

2004 SEP 10 A 10:52

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
September 9, 2004

In the Matter of:)	
)	
The City of Cambridge)	
)	
and)	03-MED-09-0885
)	03-MED-09-0886
)	
The Fraternal Order of Police/ Ohio Labor Council - Lodge 10)	
)	

APPEARANCES

For Lodge 10:

Andrea Johan, OLC Staff Representative
James Cogsil, Cambridge Dispatcher
Mark DeLancey, Cambridge Patrolman
Dwayne Helmick, Cambridge Patrolman
John Milan, Lieutenant Cambridge Police Department
Frank Stroud, Cambridge Patrolman

For the City:

Marc Fishel, Attorney for the City
The Honorable Sam Salupo, Mayor of Cambridge
John Jones, Cambridge Safety/Service Director

Fact Finder: Dennis M. Byrne

Background

The parties to this Fact Finding are the employees of the Cambridge Police Department represented by the Fraternal Order of Police/Ohio Labor Council (FOP/OLC) and the City of Cambridge. The parties engaged in a number of negotiating sessions and they reached a tentative agreement, but the bargaining unit overwhelmingly rejected that agreement. The parties returned to the bargaining table in an attempt to find an agreement. However, they were unsuccessful, and as a result, they resorted to the dispute resolution procedures of ORC 4117 and scheduled a Fact Finding Hearing.

Prior to the hearing the Fact Finder attempted to mediate the dispute, but the parties could not overcome their differences; consequently, nine issues remain unresolved. The issues are 1) wages, 2) changes in the health insurance plan, 3) vacation accrual, 4) shift differential, 5) drug testing, 6) minimum staffing language, 7) court time and call in pay, 8) increased number of personal days, and 9) injury leave.

The Hearing was convened at 10:00 A.M. in the Cambridge City Hall and was adjourned at approximately 6:00 PM. The Fact Finder wishes to state that he appreciates the courtesy with which he was treated by both parties.

The Ohio Public Employee Bargaining Statute sets forth the factors that a Fact Finder is to consider in making recommendations. The criteria, which are set forth in Rule 4117-9-05, are:

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

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

Introduction:

The major reason that the Union membership voted down the tentative agreement is the relationship between the City's wage offer and the cost of the medical insurance plan. The City claims that it is unable to pay any wage increase in the first year of the proposed agreement and at the same time it is implementing a new medical insurance plan. That plan calls for the City employees to pay much more for their insurance; in some instances, an

employee may see a premium increase of up to 200%. The Union believes that such a significant increase in the cost of medical insurance coupled with no change in the base wage is unacceptable.

The City states that it understands the Union's position, but maintains that its budgetary problems preclude a wage adjustment at this time. Furthermore, the City claims that the rising cost of providing medical insurance necessitates the changes that it is attempting to put in place. Therefore, the City's financial condition is the main source of contention between the parties. That is, the City is claiming an *inability to pay* (emphasis added), while the Union argues the City has the ability to pay but is unwilling to do so.

The City presented evidence in its pre-hearing brief and testimony by the Auditor, Suellen Johnson, to prove its position. The presentation gave a detailed picture of the City's general fund. The Auditor testified and evidence was introduced that showed the City's income tax receipts and other sources of revenues have stagnated over the past few years. On the expenditure side of the equation, the data showed that the City's outlays, especially for personnel and medical insurance, had been rising. She further testified that the projected carry over balance at the end of the year would be less than two percent of expenditures. She also stated that the City's "rainy day" fund had been exhausted. In response to the severe financial problems that it is facing, the City has instituted a freeze on all discretionary spending and is presently attempting to find further ways to cut costs. Furthermore, the City's attorney, Marc Fishel,

stated that the city is currently deciding whether layoffs will become necessary in order to close the projected budget shortfall.

The City contends that the evidence proves that it has an inability to fund any increases in wages during the first year of the prospective contract. Moreover, the City argues that the increased insurance costs must be passed on to the employees because the City can no longer afford to keep the employees' contribution(s) at an artificially low level.

The Union agrees that the City does have fiscal problems. The Union asserts that the main reason for the current financial problems is that the City has wasted money on frivolous expenditures. The Union believes that if spending priorities were changed, then the City could fund a wage increase and hold down the increased cost of insurance. The Union forcefully argued for its position, but was unable to present documentary evidence that proved the City was overstating its fiscal problems. Rather, it presented anecdotal evidence to support its position.

