

STATE EMPLOYMENT  
RELATIONS BOARD

2004 SEP -3 P 2: 02

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
September 2, 2004

In the Matter of:	)	
	)	
The City of Warren	)	
	)	
and	)	03-MED-10-1173
	)	
The Ohio Patrolmen's	)	
Benevolent Association	)	
	)	
	)	

APPEARANCES

For The OPBA:

Timothy Brown, Member of the Bargaining Committee  
Frank Dascoulias, Member of the Bargaining Committee  
Manny Nites, President Warren OPBA Local  
S. Randall Weltman, OPBA Staff Attorney

For the City of Warren:

Gary Cicero, City of Warren Director of Human Resources  
Brian Massucci, City of Warren Personnel Supervisor

Fact Finder: Dennis M. Byrne

## **Background**

The Fact Finding involves the Warren patrol officers (Blue Unit) represented by the Ohio Patrolmen's Benevolent Association (OPBA) and the City of Warren. Prior to the Fact Finding Hearing, the parties were involved in numerous negotiating sessions. However, they were unable to reach a final agreement, and twelve unresolved issues remained on the table: 1) Wages, 2) Call-In-Pay, 3) Right of First Refusal for Bargaining Unit Work, 3) Hazardous Duty Pay, 4) Pension Pick-Up, 5) Light Duty Pay, 6) Exemplary Attendance Pay, 7) Benefit Time Usage, 8) Overtime Usage, 9) Vacancies, 10) Time Clock Policy, 11) Health Care Benefits, and 12) Family and Medical Leave. During discussions before the Fact Finding Hearing, the parties came to an agreement on the Health Care and Family Medical Leave issues. Therefore, there are ten remaining unresolved issues.

The Ohio Public Employee Bargaining Statute sets forth the criteria the 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:**

One, and perhaps the main, reason for the parties' inability to reach an agreement is the timing of the negotiations. Historically, the Blue Unit negotiated its agreement with the City before the Fraternal Order of Police/Ohio Labor Council representing the ranking officers of the Police Department (Gold Unit) signed their contract. Consequently, the Blue Unit contract with the City set the pattern for the Gold Unit.

The parties agree that they postponed negotiations for a new contract while the City examined its finances. However, this delay led to a situation whereby the Gold Unit signed its contract with the City before the Blue Unit and the City finalized their agreement. Prior to this round of negotiations, the Gold Unit often (usually) accepted the same wage and benefit increases negotiated by the Blue Unit. In effect, the Gold Unit had a "me too" clause with regard to many common issues found in both contracts. In this instance, because the Gold Unit negotiated their contract first, i.e., set the pattern, the Blue Unit wants to achieve the same gains and, as a result, many of their demands are based on parity

considerations. In effect, the OPBA argues that the Blue Unit should receive the same wages and benefits that the Gold Unit received.

The City disagrees with this analysis and argues that the Blue Unit already enjoys many of the items included in the Gold Unit contract. The City contends that some of the new items found in the Gold Unit contract, e.g., the pension pick-up, are catch-up items from the prior round of negotiations and, therefore, the ranking officers did not really achieve anything in excess of the benefits that the patrolmen already enjoy. Furthermore, the City believes that it should not have to offer identical wages and benefit provisions to different bargaining units. The City believes that its offer to the patrolmen is fair and should be considered on its own merits.

The problems presented by the correspondence between the Gold and Blue contracts have impeded the parties' ability to come to an agreement. In some ways the City's contention that the two contracts are not related (integrated) is not supported by the facts. Therefore, the City must decide how to approach future negotiations with the different police units. If the language in the Gold Unit contract actually assumes that the Blue Unit will negotiate first and memorializes that understanding with "me too" language, then the Blue Unit must go first or the language in the Gold Unit agreement must be changed to reflect the fact that the "me too" language is out of date.

The preceding paragraphs give some insight into the reason(s) that the parties were unable to reach an agreement. A detailed discussion of the individual issues can now be undertaken.

**Issue:** Article 16 (8): Hazardous Duty Pay

**Union Position:** The Union demands that the hazardous duty pay provision be reinstated in the contract.

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

**Discussion:** This is situation where the relationship between the Gold and Blue contracts has created a problem. During the prior round of negotiations, the Blue Unit traded off hazardous duty pay as part of an agreement whereby the City "picked up" a portion of the patrolmen's pension payment. The parties mutually agreed to the deal and came to an agreement on the current language. However, the Gold Unit demanded the pension "pick-up" under the "me-too" language in their contract during the negotiations that led to the signing of their current contract. The City did not demand that the officers give up their hazardous duty pay for the concession on the "pick-up" language. Therefore, the officers have both the pension "pick-up" and hazardous duty pay provisions in their current agreement.

