

BACKGROUND

This Fact-Finding involves the City of Eastlake, (hereafter referred to as the “Employer”) and three (3) bargaining units of the Fraternal Order of Police, Ohio Labor Council, (hereafter referred to as the “Union”). The first Union bargaining unit is comprised of approximately twenty-one (21) full-time Patrol Officers. The second bargaining unit contains four (4) full-time Lieutenants. And, the third unit is comprised of four (4) full-time Sergeants. These Bargaining Units are consistent with and in accordance to SERB rules. Two Collective Bargaining Agreements contains the terms for all three (3) units. One Collective Bargaining Agreement for the Patrol Officers and one Collective Bargaining Agreement for the Sergeants and Lieutenants.

In a letter, dated November 28, 2007, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a two (2) year agreement expired on December 31, 2007. The parties have met on several occasions to negotiate a successor agreement. Unable to reach an Agreement, impasse was declared and the parties proceeded to Fact-Finding.

A Mediation day was scheduled on Wednesday, March 19, 2008, while the Fact-Finding Hearing, itself, was conducted on Friday, April 18, 2008, both days, in the City’s Offices, Eastlake, Ohio. The Fact-Finding Hearing began around 10:00 A. M., and was adjourned at approximately 1:15 P. M.

At the mediation day there were approximately thirty-three (33) issues remaining on the table. The mediation resulted in settling about thirteen (13) of those issues. Based on the parties prior negotiation attempts and the mediation day, the parties were able to agree on approximately thirty-three (33) tentative articles. At the Fact-Finding Hearing roughly twenty (20) issues remained.

Although the mediation, at face value, resulted in only thirteen (13) issues being settled, it gave this Fact-Finder a thorough understanding of each parties respective position on the issues at hand. Because of that understanding, the parties, were able to be brief and were able to get straight to the point, with their respective arguments, on the remaining issues during the Fact-Finding Hearing.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making

recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In writing this report, this Fact-Finder considered comparable data and like issues from the following Cities, some contiguous, some not:

Wickliffe, Willowick, Mentor, Willoughby, Lyndhurst, Maple Heights, Painesville, Parma Heights, South Euclid and Niles. The appropriate weight was given, to the information, relating to those jurisdictions above, however, heavier weight was awarded to the jurisdictions more similar to the City of Eastlake and the City's three respective bargaining units.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report, that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement.

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the parties proposals.

During these negotiations and as part of their proposals, the City, has made requests for numerous changes, as a clean up measure, for clarity, continuity, consistency and conformity, in

the names of Articles, Titles, and changes in the numbering of various Sections, of the parties Collective Bargaining Agreement. Since the Union is unopposed to those changes, it is recommended by this Fact-Finder, for this Report, that the parties put such changes in place, once this Agreement is ratified.

The following twenty (20) issues are the issues that were considered during the Fact-Finding Hearing on April 18, 2008.

ISSUE NO. 1,	ARTICLE 16, PROMOTIONS
ISSUE NO. 2,	ARTICLE 17, SICK LEAVE
ISSUE NO. 3,	ARTICLE 20, HOLIDAYS
ISSUE NO. 4,	ARTICLE 21, VACATION LEAVE
ISSUE NO. 5,	ARTICLE 22, INSURANCES
ISSUE NO. 6,	ARTICLE 23, SALARIES
ISSUE NO. 7,	ARTICLE 23, MINIMUM MANNING
ISSUE NO. 8,	ARTICLE 24, OVERTIME PAY/HOURS OF WORK
ISSUE NO. 9,	ARTICLE 26, INJURY ON LEAVE DUTY
ISSUE NO. 10,	ARTICLE 27, UNIFORM MAINTENANCE ALLOWANCE
ISSUE NO. 11,	ARTICLE 36, OBLIGATION TO NEGOTIATE
ISSUE NO. 12,	ARTICLE 37, TOTAL AGREEMENT
ISSUE NO. 13,	ARTICLE 38, DISCIPLINARY PROCEDURE
ISSUE NO. 14,	ARTICLE 39, DURATION
ISSUE NO. 15,	ARTICLE 43, REDUCTION IN FORCE
ISSUE NO. 16,	ARTICLE 44, DRUG TESTING
ISSUE NO. 17,	NEW ARTICLE - PART-TIME EMPLOYEES
ISSUE NO. 18,	NEW ARTICLE - APPLICATION OF CIVIL SERVICE LAW
ISSUE NO. 19,	NEW ARTICLE - FIREARM PROFICIENCY PAY
ISSUE NO. 20,	NEW ARTICLE - SHIFT DIFFERENTIAL

