

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUN 18 A 10: 25

In the Matter of:

The City of Westlake

and

Ohio Patrolmen's
Benevolent Association

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04-MED-01-0052

FACT FINDING REPORT
FINDINGS AND RECOMMENDATIONS

June 16, 2004

APPEARANCES

For the City:

Robin R. Leasure, Esq.	Assistant Director of Law
Dennis M. Clough	Mayor
Anne Fritz	Finance Director
Amy Stack	Law Clerk

For the Union:

Jeff Perry	Business Agent
Judy Langel	Dispatcher
Tim Lavelle	Corrections Officer
Cathy McLaughlin	Secretary

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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on April 13, 2004 pursuant to Ohio Administrative Code Rule 4117-9-05(D). The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Ohio Patrolmen's Benevolent Association (Union) and the City of Westlake (City). Westlake is a city of approximately thirty-two thousand (32,000) residents on the west side of Cuyahoga County covering sixteen and one-half (16½) square miles. It is a growing community with a substantial tax base and in excellent fiscal condition.

The fact-finding involves the City and employees of its Police Department. The employees involved are Police Secretaries, Correction Officers, the Animal Control Officer, and Dispatchers. The bargaining unit is comprised of approximately seventeen (17) individuals. The unit is represented by the Ohio Patrolmen's Benevolent Association. The Union became the exclusive representative in 2002.

Prior to the fact-finding, the parties engaged in bargaining. The City has six (6) different bargaining units represented by five (5) different labor organizations. All of the collective bargaining agreements expired at the end of February, 2004. The City has recently reached agreements with two (2) of these units, its City Hall employees and Police Department Officers, that is, the sergeants, lieutenants, and captains.

II. THE HEARING

The fact-finding hearing was held on June 9, 2004 at the Westlake City Hall. The parties provided their position statements by June 8, 2004. The hearing began at 9:30 a.m. and adjourned at 1:30 p.m. The parties attended, introduced evidence, and presented

their positions regarding the issues at impasse. The parties introduced the following exhibits into evidence:

Union Exhibits

A. 2004 City of Westlake Dispatcher Negotiations Comparison of Benefits of 10 year Employee.

B. 2003 City of [Westlake] Dispatcher Negotiations Comparison of Benefits of 10 year Employee, including Percent Increase in Steps.

C. 2003 City of [Westlake] Dispatcher Negotiations Comparison of Benefits of 10 year Employee, including Training Pay.

D. Breakdown by Dispatcher Name of Increases in each year of contract, including Total Percentage Wage Increase Over 3 Years.

E. City of Westlake, Ohio Bargaining Unit Profile, Bargaining Unit - Westlake City Hall Association.

F. Fact Finding Report of Virginia Wallace-Curry in City of Solon and Ohio Patrolmen's Benevolent Association, SERB Case Nos. 03-MED-10-1168 and 1169, dated April 4, 2004.

G. Article XX, Wages and Wage Increases, of Agreement between the City of Westlake and Westlake City Hall Association.

H. Comparable information, including collective bargaining agreements involving the cities of Beachwood, Bedford, Berea, Broadview Heights, Brook Park, Brooklyn, Cleveland, East Cleveland, Garfield Heights, Highland Heights, Lakewood, Lyndhurst, Mayfield Heights, North Olmsted, North Royalton, Olmsted Falls, Parma Heights, Richmond Heights, Shaker Heights, Solon, South Euclid, Strongsville, and University Heights.

I. Agreement between City of Westlake and Ohio Patrolmen's Benevolent Association (Dispatchers, Secretaries, Jailers, Animal Control Officer, effective March 1, 2002 through February 28, 2004.

City Exhibits

1. Agreement between City of Westlake and Ohio Patrolmen's Benevolent Association (Dispatchers, Secretaries, Jailers, Animal Control Officer, effective March 1, 2002 through February 28, 2004.

2. Breakdown of hourly wage rate and percentage wage rate increase by bargaining unit employee based on Union's last proposal.
3. City Alternative Wage Proposal, Fact Finding, June 9, 2004.
4. Comparison of Westlake Current Actual Pay Range with SERB Average (2004) and Westlake Actual Pay Range with New Proposal.
5. SERB Clearinghouse Benchmark Report, dated May 24, 2004.
6. Conciliation Report of Gregory James Van Pelt in City of Westlake and Ohio Patrolmen's Benevolent Association, SERB Case No. 02-MED-03-0172, dated August 21, 2002.

