

I. PROCEDURAL BACKGROUND

This matter came on for hearing on August 15, 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 March 9, 2005. The fact-finding hearing was conducted between the City of Chardon (“Employer” or “City”), and The Fraternal Order of Police, Ohio Labor Council Inc. (“Union”), at the Chardon Municipal Center located at 111 Water Street, Chardon, Ohio 44024. The fact-finder and the parties had engaged in lengthy mediation efforts on July 14, 2005. The two bargaining units represented by the Union are comprised of seven full-time patrolmen, five full-time dispatchers and one sergeant.

After negotiations and mediation proved unsuccessful as to various outstanding issues, the fact-finder scheduled the evidentiary portion of the fact-finding process. The following articles were subject to various proposals contained in the Union’s pre-hearing submission, and the Employer’s pre-hearing statement dated August 11, 2005:

1. Article XIV - Sick Leave
2. Article XV - Vacations
3. Article XVI - Holidays
4. Article XX - Compensatory Time
5. Article XXI - Hours of Work
6. Article XXII - Court Time
7. Article XXIV - Uniform Allowance
8. Article XXV - Insurances
9. Article XXVI - Rates of Pay
10. Article XXVII - Educational Benefit
11. Article XXXIV - Grievance Procedure
12. Article XXXV - Discipline
13. Article XXXVI - Duration

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations and any provisions of the current collective bargaining agreements, which agreements and provisions were not otherwise modified during fact-finding. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by both parties at hearing, and in 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 City of Chardon is located in Geauga County, Ohio. As stated above, there are two bargaining units involved in the fact-finding process, one unit is comprised of full-time patrol officers and a sergeant, and the other consists of full-time dispatchers. The Employer also utilizes part-time employees to compliment its full-time workforce.

Upon review of the comparable jurisdictions offered by both parties, the fact-finder determines that the following jurisdictions will be referenced for comparability purposes throughout this report: City of Kirtland; City of Mentor-on-the-Lake; Bainbridge Township; City of Painesville; Geauga County Sheriff's Office; Chester Township; and the Village of Middlefield. The fact-finder also considered the internal bargaining unit represented by AFSCME and other, non-bargaining unit employees within the Employer when evaluating the statutory criteria.

Issue 1: Article XIV - Sick Leave

Article XIV, Section 14.01 of the parties' collective bargaining agreements provides as follows:

14.01 Sick leave shall be defined as an absence with pay necessitated by:

- 1) illness or injury to the employee;
- 2) exposure by the employee to a contagious disease communicable to other employees;
- 3) serious illness, injury or death in the employee's immediate family.

The Union proposes to delete the word "serious" from the abovementioned provision. It asserts that "without a definition as to what qualifies [as] 'serious' it should not be considered part of this language." (Union's Pre-Hearing Statement). According to the Union, the term "serious illness" allows either the Employer or an employee to challenge whether an illness is serious. Furthermore, grievances may be filed as a result of the Employer denying employees' sick leave requests.

The Employer asserts that the Union seeks to modify a contract provision which has created no problems in the past. The Employer maintains that the "Union has the burden of proof to show some harm caused." It points out that the language in question has been in the contract for approximately twenty years. Furthermore, the Employer points out that its contract with AFSCME represented employees also provides that a "serious illness" in an employee's immediate family is the standard for this particular utilization of sick leave. Moreover, the same sick leave provision is also contained in several other contracts in

surrounding jurisdictions. According to the Employer, the current contract language avoids sick leave abuse due to bargaining unit employees calling in sick when an immediate family member has a very minor illness.

Article XIV, Section 14.05 of the parties' collective bargaining agreements currently provides as follows:

14.05 When sick leave abuse may be indicated, before an absence may be charged against accumulated sick leave, the Department Head may require such proof of illness, injury or death as may be satisfactory to him, or may require the employee to be examined by a physician designated by the Department Head and paid by the Employer. In any event, an employee absent for more than two (2) consecutive tours of duty must supply a physician's report to be eligible for paid sick leave.

The Union seeks to delete the aforementioned language contained in Section 14.05 that allows the Employer to request proof of illness, injury or death prior to charging an employee's absence to his or her accumulated sick leave. The Union also desires to modify the last sentence contained in Section 14.05 to provide as follows: "In any event, an employee absent for more than three (3) consecutive tours of duty must supply a physician's report to be eligible for paid sick leave." According to the Union, "[t]he City does not have a policy to define abuse of sick leave and only states in this Agreement that they have the right to arbitrarily decide if the employee abused his/her sick leave." (Union's Pre-Hearing Statement). The Union points out that the "burden of proof is on the City if there is sick leave abuse by an employee." As such, "[t]he City should exercise their right to discipline if they feel abuse is a

factor in the employee's absence, but the FOP shall continue its right to appeal any discipline of the employee." (Union's Pre-Hearing Statement).

The Employer is opposed to the Union's proposed modifications to Article XIV, Section 14.05, and it asserts that the Union has presented no reason whatsoever to alter the current contract language. The Employer points out that the provision in question has been part of the parties' collective bargaining agreement for approximately twenty years and it is currently contained in the AFSCME contract. The Employer asserts that there is no reason to delete this provision which protects it from sick leave abuse by bargaining unit members. It also maintains that no agreements in comparable jurisdictions contain a provision which allows an employee to be absent for four days before he or she is required to submit a physician's report in order to be eligible for paid sick leave.

