 1, 2004	-	2 %
July 1, 2005	-	2 %

The Union's comparables indicate that the police officers employed by the City "are in the lower quadrant of the comparable cities in wages." The SERB wage settlement chart reveals that the average wage rate increase in 2003 is 3.59 %, and the average wage rate increase in 2004

is 3.58 %. The City's proposal is over a percent and one-half lower than the SERB average. However, the Union acknowledges that its wage rate proposal is higher than the SERB average. According to the Union, its proposal is justified and the City has not argued an inability to pay the desired wage rate increase.

The City maintains that its wage rate package is reasonable and compares favorably to other internal bargaining units. Moreover, its proposal is fair and liberal compared to other jurisdictions. At the fact-finding hearing, Mayor Joseph Collica asserted that the surrounding jurisdictions are more developed than the City and have more substantial tax bases from which to derive revenue.

Final Recommendation

It is the final recommendation of the fact-finder that Article 28 of the collective bargaining agreement shall provide for the following wage rate increases:

July 1, 2003 -	3.75 %
July 1, 2004 -	3.75 %
July 1, 2005 -	3.75 %

The recommended wage rates represent increases which are slightly higher than the approximate average wage rate increases for public sector employees as set forth in SERB's annual ten-year wage settlement data. The fact-finder concludes that such increases will serve to at least maintain the relative ranking of the bargaining unit employees as compared to police officers and dispatchers employed at comparable jurisdictions. The fact-finder notes that the City

presented no probative evidence which would indicate an inability to fund the recommended wage rate increases, and the current ranking of the bargaining unit relative to comparable jurisdictions fully warrants this recommendation.

Issue 10: Article 29 - Shift Differential and Other Pay

Article 29, Section 1 of the collective bargaining agreement currently provides, as follows: “Each full-time Police Department bargaining unit member shall be entitled to a shift differential of fifty cents (\$.50) per hour for all hours actually worked between 4:00 p.m. and 8:00 a.m.”

The Union has proposed the following contract language for Article 29, Section 1: “Each full-time Police Department bargaining unit member shall be entitled to a shift differential of fifty cents (\$.50) per hour for all hours actually worked during the afternoon shift, and seventy-five cents (\$.75) per hour for all hours actually worked during the designated midnight shift.” At the fact-finding hearing, the Union admitted that there is “little [evidence of] comparables with shift differential.”

The City opposes the Union’s proposed language for Article 29, Section 1. It asserts that fixed shifts were utilized on a “trial basis,” and rotating shifts constitute the City’s normal operation. Thus, the City proposes to eliminate the shift differential altogether and fold the cost of \$.35 per hour into each employee’s hourly wage rate.

The Union rejected the City's proposal to roll \$.35 per hour into an officer's base pay on the basis that the City's proposal presupposes that the shifts will rotate. If there are steady shifts, the Union asserts that only those employees who work the afternoon and midnight shifts should receive a shift differential. The Union also notes that the current shift differential is \$.50 per hour and the City has proposed to roll only \$.35 per hour into the base wage rate. At the hearing, the City claimed that the shift differential "averages" out to \$.35 per hour.

In Article 29, Section 2, the Union has proposed to increase the OIC pay from \$.63 per hour to the base wage for sergeants. The Union points out that officers employed at comparable jurisdictions receive the sergeant's rate of pay while acting as "officers-in-charge." It asserts that an officer should receive the wages of a sergeant if he or she is required to assume the duties and responsibilities of a sergeant.

Article 29, Section 3 of the collective bargaining agreement currently provides as follows: "A police officer who qualifies as an expert pistol shooter shall receive a bonus of two hundred dollars (\$200.00) per year for each year he qualifies." The Union has proposed additional contract language which would establish two firearms qualifications sessions per year, in addition to affording each officer one thousand rounds of ammunition for use in practice. The Union asserts that the firearms qualification benefits both the City and the employee. According to the Union it is "not treading new ground" with its proposal.