The issues remaining at impasse for fact-finding included:

1. Wages
2. Holidays
3. Clothing Allowance
4. Health Benefits
5. Drug Testing

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Issues Resolved Prior to the Hearing

During negotiations, the parties agreed to several issues. The Fact Finder recommends that the following changes be made to the collective bargaining agreement.

1. A new provision is to be added that the City will provide a twenty thousand dollar (\$20,000.00) term life insurance benefit for each employee.

2. Article XVI, Longevity. The language of Section 16.02 is to be changed as follows:

Longevity is to be paid to the payroll closest to December 1 each year.

3. Article XXI, Sick Leave. Language is to be added to the first paragraph of Section 21.06 to reflect the Bureau of Workers' Compensation minimum seven (7) calendar days off before wages are paid.

Unresolved Issues

Issue: Article XV, Wages

Union Position: For the Secretaries, Corrections Officers, and Animal Control Officer, the

Union seeks a two and one-half percent (2.5%) across-the-board increase effective March 1, 2004, a three percent (3%) across-the-board increase effective March 1, 2005, and a three and one-half percent (3.5%) across-the-board increase effective March 1, 2006, or a minimum increase of fifty cents (\$.50) per hour, whichever is greater. For the Dispatchers, the Union proposes a four percent (4%) across-the-board increase effective March 1, 2004, or minimum increase of fifty cents (\$.50), whichever is greater. The Union also proposes adding steps to the contract for Dispatchers as follows:

Dispatchers	<u>March 1, 2004</u>	<u>March 1, 2005</u>	<u>March 1, 2006</u>
A	\$13.50	\$13.50	\$13.50
B	\$14.00	\$14.00	\$14.00
C	\$14.50	\$14.50	\$14.50
D	\$15.00	\$15.00	\$15.00
E	\$15.50	\$15.50	\$15.50
F	\$16.00	\$16.64 (4%)	\$17.31 (4%)
G	\$16.50	\$17.16 (4%)	\$17.85 (4%)

The City has the right to place new employees at the A or B step. Employees shall move up the steps on their anniversary day each year until they reach the top pay step.

The Union further proposes to add Section 15.02 regarding training pay as follows:

15.02 Training Pay

Any dispatcher who is training another employee shall be paid with two (2) hours additional hours of pay for each eight (8) hours of training.

City Position: At the hearing, the City made a new wage proposal. The City proposes a three percent (3%) across-the-board increase in each year of the contract for the Secretaries, Corrections Officers, and Animal Control Officer. In the first year, the increase will take effect upon the effective date of an agreement. That is, there will be no retroactivity. In the second and third years of the contract, the increases will be effective

on March 1. For the Dispatchers, the City proposes a three percent (3%) increase in the first year, with no retroactivity, and the third year, to be effective March 1, 2006. In the second year, effective March 1, 2005, the City proposes the following:

Dispatcher II	
Start:	\$13.50 per hour
After 6 months:	\$14.00 per hour
After 1 year:	\$14.50 per hour

Dispatcher 1
(After successfully completing Dispatcher II and a minimum of two (2) years after hire date.) \$15.00 - \$17.50 per hour:

Merit raises are subject to annual performance review and recommendation by Chief of Police and approved by the Mayor.

Findings: The Union agrees to the City's wage proposal for the Animal Control Officer. As to the Secretaries and Corrections Officers, the Union contends that they have essentially accepted the City's pattern wage increase. However, the Union asserts that the City also agreed, on March 24, 2004, to the concept of a minimum fifty cents (\$.50) increase, but later withdrew the agreement as it was part of the City's entire wage package. The City has already agreed to this proposal with the City Hall bargaining unit. According to the Union, the Dispatchers are one of the lowest paid units in Cuyahoga County, which it sees as the appropriate comparable region. The City has had problems retaining Dispatchers due to their low pay. Since the average wage increase in the Cuyahoga County public sector is three and three-quarters percent (3.75%) and the City is in excellent financial condition, the Union believes its wage proposal is reasonable. Further, most of the dispatch units in Cuyahoga County have a step procedure for wage increases. Finally, the City is moving toward a more sophisticated dispatch system, which will require training for some of the Dispatchers. Other Dispatchers have already received training and may

be required to train others. When engaged in training, a Dispatcher is responsible for the trainee's calls, as well as his or her own. An additional two (2) hours of pay for each eight (8) hours of training is reasonable compensation for this in the Union's view.

