STATE EMPLOYMENT
RELATIONS BOARD

2005 OCT 11 A 11:48

**IN THE MATTER OF FACT-FINDING**
**BETWEEN**

| | | |
|---|---|---|
| **CITY OF EASTLAKE** | ) | **CASE NOS. 04-MED-10-1014** |
| | ) | **04-MED-10-1015** |
| | ) | **04-MED-10-1016** |
| **AND** | ) | |
| | ) | |
| | ) | **FINDINGS** |
| **FRATERNAL ORDER OF POLICE,** | ) | **AND** |
| **OHIO LABOR COUNCIL, INC.** | ) | **RECOMMENDATIONS** |

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE UNION**

**Charles Wilson**

**FOR THE CITY**

**Jack L. Petronelli, Esq.**

## SUBMISSION

This matter concerns fact-finding proceedings between the City of Eastlake (hereinafter referred to as the City or Employer) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the FOP or Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were conducted on June 13 and August 12, 2005.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse with those remaining for this fact-finder's consideration being set forth in this report.

There are three bargaining units involved in this fact-finding consisting of all full-time Patrol Officers, Sergeants and Dispatchers. There are approximately thirty Patrol Officers, three Sergeants, and six Dispatchers in the bargaining units.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

## 1. WAGES

The Union proposes a wage increase for patrol officers and supervisors of 3.15% in the first two years of the Contract and a 4% increase in the final year with the first year increase being retroactive to January 1, 2005. With respect to Dispatchers, the Union proposes that they receive a wage adjustment of an additional one dollar per hour in each year of the Agreement. The City proposes increases in wages of 1% effective upon execution of the Contract, with additional 1% increases in the final two years of the Agreement.

The City contends that it does not have the ability to fund any wage increase for the bargaining unit beyond the 1% increases which it has proposed without layoffs occurring. The City's Finance Director, Michael Slocum, stated that the City of Eastlake is facing a fiscal emergency and is under the watch of a state oversight committee. He noted that at the end of 2004, the General Fund deficit was about 2.5 million dollars. For the current year, the Finance Director projects that there will be about a 1.1 million dollar deficit in the General Fund. The City has developed a recovery plan which is intended to reduce the deficit over time and as a result the Finance Director indicated that any further wage increases beyond the 1% proposed would have a detrimental effect on the plan. The Finance Director further indicated that layoffs have occurred in the Service Department due to the financial crisis facing the City. However, there have been no layoffs in the bargaining units involved here. He cautioned however that if pay increases

were not kept to a minimum, layoffs of safety forces could occur in the future. He also noted that a police levy was rejected by the voters last year.

Moreover, the Finance Director testified that the City will be facing even greater expenditures in 2006 and 2007 due to the debt incurred in building the baseball stadium. In order to pay the amount due on the stadium bonds in 2006, approximately $300,000 will have to be taken out of the General Fund. Similarly in 2007, an even greater amount will be needed from the General Fund to satisfy the stadium bond debt payable for that year. At the current time, the total stadium debt is approximately 26 million dollars.

The Union maintains that its wage proposal is reasonable considering the fact that bargaining unit members took a wage freeze during the past year. In addition, the Union agreed on behalf of its members last year to accept an employee healthcare contribution of over $700 per year with increases in deductibles and co-pays. The net bottom line loss to the average employee has been over $4,000 per year. As a result, it is only fair and reasonable to increase wages for patrol officers, supervisors, as well as dispatchers as the Union has proposed over the next three years.

The Union also cites wage comparables for police officers in the area. In the Cleveland region, the average increase for police officers has been 3.3% for the current year. SERB has reported that the average increase in the state for police officers was 3.28%. With respect to dispatchers because of their relatively low pay, a wage adjustment of one dollar per hour is warranted.

ANALYSIS – Based upon a careful review of the evidence, this fact-finder would recommend 2% wage increases in each year of the new three year Agreement for all patrol officers and sergeants. With respect to dispatchers, this fact-finder would recommend that they be provided with $.75 per hour wage increases in each year of the Contract. The initial wage increases would be retroactive to January 1, 2005. In making this wage recommendation, this fact-finder has taken into consideration both the City's financial crisis as well as the fact that the bargaining unit members took a wage freeze and agreed to pay about 6% towards healthcare premiums during the past year. When all the factors are taken into consideration, this fact-finder believes that the above referred to wage increase recommendation is fair and reasonable.