The City rejected the Union's proposal, and maintains that the Union is really seeking two additional paid opportunities to qualify for the expert pistol bonus. The City asserts that an

“expert” needs only one time to qualify for a “bonus.” Furthermore, the officers are currently afforded ample opportunities and ammunition to practice at the firing range on their own time. Accordingly, the fact-finder should reject the Union’s proposed addition to Article 29, Section 3.

Final Recommendation

It is the fact-finder’s final recommendation that neither party’s proposal regarding the shift differential set forth in Article 29 shall be incorporated into the collective bargaining agreement. The fact-finder determines that the Union presented no evidence to support an increase in the current shift differential of \$0.50 per hour. In fact, the Union acknowledged that few police departments even offer shift differentials. Similarly, the City presented an insufficient rationale for eliminating the shift differential and rolling \$.35 per hour into each employee’s base wage rate.

The fact-finder also concludes that the Union’s proposed language in Article 29, Section 3 shall not be incorporated into the contract for the reason that the Union has failed to demonstrate a need for two firearms qualification sessions per year, in addition to one thousand rounds of ammunition for practice purposes. The fact-finder believes that the current contract language and practice is sufficient, and there is no evidence of problems regarding the application of such language. Evidence that officers are taking full advantage of firearms practice and still failing to qualify as an “expert” is lacking, and the Union’s proposal is rejected.

With respect to modification of the officer-in-charge pay, the fact-finder concludes that the members of the bargaining unit are substantially underpaid when performing the duties of a sergeant in comparison to employees performing similar duties at comparable jurisdictions. Such bargaining unit members may not perform each and every job duty normally assigned to sergeants, however, they are expected to assume most of the duties and responsibilities of a sergeant for the duration of their assigned shift. Therefore, the fact-finder determines that an increase in OIC pay to \$2.00 per hour is warranted under the circumstances and is hereby recommended to be included in the collective bargaining agreement.

Issue 11: Article 31 - Sick Leave

Article 31, Section 1 of the collective bargaining agreement provides as follows:

Sick leave shall be defined as an absence with pay necessitated by:
1) illness, pregnancy, or injury to the bargaining unit member; 2) exposure by the bargaining unit member to a contagious disease communicable to other employees; and/or 3) serious illness, injury or death in the bargaining unit member's immediate family. Time off for doctor and dental appointments shall be charged to sick leave.

The Union proposes to eliminate the word "serious" from the aforementioned provision due to the subjective application of such word. The City opposes the removal of the word "serious" because it will permit employees to utilize sick leave when a family member has only a

minor illness or injury. It asserts that the Union has presented no valid basis for its proposed change.

Article 31, Section 4 of the collective bargaining agreement currently provides as follows:

Before an absence may be charged against accumulate sick leave, the Police Chief may require proof of illness, injury or death, or may require the bargaining unit member to be examined by a physician designated by the Police Chief and paid by the City. In any event, a bargaining unit member absent for more than three (3) days must supply a physician's report to be eligible for paid sick leave.

The Union has proposed to amend the first sentence in Section 4 by modifying the language to provide “[b]efore an absence over three continuous days in duration may be charged against accumulated sick leave,” in order for the first sentence to coordinate with the language change in the second sentence. In the second sentence contained in Section 4, the Union proposes to change “must” to “may” in regard to furnishing proof of illness for an absence of three days or more. The Union points out that all bargaining unit members are not required to submit a physician's report.

The City opposes the Union's proposed changes to Article 31, Section 4 for the following reasons. First, the City has the right under Ohio Revised Code Section 124.38 to require documentation for one or two day absences. However, the City does not regularly require documentation under those circumstances. Rather, it generally confines requests for documentation to situations such as the employee who is abusing the privilege of sick pay, or

there is a basis to believe that a false reason was given for the absence. Second, the Union has presented no valid reasons for its proposal.

