

FACTFINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO

2007 OCT 15 P 12: 25

STATE EMPLOYMENT RELATIONS BOARD

October 12, 2007

In the Matter of:

City of Westlake )

)

Case No. 06-MED-12-1426

and )

)

Police Patrolmen

Ohio Patrolmen's Benevolent Association )

APPEARANCES

For the City:

Gary Johnson, Attorney

Dennis Clough, Mayor

For the Union:

S. Randall Weltman, OPBA Attorney

Andrew Fleck, OPBA Director

Marcel Sorgi, OPBA Director

Dave Carney, OPBA Negotiator

Factfinder:

Nels E. Nelson

## BACKGROUND

The instant case involves the City of Westlake and the Ohio Patrolmen's Benevolent Association. The city is a prosperous suburb located in the northwestern part of Cuyahoga County and has a population of 32,000. The Ohio Patrolmen's Benevolent Association represents the 37 patrolmen employed by the city.

In early 2007, the parties began negotiations for a successor agreement to the one due to expire on February 28, 2007. After five bargaining sessions, the parties reached impasse and the Factfinder was appointed on April 3, 2007. The factfinding hearing was held on July 31, 2007. At the direction of the Factfinder, the parties' chief spokespersons met with him on September 14, 2007, to resolve at least some of the outstanding issues. *When the attempt was unsuccessful, this report was prepared.* The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

## ISSUES

The parties submitted 30 issues to the Factfinder. For each issue the Factfinder will state the positions of the parties, summarize the arguments and evidence they offered in support of their positions, present a discussion of the issue, and provide his recommendation for the resolution of the issue, including suggested contract language.

### 1) Article XII - Workweek/Scheduled Hours, Section 12.03 – Double

Backs - The current contract excludes double-backs due to shift rotation from the overtime requirement of Section 12.01. The union proposes an annual payment of \$300 for employees on the second and third shifts who are required to rotate shifts. The city opposes the union's demand.

Discussion - The Factfinder recognizes the difficulties associated with double backs. Three or four times each year patrolmen on the second and third shifts are required to double back, which means they must work 16 consecutive hours. The Factfinder also acknowledges that patrolmen in Middleburg Heights receive an hour of compensatory time for a double-back.

Despite these facts, the Factfinder does not recommend the union's demand. All of the city's patrolmen are well compensated and those on the second and third shifts, the only ones who are required to rotate shifts, receive a shift differential. In addition, the comparable data does not support the union's demand.

Recommendation - The Factfinder rejects the union's demand.

2) Article XXII - Workweek/Scheduled Hours, Section 12.04 –

Schedule Changes (New) - The union proposes a new contract provision that would require the city to make “every reasonable effort” to use part-time patrolmen to avoid changing a patrolman’s schedule. The city opposes the union’s demand.

Discussion - While the Factfinder understands the union’s concern about schedule changes, he does not recommend its proposal. He believes that the “every reasonable effort” standard imposes too heavy a burden on the city. The Factfinder feels that his recommended provision will protect the legitimate interests of both parties.

Recommendation - The Factfinder recommends the following contract language:

*The Employer shall not modify an employee’s work schedule unless it first attempts to prevent such modification through the use of its part-time officers.*

3) Article XXII - Workweek/Scheduled Hours, Section 12.05 – Part-

time Patrolmen (New) - The union proposes a new contract provision stating that part-time patrolmen will be used primarily to fill vacancies created by bargaining unit members. The city opposes the union demand.

Discussion - The Factfinder does not recommend the provision sought by the union. He believes that the city’s contention that the union’s demand involves a non-mandatory subject for bargaining cannot be dismissed.

Recommendation - The Factfinder reject the union’s demand.

4) Article XIII - Grievance Procedure, Section 13.01(B) – Group

Grievances - The current contract requires the union to list the names of the employees included in a group grievance. The union seeks to eliminate this requirement. The city wishes to retrain it.

Discussion - The Factfinder rejects the union's demand. The city agreed to modify Section 13.01(C)(1) and the union signaled its willingness to consider dropping its demand regarding group grievances in return.

Recommendation - The Factfinder rejects the union's demand.