First and foremost, it must be recognized in this case that the City of Eastlake is currently facing a fiscal emergency. At the end of last year, 2004, the General Fund had a deficit of approximately 2.5 million dollars. This year as indicated by the Finance Director, the General Fund is projected to have approximately a 1.1 million dollar deficit. Moreover, it was shown that over the final two years of the Agreement, the City will need to spend a significant amount from the General Fund to cover its stadium debt. In 2007 as indicated by the Finance Director, the City will spend about 1 million dollars from the General Fund to cover stadium debt. As a result, the State of Ohio Oversight Committee has advised the City that it must take immediate steps to reduce its General Fund deficits. Because the City is currently in crisis mode, this fact-finder finds that it is appropriate to recommend relatively modest wage increases for the bargaining unit.

As part of its recovery plan which has been approved by the state oversight committee, the City has budgeted for 2% wage increases for its employees. It appears from the evidence produced that 2% wage increases in each year of the Agreement for the bargaining unit will not in any way adversely impact the recovery plan which the City has developed for reducing its budgetary deficits over a period of time. However, it does appear that any further wage increases beyond the 2% recommended herein could as the City indicated result in possible layoffs. In order to avoid such a serious ramification, the Union's proposal for greater wage increases cannot be recommended.

This fact-finder has also taken into consideration the fact that the police unit during 2004 agreed to a wage freeze. In addition, the bargaining units involved here agreed to begin to pay about 6% towards health insurance premiums. As several of the officers indicated, the bargaining unit also agreed to freeze all overtime and had roll call time taken away from them. It is apparent therefore that the police units clearly made an effort to assist the City in reducing its expenditures over the past year. It is for that reason that an additional increase beyond that which the City recommended herein of 1% in each year of the Contract is appropriate for the bargaining units here. This fact-finder recognizes that the Eastlake patrol officers, sergeants and dispatchers are paid somewhat less than some of the other comparably situated police units in jurisdictions in the area. However once again it must be reemphasized that due to the City's severe financial crisis, any so-called average type wage increase would be inappropriate at the current time.

## RECOMMENDATION

It is the recommendation of this fact-finder that there be general wage increases in each year of a three year Agreement as follows:

### WAGES

Effective January 1, 2005 – Two Percent (2%) wage increases for Patrol Officers and Sergeants.

Dispatchers shall receive an additional seventy-five cents ($.75) per hour increase.

Effective January 1, 2006 – Two Percent (2%) wage increases for Patrol Officers and Sergeants.

Dispatchers shall receive an additional seventy-five cents ($.75) per hour increase.

Effective January 1, 2007 – Two Percent (2%) wage increases for Patrol Officers and Sergeants.

Dispatchers shall receive an additional seventy-five cents ($.75) per hour increase.

## 2. HEALTH INSURANCE

The Employer is proposing to have employees pay 10% of the cost of medical, hospitalization and dental coverage under the insurance plan which was recently implemented. The City further proposes that it no longer reimburse employees for any co-pays or deductibles. In addition, the City proposes language which would establish an insurance committee to review healthcare plans and to provide input as to what benefit levels would be provided in the second and third years of the Contract. Under the Employer's proposal, if amicable agreement cannot be reached between the parties, the City would be able to change the benefit to a level that is at least equal to or better than the highest level of benefits plan provided to state employees who are subject to collective bargaining in the State of Ohio

The Union's proposal is to maintain current language whereby employees contribute about $68 per month towards premiums. The Union is also opposed to any language which would permit the City to change or modify healthcare benefits during the term of the Agreement. However, the Union does propose a new mid-term bargaining article which would allow the parties to negotiate over any changes in healthcare benefits during the term of the Agreement.

The City contends that it can no longer continue to absorb the ever increasing costs for health insurance on its own. The City maintains that its proposal is appropriate due to the significant increases in the cost for providing healthcare to bargaining unit

members. The Employer notes that it is only proposing that employees be required to pay 10% towards insurance premiums which it claims is supported by area comparables.

