

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUN 17 A 10: 35

In the matter of:

City of Upper Sandusky/IUPA
Local 32/Ohio Labor Council

Case Nos. 2003-MED-09-0972
2003-MED-09-0973

FACT-FINDING REPORT

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report:

I. HEARING

On May 9, 2004, the Fact-finding was heard at the Upper Sandusky City Building. The following were present:

IUPA	William A. Dunn, Business Agent
	Andrew Silcox
	Allen Foust
City of Upper Sandusky	Pete B. Lowe and Elizabeth A. Criblez, Clemans Nelson & Associates, Inc.
	Mark J. Ellis, Law Director
	Chief Robert O. Hollis

II. CRITERIA

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, 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; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. ISSUES AND RECOMMENDATIONS

INTRODUCTION

This report covers the consolidated cases of two bargaining units, the police officers and police lieutenants of the City of Upper Sandusky. The parties successfully negotiated a number of changes to the current agreement, which expired December 31, 2003. However, with the possible exception of the changes to the grievance process, and a new drug and alcohol testing provision, the agreement has generally been limited to procedural matters. A large number of issues remained for fact-finding, and it appeared to the Fact-finder that at times the hearing more resembled a negotiating session than a fact-finding proceeding. Without any speculation as to the causes, the Fact-finder believes that the parties could and should have engaged in more serious bargaining prior to fact-finding.

Prior to this agreement, the police and fire employees bargained together in a consolidated agreement. The City refused to do so for the renewal of the agreements. References below to maintaining current language are not meant to require the retention of language as to firefighters. The parties surely can perform the editing of such language without the assistance of the Fact-finder.

FINDING OF FACT NO. 1 – WAGES—ARTICLE 12

The City proposes wage increases of 3.1% for 2004, 2.75% for 2005, and 2.75% for 2006. It agrees to retroactivity, only if any increases in employee health premiums are also

retroactive. The Union proposes a 4.5% increase for 2004, retroactive to January 1, 2004, and increases of 4% for the remaining two years of the three year contract.

The officers have historically worked unusual 12-hour shifts, seven days in a 14-day pay period, with two days on, followed by two days off. They are paid for 84 hours, with no overtime.

The City offers the cities of Clyde, Willard, Shelby, Ontario, Crestline, Galion, Ada, and Delphos as comparables. It also cites the Village of Carey in Wyandot County. The City argues that these cities averaged \$34,417.11 at top pay; \$30,769.36, if 10% is deducted for the employee Ohio Police and Fire Pension Fund contributions; and \$34,536.11 and \$31,355.23, respectively, if the Village of Carey (population 3,901) is omitted. The City's officers at top wage are paid \$33,240.48, and the City contributes all but 1% of the officer's 10% contribution to the Ohio Police and Fire Pension Fund. The net top wage, after the Ohio Police and Fire Pension Fund reduction, is \$32,918.08.

The City argues that the Consumer Price Index rose an average of but 1.7% for all urban consumers in the last year. The City gave all non-bargaining unit employees a \$1,000 per year increase to "try and balance the dollars spread which had developed from years of granting percentage increases in which ... police officers received larger dollar increases because of their higher rate of pay." Moreover, those employees have been paying more in health premiums and received no other benefit increases.

The City further argues that the Union's proposed increases would place the officers at 6.1% (5% if Carey omitted) above the average of its comparables, and in the top 33 percentile. The City has increased officer pay by 57% in the last 10 years, plus agreeing to pay 9% of the employee's contribution to OPFPF. It states that income tax collections are down 9.3% year to

date from last year. The carryover of the general fund has decreased from \$311,898.05 (2001), to \$117,457.79 (2002), to \$8,994.20 (2003). However, the total carryover in December 2003 stood at \$1,376,896.62, per the auditor's balance.

The firefighters (only *three* employees) received a 3.5% increase for 2004, 3% for 2005, and 3% for 2006. Moreover, the firefighters accepted the City's proposal as to sharing the cost of health insurance increases and agreed to reduce the number of paid leave days and made other non-economic concessions to the City. Wyandot County sheriff deputies received a 2.5% increase for 2004, and pay 20% of health insurance premiums. Further, the City argues that, nationally, state and local government average pay increases were 3.3% for the year ended March 2004, and increases dipped to 2.0% in March 2004. However, the same analysis shows benefits increasing 6.2%.