5) Article XV - Wages, Sections 15.01, 15.02, & 15.03 - Wages - The

current contract provides the following salary schedule:

Patrolman 1 <sup>st</sup> Grade	\$56,263
Patrolman 2 <sup>nd</sup> Grade	50,741
Patrolman 3 <sup>rd</sup> Grade	47,364
Patrolman Detective	59,638

The union proposes increasing each salary by 4% and adding a fourth step of 2% for patrolmen resulting in the following salary schedule:

Patrolman 1 <sup>st</sup> Grade	\$60,883
Patrolman 2 <sup>nd</sup> Grade	59,689
Patrolman 3 <sup>rd</sup> Grade	53,831
Patrolman 4 <sup>th</sup> Grade	50,248
Patrolman Detective	63,270

The union further demands 4% salary increases effective March 1 of 2008 and 2009. The city offers 2% salary increases effective March 1 of 2007, 2008, and 2008.

Discussion - The union argues that its proposal ought to be adopted. It points out that the city is among the wealthiest cities in the county in terms of median

family income, per capita income, and median household income and contends that its patrolmen should be compensated at the same level as in other wealthy cities. The union further notes that the city's very strong financial position is indicated by its 2006 carryover equal to 76% of its annual expenses and by the fact that it is the only Ohio suburb to have all Aaa/AAA ratings from Moody's, Standard & Poor's, and Fitch's.

The union maintains that salary comparisons support its demands. It acknowledges that in 2006 the city's top pay and total compensation for a ten-year patrolman exceeded the averages for the contiguous cities, 17 westside suburbs, and the county. The union stresses, however, that when considering 20 prosperous suburbs, its top pay is only 98% of the average and its total compensation is only 96% of the average.

The union claims that recent salary increases also suggest that its salary proposal ought to be recommended. It reports that the average wage increase for 2007 was 3.49% for the contiguous cities, 3.30% for the westside suburbs, 3.37% for the county, and 3.46% for the prosperous suburbs. The union observes that the average wage increase for police in Ohio in 2006 was 3.23%. It emphasizes that it needs its proposed 4% increase to come up to the average wage for the prosperous suburbs.

The city argues that its salary proposal ought to be adopted. It states that the relevant comparison is not eastside cities but surrounding communities. The city indicates that in 2006 its total compensation exceeded the average for five-, ten-, and twenty-year patrolmen in Avon Lake, Bay Village, Brook Park, Fairview Park, Lakewood, North Olmsted, and Rocky River. It states that with its proposed 2% wage increase for 2007, it will remain above the average for Avon Lake, Bay Village, Brook Park, Fairview Park, Lakewood, North Ridgeville, and Rocky River.

The city questions the union's characterization of its financial prospects. It reports that only one of the six largest employers in 1999 was still on the list of the largest employers in 2006. The city claims that it is essentially a bedroom community without the economic development of cities like Lakewood, North Olmsted, Mayfield Heights, and Mentor. The city acknowledges that it has Crocker Park but it states that the jobs there are not highly paid.

One of the key criteria for a Factfinder in making wage recommendations is the wages paid by comparable jurisdictions. Here, as is often the case, the parties offer different sets of comparable cities. The union's prosperous cities must be viewed with caution because it is not clear what criterion was used to select the cities, other than the fact that most of them pay high wages and benefits. In addition, the list includes a number of cities in Lake County. While it is sometime necessary to go far afield to find appropriate comparables, e.g., Cleveland must be compared with other large cities in Ohio and beyond, it is not necessary to do so in the case of Westlake. However, with that said, the Factfinder believes that the wages paid by other wealthy cities cannot be entirely ignored when making a wage recommendation for Westlake.

The city's proposed list of comparable cities is also suspect. Although it properly includes most of the contiguous cities, it adds a few jurisdictions to the list where the rationale for their inclusion is not clear. For example, Lakewood is a much larger city and is an inner ring suburb facing challenges beyond those confronting Westlake. Similarly, the justification for including Brook Park and Parma is not clear.

The data on wages and total compensation supplied by the union and city can be summarized as follows:

## 2006 Wages & Total Compensation<sup>1</sup>

<u>Jurisdiction</u>	<u>Wage</u>	<u>Total Compensation<sup>2</sup></u>	<u>Wage Increases</u>
<b>Contiguous Cities</b>			
Avon	-	-	-
Avon Lake	61,698	63,623	-
Bay Village	57,992	61,094	3.6/2.5/2.8
Fairview Park	59,705	62,102	3.9/3.3
North Olmsted	56,825	62,841	-
North Ridgeville	-	-	-
Rocky River	60,347	62,780	3.0/3.0
Average	59,313	62,488	3.5/2.9/2.8
City Comparables <sup>3</sup>	58,692	61,385	3.4/3.1/2.8
Union Comparables <sup>4</sup>	60,978	64,650	3.4/3.4/3.5
Westlake	59,689	61,897	-

<sup>1</sup> The data are from City Exhibit 3 and Union Exhibit 8.

