STATE EMPLOYMENT
RELATIONS BOARD

2006 FEB 15 A 11: 34

STATE EMPLOYMENT RELATIONS BOARD

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	:	CASE NOS. 05-MED-09-1042, 05-MED-09-1043 05-MED-09-1044
UNION	:	
and	:	
CITY OF NORTON	:	
EMPLOYER	:	

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

I. BERNARD TROMBETTA
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Fact Finder

I. DATES AND PLACE OF HEARING

This hearing was held on January 12th and January 17th 2006 at the Norton Community Center in Norton, Ohio. The parties agreed to the second day of hearing in writing.

II. PARTIES TO THE HEARING

The parties are the Ohio Patrolmen's Benevolent Association, hereinafter referred to herein as the "Union" or "OPBA" and the City of Norton, hereinafter referred to as the "City".

III. APPEARANCES

The following persons appeared on behalf of the respective party as noted:

For The Union

S. Randall Weltman, Attorney for the Union
John W. Canterbury, Director, OPBA
Gary C. Rafferty, Dispatcher, City of Norton
Thad Hefe, Lieutenant, Norton Police Department
Robert Bari, Patrolman, Norton Police Department

For the City

Nicholas Codrea, Labor Consultant
Claude Collins, Administrative Officer, City of Norton
Greg Carris, Police Chief, City of Norton

IV. WITNESSES

For the Union

John W. Canterbury, Director, OPBA
Gary Rafferty, Dispatcher
Thad Hefe, Lieutenant

For the City

Jeanne Zerga, Finance Director, City of Norton
Greg Carris, Police Chief
Claude Collins, Administrative Officer

V. INTRODUCTION

This is a multi-group bargaining unit and consisting of the full-time and probationary patrol officers (11); sergeants and lieutenants (4); and dispatchers (4). The unit is represented by the Ohio Patrolmen's Benevolent Association, the sole bargaining representative. Supervisors are excluded pursuant to Section 4717.01 R.C.

The unit has been organized for over 20 years. The current agreement expired on December 31, 2005.

The City of Norton lies in southern Summit County near to Akron, Barberton, and Copley. It has a population of 11,648 and characterizes itself as a lower middle class, suburban bedroom community. A 2% city income tax raises $3.398 million dollars in tax dollars per year.

Its budget dollar is roughly allocated as follows: 71.85 for the general fund, 17.95 for the road repair fund, 8.25 for the debt retirement fund, 1.2 for the capital projects fund and .75 for the building projects fund.

The City argued that in previous years it operated on credit and its books had been erroneous. A new Finance Director began to reverse former policies about 2 years ago. An increase in the

municipal income tax went into effect in 2005.

The parties met and bargained 3 times. Many issues were resolved, but 9 issues were submitted to fact finding in accordance with the statute.

The City claimed that it was in need of relief in order to catch up with the overspending of previous years. It argued that the fire fighters accepted a 1-year contract with no wage increase and maintaining the current health insurance benefits and costs and its AFSCME units accepted wage increases of 1%, 2% and 2% and acceptance of the City's proposals on health insurance. The City argued that these contracts established pattern bargaining and were binding herein. The Fact Finder was later informed that both tentative agreements were rejected.

V. ISSUES PRESENTED

Nine issues were presented for fact finding. They are:

1. Article 16; Duty Hours- the Union requested that a full-time dispatcher be assigned to the afternoon shift;
2. Article 17; Overtime and Court Time- the Union requested the deletion of the clause limiting the payment of compensatory time to those times in which payment would not result in overtime benefits;
3. Article 19; Vacation Pay modifications- the Union requested two changes to this article. First, the elimination of the 2 tier vacation benefits clause, and

second, permitting an employee with 22 or more years seniority to accrue vacation time up to 480 hours.

4. Article 26; Employee Compensation; The Union requested increases of 3.5% for the patrolmen and officers and 5% for the dispatchers in each of the three years of the contract.