The Union also proposes to delete Section 14.06 from both contracts, which section provides that the Employer is not required to pay employees who fail to supply satisfactory proof of illness. In support of its position regarding Section 14.06, the Union relies upon the same arguments which it expressed above pertaining to Section 14.05. The Employer is opposed to the Union's proposal to delete the language contained in Section 14.06 from the new collective bargaining agreements. It asserts that the "current language works," and there have been no grievances concerning the provision in question. Moreover, the same language is also contained in the Employer's contract with AFSCME.

At the fact-finding hearing, the parties withdrew their proposals pertaining to Article XIV, Section 14.07 of the collective bargaining agreements.

Article XIV, Section 14.10 of the parties' collective bargaining agreements currently provides as follows:

14.10 Sick leave may be used due to the illness of a member of the employee's immediate family requiring the presence at the employee's home to a maximum of eighty (80) hours of accumulated sick leave in a calendar year. Additional sick leave for this purpose in special cases may be authorized by the City Manager.

The Union asserts that there should be no limitation on the number of sick leave hours which may be utilized by a bargaining unit employee to care for a member of his or her immediate family. According to the Union, a limit on the use of sick time for an immediate family member to ten days is too restrictive.

The Employer proposes to maintain the existing language contained in Section 14.10 while adding a provision which provides that sick leave shall be limited to forty hours for normal routine births. It points out that there is currently no provision that guarantees an employee forty hours of leave for normal routine births. Under federal law, sick leave is only utilized during the incapacitation of a bargaining unit employee's spouse, "which means one (1) or two (2) days when the spouse is in the hospital." (Employer's Pre-Hearing Statement, at 3). The Union's position of deleting the maximum amount of leave utilized for family illness

and the ability of the City Manager to offer additional time is not meritorious due to the fact that no bargaining unit employee has ever exceeded the maximum amount of leave.

Under the parties' current collective bargaining agreements, an employee who was hired subsequent to July 21, 1983, receives one-third of his or her accumulated sick leave, not to exceed six hundred hours, upon their retirement. Employees who were hired prior to July 21, 1983, receive one-third of their accumulated sick leave, not to exceed 960 hours, upon their retirement. Additionally, employees who terminate their employment prior to retirement receive one-third of their total accumulated sick leave, not to exceed two hundred hours with ten years of service, three hundred hours with fifteen years of service, four hundred hours with twenty years of service and five hundred hours with twenty-five years of service.

The Union has proposed to modified the parties' sick leave buyout provisions set forth in Article XIV, Sections 14.12 and 14.13 of the contracts. Specifically, the Union has proposed the following provisions:

- 14.12 Upon the retirement of an employee, who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio public employee retirement system, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-half ($\frac{1}{2}$) the total number of accumulated but unused sick hours earned by the employee, not to exceed nine hundred and sixty (960), as certified by the Finance Director.
- 14.13 In accordance with the following schedule, an employee terminating service shall be entitled to a cash payment equal to his current rate of pay multiplied by one-third

(1/3) the total number of accumulated but unused sick hours earned by the employee as an employee of the City.

In support of its sick leave buyout proposal, the Union points out that many bargaining unit employees have accumulated a significant amount of sick leave. The employees have demonstrated their dedication to the department and there has been no abuse of the sick leave benefit. The Union believes that “. . . there should be an incentive to those individuals that are going to retire from the Department. Also the change from one-third to one-half may eliminate excessive use of the sick time when nearing their retirement date.” (Union’s Pre-Hearing Statement). The Union further asserts that there should be no forfeiture of a bargaining unit employee’s sick leave if he or she is discharged for cause because the termination may be “political.”

The Employer is opposed to the Union’s proposal to modify the parties’ sick leave buyout provisions. According to the Employer, the current sick leave buyout provisions are more than comparable with the benefit received by employees in surrounding jurisdictions. Additionally, the language in question has been in effect for several years and it is applied to both union and non-union employees of the City. There is no basis for modifying Sections 14.12 and 14.13 as proposed by the Union. The Employer further asserts that the language proposed by the Union in Section 14.13 “makes no sense” because an employee “could conceivably get more if they quit than if they retired after twenty-five years of service.”

Final Recommendation

It is the recommendation of the fact-finder that Article XIV, Section 14.01 of the parties' collective bargaining agreements should not be modified as proposed by the Union. The Union presented insufficient evidence that the current contract language has created any difficulties concerning its interpretation or application, nor has the Union demonstrated that any bargaining unit members have been adversely affected by the current language. The fact-finder notes that the language in question has been part of the parties' past agreements for approximately twenty years, and it is also contained in the current collective bargaining agreement between the Employer and employees represented by AFSCME. Moreover, the provision "serious illness" is also contained in the contracts for patrol officers employed by comparable jurisdictions.

In regard to Article XIV, Sections 14.05 and 14.06 of the parties' collective bargaining agreement, the fact-finder recommends that the current contract language should be maintained. At the fact-finding hearing, the Union presented insufficient evidence in support of its proposed modifications. Specifically, the fact-finder notes that the Union presented no evidence that any bargaining unit members have been adversely affected as a result of the current provision. Furthermore, the language contained in the aforementioned provisions is also set forth in the Employer's contract with AFSCME.

