STATE EMPLOYMENT RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:	)	
CITY OF WILLOUGHBY	)	**Case Nos. 2004-MED-07-0721** **2004-MED-07-0722**
-and-	)	**Jonathan I. Klein, Fact-Finder**
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	

FACT-FINDING REPORT and RECOMMENDATIONS

Appearances

For the Union:

S. Randall Weltman, Esq. - Attorney for Union
Randy Sevel - Sergeant
Derrick Stewart - Patrol Officer
David L. Scott - Patrol Officer
Matthew Tartaglia - Patrol Officer
Jack Beckwith - Lieutenant

For the Employer:

Tom Grabarczyk - Consultant
Ray Rogowski - Finance Director
Richard Cooper - Assistant Chief

Date of Issuance: March 30, 2005

I. PROCEDURAL BACKGROUND

This matter came on for hearing on February 22, 2005, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on November 30, 2004. The hearing was conducted between the City of Willoughby ("Employer" or "City"), and the Ohio Patrolmen's Benevolent Association ("Union"), at the City of Willoughby Police Department located at 3700 Euclid Avenue, Willoughby, Ohio 44094. The bargaining units represented by the Union that are involved in this fact-finding process are police officers below the rank of sergeant, which unit is comprised of approximately thirty-five (35) regular full-time patrol officers, and the police sergeants and lieutenants unit which consists of approximately ten (10) regular, full-time sergeants and lieutenants.

The following issues were submitted by the Union based on the proposals as contained in its pre-hearing statement dated February 18, 2005:

1. Article 16 - Residency (police officers below the rank of sergeant unit)

2. Article 18 - Salary Schedule (police sergeant and lieutenants unit)
   Article 19 - Salary Schedule (police officers below the rank of sergeant unit)

3. Article 20 - Holiday Schedule (police sergeant and lieutenant unit)
   Article 21 - Holiday Schedule (police officers below the rank of sergeant unit)

4. Article 22 - Overtime (police sergeant and lieutenants unit)
   Article 23 - Overtime (police officers below the rank of sergeant unit)

5. Article 24 - Insurance (police sergeant and lieutenant unit)
   Article 25 - Insurance (police officers below the rank of sergeant unit)

6. Article 26 - Sick Leave (police sergeant and lieutenant unit)
   Article 27 - Sick Leave (police officers below the rank of sergeant unit)

7. Article 29 - Funeral Leave (police sergeant and lieutenant unit)
   Article 30 - Funeral Leave (police officers below the rank of sergeant unit)

8. Article 31 - Uniform Maintenance Allowance (police sergeant and lieutenant unit)
   Article 32 - Uniform Maintenance Allowance (police officers below the rank of sergeant unit)

9. Article 33 - Firearm Proficiency Allowance (police sergeant and lieutenant unit)
   Article 34 - Firearm Proficiency Allowance (police officers below the rank of sergeant unit)

10. New Article - Longevity (police sergeant and lieutenant unit)
    New Article - Longevity (police officers below the rank of sergeant unit)

The following issues were submitted by the Employer based upon the proposals as contained in its pre-hearing statement dated February 16, 2005:

1. Article 13 - Physical Examinations (police sergeant and lieutenant unit)
   Article 14 - Physical Examinations (police officers below the rank of sergeant unit)

2. Article 15 - Residency (police sergeant and lieutenant unit)
   Article 16 - Residency (police officers below the rank of sergeant unit)

3. Article 18 - Salary Schedule (police sergeant and lieutenant unit)
   Article 19 - Salary Schedule (police officers below the rank of sergeant unit)

4. Article 17 - Administration of Pay Plan (police sergeant and lieutenant unit)
   Article 18 - Administration of Pay Plan (police officers below the rank of sergeant unit)

5. Article 19 - Promotions (police sergeant and lieutenant unit)
   Article 20 - Promotions (police officers below the rank of sergeant unit)

6. Article 20 - Holidays (police sergeant and lieutenant unit)
   Article 21 - Holidays (police officers below the rank of sergeant unit)

7. Article 21 - Vacations (police sergeant and lieutenant unit)
   Article 22 - Vacations (police officers below the rank of sergeant unit)

8. Article 24 - Insurance (police sergeant and lieutenant unit)
   Article 25 - Insurance (police officers below the rank of sergeant unit)

9. Article 26 - Sick Leave (police sergeant and lieutenant unit)
   Article 27 - Sick Leave (police officers below the rank of sergeant unit)

10. Article 28 - Injury Leave (police sergeant and lieutenant unit)
    Article 29 - Injury Leave (police officers below the rank of sergeant unit)

11. Article 30 - Court Attendance (police sergeant and lieutenant unit)
    Article 31 - Court Attendance (police officers below the rank of sergeant unit)