The Blue Unit demands parity with the Gold Unit on this issue. That is, the Blue Unit's position on this issue is a "me-too" with regard to hazardous duty pay. The City objects because the officers traded away hazardous duty pay in the previous round of negotiations. The City argues that the Union cannot be

allowed to freely negotiate a benefit out of its contract in one negotiation and then ask a neutral to insert the same benefit back into the contract during the next negotiation.

The Fact Finder agrees with the City's argument as a general rule. However, the specifics of this particular situation undermine the City's position. If the City was concerned with hazardous duty/pension pick-up tradeoff, then it should have deleted the hazardous duty provision from the Gold Unit contract as a quid-pro-quo for the pension pick-up language. Moreover, both parties agreed that the cost of the provision is minimal and that there is no reason to expect that it would cause the City undue financial strain.

Also, the Fact Finder believes that the patrolmen have at least as great a need for hazardous duty pay as the ranking officers. Police work is extremely dangerous. Patrolmen are subject to myriad threats to their well being. In general, hazardous duty pay provisions are common throughout both Ohio and the nation in recognition of this fact. Therefore, if only one unit is going to be covered by a hazardous pay provision, it should include the officers who are working on the streets.

The preceding paragraph should not be read to mean that the Fact Finder believes that the officers do not have a dangerous job. They do. However, in the ordinary course of police activity, the patrolmen usually face more day to day hazards as a matter of course than many officers.

The Fact Finder believes that the inclusion of a hazardous duty pay provision in the Gold Unit agreement must be considered when evaluating the

Blue Unit's demand. If the City had insisted on the deletion of the provision from the Gold Unit contract as a quid-pro-quo for the pension "pick-up", the Fact Finder would probably recommend the City's position. However, given the overall danger of every day police work and the unique facts of this situation, the Fact Finder is recommending inclusion of a hazardous duty provision in the prospective contract between the City and the patrolmen. In recognition of the fact that the patrolmen agreed to the deletion of the provision in a prior round of negotiations, the Fact Finder believes that the provision should not take effect until the third year of the prospective agreement.

**Finding of Fact:** Police work is inherently dangerous and, in recognition of this fact hazardous duty pay provisions are standard throughout the nation.

Furthermore, basic principles of fairness imply that the patrolmen should have a hazardous pay provision in their contract if hazardous duty language is in the Gold Unit contract.

**Suggested Language:** The contract shall contain the same hazardous duty pay language found in the Gold Unit contract. The provision shall become effective on January 1, 2006.

**Issue:** Article 16 (1) Wages and Article 16 (12) Pension Pick-UP

**Union Position:** The Union demand is for a 3.5% raise for 2004, a 3.5% raise for 2005, and a 3.5% raise for 2006. In addition, the Union demands that the 4.0% of the pension that is not currently "picked-up" be paid by the City.

**City Position:** The City is offering 0.0% in 2004, 3.5% in 2005 and 2.0% in 2006. The City rejects the Unions demand for an increased pension pick-up.

**Discussion:** Note: The Fact Finder is discussing these two issues together because the recommendation on wages will incorporate both issues.

The difference in the parties' positions on this issue is pronounced. The City makes the argument that the comparables data for other jurisdictions show that its offer is reasonable. The Union, on the other hand, argues that the same data show that the patrolmen are paid approximately 12% less than other similarly situated patrolmen.

Parenthetically, the parties both submitted comparables data from the same jurisdictions because over the years they have reached a consensus on the municipalities that are comparable to Warren. Therefore, the Fact Finder is not faced with the task of deciding which jurisdictions are truly comparable to Warren. The difference between the parties' positions is based on the way the data is presented. The Union comparable metric is the average wage rate. The City's metric also incorporates the size of the wage raises negotiated by unions in the other jurisdictions. However, regardless of which measure is selected, the Fact Finder believes that the data support the Union's position that the patrolmen are paid less than police officers in similar communities.