OPENING

The City of Eastlake is located in Lake County, Ohio, east of the City of Cleveland and has a population of approximately 20,200. The City is operated under a home rule charter which provides for a Council/Mayor form of government.

In approximately May of 2004, the City was declared, by the State of Ohio's Auditor's Office, in a state of fiscal emergency due to the City's inability to meet payroll and debt obligations while having several fund balances running a deficit. The City was mandated, by the State, to drastically reduce expenditures, cut costs and put together a recovery plan.

As part of the recovery plan, the City, among other actions, reduced personnel in the Police Department and other City departments, adjusted health care plans and controlled spending.

To help do their part, the City's Unions accepted a wage freeze for one year and made healthcare contributions. In addition, the Police Union has accepted only 2% wage increases since then.

As a result of the above-actions and others not discussed here, the Ohio State Auditor released the City of Eastlake from Fiscal Emergency status on December 4, 2007.

In order to continue down the path of established recovery, the City is concerned, and rightfully so, with overspending during these and other collective bargaining negotiations.

It is important to note that the City is not claiming an inability to pay, just a need for some conservatism in allotted wage and benefit increases.

Based on the review of the budgetary information provided, the City's general fund has grown at a steady pace, however, not at a pace where they can not be somewhat cautious and conservative in their spending as it relates to their collective bargaining agreements.

Based on the financial information provided and with help from this Union, in some areas of operational flexibility within the Agreement, the City should be able to adequately finance reasonable wage and benefit increases.

Some of the parties disagreements, as it relates to benefits and wages, lies with the external comparables each side relies on. Where the bargaining units rank in comparison to the other like jurisdictions plays an important role to many of the impasse issues. Since each party's comparables are different so goes their respective perception of the rankings as well.

The Union relies on the Cities of Wickliffe, Willowick, Mentor and Willoughby. While the Employer relies on the Cities of Lyndhurst, Maple Heights, Painesville, Parma Heights, South Euclid, Niles and like the Union, Willoughby.

The Union bases their reliance on past fact-finding reports and those fact-finder's indications and recommendations of which comparables to use. The Employer on the other hand base their reliance on other cities relevant by the size of the bargaining units, population, per capita and municipal income tax of the related Cities.

This Fact-Finder has found through the evidence presented that all the comparables given, by both the Union and the Employer, have some value in determining wages and benefits for the bargaining units considered by this Report.

The recommendations below will, therefore, take into consideration the comparables mentioned above along with the needs of the City to continue down the path established for recovery of being financially sound.

ISSUE NO. 1, ARTICLE 16, PROMOTIONS

EMPLOYER POSITION:

The Employer has proposed contract language to allow more flexibility in making promotional selections whereby a selection can be made by any of the three highest scoring individuals being eligible to receive a promotion.

UNION POSITION:

The Union wishes to maintain current contract language.

DISCUSSION AND RECOMMENDATION:

Currently promotions are made based on the scoring of a two pronged procedure, a written civil service exam and an oral interview assessment. Promotions will be made based on the total of both scores. The individual to score the highest will be promoted first.

Although the Employer would receive some flexibility by their proposal, this Fact-Finder was unable, through the evidence presented, to find a problem with the existing language and how it worked. Likewise, the true benefit to the entire Police Department was not clear. Therefore, the recommendation is for status quo and the current contract language.