12. Article 33 - Firearm Proficiency Allowance (police sergeant and lieutenant unit)
    Article 34 - Firearm Proficiency Allowance (police officers below the rank of sergeant unit)

13. Article 37 - Disciplinary Procedure (police officers below the rank of sergeant unit)

14. New Article - Suspension of Contract in Emergency

15. New Article - Retirement

At the fact-finding hearing, the parties mutually agreed that the following issues remained open and were properly before the fact-finder for resolution:

1. Physical Examinations
2. Vacation Cash Out
3. Insurance
4. Court Attendance
5. Wages
6. Premium Paid Holidays
7. Compensatory Time Cash Out
8. Funeral Leave
9. Uniform Allowance
10. Firearm Proficiency Allowance

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provisions of the current collective bargaining agreement not otherwise modified during negotiations and the fact-finding process. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

(1) Past collectively bargained agreements, if any, between the parties;

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

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

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

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

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The record establishes that approximately 22,600 citizens reside in Willoughby, Ohio. Although located in the western section of Lake County, Ohio, the City is considered to be a suburb of Cleveland, Ohio. (Union Ex. 3). The record establishes that the City has a diverse industrial base and a growing commercial sector. (Union Ex. 3). However, the City has been

subject to a slowdown in economic growth not dissimilar to the rest of Ohio and the nation as a whole. (Union Ex. 3). As noted above, the bargaining units involved in this fact-finding process consist of approximately thirty-five (35) patrol officers and ten (10) sergeants and lieutenants.

Upon review of the jurisdictions cited by both parties, the fact-finder determines that the following jurisdictions will be referenced for comparability purposes in this report: Wickliffe; Willowick; Eastlake; Painesville; Mentor; and Euclid, in addition to other Lake and Cuyahoga County cities. The fact-finder also considered other internal bargaining units of the City when evaluating the statutory criteria.

At the fact-finding hearing, the City argued that it lacked the ability to finance the Union's proposed increase in the compensation package for bargaining unit members. According to the City, it spent $1,887,100 more in its General Fund than it received in 2004, and 2005 will be the fifth consecutive year of deficit spending. Therefore, it cannot afford the wage rate increases that it has historically granted. The City points out that no road program was budgeted in 2004 due to its financial condition. Furthermore, Governor Taft's proposed budget for 2005 includes a plan to cut local government funds by twenty percent. In 2004, the City received $2,642,913 in local government funding from the State of Ohio. The City also asserts that it is very dependent upon income taxes. However, income tax collections have decreased over the past several years. (City Ex. 6).

As noted above, the City's General Fund carryover has decreased over the past several years. Therefore, the City cannot continue to be a "driving force in the area regarding wages." According to the City, wages and benefits, particularly health care costs, have grown at an alarming rate. Specifically, salaries increased from $9.5 million in 2000 to $11.2 million in 2004, and health care costs have increased from $1.2 million to $1.9 million over the same period of time. The City maintains that there was a "17¾ % overall increase in the health insurance program" last year. (City's Position Statement, at 3). The insurance portion of an employee's salary package for 2004 increased by an average of $1,851.20. Furthermore, "the health insurance portion of a salary package has grown by $4,763.20 annually based on average premiums over the last three (3) year period." (City's Position Statement, at 3).

The City points out that the pertinent statutory language provides that the fact-finder should consider its ability to finance, rather than its ability to pay. The City asserts that "those are two very different scenarios." It cannot continue to "move money from the capital fund" to cover operating expenses in order to balance the budget. Finally, the City notes that this is the first time in contract negotiations it has raised the inability to pay argument.

The Union contends that the City has "grown and prospered," and it can afford to compensate the bargaining unit employees at the "going rate." It asserts that the "City enjoys a lofty ranking in regard to per capita revenue and per capita wealth. Its debt-to-asset ratio is excellent, as is its bond rating and ascending property valuations." (Union's Position Statement, at 3). Moreover, the City "continues to be better off than most other

municipalities." (Union's Position Statement, at 3). The City has failed to sustain its heavy burden of establishing its claim of an inability to pay.

The Union contends that the City's income tax receipts are "heavily tipped to Capital Fund revenue." According to the Union, "there is plenty more present day money to put into the General Fund from the Capital Fund, or the City can change the percentage of income tax placement in the funds." The Union asserts that the City fairs favorably to comparable jurisdictions in regard to the measurement of "days of cash." (Union Ex. 2, at 20).

The Union further asserts that the "indicators reveal that the City is not in financial distress," and any alleged economic crisis has already "bottomed out." It points out that the City has a "fund balance to total expenditures ratio of approximately twenty-seven percent." The Union argues that the City improperly "builds up the Capital Fund and then moves it to the General Fund." According to the Union, the City's practice of moving money from the Capital Fund is a "sham" and it should simply "change the allocation." In sum, the City has presented no evidence which would warrant a "cut in the employees' standard of living."