<sup>2</sup> Total compensation includes the wage for a ten-year patrolman, uniform allowance, shift differential, longevity, and other payments.

<sup>3</sup> The city's comparable jurisdictions are Avon Lake, Bay Village, Brook Park, Fairview Park, Lakewood, North Olmsted, and Rocky River.

<sup>4</sup> The union's prosperous jurisdictions are Beachwood, Bedford Heights, Brecksville, Euclid, Fairview Park, Highland Heights, Independence, Lyndhurst, Mayfield Heights, Mayfield Village, Mentor, Middleburg Heights, Pepper Pike, Richmond Heights, Shaker Heights, Solon, South Euclid, University Heights, Willoughby, Willowick, and Westlake.

The employer's ability to pay is another important criterion. In the instant case, the evidence is very clear that the city is in excellent financial health and there is no reason to believe that the city's finances will not remain very strong. While this may be due to the efforts of the mayor and city council, it does not alter the fact that there are more than sufficient resources available to fund the union's demands.

In some instances, settlements reached with other unions in a city are an important consideration. While the city has reached agreements with AFSCME and the City Hall Employees Association calling for wage increases of 3% in 2007 and 2008 and 3.25% in 2009, the Factfinder does not feel compelled to recommend similar increases for the patrolmen. He does not know how the wages of AFSCME members or city hall employees compare with the wages of similar employees in other cities or what other benefits they obtained in negotiations. The record indicates that the firefighters, whose compensation is generally very similar to patrolmen, have not reached an agreement with the city.

Based on these factors and the other statutory criteria, the Factfinder recommends that wages be increased by 3.5% in 2007, 2008, and 2009. While this generally exceeds the increases in other cities, the small additional amount will help Westlake increase its rank among westside cities and narrow the gap with the other wealthy cities in the area.

Recommendation - The Factfinder recommends the following contract language:

Effective March 1 of 2007, 2008, and 2009 wages shall be increased by 3.5%.

6) Article XV - Wages, Section 15.04 - Recreation Center (New) - The union proposes that the city provide the patrolmen with free individual membership in its recreation center and a 50% discount for family memberships. The city opposes the union's demand.

Discussion - The Factfinder cannot recommend the union's demand. There was no suggestion that other city employees have free or discounted membership in the

recreation center and no comparable data was supplied by the union to support its demand. While the Factfinder may feel that the city should encourage its employees to use its recreation center in order to stay fit, he believes that the issue should be left to negotiations between the parties.

Recommendation - The Factfinder rejects the union's demand.

7) Article XV - Wages, Section 15.05 - Specialty Pay (New) - The union demands professional pay equal to 4% of a patrolman's annual salary for a long list of assignments. Its proposal would result in every patrolman receiving one professional payment but patrolmen would be limited to one such payment. The city opposes the union's demand.

Discussion - The Factfinder must reject the union's demand. While the union was able to show that Beachwood, Parma, and Solon have some form of specialty pay, there is not sufficient support among comparable cities to recommend the union's demand.

Recommendation - The Factfinder rejects the union's demand.

8) Article XV - Wages, Section 15.06 - Firearms Proficiency

Allowance (New) - The union proposes that each employee who demonstrates firearms proficiency by January 1 of each year receive an allowance of \$1050 in 2007, \$1350 in 2008, and \$1750 in 2009. It requests that the allowance be paid in four quarterly checks. The city opposes the union's demand.

Discussion - The Factfinder recommends that a firearms proficiency bonus be adopted. While he understands that such bonuses are sometimes a device to make up for substandard wages or to equate firefighter and patrolmen's earnings, firearms proficiency allowances are quite common throughout Cuyahoga County. The data supplied by the union shows that 2/3 of the cities in Cuyahoga County offer firearms proficiency allowances or some other form of additional compensation. Among the city's comparables, five of the eight listed departments have firearms proficiency allowances.

The amount of the firearms proficiency allowances varies from small amounts to very large amounts. The average allowance for the city's comparable departments is \$309. On that basis, the Factfinder recommends that the city's allowance be set at \$300.