Based upon the evidentiary record presented in this case, the fact-finder determines that the Union has presented insufficient evidence to warrant its proposed modification to Article

XIV, Section 14.10 of the contracts. The fact-finder notes that no bargaining unit employees have ever been denied the use of sick leave in order to care for members of their immediate family. The fact-finder further recommends that the Employer's proposal which guarantees an employee up to forty hours of sick leave for a normal routine child birth should be incorporated into the parties' new collective bargaining agreements.

Finally, the fact-finder recommends that there should be no modifications to the parties' sick leave buyout provisions contained in the new collective bargaining agreements. At the fact-finding hearing, the Union presented insufficient evidence to warrant modification of the contract provisions on this issue. Furthermore, the current sick leave buyout provisions afforded bargaining unit employees compare favorably to the same benefits received by employees at comparable jurisdictions.

Issue 2: Article XV - Vacations

Article XV of the collective bargaining agreements between the Employer and both the patrol officers and the dispatchers provides, in part, as follows:

- 15.01 All Employees shall be entitled to paid vacations in accordance with the following schedule:

<u>Length of Service</u>	<u>Weeks</u>
After one (1) year, through five (5) years	2
After five (5) years, through twelve (12) years	3
After twelve (12) years, through eighteen (18) years	4
After eighteen (18) years	5

The Union proposes to modify the abovementioned vacation schedule to provide that bargaining unit employees would receive three weeks of vacation after five years of service through ten years of service. Additionally, bargaining unit members would receive four weeks of vacation after ten years of service through eighteen years of service. The Union asserts that its proposal would provide the bargaining unit employees with a vacation benefit that is comparable to that received by employees at other agencies in the same geographic area. According to the Union, its proposal is not unreasonable and is “within the realm of other agencies.” The Union points out that Burton and Fairport Harbor, two of the comparable jurisdictions referenced by the Employer, are part-time departments. Furthermore, the police department in Fairport Harbor is scheduled to be abolished.

The Employer is opposed to the Union’s proposed modification of the vacation schedule. It notes that all employees of the City are afforded the same standardized vacation schedule, including those employees represented by AFSCME. Furthermore, the current vacation schedule compares favorably to the vacation benefit received by employees at comparable jurisdictions. The Employer points out that the totality of the vacation schedule must be examined by the fact-finder.

Final Recommendation

It is the fact-finder’s recommendation that there should be no modifications to Article XV, Section 15.01 of the parties’ collective bargaining agreements. The evidentiary record

reveals that the current vacation schedules afforded both the patrol officers and the dispatchers are comparable to the vacation benefit received by other employees in nearby jurisdictions. Additionally, the current vacation schedule is uniformly applied to all of the City's employees, including those represented by AFSCME. In sum, the Union presented insufficient evidence to warrant a change in the bargaining unit employees' vacation schedules under the facts and circumstances presented in this case.

Issue 3: Article XVI - Holidays

Under Article XVI, Section 16.01 of the current contracts, bargaining unit employees are entitled to twelve holidays, including one personal day, with full pay, in addition to a holiday with full pay for one "special day or National Day of Mourning per calendar year, as declared by the President of the United States or the Governor of the State of Ohio."

The Employer seeks to delete the provision which grants bargaining unit employees an additional holiday for a day of mourning as declared by the U. S. President or Governor of Ohio. The Union is opposed to the Employer's proposal, and it desires two additional personal days for the bargaining unit employees.

The Union asserts that its proposal is reasonable and "within the average" when compared to comparable jurisdictions. The Employer maintains that twelve holidays is "right on" with other comparable jurisdictions and there is no basis for a modification. It points out that all other City employees, including those represented by AFSCME, are afforded the same

holiday schedule. The Employer also notes that the bargaining unit employees receive ten hour holidays, while other units only receive eight hour holidays. The Employer desires to eliminate the Day of Mourning holiday in order to avoid confusion associated with the granting of such a benefit.

The Union has proposed that the language “if possible” should be removed from Article XVI, Section 16.03(2) of the contracts. The Union has also proposed to delete the provision contained in Section 16.03(3) that provides for the forfeiture of unused holiday leave. The Employer is opposed to the Union’s proposed modifications to Section 16.03 of the contracts, and it seeks to maintain the current provisions.

The Union asserts that the “if possible” language should be removed from the contracts in order to protect bargaining unit employees from “glitches” which would prevent them from receiving a timely payment of holiday leave in lieu of time off on December 1. According to the Union, there was a “glitch” three or four years ago. The Employer contends that it “always pays the accumulated holiday time on time, but wishes to maintain the provision that allows it to pay it latter if something happens to prohibit the Employer from paying it at that time.” (Employer’s Pre-Hearing Statement, at 9). The Employer points out that it must have a “legitimate reason” for not paying accumulated holiday hours on time. Furthermore, the Employer notes that Section 16.03(2) allows bargaining unit employees to sell back one-half of their holidays, a benefit not offered by most cities.