Issue 1: Physical Examinations

Currently, all bargaining unit employees are required to have annual physical examinations prior to June 1 of each year. At the fact-finding hearing, the parties agreed to change the language contained in Articles 13.1 and 14.1 of the applicable collective bargaining

agreements to provide as follows: "All employees shall have an annual physical examination performed by a physician designated and paid by the Employer in the 4th quarter of each year."

Articles 13.2 and 14.2 of the parties' collective bargaining agreements currently provide as follows:

> All results of the physical and testing process are considered to be privileged and confidential between the employee and the physician, and shall become part of the physician's permanent medical file of the employee. No information may be released from this file to anyone without the express written consent of the employee.

The City proposes to modify section 2 of the physical examination articles contained in both collective bargaining agreements to provide as follows:

> 14.2 Except as restricted in Sections 14.3 through 14.10 of this article, employees shall authorize the release of the results of a medical or psychological examination required by the Employer. Such information may be utilized in administrative proceedings to determine fitness for duty or as permitted by law.

The City also proposes to modify Articles 13.3 and 14.3 of the new collective bargaining agreement to provide as follows:

> At the Employer's sole discretion, the above physical examination may contain a test (blood screen) for the HIV-acquired immune deficiency syndrome (AIDS) virus. All results of the testing process are considered to be privileged and confidential between the employee and the physician, and shall become part of the physician's permanent medical file of the employee. No information may be released from this file to anyone other than the Mayor without the express written consent

> of the employee. Such testing and the test results shall be implemented as follows:
>
> * * *

The City maintains that its proposed language is supported by Section 123:1-33-01 of the Ohio Administrative Code. (City Ex. 12). Furthermore, the City asserts that it is "entitled to the information sought with the exception of AIDS cases."

The Union is opposed to the City's proposal regarding the disclosure of medical information obtained during the annual physical examinations. The Union desires to preserve the "whole exam privilege between an employee and a physician" which is contained in the current contract language. In support of its position, the Union asserts that the fact-finder must consider all three provisions regarding physical examinations which are contained in Articles 14, 27 and 29 of the patrol officers collective bargaining agreement. It points out that Articles 27.5 and 29.3 of the contract allow examinations by a physician upon the City's order, and bargaining unit employees can be compelled to submit to examinations under those sections. As such, there is no confidentiality privilege with respect to medical examinations relative to the sick leave and injury leave articles. However, the annual physical examination language contained in Articles 13 and 14 of the applicable collective bargaining agreements was intended to be a benefit to the bargaining unit employees.

Final Recommendation

Based upon the evidentiary record presented regarding the issue of physical examinations, it is the recommendation of the fact-finder that both Article 13 of the sergeants and lieutenants collective bargaining agreement and Article 14 of the collective bargaining agreement for the unit comprised of officers below the rank of sergeant, should remain unchanged in the parties' new contracts. The City presented insufficient evidence to warrant its proposed language which would eliminate the physician-patient confidentiality privilege for annual medical examinations with the exception of results from AIDS testing, which exists under the current collective bargaining agreements. The fact-finder notes that under Section 123:1-33-01 of the Ohio Administrative Code, the City is still entitled to receive the results of any medical or psychological examination administered to an employee in connection with a perceived disabling illness, injury, or condition, and it is contractually entitled to such information pursuant to Articles 27 and 29.

Issue 2: Vacation Cash-Out

Article 21.7 of the sergeants and lieutenants collective bargaining agreement and Article 22.7 of the officers below the rank of sergeant contract currently provide, as follows:

> Each employee shall be required to take a minimum of two (2) weeks of any earned vacation. In the event such employee is entitled to vacation time in excess of two (2) weeks, the employee shall have the option to request the City to purchase such additional weeks of vacation by providing notice to the

> Department Head of such intent no later than the first day of February of each year.

The City has proposed to eliminate the annual vacation cash out language contained in the abovementioned provisions. According to the City, the vacation cash out language costs approximately $20,000.00 each year. Management seeks to delete the additional compensation afforded bargaining unit employees due to the City's financial position. The City maintains the position that the officers should utilize their vacation time, rather than requesting cash pay outs. Under its proposal, the City asserts that every bargaining unit employee would be afforded their entire vacation period and there would be no changes in the amount of overtime work scheduled by the department.

The Union is opposed to the City's proposal to eliminate the vacation cash out provision. It contends that the current contract language which provides bargaining unit employees with the opportunity to cash out their unused vacation time is not injurious to the City. The Union points out that such language has been contained in the parties' collective bargaining agreements for a "long time." Furthermore, the Union asserts that the vacation cash out provision has not generated more overtime work for the bargaining unit employees. Therefore, Articles 21.7 and 22.7 of the respective collective bargaining agreements should remain unchanged in the parties' new contracts.