The Union also pointed out that the Auditor had a history of presenting mid-year forecasts that tended to be overly pessimistic when compared to the actual position of the City at the end of the fiscal year. The Union believes that the City's financial condition will be stronger than the City's projections indicate when the fiscal year ends. Nonetheless, the Union has no real evidence to refute the City's claim that it is facing acute financial problems.

The Fact Finder believes that the City did prove that it is facing a revenue shortfall. The evidence shows that City revenues have been stagnating for some

time. In addition the evidence supports a finding that year to date collections are lower than projected while the costs of running the City continue to rise.

The Union's contention that the City's budgetary problems are caused, at least in part, by spending on low priority items is not supported by the facts. The City administration and City Council make spending decisions, and what appears to be a necessary expenditure from one vantage point can be seen as wasteful spending from another vantage point. The evidence presented does not paint a picture of a City administration that wastes scarce resources. The Fact Finder is sure that some City expenditures appear (are) unnecessary in hindsight, but that same statement could be made about the expenditures of every municipality in Ohio. Regardless of whether there could be consensus on the priorities for spending every dollar, the fact remains that currently there are not enough dollars in the general fund to meet the City's funding demands.

The evidence shows that Cambridge is facing a financial problem that might cause layoffs. Furthermore, the parties agree that some vacancies in various departments throughout the City have not been filled in an attempt to save money. The parties also agree that all City departments are being asked to "do more with less." Therefore, the Fact Finder believes the data show that the City is not simply unwilling to pay.

However, there is some truth in the Union's argument. At the present time, there have been no layoffs and the City has just recently imposed a freeze on discretionary spending. The signs of the impending financial problems have been on the horizon for some time. The Union's argument that the City should

have imposed a spending freeze before the present time in order to have some funds to pay for employee raises, etc., is at least debatable.

It must also be pointed out that the City believes that its finances will improve in the future. The Mayor pointed out that his administration has been working on ways to revitalize the downtown area and that he believes that these efforts are beginning to bear fruit. In addition, both sides pointed out that Wal-Mart and other retailers had opened stores in the vicinity and that the pace of economic development was quickening. The Fact Finder is convinced that the City has made economic development a priority; but the fact remains that currently the City has a serious fiscal problem.

The Fact Finder also recognizes that the parties had a tentative agreement that was voted down. That agreement was discussed at length and the Union bargaining committee forcefully argued that the membership believed the combination of a wage freeze and increased medical premiums was unacceptable. The membership sent the negotiating committee back to the table to get a "better" contract. The Fact Finder believes that the negotiating committee was and is facing a daunting task. The committee cannot change the realities of the City's financial picture and is forced to try to negotiate a new agreement in a time of both fiscal austerity and uncertainty about whether there will be layoffs in the department. The fact that a tentative agreement is unpopular does not mean that it is a bad agreement. The question is not whether a proposed settlement that freezes wages and calls for increased payments for health care, etc. can be easily accepted by the membership. The real question

is whether the existing (or any other) negotiating committee could have achieved significantly more. The Fact Finder believes that the negotiating committee has done a good job under very difficult conditions.

Issue: Article 17(2): Minimum Staffing

Union Position: The Union desires to maintain the status quo.

City Position: The City demands that the current staffing language in Article 17 be deleted from the contract.

Discussion: The language in question reads:

“The City shall maintain a minimum force of three (3) full-time officers or two (2) full-time officers and one (1) dispatcher except that during the times between five (5) p.m. and five (5) a.m. the minimum force shall be four (4) full-time officers or three (3) full-time officers and one (1) dispatcher. For purposes of this Article, “full-time officer” shall include the Lieutenants, Sergeants and Patrol Officers and will exclude the Chief, Captains, and the Detectives.”

The City gives three reasons for its demand. First, the contract gives the City certain “management rights,” which include the right to determine the size, composition, and adequacy of the work force. Second, ORC 4117 also gives the City certain “management rights,” including the ones enumerated above. Finally, the City argues that its financial condition may lead to layoffs, and there may be no way that it can staff according to Article 17. The Union argues that it has a safety concern and that the City’s demand might lead to a situation where officers on the street would have no back-up. Furthermore, the Union believes that it cannot agree to changes in the contract that strip provisions from the agreement because the City may or may not have to layoff employees.

