

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

2004 DEC 17 A 11: 31

IN THE MATTER OF:)	
)	CASES NOS.:04-MED-06-0635
The Fact Finding between)	04-MED-06-0636 and
)	04-MED-06-0638
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	FINDINGS AND
)	RECOMMENDATIONS
and)	DECEMBER 14, 2004
)	GREGORY P. SZUTER
CITY OF BELLEVUE)	FACT FINDER
)	

List of Appearances:

Ohio Patrolmen's Benevolent Association by:
Jeff Perry
OPBA
PO Box 338003
North Royalton, OH 44133

and

The City of Bellevue by:
JohnW. Ferron Esq.
Ferron & Associates
580 North Fourth Street # 450
Columbus, OH 43215

INTRODUCTION

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on October 13, 2004, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D). This matter involves three bargaining units represented by Ohio Patrolmen's Benevolent Association (herein "the Union" or "OPBA") whose members are employed by the City of Bellevue (herein also "the City" or "Bellevue"). The instant case concerns one Bargaining Unit consisting of full-time Police Officers, Sergeants, and Dispatchers. Although a single unit, local parlance refers to each classification as "unit."

The Employer, the City of Bellevue is a charter city located in portions of three counties: Erie, Huron and Sandusky Counties. The population is 8,193. The mayor is part time elected position. The earlier of the former two mayors died in office and was replaced for an interim period by another mayor appointed for the balance of the term. The former safety director which was a full time position was in active charge of many city affairs for the interim. The current mayor has been recently elected also to a part time position. A new safety director, Jeff Cosby, formerly a councilman, was appointed in 2004. The employees serve and protect the safety of the citizens of the City under the direction of the safety director. The Ohio Patrolmen's Benevolent Association became the exclusive representative in 1989. The City and the OPBA have been parties to several collective bargaining agreements, the most recent of which covered the period of November 1, 2001 to October 31, 2004.

Bargaining commenced September 7, 2004. In total there were 9 negotiations meetings including one day of mediation that was requested by the Mayor. Twenty issues remained at impasse as of December 6, 2004.

MEDIATION

The parties agreed to mediation and proceeded with the assistance of a mediator other than the Fact Finder to address the Open Issues. The Fact Finder also offered mediation of the procedural issue of scheduling the hearing which was declined by the City. (below).

HEARING

The undersigned was appointed Fact Finder on October 13, 2004, (received October 18) and immediately requested whether the parties agreed to extend the 14 day period of RC.4117.14(C)(5) and indicate "when you have so agreed in order to coordinate our availabililies." The City did not respond to state that there was no agreement and that a hearing was needed immediately. On November 18, 2004, the Union left a voice mail message by telephoned requesting available dates and they were provided immediately the expressly on the assumption is that arrangements were made for extension. The City did not respond to the offer of dates, did not state that there was no extension and did not object to the Fact Finder's jurisdiction under the statute. On November 30, 2004, the Union informed the Fact Finder that there was no extension agreed and requested an immediate hearing. A hearing notice was issued that date for a fact finding hearing on December 6, 2004 in the City of Bellevue conference room.

By letter of December 4, 2004, the City raised a procedural issue to the Fact Finder on the scheduling of the hearing. The City attorney indicated that the City would be filing an injunction lawsuit in Columbus, Ohio to enjoin the hearing if it proceeds.

In response on December 5, 2004, the Fact Finder explained that in view of the parties failure to agree to an alternative, the hearing set for December 6, 2004, with a report by December 15 is the last opportunity in order to have a conciliator appointed by SERB this year. The Fact Finder

recommended the City and Union representative attempt to reach some agreement on dates that is workable for the parties and the Fact Finder for the 20 or so issues left open. Failing that, the Fact Finder requested that the City attorney attend even if by telephone so that the first matter to be resolved is the procedure which the parties can accomplish better themselves than invoking court jurisdiction.

The *State Employment Relations Board Fact Finding Guidebook* explains in applicable part that extensions may be agreed at any time but are effective only upon the appointment of the Fact Finder. "An extension is frequently sought to allow additional time for negotiations, or mediation prior to fact finding. In other instances, the parties agree to an extension to better ensure the availability of their selected Fact Finder for consideration in accepting the appointment." (emphasis added.) The *Guidebook* states that the Fact Finder is without authority to impose an extension of the 14 days, but may request an extension. If it is not agreed then the time lines must be met. If an extension is not agreed, "either party can insist upon scheduling of a fact-finding hearing. The initiating party is required to send written notice to the Fact Finder and to the other party if it is requesting an immediate fact finding hearing. The Fact Finder is obligated to schedule a hearing within 14 days of the receipt of written notice. If the Fact Finder cannot meet this time line, the Fact Finder must acquire a mutually agreed extension of the parties or resign from the case." (emphasis added.) The Fact Finder is given the statutory authority to set the hearing date, time and location (O.A.C. 4117-9-05(H)) provided consideration is given for the convenience of the parties and there is no additional cost. The *Guidebook* states, "a hearing must be conducted even if it is in the absence of one of the other parties."

The City attorney responded by email that an injunction lawsuit would be filed on December 6, 2004, and a temporary restraining order sought that date as soon as counsel could be heard. The Union responded by email that it would attend the fact finding hearing and requested that the Fact Finder not resign.

The fact finding hearing was held on December 6, 2004, at 9:00 a.m. at the City Bellevue, State of Ohio, in city council chambers which were offered by the Mayor in lieu of the upstairs conference room as an accommodation to the Fact Finder's recent injury. The Mayor indicated that the City would not participate in the hearing because the City attorney was at that moment seeking a temporary restraining order in court to stay the hearing.

The City of Bellevue was represented very briefly by Mayor David Kile as noted above. The OBPA was represented by Jeff Perry, Business Agent. In attendance for the Union were Dispatcher Patricia Schsen, Sgt. Jeff Matter, Sgt. Don Miller, and Patrolman John Hartman.

The Union submitted a very detailed (55 pages) position statement beforehand. The City did not submit a pre-hearing position statement. The position statement of the Union addressed the issues for which it was the proponent and also responded to the issues proposed by the City.

The City's issues were reiterated by the Union with some vagueness on details. Although the City did not present its own positions on its proposals, the City proposals as responded to by the Union are the only record the Fact Finder has on the matter. Even so, the Fact Finder examined the City's issues as stated by the Union and considering the patterns of similarity in tone and theme that appear in that recitation, the Fact Finder finds they are credibly described. If there would be some variance to what is found in this record, the burden of producing it fell to the City and was not met by its chosen absence.

The Union elaborated upon its positions regarding the issues remaining at impasse through its representative who reasserted the pre-hearing positions with respect to the open issues. In addition the Union offered four exhibits in addition to the position statement. Received in evidence at the hearing were:

- Union Exhibit 1 "Agreement Between The City of Bellevue and the Ohio Patrolmen's Benevolent Association," (eff. November 1, 2001 to October 31, 2004.) herein the "Agreement" or "CBA."
- Union Exhibit 2 Charts of comparable top pay rates for each bargaining unit
- Union Exhibit 3 Job Description of Safety Director¹
- Union Exhibit 4 Binder with excerpts from other collective bargaining agreements of the City of Bellevue

In conformity with OAC 4117-9-05(L), the date of issuance of the Fact Finder's Report not later than December 15, 2004.² The Union requested that the Report be issued within time for the appointment of a conciliator during the calendar year so that the issue of retroactivity would be preserved under the statute regardless of the Fact Finder's recommendation on wages.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

1. Past collective bargaining agreements between the parties;

¹ The job description ordinance for the new safety director discloses several of the terms of employment that the Union is seeking for the bargaining unit. Management conditions of employment are not usually significant comparisons. The other contract provisions were noted subject to the testimony that the police unit is the first negotiation and so those may be open issues in other cases.

² The injunction lawsuit was filed under caption of City of Bellevue v. SERB and G.P.Szuter and OPBA (Franklin County Common Pleas No. 04CVH-12-12768). The motion for temporary restraining order was heard on December 6, 2004 at 11:00 a.m. which was after the fact finding hearing concluded. The motion was denied and the Fact Finder was notified by telephone from the court of that ruling. The City attorney has since requested that the Report be delivered to him rather than the City.

2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;

5. Any stipulations of the parties;

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

In as much as this proceeding is an advisory interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in ELKOURI & EKLOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp1358-1364.

As quoted therein, note:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

The additional paradigm added by a public sector statutory proceeding, other than the advisory nature of fact finding in Ohio's statute, is that the interest of the public as a third element in the balance of equities. ELKOURI at p. 1361.

THE AGREEMENT

In their direct negotiations, a substantial portion of the Agreement was not subject to any proposals. Those portions are agreed to remain in tact and only the open issues are subject to the Report and Recommendation.

OPEN ISSUES FROM NEGOTIATION

The Union is the proponent of four issues remaining for consideration by the Fact Finder and the City is the proponent of 19. Of the 19 proposed by the City there has been a counter offer by the Union on two (overtime and layoff). Of the City's 19, three are also Union issues, (wages, holidays and termination/ duration). Based on the evidence at hearing the open issues are:

1. Wages (including longevity and shift pay)
2. Holidays
3. Compensatory Time
4. Overtime
5. Layoff- Recall
6. Termination and Duration
7. The City's Other Open Issues (19 issues)

For presentation purposes the sequence of the Agreement is followed for the report noting the City's open issues (*), and the joint three issues (^) :

- | | |
|---|---|
| *Article 5 Fair Share Fee | *Article 34 Sick Leave Procedure |
| *Article 12. Employee Rights | *Article 35 Injury on Duty |
| *Article 19. Layoff and Recall Procedure | *Article 36 Insurance |
| *Article 21. Discipline | *Article 37 Bereavement Leave |
| *Article 22 Application of Work Rules | *Article 38 Maternity Leave |
| *Article 23. Grievance Procedure | *Article 39 Educational Incentive Program |
| *Article 25 Work Schedule | *Article 42 Medicine Cabinet |
| ^Article 28 Wages | ^Article 48 Duration of Agreement |
| *Article 29 Uniform Allowance | |
| Article 30 Compensatory Time | |
| *Article 31 Overtime Pay and Court Time Pay | |
| *Article 32 Vacation | |
| ^Article 33 Holidays | |

ISSUE 1
ARTICLE 5 FAIR SHARE FEE

CONTRACT SECTION: **ARTICLE 5 FAIR SHARE FEE**

Section 1. Bargaining Unit members who have successfully completed thirty (30) days of employment but who are not members of the OPBA shall, as a condition of employment, pay to OPBA a fair share fee. The amount of the fair share fee shall be determined by OPBA, but shall not exceed the monthly dues paid by members of OPBA who are in the Bargaining Units. Such fair share fees shall be certified by OPBA to the City at such times during the term of this Agreement as are necessary to be accurate. Such payment shall be subject to an internal OPBA procedure meeting all requirements of state and federal law.

Section 2. For the duration of this Agreement, such fair share fees shall be automatically deducted by the City from the first pay in each calendar month of each member of any of Bargaining Units who is not a member of OPBA. Nothing in this Article shall be constructed as to require the City to deduct from any employee's monthly pay an amount more than twice the monthly fair fee then in effect for OPBA.

Section 3. The fair share fee deduction shall be initiated by the City whenever a member of any of the Bargaining Units who is not a member of OPBA has successfully completed thirty days of employment. The City shall be relieved from making such automatic fair share fee deductions upon an employee's (a) termination of employment, or (b) transfer to a job other than one covered by the Bargaining Units.

Section 4. A warrant in the amount of the total fair share fees withheld from those employees who are subject to the fair share fee deduction shall be tendered to the Treasure of OPBA within thirty (30) days from the date of making said deductions.