The Union contends that there has been no justification shown for any increase in the current contribution which employees make towards healthcare premiums. It points out that last year employees began to contribute towards health insurance premiums which for family coverage amounts to about $68 per month. The Union also cites the comparables which it maintains supports its position that the current amount contributed towards premiums by employees should not be increased. Moreover, the Union further maintains that as it has done in the past, the City should continue to pay for employee deductibles and co-pays.

ANALYSIS – This fact-finder would recommend that effective on January 1, 2006, employees contribute 8% of the monthly healthcare premium with a cap of $90 for family coverage. Effective in the last year of the Agreement, the employee monthly contribution cap for family coverage should be increased to $110. Also effective on January 1, 2006, this fact-finder would recommend that the City no longer be held responsible for reimbursing employees for co-pays and deductibles including expenses incurred for office visits. This fact-finder would also recommend that an insurance committee be established to review any proposed changes in healthcare plans. In addition in order to resolve any dispute which may occur when the City attempts to renew or enter into a new health insurance contract, a new mid-term bargaining article should

also be included in the parties' Agreement. This will allow the parties to bargain over any proposed change in healthcare plans during the term of the Agreement.

It was clearly established that healthcare costs have risen dramatically for the City as it has done for other public sector employers throughout the region. The recommended changes will to some extent allow the City to attempt to control healthcare costs. It should be reemphasized that the City is facing a financial crisis at the current time and as the Finance Director indicated, the City can no longer continue to absorb the ever increasing health insurance costs on its own. For that reason, this fact-finder would recommend that employees begin to pay 8% of the total monthly premiums effective January 1, 2006. Such a contribution level would be consistent with that which other police units in the area currently contribute towards their healthcare costs. For example in the City of Willoughby, the police units will be contributing 8% towards healthcare costs beginning with their new contract.

This fact-finder further finds that it would be appropriate to provide for a cap on the amount of employee contribution towards healthcare premiums. This will serve to limit the exposure which the police bargaining unit members would have if healthcare costs continue to rise at a double digit rate over the next two years. An 8% contribution with a cap of $90 for family coverage beginning next year which would increase to $110 in the year 2007 appears to be reasonable under the circumstances. It should be noted that caps for other coverages should likewise be proportionally provided.

This fact-finder has further determined it would be appropriate considering the City's financial difficulties that it no longer be required to reimburse employees for any co-pays or deductibles beginning in the year 2006. It was shown that no other jurisdiction in the area reimburses its employees for any deductibles or co-pays. In that regard, it should be noted that the healthcare plan currently in effect is an excellent one with relatively low co-pays and deductibles.

This fact-finder further recommends that an insurance committee be established to review healthcare plans and to provide input into which plan should be selected for the second and third years of the Agreement. During the past year, the City was compelled to implement a new insurance contract during the term of the parties' Agreement. The Union objected and claimed that the Employer had unilaterally implemented changes in violation of the Agreement. Therefore in order to avoid any such dispute during the last two years of the Contract, this fact-finder finds that it would be appropriate to provide for a mid-term bargaining provision. This would provide the parties with a procedure to be followed whenever any mid-contract term dispute arose between the police units and the City and in particular concerning any proposed changes in health insurance contracts. Any such dispute would be resolved in accordance with Section 4117.14 of the Ohio Revised Code. Appropriate mid-term bargaining language is attached hereto and included in this fact-finder's recommendation.

Finally, there does not appear to be any dispute between the parties concerning the so-called Opt-Out Provision of the Insurance Article. As a result, this fact-finder

would incorporate the Opt-Out language which has been proposed which provides that employees who obtain healthcare from a different source are to receive $200 per month if they are eligible for the family plan and $100 per month for those eligible for the single plan. In addition, $150 per month would be provided to those employees eligible for employee and spouse or children coverage who do not elect health coverage under the City's plan.

## RECOMMENDATION

With respect to Health Insurance, this fact-finder recommends the following modification:

**ARTICLE XXII** **HEALTH INSURANCE**

Effective January 1, 2006, the employee contribution shall be increased to 8% with a cap of Ninety Dollars ($90) for family coverage, with caps for other coverages likewise being proportionately provided.

Effective January 1, 2007, the monthly insurance cap shall be increased to One Hundred Ten Dollars ($110) for family coverage with caps for other coverages being likewise increased.

Effective January 1, 2006, the City shall discontinue its practice of reimbursing employees for any co-pays or deductibles.