5. Article 27; Longevity Pay; the City proposed to increase the longevity compensation by 0%, 6%, 0% for all of the members of the bargaining unit. The Union did not seek an increase in this allowance.

6. Article 29; Uniform Allowances; the Union sought an increase of $100 per year in the current $962 for patrol men and officers and $708.50 for dispatchers. The City countered by proposing keeping the allowance at current levels and prorate the yearly allowance upon separation.

7. Article 30; Health and Life Insurance; the City proposed extensive changes to the plan in costs to the employee. The City's proposal also contained a Spousal Coverage limitation. The Union countered by seeking an increase in the life insurance benefit from $25,000 to $40,000.

8. Article 33; Part-Time scheduling; the Union expressed its concern over part time officers working more than 32 hours in any week and sought to impose a time limitation on all part time officers.

9. Article 34; Deletion of Section 5 which mandated the layoff of all part time employees before a full time employee could be axed. (This issue was withdrawn by the City, its proponent, at the commencement of the hearing. The parties agreed to the withdrawal in writing).

VII. THE RECOMMENDATIONS

a. Factors Considered

The Fact Finder considered all relevant and reliable information introduced by the parties in support of their respective positions. In passing it must be observed that both parties did an excellent job in these presentations. The evidence was voluminous and the arguments compelling.

In addition to the arguments of the parties and the documentary evidence, the Fact Finder, in accordance with Rule 4117-9--5(J), considered the following:

a. Past collectively bargained agreements between the parties;

b. Comparison of unresolved issues with other public employees doing comparable work;

c. Consideration of factors peculiar to the area and classification;

d. The interest and the welfare of the public;

e. Ability of the employer to finance and administer the issues proposed;

f. Effect of the adjustments on the normal standard of public service;

g. Lawful authority of the employer;

h. Stipulations between the parties;

I. Any other factors not listed above which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

b. Exhibits Introduced At The Hearing

The parties introduced the following documents and writings, all of which were duly identified and admitted into evidence;

Joint Exhibits

Exhibit 1:	Collective Bargaining Agreement
Exhibit 2:	Comprehensive Annual Financial Report- 2004

Union Exhibits

Exhibit 1:	Benefits Comparison Chart- patrol officers
Exhibit 2:	Benefits Comparison Chart- dispatchers
Exhibit 3:	SERB Wage Settlement Report
Exhibit 4;	Excerpt from Barberton Herald of 11/23/05 And the 2005 State of the City Address
Exhibit 5:	Excerpt from Joint Ex. No. 2
Exhibit 6:	Conciliation Report
Exhibit 7:	Comparison of Medical Benefit Plans
Exhibit 8:	Comparison with IAFF medical plan offer
Exhibit 9:	Comparison of Insurance Benefits

The following exhibit was submitted after the closing of the hearing with the permission of the Fact Finder:

Exhibit 10:	Selected Time Sheets for Part Time Patrolmen

City Exhibits

Exhibit 1:	Copy of Section 4117.08 R.C.
Exhibit 2:	Copy of Beck decision
Exhibit 3:	Copy of Harry Graham's Conciliation Award
Exhibit 4:	Compensated Encumbrances
Exhibit 5:	10 year comparison
Exhibit 6:	10 year Total Compensation
Exhibit 7:	Wage Increase Comparison
Exhibit 8:	Real & Nominal Wage Increases
Exhibit 9:	Norton & AFSCME TA
Exhibit 10:	Summary of AFSCME TA
Exhibit 11:	Conciliator's Award
Exhibit 12:	Fact Finder's Recommendations Norton & OPBA- 1999
Exhibit 13:	2002 Income Tax Returns
Exhibit 14:	Norton Demographics Data
Exhibit 15:	Cost out Proposal
Exhibit 16:	General Fund Status
Exhibit 17:	Email regarding IAFF TA Appendix A- Norton Health Care Plan Appendix B- Norton Spousal Questionnaire Appendix B- Norton Spousal Employer Questionnaire
Exhibit 18:	Kent/FOP CBA (expired 10/31/05)
Exhibit 19:	Norton COBRA Actuarial Estimate
Exhibit 20:	2003 Nationwide All Employee Health Insurance
Exhibit 21:	Comparison of Health Insurance Costs- Local
Exhibit 22:	2004 SERB Public Sector Health Insurance Costs
Exhibit 23:	2005 Nationwide Health Benefits Survey
Exhibit 24:	Factors To Be Considered By Fact Finder
Exhibit 25:	2005 Schedule
Exhibit 26:	2005 Actual Pay Time Sheets
Exhibit 27:	Summary of Pay Periods & Times