The Fact Finder is not convinced by the City's arguments. Essentially, the City argues that "management rights" give it the right to determine staffing. This may be correct, except the City modified its rights by agreeing to the language in question. Once Article 17 (2) was inserted into the agreement, the City's ability to staff was restricted by the words in the labor agreement. Therefore, the City's argument that it has the right to "determine the size, composition, and adequacy of the work force" is correct except as modified by a valid labor agreement.

The City's contention that its financial condition may lead to layoffs which would make the language in Article 17 (2) inoperable is a conjecture. Article 18 of the labor agreement is a layoff provision. The parties recognized that there was some potential for layoffs when the agreement was signed, and they still inserted Article 17 (2) into the agreement. It should also be noted that Article 17 is entitled "Safety Issues." If the City does have to layoff enough officers that it can not meet the language of Article 17, then it must either meet with the Union in an attempt to find an amicable settlement to the issue or pay the remaining patrolmen/dispatchers overtime to fill the shifts. However, to change the language of the agreement because there may be some layoffs in the City is unreasonable. In this instance the concerns the Union has for its members' safety outweigh the City's potential need to layoff so many officers that it cannot fill the minimum staffing requirements contained in the contract.

Finding of Fact: The City did not prove a need to delete the contested language from the contract.

Suggested Language: Current Language

Issue: Article 26: Wages

Union Position: Essentially, the Union demands a 0% adjustment for the first year of the contract, a four (4%) percent raise and a twenty-five (25%) percent pension pick-up in the second year, and five (5%) percent raise coupled with a fifty (50%) percent pension pick-up in the third year. If the City is unwilling to agree to a pension pick-up provision, then the Union demands a five (5%) percent raise in the second year of the proposed agreement, and another five (5%) percent raise in the third year.

City Position: The City rejects the Union's demand and offers 0% for the first eighteen months of the proposed contract, a two (2%) percent raise in the second year and another two (2%) percent in the final six months of the contract.

Discussion: The parties' positions for the Fact Finding reflect their original positions. However, there was some movement on this issue during negotiations. In addition, the International Association of Fire Fighters (IAFF) and the City reached agreement on a new contract based on a Fact Finder's recommendation while the City and the FOP were still negotiating their agreement. The tentative agreement between the City and the FOP contained a wage agreement that mirrored the IAFF contract. The agreement called for 0% in the first year, 2.5% on 1-1-04, 2.5% on 7-1-05, 2.0% on 1-1-06, and 2.0% on 7-1-06. The tentative agreement did not call for the City to pay for a pension pick-up.

The City states that it does not currently have the money to fund the raises called for by the IAFF contract and that it was only willing to agree to the wage package because it projects that the economy will strengthen leading to higher tax revenues. The City pointed out that the firefighters are paid from funds generated by a property tax earmarked for the fire department. The police department, on the other hand, is funded entirely out of the City's general revenues. The City maintains that the offer on the table is all it can possibly afford.

The Fact Finder believes that the proposed settlement is reasonable given the condition of the City's general fund. The Union's demand for a pension pick-up is unexceptional, but given the City's objection to the demand and the lack of available funds the Fact Finder does not believe that the City can be expected to meet the Union's demand.

Finding of Fact: The City's financial condition precludes any raise for the first year of the proposed contract. In addition, parity demands that the police department personnel should receive the same raises that the firefighters received.

Suggested Language: In the first contract year, the wage scale in Article 26 shall be unchanged, i.e., a 0% raise. In the second year, the police officers shall receive 2.5% on January 1, 2005 and 2.5% on July 1, 2005. In the third contract year, the police officers shall receive 2.0% on January 1, 2006 and 2.0% on July 1, 2006.

Issue: Article 19 (6) Call-In pay and Article 19 (7) Court Time payments.

Union Position: The Union proposes raising the minimum time paid for both Call-In pay and Court Time Pay to three hours.

City Position: The City rejects the Union's demand and desires to maintain the status quo.