Effective upon execution of the Agreement, an Insurance Committee shall be formed to review any proposed changes in the Healthcare Plan. Any dispute arising between the Union and the City of Eastlake regarding proposed changes in the healthcare plan shall be subject to the resolution procedure set forth in the new Mid-Term Bargaining Article which is attached hereto and incorporated into this recommendation. (See Attachment 1)

Effective upon execution of the Agreement, any employee who elects to obtain healthcare coverage through another source other than the City of Eastlake, shall receive $200 per month payment for those eligible for the family plan and $100 per month for those eligible for the single plan, and $150 per month for those eligible for employee and spouse or children coverages.

(Also See ATTACHMENT 1)

ATTACHMENT 1

**MID-TERM BARGAINING ARTICLE (New)**

Section 1: The procedures contained in this article shall govern mid-contract term disputes arising between the F.O.P. and the City of Eastlake concerning proposed changes in terms and conditions of employment.

A. In the event the Employer makes or proposes to make any changes in wages, hours or terms and conditions of employment before the expiration of this agreement, either party may serve notice upon the other of its desire to negotiate such a change.

B. The parties shall continue in full force and effect all terms and conditions of this existing agreement unless and until a new or modified agreement is agreed upon or established by operation of this Article.

Section 2: At any time after the commencement these mid-term negotiations, if either party believes that negotiations have reached an impasse, the parties shall submit their dispute to an agreed upon fact-finder by selecting from the permanent panel of arbitrators contained in the arbitration procedure article, and submit the dispute to fact-finding.

A. The fact-finder shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to fact-finding procedures. These rules shall apply except as modified by this Article.

B. Each party shall submit a written statement outlining its position on each of the unresolved issues and the language for insertion in the contract by which it proposes to resolve the impasse.

C. The fact-finder shall make a final recommendation as to all of the unresolved issues.

D. The following guidelines shall be applied by the fact-finder:

1. The fact-finder shall establish times and place of the hearing.

2. The fact-finder shall take into consideration the factors listed in Section 3(H) below.

3. The fact-finder may attempt mediation of the dispute at any time until a final recommendation is made.

4. The fact-finder shall transmit his/her recommendations to the Employer and the Union at the same time via U.S. Mail or by FAX.

5. Each party shall pay one-half the cost of the fact-finding procedure.

F. Not less than fourteen (14) days after the recommendations of the fact-finder are received by the parties, the legislative body by a three-fifths vote of its total membership and, in the case of the Union, the membership by a three-fifths vote of the total Membership may reject the recommendations. If neither party rejects the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted. The existing collective bargaining agreement shall be deemed to be modified by incorporating the recommendations of the fact-finder, and all other issues tentatively agreed upon before the disputed issues were submitted to the fact-finder.

Section 3: If either the legislative body or the membership of the Union rejects the recommendations, the parties may again attempt to reach a settlement of the issues still in dispute by further negotiations. Within fourteen (14) days of the vote by either party to reject the recommendations of the fact-finder, the parties shall submit any issues still in dispute to a final offer settlement procedure, binding conciliation in accordance with the procedures provided in this section.

A. The parties shall select a conciliator from the permanent panel of arbitrators contained in the arbitration procedure article.

B. The parties shall submit all unresolved issues to conciliation.

C. The conciliator may attempt mediation at any time until he/she issues his/her report.

D. The conciliator shall establish a time and place for the hearing.

E. Not later than five (5) days before the hearing, each of the parties shall submit to the conciliator and to the opposing party a written report summarizing the unresolved issues, and the language by which that party proposes to resolve the dispute as of each issue.

F. The conciliator shall be an arbitrator and shall have the power of an arbitrator under O.R.C. Section 2511 to issue subpoenas for the hearing. The conciliator shall take all the evidence and either party may make a record at its own expense.

G. The conciliator shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to conciliation procedures. These rules shall apply except as modified by this Article.

H. After the hearing the conciliator shall resolve the unresolved issues by selecting on an issue-by-issue basis from between each of the final settlement offers made by the parties taking into consideration the following:

1. Past collectively bargained agreements between the parties.

2. Comparison of the issues submitted to conciliation relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work.

3. The interests and welfare of the public; the ability of the public Employer to finance and administer the resolution of 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. The stipulations of the parties.