The City recognizes that a valid argument can be maintained that the patrolmen are underpaid. In discussions before the hearing, the City argued that the pension "pick-up" had to be considered when wages were discussed. If the

"pick-up" is included in the wage calculation, the City contends that it pays a higher wage than other comparable jurisdictions.

The Union presented evidence from the Gold Unit fact finding and conciliation hearings. Both Neutrals involved in these hearing found that the FOP demand for 3.5% across the board for three years was reasonable. In addition, the Neutrals also recommended an increase in the rank differential paid to the Gold Unit. The Union contends that these reports show that the Union's demand for the same wage increase given to the Gold Unit is reasonable. That is, the Union argues that the reports and analyses submitted by the Neutrals involved in the Gold Unit settlement are well reasoned and accurate. Therefore, the Union believes that the City has no reason to demand a wage freeze for calendar year 2004.

The second issue in the wage demand is the Union's demand for a 4.0% pension "pick-up." The parties agree that the Blue Unit negotiated a pension "pick-up" during the previous round of negotiations. Under the "me too" philosophy, the "pick-up" was incorporated into the Gold Unit contract. The City contends that this was simply a catch up with the Blue Unit and that it should have no impact on the current impasse. The Union argues that the Gold Unit received a 10% pension "pick-up," annual raises of 3.5%, and an increase in the rank differential. Therefore, the Union believes that the evidence shows that a 4.0% "pick-up" and annual raises of 3.5% are reasonable and will maintain parity with the Gold Unit.

The Fact Finder, after listening to all of the evidence, believes that the Union has proved that a wage freeze in the first year of the contract is unreasonable. The evidence does not support a finding that the City is in severe financial distress, and both sides presented testimony that the City Administration believed that the City could fund wage increases. This is especially true if the tax levy currently on the ballot is approved by the voters. Furthermore, there was no convincing evidence presented that the patrolmen should be treated differently than the ranking officers.

The Union in its presentation pointed out that the relationship between the ranking officers and the patrolmen did affect the final cost of its demand. Given, the fact that the Gold Unit usually bargained after the Blue Unit, there is language in the Gold Unit contract that means that the ranking officers will get any increases given to the patrolmen via the rank differential. The City agreed to this contention and pointed out the potential cost of across the board raises of 3.5% in each year of the contract. In this context, the Fact Finder again notes that the City and its Unions must correct the problems caused by the Gold Unit negotiating its agreement before the Blue Unit.

The Fact Finder believes that a combination of the 4.0% pension "pick-up" in the first year of the contract in lieu of a general wage increase coupled with an across the board wage increase in the second and third year of the contract meets the parties' needs. The only question is the size of the general wage increase. The City's position places the patrolmen in a disadvantaged position vis-à-vis the Gold Unit. Due to compounding, a settlement that does not

increase the Union's base wage rate in the first year will lead to somewhat smaller percentage wage increases in subsequent years. To compensate for this effect, the Fact Finder is recommending a 4.0% wage increase in the second and third years of the prospective contract.

**Finding of Fact:** The data supports the Union's position that the City offer of a wage freeze in the first year of the proposed contract is unreasonable given the overall financial condition of Warren. In addition, the ranking officers received a 3.5% raise in the first year of their new contract with the City. There was no evidence presented that justified paying the ranking officers 3.5% and the patrolmen 0%. Furthermore, due to the vagaries of the relationship between the Gold Unit and the Blue Unit a pension "pick-up" of 4.0% in lieu of a pay increase in the first year of the proposed contract is reasonable.

**Suggested Language:** Article 16 (12). Effective January 1, 2004 the City shall assume and pay 100% of the employee's total mandated contribution to the Police and Fire Pension and Disability Fund.

Article 16(1) The Wage rate shall be changed to show an increase of 4.0% as of January 1, 2005 and 4.0% on January 1, 2006.

**Issue:** Article 16 – Section J (New) Overtime Pay

**Union Position:** The Union demands the right of first refusal on special details.

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

**Discussion:** Over the past few years the City of Warren has applied for and received a number of external grants to perform specific police functions

including traffic details, DUI task force participation, COPS in shops, school safety details, and other special programs. These details have been offered to all members of the department, both rank and patrolmen, via a "sign-up/bid" system. This system allows any interested department member to bid on and received the extra duty. Of course, working the extra hours increases the take home pay of the officers.