Section 5. It is specifically agreed that the City assumes no obligation, financial or otherwise, arising out of its compliance with the provisions of this Article, and OPBA shall indemnify, defend, and hold harmless the City, its officers, officials, agents and employees harmless against any claim, demand, suit or liability (monetary or otherwise) and for all legal costs arising from any action taken or not taken by the City, its officers, officials, agents or employees in complying with this Article. Once the funds are remitted to OPBA, their disposition thereafter shall be the sole and exclusive obligation and responsibility of OPBA. Furthermore, within thirty (30) days of the date on which this agreement is executed by all parties, OPBA agrees to provide the City with a copy of any further revised version of its written fair share rebate procedure during the life of this agreement.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed adding a new section six to define fair share fees but apparently has asked the Union to provide the language.

POSITIONS:

The Union: The OPBA sees no value in defining within the contract what can be easily discovered from many sources outside of the contract. There has been no interest from members of the Police Department to define fair shares either. The City could have at least defined it themselves rather than requesting the Union to do so.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

Article 5 has five subsections outlining the fair share opportunity of dissenting unit members. The City had proposed that additional language to define the fair share fee should be included in a new section but that the Union draft it. The existing language is already extensively describes the concept and procedure. In addition, existing sub section 5 states "...the City assumes no obligation, financial or otherwise, arising out of its compliance with the provisions of this Article, and OPBA shall indemnify, defend, and hold harmless the City..." Under the circumstances where this section is of no concern the City beyond what has already been written about its function, added description serves no City purpose.

Recommendation: Article 5 remains unchanged.

ISSUE 2
ARTICLE 12. EMPLOYEE RIGHTS

CONTRACT SECTIONS: **ARTICLE 12. EMPLOYEE RIGHTS**

Section 6. All complaints by civilians which may involve suspension or discharge of an employee, shall be in writing and signed by the complainant. The City will furnish a copy of the complaint to the employee whom the complaint has been filed against when such employee is notified of the investigation.

Section 7. Records or disciplinary action that are more than two (2) years old may, upon written request of the employee and subject to the condition that there has been no occurrence of a similar type incident within the two (2) year period, shall be removed from the employee's personnel file.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City proposed to change section six so that complaints would no longer have to be in writing. The City has also proposed to change section seven in an unspecified manner.

POSITIONS:

The Union: The current language for both has been in the contract for a long time. The City has never had trouble disciplining employees in the past with a requirement of a written charge. There is no single instance where the City failed to investigate an allegation. On the other hand, the Police do not begin investigations of civilians without having a written or tape-recorded complaint. There is no reason for Police to be treated worse than private citizens.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

One of the most elemental aspects of due process is fair notice and hearing of any charges of misconduct. If a public employee is to face loss of his livelihood, written charges provide fair notice to him in order to allow a response. This is fundamentally fair. There is absolutely no compelling reason for a proposal that puts employment at risk by uncorroborated verbal complaints. It would give the City total discretion as to which complaint ought to be credited sufficiently to initiate an investigation. This opens the employee to arbitrary prosecution, whether or not discipline results.

Recommendation: Article 12 remains unchanged.

ISSUE 3
ARTICLE 19. LAYOFF AND RECALL PROCEDURE

CONTRACT SECTIONS: **ARTICLE 19. LAYOFF AND RECALL PROCEDURE**

Section 1. If it becomes necessary, due to lack of work or lack of funds to lay off employees, the City shall lay off employees within each Bargaining Unit by Bargaining Unit seniority. An employee to be laid off shall be given not less than fifteen (15) days written notice prior to be laid off.

Section 2. All part-time, seasonal or temporary employees in the various Bargaining Units shall be laid off before any full-time employee is laid off. Names of employees laid off shall be placed on a recall list, based upon their classifications series and seniority. When positions are to be filled, employees shall be recalled with the laid off employee with the most seniority having the first opportunity to take the position. No employee shall be hired while an employee is on a recall list, unless all employees on the list refuse the position. Employees' names shall remain on the recall list for two (2) years.

UNION PROPOSAL:

The Union proposes no changes to section 1 but made a counter offer to add the following to section 2.

If a laid off employee declines the city's attempt to recall such employee to their prior position, the employee shall be removed from the recall list and forfeit all future rights to be recalled.

CITY PROPOSAL:

The City proposes to change the employee notification from fifteen days to three days. It also proposed to change recall rights to allow employees to be dropped from recall in unspecified circumstances before the 2 year period.

POSITIONS:

The Union: The Union is completely opposed to reducing the layoff notice from 15 to 3 days. The City has a duty to properly plan for their budgetary future, as do the employees. If a lay-off is ever needed, the City should be aware of the need well in advance. Conversely, it would be quite difficult for an employee to rearrange their finances with three days notice.

The change to section 2 would limit the City's responsibilities for calling back employees a multitude of times. At the same time, the employee is protected until they are offered their old position back. Otherwise, a Police Officer could be offered a dispatcher job and lose their recall rights if they refused the job.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

Such short notice as 3 days before layoff is unworkable. The City not only needs to have contractual necessity but it must track seniority right and allow for its exercise.

This if done correctly is not uncomplicated. Three day notice would create disorder in administration. Something of a major unforeseen natural catastrophe would need be the predicate for such short notice, but in that circumstance police protection of the City and citizens is paramount. Other than that any economic layoff that would require such short notice would have to be unforeseen economic changes. Only something in the nature of the discovery of a major embezzlement is imaginable. In short, the city that cannot plan for a payroll more than 3 days hence would have to be unspeakably mismanaged. The visit to the Bellevue City Center to view the new complex and industrious civil servants at work suggest anything but major financial incompetence. There is no necessity of the change proposed by the City.

The necessity of the recall provision is apparently that the City seeks to avoid multiple recalls which are refused by the employee who remains on the list for two years. The Union is correct that since this is a combined unit, the City may recall an employee to a position other than the former one and thereby lose his former livelihood. The counter proposal allows rejection until the former position is offered. That is a reasonable compromise and in fact adds clarification. Some improvement in drafting is needed.

Recommendation: Article 19, section 1, remains unchanged. Article 19, section 2, shall have added to it:

"If a laid off employee declines the city's attempt to recall such employee to the position held at the time of the layoff, the employee shall be removed from the recall list and forfeit all future rights to be recalled."

ISSUE 4
ARTICLE 21. DISCIPLINE

CONTRACT SECTIONS: ARTICLE 21. DISCIPLINE

Section 1. Disciplinary action taken by the City shall be only for just cause.

Section 2. The principals of progressive disciplinary action will be followed with respect to offenses of misconduct. The progressive action will at least include documented oral reprimand, written reprimand, suspension, demotion and termination, except in cases for serious misconduct which may require a more severe penalty to be imposed than that called for herein.

Section 3. A non-probationary employee who is suspended, demoted, or discharged shall be given written notice regarding the reason(s) for the disciplinary action. The employee shall be informed of the right to confer with a representative of the OPBA.

Section 4. Prior to any discipline being imposed, the employee shall be given the right to appeal through Step 3 of the Grievance Procedure contained in Article 22 [*T.A - change 22 to 23*] of this Agreement. The employee shall then have the right to appeal the Step 3 decision to Arbitration, as set forth in Article 23 of this Agreement.

Section 5. Nothing in this Article shall be constructed as to limit the City's ability to suspend an employee with pay during the City's investigation of the employee's alleged misconduct and consideration of the appropriate disciplinary action to be taken.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City proposes to change several parts of this article, all of which are unspecified in the evidence. An addition to section one is a proposal to alter the language regarding progressive discipline.

POSITIONS:

The Union: There has never been a problem caused by the present language in the contract. The union will not agree to the City request and asks the Fact-finder to maintain the current contract language.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

This is a very tame discipline provision that respects the City's management responsibility on investigations and probationers along with providing basic due process in the meting of discipline. There is no obvious need of wholesale change.

Any specific change that would affect progressive discipline would remove the benefits that a discipline clause provides to an employer. Progressive discipline provides the opportunity to encourage employee self correction and the City's opportunity for teaching its standards. Moreover, to delete it is contrary to the City's

economic intelligence. Without progressive discipline, or curtailing it, the City is eventually forced to consider the trade off of misconduct and the cost of replacement (viz testing, background checks, etc to screen applicants not to mention investment in field training and other training institutes to develop incumbent police department talent). The City is not obligated to terminate for every offense and would not. However, without progressive discipline, or with less of it, offenses become immediately (or more imminently) terminable which only accelerates the consideration of costs. At any point in time, given human nature, the City could face the prospect of serious infraction by a valued and highly trained employee. The temptation of keeping and thus condoning the infraction due to the expense presents itself more rapidly without the cushion of progressive discipline. Nondiscrimination strictures might come into play in the converse. Employees become classed as expendable and not, and that line crosses investment, talent and legally protected status (race, sex etc.). Hence every discipline decision becomes more difficult in the long term rather than easier without progressive discipline. One retort might be: how do at will employers do it? The answer is that the educated ones have progressive discipline. It is one of the several ways in which collective bargaining institutions have influenced the employment culture at large.

Recommendation: Article 21 remains unchanged except the typo reference in section 4 where Article 22 is to be Article 23.

ISSUE 5
ARTICLE 22 APPLICATION OF WORK RULES

CONTRACT SECTIONS: **ARTICLE 22 APPLICATION OF WORK RULES**

To the extent work rules have been or will become reduced to writing, every employee shall have access to them for the duration of this Agreement. Copies of newly established work rules or amendments to existing work rules, will be furnished to the OPBA no less than five (5) working days prior to the effective date of such rules or amendments. Should any work rules conflict with any law or with the specific provisions of this Agreement, such rules will be invalid to the extent of this conflict.

OPBA or an employee against whom such rules, policies, and directives are enforced, may challenge the reasonableness or uniformity of their application or interpretation as to him through this Agreement.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City proposes to change the two parts of this article, all of which are unspecified in the evidence.

POSITIONS:

The Union: The City once again cannot point to any harm the contract language has caused them. The present language is both fair and reasonable and we ask the Fact-Finder to uphold it.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

This is a very typical work rule provision that is no different than typical arbitral precedent for applying rules such as notice and reasonableness and lack of conflict with the Agreement. It is also a statement of the lack of waiver that complies with State ex rel. Ohio Assn. Of Pub. School Emp./AFSCME, Local 4, AFL-CIO v. Batavia Local School Dist. Bd. of Edn (2000), 89 Ohio St.3d 191. That case held that contract language can negate state and local statutes if done explicitly. Here the contract states that it is not intended to be a waiver of statutory rights where work rules conflict with statutes.

Recommendation: Article 22 remains unchanged.

ISSUE 6
ARTICLE 23. GRIEVANCE PROCEDURE

CONTRACT SECTIONS: ARTICLE 23. GRIEVANCE PROCEDURE

Section 1. Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and, except at Step 1, shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this agreement that all grievances shall be settled, if possible, at the lowest step of this procedure.

Section 2. For the purposes of this procedure, the below listed terms are as defined as follows:

- A** Grievance- A grievance shall be defined as a dispute or controversy arising from the misapplication or misinterpretation of the specific and express written provisions of this Agreement.

- B** Grievant- The "grievant" shall be defined as an employee, group of employees within the bargaining unit or the OPBA.

- C** Party In Interest- A "party in interest" shall be defined as an employee of the City named in the grievance who is not the grievant.

- D** Days- A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays, Holidays as provided by this Agreement.

Section 3. The following procedures shall apply to the administration of all grievances filed under this procedure.

