

BACKGROUND:

The Employer, the City of Eastlake, Lake County, Ohio, exercises statutory and charter authority and responsibility, inter alia, for the provision of law enforcement services for its some 20,200 residents.

The uniformed members of the City's Division of Police are organized into four Bargaining Units, each exclusively represented by the Fraternal Order of Police, Ohio Labor Council, Inc. The twenty-one Patrol Officers are in one Unit. Four Sergeants constitute the membership in a second, Four Lieutenants make-up a third.

The Patrol and Rank Officers are parties to a single Collective Bargaining Agreement entered into as of January 1, 2008 for an initial term of three-years.

The fourth Bargaining Unit, with which we are presently concerned, consists of six full-time Dispatchers. Their Collective Bargaining Agreement was entered into as of January 1, 2005 for an initial term which ended on December 31, 2007.

Pursuant to Contractual requirements, timely notices were given by the parties of their intent to modify or amend the Dispatchers' Agreement, and negotiations proceeded looking towards the execution of a successor Agreement. The parties declared impasse in the

negotiations, and the undersigned was appointed Fact-Finder by the State Employment Relations Board on November 28, 2007.

The parties continued to meet in an effort to resolve the outstanding issues.

Finally, twelve-months after its expiration, the parties directed the Fact-Finder to hold an evidentiary hearing on June 29, 2009 at the City of Eastlake's Municipal Building.

Thereat, the parties provided extensive documentary materials in support of their relative positions on the unresolved issues, and those found pertinent, are identified herein.

Timely in advance of the evidentiary hearing, the parties provided the Fact-Finder with the statements required by Section 4117-9-05(F) of the Ohio Administrative Code and Section 4117.14(C)(3)(a) of the Ohio Revised Code.

At the hearing the parties submitted tentative agreements reached with respect to subjects contained in the following Articles (numbered as they appeared in the 2005 Contract):

- Article I - Preamble;
- Article II - Purpose & Intent;
- Article III - Recognition;
- Article IV - Dues Deduction/Fair Share Fees;
- Article V - Management Rights;

Article VI - No Strike/No Lockout;
Article VII - Non-Discrimination;
Article VIII- FOP Representatives;
Article IX - Probationary Period;
Article X - Labor Management Committee;
Article XI - Personnel Files;
Article XII - Performance Evaluations;
Article XIII- Work Rules & Regulations;
Article XIV - Fitness for Duty;
Article XV - Seniority;
Article XVI - Layoff and Recall;
Article XVIII - Rest Periods;
Article XIX - Lunch Periods;
Article XX - FMLA;
Article XXI - Military Leave;
Article XXII - Union Leave;
Article XXIII - Unpaid Leaves of Absence;
Article XXIV - Special Leaves;
Article XXV - Injury Leave;
Article XXVI- Sick Leave;
Article XXVII - Funeral Leave;
Article XXVIII - Jury Duty;
Article XXX - Vacations;
Article XXXI - Insurance;
Article XXXIII - Longevity;
Article XXVII - Tuition & Fees;
Article XXVIII - Disciplinary Procedure;
Article XXIX - Grievance Procedure;
Article XXXX - Arbitration Procedure;
Article XXXXI - Gender and Plural;
Article XXXXII - Headings;
Article XXXXIII - Conformity to Law;
Article XXXXIV - Drug/Alcohol Testing;
Article XXXXV - Employee Assistance Program (EAP);
Article XXXXVI - Obligation to Negotiate;
Article XXXXVII - Severance of Prior Agreements/Mid-Term
Bargaining and,
Article XXXXVIII - Contribution to the Pension Fund by City
and
Member

The parties, moreover, tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all of the other Articles, and Sections of

Articles and Supplemental attachments from the 2005 Contract except those set forth below.

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

A series of proposals to add new provisions and to amend other Articles and Sections of Articles of the 2005 Contract were withdrawn. Consequently, all proposals for Contractual amendments or the addition of Sections, Articles or Supplements that are not so referred to above or discussed below, are to be deemed as having been abandoned.

Remaining unresolved were proposals submitted by the parties for changes or additions to the following Articles and Sections of Articles of the 2005 Agreement:

Article XVII - "Work Day and Workweek/Staffing";
Article XXIX - "Holidays";
Article XXXII - "Wages";
Article XXXIV - "Overtime/Call-Out Pay";
Article XXXV - "Overtime Equalization Distribution";
Article XXXVI - "Uniform Maintenance Allowance", and
Article XXXIX - "Duration"

In making his recommendations upon all of the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code, Section 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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, 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 facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

CONTRACT PROVISIONS AT ISSUE:

INTRODUCTION:

The Fact-Finder is asked to make recommendations with respect to the economic relationship of the parties during the next fifteen-months, as the Union would have the new Contract extend, or during the next thirty-nine months, as the City would have it, at a time of an unprecedented recession whose depth and length not even Nobel Prize Laureates can predict with assurance. Further, he must

proceed without comprehensive audited 2008 financial data, unaudited financial data for the first eight-months of 2009, nor even the 2009 budget analyses and projections.