Final Recommendation

It is the fact-finder's recommendation that there should be no changes to Articles 21.7 and 22.7 of the parties' new collective bargaining agreements. At the fact-finding hearing, the City presented insufficient evidence that the long-standing contract provisions which afford bargaining unit employees the opportunity to cash out their unused vacation time should be eliminated. The fact-finder notes that the City presented no evidence that such provision results in an increased amount of overtime work, or that the vacation cash-out language is otherwise harmful to the operations of the police department.

Issue 3: Insurance

The Union's pre-hearing position statement contained the following proposal concerning Sections 24.1 and 25.1 of the applicable collective bargaining agreements:

> Discuss terms of the dental/orthodontic insurance coverage implemented in January 2004. OPBA to submit proposal incrementally enhancing the dental/orthodontic insurance coverage that was in effect on January 1, 2001.

The Union also seeks to add Sections 24.8 and 25.8 to both collective bargaining agreements in order to create a health care committee:

> Add language requiring the City to form a Health Care Cost Containment Committee, consisting of representatives of each City bargaining unit. One function of that Committee will be to study and seek suitable alternatives to increased costs. Require that any change in plan benefits, coverage or employee costs be formally approved by that Committee.

The City proposes to maintain the current language regarding medical benefits contained in Article 25.1 of the patrol officers contract, except as may be modified pursuant to its proposed Article 25.3 provision. The City further proposes the following change to Article 25.3 in the amount that employees contribute toward the cost of their health insurance coverage:

> Effective December 1, 2005, modify current fixed monthly employee premium co-pay to fifteen percent (15%) of the accumulative total of all coverage monthly premiums.[1]
>
> In the event the collective total premium increases exceed fifteen percent (15%) from one renewal year to another, the City may modify benefit levels at its discretion following consultation with the Labor Management committee.
>
> (City's Pre-Hearing Statement, at 5).

The City maintains that no internal bargaining units other than AFSCME would consider its original health care proposal. As a result, health care costs for the City increased by 17% last year. The City "wanted to change plans but was unable to save any money based on the current language." Under the City's proposed language, bargaining unit employees would pay approximately $175.80 per month for family health insurance coverage. Currently, employees pay a fixed amount of $21.00 per pay period for family health insurance coverage.

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1. The language in this paragraph is taken from the City's position statement at page 5.

The City points to SERB statistics which show public sector employees pay, on average, approximately 12.6% of the health insurance premium cost for family coverage.

The Union is opposed to the City's proposal although it is "mindful that a change is probably in order." However, any change should reflect the overall package. It points out that the City "offered nothing on the revenue side." In support of its position regarding this matter, the Union cites City Exhibit 18 which reflects the health care costs for various comparable jurisdictions. Furthermore, even if the fact-finder accepts the data compiled by SERB, the Union points out that the average contribution by employees toward the cost of their family health insurance coverage is 12.6%. It argues that any changes in the health insurance provision should be implemented in an incremental manner. Currently, bargaining unit members pay $42 per month for family health insurance coverage.

Final Recommendation

Based upon the evidence of record presented regarding the issue of health insurance, the fact-finder concludes that there should be an increase in the monthly amount which bargaining unit members contribute towards the cost of their health insurance premiums. However, the fact-finder determines that the City's proposed health insurance premium contribution by employees is excessive under all the facts and circumstances. Currently, bargaining unit members pay $10.50 per pay period for single health insurance coverage and $21.00 per pay period for family health insurance coverage. Under the City's proposal, the

contribution amount for an employee with family health insurance coverage would escalate to $175.95 per month. ($1,173.00 x 15%).

The fact-finder recommends that bargaining unit employees pay 8% of the cost of their monthly health insurance premiums. The fact-finder believes that such an incremental increase in the health insurance contribution amount by bargaining unit employees is more appropriate than the sudden and dramatic increase proposed by the City. The fact-finder notes that SERB's 12th Annual Report on the Cost of Health Insurance in Ohio's Public Sector provides as follows regarding premium sharing:

> When employees pay a portion of the premium cost for medical coverage, their monthly contributions average $36.75 and $103.14 for single and family coverage, respectively. These rates amount to 11.2 percent of the cost of a single plan and 12.6 percent of the monthly family premium.
>
> (City Ex. 17).

Therefore, under the fact-finder's recommendation, bargaining unit employees would pay approximately $93.84 per month for family health insurance coverage and approximately $35.39 per month for single health insurance coverage in 2005, amounts which are still less than the average health insurance contributions paid by public sector employees throughout the State of Ohio. Furthermore, those figures are comparable to some of the health insurance contribution amounts paid by employees in surrounding jurisdictions. (City Ex. 18). Therefore, Articles 24.3 and 25.3 shall be modified to require the respective bargaining unit

employees to pay 8% of the total monthly premiums for all coverages through payroll deduction, which amount shall vary depending on whether the employee holds single or family coverage.