Recommendation - The Factfinder recommends the following contract language:

Annually, and in accordance with the standards set forth in Ohio Revised Code 109.801, et seq., all bargaining unit employees shall be required to complete an approved Firearms Re-qualification Program consistent with requirements of the Ohio Revised Code and Regulations issued pursuant thereto. Each employee who has shown to be proficient by January 1<sup>st</sup> of each calendar year shall receive \$300. This bonus shall be paid in two separate checks, divided equally and paid on a semi-annual basis on the first payday of January and July.

#### 9) Article XV - Wages, Section 15.07 - Education Allowance

(New) - The union proposes an education allowance of \$500 for an associate's degree, \$1000 for a bachelor's degree, and \$2000 for a master's degree payable on July 1 of each year. The city opposes the union's demand.

Discussion - The Factfinder does not feel comfortable recommending the union's proposal. While many recently hired patrolmen may have degrees, he suspects that some long-service and productive members of the department may not have college degrees. However, these patrolmen, who have attended numerous schools and training programs, would receive no consideration for such education and training. The Factfinder is concerned that this situation would unfairly disadvantage the more senior members of the department.

Recommendation - The Factfinder rejects the union's demand.

10) Article XVI - Shift Differential, Section 16.01 - Shift

Differential - The current contract provides for a 15 cent per hour shift differential for the afternoon and night shifts. The union seeks to increase the differential to 25 cents per hour. The city opposes the union's demand.

Discussion - The Factfinder acknowledges that working on the afternoon or night shift is a burden for most patrolmen. The proposed 25 cent per hour premium is not unreasonable and is consistent with the union's comparables.

Recommendation - The Factfinder recommends the following contract

language:

All employees of the Police Department who are assigned to start their tour of duty at 1500 hours (3:00 p.m.) or later shall be compensated an additional twenty-five (\$.25) per hour for every hour worked. Payment shall be made bi-weekly every other Friday. The starting times between 0700 and 1500 and the working hours of 0700 to 1500 are excluded from the shift differential pay with the exception of those officers whose shift encompasses five (5) or more hours of shift differential time.

This section shall be effective the first pay period after the signing of the contract.

11) Article XIX - Holidays, Section 19.01- Personal Leave - The

current contract grants eight holidays and 28 hours of personal leave. The union seeks to add eight hours of personal leave. The city opposes the union's demand.

Discussion - The Factfinder rejects the union's demand. The comparable data offered by the union indicates that its members already receive more personal leave than patrolmen in comparable departments.

Recommendation - The Factfinder rejects the union's demand.

12) Article XIX - Holidays, Section 19.02 - Holiday Overtime - The

current contract provides for time and one-half for working on New Year's, Christmas, and Thanksgiving. The union demands that patrolmen be paid premium time for work on all eight listed holidays. The city opposes the union's demand.

Discussion - The Factfinder believes that some increase in the number of holidays paid at time and one-half is in order. However, the demand that premium time be paid on all holidays is not supported by the comparable data. The Factfinder concludes that adding Memorial Day and Labor Day to the list of premium time holidays is appropriate.

Recommendation - The Factfinder recommends the following contract language:

Any employee whose regularly scheduled shift starts on New Year's Day, Christmas Day, Thanksgiving Day, Memorial Day, and/or Labor Day shall

receive compensation at time and one-half (1½) this current regular rate of pay for those hours worked during that shift.

### 13) Article XX - Vacations, Section 20.03 - Scheduling Vacation

Time (New) - The union proposes that patrolmen be allowed to schedule vacation on an hourly basis. The city opposes the union's demand.

Discussion - The Factfinder rejects the union's proposal. Since personal time and compensatory time are already available in increments of less than one hour, there is no need to further complicate scheduling by granting the union's request.

Recommendation - The Factfinder rejects the union's demand.

### 14) Article XX - Vacations, Section 20.04 - Schedule Changes

(New) - The union proposes a clause that would prevent the city from canceling or modifying a patrolmen's scheduled vacation except in an emergency. The city opposes the union's demand.

Discussion - The Factfinder rejects the union's demand. The union acknowledges that vacation is not canceled very often. The Factfinder concludes that the union failed to establish that there is a problem that justifies restricting the city's ability to schedule its patrolmen.

Recommendation - The Factfinder rejects the union's demand.

### 15) Article XX - Vacations, Section 20.05 - Pre-Scheduling Vacation

(New) - The union demands a new provision that allows employees to pre-schedule

vacation after the initial planning period. requires the city to circulate the vacation schedule in November, and permits employees to pre-schedule any amount of vacation.