- A** Except at Step 1, all grievances shall include the name and position of the grievant, the identity of the provisions of this agreement involved in the grievance; the time and place where the alleged events, or conditions giving rise to the grievance; and a general statement of the nature of the grievance and the redress sought by the grievant.

- B** Except at Step 1, all discussions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the grievant and his representative, if any.

- C** If a grievance affects a group of employees working in different locations, with any different principals, or associated with an employer-wide controversy, it may be submitted at Step 3.

- D** Nothing contained herein shall be constructed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the administration and having said matter informally adjusted without the intervention of the OPBA, provided that the adjustment is not consistent with the terms of this agreement. In the event that the grievance is adjusted without formal determination, pursuant to this procedure, while such adjustment shall be binding upon the grievant and shall, in all respects, be final, such adjustment shall not create a precedent or ruling binding upon the employer in future proceedings.

- E** The grievant may choose whomever he wishes to represent him at any step of the Grievance procedure after Step 1.
- F** The parties agree that any appeals regarding matters covered by this Agreement are required to be filed through the Grievance and/or Arbitration procedure of this Agreement only.
- G** The time limits provided herein will be strictly adhered to any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the City fails to reply within the specified time limit, the grievance shall automatically be sustained in favor of the grievant. The time limits specified for either party may be extended only by written mutual agreement.
- H** This procedure shall not be used for the purpose of adding to, Subtracting from, or altering in any way, any provisions of this Agreement.

Section 4. All grievances shall be administered in accordance with the following steps of the Grievance Procedure.

- Step 1.** An employee who believes he may have a grievance shall notify his immediate supervisor of the possible grievance within five (5) days of the occurrence of the facts giving rise to the grievance. The supervisor shall schedule an informal meeting with the employee and an OPBA representative, if such representation is requested by the employee, within five (5) days of the notice of the employee, at which time the issue in dispute will be discussed with the objective resolving the matter informally.
- Step 2.** If the dispute is not resolved informally at Step 1, it shall be reduced to writing by the grievant and presented as a grievance to the Chief within five (5) days of the informal meeting or notification of the supervisor's decision at Step 1, whichever is later, but not later than seven (7) days from the date of the meeting if the supervisor fails to give the employee an answer. The Chief shall give his answer within five (5) days of receiving the grievance.
- Step 3.** If the grievant is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Safety-Service Director within five (5) days of the rendering of the decision at Step 2. Copies of the written decision shall be submitted with the appeal. The Safety-Service Director or his designee shall convene a hearing within ten (10) days of the receipt of the appeal. The hearing will be held with the grievant, his OPBA representative and other party necessary to provide the required information for the rendering of a proper decision. The Safety-Service Director or his designee shall issue a written decision to the employee and his OPBA representative within fifteen (15) days from the date of the hearing. If the grievant is not satisfied with the decision at Step 3, he may proceed to the Arbitration Procedure herein contained.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City proposes to change at least one part, the time limits of the grievance procedure applicable to the City. Changes to other parts of this article are unspecified in detail.

POSITIONS:

The Union: The OPBA hereby requests the Fact-Finder to maintain the current contract language. The OPBA has never once attempted to impose a remedy to a grievance that was not responded to in a timely fashion. In fact, there has never been a grievance that the City has not answered in a timely fashion.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

In the evidence the City appears to seek change as to grievances that are not answered by the City timely so that the remedy is not assumed to be granted. Essentially the City prefers a grievance procedure where the Union is constrained by time limits but the City is not. That is unbalanced and thus unfair and unwise.

The City would prefer to agree to the grievance only expressly. That does not consider what happens if there is no answer. The Union says that never happened, and that the City has always been timely. However, that was under the unchanged language. If the City did not have the incentive to answer, many grievances could be ignored and therefore not agreed. If not agreed the matter progresses to the next step without the Union having of the City's rationale that may assist in adjusting the dispute. The grievance procedure is an orderly method of negotiating disputes that arise during an agreement and contains a contingent method of their adjustment, agreement or arbitration. Stonewalling serves neither purpose.

One solution is that the Union also be freed of time limit consequences. The logical conclusion there is chaos. That leads to grievances lingering on forever and becoming eligible for arbitration even if they are stale increasing costs and risks.

Another solution would be to have unanswered grievances go immediately to arbitration. That would only increase the number of arbitrations at both parties' cost but worse, it would deprive the City of the opportunity to develop the record before arbitration to assist the arbitrator. The typical maxim of arbitration is that the dispute in the grievance procedure is the one heard. This often means that the evidence is limited to what was presented in the grievance procedure or something close to it. If the City does not answer and the case goes forward, it may lose a significant opportunity to preserve its rights and to develop its case and discover relevant material.

Recommendation: Article 23 remains unchanged.

ISSUE 7
ARTICLE 25 WORK SCHEDULE

CONTRACT SECTIONS: ARTICLE 25 WORK SCHEDULE

Section 1. The City agrees to post all regular shift work schedules thirty (30) days in advance of their effective date. The posting shall be where the affected employees can see them. Any changes in the regular work schedules shall be communicated to all employees affected by such changes as soon as possible.

Section 2. The City shall not split the regular work shifts, days, and/or hours to prohibit overtime.

Section 3. The City retains the right to determine whether all officers in a given classification will be assigned a permanent schedule or a rotating schedule. If the City implements a rotating schedule, all employees shall have the right to rotate their schedules. Rotating schedules shall no longer than ten (10) weeks nor shorter than six (6) weeks in duration, and shall include all employees within a classification.

Section 4. Employees shall have the right to trade shift assignments subject to the Department's prior approval, which shall not unreasonably be withheld. Employees shall also have the right to select permanent shift assignments by seniority subject to the Department's approval, which shall not unreasonably be withheld.

Section 5. Communications Officers shall once each year have the right to bid on the shift of their choice by seniority subject to the Department's approval, which shall not unreasonably be withheld. Said shift shall be picked by, and become effective upon, the first day of March of each year.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City proposes to delete section 2 and to reduce the Employees ability to trade shifts, section 4.

POSITIONS:

The Union: The proposal would allow the City to move people's schedules around at will and with no notice. The contract already allows the City to refuse compensatory time off if it causes overtime. That is not fair to employees. The trading of shifts has been done for years with no problems.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

Essentially the City wants free reign to take whatever steps that might be available to avoid the overtime premium at all costs. This is one of the recurrent themes of the City proposals, which although not abstractly unreasonable, is often is short sighted. The displacement of schedules is a hardship to the employees. It is also a hardship to the City. The number of personnel moves needed to avoid overtime would have

to be tracked so that it does not cause overtime elsewhere. The added administration record keeping and programming to keep such a rubric failsafe does not make this attractive to a modern employer. If a city cannot afford any overtime whatsoever and must create disorder to avoid it, it must be in catastrophic financial straits. That was not apparent in this case. Overtime premium was intended to encourage hiring additional personnel. However, other costs of employment, chiefly healthcare and recruiting and training, have acted as a brake on hiring making overtime preferable. If that is the choice made by an employer, then the statutory price of the consequence must be paid.

On the other hand shift trades can potentially save the City overtime premiums but it is opposing them. In addition, the Agreement states that shift trades are subject to approval not unreasonably withheld. The City already has sufficient management authority to avoid any abuse it perceives in shift trades.

Recommendation: Article 25 remains unchanged.

ISSUE 8
ARTICLE 28 WAGES

CONTRACT SECTIONS: **ARTICLE 28 WAGES**

Section 4. Wages – Schedule A The following wage rates shall apply to employees on November 1st of the applicable year . . .

Section 5. In addition to the above base wage rates, all employees shall receive longevity pay according to the following schedule, effective November 1 of the applicable year (except for the first year of this Agreement, when such rates shall become effective on January 27, 2002 (See Lump Sum Payment, Section 4 (A), above):

after 3 years	\$0.25 per hr.
after 7 years	\$0.49 per hr.
after 14 years	\$0.58 per hr.
after 20 years	\$0.68 per hr.
after 25 years	\$0.78 per hr.

UNION PROPOSAL:

The OPBA is requesting four percent (4%) across the board wage increases in each year of the contract. The Union proposes to make the longevity pay steps more standardized. Finally, the OPBA proposes the implementation of a shift differential. The following are proposed.

Section 4. Wages – Schedule A The following wage rates shall apply to employees on November 1st of the applicable year . . .

[Increase each hourly wage 4% for each classification each year but delete Captains. Also omit Lump Sum language as applicable to an old agreement as a signing bonus.]

Section 5. Replace the table for longevity pay with what follows:

After 3 years	\$0.30 per hour
After 5	\$0.50 per hour
After 10	\$0.60 per hour
After 15	\$0.70 per hour
After 20	\$0.80 per hour
After 25	\$0.90 per hour
After 30	\$1.00 per hour

The following are proposed additions:

"Section 7. Any employee that works any hours during the afternoon shift shall be paid a shift differential of twenty-five cents (\$0.25) an hour. Any employee that works any hours during the night shift shall be paid a shift differential of fifty cents (\$0.50) an hour."

CITY PROPOSAL: The City proposes to increase wages by two (2%) but to pay it in an annual bonus in lieu of adding the increase to the wage rates.

POSITIONS:

The Union: While fours are slightly higher than the present going rate for police, Bellevue Police are markedly underpaid according to the comparable data. Their top pay is only 85.51 % of the average wage rate in the four county area. This proposal would make the police more comparable to surrounding police officers. The Captains have sought other representation. The police are also slightly behind in longevity payments. This is aggravated by having odd step increases within their longevity steps. The lump sum language is surplus from an old agreement.

Shift differentials are common through out the state and in the area. Forty percent (40%) of the other departments in the area already have shift differentials. This helps make up for a lack in pay. Shift differentials have long been used to help motivate employees to work the unusual hours that upset employees sleep patterns as well as their family life. It is only fair to compensate the employees a little extra for working these odd shifts.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

The evidence elicited from the Union in support of its proposal related to each of the three units separately: Patrol, Sergeants, Dispatch. The Union argued that the City is multi-county and looked to the three counties in which it is located for comparators. The communities of Clyde, Huron, Norwalk Fremont, Tiffin, Vermillion and Sandusky were used. These represent most of the closest cities that are part of the local market for recruiting police. They vary significantly from Bellevue in population such as Norwalk, Tiffin and Sandusky at two to three times the size. Of those nearest in size, Huron appears to be somewhat more affluent than Clyde, and Vermillion the most affluent of the lower population cohort. Of the four Clyde may be the most similar to Bellevue. This is taken inferentially from the relative population to pay scales supported by the communities.

The Union's theme is that Bellevue is underpays significantly for police service in all three of the units. On a wage basis the differences from the average of all the other communities is the most exacerbated. Even when the entire direct pay package (ie excluding paid time off and insurance and retirement) the variance continues. The following analysis is based on the top rates:

Sergeants (2004):

<u>Jurisdiction</u>	<u>Population</u>	<u>Ratio</u>	<u>% Ave.Wage</u>	<u>% Pay Pkg</u>
Vermillion	10,927	1x	99.7%	102%
Tiffin	18,135	2x+	98.5%	100%
Sandusky	27,844	3x	102%	99.8%
Fremont	17,375	2x	99.7%	98.2%
Bellevue	8,193		81.46%	89.57%

All the other communities pay for sergeants within 1 to 2% of the average with the exception of Bellevue which is the outlier.

Patrol (2004):

<u>Jurisdiction</u>	<u>Population</u>	<u>Ratio</u>	<u>% Ave.Wage</u>	<u>% Pay Pkg</u>
Vermillion	10,927	1x	102%	102%
Clyde	6,064	1x-	93.2%	101%
Tiffin	18,135	2x+	101%	101%
Sandusky	27,844	3x	102%	98.2%
Fremont	17,375	2x+	101%	97.6%
Bellevue	8,193		85.5%	92.2%

Nearly all the other communities pay for patrol officers within 1 to 2% of the average with the exception of Bellevue. Clyde, which pays 7% lower on wages, makes up the difference on enhancements other than wage rates.