In regard to Article XVI, Section 16.03(3) of the contracts, the Union is simply attempting to avoid the forfeiture of vacation time. According to the Union, requests for time off may not be confirmed by the Employer due to various reasons. "Therefore the time if not available to the employee can't be used then they should receive compensation." (Union's Pre-Hearing Statement). The Employer asserts that the Union's proposal to carry over thirty hours of unused holiday leave after April 1 and then subsequently pay employees' at their rates of pay during the course of the year would increase its costs due to the fact that those holidays would be paid at a new higher rate after April 1, the date upon which bargaining unit employees have traditionally received pay increases. Furthermore, the Employer would be liable to pay more time out in the following year as a result of employees not utilizing their accumulated holiday leave. Moreover, the Employer maintains that the current contract language provides "maximum flexibility to an abnormal benefit."

At the fact-finding hearing, the Union agreed to leave the language currently contained in Article XVI, Section 16.05 as is, and to maintain the "status quo."

Article XVI, Section 16.07 of the parties' collective bargaining agreements currently provides as follows:

Employees working on Thanksgiving (November 28, 2002, November 27, 2003, November 25, 2004) and Christmas (December 25 of each year) shall be compensated at one and one-half (1½) times the employee's regular hourly rate of pay.

The Employer proposes to terminate the practice of paying time and one-half to bargaining unit employees who work on Thanksgiving and Christmas Day. It asserts that there is no basis to pay the bargaining unit employees at the time and one-half rate “due to the fact that these employees already receive a bonus due to the fact that they [are] being paid for one hundred twenty (120) hours instead of ninety-six (96) like all other employees.” (Employer’s Pre-Hearing Statement, at 10). The current contract provision “compounds an abnormal benefit and is totally not necessary.” (Employer’s Pre-Hearing Statement, at 10).

In contrast to the Employer’s position, the Union has proposed the following language for Section 16.07 of the contracts: “Employees working on a designated holiday as provided in section 16.01 shall receive one and one-half times his hourly rate of pay for all hours worked.” The Union asserts that the bargaining unit employees should be compensated at a premium rate of pay if they work on a holiday. According to the Union, such a benefit is afforded employees at comparable jurisdictions.

Final Recommendation

Based upon the evidentiary record presented in this case, it is the fact-finder’s recommendation that the language currently contained in Article XVI, Section 16.01 of the contracts should be maintained in the parties’ new collective bargaining agreements. The fact-finder determines that the holiday leave currently afforded the bargaining unit employees compares favorably to that which is received by employees at comparable jurisdictions. The

fact-finder further concludes that the Employer failed to adequately demonstrate any confusion concerning the granting of a day of mourning. The fact-finder notes that the language pertaining to this issue is clear and unambiguous. As such, it should remain in the parties' new collective bargaining agreements.

The fact-finder also recommends that the parties' should maintain the language currently contained in Article XVI, Section 16.03 of the contracts. There was no showing by the Union that the provision "if possible" which it seeks to remove from the contracts has resulted in any adverse consequences for the bargaining unit employees. Section 16.03(2). In regard to carrying over unused holiday leave after April 1, the Union failed to establish that any bargaining unit employees have forfeited unused holiday leave in the past. As such, the fact-finder concludes that the Union presented insufficient evidence to modify the current carryover benefit afforded bargaining unit employees under Section 16.03 (3) of the collective bargaining agreements.

Finally, the fact-finder recommends that the provision currently contained in Article XVI, Section 16.07 of the contracts should be maintained. At the fact-finding hearing, neither party presented sufficient and persuasive evidence to justify a modification of the current language. Although other comparable jurisdictions such as Bainbridge and the Geauga County Sheriff's Office receive more premium paid holidays, the totality of the evidence is far from persuasive. The fact-finder also notes that the bargaining unit employees receive ten-hour paid holidays as opposed to the standard, eight-hour holiday.

Issue 4: Article XX - Compensatory Time

The Union has proposed that the following provision should be added to Article XX of the parties' collective bargaining agreements:

20.04 The Employee may request payment for any unused compensatory time. Request shall be made fourteen (14) days prior to the requested date of payment.

The Union reasons that its proposal “. . . only provides the option of the employee to request payment for all or part of compensatory time.” (Union's Pre-Hearing Statement). The Union points out that the City of Kirtland also affords its patrol officers the opportunity to cash out their accumulated compensatory time. According to the Union, the Employer's sole argument is that it would be inconvenient to allow bargaining unit employees to cash out compensatory time.

The Employer proposes to maintain the current contract language contained in Article XX. In support of its position, the Employer asserts that it does not want to become a bank for the bargaining unit employees, and it would create an undue hardship on the finance department if the Union's proposal was recommended by the fact-finder. Under the current contracts, employees may request overtime cash payments if they desire to be paid for their overtime work. The Employer contends that the Union's proposal is contrary to the concept of compensatory time and constitutes an abnormal benefit. It points out that most labor contracts do not contain the compensatory time buy out language proposed by the Union. However, it acknowledges that the City of Eastlake allows the buy back of compensatory time once per

year. Finally, the Employer notes that its contract with AFSCME does not contain a compensatory time cash out provision.