I. The Conciliator shall make written findings of fact and publish a written opinion and order deciding the issues presented to him/her. He/she shall deliver a copy to each of the parties, at the same time via US. Mail or by FAX.

J. The parties shall each pay one-half the cost of the conciliation procedure.

Section 4: The issuance of a final offer settlement award constitutes a binding mandate to the Employer and the Union to take whatever action may be necessary to implement the award. Both parties agree to be bound by the award and order on all issues resolved by the conciliator and all issues previously resolved by agreement of the parties during negotiations. This award, order and all previously negotiated agreements, shall constitute amendments to the collective bargaining agreement without the necessity of either party taking any further action. However, the parties may, if they desire to do so by agreement execute an amended collective bargaining agreement including the award and order of the conciliator and all tentatively agreed upon issues not submitted to the conciliator for resolution.

## 3. SICK LEAVE

The City is proposing a change in the current Sick Leave Conversion Provision so that after fifteen years of full-time service, employees would be entitled to one-half of the first 1,344 hours of accumulated sick leave and 20% of any hours in excess of 1,344 hours. The City also seeks to delete "resignation" as a reason for being able to convert sick time into a cash payment. Finally, the City proposes a new payout provision whereby no more than 40% would be paid in the first year, 30% paid out in the second year, and 30% paid out in the third year. Moreover should an employee request a longer period of payout, the City and the employee could agree to a longer payout period.

The Union proposes to retain current language. Currently, an employee who has sixteen or more years of service can cash in 1,344 hours of sick time at a payout of 100%. All hours of sick time that an employee earns over 1,344 hours are to be paid out at the rate of 20%.

The City argues that its proposal is consistent with that found in surrounding communities where employees receive far less in the way of sick leave conversion upon retirement. Moreover, these other departments do not include "resignation" as a reason to convert sick leave. The potential amount of payout under the current language creates an excessive amount of liability for the City which again is facing a financial crisis at the current time. The City believes that it would also be reasonable to provide that it be allowed to pay out the amount of sick leave conversion over a period of time so that there is no major impact on the budget process.

The Union argues that the City is seeking to undue one of the few benefits which the employees have been able to obtain during the most recent contract period. Those negotiations were completed in good faith and should not now be disturbed by the new administration. The Union notes that the Sick Leave Conversion Provision will have very little, if any, impact on City finances by these particular bargaining units over the next three years. According to the Union, there simply was no basis established for making any change in the current Sick Leave Conversion Provision.

ANALYSIS – This fact-finder does not recommend any change in the amount of sick leave conversion payout upon retirement. It is recommended however that "resignation" be deleted as a reason for being able to convert sick leave into a cash payout. This fact-finder also finds that it would be appropriate to recommend that the payout be made over three years rather than at one time as currently provided.

This fact-finder has determined that there was insufficient basis established for making the rather dramatic changes to the sick leave conversion payout as suggested by the City. As the Union noted, the parties agreed to the current provision as part of a package in 2003. It simply does not appear that this would be an appropriate time to significantly alter the provision as the City suggests.

This fact-finder would however recommend that "resignation" be deleted as a reason for being able to convert sick leave time into a cash payout. There are not many other contracts which contain a sick leave payout upon an employee's resignation. As a

result, this fact-finder finds that it would be appropriate to provide that an employee's resignation should not be used as a reason to convert sick leave.

This fact-finder further finds that there is merit to the City's proposal to have the sick leave conversion paid out over a period of time so that there would be no major impact during any one year on the budgetary process. This would also allow any tax owed by the employee to be spread out over a period of three years. However, language should be included which would allow the employee and City to agree to a longer payout period.

## RECOMMENDATION

It is the recommendation of this fact-finder with respect to the Sick Leave Conversion Provision that the only change is that "resignation" be deleted as a reason for being able to convert sick time into a cash payout and that the payout be made over a minimum of three years.

**ARTICLE XVII SICK LEAVE CONVERSION**

No change except "resignation" shall be deleted as a reason for being able to convert sick time into a cash payout.

(Add):
The payment shall be over a minimum of three (3) years as follows:

Forty Percent (40%) payable in the first year of retirement or death, and Thirty Percent (30%) per year for the second and third year. Nothing precludes an employee from requesting a longer payout period.