ISSUE NO. 2, ARTICLE 17, SICK LEAVE

UNION POSITION:

The Union is proposing to increase the sick leave buyout percentage more to conform to the comparable jurisdictions used by the Union for the last five contract cycles

EMPLOYER POSITION:

The Employer has proposed to incorporate standard approval and documentation language based on R.C. 124.38. In addition, the Employer proposes to revise the current sick leave schedule to standardize the amount of sick leave allowed to be converted upon retirement, uncapped, to forty per cent.

Third, the Employer has proposed to eliminate the transfer of sick leave earned with another public employer to the City of Eastlake.

DISCUSSION AND RECOMMENDATION:

The Employer proposes changes to the approval and documentation language for use of sick leave. However, this Fact-Finder saw no evidence that abuses were occurring under the current language. The old adage, if it's not broken, don't fix it. This Fact-Finder is hesitant to make changes where no problem currently exists.

The Union and the Employer have both proposed changes in the sick leave buyout percentage. While taking into consideration the facts in this Report's opening and considering wage and benefit increases later in this Report, this Fact-Finder finds that Union is not substandard as this benefit relates to all the comparables used. Likewise, this Fact-Finder, finds that there is also no reason to make any changes to the schedule as suggested by the Employer.

The Employer's last proposed change in this issue is to eliminate the transfer of sick leave earned, with another public employer, to the City of Eastlake for new employees hired. Here, this Fact-Finder will agree with the City. The City should not be forced to pay or subsidize leave earned elsewhere. That would not be fiscally responsible.

This Fact-Finder's recommendation is that Sections 1 through 14 will remain status quo, with the exception of the proposed clean up language discussed earlier.

Section 15 will now read:

Any newly hired employee shall not be credited with any unused accumulated sick leave earned with another public agency/entity.

ISSUE NO. 3, ARTICLE 20, HOLIDAYS

UNION POSITION:

The Union is proposing to add Martin Luther King Day as a paid holiday and the addition of that paid holiday would keep them well within the number of holidays allocated to their comparable jurisdictions.

EMPLOYER POSITION:

The Employer is proposing to modify the holiday provisions and maintain the number of holidays but revise the manner in which the benefit is administered. The Employer is proposing deleting Veteran's Day and Employee's Birthday and replacing them with two (2) Floating holidays.

Also, under the Employer's proposal the Chief would determine the operational needs of the department, and when warranted, could permit such work to occur.

DISCUSSION AND RECOMMENDATION:

Based on the evidence presented and once again taking into consideration the finances of the City and other wage and benefits items given in this Report, this Fact-Finder believes that the Union falls well within the comparables used with 11 holidays and their birthday as the 12th holiday. No further addition is warranted at this time.

However, the Employer's proposal of taking away Veteran's Day and the Employee's Birthday and exchanging them for two (2) floating holidays would actually benefit a department that currently struggles for time off and would help this bargaining unit as a whole.

The Employer's proposed changes whereby the Chief would determine the operational needs of the department and decide when holiday work is needed is with merit. Holiday work should only be distributed when there is actual work that needs done on the holiday. To let employees decide when they want to work and what work they are going to do on a holiday is just not good management by any employer.

Therefore, this Fact-Finder recommends the Employer's proposal and language changes as written.

ISSUE NO. 4, ARTICLE 21, VACATION LEAVE

UNION POSITION:

The Union is proposing the ability to increase the amount of single vacation days they are permitted to use from 5 days to 10 days. The Union argues that they have a hard time with the shortage of Officers in getting time off. In addition, the break up of more single days would mean that vacation cash out would then be less, thereby addressing a concern of the City.

EMPLOYER POSITION:

The Employer has proposed to modify the vacation provision by revising the manner in which the benefit is administered.

The Employer would change the cashout section to provide that after 5 years of service employees with 3 or 4 weeks of annual vacation accrual must use 2 weeks annually. Employees with 5 weeks of accrual must use 3 weeks annually and employees with 6 weeks of accrual must use 4 weeks annually.

The Employer also proposes language that would give prior service credit, for employees hired after December 1, 2007, based on continuous full-time service with the City of Eastlake.

The Employer argues that the employees need to take the time off due to the stressfulness of their jobs and that the current levels of cashout to the City is extremely high.