Discussion - The Factfinder cannot grant the union's demand. Some of the provisions that the union seeks are not found in the contracts of comparable cities. More importantly, the rules and procedures governing the vacation selection process should be negotiated by the parties rather than set by the recommendations of a Factfinder. The parties are familiar with the needs of the city and the concerns of the patrolmen.

Recommendation - The Factfinder rejects the union's demand.

16) Article XXI - Health Benefits and Spending Plan, Section 21.01 -

Health Insurance Plan - The current contract provides for a preferred provider plan with individual and family coverage with 20% co-pays for in-network covered services. The plan includes a \$10 office visit co-pay; an emergency room co-pay of \$50; \$100/\$200 annual deductibles; out-of-pocket maximums of \$200/\$300; prescription co-pays of \$10 for generic, \$15 for formulary, and \$20 for non-formulary drugs; and \$50 for an eye exam and \$150 for eyewear every two years. Employees are required to pay 5% of the cost of the premiums up to a \$25 per month.

The city proposes changing the options to single, single plus one, and family coverage; increasing the emergency room co-pay to \$75 and the out-of-pocket maximums to \$1000 for single coverage, \$1500 for single plus one coverage, and \$2000 and family coverage; adding a generic level one with a co-pay of \$0, increasing the formulary co-pay to \$20, and establishing a 30% co-pay for non-formulary drugs; and

pping the employee premium contribution to \$35 per month in 2008 and \$45 per month in 2009. The union opposes the changes sought by the employer.

Discussion - The city argues that the most profound problem facing employees and employers is the skyrocketing cost of health insurance. It points out that General Motors recently announced cuts of \$1 billion dollars in healthcare benefits for its 750,000 blue-collar workers and retirees. The city notes that Ford and Chrysler are also discussing healthcare costs.

The city contends that the high cost of health insurance is revealed in the State Employment Relations Board's 2006 Report of Health Insurance Costs in Ohio's Public Sector. It observes that the report shows that the average cost of health benefits is \$9,708 per employee; that cost increases since 2000 have ranged from 10.7% to 18.6%; that 67.1% of employees make some contribution to the cost of such coverage and 36.7% pay \$30 per month or more; and that 73.5% of employees make some contribution for family coverage and 29.9% pay \$100 per month or more for such coverage.

The city maintains that deductibles and co-pays are often used to defray health insurance costs. It claims that the deductibles and co-pays in comparable cities support its position.

The city indicates that its healthcare costs have risen. It points out that in 2006 its total cost increased to \$2,666,068. The city notes that this represents a 7.2% increase over 2005.

The city stresses that its proposed changes in the plan design and the premium contributions have already been accepted by AFSCME, which represents 40 to 50 employees in the city.

The union opposes the city's demands. It states that it agreed to mid-term changes in health insurance in order to restrain costs. The union maintains that there is "not sufficient evidence to warrant any further employee concessions." (Union Pre-Hearing Statement, page 11)

The union contends that there is no pattern in the city with respect to health insurance. It acknowledges that AFSCME has accepted the city's proposal but indicates that none of the safety forces have done so. The union states that the City Hall Employees Association has a different arrangement than AFSCME.

The union objects to specific aspects of the city's health insurance proposal. It complains that the increase in employee premium payments will not discourage usage but simply requires employees to give more money to the city. The union asserts that the \$2000 out-of-pocket maximum for family coverage involves too much added risk for employees and the usual co-pay for non-formulary drugs is \$30 rather than 30%.

The union suggests that the health insurance received by employees in nearby cities does not support the city's position. It points out that in Fairview Park employees in the high option have no co-pay for covered services except for office visits and that the drug co-pays are \$10 for generic, \$20 for formulary, and \$30 for non-formulary; in Rocky River the top plan costs \$10,951 and the city pays \$10,837; in Bay Village the insurance plan pays 80% of the covered charges with \$250 and \$500 deductibles, out-of-pocket maximums of \$500 and \$1000, and drug co-pays of \$10 for generic, \$20 for formulary, and \$30 for non-formulary drugs; and North Olmsted employees pay 13% of the premium for a plan that is hard to define.

The union asks the Factfinder to continue the current plan or address the co-insurance and out-of-pocket maximums so that those who use the insurance will bear the burden.

The Factfinder does not dispute that the escalation of the cost of healthcare is a major issue in collective bargaining. Newspaper accounts indicate that healthcare is a major issue in private sector negotiations and SERB's annual report on health insurance costs suggests that it is also a significant challenge in public sector negotiations.