## 4. INJURY LEAVE

The City proposes to modify Sections 26.01 and 26.03 to provide that an employee on injury leave would not be able to receive reimbursement for sick leave or earn any benefits provided under the Contract when an employee is on injury leave. The Union proposes to retain current language.

The City requests the modification to the Injury Leave Provision because it has an employee who has been on injury leave for an excessive amount of time and with the current language, has been seeking reimbursement of his sick leave so that he can obtain full payment from the City. As a result, the City has an employee on the payroll who is unable to perform any of his regular duties but who the Employer cannot replace at the current time.

The Union argues that there is no justification for the modification of the Injury Leave Provision as sought by the City. The Union believes that the language is well grounded from the past in that it has appeared in all of the other previous Collective Bargaining Agreements.

ANALYSIS – This fact-finder would recommend some modification to the current Injury Leave Provision. It is recommended that any employee on injury leave shall not earn sick leave during this leave period. However an employee shall continue to earn seniority provided the duration of the injury leave is less than one year. This modification will serve to address the City's concern with respect to an employee who has been on injury leave for a considerable amount of time.

## RECOMMENDATION

It is the recommendation of this fact-finder that the Injury Leave Provision be modified as more fully set forth below:

**ARTICLE XXVI** **INJURY LEAVE**

26.01 When an employee is injured in the line of duty while actually working for the Employer, he shall be eligible for a paid leave not to exceed forty-five (45) calendar days from injury date, providing he files for Workers' Compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this Article. Such leave shall commence after the employee utilizes his sick leave for the first five (5) work days or unless such absence occurs on the date of injury or is immediately contiguous to the date of injury. Sick leave utilized for the first five (5) days will be fully reimbursed if any Workers' Compensation is received for such days by the Employer. All injuries must be reported on the shift of occurrence to be eligible for payments under this Article.

26.02 The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer, resulting in the physician's certification that the employee is unable to work due to the injury as a condition precedent to the employee receiving any benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled or not, but shall not govern whether the Employer shall extend the period of leave.

26.03 Any employee on injury leave shall not earn sick leave during this leave period, nor shall they be entitled to any holiday pay for any holidays falling within this leave, also this leave shall not be used in computing time for vacation. However, an employee shall continue to earn seniority, provided the duration of the injury leave is less than one (1) year.

## 5. DISCIPLINARY PROCEDURE

The City is proposing to change Section 38.02 to increase the amount of time to ninety days in which the Employer may bring disciplinary charges. The Union seeks to retain current language which provides for a ten day period to file disciplinary charges against a bargaining unit member.

The City contends that the current ten day period is just too short a period of time to properly complete a thorough investigation of any misconduct and to determine whether or not potential disciplinary actions should be issued. As a result, the Employer is proposing to lengthen the period of time to ninety days which would give the City ample opportunity to complete an investigation before bringing any disciplinary charges.

The Union maintains that the current language affords protection to its members in that they will be given prompt notice of any disciplinary action which is pending. The Union submits that requiring the City to take only ten days to issue any discipline is reasonable and should be retained.

ANALYSIS – This arbitrator would recommend a modification to the current section of the disciplinary procedure in question. It would appear to be reasonable to modify Section 38.02 to allow the Employer the time needed to conduct a thorough investigation of any misconduct on the part of any bargaining unit member. The Police Chief stated that the current ten day period is simply too short of a period of time to allow the department to complete a thorough investigation of any misconduct and to determine if any disciplinary charges should be issued. As a result, this fact-finder finds that it

would be appropriate to lengthen the period of time to sixty days so that the City would have ample opportunity to complete a proper investigation before bringing any disciplinary action against a bargaining unit member.

## RECOMMENDATION

It is the recommendation of this fact-finder with respect to the Disciplinary Procedure Provision that Section 38.02 be modified to sixty working days for the City to issue a disciplinary action against a bargaining unit member for any alleged misconduct.

**ARTICLE XXXVIII** **DISCIPLINARY PROCEDURE**

38.02 Modify to sixty (60) working days for the City to bring any disciplinary charges against a bargaining unit member.

## 6. UNIFORM ALLOWANCE

The Union seeks an increase of twenty-five dollars per year in the uniform allowance. In addition, the Union proposes a new provision whereby the City would be required to provide employees with a protective vest. The City opposes any increase in the uniform allowance and does not propose any new provision to provide for protective vests at the current time.