The City argues that its offer of three percent (3%) for each year of the contract is reasonable. Council has authorized the City to offer nine percent (9%) over three (3) years for all City employees. The City needs to maintain parity. The City rejects the Union's wage proposal. Reviewing SERB comparables, the City claims that the Corrections Officers are at or above the average salary in the county, the Animal Control Officer is the highest paid such officer in the county, and the Secretaries have received increases in previous contracts to bring them equal to or above most other cities. The City's comparables do not establish that they are underpaid, requiring substantial raises. The City argues that, as to the Dispatchers, the Union's proposed step system would provide unrealistic and excessive wage increases for most Dispatchers over the next three (3) years. The City also objects to the Union's attempt to classify Dispatchers as to years of service. Employees are already compensated based on years of service through longevity pay. The City wishes to retain its current system whereby Council passes an ordinance setting a pay range for each position. Further, the Dispatchers handle only police calls, not fire or EMS calls as in some of the Union's comparables. In the City's view, the Union has shown no justification to change the current system. Additionally, in the last collective bargaining process, the Fact Finder and Conciliator found no need for a step system. Finally, the City opposes the Union's request for training pay. Training is part of the Dispatchers' normal duties. Any training will likely be done by an outside organization.

The parties disagree on the proper comparables to the City. The Union contends

that the Fact Finder should look only to those jurisdictions within Cuyahoga County. The City claims that the proper comparables are similar sized cities, whether in Cuyahoga County or not. Each side submitted a number of comparables, which included a number that were included by the other. The Fact Finder concludes that, of the comparables provided by both sides, those within Cuyahoga County are better comparisons than those outside. There are several reasons for this. Westlake is an outer ring suburb of Cleveland. It is a recently developed community, with a great deal of development in the last ten (10) to twenty (20) years. It continues to be developed and still has land to develop. Many of the cities listed as comparables are much older communities that are inner ring suburbs. Many are quite a bit smaller. However, there are a number of cities that the Fact Finder concludes are close comparisons. These include Beachwood, North Olmsted, North Royalton, Solon, and Strongsville. Each has a similar mix of housing, industrial, and commercial development and has seen much development in recent years. All have a strong tax base and are in good fiscal condition. Most are outer ring suburbs and similar in size. The lone exception is Beachwood. Though quite a bit smaller and one (1) ring removed from the outer ring, Beachwood continues to be developed, has a similar mix of development, a substantial tax base, and is in excellent fiscal condition.

The Fact Finder finds that there is no dispute as to the wages of the Animal Control Officer. The Union accepts the City's wage offer regarding that position. The City's proposal is recommended, except as to retroactivity.

As to the Secretaries, there is little evidence to go on. While it introduced comparables for the Dispatchers and Corrections Officers, the Union did not have a sufficient sample size to introduce evidence as to Secretary wages. The City introduced

evidence showing that the Secretaries currently earn between \$31,140 and \$34,620 and, including its new proposal, will earn between \$34,028 and \$37,830. It also introduced a few comparables, which included two (2) Cuyahoga County cities, two (2) Summit County cities, three (3) Lorain County cities, and one (1) Lake County city, showing an entry level range of \$21,466 to \$37,417 and a top level range of \$24,898 to \$39,497. While the Fact Finder concludes that most of these are not true comparables, there is at least one(1), the City of North Olmsted, that is. Its entry wage level is \$30,160 and the top level is \$34,424. The Secretaries' wage levels are consistent with this. There is no evidence that the Secretaries are underpaid. Given this evidence, the Union did not justify a need for increases greater than what the City offered. The City's proposal to the Secretaries is recommended, except as to retroactivity.