DISCUSSION AND RECOMMENDATION:

Both the Union and the Employer would like to see more vacation time taken and both have proposed ways to accomplish that. The City would like to alleviate the amount of cashout paid in order to help maintain their budget. Based on the testimony and discussions given at the Hearing, the recommendation is as follows;

Sections 1, 2, 4, 5, 6 & 7, will be changed as the proposed clean up language suggests. Section 2 will permit the usage of ten (10) days of vacation time on a daily basis.

Section 3, will read as follows:

Section 3 Vacation Cashout/Required Usage

After five (5) years of service, if an employee at the end of their anniversary year has vacation time remaining, may with two weeks notice receive payment at their regular rate for these hours. Employees with three (3), or four (4) weeks of annual vacation accrual must use a minimum of two (2) weeks annually. Employees with five (5) or six (6) weeks of annual accrual must use a minimum of three (3) weeks annually.

Section 8, will read as follows:

Section 8. Prior Service Credit for Employees Hired After December 1, 2007

For all bargaining unit members hired after December 1, 2007, service credit for vacation purposes shall be based on years of continuous, full-time service with the City of Eastlake, Ohio.

ISSUE NO. 5, ARTICLE 22, INSURANCES

EMPLOYER POSITION:

The Employer is proposing to modify the current language to bring the employees in line with statewide trends with regard to employee contributions. The Employer is asking the employees to contribute 15% of the monthly premium cost for the insurance plan they select. Currently the employees contribute 8%.

The Employer is also proposing a spousal surcharge of \$75.00 per month for those employees whose spouse has coverage available through another employer.

The Employer also, by virtue of their proposal, establishes a committee comprised of City, representatives of all their bargaining units and non bargaining unit employees. This committee can recommend changes and alterations to benefit levels, contribution rates and program coverage. The language also gives the Employer the right to make the recommended changes without a grievance being filed.

The Employer cites the rising cost of health care and the need to keep constraints on spending as their reason for such a proposal.

UNION POSITION:

The Union is seeking to maintain current language since a grievance now is being processed to arbitration on what they see as unilaterally changes made by the Employer.

DISCUSSION AND RECOMMENDATION:

Health Care is always one of those issues that a Fact-Finder must find a balance to what is the appropriate contribution by employees, if any, and what cost savings measures should be implemented to help the Employer from the ever rising costs associated with financing a health care plan.

This Employer is rebounding out of fiscal emergency, the need and the concern to control health care cost is evident and necessary. The City is standing on its' own, however, there is some need for continual help.

Although the Union would prefer to handle this through the grievance/arbitration procedure, this Fact-Finder would be remiss in his duties if an attempted solution wasn't recommended here.

With that said and taking into account, not only the testimony given and evidence presented, but the entire financial picture of the City and other wage and benefit recommendations in this Report, the following recommendation, this Fact-Finder believes is the best that balances the needs and interest of both parties and is doable under the City's financial concerns.

The Employer's proposed clean up language and changes in Sections 1,2, 3, 4 & 5 are recommended. However, the contribution rates will remain at the current 92/8 split.

This Report does recommend the Section 4, spousal surcharge language at the \$75.00 a month cost. This type of proposal should help the City remain fiscally responsible and enable them to fund the health care proposal adequately. The spousal surcharge is a growing area that helps small employers to still offer decent health care plans to their employees.

The Employer's new language in the section on Insurance Committee is, however, not recommended. As that language will remain status quo.

ISSUE NO. 6, ARTICLE 23, SALARIES

UNION PROPOSAL:

The Union is requesting wage increases for the Patrol Officers, Sergeants and Lieutenants in the amount of 4% in each year of the contract, retroactive to January 1, 2008.

The Union cites their comparables to show that Police for the City of Eastlake is falling behind the other like jurisdictions.

The Union also argues that when the City was in fiscal emergency they settled for a one year wage freeze and raises of only 2% a year after that.

EMPLOYER POSITION:

The Employer is offering wage increases consistent with the mandates placed upon it by the fiscal emergency recovery plan. 1.5% for the first year, 1.5% for the second year and 2% for the third year of the contract. In addition, the Employer has proposed modest adjustment to the salary step.