Issue 4: Court Attendance

Article 30.1 of the sergeants and lieutenants collective bargaining agreement and Article 31.1 of the contract for officers below the rank of sergeant both state:

> When any employee of the Division of Police is subpoenaed or ordered to appear in Court, on a City matter, on a day which is that employee's day off, outside the four (4) contiguous hours for the second shift, or when he is working the third shift, he shall be paid a minimum of four (4) hours' pay when an appearance is made at the scheduled time required, and such time shall be included in determining hours worked for purposes of overtime.

The City seeks to add a provision for a sliding scale of guaranteed hours of pay based upon the length of notice given for a canceled court appearance. Specifically, the City proposes the addition of the following provision to the collective bargaining agreements for both units:

> An employee notified by a pager of a cancelled court appearance shall be entitled to receive three (3) hours pay if notified prior to one (1) hour of the scheduled appearance, two (2) hours pay if notified prior to two (2) hours of the scheduled appearance, one (1) hours pay if notified prior to three (3) hours of the scheduled appearance, and no pay if notified of a cancellation prior to four (4) hours of the scheduled appearance.

At the fact-finding hearing, the City indicated that its proposal regarding this issue was a cost savings measure.

The City also proposed to add the following language to the contracts for both bargaining units concerning the exclusion of paid time for personal court appearances:

> Employees will not be entitled to court leave when appearing in court for criminal or civil cases, or a commission, board, or other legally constituted body authorized by law to compel the attendance of witnesses in which the employee is a plaintiff or party to the action or when the case is being heard in connection with the employees' personal matters.

The Union is opposed to the City's proposal to implement a sliding scale regarding paid court appearances by bargaining unit employees. The Union asserts that the City presented no evidence concerning its experiences regarding this issue to warrant a modification of the current contract language. According to the Union, four hours of pay represents the cost of inconveniencing employees by either scheduling them to testify on their off days or at other times when additional compensation is provided for under the respective collective bargaining agreements.

Final Recommendation

Based upon the evidence presented at the hearing, it is the fact-finder's recommendation that no changes or modifications should be made to the parties' new collective bargaining agreements with respect to the issue of court attendance. The City presented insufficient

evidence that its proposed modifications were either necessary or warranted under the facts and circumstances presented. The fact-finder notes that the City's proposed provision regarding personal court appearances is unnecessary in light of the language contained in the current contracts which provides that employees only receive the specified court appearance pay when they are subpoenaed or ordered to appear in court *on City matters*.

Issue 5: Wages

At the fact-finding hearing, the Union modified its proposal regarding wages and now seeks the following wage rate increases for the parties' new collective bargaining agreement:

Effective April 1, 2004 - 4%
Effective April 1, 2005 - 4%
Effective April 1, 2006 - 4%

The Union asserts that the abovementioned wage rate increases are sought in order to allow the bargaining unit members to maintain their relative ranking compared to patrol officers employed by the fifteen highest paid jurisdictions in the State of Ohio in regard to base wages. (Union Ex. 8). The Union points out that the ranking of the City's patrol officers with respect to total compensation decreases when other financial benefits such as longevity bonuses are considered. According to the Union, the average wage rate increases for patrol officers employed by other cities have been 4% each year. The Union "just wants the going rate." It maintains that the City is a "true Cleveland suburb," and the fact-finder should look at other eastside Cuyahoga County cities, in addition to Lake County jurisdictions. Finally, the Union

contends that the City's offer is "off the board," and its financial condition does not warrant such a proposal.

The City reiterated that it is unable to continue financing the current wage and benefit package. As such, it has proposed that there be no wage rate increases in the new collective bargaining agreements. In further support of its position that there should be no wage rate increases, the City points out that the bargaining unit employees receive above average wages. In fact, the patrol officers rank second in the State of Ohio in regard to base wage rates. Finally, the City maintains that the fact-finder should consider the wages afforded patrol officers employed by other cities located in Lake County when determining the issue of wages.

Final Recommendation

It is the fact-finder's recommendation that the salary schedules contained in Articles 18 and 19 of the applicable collective bargaining agreements should be adjusted to reflect annual wage rate increases of 3.25% per year commencing April 1, 2004, April 1, 2005 and April 1, 2006. For the following reasons, the fact-finder determines that these wage rate increases combined with the recommended increases in health care premiums paid by bargaining unit members results in an economic package which is fair and reasonable for the employees while at the same time recognizing that the City's financial position may not be as favorable as it has been in the past.