c. Issues Submitted To Fact Finding

ISSUE NO. 1

ARTICLE 16- DUTY HOURS

Union Position: The Union sought to amend Section 4 by the addition of language that would require the City to employ a full-time dispatcher to fill

the afternoon shift, which is now covered by a part-time, non-bargaining unit dispatcher.

City Position: The City rejected the Union proposal on the grounds that it was not a proper subject for fact finding and that the Union failed to present the proposal in contractual language.

Discussion: Some time during November 2004, the afternoon dispatch shift was filled by a part-time dispatcher. The Union did not file a grievance over the part-time staffing.

This is a proper issue for collective bargaining and the Union's proposal satisfied the statutes requirements.

The City defended the continued use of a part-time dispatcher on the grounds that no full-time dispatcher bid on the afternoon shift, but that it intends to fill the position with a full-time dispatcher as soon as possible.

It is 14 months and the position is still staffed with a part-time, non-union dispatcher.

The Contract (Art. 34, Section 8) grants the City the authority to hire a minimum of two part-time dispatchers. There is no limit on the number of part-time dispatchers that the City may hire and no limits on the number of shifts a part time dispatcher may work, unlike the limiting provisions made for patrolmen. (See Sections 5 and 6).

It appears that the City has been using part-time dispatchers for at least 3 years and there is nothing in the present contract to prevent the City to cover the afternoon shift with a part-time dispatcher.

The Union's position is understandable. Part-time dispatchers are not part of this unit. However, the recently expired contract recognizes the City's right to hire and use part-time dispatchers. This is one of the criteria that a Fact Finder is obliged to consider in making a recommendation.

The Fact Finder accepts the Police Chief's statement that a full time dispatcher will be hired as soon as possible at face value. The Fact Finder also recognizes that 14 months have lapsed since the change.

RECOMMENDATION: The Fact Finder recommends against the adoption of the Union's proposal.

ISSUE NO. 2

ARTICLE 17- OVERTIME PAY AND COURT TIME

Union Position: This is a Union proposal and seeks to amend Section 5 by the addition of language making it mandatory that compensatory time requests be granted unless the City is unduly burdened. It added that having to pay replacement employees at the overtime rate does not constitute an undue burden.

City Position: The City rejected the proposal on the grounds that it cannot afford to pay unnecessary overtime.

Discussion: In November 2004 the Sixth Circuit handed down its decision in the Beck v. City of Cleveland, case, originally decided by Mag. Jack Streepy of the U.S. District Court, Northern Ohio District. The lower court granted the City's motion for summary judgment on the complaint that the FLSA prevents a municipality to refuse to honor a police officer's timely leave request solely to avoid payment of overtime to substitute police officers. The Appellate Court ruled the payment of overtime and granting a request for compensatory time does not qualify as being unduly disruptive, and added that a city cannot deny compensatory leave solely for financial reasons. The decision appears to shift the burden from the employee requesting leave to the employer who must now establish that granting the request would cause undue disruption in services due to severe financial constraints. This burden will be difficult for public employers to meet.

The financial condition of the City of Norton by no means equates with the financial condition of the City of Cleveland.

The language of the recently expired agreement limiting "Use of compensatory time [to] the Chief's discretion and must not result in the payment of overtime" appears to be dead-on with the rationale of Beck.

The City's argument that it cannot afford additional overtime for payment of compensatory time is not convincing and this is true, even though there does not appear to be an overwhelming need for change. The Union's witnesses admitted that between 95% and

98% of the requests for time-off are honored, and apparently honoring those requests did not create a financial burden upon or disrupt City services.