The Union has two problems with this bid system. The first is philosophical. The Union believes that the duties enumerated above are all duties that are usually performed by patrolmen, i.e., the Union argues that the bid system allows ranking officers to perform bargaining unit work. The Union's second objection is that it believes that the work is not uniformly distributed and that some of the ranking officers receive preferential treatment in the assignment of the extra duty work.

The Police Chief testified on this matter for the City. He stated that his administration worked to get the grants and he believes that all members of the department should have an equal opportunity to work the details. He further stated that his philosophy was that everyone should be treated equally in all ways and, therefore, he was opposed to the Union's demand. He ended his testimony with the argument that changing the way the extra details were assigned would cause a morale problem within the Gold Unit. The Union answered the latter point by stating that the current system was already causing a morale problem within the Blue Unit.

The parties presented scheduling sheets showing who worked the various shifts. The Fact Finder cannot fully evaluate this data because there is no way to determine the specifics of each officer's situation. However, the data does appear to support the contention that some ranking officers are working more hours on the extra-duty details than seems reasonable. That is, the hours do not appear to be randomly distributed. The Fact Finder understands that some members of the department do not want to work overtime and, therefore will not bid on the work. Even taking this fact into account, some ranking officers appear to work an exorbitant number of "special detail" hours.

One of the main reasons that a group of individuals decides to unionize is to protect their jobs. The idea of "bargaining unit" work is universally accepted in both the private and public sectors. There is little doubt that the work paid for by the grants is work customarily performed by patrolmen. In most (all) departments ranking officers are not usually assigned to traffic or school details. The Fact Finder believes that the Union's position is reasonable as a way to ensure that bargaining unit work is done by bargaining unit members.

The Chief's philosophical concerns about equity must be respected. However, the entire thrust of collective bargaining is that the union membership has the right to make themselves heard on issues that are covered by the phrase, "wages, hours, and other terms and conditions of employment." This issue is clearly covered by that language.

The Union demand is for the right of first refusal for the special details. This does not mean that the ranking officers cannot bid on and receive

assignments to perform the work in question. What the demand does imply is that bargaining unit members have the right of first refusal on work that is traditionally considered bargaining unit work. This is unobjectionable. The Fact Finder recognizes that the Gold Unit members who have worked the extra details may see their take home pay adversely affected by the Union's demand, or they may have to work at less desirable times. Nonetheless, the fact remains that the Union's position is reasonable by any standard. Therefore, the Fact Finder believes that the Union proved its point(s) in this instance and recommends inclusion of Article J into the contract.

**Finding of Fact:** The duties in question are customarily and usually performed by bargaining unit members. Consequently, bargaining unit members should have the right of first refusal on bargaining unit work.

**Suggested Language:** Article 16 (J)

The Patrol Officers shall be offered the right to work, have the right of first refusal, on the details listed below. In the event that a sufficient number of patrolmen do not bid on the work, then all members of the department will be eligible to bid for and work the extra duty. The extra duty work covered by this section include Step Grants (traffic details), DUI task force details, COPS is shops details, School Grant details, and other Special Programs funded by governmental grants.

**Issue:** Article 16: Section E Call-In Pay

**Union Position:** The Union demand is that all shifts must have a minimum of six patrol officers on duty at all times.

**City Position:** The City rejects the Union's demand and counters with current language.

**Discussion:** The Union argues that manning is a safety issue. The main evidence presented in support of its position is a fact finding report by Professor Bernadette Marczely that states that the minimum staffing level should be eight patrol officers. The Union argues that the analysis of safety concerns contained in Fact Finder Marczely's report is still valid. The Union concedes that it agreed to a different manning level in the past, but argues that safety is a paramount concern and that there must be enough officers on duty to safely meet any problem that might arise.

The City disagrees with this analysis. The City argues that manning is a management right and, therefore the matter is not properly before the Fact Finder. Furthermore, the City also stated that it did not believe that there was any safety problem in the department.

Safety is a paramount concern in a police department. The work is inherently dangerous, and the officers on duty have the right to expect timely backup if the need arises. However, the question of whether there is enough manpower on duty to safely perform the necessary tasks is, in the final analysis, an empirical question. That is, for a Neutral to make a recommendation regarding staffing, there must be some concrete evidence that the manning level

is insufficient to meet the needs of the community and department. In this instance the Union did not present any evidence that the staffing level was causing problems. Rather the Union gave a philosophical presentation that focused on the dangers of police work, etc. Given this lack of specificity, the Fact Finder cannot recommend the Union's position on this issue.