The evidence of record presented by the parties reveals the following top wage rates for patrol officers employed by the City and comparable and surrounding jurisdictions:

Willoughby	$60,278.40	(as of 2/15/05)
Eastlake	$54,558.40	(as of 2/15/05)
Mentor	$58,264.18	(as of 1/25/05)
Painesville	$52,864.75	(as of 1/25/05)
Wickliffe	$59,051.20	(as of 1/25/05)
Willowick	$56,326.40	(as of 4/14/04)
Euclid	$49,338.90	(as of 1/25/05)
Solon	$56,871.07	(as of 2/15/05)

(City Exs. 20, 21, and 22).

As indicated above, the patrol officers employed by the City are afforded a wage rate which is higher than that received by officers at comparable jurisdictions. The fact-finder believes that a 3.25% wage rate increase will allow the bargaining unit members to maintain their ranking relative to comparable employees in regard to wages. The record establishes that the average overall wage rate increase for employees in the Cleveland area was 3.33% in 2003, and the average increase for police officers throughout the State of Ohio that year was 3.28%. (Union Ex. 8). Wickliffe patrol officers received 3.25% each year for 2004 and 2005.

Although the record establishes that the City's income tax revenue has decreased each

year since 2001 from $14,126,021 to $13,046,999, and the General Fund carryover has also decreased since 2002, the fact-finder concludes that the City has failed to establish that it cannot fund the recommended wage rate increases. (City Exs. 5, 6). The fact-finder notes that the City's financial position expressed in "days of cash" compares favorably to other surrounding jurisdictions. (Union Ex. 2). The fact-finder points out that consideration was given to the City's position that its financial condition has weakened in the past few years, as well as the recommendation on health insurance premiums. Further, the recommended wage rate increases are less than those received by patrol officers in several nearby cities located in eastern Cuyahoga County. (Union Ex. 8).

Issue 6: Premium Paid Holidays

Article 20.4 of the sergeants and lieutenants contract and Article 21.4 of the collective bargaining agreement for officers below the rank of sergeant, both currently provide:

> An employee who works on Independence Day, Thanksgiving Day, or Christmas Day shall be entitled to be compensated at time and one-half up to eight (8) hours. The shift assigned to work on such designated holidays shall be determined by the majority of scheduled hours being worked on the day of the holiday. There will be no additional pyramiding of time or rates for additional time worked on the designated holidays.

Under the current collective bargaining agreements, employees receive thirteen paid holidays per year. The Union proposed in its pre-hearing statement that the remaining ten holidays should also be paid at the premium rate if worked by a bargaining unit employee. At

the fact-finding hearing, the Union proposed that bargaining unit employees should be paid at the time and one-half rate of pay if they work on eight holidays, rather than only three under the current contracts. The Union asserts that it is below average when compared to other comparable jurisdictions concerning the issue of holiday premium pay. (Union Ex. 10). As such, it seeks to "pick away incrementally" and reduce the deficiency regarding holiday premium pay for its bargaining unit members.

The City is opposed to the Union's proposal regarding this issue and it urges the fact-finder to look at the totality of its compensation package. The City maintains that it is "not interested in adding all types of frills to the package." The bargaining unit employees are afforded a high base wage rate, and the City just granted three premium paid holidays in the most recent collective bargaining agreement. (City Ex. 3).

Final Recommendation

Based upon the evidentiary record presented, the fact-finder recommends that there should be no changes concerning the number of premium paid holidays contained in Articles 20.4 and 21.4 of the parties' collective bargaining agreements. At the fact-finding hearing, the Union presented insufficient evidence to justify the addition of five premium paid holidays. Furthermore, the fact-finder notes that three premium paid holidays were just added to the contracts as a result of the last set of negotiations. Moreover, an analysis of comparable jurisdictions does not warrant an increase in the number of premium paid holidays at this time.

Issue 7: Compensatory Time Cash Out

Articles 22.5 and 23.5 of the respective contracts for the sergeants and lieutenants unit and the officers below the rank of sergeant bargaining unit currently provide, as follows:

> Upon execution of this Agreement, employees shall be able to accrue compensatory time to a maximum of one hundred eighty (180) hours with an unlimited "cash out" option in April and October of each year.
>
> The employee must submit a request to the Finance Director by the last business day in March and September, requesting a "cash out" of his compensatory time. Payment to the employee shall be made no later than April 15th and October 15th respectfully, or on the next business day following such dates if they fall on a weekend.

The Union's original proposal contained in its pre-hearing statement provided that the "cash out" option should be available in April, October and five (5) other designated months each year. At the fact-finding hearing, the Union proposed language which would afford bargaining unit members the "cash out" option during four designated months each year. The Union acknowledged that its proposal may create an administrative burden for the City. However, it claimed that such a proposal would be helpful to both parties because it would function "like an account to draw on" and it would "keep accumulated compensatory time down." Furthermore, employees would be paid at the same rate at which the compensatory time was earned.