Discussion: The parties agreed to accept the Union's position in the tentative agreement that was rejected by the Union membership. Neither side indicated any serious problems with the original agreement on these issues. Both sides agree that the proposed settlement is reasonable. Given the testimony, the Fact Finder believes that tentative agreement on this issue is reasonable.

Finding of Fact: The parties agree that a three (3) hour payment for both call-in pay and court pay is reasonable.

Suggested Language: Article 19 (6) Call-In time

Sentence 2: Employees reporting back to the employer's premises at a specified time on regularly scheduled work days shall be compensated for three (3) hours of the appropriate overtime rate or be compensated for the actual time worked, whichever is greater except that, for any call-in which occurs on a holiday, the appropriate rate of compensation shall be at the premium rate.

Article 19 (7) Court Time

Employees covered by this Agreement, who are required to attend court outside their regularly scheduled work hours, shall be compensated at the overtime rate with a minimum of three (3) hours.

Issue: Article 21: Vacations

Union Position: The Union demands an increase in the vacation accrual rate needed to earn the fifth week of vacation. In addition, the Union demands an extra week of vacation at the top end of the scale.

City Position: The City rejects the Union's demand.

Discussion: The Union made two arguments in support of its position. First, in light of the contracts that the City has with other bargaining units, the Union argues that its demand for a sixth week of vacation earned in one day increments after twenty years of service is a benefit already found in the City's AFSCME contract. Therefore, the Union argues that this is a benefit to which it is entitled. That is, the Union is making a parity argument. The Union pointed out that there are very few police officers with twenty years of service, and therefore, the cost of the benefit is minimal.

The Union also demands that the accrual rate for the fifth week of vacation be changed from the current schedule which specifies that the fifth week is earned after an officer is with the department for eighteen (18) years. The Union proposes a schedule whereby an officer earns an extra day of vacation after fourteen (14) years of service, another extra day after fifteen (15) years of service, etc. The Union argues that this will benefit both parties. The Union claims that few officers remain with the department for twenty or more years. Therefore, the Union sees this modification of the vacation schedule as an inducement for officers to remain on the force.

The City indicates that it understands the Union's position that all bargaining units will demand parity with the AFSCME unit, and given the facts of the matter, it states that it is willing to increase the vacation accrual at the twenty year mark. The City does not believe that the extra day of vacation at the fourteenth (14) year of service will have much (any) impact on an officer's decision to remain with the department. However, based on the discussions about this matter, the City stated that it is willing to meet one or the other of the Union's demands, but not both. The City claims that its financial situation makes this concession problematic, but that it is willing to meet part of the Union's demand because this is an instance where it believes that the Union's demand has some merit.

The Fact Finder notes that this is a change from the tentative agreement signed by the parties. Furthermore, the Fact Finder agrees that the Union's rationale for the suggested change(s) has merit. Anything that increases tenure within the department should help the City control costs by lowering hiring and training costs. Moreover, a department with a number of senior officers should have increased productivity because the officers by definition have more experience. Therefore, even a marginal inducement for officers to remain with the department should benefit the City. The Union's parity argument is also compelling.

In discussions with the Union negotiating committee, the Fact Finder learned that the committee believes that the changed accrual rate at the fourteenth (14) year will benefit more bargaining unit members than the change

in the scale after twenty (20) years. Therefore, the bargaining committee's position was that changing the vacation schedule after fourteen (14) years was a higher priority than changing the scale after twenty (20) years. The Fact Finder agrees with this analysis.

Finding of Fact: The Union's proposed change in the vacation accrual rate after fourteen (14) years will have little cost for the City, but may act as an inducement for officers to remain with the department.

Suggested Language: Article 21: Vacations

Regular full-time employees in the Bargaining Unit shall be eligible for paid vacation as follows:

Years of Service Completed	Number of weeks of vacation
1 year	2 calendar weeks
5 years	3 calendar weeks
10 years	4 calendar weeks
14 years	4 calendar weeks plus 1 day
15 years	4 calendar weeks plus 2 days
16 years	4 calendar weeks plus 3 days
17 years	4 calendar weeks plus 4 days
18 years	5 calendar weeks.

Note: The rest of the language in Article 21 shall remain unchanged.