Final Recommendation

The fact-finder recommends that the Union's proposed provision regarding the cash out of compensatory time should not be added to the parties' new collective bargaining agreements. At the fact-finding hearing, the Union presented no evidence that any other comparable jurisdiction affords its employees such broad discretion regarding the cash out of their accumulated compensatory time. Furthermore, no other individuals employed by the City, including employees represented by AFSCME, are afforded such a benefit. The Union's proposal would appear likely to unduly increase the administrative costs for the Employer due to the unlimited opportunity to cash out compensatory time, and the bargaining unit employees were already granted the right to elect overtime, rather than compensatory time, in the first instance.

Issue 5: Article XXI - Hours of Work

In regard to Article XXI, Section 21.01 of the contract, the Union has proposed language which provides that full-time patrol officers will be offered overtime work prior to such work being offered to part-time employees. Specifically, the Union has proposed the following provision:

Overtime shall be offered to a Bargaining Unit Member first. Selecting a member shall be by seniority requesting the most senior officer in his/her classification to work overtime. Should the member refuse or accept to work, he/she would go to the bottom of the seniority list, creating a rotation of the list. Should no full-time member accept the overtime, the Employer may select a part-time employee to work the overtime.

The Union asserts that it is “obvious with the current language that the part[-]time patrolman [sic] have an impact on the full[-]time officers quality of life.” (Union’s Pre-Hearing Statement). Furthermore, “the choice being given to part[-]time officers takes away any opportunity of the full[-]time officer to receive any additional income.” (Union’s Pre-Hearing Statement). The Union acknowledges that “part[-]time patrolmen do contribute to the operation of the department but it’s a volunteer choice without obligation.” (Union’s Pre-Hearing Statement). The Union further asserts that its proposed contract language protects the patrol officers’ classification.

The Union has also proposed that the following provisions should be added to Article XXI of the parties’ collective bargaining agreements:

- 21.05 Patrolman, Sergeants’ Bargaining Unit Member shall work four (4) consecutive days of ten (10) hours, with three (3) consecutive days off. Dispatchers shall work five (5) consecutive days off. An exception shall be an employee working a swing shift as scheduled with the Police Department’s present practice.
- 21.06 The Employer shall not modify or charge [sic] a member’s schedule to avoid payment of overtime.

The Union points out that its proposed Section 21.05 language simply defines the work schedule which is currently in effect. Furthermore, the patrol officers have been scheduled to work ten hour days since 1980. The Union desires to “lock in” the current work schedule. Finally, the Union asserts that the purpose of its proposed Section 21.06 contract provision is to “avoid random schedule changes [by the Employer] with the purpose to avoid payment of overtime.” (Union’s Pre-Hearing Statement).

The Employer is opposed to the Union’s proposal to add language to Section 21.01 of the contract which would require it to offer overtime work to full-time employees prior to offering such work to part-time employees. The Employer asserts that the Union’s proposal is extremely expensive and such a provision would require it to pay time and one-half to employees for most of the hours that part-time employees have worked due to the fact that full-time employees would elect to work those hours on an overtime basis. Traditionally, the Employer has had the ability to determine when overtime is paid and worked. The Union’s “. . . proposal runs completely counter to the Employer’s ability to run its department in a reasonable fashion.” (Employer’s Pre-Hearing Statement, at 12). The Employer points out that the use of part-time employees by the department “allows for efficiency.”

According to the Employer, there is “plenty of overtime to go around and the bargaining unit cannot work it all.” The bottom line is that “nobody is stiffed on overtime,” and the “bargaining unit is getting a bunch of overtime.” The Employer points out that “[n]o

other contract in this area has this type of a provision.” (Employer’s Pre-Hearing Statement, at 12).

The Employer proposes to modify Article XXI of the parties’ collective bargaining agreements by adding Section 21.05 “. . . to limit the payment of overtime to hours worked including only vacation, holiday and compensatory time in the calculation of overtime.” (Employer’s Pre-Hearing Statement, at 12). Specifically, Section 21.05 shall provide as follows: “Only vacation, holiday, and compensatory time shall count in the calculation of overtime.” The Employer desires to limit sick leave abuse by excluding it from the computation of overtime. According to the Employer, “[t]his is a common practice and it is found in most labor contracts.” (Employer’s Pre-Hearing Statement, at 13). The Union is opposed to the Employer’s proposal to exclude sick leave from the computation of overtime.

The Employer is opposed to the Union’s proposed Article XXI, Section 21.05 contract provision. It points out that there is no requirement in the current collective bargaining agreement which requires ten hour days or eight hour days. The Employer asserts that “[t]he standard is forty (40) hours per week or eighty (80) hours bi-weekly.” (Employer’s Pre-Hearing Statement, at 13). Furthermore, the Union’s proposal is not only “rare”, but a “highly restrictive provision” because it would limit the Employer’s ability to alter work schedules when necessary. According to the Employer, the parties agreed to implement ten hour shifts on a non-mandatory basis. It notes that ten hour shifts are not standard, police work shifts, and therefore, should not be included in the new contract.

The Employer is also opposed to the Union's proposed Article XXI, Section 21.06 provision " . . . due to the fact that from time to time the Employer has to change schedules to provide for a necessary level of service." (Employer's Pre-Hearing Statement, at 14). It notes that the Union's proposal regarding this issue is "very rare." The Employer further contends that the Union's proposal would require it to pay overtime for virtually all services provided by an employee who is not working his or her regular workweek. The Employer also asserts that the Union's proposal would "destroy the department's schedule and wreck the budget," and would result in serious administrative problems for the department. As such, the Union's proposal to add Section 21.06 to Article XXI of the parties' collective bargaining agreements should not be considered by the fact-finder.