The Union notes that bargaining unit members must purchase all uniform related items on their own. An increase in the uniform allowance is warranted considering the average increase in cost of uniforms and equipment. With respect to its proposal to require the City to purchase protective vests for bargaining unit members, the Union points out that such a provision is found in many other police contracts in the area. In general, other cities provide such protective vests every five years.

The City takes the position that it simply cannot afford to increase the uniform allowance at the current time due to its limited financial resources. It also points out that protective vests were purchased for those in the bargaining unit as recently as the year 2000.

ANALYSIS – This fact-finder has determined that there should be a new provision which would require the City to purchase protective vests for its bargaining unit members. It was shown that just about all of the other jurisdictions in the area provide protective vests for their police departments. Such protective vests are provided by the cities of Wickliffe, Willowick, Painesville, Mentor and Willoughby. It is apparent

therefore that comparables support the protective vest proposal made by the Union. It should be noted that under the Union's proposal, employees that have a vest are to receive a new protective vest at the manufacturer's recommended replacement date.

This fact-finder does not however recommend any increase in the uniform allowance. The City as previously discussed is facing a financial crisis. Given the City's limited financial resources, it does not appear that any increase in uniform allowance should be undertaken at the current time.

## RECOMMENDATION

This fact-finder recommends the new provision proposed by the Union with respect to protective vests. However, no change is recommended in the amount of the current Uniform Allowance.

### XXVII UNIFORM MAINTENANCE ALLOWANCE

No change in current amount of $825.

Add new provision – **Uniform Ballistic Vests**

27.05 (new) Employees shall be provided with a protective vest. Those employees that have a vest shall receive a protective vest at the manufacturer's recommended replacement date. The vest shall be worn as directed by departmental policy. The Employer and members of the Union will mutually select a vest or vests that shall be available for purchase/issue.

## 7. ARBITRATION PROCEDURE

The City is proposing to delete the last sentence of Section 41.01 which provides that in the event the parties cannot mutually agree upon an arbitrator from their permanent panel, then FMCS is to be utilized. The Union seeks to retain current language on the proposed modification.

The Employer claims that the last sentence which it seeks to delete makes no sense since the arbitrators are to be selected by the alternative strike method from the permanent panel of arbitrators. As a result, there would be no need to utilize FMCS. Moreover, the fire fighters' contract as well as the dispatchers and service employees' contracts do not contain this sentence and therefore it should be eliminated.

The Union argues that the duel process of selecting from the permanent panel or utilizing FMCS has worked for the parties in the past. The Union points out that the language in question resulted from a previous fact-finding proceeding over this same issue. According to the Union, there simply is no justification for eliminating the language involved.

ANALYSIS - This fact-finder would recommend that the language in question found under Section 41.01 should be deleted. The current Agreement provides for a permanent panel of arbitrators which are to be selected through the alternative strike method. Such a procedure would of course leave one arbitrator from the permanent panel who would hear any grievance involved. In that the procedure set forth under Section 41.01 provides for the selection of an arbitrator from the permanent panel, it becomes apparent that the last

sentence referring to the use of FMCS makes no sense. Apparently, this language was placed into the contract as a result of a prior fact-finding proceeding and was obviously an attempt to compromise the various positions of the parties. However, it is evident that the language in question makes little sense in light of the procedure set forth for the selection of an arbitrator from the permanent panel.

Moreover, internal comparables support the change to Section 41.01 recommended here. The firefighters' contract as well as the service employees and dispatchers' agreements do not contain the particular sentence involved. Therefore, this fact-finder finds that it would likewise be appropriate to delete the last sentence of Section 41.01 so that the language conforms with that found in these other contracts.

## RECOMMENDATION

With respect to the Arbitration Procedure, this fact-finder recommends that the last sentence of Section 41.01 be deleted.

**ARTICLE XLI ARBITRATION PROCEDURE**

Section 41.01 – Delete last sentences referring to the utilization of FMCS.

## 8. DRUG TESTING

The Employer is proposing to add two additional reasons for drug tests, namely post accident and random testing. Under its proposal, the City also is seeking to delete the annual physical as a reason for drug testing. In Section 43.03, the City proposes to delete the sections of the Ohio Revised Code relating to controlled substances.