The Employer believes these increases will allow the City more judiciously manage its funds so it can rebuild the staffing level that fell due to the fiscal emergency.

DISCUSSION AND RECOMMENDATION:

After carefully reviewing the financial data provided to me and the comparables provided by both the Union and the Employer, this Fact-Finder finds that the City of Eastlake's police officers and supervisors lag behind in the area of wages. At best they fall somewhere below average on most categories considered in all the comparables offered.

However, and once again taking into account the City's recovery out of fiscal emergency and the need to stay on the right path put into effect by the recovery plan, and other financed benefits such as health care, this Fact-Finder believes that the level of a wage increase that best balances the needs and interests of both parties is the following recommendation:

Effective January 1, 2008,	3% wage increase to all three bargaining units.
Effective January 1, 2009,	3% wage increase to all three bargaining units.
Effective January 1, 2010,	3% wage increase to all three bargaining units.

The salary step schedule will remain current language or status quo.

ISSUE NO. 7, ARTICLE 23, MINIMUM MANNING

EMPLOYER POSITION:

The Employer has proposed to eliminate the minimum manning requirement from the Agreement.

The Employer argues that such language is permissive subject for bargaining and once an impasse is declared the Employer no longer has to negotiate over such language even though it was once put in to the parties Agreement. The Employer, to its defense, cites several SERB Cases on subjects of permissive bargaining .

The Employer also cites rising overtime costs, relating to this language, as another reason for its elimination.

UNION POSITION:

The Union requests that the current language remain.

DISCUSSION AND RECOMMENDATION:

Despite the Employer's argument and subsequent cited SERB Cases on permissive subjects of bargaining, this Fact-Finder finds that keeping such language may be helpful with the upcoming discussion on part-time employees. The two subjects goes hand and hand for this particular Report.

Therefore, the recommendation for Article 23, minimum manning is the status quo.

ISSUE NO. 8, ARTICLE 24, OVERTIME PAY/HOURS OF WORK

UNION POSITION:

The Union is seeking to increase the amount of court time pay minimums from 3 to 4 hours.

The Union bases its argument on their cited comparables

EMPLOYER POSITION:

The Employer has proposed language incorporated from the wage article, addressing hours of work into the provision, and titling the language elsewhere. Also, the Employer has proposed a specific recognition of the differences between contractual and FLSA overtime which clarifies the practice in place and is consistent with language accepted by the other City bargaining units.

The Employer rejects the Union's proposal to increase the court time pay minimums stating they are in the ball park with the comparables provided.

DISCUSSION AND RECOMMENDATION:

The Employer's proposal only reflects what is actually taken place and should be memorialized in the parties Agreement as the City has done with its other bargaining units. Hearing no objection from the Union, the Employer's proposal is recommended as written.

This Fact-Finder is also recommending that the court time pay minimums be increased from 3 hours to 4 hours to supplement those officers who spend their off time in court. This bargaining unit falls in the middle of the comparables with this issue, however, the Employer did not present evidence where such time and pay is being abused or too costly for the City. Therefore, a slight increase is warranted.

ISSUE NO. 9, ARTICLE 26, INJURY ON LEAVE DUTY

EMPLOYERS POSITION:

The Employer is proposing an injury on duty leave provision that increases the days of paid leave for a workplace injury and establishes a voluntary light duty program where the employee would be compensated at 75% of the employee's existing pay rate while on light duty.

UNION POSITION:

The Union is requesting current language and opposes the Employer's proposal stating that even though it is unwritten the practice now is to bring employees back to light duty positions at 100% of their current wages.

DISCUSSION AND RECOMMENDATION:

The Employer's proposal increases the amount of IOD leave, however, it takes away from the bargaining unit with regards to pay for someone who returns light duty. Although, the light duty program now is voluntary and at the Employer's discretion, it provides for 100% pay.

The Employer argues that their proposal is needed because of the substantial increase in overall workers compensation costs. The City has failed to show or prove how this proposal on IOD would help eliminate such cost compared to the program already in place in the Agreement.