The Union has further proposed to add one day of paid leave for the death of an employee's aunt or uncle. The Union asserts that its proposal is not unreasonable, and one additional day of leave is not excessive. At the fact-finding hearing, the Union admitted that there are no comparable jurisdictions which afford employees sick leave for the death of an uncle or aunt.

The City contends that the current provision for paid leave for a death in the family is very liberal. It points out that the contracts in surrounding communities contain no provisions which grant leave for the deaths of aunts and uncles. Accordingly, the fact-finder should reject the Union's proposal.

Finally, the City objects to the fact-finder even considering the issue of sick leave donation on the basis that the Union presented its proposal for the first-time at the fact-finding hearing. Furthermore, the City asserts that such a proposal creates the potential for conflicts among the employees, and each employee should be encouraged to save and bank their sick leave.

Final Recommendation

It is the fact-finder's final recommendation that the Union has presented insufficient evidence of a need to delete the word "serious" from Article 31, Section 1 of the contract.

Furthermore, the Union's proposal concerning Article 31, Section 4 of the contract shall not be incorporated into the collective bargaining agreement. The fact-finder notes that the City has the right under Ohio Revised Code Section 124.38 to require documentation for absences by its employees, and the Union has failed to demonstrate any problems with or abuses under the current contract language which would necessitate a change. There has been no evidence presented by the Union that the Employer has administered this section of Article 31 in an arbitrary or capricious manner so as to warrant recommendation of the Union's proposal.

Based upon the evidence presented, the fact-finder further concludes that the Union's proposal to add one day of paid leave for the death of an aunt or uncle shall not be added to Article 31, Section 9 of the collective bargaining agreement. The Union presented no evidence indicating that comparable employees are afforded sick leave under such circumstances.

Finally, the fact-finder concludes that the Union's proposal regarding sick leave donation shall be incorporated into the collective bargaining agreement. There was no probative evidence to support the City's assertion that such language will lead to conflict among bargaining unit members. Further, the Union's proposal is consistent with Ohio Admin. Code §123:1-46-05, it has a salutary purpose, and the proposal represents no additional cost to the Employer.

Issue 12: Article - 35 Insurance

Article 35, Section 4 of the collective bargaining agreement provides as follows:

Section 03. Employees shall contribute ten (10 %) percent towards the employers' insurance premium cost not to exceed the following amounts per month per employee:
\$90.00 – during the term of the Agreement
All City employees must maintain a 10 % premium contribution agreement, otherwise if any employees are required to contribute less than 10 % towards their premium, then bargaining unit members will be required to also contribute that same lesser percentage.

The City proposes to remove the cap on employee insurance premium contributions. It points out that the cost of insurance has continued to increase over the past years. However, it will continue to pay 90 % of the insurance cost. Thus, the City will absorb the “lion’s share” of any increases in health care costs. The City hopes that employees will become better consumers under its proposal, and therefore, health care premiums will remain lower. The City asserts that its proposal is very fair.

The Union has proposed to increase the cap on employee insurance premium contributions to \$93 per month. The Union asserts that the employee contribution amount must have a limit, and it cannot enter into a three-year contract with no cap on the contribution amount due to volatility in the health care industry. It points out that any wage rate increase could be negated by an increase in the employee contribution for health care.

According to the Union, most of the other bargaining units within the City have contracts which provide for a \$93 per month employee insurance premium contribution. Additionally,

bargaining unit employees pay far more in health insurance contributions than employees at comparable jurisdictions. Accordingly, the Union requests that the fact-finder adopt its proposal.

The Union has also proposed contract language which provides that the City agrees to indemnify and defend any bargaining unit employee from actions arising out of the performance of his or her duties. As a result of Senate Bill 106, Section 2744 of the Ohio Revised Code was amended to permit a political subdivision to apply to the courts so that it would not be required to defend an employee who allegedly did not act in good faith or acted outside the scope of employment or official responsibilities. The Union seeks some assurance that the City will defend and protect the bargaining unit members if an action is brought against them. Under the Union's proposal, the City would contribute \$4 per month for each employee for the purchase of criminal defense insurance. According to the Union, its proposal would save the City a substantial amount of money if an employee is criminally charged. The Union points out that it does not provide the insurance, rather it is offered through the Union.