The relevant consideration, however, is the situation for the city. The data supplied by the union indicates that the city's costs have risen relatively modestly. The relatively modest increase in healthcare costs probably reflects the union's agreement to the city's request for mid-term cost-saving changes in the health insurance plan.

While the city needs to be concerned about the continuing increased cost of healthcare, its proposed changes go further than necessary and beyond what is justified by comparisons to nearby cities. In addition, as the union pointed out, some of the changes do not focus on changes that would serve to reduce the usage of healthcare services.

The Factfinder feels that a number of changes in the city's proposal are appropriate. First, the co-pay of 30% for non-formulary drugs is potentially too expensive for employees who are forced to depend on such drugs. A \$30 co-pay is more consistent with the co-pays reported by SERB and nearby jurisdictions.

Second, the Factfinder does not believe that the city's proposal for an immediate increase in employee premium contributions is justified. The increase in the co-pays and out-of-pocket maximums will reduce or restrain the city's cost increases. Furthermore,

the increase in the city's cost of healthcare between 2005 and 2006 was relatively modest. For these reasons, the Factfinder recommends that the \$25 per month employee contribution be continued through 2007 and 2008. An increase from \$25 per month to \$35 per month in 2009 would be appropriate.

**Recommendation** - The Factfinder recommends the following contract

language:

21.01 Bargaining Unit members shall receive medical, hospitalization, dental, eye-care and prescription coverage as follows:

a. Employee co-pay participation:

<u>Tier</u>	<u>80/20 Limit</u>	<u>80/20 Max Out-of-Pocket</u>
Single	80/20 of max \$5,000	\$1,000
Employee + 1	80/20 of max \$7,500	\$1,500
Family	80/20 of max \$10,000	\$2,000

b. Office visit participation:

i. \$10 per visit (not included in calculation of deductible or out-of-pocket maximum).

ii. Non-emergency use of emergency room - \$75 per visit.

c. Prescription co-pays:

i. Generic (level 1) \$0 - only applicable to generics available from all discounted generic providers (\$4 will be reimbursed by City)

ii. Generic (level 2) - \$10

iii. Formulary (preferred) - \$20

iv. Non- Formulary - \$30

Employees shall continue to pay the difference when a name brand or formulary is selected over an available generic or formulary.

17) Article XXI - Health Benefits & Spending Plan, Section 21.05

Life Insurance - The current contract provides for \$25,000 of term life insurance. The union seeks to increase this amount to \$50,000.

Discussion - The Factfinder cannot recommend the union's demand. The union noted that Bay Village and Fairview Park provided \$50,000 of life insurance but the other comparable cities offered \$25,000 or less. Furthermore, even with \$50,000 of insurance provided by the city, patrolmen would still generally be required to purchase additional life insurance.

Recommendation - The Factfinder rejects the union's demand.

18) Article XXII - Clothing Allowance, Sections 22.01 & 22.02

Clothing Allowance - The current contract includes a yearly clothing allowance of \$1000. The city proposes that the annual uniform allowance be eliminated and replaced with city-provided uniforms. The union seeks to increase the allowance to \$1050 in 2007, \$1100 in 2008, and \$1150 in 2009.

Discussion - The Factfinder must reject the city's proposal. The vast majority of cities in Cuyahoga County provide cash uniform allowances. The city did not provide sufficient support for departing from the general practice and the practice it has followed in the past.

The Factfinder believes that some increase in the current clothing allowance is appropriate. In 2006, the average clothing allowance in the contiguous and westside suburbs was generally the same as in the city. The city's comparable departments have an average clothing allowance of slightly over \$1000. Given that other cities are

currently negotiating increases in clothing allowances, the Factfinder recommends a modest increase in the city's clothing allowance.

Recommendation - The Factfinder recommends the following contract language:

22.01 - All full-time employees of the Police Department shall receive an annual clothing allowance of \$1100 to be paid on the first of July annually by separate check.

22.02 - New employees shall receive, as clothing allowance, fifty (\$50) dollars per month of employment up to a maximum of \$1100 until the first of July (July 1<sup>st</sup>) immediately following the completion of their first year of employment, at which time, they shall receive a clothing allowance in accordance with Section 1 of this Article.