In making his recommendation, the Fact Finder is not making any statement about the City's contention that manning levels are a management right. The Union did not prove a need for the language that it suggested for inclusion into the contract and the Fact Finder decided the issue on that basis.

**Finding of Fact:** The Union presented no evidence that necessitated a change Article 16(2)(e).

**Suggested Language:** Current Language.

**Issue:** Article 16 (l) Overtime Equalization

**Union Position:** The Union demands the status-quo on this issue.

**City Position:** The City demands that the phrase, "on the bid shifts" be added to the first line of Section I.

**Discussion:** The City's position is that the current language has created some problems with overtime payments. The City argues that current contract language has led to some ambiguity in the Article 16 (1). The City states that the original intent of the language was to equalize overtime for a specific work week. However, because police officers perform other functions, e.g. guarding dignitaries, working at football games, etc. the language has led to the payment

of overtime on assignments that are not related to the police function. That is, the City contends that the current interpretation of Section (I) is much more expansive than the parties originally intended.

The Union argues that the City is overstating the problems with the current language. The Union believes that the last time any issue arose with the current language was when the Governor visited Warren and was guarded (escorted around the City) by off duty police officers. The Union position is that with the exception of that single instance there have been no other problems with the current language. In effect, the Union argued that, "if it isn't broke, don't fix it." In addition, the Union argues that part of the problem the City was experiencing with overtime was the result of Gold Unit members working special details. The Union argues that the fix the City was proposing is out of proportion to the problems it is experiencing with the patrol officers. Moreover, the Union strongly argues that if its position on Article 16(J) is accepted some of the City's overtime problems will be ameliorated.

The Fact Finder believes that City failed to show why the current language is unworkable. The analysis of this issue is essentially the same as the analysis of the Call-In issue. The question of whether the contested language is causing problems is essentially a factual matter. The City did not present any specific instances of problems with the language in question. Without any knowledge of instances of problems with the language, the Fact Finder cannot recommend acceptance of the City's position on this issue.

**Finding of Fact:** The City did not prove that there was a need for a change in the current language.

**Suggested Language:** Current Language

**Issue:** Article 15 (5) Benefit Time Usage

**Union Position:** The Union demands the status quo on this issue.

**City Position:** The City demands an increase in the lead time for requesting the use of compensatory time off from ninety-six hours, i.e., four days to ten days.

**Discussion:** The City's position is that the current language creates scheduling problems. Both sides agree that when an officer has earned compensatory time on the books, he/she has a right to use that time. The City argues that the ninety-six hour limit has led to situations where the use of compensatory time has led to the scheduling of excessive overtime. The City contends that its suggested ten day limit will allow it to adjust work schedules to minimize overtime usage.

The Union objects to the City's position. The Union pointed out the City attempts to change the language in question in every negotiation and is never successful. Moreover, the Union further stated that there are few instances where the current language has caused any problems. A discussion by the parties on this issue was inconclusive.

The evidence does show that there is not a serious problem with the current language. The City has had some problems with the offending language in the past, but those problems appear to be relatively minor. The City's

proposed language would cause some hardship on the union membership and increase the "cost" to the police officers when they attempt to use their earned time off. Without evidence of a more severe and/or persistent problem, the Fact Finder cannot recommend acceptance of the City's position.

**Finding of Fact:** The City did not prove that there was a need for a change in Article 15.

**Suggested Language:** Current Language

**Issue:** Article 25: Exemplary Attendance Bonus

**Union Position:** The Union rejects the City's demand for a doctor's slip for the use of more than one sick day per quarter.

**City Position:** The City demands the right to require a doctor's slip to validate the use of sick leave when considering an attendance bonus.

**Discussion:** The use of sick leave continues to create havoc with municipal budgets because when an employee calls off sick, the City must pay another employee overtime to fill in for the absentee. As a result, many jurisdictions are including an attendance bonus clause in collective bargaining agreements as a way to curtail excessive sick leave use. The payment of a bonus to an employee who does not use sick leave for a specified time period is often a less costly than paying call-in pay, overtime, etc.

In this instance the parties have agreed on the outline of the system, but they cannot agree on the need for a physician's slip to validate that the officer was ill. The City claims that the bonus is paid for the nonuse of sick leave unless

the officer in question is using earned time off or is legitimately ill. The City argues that a bonus for attendance should not be paid to a person who misses work and is not ill. The City states that it is simply following the logic inherent in an attendance policy.