The City opposes the Union's proposal and submits that Ohio Revised Code Section 2744 sets forth the duties and obligations in regard to the Union's proposed Article 35, Section 6 contract language. Therefore, there is no need for such a provision in the contract. Furthermore, it is an employee's choice whether or not he or she wishes to purchase criminal defense insurance. Finally, the City points out that no similar contract language is contained in collective bargaining agreements in effect in the surrounding communities.

Final Recommendation

It is the final recommendation of the fact-finder that the cap on employee insurance premium contributions should not be eliminated as proposed by the City. In support of this decision, the fact-finder notes that employees at comparable jurisdictions generally pay less for health care insurance than bargaining unit employees. Based upon the evidence presented at the hearing, the fact-finder determines that the employee contribution towards the City's insurance premium costs shall be increased to \$93.00 per month per employee as proposed by the Union.

The fact-finder further concludes that the Union's proposed Article 35, Section 6 shall not be added to the collective bargaining agreement. The Union presented no evidence which indicates that the City has any intention of not indemnifying and defending any officers from actions arising out the performance of their duties. The fact-finder points out that the bargaining unit employees are free to purchase criminal defense insurance if they so choose, however, there is no reasonable basis to impose such an obligation upon the Employer at this time.

Issue 13: Article 38 - Savings Clause

Article 38 of the collective bargaining agreement currently provides as follows:

- Section 01. If during the period of this Agreement a law, rule, or regulation is either in existence or becomes so, which shall render any part of [a] provision of this Agreement invalid, then such invalidation shall not in any way restrain the parties from adhering to the remaining portions and/or Agreement.

The Union has proposed the addition of Sections 2 through 5 in Article 38 of the contract. (Union Tab 16). The purpose of the Union's proposal is to comply with the suggestion set forth by SERB in Toledo City School District Board of Education, 2002-005 (October 1, 2001). According to the Union, SERB held in the aforementioned case that if a collective bargaining agreement did not contain a mid-term dispute resolution process then changes could only be made to the agreement in two distinct circumstances, unless the parties agreed to the new language. The Union seeks to insert mid-term dispute resolution language into the parties' contract so that there is an orderly process in place to settle disagreements which occur mid-term. At the fact-finding hearing, the Union reiterated that its proposal is "SERB generated."

The City opposes the Union's proposal and maintains that there is no need for such a procedure because current SERB law addresses the parties' respective rights with regard to mid-term contract modifications. The SERB decision in Toledo City School District Board of Education must be confined to its specific fact pattern, and it does not justify imposing an unnecessary procedure on a party which is unwilling to agree to such a dispute resolution procedure.

At the fact-finding hearing, the City confirmed that it would negotiate changes in the contract with the Union and follow SERB law. It argues that the Union's proposed contract language is unnecessary, and it is subject to abuse every time a change in policy would be implemented. The City also noted that it was unable to find such a provision in other collective bargaining agreements.

Final Recommendation

It is the fact-finder's final recommendation that the Union's proposal to modify Article 38 of the contract should not be incorporated into the new collective bargaining agreement. The fact-finder determines that the mid-term dispute resolution process proposed by the Union is unduly burdensome, complex and time consuming, particularly as it attempts to emulate the two-step statutory processes of fact-finding and conciliation. Furthermore, the Union has pointed to no other comparable jurisdictions which have implemented such a mid-term dispute resolution mechanism. However, the fact-finder notes that similar contract language addressing mid-term negotiations, if sufficiently refined, may eventually find its way into future collective bargaining agreements between the parties.