19) Article XXII - Clothing Allowance, Section 22.05 -

Uniform Changes (New) - The union proposes a new contract provision that would require the city to pay the cost of any required change in the uniform or for the purchase of any equipment. The city opposes the union's demand.

Discussion - The Factfinder cannot recommend the union's demand. While there was some controversy during the term of the previous agreement regarding the purchase of radios, the issue was resolved. The Factfinder does not believe that the union provided sufficient evidence to support its demand for a provision that does not exist in other contracts.

Recommendation - The Factfinder rejects the union's demand.

20) Article XXIII - Sick Leave, Section 23.04 - Significant Others -

The current contract states that sick leave is to be used in accord with city ordinances.

The union wishes to add that sick leave can be used to care for an ill or injured significant other. The city opposes the union's demand.

Discussion - The Factfinder cannot recommend the union's proposal. It was unable to show that other contracts contain such provisions.

Recommendation - The Factfinder rejects the union's demand.

21) Article XXIII - Sick Leave, Section 23.06 - Wage Continuation -

The current contract indicates that to qualify for a wage continuation plan an injury must have resulted in seven days where an employee was unable to work. The city proposes that the seven days must be consecutive and that after returning to work subsequent to an injury, an additional seven consecutive days of absence is required to qualify for a wage continuation plan.

Discussion - The Factfinder must recommend the city's proposal. It appears reasonable on its face and is consistent with the contracts in nearby cities. Making pay retroactive to the first day of absence once the seven day requirement is met, protects the financial interests of the patrolmen.

Recommendation - The Factfinder recommends the following contract language:

Wage Continuation Plan - Should a bargaining member ... In order to qualify for a wage continuation plan, the injury must have resulted in seven (7) consecutive scheduled days in which the employee was certified by a qualified medical provider as being unable to return to work. Any further use of wage continuation for a particular injury after the employee returns to work must have resulted in a minimum of seven consecutive scheduled work days being certified by a qualified medical provider as being unable to work due to the previous. Once an employee has been absent for seven days, pay is retroactive to the first day of absence ...

22) Article XXIII- Sick Leave, Section 23.08 - Patterned Use (New) -

The city seeks a new provision that states that the abuse or patterned use of sick leave shall result in disciplinary action. The union opposes the city's demand.

Discussion - The Factfinder does not recommend the city's demand. The abuse or patterned use of sick leave already constitutes just cause for discipline and the proposed provision is not necessary to administer the sick leave program. In fact, one could argue that it is inadvisable to list one form of misconduct as justifying discipline since it might suggest that other misconduct does not constitute just cause for discipline.

Recommendation - The Factfinder rejects the city's proposal.

23) Article XXIII - Sick Leave, Section 23.09 - Privileged

Information (New) - The union demands a new provision prohibiting the city from conditioning the use of sick leave upon the submission of privileged medical information. The city opposes the union's demand.

Discussion - The Factfinder believes that both the city and the union appreciate the importance of protecting the privacy of employees' confidential medical information. The union agreed to withdraw its proposal pursuant to a commitment from the city to resolve the issue.

Recommendation - The Factfinder rejects the union's demand.

24) Article XXVII - Court Time, Section 27.01 - Minimum - The

current contract establishes a four-hour minimum for court time. The city seeks to eliminate the minimum. The union wishes to retain the current minimum.

Discussion - The Factfinder reject the city's proposal. Two of the city's comparable departments have four-hour minimums and two others have four-hour minimums except for municipal court appearances. Given this, the city did not present a convincing rationale for changing the previously negotiated court time minimum.

Recommendation - The Factfinder rejects the city's demand.

25) Article XXVII - Court Time, Section 27.04 - Appearance - The current contract indicates that court appearance time begins when a patrolmen arrives at the station to pick up documents for court and ends when he returns to the station. The city proposes adding that the court minimum applies only when a patrolman actually appears in court and changing the title of the article to "Court Appearance Time." The union opposes the city's demand.

Discussion - The Factfinder rejects the city's proposal. He understands that there are times when a patrolman reports to the station and goes home after learning that a case has been continued, dismissed, or settled. However, the disposition of a case is not controlled by a patrolman. A patrolman who is ordered to report in order to appear in court, should continue to receive the minimum regardless of whether he actually appears in court.

Recommendation - The Factfinder rejects the city's demand.

26) Article XXVIII - Show-Up Time, Section 28.01 - Show-Up Time Minimum - The current contract establishes a minimum of two hours where a

patrolman is called in or advised to show up for an event other than a court appearance. The union wishes to increase the minimum to four hours. The city opposes the change.