The Union has offered comparable municipalities, including some suburban cities, such as Bexley, Grandview Heights, Pickerington, Powell, and Worthington, all of which are near to Columbus. Its comparables result in an average minimum of \$32,342.35 and an average maximum of \$44,084.50, to Upper Sandusky's \$26,228.80 and \$33,467.20 (including the 9% pension pick-up and based on a 40-hour week), respectively. If the suburban municipalities are removed from the calculation, the averages are \$30,527.07 and \$37,919.03 (Bucyrus, Circleville, Galion, Heath, London, Mt. Vernon, Ontario, and Washington Courthouse).

The Union notes that the City's officers work a 42-hour work week, which further complicates comparisons. All comparables (City and Union) are municipalities using 40-hour work weeks. The Union has compared wages earned only upon 2,080 hours for the officers. The City's comparable comparisons do not adjust for the extra hours worked by the City's officers (an extra 104 hours per year). At the current \$14.75 per hour rate at the top, the pay for

the City's officers should be decreased \$1,535.04, prior to comparison with the City's comparables. This would result in an adjustment to \$31,383.04 for comparison with those cities, placing the City a bit below the average, if compared on an hourly basis.

In the last agreement, the City agreed to 4% yearly increases. Without question, the past year has seen lower wage increases on average than those enjoyed prior to the economic downturn. The City argued a limited ability to pay at fact-finding, which it acknowledges was not brought up as an issue in negotiations. 2003 saw increases in the City's income tax revenues of approximately 10% over 2002, and the Mayor has been quoted as anticipating continued improvement. However, the City cites a decrease of 9.3% in collections January–April, 2004 over the same period in 2003. The City's General Fund carryover has dropped from \$311,898.05 (December 31, 2001) to \$117,457.70 (December 31, 2002), and \$8,994.20 (December 31, 2003). In sum, this Fact-finder was not presented with sufficiently detailed financial information to support a conclusion that the City's finances will not support wage increases otherwise appropriate.

It appears to the Fact-finder that increases of 3.5% this year, and 3.0% for the following two years are necessary to maintain the officer's pay in accordance with those of municipalities similarly situated.

RECOMMENDATION

The wages should be increased by 3.5% in 2004 (retroactive to January 1, 2004), 3.0% in 2004, and 3.0% in 2006, and revised Article §§13.1 and 13.2 should be adopted, as in Exhibit A attached hereto. Article 13.3 from the previous agreement should be deleted. Section 13.5 of the current agreement should be retained in the new agreement without change.

FINDING OF FACT NO. 2 – OPT-OUT OF PENSION CONTRIBUTION

Currently, the agreement (§13.4) permits employees within three years of retirement to “opt-out” of the 9% City pick-up of the employee (10%) portion of contributions to the Police and Fire Pension Fund. However, recent correspondence from the Fund and IRS rulings now prohibit such flexibility, although an entire unit “opt-out” is acceptable.

The Union wants the same language as negotiated in the firefighter agreement. That language would permit opt-out by unit, which appears to be reasonable and consistent with the law, with little, if any, economic impact to the City.

RECOMMENDATION

The attached Exhibit B should be adopted in the new agreement as Section 13.4.

FINDING OF FACT NO. 3 – ANNUAL BONUS

The Union proposes increasing the current annual bonus of continuous fulltime service from \$5.00 to \$6.00 per month. The Union also proposes increasing the threshold to five years from three. The current benefit was negotiated in 1989. The Union argues that the benefit has decreased by virtue of inflation and that the increase was provided to the firefighters, but the City argues that the firefighters made other concessions to get the increase. The City argues that each employee gets an increase every year merely through longevity. All other (non-bargaining unit) employees receive \$5.00. The Fact-finder believes that an increase is warranted. The benefit today is much less than that negotiated 15 years ago.

RECOMMENDATION

The annual bonus now in §14.1 should be modified to adopt the Union position, as per the attached Exhibit C. All other provisions of the current Article 14 shall be retained unchanged in the new agreement.