The Union opposes any change for the reasons of drug testing under the current provision. The Union does agree that the references under Section 43.03 to the Ohio Revised Code sections pertaining to controlled substances should be deleted.

The Employer maintains that its proposal is consistent with its long established drug testing policy. For internal consistency purposes, the City argues that its position regarding the additional reasons for drug tests should be adopted.

The Union is opposed to a random drug testing provision that does not spell out the selection process of the procedure to be followed. The Union argues that the additional reasons offered by the Employer for drug tests were not sufficiently explained by the City and for that reason no changes should be made to the provision.

ANALYSIS – This fact-finder would recommend that two additional reasons be added for drug tests of employees. The addition of post accident as well as random testing would be consistent with the drug policy which has been long established in the City of Eastlake. It was also shown that for internal consistency purposes, the change to include the two additional reasons for drug tests should be adopted. In that regard, it should be noted that in the firefighters' contract, drug testing is to be conducted at times

of "pre-employment, and post accident, upon reasonable suspicion, and randomly pursuant to the City of Eastlake policy." The language which the City has proposed in the instant matter with reference to the police contracts includes the same reasons for drug tests as that found in the firefighters' contract.

The parties are in apparent agreement that under Section 43.03 the reference to the specific sections of the Ohio Revised Code pertaining to controlled substances should be deleted. Therefore, this fact-finder recommends that change under Section 43.03.

## RECOMMENDATION

With respect to Drug Testing, this fact-finder recommends that Section 43.01 be modified to include two additional reasons for drug tests, those being post accident and random. In addition, it is recommended that under Section 43.03 the specific references to sections of the Ohio Revised Code pertaining to controlled substances be deleted.

**ARTICLE XLIII** **DRUG TESTING**

43.01(modify first sentence to read) Drug screening/testing shall be conducted at times of pre-employment, post accident, upon reasonable suspicion and randomly pursuant to the City of Eastlake policy on drug testing.
*note (no other changes under Section 43.01)

43.03(modify first sentence to read) Drug screening tests shall be given to employees to detect the illegal use of a controlled substance, as defined in the Ohio Revised Code."
*note (delete references to sections 3719.02 and 4729.02 O.R.C.)

## 9. SHIFT DIFFERENTIAL

The Union is proposing a new shift differential article which would provide for an additional $.60 per hour for those on the afternoon shift and $.75 per hour for all midnight shift hours worked. The City is opposed to any new shift differential provision.

The Union argues that because the department insists on rotating the work schedule, it is only reasonable to provide additional compensation to those employees who must work on the afternoon and midnight shifts. Due to the additional stress and inconvenience to the employees who must work those shifts, a shift differential should be provided. The Union also cites several other jurisdictions in the area which provide for shift differentials for its patrolmen.

The City argues that the request for shift differential is simply another way for the Union to seek additional compensation for its bargaining unit members. Because it is facing a financial crisis, the City cannot afford to provide for any shift differential to those who work on the afternoon and midnight shifts. The City also points out that such a shift differential provision would create bookkeeping headaches for the department.

ANALYSIS – This fact-finder does not recommend any new shift differential provision as proposed by the Union. As previously discussed, the City is facing a severe financial crisis. Any additional form of compensation such as a shift differential would create more of a strain on the City's already limited financial resources. As a result, no shift differential provision can be recommended at the current time.

## RECOMMENDATION

It is the recommendation of this fact-finder that there be no new Shift Differential Provision as sought by the Union.

**SHIFT DIFFERENTIAL** – No new provision.

## 10. DURATION

The Employer is proposing that the Agreement become effective upon execution with an expiration date of December 31, 2007. The Union proposes that the Agreement become effective on January 1, 2005.

ANALYSIS – This fact-finder recommends that the parties' Agreement become effective on January 1, 2005 with an expiration date of December 31, 2007. This would be consistent with the Duration Provision found under the previous patrolmen's unit contract. There was insufficient basis established for making the new Agreement effective upon the execution of the contract.

## RECOMMENDATION

This fact-finder recommends the following Duration Provision:

**XXXVIII DURATION**

This Agreement shall become effective on January 1, 2005 and shall continue in full force and effect, along with any amendments made and annexed hereto until midnight, December 31, 2007.

## CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

**OCTOBER 8, 2005**

**JAMES M. MANCINI, FACT-FINDER**