Dispatch (2004):

<u>Jurisdiction</u>	<u>Population</u>	<u>Ratio</u>	<u>% Ave.Wage</u>	<u>% Pay Pkg</u>
Clyde	6,064	1x-	98.8%	108%
Huron	7,958	1x-	110%	108%
Norwalk	16,238	2x	105%	100%
Fremont	17,375	2x+	97.3%	95.4%
Tiffin	18,135	2x+	89.2%	88%
Bellevue	8,193		93.5%	100.6%

The pay for communications officers is not so clustered. Bellevue is not the lowest and on the pay package actually pays the average. However in this comparison the highest are even more disparate upward of 8 to 10 %. The true range seems to be 92% to 108% with the others being outliers. While it appears that there is less ground to make up for dispatchers, the above compares the top pay. According to testimony, most dispatchers do not stay long enough to achieve top pay.

The composition of the non-wage direct pay package is revealing.

Sergeants (2004):

<u>Jurisdiction</u>	<u>Uniform</u>	<u>Shift (Annual)</u>	<u>Longevity</u>	<u>Other</u>
Vermillion	\$1,200	0.00	\$1,698.64	\$ 250.00*
Tiffin	900	0.00	1,914.43	0.00
Sandusky	650	0.00	350.00	0.00
Fremont	700	554.74	0.00	0.00
Bellevue	800	0.00	1,019.20	3,962.40**

* Signing bonus ** pension pickup

Patrol (2004):

<u>Jurisdiction</u>	<u>Uniform</u>	<u>Shift (Annual)</u>	<u>Longevity</u>	<u>Other</u>
Vermillion	\$1,200	0.00	\$1,530.33	\$ 250*
Clyde	650	832.00	900.00	3,993.60**
Tiffin	900	0.00	1,740.54	0.00
Sandusky	650	0.00	350.00	0.00
Fremont	700	554.74	0.00	0.00
Bellevue	800	0.00	1,019.20	3,962.40**

* Signing bonus ** pension pickup

Sergeants and patrol are similar on each item. Vermillion is the outlier on uniforms, and the longevity pay range is wide, from \$350 to \$1,700 (and \$1900 for sergeants). Only Bellevue and Clyde provide pension pickup. The shift pay appears only in Fremont and Clyde. Fremont, Tiffin and Sandusky, the three largest, and which pay the most, have the least non-wage rate enhancements. Bellevue and Clyde, the smallest, have around \$6000 while Sandusky has \$1,000, Fremont has \$1,200 and Tiffin has a bit over \$2,500. Without the pension pickup the comparison is closer on the non-wage portion, about \$2000 for Bellevue and Clyde.

The same is not as true of the communication officers. Without the pension pickup, Clyde and Bellevue would still be well ahead of the others. Tiffin and Fremont are at \$1000 and Clyde is \$2200, Huron \$1200 and Bellevue \$1500.

Dispatch (2004):

<u>Jurisdiction</u>	<u>Uniform</u>	<u>Shift (Annual)</u>	<u>Longevity</u>	<u>Other</u>
Clyde	500	832.00	900.00	2,798.74**
Huron	550	0.00	729.66	0.00
Norwalk	^	208.00	0.00	0.00
Fremont	500	554.74	0.00	0.00
Tiffin	^	0.00	1,186.43	0.00
Bellevue	450	0.00	1,019.20	2,643.16**

* Signing bonus ** pension pickup ^ provided

This is persuasive that the non-wage rate portion of the pay package is not the problem with an exception. Bellevue is more competitive in the longevity pay with the dispatchers than the others units but it ranges \$500 to \$900 lower than the other cities per classification. Shift pay does not appear to have a serious constituency in the localities nearby. The largest have it, Fremont and Norwalk. Only Clyde of the smaller ones also has it which makes it distinct.

The wage proposals for the three units are in the following tables. They demonstrate the OPBA proposal of 4% increase on the top rates of the agreement and the City proposal for 2% as a bonus in lieu of rate increase. The Alternative calculation of 3% for Bellevue and the historic data for comparators is also listed.

Sergeants:

Jurisdiction	2004	Total Pay Package	2005 GWI	2005 Increase
OPBA 4%			\$41,208.96 (4%)	\$1,504.96
Alt:3%			\$40,812.72 (4%)	\$1,188.72
Alt 3.5%			\$41,010.84 (3.5%)	\$1,386.84
City 2% bonus equivalent:			\$39,624.00 (0%)	\$792.48 (2%) \$40,416.48 (2%)
Bellevue	\$39,624.00	\$45,405.60		
Vermillion	\$48,532.64	\$51,681.28	\$49,988.62 (3%)	\$1,455.98
Tiffin	\$47,860.80	\$50,675.23	Unknown	
Sandusky	\$49,596.00	\$50,596.00	\$50,587.92 (2%)	\$991.62
Fremont	\$48,568.00	\$49,822.74	\$50,267.88 (3.5%)	\$1,699.88
Average Ex City	\$48,639.36	\$47,927.91	\$50,001.27 (2.83%)	\$1,361.90

Patrol:

Jurisdiction	2004	Total Pay Package	2005 GWI	2005 Increase
OPBA 4%			\$38,345.22 (4%)	\$1,564.82
Alt:3%			\$37,976.51 (3%)	\$1,106.11
Alt 3.5%			\$38,160.86 (3.5%)	\$1,290.46
City 2% bonus equivalent:			\$36,870.40 (0%)	\$ 763.41 \$37,403.81 (2%)
Bellevue	\$36,870.40	\$42,156.64		
Vermillion	\$43,723.64	\$46,704.01	\$45,035.35 (3%)	\$1,521.75
Clyde	\$39,936.00	\$46,311.60	Unknown	
Tiffin	\$43,513.60	\$46,154.14	Unknown	\$991.62
Sandusky	\$43,890.00	\$44,890.00	\$44,767.80 (2%)	\$877.80
Fremont	\$43,368.00	\$44,622.74	\$44,885.88(3.5%)	\$1,517.88
Average Ex City	\$42,886.26	\$45,736.50	\$44,099.94 (2.83%)	\$1,213.68

Dispatch:

Jurisdiction	2004	Total Pay Package	2005 GWI	2005 Increase
OPBA 4%			\$32,339.84 (4%)	\$1,243.84
Alt:3%			\$32,028.88 (3%)	\$932.88
Alt 3.5%			\$32,184.36 (3.5%)	\$1,088.36
City 2% bonus equivalent:			\$31,096.00 (0%)	\$609.73 \$30,486.27 (2%)
Bellevue	\$31,096.00	\$35,208.36		
Clyde	\$32,926.40	\$37,957.14	Unknown	
Huron	\$36,483.00	\$37,762.66	\$37,942.32 (4%)	\$1,459.00
Norwalk	\$34,840.00	\$35,048.00	\$35,885.52 (3%)	\$1,045.20
Fremont	\$32,385.60	\$33,440.34	\$33,519.10 (3.5%)	\$1,133.50
Tiffin	\$29,660.80	\$30,847.23	Unknown	
Average Ex City	\$33,259.16	\$35,011.07	\$34,200.39 (3.5%)	\$941.23

NOTE: The above tables are analysis for purposes of comparison. They are based on the annual figures of the top rates as provided in the evidence of comparators and not the wage scales. That accounts for some rounding differences as does the interpolations made in ratios that were rounded also.

It is rarely possible to change the relative positions of a city in the comparison. Using the 4% or 3.5% or 3% wage increase would place Bellevue within tenths of 82%, 86%, and 93% of the average for the three units, about where it is now. The difficulty is that the lowest cohort population-wise contains two lakefront resort areas having some affluence that interior one-time-farm cities like Bellevue and Clyde do not enjoy. The rest of the localities are larger with more variety of support systems. These make it difficult to achieve perfect labor market parity.

The average of the known wage increases of the other cities were translated into dollar increases and compared to Bellevue. They are in the magnitude of 3% for dispatch and 3.3% for patrol and 3.4% for sergeants. An increase of 3.5% will be recommended. This approximates the dollar increase that other jurisdictions are experiencing. It is more than arithmetically needed for dispatchers but the top rate comparison puts them at a disadvantage so the larger increase is justified.

The addition of a shift pay provision is not supported adequately beyond a substitute for an increased wage payment. Under the standard of what reasonable people would agree to, it is difficult to see a reasonable city agree to add a pay provision that is not widely available in the vicinity on the basis of alternative method of wage increase. There is no evidence about the shift environment such as insufficiency of availability, excess overtime, health

problems or otherwise. Without the basis for the incentive, and with its relative infrequency in the neighborhood, it was not supported.

Longevity pay is clearly different. It is an existing benefit and generally available elsewhere. It is demonstrably low. Five of six cities have it and Bellevue is \$500 to \$900 lower in patrol and sergeants. Clyde and Sandusky are lower than Bellevue but their packages are somewhat defy comparison. Sandusky is very low for as large as it is and Clyde also has a shift premium which augments it. Without idiosyncratic differences, Bellevue longevity should stand in better comparison to Tiffin and Vermillion, one larger and one similar city.

The bonus in lieu of rate adjustment is not supported by evidence due to the City's chosen absence. It was represented by the Union as yet another opportunity for the City to avoid overtime because it is not in the wage rate. It only generates overtime for the week in which it is paid. It also is not computed in vacation and holidays and other paid time off. In effect, an employee must take a pay cut to take a vacation. Such bonuses are intended to avoid cost enhancements such as these where the employer is financially troubled or where the economy is hyper inflated. The latter is not the case with inflation running at historic lows. The former is not proven. Although every City proposal has available inferences of financial disaster, it was not demonstrated with any evidence due to the City's absence. The basis for a bonus in lieu was not shown.

Recommendation: Article 28 should be amended with the following particulars and should remain unchanged otherwise.

Section 4. Wages - Schedule A Omit Captains from all scales. Increase each hourly wage for all units, all classifications and all steps by 3.5% each year effective November 1st of each year beginning November 1, 2004. Also delete Lump Sum language as applicable to an old agreement as a signing bonus.

Section 5. Replace the table for longevity pay with what follows:

After 3 years	\$0.30 per hour
After 5	\$0.50 per hour
After 10	\$0.60 per hour
After 15	\$0.70 per hour
After 20	\$0.80 per hour
After 25	\$0.90 per hour
After 30	\$1.00 per hour

ISSUE 9
ARTICLE 29 UNIFORM ALLOWANCE

CONTRACT SECTIONS: **ARTICLE 29 UNIFORM ALLOWANCE**

Section 4. The City shall provide to all new employees twenty-six (26) shoulder patches, or if the current shoulder patch changes the City will provide twenty-six (26) new patches to employees. From this point on, the City will provide each employee ten (10) patches each year. Also the City shall provide the necessary foul weather gear, one (1) raincoat, one (1) pair of rubber boots, one (1) badge, one (1) gun and one (1) holster, chemical mace and one (1) holder, one (1) stun gun and holder, one (1) leather liner and outer belt, portable radio and holder, one bullet proof vest reissued every five (5) years or manufacture's date of expiration, at no cost to the employees of the Police Department. Any articles lost or damaged through negligence of the employee shall be replaced at the employee's expense. Any articles not damaged through negligence of the employee shall be repaired or replaced at the City's expense.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed limiting the number of patches given to new hires to ten (10) rather than the present twenty-six (26).