The City is "totally opposed to any compensatory time cash out at all." It contends that compensatory time has created an administrative nightmare. Moreover, the City does not want to function as a "bank" for the bargaining unit employees.

Final Recommendation

It is the fact-finder's recommendation that there should be no modifications to Articles 22.5 and 23.5 of the parties' collective bargaining agreements. At the hearing, the Union presented insufficient evidence which would warrant an increase in the number of times per year that bargaining unit employees are permitted to "cash out" their accrued compensatory time. In the fact-finder's opinion the Union proposal would create an additional and unreasonable administrative burden for the City. The fact-finder also notes that the Union presented no data from comparable jurisdictions regarding this issue to support its proposal.

Issue 8: Funeral Leave

Currently, neither the sergeants and lieutenants collective bargaining agreement nor the agreement for police officers below the rank of sergeant includes step-parents in the definition of immediate family as set forth in Articles 29.2 and 30.2, respectively. The Union proposes to add step-parents to the definition of immediate family under the new contracts. According to the Union, step-parents are often very significant family members. Therefore, it is reasonable to include such individuals in the definition of immediate family members so that

bargaining unit members are able to receive time off with pay for attending funerals for their step-parents. The Union points out that step-parents are considered immediate family members under the clerks contract with the City.

The Union further proposes a provision which would grant bargaining unit members six (6) days of paid leave for the purpose of attending the funerals of immediate family members in the event that two relatives die simultaneously. The Union notes that such an event is rare, and would result in a minimal cost for the City. According to the Union, its proposed language is also contained in the clerks contract with the City.

The City is opposed to the contract provisions proposed by the Union. It asserts that the clerks are the only internal bargaining unit which provides that step-parents are considered to be immediate family members under the funeral leave provision. It points out that the dispatchers unit does not contain the language which is proposed by the Union in regard to both the inclusion of step-parents as immediate family members and a six-day paid leave in the event that two immediate family members die at the same time.

Final Recommendation

It is the fact-finder's final recommendation that the collective bargaining agreements for both bargaining units should be modified to include step-parents as immediate family members under Articles 29.2 and 30.2, respectively. The fact-finder concludes that the inclusion of step-parents as immediate family members is reasonable in light of the composition of many

families in today's society. Furthermore, the fact-finder notes that step-children and parents-in-law are currently included in the definition of immediate family members. The City presented insufficient evidence that step-parents should not also be considered immediate family members. Finally, the fact-finder notes that the City's collective bargaining agreement with the clerks unit apparently provides that step-parents are considered to be immediate family members for purposes of paid funeral leave. However, the fact-finder rejects the Union's proposed increase of six days leave in the event of the simultaneous death of two immediate family members.

Issue 9: Uniform Allowance

Article 31.1 of the sergeants and lieutenants collective bargaining agreement currently provides that those employees shall receive a yearly uniform maintenance allowance of $950.00. Article 32.2 of the contract for police officers below the rank of sergeant provides that those bargaining unit members receive a uniform allowance of $1,000.00 per year.

The Union proposes to increase the uniform maintenance allowance for both bargaining units to $1,100.00 per year under the new contracts. According to the Union, the annual rate of inflation clearly warrants their proposed increases. Furthermore, there is no reason for disparity in the uniform maintenance allowance between the two bargaining units. It points out that the uniform requirements for employees in both units are identical. The Union also

proposes that the uniform maintenance allowance should be paid to the bargaining unit members in separate checks from their regular paychecks.

The City is opposed to the Union's proposed increases in the uniform maintenance allowance. According to the City, its overall compensation package offered to the bargaining unit employees is sufficient. Furthermore, the uniform maintenance allowance afforded bargaining unit employees compares favorably to that which is offered to employees in other jurisdictions.

Final Recommendation

It is the fact-finder's final recommendation that both bargaining units involved with this fact-finding should be afforded the same annual uniform maintenance allowance. The fact-finder determines that there is no reason that both units should not receive the same uniform maintenance allowance in light of the undisputed fact that their uniform requirements are identical. However, the fact-finder recommends the uniform maintenance allowance in the new contracts shall be $1,000.00 per year for both bargaining units, rather than $1,100.00 as proposed by the Union. The Union presented insufficient evidence to warrant its proposed increases, other than an increase of $50.00 per year for the sergeants and lieutenants so that employees in that unit receive the same uniform maintenance allowance afforded to the employees whom they supervise. In support of this recommendation, the fact-finder notes that

a yearly uniform maintenance allowance of $1,000.00 compares favorably to the uniform allowances provided by comparable jurisdictions. (City Ex. 23; Union Ex. 8).