For the Corrections Officer classification, the Union's comparables show a top pay range for a ten (10) year employee of \$27,163.31 to \$34,706. The highest pay is for Westlake. Of particular note are the pay rates for North Olmsted and Solon, which are \$33,827.27 and \$32,287.40, respectively. The City's comparables show an entry level range of \$22,195.37 to \$33,259.20 and a top pay range of \$28,115.57 to \$38,403.82. This includes North Royalton, which has an entry level pay of \$24,809.46 and a top pay of \$33,827.30. The current pay range for Westlake Corrections Officers is \$27,560 to \$34,706. With the City's proposal, the pay would increase to \$30,116 to \$37,924. Based on this evidence, the Union did not show a need for any additional increase than what is offered. The City's proposal to the Corrections Officers is recommended, except as to retroactivity.

The evidence is different for the Dispatchers, however. The current range of

salaries is from \$27,040 to \$33,168. The City's comparables show an entry range from \$21,597.47 to \$34,379.90. Removing the three (3) low end salaries (from Green City in Summit County, East Cleveland, and Maple Heights), which the Fact Finder concludes are out of the norm and not comparable to Westlake, the entry range begins at \$26,229. Of particular note are North Olmsted starting at \$26,718, North Royalton at \$29,244.80, and Solon at \$30,742.40. The City's evidence also shows a top level range from \$25,563.20 to \$41,706.80. Removing the lowest two (2) salaries (again from Green City and East Cleveland), the range begins at \$31,865.60. Of note are North Olmsted, with a top salary of \$36,429, North Royalton at \$33,404.80, and Solon at \$40,102.40. While the City's argument that its Dispatchers handle only police calls has some merit, the evidence proves that the Dispatchers are underpaid. The City recognizes this and tried to address it in its alternative wage proposal made at the hearing.

The underpayment is particularly so at the upper range of the salaries. The Union's comparables show the top pay for a ten (10) year employee in a number of Cuyahoga County jurisdictions. Excluding East Cleveland, the range begins at \$31,865.60 and reaches \$44,512. The average is \$36,520.33. Of particular note are Beachwood at \$36,266, North Olmsted at \$36,429, North Royalton at \$33,404.80, Solon at \$42,619.20, and Strongsville at \$35,193. A ten (10) year Dispatcher at Westlake earns, \$33,168. In short, the Dispatchers are entitled to an increase, greater than the three percent (3%) offered, to bring them more in line with comparable cities.

The Union also seeks to create a step system for Dispatchers. Given that the Dispatchers are underpaid, that the current system has not adequately addressed this, and that the vast majority of jurisdictions in Cuyahoga County have some step system, the Fact

Finder concludes that a step system will better address the need to increase Dispatchers pay to bring it in line with comparable cities.

Additionally, the Union seeks to add a provision regarding training pay for Dispatchers. The Fact Finder finds that this is unnecessary. The City's argument that training is part of the Dispatchers' normal duties is well taken. Further, the Union did not establish a need for it. While the City is moving toward a more sophisticated dispatch system, it has not made the move yet and any training may be done by an outside organization.

Finally, all employees will be entitled to pay retroactive to March 1, 2004. While the City proposed no retroactivity, it provided no basis for its proposal. Retroactivity is the standard in collective bargaining. While there are situations where no retroactivity in wages is justified, there must be some basis for it. The City did not substantiate the need to eliminate retroactivity.

Recommendation: The Fact Finder accepts the position of the City regarding Secretaries, Corrections Officers, and the Animal Control Officer. The Fact Finder rejects the City's position as to Dispatchers and adopts the Union's position, with modifications. The Fact Finder recommends that Article XV be amended as follows:

<u>Position</u>	<u>3/1/04</u>	<u>3/1/05</u>	<u>3/1/06</u>
Secretaries	3%	3%	3%
Corrections Officers	3%	3%	3%
Animal Control Officer	3%	3%	3%
Dispatchers	4%	*	*see below

Effective March 1, 2005, Dispatchers shall enter the steps below at the next highest step:

<u>Dispatchers</u>	<u>3/1/04</u>	<u>3/1/05</u>	<u>3/1/06</u>
A	13.50	13.50	13.50
B	14.00	14.00	14.00
C	14.50	14.50	14.50
D	15.00	15.00	15.00
E	15.50	15.50	15.50
F	16.00	16.50	17.00
G	16.50	17.00	17.50

The City has the right to place new employees at the A or B step. Employees shall move up the steps on their anniversary date each year until they reach the top pay step.