POSITIONS:

The Union: New employees tend to buy four (4) long and short sleeve shirts that each require two (2) patches. They also buy two to three (2-3) different coats that also require two (2) patches each. It is not right for the newest and lowest paid employees to have to pay for the patches that are required to be worn by the City.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

This proposal is for an economic concession that has no explanation. Shifting the cost of incidentals like the patches can be avoided by the City by not requiring them. That would of course cause confusion in the citizenry and potentially cause liability for the City or injury to the employees. By requiring the employees to purchase the patches, the City is giving up control over the replacement frequency and quality of the patches to the employees. Damaged or destroyed patches may not be replaced or not to former quality. The image of the City to the public would be affected and law enforcement respect would suffer. While this may be countered with a disciplinary rule, if it is so important that administrative resources would be devoted to its enforcement, the City would be better served by paying for the patches.

Recommendation: Article 29 remains unchanged.

ISSUE 10
ARTICLE 30 COMPENSATORY TIME

CONTRACT SECTIONS: ARTICLE 30 COMPENSATORY TIME

Section 1. The City agree that employees who have verified banked hours of compensatory time accumulated and unpaid prior to 1977 shall receive payment of the same rate it was accumulated upon their termination, resignation, retirement or death.

Section 2. Employees may elect to receive overtime pay or compensatory time off for hours worked in excess of the standard work week. If the employee does not request compensatory time, on a standard form, during the pay period, the employee shall receive overtime pay at the applicable rate.

Section 3. Compensatory time off with pay shall be granted at time and one-half (1 ½) and must be scheduled four (4) days in advance by mutual agreement of the employee and the Department Head. The scheduling herein shall not create any additional time and one-half (1 ½); i.e., there shall be no pyramiding of time off.

Section 4. An employee shall be permitted to cash out up to two hundred (200) hours of compensatory time in any calendar year. Any accrued compensatory time that is not cashed out at the end of the calendar year shall be carried over into the next calendar, subject to the banking restriction in Section 5.

Section 5. Employees shall not bank more compensatory time than allowed under the Fair Labor Standards Act or 125 hours, which ever is less.

UNION PROPOSAL:

The Union proposes the following changes.

Section 3. Compensatory time off with pay shall be granted at time and one-half (1 ½) and must be scheduled ~~four (4) days in advance~~ by mutual agreement of the employee and the Department Head. The scheduling herein shall not create any additional time and one-half (1 ½); i.e., there shall be no pyramiding of time off.

Section 4. An employee shall be permitted to cash out up to ~~two hundred (200) hours~~ **three hundred (300) hours** of compensatory time in any calendar year. Any accrued compensatory time that is not cashed out at the end of the calendar year shall be carried over into the next calendar, subject to the banking restriction in Section 5.

CITY PROPOSAL: The City has proposed deleting the whole article.

POSITIONS:

The Union: The proposed change in section three eliminates the requirement to request compensatory time off four days in advance. The reason for the change is quite simple. Since the taking off of compensatory time is only acceptable if it does not cause overtime, there should be no need for advance notification. The only time compensatory time is ever denied is when it causes the creation of overtime. Thus, there is really no need to provide advance notification. Since taking compensatory

time off is first come/ first serve, the change will probably have a small impact on notification, yet it will allow for the use when the need for the time off was not known well in advance.

The Union doubts that the use of compensatory time has cost the City of Bellevue much, if anything. Since the use of compensatory time cannot cause overtime, the accumulation of compensatory time actually makes money for the City since they earn the float on the money that should have been paid to the employee. The only possible way for the City to lose any money at all is when the employee carries their compensatory time from one contract year to the next. The increase in hourly wage associated with the switch in contract year is still diminished by the float on the money. Therefore, the only possible cost associated with the use of compensatory time is the difference between the current wage and the wage at the time the compensatory time was earned minus the interest earned on the money during that same time. That difference is insignificant and often to the Employer's advantage.

The City: The City offered no explanation. The Union represents that the City believes the use of compensatory time costs the City money.

FINDINGS AND RECOMMENDATION:

The basis for the liberalization of the scheduling of the compensatory time given by the Union is limited. Causing overtime premium is not the only legitimate management concern. Management has concerns over staffing beyond the cost of overtime. The notice may be insufficient to allow the City to fill in without the overtime premium for another employee. The lessening of notice time may only result in more requests being denied because the City would have less time to accommodate the request.

The basis for the cash out expansion to 300 hours was insufficiently established. The employee can only bank 125 hours year to year per section 5. Cash out of 200 hours means that 325 are routinely banked and 200 must be cashed to meet the statutory/contract limit for carry over. The need to expand this to 300 hours was not demonstrated. Since the comp time can only be elected by the employee this means the employees elect it more frequently than taking the premium pay. However, if the wage rate analysis above carries weight, overtime pay is one means of improving incomes in an otherwise low pay environment. On the other hand the scheduling of comp time is, in existing language, bilateral. If this is an obstacle is it not shown since the Union says it is only denied if it causes more overtime.

Recommendation: Article 30 remains unchanged.

ISSUE 11
ARTICLE 31 OVERTIME PAY AND COURT TIME PAY

CONTRACT SECTIONS: ARTICLE 31 OVERTIME PAY AND COURT TIME PAY

Section 1. All employees, for work performed in excess of forty (40) hours per week or eight (8) hours per day, when approved by the Chief of Police shall be compensated, at the employee's election, either at (a) the hourly rate of one and one-half (1 ½) times the employee's regular rate for all overtime or (b) compensatory time at the same rate to be taken in the future as approved.

Section 2. Whenever approved by the Chief of Police, employees called into work or appearing in court on behalf of the City for a time period of less than two (2) hours when the employee is not on duty and the time is not contiguous to the employee's shift, shall be compensated not less than two (2) hours subject to the election of the method in which compensation is to be received as set forth within Section 1 of this Article.

Section 3. When the City determines overtime is necessary, the City will rotate overtime opportunities among qualified full-time employees. Employees will be called in first on the basis of seniority. An employee who is offered and refuses an overtime assignment will be passed over by the City until an employee is found, on the basis of seniority, who consents to work overtime. On the next occasion when the City determines overtime is necessary, it shall offer the opportunity for overtime to the individual on the seniority list whose name appears after the individual who had previously worked overtime. Overtime for Communications Officers shall be first offered to Communications Officers on the basis of seniority and thereafter on a rotating basis. It is specifically agreed that the City shall have the right to utilize part-time employees to cover overtime but that such utilization shall not exceed forty (40) hours per week for the entire Bellevue Police Department.

Section 4. When an employee works four (4) hours overtime contiguous in a regular shift, or when an employee has been called out for emergency overtime which exceeds four (4) hours, the City shall grant a one-half (1/2) hour paid lunch break when possible. An additional one-half (1/2) hour paid break period shall be granted when possible for each additional four (4) hour period the employee works overtime. However, only one (1) one-half (1/2) hour break is permitted per eight (8) hour overtime shift.

Section 5. When an employee is required to attend a Departmental meeting or training session, he shall be compensated at his regular hourly rate of pay for each hour in attendance.

UNION PROPOSAL:

The Union proposed no changes initially. It made a counter offer at the request of the City to eliminate the Captains from the overtime distribution language and to change the number of part-time hours from forty to sixteen (40 to 16). The counter offer also adds the following to section 3 as follows:

~~**Section 3.** When the City determines overtime is necessary, the City will rotate overtime opportunities among qualified full-time employees. Employees will be called in first on the basis of seniority. An employee who is offered and refuses an overtime assignment will be passed over by the City until an employee is found, on the basis of seniority, who consents to work overtime. On the next occasion when the City determines overtime is necessary, it shall offer the opportunity for overtime to the individual on the seniority list whose name appears after the individual who had previously worked~~

~~overtime. Overtime for Communications Officers shall be first offered to Communications Officers on the basis of seniority and thereafter on a rotating basis. It is specifically agreed that the City shall have the right to utilize part-time employees to cover overtime but that such utilization shall not exceed forty (40) hours per week for the entire Bellevue Police Department. All overtime shall be filled based upon a rotational basis. This shall be accomplished by offering the overtime to the next lower person in the rotation. The rotation shall be set up by, bargaining unit seniority, NOT City seniority. If an employee refuses the overtime or can't be contacted within 5 minutes, the next employee in the rotation shall be contacted. The Captain are NOT to be included in this overtime distribution. Each year, the overtime rotation will be carried over and maintained. If the overtime is caused by a Communication officer, and no communication officer is willing to work the overtime, the overtime will then be offered to the other police officers in the Police Department. The overtime will still be offered upon a rotational basis starting with the next lowest person. If no one is willing to work the overtime shift, it shall be offered to the next officer until all classifications have been offered the overtime. If no one is willing to work the shift, the vacancy shall be filled by the position (i.e., Officer for Officer and Communications for Communications) that caused the overtime. The vacancy shall be filled with the person with the least seniority (officers), they shall be forced to work the overtime. In the event that the overtime cannot be determined which bargaining unit caused it, it will be then offered first to the Communications officers or patrol officers that can fill the overtime position and then proceed through the other police officers till that overtime is filled. However, since no one is to work more than sixteen (16) hours in a twenty-four (24) hour period, the next lowest in seniority may then be forced to work that overtime shift. It is specifically agreed that the City shall have the right to utilize part-time employees to cover overtime, but that such utilization shall not exceed sixteen (16) hours per week for the entire Bellevue Police Department.~~

CITY PROPOSAL: The City proposed that exactly how overtime is to be worked should be left to the employees, but insisted that there should only be one definition for overtime through the contract. The City asked the Union to come up with definitions and to settle the overtime issue.

POSITIONS:

The Union: It is standard practice for there to be at least two types of seniority; within the bargaining unit and within the City. Indeed, that has always been the case here. The

problem in Bellevue is the practice didn't fit the actual contract language. The realization of that fact caused some difficulties with the department.

The Captains are NOT to be included in this overtime distribution. First of all, the Captains have stated that they want to join a different labor union. Secondly, since they are now primarily administrative and / or detectives, they no longer have quite as much similarity within the remaining bargaining units.

It is specifically agreed that the City shall have the right to utilize part-time employees to cover overtime, but that such utilization shall not exceed sixteen (16) hours per week for the entire Bellevue Police Department. There are several reasons for changing the number of part-time hours from forty to sixteen (40 to 16). First of all, there are presently no part-time employees working within the Police Department. In fact, there have not been any part-time officers for many years. The Union is happy to keep the work for full time employees completely, as we feel they work together better, and maintain the needed level of expertise required to adequately perform their assigned duties.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

The Fact Finder has studied the original language and the Union proposal that was meant to resolve the City's problem. That problem appears to be that the overtime was offered by what the Union calls "unit seniority" although the CBA merely said "seniority" which could mean city-wide seniority. What is really meant is seniority within the classification. The wholesale revision proffered by the Union is not necessary to resolve the problem. A major reason is that entirely new language is open to new interpretation problems. The need of change to allowing 16 hours of part time fill in instead of 40 was not apparent from the fact that there are no part time employees. The need of change is not obvious particularly as the limitation on the use of the time is for the entire department weekly schedule. The exclusion of the Captains is reasonable under the Union's explanation. The language interpolations are in the recommendation.

Recommendation: Article 31 section remains unchanged except that section 3 thereof shall be amended as follows:

"Section 3. When the City determines overtime is necessary, the City will rotate overtime opportunities among qualified full-time employees. Employees will be called in first on the basis of seniority within the classification where the overtime arose. An employee who is offered and refuses an overtime assignment will be passed over by the City until an employee is found, on the same basis of seniority, who consents to work overtime. On the next occasion when the City determines overtime is necessary, it shall offer the opportunity for overtime to the individual on the seniority list within the

classification whose name appears after the individual who had previously worked overtime. Overtime for Communications Officers shall be first offered to Communications Officers on the basis of seniority within the classification and thereafter on a rotating basis. It is specifically agreed that the City shall have the right to utilize part-time employees to cover overtime but that such utilization shall not exceed forty (40) hours per week for the entire Bellevue Police Department. Captains are excluded form the overtime rotation."