Final Recommendation

For the following reasons, it is the fact-finder's recommendation that both parties' proposed contract provisions should not be added to the new collective bargaining agreements. Section 21.05 proposed by the Employer is not supported by a majority of the comparable jurisdictions, and there was no showing of sick leave abuse by bargaining unit employees. At the fact-finding hearing, the Union presented no evidence from comparable jurisdictions in support of its proposed Article XXI, Section 21.01 contract language. Furthermore, the Union presented no evidence that any full-time employees have been denied overtime opportunities by

the Employer. Additionally, the Union's proposal would result in a significant increase in labor costs for the Employer.

The fact-finder further concludes that the Union presented insufficient evidence that a provision is necessary to establish a permanent, ten-hour work day schedule for the patrol officers. The fact-finder notes that such a work schedule is not standard among police departments in the area. Additionally, there is no evidence that the proposed incorporation of the parties' current practice to utilize a ten-hour work day schedule is justified.

Finally, based upon the evidentiary record presented in this case, the fact-finder determines that the Union's proposed Article XXI, Section 21.06 contract language would create both economic and administrative hardships upon the Employer. There was also no showing that the Employer altered work schedules for the primary purpose of overtime avoidance.

Issue 6: Article XXII - Court Time

Article XXII contained in the parties' current collective bargaining agreements provides as follows:

- 22.01 When employees are required to appear in court on scheduled time off, as a result of their employment with the department, to testify, or appear in their official capacity, they shall be entitled to a minimum of four (4) hours compensation at one and one-half . . . times the regular rate.

The Employer has proposed to modify the above provision by reducing the number of minimum call-in hours from four to two at the time and one-half rate of pay. According to the Employer, guaranteeing an employee six hours of pay for an appearance in municipal court which may take only fifteen to twenty minutes is an outrageous and excessive benefit. The Employer desires to reduce the number of call-in hours to reflect a more reasonable payment to the bargaining unit employees.

The Union proposes to maintain the language currently contained in the collective bargaining agreements, and it is opposed to a reduction in the minimum number of call-in hours for court appearances proposed by the Employer. It points out that Article XXII of the contracts only applies to off-duty employees.

Final Recommendation

The fact-finder recommends that there should be no changes to Article XXII of the parties' new collective bargaining agreements. At the fact-finding hearing, the Employer presented insufficient evidence to warrant a reduction in the minimum number of call-in hours for court appearances from four to two hours. The Employer presented no evidence in support of its assertion that the duration of court appearances by bargaining unit employees are only fifteen minutes in length. Furthermore, the fact-finder notes that patrol officers employed by several comparable jurisdictions, such as Kirtland, Mentor-on-the-Lake and Chester Township, are also afforded a minimum of four call-in hours for court appearances.

Issue 7: Article XXIV - Uniform Allowance

Currently, patrol officers employed by the City are afforded an annual uniform allowance of \$750.00, and dispatchers receive a uniform allowance of \$400.00 per year.

In its Pre-Hearing Statement, the Union proposed to increase the uniform allowances for patrol officers and dispatchers to \$1,000.00 and \$600.00 per year, respectively. However, at the fact-finding hearing, the Union proposed a uniform allowance increase of \$100.00 in the first year of the contract and \$50.00 in both the second and third years of the new collective bargaining agreements. Testimony was presented at the hearing by a patrol officer in support of the Union's position that its proposed increase in the annual uniform allowance was necessary.

The Employer has proposed an increase of \$50.00 per year in the uniform allowance afforded patrol officers. It is opposed to the significant increase proposed by the Union because most of the patrol officers have not "maxed out" their annual uniform allowance. The Employer points out that an employee's annual uniform allowance is placed in an escrow account and the balance is carried over at the end of each year. Furthermore, the Employer notes that it purchases the initial uniforms issued to the bargaining unit employees.

At the fact-finding hearing, the parties mutually agreed that the annual uniform allowance for dispatchers should be increased by \$25.00 per year.

Final Recommendation

Based upon the evidentiary record presented regarding the issue of uniform allowance, it is the recommendation of the fact-finder that Article XXIV of the collective bargaining agreement for the patrol officers should be modified to incorporate the Employer's proposal: \$800 in the first year, \$850 in the second year, and \$900 in the third year. In support of such a recommendation, the fact-finder notes that many of the patrol officers had significant balances in their respective uniform allowance accounts as of the date of the hearing. Furthermore, the Employer's proposed increase results in an annual uniform allowance for the patrol officers which is comparable to that afforded their counterparts in surrounding jurisdictions. Moreover, the Union presented insufficient evidence in support of the substantial increase in the patrol officers' uniform allowance it sought under proposal.

Issue 8: Article XXV - Insurances

At the fact-finding hearing, the parties mutually agreed to language on this article and withdrew the issue concerning insurances from further consideration by the fact-finder.