Issue: Article XVII, Holidays

Union Position: The Union seeks to add language to the article allowing employees to be paid for any unused personal hours at the end of the year.

City Position: The City opposes the amendment and wants to maintain the current language.

Findings: The Union argues that the language it seeks is found in the contract with the Police and has worked successfully. The Union seeks parity. Additionally, with the City's move to add EMS and fire dispatch work, two (2) Dispatchers will have be on duty at all times. It may be more difficult for employees to take personal time. They should be paid for the time if they cannot use it.

The City contends that this provision is not necessary. The Police Officers are the only unit to have this language. It is not city wide and the City wants to limit it to that unit. The language was added to the Police contract because, at the time, the department was short handed and the Officers could not use all of their time. There is no such similar situation with this unit. Additionally, the City believes it is important for employees to take the time off because of a stressful position rather than cash out the time. This is supported

by the Police Officers lack of cashing out their hours. Finally, the City does not perceive it will be a problem under the new system. If it becomes a problem, it can be addressed later.

The Fact Finder concludes that the Union has not shown a need for the language. Only the Police Officers unit has such language, and it was added to address a specific need. There is no such need in this unit. Nor is there a concern as to lack of parity, since other units do not enjoy this benefit. While the dispatch system is to be changed, it is not certain whether Dispatchers will be unable to take their personal time. Very few Police Officers cash out their time, which indicates that there may be no problem created when the new system is implemented. Finally, if a problem does occur, it can be addressed when it arises.

Recommendation: The Fact Finder adopts the position of the City. No change is recommended to the current language of Article XVII.

Issue: Article XIX, Health Benefits and Spending Plan

City Position: The City proposes to modify 19.02 of the Agreement as to the prescription drug plan by adopting the following formulary option:

Generic

1.	Year 1	\$10
2.	Year 2	\$10
3.	Year 3	\$10

Formulary (Preferred)

1.	Year 1	\$15
2.	Year 2	\$15
3.	Year 3	\$15

Brand Name (Non-preferred)		
1.	Year 1	\$15
2.	Year 2	\$20
3.	Year 3	\$20

The City also proposes to amend 19.03 to increase the premium sharing to a maximum of \$25.00 per month.

Union Position: The Union opposes the amendment and wishes to maintain the present language.

Findings: The City asserts that it maintains a very generous health insurance package. While costs in 2003 were very low, from its prior experience and the trend in general, costs have risen. Costs have already risen in 2004, primarily for prescriptions. The amendment will allow the City to better control prescription costs this year and going forward. The City Hall bargaining unit has already agreed to this proposal, while the Police Officers (Sergeants, Lieutenants, and Captains) have agreed to a flat twenty-five dollars (\$25.00) per month, instead of a twenty-five dollar (\$25.00) maximum. The City has had a premium share provision before 2003, but did not have to share premiums in 2003 because costs were low. Under the plan, employees only share one-half the premium if costs exceed five hundred fifty dollars (\$550.00) per month.

The Union contends that the City has failed to demonstrate a need to increase the premium share. The City is in excellent financial condition and the outlook is excellent. There is no data to suggest that increasing the premium will reduce the usage or cost of insurance. There has been no showing of abuse by employees. While the City is attempting to spread these higher costs to all of its employees, these bargaining unit employees are some of the lowest paid in the City. The proposed increase places a

greater burden upon them.

The City's position is well taken. The Fact Finder takes administrative notice from his practice that health care costs have increased dramatically over the last several years. While the City had a good year in 2003 and did not need to share premiums, that was an anomaly. The City introduced evidence that costs have already increased in 2004. The Fact Finder empathizes with the Union's position that the City is in good financial condition and can afford increases. While true, that does not require the City to shoulder the entire burden of these costs. The City's plan is an excellent one and City employees share only a fraction of the cost, much less than many other public employees. The proposal requires that they share only one-half of any premium over five hundred fifty dollars (\$550.00) per month, to a maximum of twenty-five dollars (\$25.00). Additionally, the City has proposed this plan to its other units and seeks parity among the units. Two (2) units have already agreed to the same plan or a version of it. Having these employees shoulder a lesser percentage because they receive lower pay would create its own problems. There are always differences in employees' pay. Determining an individual's cost of health insurance based on his or her pay would be burdensome.