ISSUE 12
ARTICLE 32 VACATION

CONTRACT SECTIONS: ARTICLE 32 VACATION

Section 2. Employees may elect to work their vacation and receive their vacation pay along with their regular pay.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed to change the language in section 2 so that any vacation time not used in a given year would automatically be cashed out at the end of the year.

POSITIONS:

The Union: Many of the employees have commonly carried vacation time over from year to year. It has never caused a problem to date. The employees consider the carry over of vacation to be very beneficial and quite necessary at times. Not only does it allow employees to save up time off for a long vacation, but it also safeguards against the inability to schedule vacation time off. Vacation requests have been rejected in the past due to long term illnesses and even terminations of other employees.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

This is a proposal that could have been assisted by an explanation by the City. The vacation schedule only allows for two or three weeks until the 15th year of service:

After one (1) year	80 hours
After seven (7) years	120 hours
After fourteen (14) years	160 hours
After twenty (20) years	200 hours
After twenty (21) years	One additional day for each additional year

The benefit is frugal and not excessive. If the City cannot allow an employee three weeks off out of 52, the carry over of the time is far more important to the employee and the City than the cash. The sheer exhaustion of police shift work not to mention the stress of arrest and custody would at a minimum need respite. The vacation benefit was developed historically to allow the employee a break to return refreshed and of more value to the employer than a spent vessel. On the other hand, at the longer service levels, the additional cash may be of more use than the time for some individuals at their option. Without evidence of the numbers involved, the costs and the history, there is no point of the Fact Finder to speculate.

Recommendation: Article 32 remains unchanged.

ISSUE 13
ARTICLE 33 HOLIDAYS

CONTRACT SECTIONS: ARTICLE 33 HOLIDAYS

Section 1. Employees in the Bargaining Unit shall receive the following paid holidays per year:

New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Day before Christmas, Christmas Day, two (2) floating holidays.

Section 2. Employees required to work a holiday shall have the option of electing to either take time off with pay or work the day and be paid for hours worked on the holiday at two and one-half (2 ½) times their base rate of pay for all hours worked on a holiday.

Section 3. Should an employee who works or is scheduled off on a holiday and who elects to take the time off instead of pay for the holiday, the employee shall designate the days he wishes to take off, with at least twenty-four (24) hours' advance notice, and shall be subject to the advance approval of the Chief.

Section 4. Upon retirement, death, resignation , or termination, an employee shall be paid for all accumulated but unpaid holiday pay due and owed to him as of the last date of employment. In the case of death, the above payments shall be made to the employee's estate or designated survivor.

Section 5. An employee shall be allowed to carry over twenty-four (24) hours of unused accumulated holidays per year. The calendar year for holidays is from December 10 to the following December 9.

Section 6. Holiday time may be used in four (4) hour increments subject to Section 3 above.

Section 7. An employee who has unused, accumulated holiday time shall be entitled to receive compensation for said time at his regular hourly rate. An employee who elects to receive compensation for unused accumulated holiday time shall be paid by December 10th of each year.

UNION PROPOSAL:

The Union proposes the following changes.

Section 1. Employees in the Bargaining Unit shall receive the following paid holidays per year:

New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Day before Christmas, Christmas Day, ~~two (2) floating holidays~~ **two (2) personal days**.

Section 6. Holiday time may be used in ~~four (4) hour~~ **one (1) hour** increments subject to Section 3 above.

CITY PROPOSAL: The City has proposed to eliminate premium pay which appears in sections 1, 2 and 3, and to entirely eliminate carry over (section 5), four (4) hour increments (section 6) and the cash out options (section 7 and 4).

POSITIONS:

The Union:

The Union proposes to change the floating holidays to personal days so that the past practice is reestablished. In the past, the floating holidays were referred to as personal days. They were never denied. They required little if any prior notification. That changed recently when the contract was reviewed. The City now interprets the contract as requiring twenty-four hour notice due strictly to the name of the days. There had never been a problem with the use of personal days when no notice was required.

The OPBA also requests that the minimum increments to use holiday time be reduced from four (4) hours to one (1) hour. This will allow more freedom to get off work or leave work a little early without wasting four hours if one is needed. The other employees would have no problem filling in for an hour compared to four hours. This would make life a little easier for employees that have to deal with a lot of stressful situations on a daily basis.

As to the City's proposal, the City is attempting to gut the benefits granted by this contract. These are not extraordinary benefits. Many of the contracts have similar language. Furthermore, the contract language has not been abused or even complained about in any fashion. The OPBA urges the Fact-finder to accept the Unions proposal and leave the rest of the language as is.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

It is true that floating holidays in some contracts may be defined by the employer while personal holidays are not. The problem with the floating holiday versus personal holiday is not solvable by the change of name only. The source of difficulty is apparently the section 3. Although that does not appear to state what the Union describes, somehow that is the City's interpretation and it has been unchallenged. It may be applied by the City to personal holidays also. The exemption would need be stated to preserve the past practice.

There is inherent resistance to using holidays in increments only because they are supposed to be respites for traditional observances that would take the employee away mentally, if not physically, from attention to work. However, in a 24/7 operation of public safety those traditions have long been displaced by having time banks available and more and more at the discretion of the employee. What the Union says about coverage is convincing. Shorter times to fill in will make the matter easier for the City to allow. It is subject to section 3 and any event. However making the discretionary days also exempt from section 3 allows "surprise" holiday hours that unfairly disadvantages the City since they do not appear on any calendar. Therefore the exemption must be two sided.

As to the City's proposal, the Fact Finder has never, in 30 years of exclusively labor management practice, seen a proposal to eliminate holiday pay. The temptation is to assume that since the City refused to participate in the hearing, that the record evidence on the City proposals is biased by the Union's recitations and that something must have been lost in the translation. That is doubtful. In the course of study and drafting the report of the City's proposals, it is clear to the Fact Finder that this it is plainly directed by the same hand as the others. This proposal by the City dis-serves the public. The unprecedented condition of employment of unpaid holidays would make retention and recruitment of police impossible thus ultimately putting the public at risk of a community without protection.

Recommendation: Article 33 remains unchanged except for the following revisions:

"**Section 1.** Employees in the Bargaining Unit shall receive the following paid holidays per year:

New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Day before Christmas, Christmas Day, ~~two (2) floating holidays~~ two (2) personal days.

"**Section 3.** Should an employee who works or is scheduled off on a holiday and who elects to take the time off instead of pay for the holiday, the employee shall designate the days he wishes to take off, with at least twenty-four (24) hours' advance notice, and shall be subject to the advance approval of the Chief. This is not applicable to the personal holidays which are to be scheduled twenty-four (24) hours advance by the employee and approval shall not be unreasonably withheld. Payment of overtime alone is not sufficient reason to refuse the time off requested."

"**Section 6.** Holiday time, except for personal holidays which must be used at eight (8) hours, may be used in ~~four (4) hour~~ one (1) hour increments subject to Section 3 above."

ISSUE 14
ARTICLE 34 SICK LEAVE PROCEDURE

CONTRACT SECTIONS: ARTICLE 34 SICK LEAVE PROCEDURE

Section 1 Crediting of Sick Leave

- A. Each employee shall be credited with four and eight-tenths (4.8) hours of sick leave for every eighty (80) hours in active pay status to a maximum total of one hundred twenty (120) hours (fifteen (15) regular works days) in any year.
- B. Sick leave accumulated and unused prior to April 1, 1985 shall be banked and unused at one hundred percent (100%).
- C. Employees will be paid at ninety percent (90%) of their hourly rate for Section 1A sick leave used. Sick leave accumulated and unused between April 1, 1985 and October 31, 1992 shall be banked, used and paid at ninety (90%), in the same manner as sick leave is credited in Section 1A.
- D. In the event an employee exhausts all new sick leave, he or she shall be entitled to use banked sick leave pursuant to Section 1 B, which shall be paid at one hundred percent (100%) of the employee's hourly rate. In the event an employee exhausts all new and old sick leave, the employee shall be entitled to up to twenty six (26) weeks of disability leave for the employee's own sickness at the employee's base hourly rate and such pay shall be remitted according to the schedule addressed below:

SERVICE SENIORITY	WEEKS 80% OF <u>FULL PAY</u>	WEEKS AT <u>HALF PAY</u>
Beginning, but less than, 6 years	10	16
6 years, but less than, 8 years	11	15
8 years, but less than, 10 years	12	14
10 years, but less than 12 years	13	13
12 years, but less than 14 years	14	12
14 years, but less than 16 years	15	11
16 years, but less than 18 years	16	10
18 years, but less than 20 years	17	9
Over 20 years	18	8

Employees having a sick leave bank of at least two hundred forty (240) hours may elect in writing, not more that three (3) times each year, convert Section 1A sick leave to cash to be paid at ninety (90) percent and Section 1 B sick leave to cash to be paid at ninety (90) percent. Payment shall be made in one lump sum no later than thirty (30) days after the employee submits a written request for such payment. If an employee does not certify an election option, all unused sick leave shall be automatically banked. The Section 1A conversion shall be at ninety (90) of the employee's normal hourly rate and the Section 18 shall be at ninety (90) percent of the employee's normal hourly rate, provided the employee's bank of unused sick leave hours does not fall below two hundred forty (240) hours as a result of such conversion.

Section 2. Charge of Sick Leave. Sick leave shall be charged in minimum units of one (1) hour. An employee shall be charged for sick leave, on a hour for hour basis, only for days which he/she otherwise would have been scheduled for work. Sick leave payment shall not exceed the normal scheduled work day or work week earnings.

Section 3. Uses of Sick Leave. Sick leave shall be granted to the employee on approval of the Safety-Service Director for the following reasons:

- A. Illness or injury of the employee, or a member of his/her immediate family, wherein the employee's presence is required.
- B. Medical, dental, or optical examination or treatment of an employee or member of the employee's immediate family, which requires the employee and which cannot be scheduled during non-working hours.
- C. If a member of the immediate family is afflicted with a contagious disease or requires the care and attendance of the employee, or when, through exposure to infectious disease, the presence of the employee at his/her job would
- D. Pregnancy and/or childbirth or other conditions related thereto.
- E. Assistance to spouse when required for maternity purposes.

Section 4. Evidence Required for Sick Leave Usage. The City shall require the employee to furnish a standard, written signed statement upon their return to work to justify and explain the nature of the illness. Falsification of either a written signed statement or physician's certificate shall be grounds for disciplinary action, including dismissal.

Section 5. Notification by Employee. When an employee is unable to report to work, he shall notify his immediate supervisor or other designated person, not less than one (1) hour prior to the time he is scheduled to work on each day of absence.

Section 6. Abuse of Sick Leave. Employees failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave, with intent to defraud, will result in dismissal and refund of salary or wage paid.

Section 7. Physician's Statement. Employees requiring physician's care or medication, may be required to furnish a statement from his physician notifying the City that the employee was unable to perform his duties. Employees returning to work after an injury, illness, or operation attended by a physician shall have a physician's written permission before returning to work.

Section 8. Determination. The City may require an employee to take an examination, conducted by a licensed physician, to determine his physical or mental capability to perform the duties of his position. If found not to be qualified, the employee may be placed on sick leave or disability leave. The cost of such examination shall be paid by the City.