Issue 9: Article XXVI - Rates of Pay

The Union has proposed the following wage rate increases for the bargaining unit employees:

Effective April 5, 2005	8%
Effective April 6, 2006	4%
Effective April 7, 2007	4%

The Employer has proposed the following wage rate increases for the bargaining unit employees effective upon the execution of the contract:

First Year	3%
Second Year	3%
Third Year	3%

According to the Union, the patrol officers currently receive a wage rate which is nine percent (9%) lower than that which is afforded their counterparts at comparable jurisdictions. Specifically, patrol officers employed by the City received \$49,420.80 in 2005, while the average for the Union's cited comparable jurisdictions was \$53,989.00 per year. The Union also points out that the deputies at the Geauga County Sheriff's Office received a nine percent (9%) wage rate increase as a result of the award by arbitrator Harry Graham.

The Employer asserts that its proposal on wage rate increases constitutes the "normal raise granted to most employees in the State." (Employer's Pre-Hearing Statement, at 18). Furthermore, the consumer price index has been less than three percent for the last three years. It acknowledges that the bargaining unit employees did not receive a raise last year, and therefore, they are certainly entitled to a raise in 2005. However, the Employer points out that

unlike the bargaining unit employees, all other City employees went two years without a raise. As a result, the bargaining unit employees are one wage increase (3%) ahead of all the other employees of the City. The Employer maintains that the wage rate afforded bargaining unit employees is “not that far off” from the wages received by employees at comparable jurisdictions. According to the Employer, the average wage rate for patrol officers in its comparable jurisdictions was approximately \$48,000.00 per year. The Employer points out that Chardon is located in Geauga County and it is “not a high priced suburb.” In regard to the issue of wages, the Employer indicated that there is “no retroactivity unless ordered by the fact-finder.”

Under the current collective bargaining agreements, there is no specified rank differential between patrol officers and sergeants. The Union has proposed a provision which states that “Sergeants shall receive a 15% wage differential from the top Patrolmen wage.” According to the Union, the sergeant employed by the City currently receives \$52,540.00 per year, while sergeants employed at comparable jurisdictions earn an average annual wage of \$60,819.00.

The Employer is opposed to the creation of a wage differential of fifteen percent between the patrol officers and sergeants. It points out that the current wage rate differential between the aforementioned positions is approximately ten percent. The Employer asserts that such a differential is sufficient given the size of the police department and the fact that the sergeant supervises a small number of employees. According to the Employer, a fifteen

percent rank differential is “not the standard,” and the rank differential for jurisdictions located in Cuyahoga County is approximately twelve percent. However, the Employer “doesn’t mind an upward adjustment [in the rank differential] over time.” The Employer also notes that “everybody supervises the dispatcher.”

At the fact-finding hearing, the Union withdrew its remaining proposals pertaining to Article XXVI of the parties’ collective bargaining agreements with the exception of the issues concerning compensation for field training officers and officers-in-charge. Article XXVI, Section 26.09 of the current agreement provides as follows: “[e]mployees serving as field training officers shall be paid twenty dollars (\$20.00) per week. Such payments shall be prorated for any partial weeks worked. Field training officer pay must be preauthorized by the Police Chief or his designee.”

The Union has proposed to increase field training officers’ pay from \$20.00 per week (50 cents per hour) to \$2.00 per hour. The Employer is willing to increase field training officers’ pay, however, an increase from \$20.00 to \$80.00 per week is “too much” and clearly unreasonable. At the fact-finding hearing, the Employer indicated that it would be amenable to increase field training officers’ pay to \$1.00 per hour.

The Union has proposed that the following provision should also be added to Article XXVI of the collective bargaining agreement for patrol officers: “Patrolmen who work in the ‘officer in charge’ position, shall be paid two dollars (\$2.) in addition to his or her base hourly rate of pay.” The Employer is “adamantly opposed” to the Union’s proposal regarding

officer-in-charge pay, and maintains that such a benefit is clearly excessive. The Employer points out that the senior patrol officers in charge are “only in charge of themselves and one other patrol officer.” The Union acknowledges that an officer-in-charge supervises only one other patrol officer and a dispatcher.

Final Recommendation

Based upon the evidentiary record presented in this case, the fact-finder recommends the following wage rate increases, retroactive to 12:01 a.m. April 4, 2005, for both the patrol officers and dispatchers bargaining units:

First Year	3%
Second Year	3%
Third Year	3%

The record reveals that non-union employees of the City received 4% wage rate increases this year. However, the record also clearly establishes that all other City employees, both union and non-union, received no wage rate increases during the previous two years, whereas the bargaining unit employees only went one year without a wage rate increase. The fact-finder also notes that the annual wage rates afforded patrol officers at four of the seven comparable jurisdictions (Chester Township, Kirtland, Mentor-on-the-Lake and Middlefield) were less than eight hundred dollars per year higher than the annual wage rate received by the City’s patrol officers. Based upon the totality of the evidence, the fact-finder determines that retroactive wage rate increases of three percent per year will allow the bargaining unit

employees to maintain their relative standing among comparable jurisdictions in regard to the issue of wages.