Discussion - The Factfinder rejects the union's demand. While there is some logic to making the court time and show-up minimums the same, the parties negotiated a two-hour show-up minimum. The union was unable to present a convincing rationale to change the previously established minimum.

Recommendation - The Factfinder rejects the union's demand.

27) Article XXIX - Conformity to Law, Section 29.01 - Conformity to Law - The current contract states that it is subordinated to present and future state laws. The union wishes to limit the effect to "applicable" state and federal laws. The city opposes changing the current contract language.

Discussion - The Factfinder rejects the union's demand. The city indicated that it is unnecessary to alter the contract language since it understands that only the laws listed in Chapter 4117 of the Ohio Revised Code as superseding a collective bargaining agreement or those that specifically indicate that they supersede a collective bargaining agreement can have that effect.

Recommendation - The Factfinder rejects the union's demand.

28) Article XXXIV - Field Training Officer, Section 34.01 - FTO Payment - The current contract provides for a maximum of six Field Training Officers who are selected by the chief and paid \$500 per year. The union proposes paying any

patrolman who works as a FTO one hour at the overtime rate for each shift he works in that capacity. The city rejects the union's demand.

Discussion - The Factfinder rejects the union's proposal. While the current contract language gives the chief some discretion in the designation of FTOs, the union's proposal would be excessively expensive.

Recommendation - The Factfinder rejects the union's demand.

### 29) Article XXXVI - Duration, Section 36.02 - Retroactivity in

Conciliation (New) - The current contract does not contain any provision relating to retroactivity in conciliation. The union proposes adding a provision to allow a *Conciliator to make wages and other economic items effective in the year of appointment, i.e., to make them retroactive.* The city opposes the union's demand.

Discussion - The Factfinder recommends that the union's demand be granted. While he understands that the city wishes to retain the expiration date that has existed for the past 22 years, he appreciates the union's concern about the possibility of being unable to obtain a wage increase because of the operation of the terms of Chapter 4117. Adding the provision sought by the union, similar to that found in some other agreements, responds to this concern while preserving the existing February 28 expiration date.

Recommendation - The Factfinder recommends the following contract language:

A conciliator appointed pursuant to the provisions of Chapter 4117 of the Revised Code shall have the authority to order increases in wage

rates and other economic items in the fiscal year in which he is appointed.

30) New Article - Funeral Leave, Sections XX.01 & XX.02 - The union proposes 32 hours of funeral leave for the death of a spouse, child, stepchild, spouse's grandparent, parent or current mother- or father-in-law, brother, sister, grandparent, current sister-in-law, brother-in-law, daughter-in-law, or son-in-law and the ability to use other leave for additional time off. The city opposes the union's demand.

Discussion - The Factfinder recommends that funeral leave be added to the contract. All of the comparable jurisdictions cited by the city have funeral leave that is not charged to sick leave. The other cities typically provide five days of leave for immediate family and three days for other family members.

The Factfinder suggests a modified version of the union's proposal. Since funeral leave is a new benefit, it should be limited to three days and the list of individuals for whom leave is available should be limited by excluding a spouse's grandparent and current sister-in-law, brother-in-law, daughter-in-law, and son-in-law.

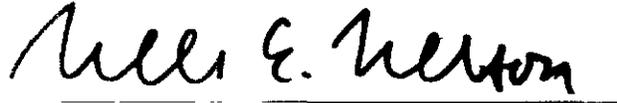
The Factfinder also recommends that the union's proposal that allow patrolmen to use other accumulated leave to extend funeral leave. He suggests that Article XXIII - Sick Leave, Section 23.05, which authorizes the use of sick leave for prepare to and attend a funeral for family members be deleted from the contract.

Recommendation - The Factfinder recommends the following contract language:

XX.01 - Employees shall be granted thirty-two (32) hours funeral leave time off with pay for the purpose of attending the funeral, which shall not be charged against sick leave, in the event of a death of a

spouse, child, step-child, parent or current mother-in-law or father-in-law, brother, sister, or grandparent.

XX.02 - Employees will be permitted with proper authorization to take additional days for funeral leave when necessary which shall be charged against any accumulated leave at the employee's discretion.

A handwritten signature in black ink that reads "Nels E. Nelson". The signature is written in a cursive style and is positioned above a horizontal line.

Nels E. Nelson  
Factfinder

October 12, 2007  
Russell Township  
Geauga County, Ohio