Section 9. Sick leave Conversion. A full-time, non-probationary employee, at the time of retirement or death, shall be entitled to receive one hundred percent (100%) of the employee's accumulated and unused sick leave. Payment for sick leave shall eliminate all sick leave accrued by the employee at that time.

Section 10. Family and Medical Leave Act. Pursuant to the Federal Family and Medical Leave Act (FMLA), the employer provides up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family or medical

reasons. Employees are eligible if they have worked for the City for at least one (1) year, and for at least 1,250 hours during the past year. This section is intended to appraise employees generally of the major provisions of the FMLA, and any regulations or court decisions interpreting and applying it shall govern.

- A. Unpaid FMLA leave will be granted to eligible employees in the following situations.
 - a. To care for the employee's child after birth, or placement for adoption or foster care.
 - b. To care for the employee's spouse, son or daughter, or parent, who has a serious health condition.
 - c. For a serious health condition that makes the employee unable to perform the employee's job.
- B. At the employee's or the employer's option, certain kinds of paid leave may be substituted for unpaid leave, depending upon the circumstances. The employer will advise the employee as to whether any portion of the employee's approved FMLA leave may or will be paid.
- C. To obtain an approved FMLA leave of absence, eligible employees are required to provide advance notice and, if applicable, medical certification. The taking of a leave of absence may be denied if the following requirements are not met. Ordinarily, the employee must provide thirty (30) days advance notice when the leave is foreseeable. Also, the employer requires medical certification to support a request for leave because of a serious health condition, and may require second or third medical opinions at the employer's expense. A report from the employee's physician may be required before the employee is permitted to return to work.
- D. For the duration of an approved FMLA leave, the employer will maintain the employee's health coverage under its group health plan, provided the employee continues to pay his or her portion of the insurance premiums, if applicable. Also, upon return from an approved FMLA leave, the employee will be restored to the same position or an equivalent position with equivalent pay and benefits. The use of approved FMLA leave will not result in the loss of any employment benefits that accrued prior to the start of an employee's leave. For example, the employee will not lose vacation time that has already accrued if is not otherwise used during the leave of absence.
- E. Employees who wish to determine whether they qualify for an approved FMLA leave, or to obtain more information about such a leave, must contact the Safety-Service Director. If the employee is eligible and qualifies for an FMLA leave, the employee will be provided appropriate forms to complete.
- F. The above is a brief summary of the FMLA and shall not supersede the contract or any of its benefits.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL:

The City has proposed deleting section 1 D, and to change the minimum number of hours of sick time that can be used at one time from one (1) hour to two (2) hours and to decrease the percentage of sick time buy out when employees retire from 100% to 40%. The Employer also proposed to delete Section 10, Family and Medical Leave Act (FMLA) provisions.

POSITIONS:

The Union: Section 1 D allows employees that have no sick time to take up to twenty-six (26) weeks of time off at eighty percent (80%) or fifty percent (50%) depending upon the week and the employees seniority. The language also allows banked sick leave to be cashed out up to three times a year when their sick bank is over two hundred and forty hours (240). This language has been around for quite a long time. The sick bank has only been used by two employees that anyone can remember. No employee has been disciplined for abuse. The sick bank gives the employees a little extra protection should they get ill and run out of sick time. In a field of high risk, it only makes sense to offer a little extra time off with partial pay when needed.

The City has offered no good reason to change the sick leave buy out or the minimum number of hours of sick time that can be used. The City has failed to show any abuse or harm that was ever caused by for the sick leave buy out provision. There has been no problems created by having an hour call off rather than two. In fact, doubling the minimum call off would probably create many problems. For example, It is much more difficult for an employee to be forced to work for two hours compared to one hour. It is much more disruptive to the lives of the employee and their families as well. The only thing this proposal would accomplish is increasing the use of sick time and decrease the police departments morale.

The employees are vastly underpaid. The sick leave benefit is one small way the employees can make ends meet if they are careful with the use of their sick leave. It may have been one of the few reasons that people still apply for the job despite the comparatively low wages.

The FMLA language has been in the contract for many years. It does not hurt anybody. It may answer the questions of some employees that would not otherwise realize that they would qualify for FMLA. There is no good reason to change.

The City: The City offered no explanation. The Union relates that the City's rationale to eliminate the FMLA reference is simply to rid the contract of a benefit that is already provided by law.

FINDINGS AND RECOMMENDATION:

With respect to the FMLA language, the statute requires notice to employees of their rights typically done in an employee handbook. Having the explanation in the CBA assists the City's compliance with the law and answers some questions that the City has an obligation to explain somewhere. While a handbook can be used, employee handbooks have very little relevance to union represented employees. There may be some but it is the unusual provision that would. Omitting the language only because it is in the law is not of assistance to the City's interests, nor the employees'.

The CBA has what is termed "old" and "new" sick leave. Old sick leave is banked at various schedules before 1992. New sick leave is accrued at 4.8 hours per 80 hours worked and capped at 120 hours (15 days). Presumably the City has booked the liability for years. The proposal to deleting section 1 D would effectively omit an accrued financial obligation of the City. The best that can be said of it is that the proposal lets the method of accrual stand but allows the charging the bank to be at the City's discretion. In reducing the retirement buy out the City is confiscating 60% of the accrued benefit that is being is forfeited by the retiring employee. Sick bank withdrawals at two hours in stead of one hour needs to have some reason other than two uses up the benefit faster than one hour and so takes it off the books quicker for the City. An employee who needs one hour and who must take two, will use two putting the City at hardship for cover in the absence. Similarly, pre-retirement absence for legitimate, but perhaps elective, health reasons at advanced age could increase overtime if the incentive is removed.

Admittedly the sick leave bank system is complex. It is also obvious that it had developed over a long time and respected accrued rights, and thus accrued liabilities of the City. The meat axe approach forgets that it was obtained by the City in bargaining. If it is removed, then the City ought to be prepared to give back the compensation it received for providing the benefit. One compensation it received is that employees' attendance right up to retirement has been better with cash incentives than without them. The benefit costs cash but the City saved cash in the attendance charges such as overtime and in negotiations for larger wage packages than might otherwise have occurred. There may be ways to reform a complex system, but the wholesale confiscation is not one of them.

Recommendation: Article 34 remains unchanged.

ISSUE 15
ARTICLE 35 INJURY ON DUTY

CONTRACT SECTIONS: ARTICLE 35 INJURY ON DUTY

Section 1. When a full-time officer is injured or disabled while performing his duty, he/she shall be carried on the police payroll at full pay until his/her case is reviewed by a mandatory Board of Inquiry consisting of: one (1) member determined by the City Administration, one (1) member determined by the President of City Council, two (2) members determined by the local Director of OPBA, and one (1) impartial member to be chosen by four (4) members to act as a mediator. The Board of Inquiry shall seek a medical Determination from not more than three (3) medical doctors, one (1) to be determined by the injured officer, at the officer's own expense. The City shall pay fees of medical doctors called to examine the officer, if this examination is called by the Board members chosen by the Administration and/or the Council President. The Board of Inquiry, upon determination that the injury or disability was not caused by negligence or misconduct of the injured employee, nor was self-inflicted, shall determine how long said officer shall remain in full pay status using the following formula:

<u>SERVICE SENIORITY</u>	<u>WEEKS AT FULL PAY</u>	<u>WEEKS AT HALF PAY</u>
Beginning, but less than, 6 years	10	16
6 years, but less than, 8 years	11	15
8 years, but less than, 10 years	12	14
10 years, but less than, 12 years	13	13
12 years, but less than, 14 years	14	12
14 years, but less than, 16 years	15	11
16 years, but less than, 18 years	16	10
18 years, but less than, 20 years	17	9
Over 20 years	18	8

The disability pay provided for herein shall terminate as soon as the officer returns to work, regardless of the determination of the Board. In addition, an employee may, at his discretion, use accrued sick leave after the number of weeks at full pay have been exhausted, prior to going on half-pay status.

Section 2. Injury leave coverage will terminate after twenty-six (26) weeks in any calendar year or upon the demise of the officer or upon his return to duty. Injury leave shall be available only once per injury/illness.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed deleting the Article.

POSITIONS:

The Union: This benefit that has long existed in the contract and had never been abused. It is quite discouraging that the City would wish to end this benefit that can be so important to employees in such a dangerous field. Ironically, many cities request this type of language in an attempt to lower their Workers Compensation insurance costs. This language gives the employees a little extra cushion should they get hurt. It may make the employee avoid Workers Compensation altogether. Either way, it would at least cover the employee until the Workers Compensation Board ruled and began to make payments. The cost of this portion of the contract is quite low compared to

the risks these officers must take.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

The proposal to omit the salary continuation for injury to a police officer in the line of duty (through no fault of his own) is unconscionable based upon considerations of policy, fairness, and expediency as well as public interest. The Article states that it is not provided if the injury was caused by negligence or misconduct of the injured employee, or was self-inflicted. In other words this benefit is for the officer who is injured in the protection of the public and is without fault, an very rare occurrence. Why the City would seek to further economically injure an officer already suffering physically is utterly unfathomable. Although worker compensation is available to him, it takes time and is not paid at the former level of compensation. The Union is correct that the benefit can reduce or offset the worker compensation weekly indemnities which the City, as a public employer, must pay direct and in full. So there is value to the City in this benefit even if it is not willing to recognize a moral obligation to heroic service.

Recommendation: Article 35 remains unchanged.

ISSUE 16
ARTICLE 36 INSURANCE

CONTRACT SECTIONS: ARTICLE 36 INSURANCE

Section 1. The City agrees to pay for and provide employees and their families with comprehensive major medical benefits. Employees should refer to the appropriate benefit booklet for a complete description of current coverage's and deductibles, which are summarized in the general description attached hereto at Appendix page A1.

Section 2. The City retains the right to change the benefit coverage it provides by purchasing coverage from other insurance companies or by becoming self-funded, so long as the general nature and level of benefits is maintained. However, the deductible and co-pay amounts set forth in Appendix A1 shall remain unchanged during the term of this Agreement, without regard to the benefit coverage provided by the City.

Section 3. The City shall contribute for each employee's health insurance monthly premium the dollar amount of the monthly premium for the HMO plan carried by the City. The employee shall be responsible for paying, through payroll withholding, any premium amount above the HMO plan's monthly premium if the employee does not choose the HMO option.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed that the employees should pay any and all increases in the cost of insurance hence forth.

POSITIONS:

The Union: The proposal puts the full weight of any and all future increases in the cost of insurance totally on the shoulders of the employees. The City has complete control of which insurance company they deal with. No other contract comes close to this type of employee mistreatment. This is totally unacceptable to the Union.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

The CBA provides two options for healthcare insurance coverage. One is an HMO form and the other appears to be a PPO (network based) program. If the Employee elects the HMO, the City pays the full premium. If there is an election for the more expensive option, the increase over the HMO premium is paid by the employee. The City proposes that in addition the employee pay any premium increase in premium for the HMO or PPO henceforth. This proposal could be benefitted from the City's evidence. There are no comparables and no cost analysis or trends to consider. Cost sharing is not as unheard of as the Union makes out. The Fact Finder cannot speculate and there is no evidence as required under the Criteria to consider.

Recommendation: Article 36 remains unchanged.

ISSUE 17
ARTICLE 37 BEREAVEMENT LEAVE

CONTRACT SECTIONS: ARTICLE 37 BEREAVEMENT LEAVE

Section 1. In the event a retired City employee or active employee dies, the Mayor may grant time off for City employees to attend the funeral.