FINDING OF FACT NO. 4 – PAY STEPS

The Union proposes to delete step 6 from the wage rates. This would result in an officer receiving top wages after five years of employment. The Union offered comparables showing an average 4.8 steps to reach maximum pay. The firefighters recently agreed to a seven-step wage package, reduced from 10 steps.

The City argues that the Union proposed adding five steps in 1998, and they reduced the demand to four additional steps, which was adopted by the conciliator.

Given the recent history of the negotiations and positions of the parties, and a current wage structure that is not dramatically out of step with other comparable units, the Fact-finder sees no need to alter the step structure.

RECOMMENDATION

Section 12.1 should not be modified to decrease the number of steps, and the current steps should remain unchanged in the new agreement.

FINDING OF FACT NO. 5 – MEDICAL BENEFITS

The current agreement requires an employee medical benefit payment of \$27.50 per month (single), \$44 per month (for spouses), and \$66 per month (with other dependents). Same or comparable benefits are required, though the City can change carriers.

The City wishes to preserve those rates, provided that the employees will pay 25% of any increases in costs, up to a total 15% of the City's maximum costs for coverage. The City agrees to maintain same or comparable benefit levels. The City argues that non-bargaining unit employees pay 10% of their premiums at the rate of \$88.47 per month. In the last three years, the City's costs have gone up \$318/month per employee, while officer contributions have only

increased from \$50 to \$66 since 1995. The officers now pay approximately 7.5% of the total \$84.73 premium (with two dependents). The cost to the City increased by \$157.59 as of January 1, 2004. The City also proposes that cash fund contribution maximums for dental and optical be increased slightly (from \$650 to \$675) for three or more covered persons. The firefighters have agreed to the proposal.

The City further argues that currently 70% of public employees require some employee contribution, and the average contribution is \$103.14. The City's proposal would mean an increase of \$39.40 per month from January 2004.

The Union argues that in 2003 the insurance costs went down, but the employee contribution did not. The non-bargaining units, however, received the benefit of a decrease. The Union argues that the firefighter unit agreed only because of peculiarities relating to its three employees. The Union wants to increase contributions by 10% for 2004, 5% for 2005, and 5% for 2006, reaching a maximum contribution of \$80.04 (with two dependents) in 2006.

The Union contends that the sheriff's employees pay 20% of the premium, but the rates have gone up so high that many are dropping out. The Union argues that the non-bargaining unit employees pay but 10% of the premium. The City wants the bargaining unit to pay up to 15%.

The City says that there was no evidence of deputies dropping out of the County's insurance because of premiums and that the Union's own comparables show a higher percentage of health care premiums being paid than that being paid by Upper Sandusky officers.

The City's proposal appears reasonable and merely an acknowledgement that the employees must share some of the burden of the increasing medical and hospitalization costs.

RECOMMENDATION

The City's proposal as to medical benefits (attached hereto as Exhibit D, with noted modifications from the current Article 17) should be adopted, effective with acceptance of the new agreement.

FINDING OF FACT NO. 6 – PERSONNEL FILES

The City wishes to change the current Article 11 as to the maintenance of personnel files to extend, upon certain circumstances, the time for retention of disciplinary action records. The City argues that the language has been agreed to by the firefighters and dispatchers. The City maintains that the current language unfairly limits the use of prior disciplinary actions in progressive discipline. The proposal would permit the retention of written reprimands for 24 months (from 18), if the employee receives another written reprimand within 18 months, and would extend same to the length of any extension. The proposal also would apparently prevent the employee from viewing his or her file while on duty, and specifies that the Mayor's administrative assistant shall maintain the files. The proposal would give the City five days to provide any copies of items in the file.

If problems have accrued with the status quo as to the retention of disciplinary files, the City has provided no concrete example. The Union argues that the current language was negotiated in the last agreement. In fact, it appears to this Fact-finder that the proposed changes would unduly hinder access to files and may unduly protract disciplinary actions.

This Fact-finder sees no need for changing the current requirements.

RECOMMENDATION

The Fact-finder recommends that the current Article 11 be retained in the new agreement without modification.