Issue 14: Article 41 - Personnel Files

The Union has proposed a new section in Article 41 of the collective bargaining agreement regarding public records requests. (Union Tab 17). The Union's proposal is intended to thwart the release of information concerning a bargaining unit member or his/her family which would place them at risk. The proposal is also intended to notify an employee that a member of the public is accessing his or her personnel file. The Union's proposed language sets limits so that members of the public do not have an unfettered right to the personnel records of bargaining unit employees. The Union points out that its proposal permits the release of any information permitted by law.

The parameters set forth under the Union's proposal allow an employee to file an objection to the release of information, and permit the City to thoroughly inspect the material to be released. Additionally, the Union's proposed contract language permits a neutral party to assure that the request is legitimate and the release of material does not violate statutory or case law. At the fact-finding hearing, the Union reiterated that its proposed contract language is necessary because employees are in jeopardy due to the rapid disclosure of information contained in their personnel files.

The City strongly opposes the Union's proposal regarding public records requests. It points out that the Ohio Revised Code defines public records and guidelines have been established by the Ohio Attorney General regarding the information which can and cannot be disclosed. The Union's proposal imposes unwarranted delays in the release of public records, and it also imposes additional costs upon the City by requiring a hearing before an independent hearing officer. According to the City, the Union's proposal will subject it to unwarranted litigation costs when disclosure is not promptly made or when a hearing officer improperly concludes that some information should not be disclosed.

At the fact-finding hearing, the City asserted that the process proposed by the Union serves no purpose. Police Chief Schmid confirmed that the City has an ordinance regarding its public records policy, and the police department follows the Ohio Attorney General's guidelines concerning the disclosure of public records. The City notes that there is no language contained in

other collective bargaining agreements which is similar to the Union's proposed contract language.

Final Recommendation

It is the fact-finder's final recommendation that the Union's proposed language regarding public records requests shall not be incorporated into the collective bargaining agreement. The fact-finder determines that the Union's proposal creates an unduly burdensome and time consuming procedure regarding the disclosure of public information by the City. There is no mandate that an outside party must comply with this language prior to seeking judicial intervention to lawfully obtain public records. Moreover, the fact-finder concludes that the Ohio Revised Code and the guidelines established by the Ohio Attorney General adequately govern the dissemination of public records. Accordingly, Article 41 shall remain unchanged.

Issue 15: Article 43 - Promotions

Article 43 of the collective bargaining agreement currently provides, as follows:

- Section 01. When the City determines that a vacancy exists in an existing position of rank and determines to fill the vacancy, the procedure shall be as follows:
- a. The City shall give a promotional examination in accordance with the City's Civil Service Rules and Regulations.
 - b. For all candidates who pass the written examination, they shall have only their seniority credit added. No military or other credits shall be added to candidates passing scores.

- c. An eligibility list of the top [three] (3) candidates will be established by the Civil Service Commission and submitted to the Mayor-Safety Director.
- d. The Mayor-Safety Director shall appoint one of the three candidates within thirty (30) days [after] the Civil Service Commission submits the promotional eligibility list.

The Union has proposed to eliminate the aforementioned provision from Article 43 and add eight new sections regarding the promotional process. (Union Tab 18). The Union's proposal eliminates the Civil Service Commission from the promotional testing process and establishes a structured and ordered process in the collective bargaining agreement. Under the current contract, one of the top three scorers is promoted. However, the employee with the highest score on the eligibility list is promoted under the Union's proposal. The Union questions why the City would want to continue injecting subjectivity into an objective process. The Union asserts that its proposal follows the current practice of including seniority as a component of the final grade.

At the fact-finding hearing, the Union noted that the City has the right to administer and grade tests, and the process is not controlled by the Union. The Union reiterated that the current contract language and its proposal both provide credit on promotional examinations for seniority. According to the Union, one officer experienced problems with the promotional process in the past.