The Beck decision is certainly close enough to the language of the expired agreement to draw a parallel. The time to clearly elucidate an employee's right to receive compensatory leave is ripe. Unless the public employer can prove that payment of overtime to replacement officers constitutes either an undue burden or will disrupt services an employee will be entitled to take such leave.

RECOMMENDATION: The Fact Finder recommends the deletion of the second sentence of Section 5. It is to be replaced with the following: "Compensatory time requests shall be granted unless by granting the same, the City will sustain an undue burden or cannot provide necessary services".

ISSUE NO. 3

ARTICLE 19- VACATIONS

Union Position: The Union sought a) to delete the 2-tier vacation program appearing in Section 1; and b) modify Section 4 to permit employees with 22 or more years of seniority to bank or rollover accrued vacation time up to 480 hours.

City Position: The City argued that the 2-tier vacation program has been in effect since 1992 and rejected any change in current language. Additionally the City opposed accumulating vacation time on the grounds that it has made no provisions for additional unfunded compensated absences encumbrances and cannot afford them.

Discussion: The 2-tier vacation system may have been placed in effect in 1992, the cut-off date in the recently expired agreement uses 2000 as the cut-off date. Apparently, the cut-off date was modified in a prior contract.

The original 2-tier system evolved as the result of an agreement between the parties. In a 1997 conciliation hearing, the Union, then represented by Nicholas Codrea, now the City's representative, argued against retention of the system on the grounds of unit morale.

The Conciliator found that 2-tier compensation systems are,

indeed, notoriously destructive of morale and penalize some simply on the basis of their date of hire. He also found, however, that the Union agreed with this system some years before and it now seeks to repudiate its agreement while offering no quid-pro-quo in return.

As did Conciliator Graham in 1997, this Fact Finder also believes that members of the same group should not be penalized on the basis of the date of hire. The members of the department work the same shifts, carry out the same duties and are exposed to the same dangers. The system is divisive and does not make for a satisfied work force. Nevertheless, the Union agreed to the system some years ago. Its inclusion was not the result of a conciliator's award, but an agreement. The City bargained this limitation into the agreement and is not willing to surrender it without an economic concession from the Union in return. The Union has offered no concessions. It is difficult to establish a dollar amount on the elusive "better morale" promise of the Union, and the City is apparently willing to accept the risk of lower morale at the expense of significant savings, particularly as new hires are employed.

In order for the Fact Finder to recommend a change in existing language, the proponent must establish that retention of the particular clause is unjust or in clear error. The present vacation system severely limits newer employees vacation rights, but is not unfair. New hires know, at the time of their hire, the precise length of their vacation benefit. It is only after hire when the newer hires discuss "shop talk" with their fellow officers that they begin to feel shortchanged and while it is not known what, if anything, the City gave up to gain this tiered system, it has been in at least 4 collective bargaining agreements. The burden is now falls upon the proponent for change to establish error, injustice or inequity.

The second part of the proposal seeks to reward employees with 22 or more years seniority by permitting them to accrue vacation time from year to year up to 480 hours. Presently, employees forfeit vacation time after 1 year, forcing the employee to either use or lose the vacation time.

The request to accrue this right goes far beyond a simple benefit accrual. It obviously is intended as a prelude to retirement or separation when the accrued time is "cashed in", usually at the rate prevailing at that time and not at the time the particular benefit was earned. The City is then faced with costs for which it did not budget.

A clear need for change was not proven. Vacation time was originally intended as a respite from the daily rigors of employment. Unless the parties agree on the right to accrue and then cash-in this benefit, there is no need to change this right.

More importantly, on the one hand, the Union is seeking to abolish a tiered system of vacation benefits, and on the other hand to introduce a tiered system of vacation accrual rights for employees with the greatest service time.

The Fact Finder is opposed to tiered benefit packages regardless of the proponent. The Fact Finder finds can find no difference between accrued vacation rights for a 22 year employee and that of an employee with less seniority.