Recommendation: The City's proposal is accepted. The language of Article 19.02 shall be amended to the following formula:

Generic		
4.	Year 1	\$10
5.	Year 2	\$10
6.	Year 3	\$10

Formulary (Preferred)		
1.	Year 1	\$15
2.	Year 2	\$15
3.	Year 3	\$15

Brand Name (Non-preferred)		
1.	Year 1	\$15
2.	Year 2	\$20
3.	Year 3	\$20

Additionally, the language of Article 19.03 shall be changed to reflect an increase in the premium sharing to a maximum of twenty-five dollars (\$25.00) per month.

Issue: Article XX, Clothing Allowance

Union Position: The Union seeks an increase in the clothing allowance from six hundred dollars (\$600.00) per year to six hundred fifty dollars (\$650.00).

City Position: The City proposes to eliminate the clothing allowance and begin providing uniforms to employees.

Findings: The Union contends that the current system has worked satisfactorily and should not be changed. However, the cost of purchasing and maintaining uniforms has increased, so should the allowance. The Union opposes the City's proposal to supply uniforms. It has not adequately explained how it will supply them and, in the Union's experience, it is a cumbersome process that causes more problems than employees purchasing them. The City's proposal also does not address the cost of cleaning and maintaining the uniforms. Nor has the City explained what uniform items it will provide. The current system gives employees greater choice. Finally, only two (2) of the Union's comparables provide uniforms. One (1) of these, Shaker Heights, also provides an allowance to cover the cleaning and maintenance. In the Union's view, if the Fact Finder adopts the City's proposal, he should reduce, but not eliminate, the allowance to provide for cleaning and maintenance.

The City contends that it purchases the first three (3) sets of uniforms and would like to provide all uniforms. Not all members of the bargaining unit need to be in uniform and the City could discontinue it. No other administrative unit receives the benefit of uniforms. Furthermore, the uniforms are not consistent and the City could make them consistent by providing them. Purchasing the uniforms would also allow the City to use its purchasing power to reduce the cost. Finally, the City would like to provide uniforms for all employees. It has proposed this with other units.

The Fact Finder determines that there is no need to change the current system of clothing allowance. The only justification for the City to provide the uniforms would be to ensure they are consistent. However, that can be accomplished by the City mandating a certain type, color, brand name, or style of uniform. The City's proposal also does not address the cost of cleaning and maintaining the uniforms.

More importantly, a clothing allowance does not simply reimburse for the cost of uniforms. Over the years, this has become another form of compensation, allowing the parties to provide employees more money without increasing base pay. The City's proposal would eliminate another form of compensation without sufficient justification. Looking to the Union's comparables, twenty (20) of the thirty-five (35) jurisdictions (Dispatchers and Corrections Officers) provide a more generous clothing allowance than Westlake. This includes Shaker Heights, which provides the uniforms and a clothing allowance. An increase is warranted.

Recommendation: The Fact Finder accepts the Union's position and rejects the City's position. The language of Article XX shall be amended to reflect an increase in the clothing allowance to six hundred fifty dollars (\$650.00).

Issue: New Article, Drug Testing

City Position: The City already has a drug testing program in place. The City proposes changing the program to include random testing to which all Union and non-Union employees, even the Mayor, are subject. Additionally, the levels will be lowered to .02 for a positive test, which is a federal standard. The City is implementing a Drug Free Work Place Act program through the Bureau of Workers' Compensation (BWC). Implementing such a program gives the City a lower workers' compensation premium. All non-Union employees are now subject to the policy. The City Hall bargaining unit has already agreed to it and the City is negotiating with the remaining units. Some Service Department employees have been subject to random testing under the Department of Transportation regulations. The City has sufficient experience with random testing. The City uses a reputable testing service and desires to maintain parity on this matter.