The City is strongly opposed to the Article 43 contract language proposed by the Union. It asserts that the current process is fair and the Union has presented no overriding reason to change the current Civil Service Commission provisions and procedures. The Union's proposal is simply an attempt to provide the most senior employee the sought after assignment or promotion in rank, and interject itself into the Civil Service examination process. Under the Union's proposal, seniority counts for one-third of the total score. However, the City points out that seniority counts for only ten percent of the total score under the current process. Additionally, the Union's proposal eliminates the "rule of three," and provides that promotions shall first be offered to employees at the top of the eligibility list. Furthermore, Chief Schmid testified that under Section 3 of the Union's proposal, the City cannot consider anything but seniority in regard to lateral transfers. Finally, the City points out that Article 43 was added to the current collective bargaining agreement as a result of a proposal by the Union in a prior contract negotiation..

Final Recommendation

It is the fact-finder's final recommendation that the Union's proposal regarding the promotion process shall not be incorporated into the parties' collective bargaining agreement. At the fact-finding hearing, the Union presented insufficient evidence of any pervasive problems with the current promotional process governed by the provisions and procedures of the Civil Service Commission. The fact-finder also questions the Union's proposal in regard to the

increased weight accorded seniority in the overall promotional test scores. The fact-finder also notes that the current language was added to the contract as a result of the Union's proposal during the last round of negotiations. Accordingly, Article 43 shall remain unchanged.

Issue 16: New Article - Unpaid Leaves of Absence

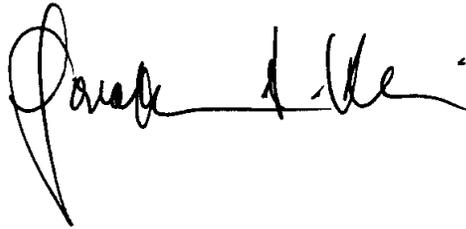
The Union has proposed a new article regarding unpaid leaves of absences for employees who have completed one year of continuous service with the City. (Union Tab 14). The purpose of the Union's proposal is to prevent employees from "dropping out of status" if they exhaust all of their paid time off and FMLA time.

The City offered a counter proposal to the Union's proposed contract language. (City's Statement to the Fact-finder, at 15 -16). Specifically, the City deleted the reference to maternity leave contained in Section 1 of the Union's proposal because maternity leave is already covered under another provision in the contract. The City also added a section to the Union's proposal regarding the concurrent use of unpaid time and FMLA leave.

Final Recommendation

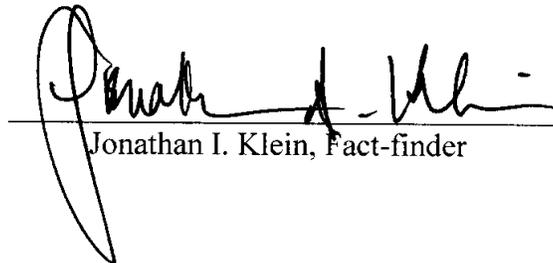
It is the final recommendation of the fact-finder that a new article entitled "Unpaid Leaves of Absence" shall be added to the parties' collective bargaining agreement as proposed by the City. The fact-finder notes that the City's proposal is substantially identical to the Union's proposed contract language with the exception that the reference to maternity leave contained in

Section 1 is deleted, and the City's proposal contains an additional Section 6 regarding FMLA leave. The fact-finder concludes that the reference to maternity leave is properly deleted for the reason that such leave entitlement is adequately covered under another article contained in the contract. The fact-finder notes that the City's proposed contract language set forth in Section 6 is also contained in the collective bargaining agreement between the City and employees represented by AFSCME.



CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served upon Timothy D. Wood, Esq., Brouse McDowell, 1001 Lakeside Avenue, Suite 1600, Cleveland, Ohio 44114-1151, and upon Hugh C. Bennett, Staff Representative, 3076 Hillside Trail, Stow, Ohio 44224-4791, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 28th day of September, 2003.



Jonathan I. Klein, Fact-finder