Recommendation: The Fact Finder recommends against the proposed changes. Current contract language should be retained.

ISSUE NO. 4

ARTICLE 26- EMPLOYEE COMPENSATION

Union Position: The Union requested wage increases for the patrolmen, sergeants and lieutenants of 3.5% for each of the 3 years and 5% increases per year for the dispatchers.

City Position: The City offered increases of 1%, 2% and 2% to the patrolmen, sergeants and lieutenants and 1%, 2% and 3% increases to the dispatchers.

Discussion: The evidence presented by both sides on this and the following issue was voluminous as one can conclude by referring to the preceding list of exhibits.

During the course of presentation, the City proffered that it had engaged in "Pattern Bargaining" in negotiating settlements with two other unions representing City employees, AFSCME and IAFF. The Fact Finder was later advised that both tentative agreements were rejected by the union members. On this ground alone, the so-called "Pattern Bargaining" was broken and of no validity.

Further, the Fact Finder could find no evidence that the various parties engaged in joint bargaining with the City and certainly did not agree to be bound by the actions of the other. The so called "pattern" settlement with the other unions was widely

different, one union accepting a wage increase and changes to the health insurance coverage with the other union "accepting" no wage increase in Year 1 in return for no changes in health insurance. These facts do not establish a pattern even if the AFSCME and IAFF unions had adopted the "TA"s.

The Fact Finder must look to the factors referred to in Section VI(a) herein, including, but not limited to, the ability of City to afford the requested increases, comparative wages paid by other cities for similar services, past collective bargaining experiences of the parties and the interest and welfare of the public.

A City's primary duty is to deliver services to its residents within the means evidenced by those residents, i.e. taxes. The City argued that it has now righted its finances after a number of years in which it operated primarily on credit, but needed some leeway to recover from those practices. An income tax increase went into effect in January 2005 giving it additional funds with which to deliver necessary services and to pay just and competitive wages to its employees.

In order to deliver necessary services, such as police and fire protection of its residents, the City must hire professional and highly trained personnel. There is a fine line between an inability to pay versus an unwillingness to pay.

A review of all of the Exhibits discloses that the City can afford to pay the members of the three units a reasonable increase in wages and, at the same time, not creating an undue burden upon its citizens. A reasonable wage increase will permit the City to remain competitive with other employers in the immediate area and to permit the bargaining unit members to maintain the same standard of living enjoyed in the past.

In 2005 the CPI rose by approximately 3.5% after a number of years of lesser annual increases. The City is in the middle tier in compensation levels when compared to neighboring cities. Its patrolmen and sergeants are paid less than Twinsburg and Fairlawn, but more than Stow, Hudson, Macedonia and Barberton. (Union Ex. 1). Its dispatchers are approximately at the same levels, higher than Barberton, Fairlawn and Talmadge, but lower than Twinsburg, Cuyahoga Falls, Macedonia and Stow. (Union Ex. 2).

The financial difficulties faced by the City are, at the risk of oversimplification, the usual type faced by most municipalities at one time or another. As a matter of fact, the City appears to have addressed its credit problems and has reduced its debt. There

has been no demonstrated "inability to pay" despite the plethora of exhibits. An increase in compensation paid to its patrolmen, lieutenants, sergeants and dispatchers would not interfere with the City's ability to provide other necessary services to its residents.

Recommendation: In view of the recommendations made in the next issue, it is recommended that the patrolmen and sergeants receive a wage increase of 3% per annum from January 1, 2006. The dispatchers should receive increases of 4%, 3 ½% and 3%.

ISSUE NO. 5

ARTICLE 27- LONGEVITY

City Position: The City proposed increasing the longevity schedule by 6% in the second year with 0% in the first and third years. For a 20+ year employee this would amount to an increase of $66.30 in the second year.

Union Position: The Union did not address longevity as an outstanding issue and claimed that the City's proposal amounted to an Unfair Labor Practice for failing to bargain on the issue.