On the other hand, the Union claims that requiring a doctor's slip for every absence will be onerous on the employee and actually increase the City's costs. The Union noted that a visit to the doctor to get the slip will cause the employee to file a claim on the medical plan and that this is costly to all concerned.

This is a situation where there is some validity to both positions. The City has the right to expect that anyone who desires to receive an attendance bonus predicated on not calling off sick, etc., is actually sick if he/she calls off and still wants to be in line for a bonus. The Union's position is also reasonable in some ways. If a person has the flu; he/she may be very ill but there is nothing that a physician can do for him/her. To expect a person in that instance to go to a doctor simply adds a claim to the health insurance policy for very little benefit. This increases the cost to the City. Not only must the department fill the vacant position, but it must also deal with increased medical cost.

The Fact Finder believes that the impasse can be resolved following a formula that works for many other jurisdictions. A way past this conundrum is to allow the City to request a physician's excuse for any absence of more than one day. The contract does not require a doctor's slip, but the City can ask for one if it believes that there is some reason to do so. Given the effect that asking for a doctor's slip has on the health insurance plan usage, there is an incentive for the

City to ask for this validation only in rare instances. In addition, the uncertainty of the patrolman about whether a slip will be required should tend to curb calling off sick.

**Finding of Fact:** The City should have the right to ask for a doctor's slip when evaluating whether an employee should be eligible for an attendance bonus.

**Suggested Language:**

Section 1: Paragraph 3

To coincide with the paying of bonuses and reducing the need for overtime, an officer **may be required** to justify the use of more than one (1) sick leave day during any of the four (4) month periods by submitting a signed Medical Certificate as approved by the Human Resources Department. Falsification of either a written, signed statement or a medical certificate shall be grounds for disciplinary action including dismissal. The Medical Certificate shall be provided by the City.

**Issue:** Article 35: Time Clock Policy

**Union Position:** The Union demands that Article 35 be removed from the contract.

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

**Discussion:** The City implemented a time clock policy in order to insure that the patrolmen report to work on time. The City claims that this system is unexceptional and it works. The Union membership believes that the system that was in place before the introduction of the time clock worked equally well.

Under that system, the shift commander logs the officer in when he reports for work. The membership points out that the shift commander's log is still used to determine attendance. Furthermore, the membership believes that the use of a time clock is discriminatory because some patrolmen, e.g. detective bureau members, are not required to use the clock. Therefore, the Union believes that the time clock language should be deleted from the contract.

The Fact Finder is unconvinced by the Union's arguments. The use of a time clock is a standard feature of modern day America. The employer has the right to insure that the employees are present for work. The contract specifies that a person will be paid for eight hours and the City has the right to expect that it will get eight hours work for eight hours pay. There are any number of reasons why the Shift Commander's log may not be accurate but the time clock is always accurate.

The Union's argument that some of its members are not required to clock in is an argument that the City is discriminating against some union members. This is not true. If the City impartially implements its policies, even if some individuals in different positions are treated differently, then it is not discriminating against anyone.

**Finding of Fact:** The City has the right to make sure that the officers report to work on time.

**Suggested Language:** Current Language

**Issue:** Article 16 (7) Vacancies

**Union Position:** The Union demand is for the status quo.

**City Position:** The City wishes to insert the phrase, "...**either on regular duty or overtime** the Senior Patrolman will be paid \$3.13 an hour."

**Discussion:** This clause is concerned with Office-in-Charge (OIC) pay and, surprisingly, it is one of the most contentious issues dividing the parties. The questions surrounding this single provision have led to litigation via unfair labor practice complaints with SERB, problems between the City and both the Gold and Blue bargaining units, and discord between the Gold and Blue Units.

The main problem is that the City needs two supervisors on duty at all times, but there are instances where only one sergeant or lieutenant is working. In that instance, the senior patrolman is assigned to fill the temporary vacancy. The Gold Unit demanded that a sergeant or lieutenant be called in to fill the position, but both the Fact Finder and Conciliator in the Gold Unit negotiations found that alternative would be prohibitively costly for the city. Therefore, they recommended no change in the current system whereby the senior patrolman earns OIC pay.