Issue: Article 22 (4) Injury Leave

Union Position: The Union is demanding that the City pay an officer his wages for the time between a covered accident and the start of Worker's Compensation payments.

City Position: The City rejects the Union's demand.

Discussion: The Union pointed out, and the City agreed, that there have been a number of serious work related accidents over the past few years. The Union's position is that an officer who is injured in the line of duty should not be faced with financial hardship until he/she is eligible to receive Worker's Compensation insurance. Under the current system in place in Cambridge, the officer receives eight (8) working days of injury leave and then receives no income until Worker's Compensation payments begin. However, Worker's Compensation usually does not start until an officer has been off work for one month. Therefore, the officer receives no pay or insurance for approximately three weeks.

The two sides discussed this issue at length; and after listening to the Union's rationale, the City agreed to increase the injury leave period to fifteen (15) days. Furthermore, the City agreed to pay the injured worker for the days after injury leave is exhausted until the officer starts to receive Worker's Compensation with the understanding that the officer will reimburse the City for any payments made to the individual after the expiration of his/her injury leave.

The agreement that the parties discussed at the Fact Finding is standard in many jurisdictions. The employer pays the injured worker during the time between the accident and the start of Worker's Compensation. This helps the injured employee pay bills, etc. The Union agrees that there is no attempt to "double dip" on the payments and accepts the fact that any payment made by Worker's Compensation will be used to fully reimburse the employer for the wages paid while the officer was without either injury leave or a pay check. This arrangement is standard and is found in many police contracts throughout Ohio.

Finding of Fact: The Union's proposed changes in the injury leave language are standard throughout Ohio. The proposed changes insure that an injured employee has a source of income until Worker's Compensation payments begin.

Suggested Language: The parties agree that they will work to develop mutually acceptable language on this issue.

Issue: Article 24 Insurance

Union Position: The Union demands that the sentence, "Should the premium contribution increase, said increase shall be equal to or less than the increase in base-wages for the same year." be added to the contract.

City Position: The City rejects the Union's demand.

Discussion: This is the most contentious of the issues that separate the parties. The City is changing from a situation where it was self-insured to a bid/purchase agreement with a medical insurance carrier. The City is making the change because it is facing ever increasing insurance costs and it needs to find some way to control these costs. The City testified that the proposed changes will save significant amounts. Unfortunately for the employees, even with the projected savings, the City is still facing increased medical insurance costs and must find a way to cover the increased charges. The City, like every other employer both public and private, is requiring its employees to pick up a part of the cost of insurance via some combination of increased co-pays, deductibles, and premium payments. In this case the increase in premiums is substantial. For example, the premium for a family plan jumps from \$45.00 per month to

\$155.00 per month. The Union finds this increase especially onerous given the fact that wages are frozen or growing slowly. The Union believes that this “double whammy” is unacceptable. The rise in premiums for health care is the major reason that the tentative agreement between the parties was voted down by the union membership.

The City Auditor, Suellen Johnson, testified at the hearing and answered many questions from the bargaining committee. The thrust of her testimony was that one main reason for the City’s financial plight is that the cost of health care continues to spiral out of control. She stated that health care expenditures have risen to the point where the City must make changes in the plan in order to be able to provide insurance to its employees. She testified that the City Council made the decision to change from self insurance to an insurance carrier only after prolonged study. The Council decided that it would try to keep the new insurance benefits similar to the old plan in an attempt to ease the transition from one plan to another. After that decision was made, the City attempted to find the lowest cost carrier who would bid on the plan. The City then selected the low cost bidder.

Ms. Johnson also attempted to dispel any doubts the bargaining committee had about the plan. For example, she testified that all City employees had the same plan, unless they opted out because they could get insurance through a spouse. She stated that all employees paid the same premium. The employee contribution was determined by taking the cost of the plan minus the City’s contribution (approximately 75%) and dividing the remainder by the

number of City employees. She also testified that the City's contribution was in excess of \$700,000.00.

The Auditor also testified that the City Administration understood that the increase in insurance premiums created a hardship on the employees. However, given the state of the City's finances and the ever increasing cost of insurance, the City believed that it had no choice but to change the way insurance was provided. Under questioning from the bargaining committee Ms. Johnson said that City Council and the Mayor recognized that they would have to try to control health care costs over a year ago; but they decided to keep costs to the employees at a minimum for as long as possible. Therefore, rather than a gradual increase in premium payments phased in over time, something that might be more palatable albeit more costly to the employees, the City kept premiums low for as long as possible but then was forced to raise the cost significantly.