Discussion: The Fact Finder will not be drawn into the controversy on whether the City's proposal constitutes ULP. Obviously, it was intended as a part of an over-all economic package. Its economic impact is minimal. The Union stated that it would be willing to accept current contract language.

Recommendation: The Fact Finder recommends the retention of current contract language.

ISSUE NO. 6

ARTICLE 29-UNIFORM ALLOWANCE

Union Position: The Union proposed increasing the allowance by $100 in each of the three years of the agreement and argued that the allowance was incrementally increased over the life of past agreements.

City Position: The City was opposed to increasing this allowance and proposed, during argument, that the Fact Finder recommend the adoption of a proration clause in which an employee retiring or terminating for any other reason, return a prorated percentage of the allowance paid during the year, i.e. if the employee separated at the end of June, one half of the annual allowance would be repaid to the City.

Discussion: Regardless of the present interpretation of the purposes of this benefit, it was originally intended to offset uniform costs. Over the years, this benefit has come to be considered as a part of the overall compensation package.

While the Union demanded a $100 per year increase in each of the three years of the contract, it failed to produce any documentation of both costs and the useful life of uniform items. Undoubtedly, uniform costs have increased, but it is doubtful that they have increased beyond the allowances already in place. Over the length of the present contract, the police officers will receive $2,886 and the dispatchers $2,125.50.

Much of the testimony devolved around purchases of weapons and not uniforms, a Glock costs in excess of $525 and that many patrol officers purchase upgrades of City issued weapons. The purchase of a side weapon is the responsibility of the officer and remains the personal property of that officer. Weapon purchases are not specifically mentioned as being covered under this allowance. The agreement specifically refers to uniform costs. Upgrades of City issued rifles for SWAT Team members are a matter of personal choice. No evidence was introduced to reflect upon the necessity of weapon upgrades or the useful life of either a sidearm or rifle.

The City's proposal that the benefit be prorated, other than as already permitted in Section 1 is a "take-back" from an contractually bargained benefit. No evidence was submitted to substantiate the City's need or right to such an proration.

Recommendation: The Fact Finder recommends against any changes to the current benefit and contract language.

ISSUE NO. 7

ARTICLE 30- INSURANCE

City's Position: The City proposed sweeping changes to this benefit. It proposed a graduated

plan for increasing cost sharing, but the biggest changes appear aimed at spousal coverage. Its proposed changes would not begin until January 1, 2006 when preferred and non-preferred prescription expenses, in contrast to generic, would be increased. The full brunt of the proposed changes would occur in mid-2007.

Union Position: On the other hand, the Union appeared ready to recognize that certain changes to coverage and costs were in the offing, but remained opposed to premium sharing and limiting spousal coverage.

Discussion: First, the City has not established a pattern agreement for health care changes. Since both AFSCME and the IAFF rejected proposed "TA"s, these recommendations may be the first to affect city employee.

The Fact Finder recognizes that health care costs must be dealt with differently than as in the past. The pendulum of coverages is, unfortunately, beginning to swing in the direction of higher and higher costs. Neither the City nor the employees have much control over those costs and are victims of the market place.

Costs, particularly prescription expenses, are rising faster than employers can absorb them. This is particularly true in the public sector when the employer has fewer "pass-on" options than in the private sector, and this observance is not intended to trivialize the obstacles faced in that sector. One way to offset some of those costs is to purchase generic drugs, but all drugs are not available in generic form and the costs of generic drugs are increasing.

The City proposed a comprehensive and compassionate plan regarding changes to this coverage. The most burdensome changes will not occur until mid-2007. The Union, quite understandably, remained opposed to premium sharing and changes in spousal coverage, but could not produce its own plan with a cost breakdown.

In general, the Fact Finder is in agreement with the City's proposed changes which are found to be reasonable and necessary, particularly in view of the fact that the raison d'etre for its existence and any municipality's existence is to deliver necessary services to its residents. The changes that were to go into place on January 1, 2006 are too long delayed at this point in time.

The establishment of an IRS section 125 Plan, while laudatory, is not of major significance. For those employees with known and/or relatively frequently incurred expenses, the plan has benefits.