FINDING OF FACT NO. 7 – HOURS OF WORK/OVERTIME

The City has proposed a number of changes to clarify hours of work, overtime, and compensatory time. It also proposes to permit the Chief to require three days off in some occasions, as needed, to “re-charge batteries.” Also, it proposes to limit compensatory time accumulating after 48 hours, as opposed to the current 100 hours.

The Union proposes that special events assignments be made with the same procedure (seniority) as overtime assignments. The Union says that auxiliaries have been used for special events, and this bypasses the unit employees. The City acknowledges that the auxiliaries are paid less, and that only two events exist.

There was evidence presented as to the existence of five grievances relating to shift changes and/or hours of work and compensatory time. However, the records as to the grievances do not adequately describe any specific problems relating to these specific issues. The Union further argues that the last sentence of §11.3, as proposed by the City, violates the FLSA.

This Fact-finder cannot accept the proposals of either party. The practice of assigning auxiliaries to special events is not new and does not significantly affect the unit members. The City’s proposals would vitiate many of the concessions previously made by the City as to shift assignments, overtime, and compensatory time. This Fact-finder sees no compelling reason to alter the current language. The City’s 12-hour, two days on, two days off shifts, coupled with limitations necessarily existing in a small work force may cause some strange, if not onerous, results. A total revamping of Article 12, such as argued by the City, may have an impact far beyond the facts presented at hearing.

RECOMMENDATION

Article 11 in the past agreement shall remain unchanged in the current agreement.

FINDING OF FACT NO. 8 – HOLIDAYS

The City proposes deleting two holidays and one personal leave day. The City argues that such is necessary to bring officers more into line with other City employees (on an hourly basis). A holiday for a 12-hour shift is obviously longer than an 8-hour holiday.

While the current number of holidays went to 12 in 1998, the City must acknowledge that taking even one holiday away would be bad for morale. The same argument is persuasive as to maintaining the current “me too” clause in §20.3. Although the officers may have the benefit of additional holiday hours, certainly there are some negatives to working 12-hour shifts.

The employer has not persuaded this Fact-finder that the current holiday provision is inequitable.

RECOMMENDATION

The current Article 20 shall continue in the new Agreement without modifications.

FINDING OF FACT NO. 9 – VACATION

The City proposes reducing vacation time to the hours granted in vacation time to other City employees. Even though the current vacation provision has been around for some time, the City has described no real inequity, as the officers do, indeed, work 12-hour shifts, and a vacation is a vacation. As long as the 12-hour shift process exists, vacation time should remain in 12-hour increments.

RECOMMENDATION

The current Article 21 should be continued unchanged in the new Agreement.

FINDING OF FACT NO. 10 – SICK LEAVE

The City has proposed a comprehensive revamping of the current sick leave language in Article 22. The City argues that average sick leave jumped from 68 hours per employee in 2002 to 76 hours per employee in 2003. Thus, the average officer missed six shifts in 2003 due to illness. The City argues that the changes are needed to prevent abuse. The firefighters agreed to the language. The current language permits an officer to be off six days without a doctor's letter.

The Union states that there have been no disciplinary actions for sick leave abuse, and currently, the officers are using less than the 15 days (calculated at 8-hour shifts) allotted for sick leave. The expense of obtaining a doctor's letter could be onerous.

The City's proposal appears to this Fact-finder to unduly complicate the process of sick leave. The City cited no individual cases of abuse, or even complications in performing the Department's mission, caused by the abuse of sick leave. Finally, the repeated references in the City's proposal to "excessive amounts of sick leave" create ambiguity, which more than likely, could lead to confusion and/or the filing of unnecessary grievances.

RECOMMENDATION

Article 22 in the current Agreement should remain unchanged in the new agreement.

FINDING OF FACT NO. 11 – SHIFT DIFFERENTIAL

The Union proposes a 35¢ per hour payment to those officers working the 6:00 p.m. to 6:00 a.m. shift. The agreement has not heretofore contained a shift differential payment. The Union states that, of its 13 comparables, 10 had a shift differential payment, with the range between 15¢ and \$1.10 per hour. The night shift causes a disruption to family life which should be compensated, especially when the officers cannot choose their shifts. The City opposes the new article on economic grounds, and argues that some officers prefer night work.