The fact-finder further recommends that language be incorporated in the first year of the parties' new collective bargaining agreement which reflects the current rank differential between the patrol officers and sergeant. At the fact-finding hearing, the Union presented insufficient evidence in support of its position that the rank differential should be fifteen percent (15%). The fact-finder notes that the average rank differential between patrol officers and sergeants employed by the Geauga County Sheriff's Department, Chester Township and Kirtland is approximately 13%. In light of the rank differential received by the sergeants employed at the aforementioned jurisdictions, the fact-finder concludes that the rank differential for the sergeant position shall be increased to 11% in the second year of the agreement, and increased to 12% in the final year of the agreement.

Based upon the evidentiary record presented, it is the fact finder's recommendation that the new agreement provide officer-in-charge pay of \$1 per hour in addition to their base wage rate. The fact-finder further recommends that the pay afforded field training officers should be increased to \$1.25 per hour based upon the evidentiary record presented in this case.

Issue 10: Article XXVII - Educational Benefit

The Employer has proposed that the current contract language contained in Article XXVII of the collective bargaining agreements should be maintained. At the fact-finding hearing, the Union withdrew its proposal regarding educational benefits. Accordingly, the current contract language shall be maintained in the parties' new collective bargaining agreements.

Issue 11: Article XXXIV - Grievance Procedure

The Employer seeks to maintain the present practice regarding the parties' grievance procedure. In regard to the arbitration procedure, the Employer has proposed language which sets forth a permanent panel of arbitrators to be utilized for the selection of an arbitrator. (City Ex. 5). According to the Employer, there is a "trend toward panels." The Employer has also proposed the following "loser pay" provision in connection with the arbitration procedure:

The fees and expenses of the arbitrator and the cost of the hearing room, if any, shall be borne by the party losing the arbitration. All other costs shall be borne by the party incurring them. Neither party shall be responsible for any of the expenses incurred by the other part. In the event of a "split award," the arbitrator shall split his fees and expenses equally.

At the fact-finding hearing, the Union indicated that it was "OK with the grievance procedure with the exception of the panels and the loser pay provisions [proposed by the Employer]." The Union is opposed to the Employer's proposal regarding an arbitration panel

because it does not want to be “locked into” particular arbitrators. The Union is also opposed to the “loser pay” arbitration provision proposed by the Employer because it believes that “the City would be receptive to deal if it knows that it will pay one-half” of the arbitrator’s fees and expenses.

Final Recommendation

It is the recommendation of the fact-finder that the grievance procedure set forth in Article XXXIV of the parties’ collective bargaining agreements shall remain unchanged in the new contracts with two modifications. First, the last sentence of Section 34.04 (4) shall be deleted. Second, Article 34 shall incorporate the Employer’s proposed arbitration procedure set forth in Employer Exhibit 5, with the following changes.

At the fact-finding hearing, the Employer presented insufficient evidence regarding a necessity to establish a panel of permanent arbitrators. The fact-finder notes that most of the collective bargaining agreements in comparable jurisdictions referenced by the Employer do not have provisions which establish a permanent panel of arbitrators. Therefore, Section .07 of Exhibit 5 shall not be included in the final agreements.

Furthermore, the fact-finder determines that the Employer’s position regarding the implementation of a “loser pay” provision in the arbitration procedure is unpersuasive. Based upon the evidentiary record, the fact-finder concludes that a contract provision which provides that an arbitrator’s fees and expenses shall be equally paid by the parties is appropriate. As

such, Section .05 of Employer Exhibit 5 shall not be included in the final agreements. Rather, the Union's proposed cost sharing language shall be inserted in lieu of Section .05.

Issue 12: Article XXXV - Discipline

The Employer has proposed a disciplinary procedure which mirrors the provisions contained in its contract with employees represented by AFSCME. (City Ex. 4). The Employer also asserts that its proposed disciplinary procedure is similar to that which is contained in numerous other collective bargaining agreements throughout the area. Furthermore, the Employer's proposal affords the necessary protections for the bargaining unit employees and it allows for binding arbitration for discipline if the Union concurs.

The Union has proposed a disciplinary procedure which addresses various issues such as the assessment of discipline, a progressive discipline policy, notification, and disciplinary hearings.

Final Recommendation

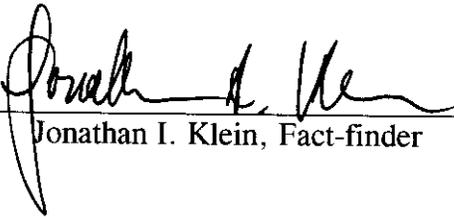
Based upon the evidentiary record presented regarding the issue of discipline, it is the recommendation of the fact-finder that Article XXXV of the parties' collective bargaining agreements should reflect the Employer's proposed disciplinary procedure. In support of such a recommendation, the fact-finder notes that the disciplinary procedure proposed by the Employer is currently utilized in the contract between the City and employees represented by AFSCME. At the fact-finding hearing, the Union presented no evidence that there have been

any difficulties regarding the application or administration of the disciplinary procedure set forth in the AFSCME contract referred to above.

Issue 13: Article XXXVI - Duration

At the fact-finding hearing, the parties mutually agreed that the duration of the new collective bargaining agreements shall be three years. Accordingly, Article XXXVI of the collective bargaining agreements shall reflect the parties' understanding, and provide:

36.01 This Agreement shall become effective at 12:01 a.m. on April 4, 2005, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, April 3, 2008.


Jonathan I. Klein, Fact-finder

Dated: September 2, 2005