This Fact-Finder recommends no change or the status quo for Article 26, Injury On Duty.

ISSUE NO 10, ARTICLE 27, UNIFORM MAINTENANCE ALLOWANCE

UNION POSITION:

The Union is seeking a \$75.00 per year increase in uniform allowance.

The Union argues that they have gone two contract cycles without increasing this allowance and the amounts proposed are well within the comparable jurisdictions. The Union also argues that the increase is needed to cover the rising cost of uniforms and equipment.

EMPLOYER POSITION:

The Employer proposes to maintain the current level of benefits citing that they are above the average of the comparables used by the City.

DISCUSSION AND RECOMMENDATION:

Looking at the list of comparables provided by the Union shows that this Union has fallen behind with respect to uniform allowances. Reviewing the City's comparables shows that this unit is lagging behind. The data provided shows that the City of Lyndhurst pays nothing towards uniform allowance and that 0 figure throws the average calculation, of those comparables, off by a large degree.

It is this Fact-Finder's recommendation that an increase is warranted, however, to ensure the City's recovery, the Union's request is a little too high for this time around.

Therefore, the recommendation is that the uniform allowance be increased by \$50.00 each year of the Agreement.

ISSUE NO. 11, ARTICLE 36, OBLIGATION TO NEGOTIATE
ISSUE NO. 12, ARTICLE 37, TOTAL AGREEMENT

These two issues will be discussed together.

On issue 11, obligation to negotiate, the Employer has proposed to eliminate language that conflicts with its proposal for a mid-term bargaining procedure over issues that may arise not addressed in the contract during the term of the agreement.

On issue 12, total agreement, The Employer has proposed language to address the requirement that the parties engage in mid-term bargaining during the course of the contract.

This requirement was enunciated by SERB in its 2001 Toledo decision.

The Employer proposes the changes in issue 11 and issue 12 to promote better administration of the agreement by both parties.

UNION POSITION:

The Union proposes to maintain current language for both issues.

DISCUSSION AND RECOMMENDATION:

SERB has recommended such language changes to cover mid-term bargaining so that parties to a collective bargaining agreement can be able to respond to emergency situations that arise during the term of their agreement.

The language proposed by the Employer on both issues does not negatively affect or impact the Union. After reading the language proposed, it clearly covers issues that arise that are not covered by the terms of the parties agreement. And, it gives the Union recourse to unilaterally imposed changes.

The language proposed by the Employer for both issues above is hereby recommended in its entirety.

ISSUE NO. 13, ARTICLE 38, DISCIPLINARY PROCEDURE

EMPLOYER POSITION:

The Employer proposes standard disciplinary language, previously agreed to by the FOP elsewhere, addressing issues involving discipline in a reasonable standard manner. The proposal lists the various forms of discipline, incorporates R.C. 124.34 offenses requiring progressive discipline, and incorporates the due process element of pre-disciplinary conferences into the agreement. The proposal also incorporates multiple elements of the Union's previously made employee rights proposal into the language.

UNION POSITION:

The Union wishes to maintain current language stating that the current language has worked for a couple of cycles and shouldn't be changed.

DISCUSSION AND RECOMMENDATION:

The Employer's proposal addresses gaps in the current language and is modeled after R.C. 124.34. The Union has not provided this Fact-Finder a legitimate reason not to recommend the Employer's proposal. Therefore, the Employer's proposal on Disciplinary Procedures is hereby recommended in its entirety.

ISSUE NO. 14, ARTICLE 39, DURATION

EMPLOYER POSITION:

The Employer proposes a three (3) year agreement, effective upon execution.

UNION POSITION:

The Union proposes a three (3) year agreement, effective January 1, 2008.

RECOMMENDATION:

A new three (3) year Agreement, effective January 1, 2008, through December 31, 2010.

All wage items, listed in this Report, will be retroactive back to January 1, 2008.

ISSUE NO. 15, ARTICLE 43, REDUCTION IN FORCE

EMPLOYER POSITION:

The Employer proposes language for the layoff procedure with the purpose to preempt applicable civil service statutes so that the parties can be secure that the layoff procedure as negotiated will be followed.