There is no question that evening hours involve particular risks and duties, and that the increased stress to the officer and his family should be compensated.

RECOMMENDATION

The agreement should contain a new article "Shift Differential," as stated in the attached Exhibit E.

FINDING OF FACT NO. 11 – SHIFT BIDDING

The Union has proposed a new article to provide for permanent shift assignments and a seniority bidding process. The Union argues that uncertainties in shift work is stressful to the officer and his family, and that short-term changes reduce lifespan. It also argues that shift assignments have been used as a form of discipline. The City has agreed to the proposal for dispatchers.

The City argues that there is no evidence of harm caused by shift changes. Because of the size of the unit (11 employees, three of whom are lieutenants), the Chief must have flexibility in such assignments to meet management's needs, including the training of officers with low seniority. The dispatchers have eight-hour shifts, are fewer in number, and have different duties, making the bidding process more appropriate. The City states that the Chief has not used shift assignments as discipline. The Union cites increasing grievances over shift assignments.

The Fact-finder appreciates the officers' concerns regarding the stress of shift changes. However, given the size of this unit, comparisons with such units as the Toledo police are inappropriate. The Chief must have flexibility to accomplish the Department's mission. The Union has proposed such revisions to the article twice before and has been rejected by two fact-finders and two conciliators.

RECOMMENDATION

The Union's proposed "permanent shift" article should not be adopted in the new agreement.

FINDING OF FACT NO. 12 – NON-DISCRIMINATION

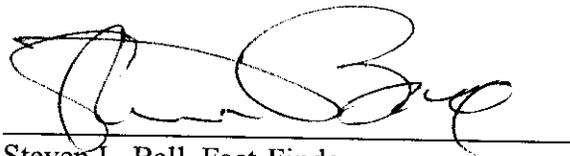
The employer proposes deleting the first sentence of the current Article 4.1. That article permits grievances to be brought for actions which also may be heard by the EEOC, Civil Rights Commission, or the courts. The City argues that it should not have to defend itself in multiple proceedings. The firefighters and dispatchers have agreed to the deletion.

The Union believes that the proposal is a mere bargaining chip. The City offered no specific evidence of any undue complications caused by the current language, or indeed, the existence of any such claims.

This Fact-finder believes that the grievance process may be a valuable and more speedy and effective tool to redress violations of discriminatory behavior than the courts or government agencies, and sees no inequity in employees having multiple avenues of redress.

RECOMMENDATION

The first sentence in the current Article 5, §5.1 should not be deleted, and Article 5 should be continued in the new agreement, unchanged.



Steven L. Ball, Fact-Finder
June 16, 2004

CERTIFICATE OF MAILING

I hereby certify that a copy of the Fact-Finding Report was sent via fax and overnight mail to: Pete Lowe, Clemans, Nelson & Associates, Inc., 417 North West Street, Lima, Ohio 45801-4237, and William A. Dunn, IUPA, P.O. Box 252, Oak Harbor, Ohio 43449; and the original Fact-Finding Report was sent via first class U.S. mail, postage prepaid, to Dale A. Zimmer, Administrator, Bureau of Mediation, SERB, 65 East State Street, 12th Floor, Columbus, Ohio 43215, on this 16th day of June, 2004.

A handwritten signature in black ink, appearing to read "Steven L. Ball", written over a horizontal line.

Steven L. Ball, Fact-Finder

ARTICLE 13 – WAGES

Section 13.1.

Effective January 1, 2004, the annual (based on 2,184 hours per year)/hourly base rate of pay for a police officer shall be as follows:

<u>STEP</u>	<u>ANNUAL</u>	<u>HOURLY</u>
Step 1 – Probationary	\$24,164.15	\$11.06
Step 2 – 1 st Anniversary	\$25,158.78	\$11.52
Step 3 – 2 nd Anniversary	\$26,537.40	\$12.15
Step 4 – 3 rd Anniversary	\$28,549.44	\$13.07
Step 5 – 5 th Anniversary	\$29,656.89	\$13.58
Step 6 – 7 th Anniversary	\$30,832.65	\$14.12

Effective January 1, 2005. Three percent (3%) increase for the yearly/hourly rates of pay for each step listed above in 2004.