The Fact Finder understands the Union membership's concerns in this area. The cost of health care is rising at over twice the cost of living, and prescription drug prices are rising even faster. In addition, many employers are either dropping health insurance for their employees or having the employees pay for their health insurance by accepting wage freezes. All of this has not led either to better health or increased insurance coverage. Statistics show that fewer Americans are covered by health insurance every year and that the health of the average American continues to deteriorate.

Unfortunately, the health care crisis has come to Cambridge. The City is in the same situation as almost every other municipality in Ohio and the Nation. The City is compelled to find funds to pay for the rising cost of care in a time of economic malaise and stagnant revenues. The result is that employees often have to pay significantly more for insurance. The alternative is either a much worse health insurance plan or no insurance.

The Union also made the point that there is a health insurance committee that is supposed to meet and discuss changes in the health plan. This committee did not have any input into the new plan, and the negotiating committee argues that this violated the terms of their agreement. The Auditor stated that the committee had, historically, met to consider special circumstance cases where there was a question about whether the plan would cover a specific illness. She agreed that the committee was not consulted by the City Council about the decision to change insurance plans. The Fact Finder believes that the insurance committee should be consulted about changes to the plan and be offered the ability to comment on proposed changes. The free dissemination of information about the plan will make it easier for City employees to understand what is happening and why.

The bargaining committee also questioned Ms. Johnson about why county employees do not pay as much for insurance as City employees. Ms. Johnson stated that she did not know. However, during the hearing the parties testified that a new Wal-Mart and other retail outlets had recently opened in Guernsey County, leading to increased sales tax revenue for the County. It is probable that

the County has used some of this increased revenue to defray the cost of insurance. In any event, assuming that County employees do pay less for insurance, the County seems to have some source or revenue that allows it to keep insurance premiums lower than the premiums paid by City workers.

The Auditor also stated that all City employees, both union and nonunion, were covered by the same plan. The only difference is that the IAFF contract contained a slightly lower premium than the one contained in the City's proposal. The reason is that the Fact Finder in the firefighter's negotiation recommended a lower figure than the City proposed. Therefore, given the fact that safety forces usually have parity with regard to benefits, the Fact Finder is recommending that the premiums paid by the police officers be the same as the premiums paid by the firefighters.

One further item needs to be discussed in this context. The City is demanding that the increased premiums be retroactive to June 1, 2004. The City testified that this is the date that the firefighters started to pay the increased premiums. The City also stated that all other employees started paying the increased premiums prior to June 1st. Therefore, the City believes that basic fairness and parity require that the police officers begin to pay the increased premiums as of June 1, 2004.

The Union argued against this position, but the City's contentions about parity are compelling. This Fact Finder has used the IAFF contract as a reference point a number of times, and the parity argument raised by the City in this context makes sense. Therefore, the Fact Finder agrees with the City's

position on this issue. However, the Union in its presentation on this issue also pointed out that the lack of a pay increase coupled with a large one-time payment of back insurance premiums would cause a hardship on the police personnel. As a result, the City agreed to recover the back premiums over time; and the parties agreed that a six month recovery period is reasonable.

Finding of Fact: The combination of stagnant revenues and rising health care costs forced the City to change the way it funded health insurance. The City is not discriminating against any employee because it offers the same plan at the same cost to all.

Suggested Language: Article 24 Insurance

No changes to paragraph 1.

During the term of this Agreement, each employee shall contribute the following premium amounts monthly.

Single Plan - \$50.00
Employee and Spouse - \$80.00
Employee and Children - \$110.00
Family Plan - \$140.00

Issue: Article 26 (10) Shift Differential

Union Position: The Union demand is for a \$.25 per hour increase in the differential.

City Position: The City rejects the Union's demand.