In its' defense, the Employer cites Batavia and other court and arbitration decisions.

UNION POSITION:

The Union wishes to maintain current language, although they prefer to follow the contract as opposed to following civil service for this issue.

DISCUSSION AND RECOMMENDATION:

Based on the evidence presented and the discussions that took place at the Hearing, the Employer's proposal does not alter any of the current bargaining unit members' rights during a reduction, in fact, the language proposed is actually better than what they have now.

Due to the impact of Batavia, it is not reasonable to allow any party to retain the rights they have negotiated in their Collective Bargaining Agreement and also have rights under the Ohio Statute because the Collective Bargaining Agreement may be found to lack specificity as outlined in Batavia. In Batavia, the Agreement must use language with such specificity as to explicitly demonstrate that the intent of the parties was to preempt statutory rights.

Therefore, this Fact-Finder, find that the Employer's proposal to be reasonable and it meets the test in Batavia and is recommended in its' entirety.

ISSUE NO. 16, ARTICLE 44, DRUG TESTING

EMPLOYER POSITION:

The Employer has proposed minor clean up language in order to clarify the language and reinstatement requirements when a positive test has occurred. The proposal also removes language that the Employer believes is unenforceable and contradicts Ohio Public Records Law.

UNION POSITION:

The Union proposes the current language and argues that post accident requirement has not been done before.

DISCUSSION AND RECOMMENDATION:

This fact-Finder, finds the Employer's proposal to be reasonable as it only reflects the current practice of the parties. This type of drug testing language is common in police contracts and falls within the scope of the law.

Therefore, the recommendation is for the Employer's proposal in its' entirety.

ISSUE NO. 17, NEW ARTICLE - PART-TIME EMPLOYEES

EMPLOYER POSITION:

The Employer is proposing language for the ability to utilize part-time employees to supplement it operations and to cover time off.

The Employer argues that with departmental costs escalating rapidly, part-time employees represent a viable way to provide greater protection to the public, cover time off and increase the public service in an economic fashion.

UNION POSITION:

The Union is opposed to the inclusion of part-time officers. The Union views that the hiring of part-time officers would be the start of eroding their bargaining unit.

DISCUSSION AND RECOMMENDATION:

Over the last contract, 05-07, the Employer had to pay more than \$250,000 in overtime costs. That number is nearly double from the contract term previous, 02-04. Over the past three years expenditures for the police department have increased by 87%. Over that same period sick leave usage was up 73%. Staggering figures, that need to be alleviated before the City is faced to return to a state of fiscal emergency. The use of part-time officers is one way to help alleviate those tremendous costs. This Fact-Finder is cognizant and sympathetic to the Union's concern of having their bargaining unit eroded by part-time employees. However, the Employer's proposal balances the needs of the bargaining unit for job security by guaranteeing that the use of part-time officers will not cause a reduction in force or regularly scheduled hours. The proposal also requires the reduction of part-time officers before any full time officers. One argument is, with the compliment of full-time officers down, vacation time is hard to take and overtime is a must. The Employer's proposal for part-time officers would enable the full-time officers to use more of their vacation time, and reduce some of the overtime they are working.

This Fact-Finder finds that the Employer's proposal is reasonable with the following additions.

1. Part-time officers will not be used for Ranking Officers.
2. The current level of Patrol Officers, currently at 21 full-time officers, will be increased by 1 full-time officer prior to the hiring and use of part-time officers.
3. A committee comprised of the Mayor and/or his representative, the Chief and at least 3 members of the bargaining units will meet and discuss the City's plan to hire part-time officers, where such issues as training, qualifications, and the scheduling of the part-time officers will be addressed. The committee will continue to meet, when necessary, to discuss part-time officer issues and to make sure that the full-time officers are not being disadvantaged by the use of part-time officers.
4. No part-time officer will be entitled to work overtime unless all eligible full-time officers have turned the overtime assignment down.

The recommendation is for the Employer's proposal in its' entirety with the inclusion of the above four (4) items.