Effective January 1, 2006. Three percent (3%) increase for the yearly/hourly rates of pay for each step in 2005.

Section 13.2.

Lieutenants shall be paid one hundred and eight percent (108%) of the police officer's yearly/hourly rate of pay, based on the years of service each year of the agreement.

EXHIBIT A

Section 12.2. The City shall pick up nine percent (9%) of the employee's contribution toward the Ohio Police and Fire Pension Fund. The City will make the contribution directly to the pension fund on the employee's behalf in accordance with the tax laws or rules applicable to the fund. Once during the term of this Agreement the bargaining unit may elect to waive the above provision, and stop the Employer pickup. This option is only available by a majority vote of the entire bargaining unit, and written certification of the vote to the City Auditor, and the approval of the Ohio Police and Fire Pension Fund.

EXHIBIT B

ARTICLE 14 13 - ANNUAL BONUS

Section 13.1.

An Annual Bonus shall be paid to City employees who are classified as full-time employees who work at least seventy (70) hours per pay period. After ~~three (3)~~ five (5) years of continuous full-time service, a City employee shall be entitled to an Annual Bonus to be paid the first pay period in December, in an amount equal to ~~\$5.00~~ \$6.00 per month of continuous full-time service. A full-time City employee with less than ~~three (3)~~ five (5) years of continuous full-time service as of December 1st of each year will not be entitled to the Annual Bonus .

EXHIBIT C

ARTICLE 17 16
MEDICAL BENEFITS

Section 1716.1. The City shall ~~continue to provide such medical, and hospitalization, x-ray, and laboratory insurance coverage as are presently in existence.~~ **to each full-time bargaining unit employee as provided in this article.**

~~During the period of the contract~~ **Effective January 1, 2004 and thereafter,** the employee's ~~premium contribution share of the cost for medical and hospitalization insurance coverage~~ shall be as follows:

Base Costs:

- A. single person, \$27.50 per month;
- B. two (2) party, with no additional dependents, \$44.00 per month;
- C. two (2) party, with additional dependents, \$66.00 per month.

Increased Costs: Any increases in costs for medical and hospitalization insurance coverage above the rates in effect for 2003 shall be paid 75% by the Employer and 25% by the employee up to a maximum contribution equal to 15% of the City's total cost for health insurance coverage.

Section 1716.2. Current Language.

EXHIBIT D

MEDICAL BENEFITS (Continued)

Section 1716.3. Current Language.

Section 1716.4. The City shall establish a fund to which it will contribute a maximum \$550 per year for a single person; \$600 for two ~~(2)~~ party **an employee plus one (1) dependent**; and \$650 ~~\$675~~ for three ~~(3)~~ party or more **an employee with more than one (1) dependent** per year per non-probationary employee., ~~for the~~ **These monies shall be used** by the employee (and ~~his or her~~ **the employee's** family members covered by the City's medical insurance plan) for the reimbursement of any dental and/or optical expenses not otherwise covered by insurance. Payment may also be requested in the form of a joint check, payable to both the employee and the provider, in instances where the employee has not advanced payment for the completed services. This benefit is available to **only** non-probationary employees, ~~except that this benefit is available to probationary policemen and firefighters after six (6) months consecutive employment with the City. and their dependents.~~ Unused portions of the employee's annual fund are forfeited.

Section 1716.5. The City shall have the right to change insurance carriers and or programs provided the same or comparable benefit levels are maintained. **The parties agree to work cooperatively in an attempt to control the rising costs of health**

MEDICAL BENEFITS (Continued)

insurance coverage. In furtherance of this objective, the union and Employer may mutually agree to change benefit levels.

Any changes in coverage mandated by state or federal law shall automatically amend the coverage provided by the City. The union shall be provided written verification of the state or federal mandate. Procedural changes under the insurance plan which do not adversely affect the economic benefits provided to the employees may be made upon notification to the union.

ARTICLE (NEW) - SHIFT DIFFERENTIAL

Section _____

Officers assigned to the 6 pm to 6 am shift shall receive an additional thirty-five cents (\$0.35) per hour.

EXHIBIT E