Discussion: The parties did not agree on an increase in the differential in the original negotiations leading up to their tentative agreement. The City argues that it cannot afford to meet the Union's demand. The Union believes that the comparables' data show that the differential paid to the Cambridge officers is

deficient when compared to other jurisdictions. The Fact Finder believes that the data support the Union's position on this issue. Moreover, in discussions surrounding the issue, the City agreed that given the size of the department and the staffing per shift, that it could meet the cost of the demand even with the fiscal problems it faces. Consequently, the City was willing to move on this issue. The Fact Finder believes that doubling the differential is not warranted by the facts of the matter. Therefore, the Fact Finder is recommending a \$.15 increase in the benefit.

Finding of Fact: The comparables data show that the shift differential paid in Cambridge is below the amount paid in other jurisdictions.

Suggested Language: Section 10: Shift Differential

All employees in the Bargaining Units who are scheduled to work during the afternoon and midnight shifts as defined in Article 19, Section G, shall be paid a shift differential of forty cents (\$.40) per hour for each hour worked.

Issue: Article 22 (5) Personal Leave

Union Position: The Union demand is for one (1) extra personal day.

City Position: The City rejects the Union's demand.

Discussion: The parties agreed during the negotiations leading up to the tentative agreement that the officers would be entitled to a fourth personal day paid out of sick leave. That is, the Union members could convert eight hours of sick leave into a personal day. During the Fact Finding there was little discussion of this issue. The Union stated that it wanted to continue the same

agreement that was contained in the tentative agreement, and the City did not make any argument against that position.

Finding of Fact: The parties agree that eight hours of sick leave can be converted to a personal day.

Suggested Language: Article 22 (5)

Each bargaining unit member who has completed his/her probationary period shall be given three (3) paid personal days during each calendar year of employment. **In addition, each eligible bargaining unit member may convert eight hours of sick leave into one (1) personal day during each calendar year of employment.** (No changes to the rest of Section 5)

Issue: Article 29: Drug Testing

Union Position: The Union demands that the status quo be maintained on this issue.

City Position: The City demands that the standard for testing for substance abuse be lowered from probable cause to reasonable suspicion.

Discussion: The City believes that the public has the right to expect that its safety forces are drug and alcohol free. The current contract does not allow for random testing of the police officers, and the City made a point that it is not asking for random testing. However, the City believes that a reasonable suspicion standard allows the City some leeway in determining whether an officer should be tested and also allows the officers some protection from intrusive testing. The City argues that a probable cause standard can prevent it

from testing an officer even if the City has some reason to believe that he/she may be abusing drugs or alcohol, but not enough evidence to rise to the level of probable cause.

The Union sees no reason for changing the current language. The Union points out that there is no evidence that any member of the department is a substance abuser. Furthermore, the Union contends that there is no instance where the current language has caused any problems. The Union's position is, "if it ain't broke, don't fix it."

The Fact Finder is not convinced that the City's position on this issue is unreasonable. The move throughout the country is toward a more lenient testing regime, i.e. random testing; and there are many ways that random testing can be justified for public safety workers. A move to a reasonable suspicion standard is often seen as a compromise between the probable cause standard and random testing. However, in this situation given the lack of any evidence that the current language has caused a problem, the lack of any history of substance abuse within the department, and considering the overall state of the relationship between the parties; the Fact Finder is recommending that the current language remain in effect.

Finding of Fact: The City presented no evidence that the current drug testing language was causing problems.

Suggested Language: Current language

Issue: Article 19 (3) Hours of Work and Overtime/Work Schedule Defined

Union Position: The Union demands that the language of Article 19 (3) remain in the contract.

City Position: The City contends that the issue is not properly before the Fact Finder and did not discuss the Union's demand.

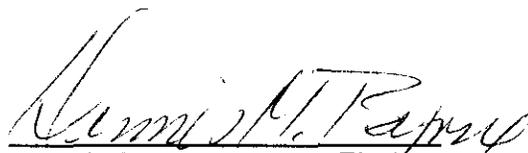
Discussion: The issue was not raised in either party's pre-hearing statement. Furthermore, the parties agreed that it had not been discussed in earlier negotiations. Therefore, the Fact Finder agrees with the City's contention on this issue.

Finding of Fact: The issue is not properly before the Fact Finder.

Suggested Language: N.A.

All other articles tentatively agreed to by the parties are included by reference into the contract

Signed this 9th day of September 2004 at Munroe Falls.


Dennis M. Byrne, Fact Finder