Finally, the fact-finder recommends that the Union's proposal that the uniform maintenance allowance be paid to bargaining unit employees in separate checks from their regular paychecks should not be included in the new collective bargaining agreements. At the fact-finding hearing, the Union presented no evidence in support of its proposal, or that would otherwise warrant a modification in the City's current method of disbursing the uniform maintenance allowance to the bargaining unit employees.

Issue 10: Firearm Proficiency Allowance

Article 33.2 of the sergeants and lieutenants collective bargaining agreement provides, as follows:

> All eligible employees as set out in this Section, who have qualified in firearms proficiency as set out in Section 33.1 of this Article shall be entitled to a proficiency allowance as set out below:
>
> | | |
> |---|---|
> | Sergeant | $1,190.00 |
> | Lieutenant | $1,280.00 |
>
> Firearm proficiency allowances shall be paid in a separate lump sum check, within thirty (30) days of submission of qualification lists.

Article 34.2 of the contract for police officers below the rank of sergeant provides, as follows:

> All employees employed prior to such execution who have qualified in firearms proficiency as set out in Section 34.1 of this Article shall be entitled to a proficiency allowance in the amount of One Thousand One Hundred Dollars ($1,100).
> Firearm proficiency allowances shall be paid in a separate lump sum check, within thirty (30) days of submission of qualification lists.

Under the new collective bargaining agreement for the officers below the rank of sergeant, the Union seeks to increase the firearms proficiency allowance to the greater of either $1,500.00 per year or the amount of the firefighters' paramedic pay. The Union further proposes to increase the firearms proficiency allowance for the sergeants and lieutenants unit to an amount equal to the "rank differential" percentage over and above the patrol officers firearms proficiency allowance.

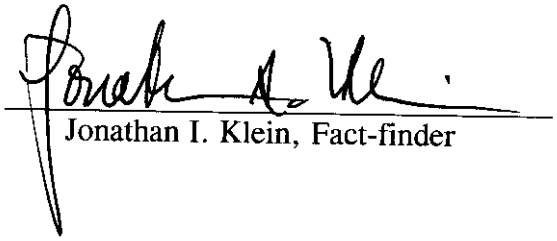
In support of its position, the Union points out that the City unilaterally deducted ten percent from each bargaining unit employee's firearms proficiency allowance last year because the Ohio Police & Fire Pension Board indicated that such payments were "pensionable." (City Ex. 24). The Union maintains that the bargaining unit members should receive the full benefit of the bargaining when they agreed to accept the current firearms proficiency allowances in lieu of two percent wage rate increases during prior contract negotiations. The Union asserts that it "needs at least a $100.00 increase in the firearms proficiency allowance." Furthermore, it maintains that the firearms proficiency allowance should be at least equal to the firefighters paramedic pay or $1,500.00, whichever is greater.

The City is opposed to the Union's proposal regarding the firearms proficiency allowance. It notes that it was also opposed to the Union's proposal regarding this issue during the last contract negotiations. According to the City, the firearms proficiency allowance was initially $300.00 to $400.00 per year. Thereafter, the firearms proficiency allowance was "raised to buy it out." It argues that an individual cannot be a police officer if he or she cannot shoot a gun. The City maintains that it "did the same thing with the firefighters paramedic pay." It points out that 19½% of the firearms proficiency allowance had to be deducted because the Pension Board determined that the payments were "pensionable." (City Ex. 24). The City contends that there is no justification for the Union's proposal.

Final Recommendation

Based upon the evidentiary record presented concerning this issue, the fact-finder recommends that the firearms proficiency allowance for officers below the rank of sergeant should be increased so that after any deductions for the pension assessment the bargaining unit members receive a net amount equal to $1,100.00 per year. The same formula shall be applied to the current allowance for sergeants and lieutenants. The fact-finder determines that the bargaining unit members are entitled to receive the benefit of the bargain previously reached to be paid the contractual amount designated as a firearms proficiency allowance. The record reveals that neither party realized that the firearms proficiency allowance was "pensionable" when the provision was placed in the agreement.

The fact-finder further determines, however, that the Union presented insufficient evidence to justify an increase in the firearms proficiency allowance to an amount which is equal to the paramedic pay afforded firefighters employed by the City.



Jonathan I. Klein, Fact-finder

Dated: March 30, 2005

SERB Case Nos. 2004-MED-07-0721
2004-MED-07-0722

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served upon on S. Randall Weltman, Esq., at Ohio Patrolmen's Benevolent Association, 10147 Royalton Road, Suite J, P.O. Box 338003, North Royalton, Ohio 44133; Tom Grabarczyk, Labor Relations Management, Inc., at 6800 W. Central Avenue, Suite L-2, Toledo, Ohio 43617; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 30th day of March 2005.

Jonathan I. Klein, Fact-finder