The City argues that it is sometimes forced to pay the senior patrolman to fill the temporary vacancy when a sergeant is present. According to the testimony the problem arises because the language of Article 16(7) has been interpreted to mean that the senior patrolman will assume the duties of the shift sergeant when no sergeant is scheduled to work. However, there are times when a sergeant is present because of an overtime or call-in situation and at the same time the senior patrolman is considered to be filling a temporary vacancy,

but in fact is not. Therefore, the City pays the senior patrolman OIC pay when he/she is not acting in that capacity. The City believes that it should not pay an OIC bonus to a person when he/she is not doing the work in question.

The Fact Finder is sympathetic to the City's arguments. No City has enough money to pay a person for work that he/she is not performing. The Gold Unit negotiations touched on the same issue, and the Neutrals involved decided that the current system while flawed was better than the alternatives proposed by the Gold Unit. The Fact Finder in the current situation believes that in this instance the status-quo is acceptable.

The Fact Finder believes that the City's position is reasonable. However, the cost of the current language is approximately \$10,000.00 per year, which is a fairly small sum of money when compared to the entire City or Police Department budget. Furthermore, this is an issue that has generated extreme bad will between all concerned parties over the years; and while no one seems satisfied with the status quo, the current language has the benefit of being in place and workable. Recommending changes in this language would open the entire situation up to the dispute resolution procedures of ORC 4117 and the Fact Finder is not convinced that any other solution would work any better. It might be that a change in the wording would cause even more friction.

This is not to say that the parties should not continue to discuss this item in a labor/management setting. The finances of all municipalities are stretched, and contract language that requires a city to pay a bonus for no good reason, shifts resources away from more pressing needs. However, given the entire

record, the Fact Finder believes that the parties themselves should try to resolve this issue. If they are unable to come to an agreement, then further negotiations are the place to revisit the subject.

**Finding of Fact:** The City does sometimes pay for work that is not performed under the current language of Article 16(7): however, in this instance the status-quo is an acceptable solution to a problem that has caused the City and its police bargaining units problems over the years.

**Suggested Language:** Current Language.

**Issue:** Article 20 (5) Light Duty

**Union Position:** The Union demands that the phrase “Whenever possible” be deleted from the second sentence of Article 20 (5).

**City Position:** The City rejects the Union’s demand.

**Discussion:** The sentence in question is, “Whenever possible, the light duty assignment shall be on the officer’s regular shift.” The Union believes that it was able to obtain shift bidding language in a prior contract and that the light duty assignments should follow the shift bidding language. That is, the Union argues that an officer should be assigned to light duty assignments on the officer’s regular (bid) shift. The City disagrees because it argues that sometimes there is no light duty on certain shifts and to accept the Union’s position would force the City to pay an individual for light duty even if there is no light duty work, or ultimately, it would curtail the amount of light duty assignments in the department.

The Fact Finder agrees with the City's position on this issue. Light duty assignments are not the norm in any police department. While there are some tasks that can be performed by an injured officer, the need for light duty is random and does not fall neatly on to specific shifts. The parties have agreed to try to aid an injured officer in his/her return to work by allowing light duty. To force the City to schedule that duty on a certain shift is unrealistic. Furthermore, the Union presented no evidence that the language in question created a hardship for any injured officer.

**Finding of Fact:** The Union did not prove its position on this issue.

**Suggested Language:** Current Language

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this \_\_\_\_\_ day of August 2004 at Munroe Falls, Ohio.

---

Dennis M. Byrne,  
Fact Finder

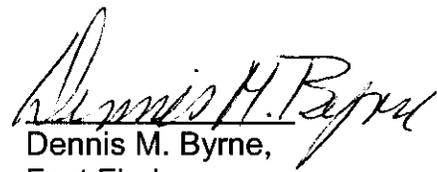
The Fact Finder agrees with the City's position on this issue. Light duty assignments are not the norm in any police department. While there are some tasks that can be performed by an injured officer, the need for light duty is random and does not fall neatly on to specific shifts. The parties have agreed to try to aid an injured officer in his/her return to work by allowing light duty. To force the City to schedule that duty on a certain shift is unrealistic. Furthermore, the Union presented no evidence that the language in question created a hardship for any injured officer.

**Finding of Fact:** The Union did not prove its position on this issue.

**Suggested Language:** Current Language

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this 7<sup>th</sup> day of September 2004 at Munroe Falls, Ohio.

  
Dennis M. Byrne,  
Fact Finder