Section 2. A regular full-time employee who is absent from work due to a death in the employee's immediate family, father, mother, wife, husband, son, daughter, brother, sister, grandchild, grandparents or spouse's mother, father, grandparents, shall be granted up to four (4) working days leave of absence with no loss in pay. Funeral leave shall be granted for the employee to attend the funeral , make funeral arrangements, and to carry out other responsibilities relative to funeral. Employees shall receive funeral leave pay only for those days on which they would have otherwise been scheduled to work.

A regular full time employee shall be granted a two (2) day leave of absence with no loss in pay to attend the funeral of the spouse's brother and /or sister, or the employee's son-in-law, daughter-in-law, aunt, uncle if the funeral is held on the employee's regularly scheduled work day. If the employee is required to travel more than one hundred and fifty (150) miles from Bellevue, due to death of a member of the family as listed above, an absence of one (1) additional day with no loss in pay shall be granted.

Section 3. In the event an employee is the administrator of the estate, the Safety-Service Director may authorize additional leave to complete funeral arrangements. If additional leave is authorized, it shall be deducted from the employee's accumulated sick leave (for immediate family) or accumulated vacation days or personal days as requested. Said leave shall not be denied without just cause.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed to reduce the number of funeral days from four (4) to three (3).

POSITIONS:

The Union: The number of days off, four (4), is certainly not excessive. It should be noted that the employees only receive two (2) days off for their spouses' relatives. The City has shown no harm as a result of the use of bereavement leave. Three days is not enough time to properly morn the lose of a love one. In the case of these employees, the lives of others may well depend on their state of mind.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

Four days for bereavement leave is not an unreasonable allotment. With modern families being less nuclear, and thus at greater distances, than in the past, long distance travel is often necessary. This proposal is of infinitesimally small consequence. The labor cost of a bereavement benefit, because it is so contingent and

thus rare, has been traditionally been nothing more than a rounding factor of a hundredth of a cent or possibly twice that (ie \$0.002) per employee hour. The savings of one day out of four must by arithmetic be at best in the order of \$0.0005 per hour. Even at 2080 hours, that is a savings of \$0.14 per employee per year.

Recommendation: Article 37 remains unchanged.

ISSUE 18
ARTICLE 38 MATERNITY LEAVE

CONTRACT SECTIONS: ARTICLE 38 MATERNITY LEAVE

Section 1. Regular full-time employees shall be granted maternity leave in accordance with the following:

- A. The employee shall submit a written request for maternity leave to her department head, along with an attending physician's statement regarding the employee's work restrictions, if any, and the date to commence maternity leave.
- B. Maternity leave shall include the employee's reasonable pre-deliver, delivery, and recovery time as certified by the attending physician.
- C. Any employee on maternity leave, shall report to work on the nearest scheduled date after sixty (60) days expiration date, if she produces a physician's statement that she is able to perform her duties. Any extension of the sixty (60) days maternity leave may be granted should the attending physician acknowledge the employee's inability to perform her duties, and the administration approves such request. Any extension of maternity leave shall not exceed six (6) months from the beginning date of such leave.
- D. Maternity leave shall be leave with pay, should the employee choose to use her accrued vacation time, sick time, holiday time, or compensatory time.
- E. The employee shall continue to be covered by the City for all medical insurances, so long as the approved maternity leave continues.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed to eliminate this Article.

POSITIONS:

The Union: The City can show no harm done by this language. There have been no complaints regarding this language. Furthermore, in this line of work, the amount of time off due to maternity leave should be expanded, not subtracted. A police woman should not have to risk loss of her baby because she had to keep working a dangerous job during her last trimester.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

The Fact Finder is incredulous that the entire maternity benefit would be sought to be removed. Yet that is the understanding of the Union and the City chose not to participate in order that the Fact Finder have more accurate picture of the impasse. Taking the matter as submitted and without any evidence or other considerations of the Criteria presented, no change will be recommended. It is a very useful recitation for expectant mothers who are apprehensive about many things. It assists the City in the ongoing necessity of communicating its standards. It clarifies the coordination with the complex sick leave provision.

Recommendation: Article 38 remains unchanged.

ISSUE 19
ARTICLE 39 EDUCATIONAL INCENTIVE PROGRAM

CONTRACT SECTIONS: ARTICLE 39 EDUCATIONAL INCENTIVE PROGRAM

Section 1. There shall be an Education Committee, to be comprised of the Mayor, Safety-Service Director, Chairman of the City Council's Safety Committee and the Local Director of OPBA, for the purpose of evaluating courses proposed for accreditation and approval for payment under provisions of this Section.

Section 2. An employee who earns an Associate Degree in Law Enforcement or Police Science shall receive additional pay in the amount of Three Hundred Dollars (\$300.00) included with the last pay period of the year the employee earns the degree. Any current employee who, in a prior year, received a payment from the City under this Section, shall be paid one final three hundred dollar (\$300.00) payment on or before January 30, 2002, and thereafter shall no longer be eligible for any payments under this Section.

Section 3. An employee who earns a Bachelor Degree in Criminal Justice shall receive additional pay in the amount of Nine Hundred Dollars (\$900.00) included with the last pay period of the year the employee earns the degree. Any current employee who, in a prior year, received a payment from the City under this Section, shall be paid one final nine hundred dollar (\$900.00) payment on or before January 30, 2002, and thereafter shall no longer be eligible for any payments under this Section.

Section 4. Each full-time employee shall be entitled to a maximum reimbursement, per calendar year, of Two Hundred Twenty-Five Dollars (\$225.00) toward the cost of approved course work.

Section 5. An employee must attain a "C" grade, or equivalent thereof, to receive reimbursement for approved course work. Proof of completion must be provided to the Safety-Service Director prior to filing for reimbursement.

Section 6. The total amount of any allowed combination of the above payments shall not exceed One Thousand Two Hundred Dollars (\$1,200.00) annually.

Section 7. Employees required by the City to attend course work, training sessions or out-of-town work assignments shall not lose time or pay as a result of their attendance.

Section 8. The selected employee(s) shall be reimbursed or accepted expenses incurred as a result of the assignment.

Section 9. Where use of personal vehicles is required by the City, the City shall reimburse the employee at the then current mileage rate approved by the Internal Revenue Service.

Section 10. Employees so selected will be provided at least seven (7) days prior notice of the required training, course work or out-of-town work assignment whenever possible.

Section 11. Education leave, without pay, may be granted to employees upon approval from the Safety-Service Director for a period not to exceed six (6) months.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed to delete sections 2 and 3.

POSITIONS:

The Union: The value of recruiting police without a college degree is immeasurable. The job of a Police Officer is continuously getting more difficult every year. In fact, they are often referred to as lawyers with guns due to the vast amount of knowledge they must command at an instant. It does not make any sense to reduce this small benefit. This is particularly true given that so few employees presently qualify.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

Sections 2 and 3 provide for a one time payment of stipend for college degrees achieved within the year. It is a small amount and is apparently meant to be an incentive and recognition for the employees who pursue a degree. Even with section 4 payments, it does not pay the cost of the education. The City proposes to eliminate it and again deprived the Fact Finder of evidence of its analysis. What a City receives much that is rare on the job market for the token of \$300 or \$900.

A degree of any sort is evidence of perseverance in achieving an arduous goal. Perseverance is a factor. But so are skills in communication, reasoning, analysis, presentation and personal relationships among others. However, the real consequence of a degree is the demonstrated ability to learn new things. An education is everything left over after you have forgotten the content of the course work. When a person pursues any degree the employer knows that, in the period of life when youth can so tempted to be derelict, the college student was constructively engaged pursuing a goal and was most likely out of trouble, or at least out of the most significant trouble. They obviously have to demonstrate intelligence. The employer can assume such a candidate is (relatively) clean and smart. However, pursuing a related degree demonstrates more. The value of a related degree in law enforcement or criminal justice or public administration shows more than the ability to communicate, analyze, think, learn and inter-act that is generally gleaned from most educations. It demonstrates motivation. From a deep place in their history such a candidate recognized the values of the work of law enforcement, criminal justice or public administration and nursed a long term desire to achieve them. Consequently with a related degree, the employer knows that the candidate is not only smart and clean, but also motivated for the mission. Smart, clean and motivated. What else is needed? All that is left is competence that is attained on the job.

Under that analysis, and the circumstance of a relatively low pay work force, an increase of this stipend to \$500 (associate) and \$1,500 (bachelor) would reasonable and would have been recommended but was not sought. In that way the premium the employer is receiving would be known to be appreciated among its other employees and applicants so that it would offset any recruiting disadvantage caused by a low pay scale.

Recommendation: Article 39 remains unchanged.

ISSUE
ARTICLE 42 MEDICINE CABINET

CONTRACT SECTIONS: ARTICLE 42 MEDICINE CABINET

The City agrees to maintain the present medicine cabinet that was installed in the Police Department.

UNION PROPOSAL:

The Union proposes no changes.

CITY PROPOSAL: The City has proposed to limit the amount of products they want to supply in the medical cabinet.

POSITIONS:

The Union: The Union disbelieves any significant risk of a lawsuit. If the city will just keep the current stock of products in the medicine cabinet the employees could be willing to sign waivers.

The City: The City offered no explanation. The Union attributes the desire to the City's concern over exposing themselves to a lawsuit by supplying all of the current products.

FINDINGS AND RECOMMENDATION:

Evidence would have helped to demonstrate what the litigation risk there is and how significant. The "present medicine cabinet" does not mean the fixture but the contents. The negotiation interest is to have necessary material available as needed not to specify what the requirements may be day to day. The content of the cabinet is a matter that may change over time with medical and legal requirements, but not by cost considerations. There are OSHA standards for what a medicine cabinet must have³. There are other sources of information on medical and legal risks. It is a management responsibility to do the home work. The "present medicine cabinet" is to be maintained. If the stocks are inadequate or the supplies depart in some significant way from what was relied upon in the past, then the Union has contractual recourse grieve a breach. The City would need demonstrate the necessity of change that does not commit a contract violation. Cost is not a excuse to change because that is always negotiated. Uninsurability may be a cause and agency rules may be as those are beyond the parties' control. While those can be matters of negotiations, they may also be matters of contract compliance. There has been no evidence on cost, or of any threatened uninsurability or changed agency determinations that the products are dangerous or unsafe. Until then, there is no demonstrated need of a negotiated change.

Recommendation: Article 42 remains unchanged.

³

29 C.F.R.1910.151

ISSUE 20
ARTICLE 48 DURATION OF AGREEMENT

CONTRACT SECTIONS: ARTICLE 48 DURATION OF AGREEMENT

Section 1. This Agreement shall be effective November 1, 2001 and shall remain in full force and effect through October 31, 2004.

UNION PROPOSAL:

The Union would propose to update the relevant dates for a three year agreement and leave the language as is besides that.

CITY PROPOSAL: The City has no proposal but the Union indicated that the City opposed the effective date of November 1, 2004.

POSITIONS:

The Union: The Union wishes a three year agreement to replace the last one effective November 1, 2001 to October 31, 2004 and as part there of seeks retroactive application of economic benefits to November 1, 2004.

The City: The City offered no explanation.

FINDINGS AND RECOMMENDATION:

So little time has passed since the expiration of the last agreement that a new three year agreement with retroactivity is reasonable.

Recommendation: Without other change, Article 48, section 1 shall read:

Section 1. This Agreement shall be effective November 1, 2004 and shall remain in full force and effect through October 31, 2007.

Recommendation: The Fact Finder recommends the adoption of all provisions of the Agreement of November 1, 2001 to October 31, 2004 that had not been proposed to have been changed by any party.

Recommendation: The Fact Finder recommends the adoption of all provisions of the Agreement of November 1, 2001 to October 31, 2004 that had not been changed by any recommendation.



Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
December 14, 2004