Union Position: The City has failed to demonstrate why the employees should accept this invasion of privacy. The City claims it will save money, but has not explained how much money or mentioned passing on any of the savings to employees. Non-Union employees can be ordered to comply with this policy at any time. While Service Department employees are subject to random testing, random testing is not as widespread outside ODOT employees as the City would have one believe. Employees do not like it; it is too intrusive. The Union is aware of only two (2) units that have random testing. The Union is also concerned that the .02 level is too low. Finally, there has been no showing of cause within this unit. The present language was placed into the contract in the last negotiations. It has yet to be used with this unit. There has been no problem to date, calling into

question the need.

Findings: The City argues that implementing the drug testing policy will save money through the BWC. The Union contends that there is no need for the new policy. While there is no evidence of a problem within the unit, the new policy will help the City cut costs in its workers' compensation coverage. Although this is evidence of some need, it is insufficient, in the Fact Finder's view, to support the new policy. The primary purpose of a drug testing policy is to combat a drug problem. There has been no showing of such a problem. In fact, the current drug testing language has yet to be used. The current policy provides for reasonable suspicion based testing. This is sufficient to deal with the current situation and other work place issues such as performance problems.

The proposed policy will add testing during any work related physical exam, post-accident testing, random testing, testing as a condition of discipline for previous offenses under the policy, and as a condition of returning to work after leave related to drugs or alcohol use. The Fact Finder believes that this is too great an intrusion upon the employees solely to save money on workers' compensation costs. If there were evidence of past drug problems, the policy would be reasonable to address them. While the Fact Finder empathizes with the City's desire to contain costs, the proposal imposes too great a burden as a justification for cost saving.

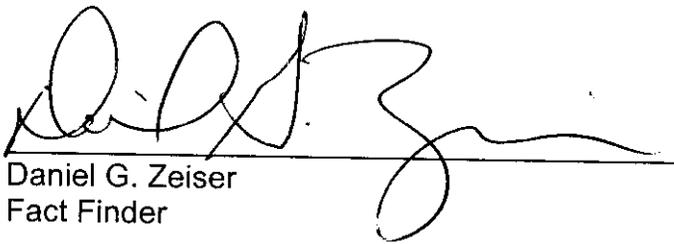
Additionally, perhaps to dispel concerns regarding the proposal, the City argued at the hearing that Service Department employees are not immediately terminated when they test positive. Rather, they simply are unable to perform safety sensitive duties. These Service Department employees, however, are covered by Department of Transportation regulations and the protections they provide. The employees in the bargaining unit at issue

are not. As the Fact Finder reads the policy, an employee can be discharged for a first violation under Section 6. While this may be justified, it imposes a far greater burden than the current policy.

Simply put, the City's proposed goal is gained at too great a burden on employees. The proposal would be reasonable to combat a drug problem, but is not reasonable to attain cost savings alone.

Recommendation: The City's proposal is rejected. The Union's position is adopted. No new article is to be adopted regarding drug testing.

Dated: June 16, 2004



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STATE EMPLOYMENT
RELATIONS BOARD

2004 JUN 18 A 10: 25

June 16, 2004

Jeff Perry
Ohio Patrolmen's Benevolent Assn.
P.O. Box 338003
North Royalton, Ohio 44133

Robin R. Leisure, Esq.
City of Westlake
27700 Hilliard Boulevard
Westlake, Ohio 44145

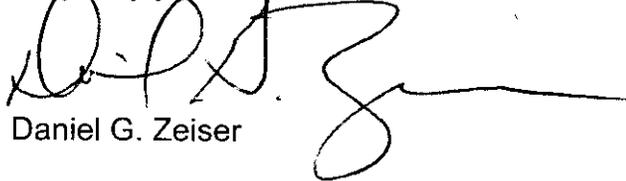
Re: Case No. 04-MED-01-0052
Ohio Patrolmen's Benevolent Association and City of Westlake

Dear Mr. Perry and Ms. Leisure:

Enclosed you will find a copy of my Fact Finding Report in the above matter as well as my invoice. I trust you will find them in order. Please let me know if you have questions about either.

Thank you for your cooperation. I enjoyed working with you. I hope to have the opportunity to serve you again as fact finder.

Very truly yours,


Daniel G. Zeiser

cc. Dale A. Zimmer
Administrator, Bureau of Mediation