Establishment of the plan, however, is not a major part of any collective bargaining article covering health insurance, but does demonstrate that the City is aware of the predicament faced by its workforce regarding health care costs and is willing to help fend off those increases.

While in agreement with most of the City's proposal, the Fact Finder does, however, question the sweeping nature of the extensive changes sought in spousal coverage. Many households feature working husbands and wives. Benefits may be available to each as a result of that employment, and while the City has addressed the issue of lesser coverage by agreeing to pick-up the differences in coverage as a secondary carrier, the main drawback in the City's proposal occurs when the spouse's premium costs, exceed the premium costs paid under the City's plan. In that instance, the City has declined to pay the difference. Requiring a spouse to obtain employer sponsored health insurance at a greater cost (premium sharing) than applicable herein may cause spouses to quit working or change employment on the sole basis of health care costs.

In such an instance, the bargaining unit member's insurance costs could be expected to skyrocket, particularly in those instances in which the spouse's employer pays little or nothing toward health insurance premium costs. This is fundamentally unfair and flies in the face of benefits earned through years of collective bargaining and not something that this Fact Finder will recommend.

The City could reimburse the employee for the added costs as a secondary carrier expense.

The Union seeks an increase in the face amount of the "group" life insurance from $25,000 to $40,000. Other than being a nice perk, the Union produced no evidence as to either the need for such an increase or the costs thereof. The City is attempting to hold the line on insurance costs, and increasing the benefit on life insurance would not particularly mesh with those objectives, regardless of the cost of the additional premiums.

Recommendation: The Fact Finder recommends the adoption of the City's proposals with these exceptions: the changes which were to go into effect on January 1, 2006 are delayed to May 1, 2006 and increases in premium sharing be paid by the City as a secondary carrier.

The Union's request to increase life insurance to $40,000 is not recommended. The language of Section 5 should be retained.

ISSUE NO. 8

ARTICLE 33- MISCELLANEOUS

Union Position: The Union is seeking a modification to Section 6, limiting the number of hours that a part-time officer can work to 32 hours per week.

City Position: As a counter measure, the City proposed the elimination of Section 6, the result of which would apparently give the City an unlimited right in the scheduling of part-time officers now limited to a collective 16 shifts per week.

Discussion: Understandably, the City likes the flexibility and cost savings that using part-time police officers provides. The Union, on the other hand sees the increased use of part-time, non bargaining unit personnel as an erosion of its position as the sole bargaining agent for full-time officers.

The agreement specifically gives the City the authority to use part-time patrolmen and goes on to limit their numbers only by the proviso that part-timers shall not exceed the number of full-time officers.

The agreement limits the City to scheduling the part-time officers to no more than 16 shifts per week. The burr in the relationship occurs when the part-timers are not scheduled to, but work more than the 16 shift limitation found in Section 6. The Union did not prove that its members were available to work, but were passed over in favor or part-time officers.

Working part-time officers for more than 16 shifts does not, in and of itself, establish a breach of contract, nor does it establish the necessity for a contractual ban against working of any part time officer for more than 32 hours per week.

The agreement provides a mechanism for relief if part-time officers are worked in violation of the contract- the grievance procedure. There was no evidence that a grievance had been filed for a violation of this provision. If there was a history of repeated violations or disregard of arbitration awards, then a change in contractual language would be proper. Based, however, upon the evidence, there does not appear to be any necessity to recommend the contractual changes sought by the Union.

Recommendation: The Fact Finder recommends against any changes to current contract language.

ISSUE NO. 9

ARTICLE 34- LAYOFFS

This proposal was withdrawn by the City and the parties "signed off" on the withdrawal.

Respectfully submitted,

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I. Bernard Trombetta
Fact Finder

SERVICE

A copy of the foregoing was mailed to S. Randall Weltman, attorney for of the Union and Nicholas Codrea, representative of the City by ordinary U.S. Mail this 13th day of February 2006.

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I. Bernard Trombetta