ISSUE NO. 18, NEW ARTICLE - APPLICATION OF CIVIL SERVICE LAW

EMPLOYER POSITION:

The Employer has proposed new language to clarify the relationship between the parties' collective bargaining agreement and the Ohio Civil Service Law.

The Employer contends that they only want to ensure all portions of the labor agreement can be given effect and ensure that a negotiated provision not be nullified by external law. Once again the Employer cites Batavia and various court and arbitration cases in its' defense.

UNION POSITION:

The Union is opposed to the inclusion of the Employers proposal stating that it is a sweeping change and one that they are not sure what the impact may be.

DISCUSSION AND RECOMMENDATION:

The intent of the Employer's proposal is to seek a commitment from the Union that the Union is willing to live by what they have negotiated into their Collective Bargaining Agreement. The intent is fine, however, this Fact-Finder agrees with the Union that the Employer's proposal is such a sweeping change that no-one can predict, at least without more discussion and evidence, what the future ramification may be to either party.

The Employer's proposal preempts at least 11 sections of the ORC which includes corresponding Municipal Ordinances and Municipal Civil Service Rules. A lot more discussion needs to take place between the City and the Union on this issue before this type of language can be implemented.

It is therefore this Fact-Finder's recommendation that the Employer's proposal be denied for this Report.

ISSUE NO. 19, NEW ARTICLE - FIREARM PROFICIENCY PAY

UNION POSITION:

The Union is seeking to add a Firearms Proficiency allowance to the contract of \$1000.00 annually.

The Union contends that such an allowance is consistent with comparable jurisdictions and is an area that their members should be compensated.

EMPLOYER POSITION:

The Employer objects to such a proposal arguing that one, it is too costly and two, fire arm proficiency is a basic job requirement and the City should not have to pay extra for it.

DISCUSSION AND RECOMMENDATION:

It appears that six out of the total ten comparables used for this Report have some allowances for fire arm proficiency. Those jurisdictions are Wickliffe, Mentor, Willoughby, Maple Heights, Painesville, and South Euclid. They range from \$400 to \$1250, some are annually, some are a one time payment.

Based on the cost of this entire Report and taking into consideration the past and current financial picture of the City, the Eastlake Officers should be entitled to some compensation for staying proficient in this area. Since it seems to be a common benefit paid elsewhere. However, at this time the Union's proposal would be too costly to the City. The recommendation is for a one time fire proficiency allowance of \$500.00 for the term of this contract. Suggested language will be the Union's proposal with the recommendation of the one time \$500.00 allowance.

ISSUE NO. 20, NEW ARTICLE - SHIFT DIFFERENTIAL

UNION POSITION:

The Union is seeking a Shift Differential of \$.45 for all afternoon shift hours and \$.65 for all midnight shift hours.

The Union argues that all comparables and industry standard allow a shift differential when there are not shift bids and Officers work a rotating schedule.

EMPLOYER POSITION:

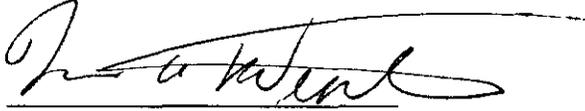
The Employer opposes the proposal as being too costly since the City is in an effort to climb out of and make progress away from the area of fiscal emergency that they just left.

DISCUSSION AND RECOMMENDATION:

Shift differential is normally found in contracts where employees work a continuous rotating schedule such Eastlake. The trend is to get away from such rigorous schedules. The differential is to compensate employees for the stress on their bodies and how their internal time clocks are upset and for the inconvenience to social and family life.

It is not unreasonable for this Union to make such a request. However, in view of the discussions for this entire report, caution must exist on the spending of the City. Based, once again, on the cost of this entire report, these bargaining units should be entitled to some differential, although their request is a little too high for this Report.

The recommendation is to accept the Unions proposal as written, however, the afternoon shift differential will be \$.30 and the night shift differential shall be \$.50.

A handwritten signature in black ink, appearing to read "Marc A. Winters", with a long horizontal flourish extending to the right.

Marc A. Winters