Nonetheless, it is clear from Eastlake's financial history over the past five-years that prudence is required in considering the extent of augmentations to its required expenditures.

In 2004 the State of Ohio Auditor declared the City to be in a State of Fiscal Emergency because it was unable to meet both its payroll and debt obligations, and was running a deficit in many of its fund balances.

In response, the City put together a plan for financial recovery which involved among other cost-cutting measures, laying-off employees and allowing vacancies to remain unfilled. All employees accepted a wage freeze, and agreed to make contributions towards the cost of City provided health care insurance.

On December 4, 2007 the Auditor of the State removed the City from the oversight of the Eastlake Financial Planning and Supervision Commission because the City no longer met the Fiscal Emergency conditions set forth in Section 118.27(A)(1), (2), (3), and (4) of the Ohio Revised Code.

However, since an acceptable financial accounting, and reporting system had not yet been fully implemented, the Auditor of State continues to monitor the City's progress, and to exercise authority under the Code to assure full implementation by December of 2009.

The City's economic future is constrained by several adverse demographic factors. The City has lost approximately 3% of its population since the last Census. The most recent data available indicates that 21% of Eastlake residents live on fixed income, the medium household income is only \$43,300.00 and over 57% of families resident in the City have combined income totaling less than the national average of \$50,000.00.

The City's 2009 State provided Local Government Assistance and Local Government Fund revenues were reduced to \$1,911,000.00, and the City's investment income which had been used to subsidize its ongoing operations, suffered an even greater diminution. In 2008 the City earned only \$11,458.00, as compared to \$326,000.00 in 2006 and \$109,316.00 in 2007.

However, the City's chief source of funding for employee compensation - the Municipal Income Tax - has remained stable over the past eight-years. In 2008, the

City income tax revenues amounted to \$7,421,000.00, down by only some \$150,000.00 from its peak in 2006.

The pre-2004 gap between revenues and expenditures had been closed by drawing upon the General Fund Carry-over. The City estimates that the General Fund carry-over to 2010 will be \$1,482,000.00 representing slightly less than 10% of its projected expenditures for 2009.

While this surplus represents a comfortable margin for bond rating purposes, the City is concerned that the Carry-Over will dwindle in future years, and fall to unacceptable levels.

Since 2004, the City has been able not only to balance its budget, but also to add modestly to the General Fund balance every year. However, the surplus of revenues over expenditures has declined over the past two-years, so that while General Fund revenues were relatively stable in 2008 at \$14,273,984.00, expenditures climbed by about \$800,000.00 over 2007 to \$14,088,355.00.

With these circumstances in mind, the Fact-Finder proceeds to consider the unresolved issues.

I. Present Article XVII - "Workday and Workweek Staffing":

A. The 2005 Contract:

The expired Contract provided as follows:

"17.01: The normal workweek for regular full-time employees shall be forty (40) hours of work in five (5) days of eight (8) consecutive hours each day.

"17.02: This Article shall not be construed as a guarantee of hours of work per day or per week. In the event it is necessary to reduce the hours of work, the Employer will meet with the Union and discuss the situation and attempt to reach an agreement on the action to be taken. If it becomes necessary to make other hour changes, the Employer will notify the Union in writing seven (7) calendar days prior to implementing said changes. Changes in hours of work resulting from snowfall or other unusual situations shall not require prior notification to the Union.

"17.03: Employees shall be awarded one-quarter (1/4) hour of time for roll calls at the beginning of each shift. This time shall be paid in compensatory time on a straight time basis.

"17.04: The police department will maintain six (6) full time dispatchers on staff."

B. The City's Proposal:

The City proposes to amend Section 1 of this Article in order to expand the changes in work hours which do not require prior notification to the Union:

"Changes in hours of work resulting from an emergency, in order to meet compensatory time requests and other unusual situations shall not require prior notification to the Union."

It also wants to eliminate Section 4 in its entirety.

C. The Union's Proposal:

The Union wishes to retain the current language without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATIONS:

Section 17.04 came into the Contract as a quid for quo for economic concessions made by the Union.

Now, however, citing the decisions in City of Cincinnati vs. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, 61 Ohio St.3d 658, 576 N.E.2d 745, 1991 Ohio Lexus 2123 (1991) and In re: SERB vs. Youngstown City School Dist., Bd. Of Ed., SERB 95-010, the City argues that the dictation by a union of the minimum number of employees an employer must have in a classification is unprecedented in the contracts of comparable communities, and is, at best, only a "permissive topic of bargaining". Given current economic conditions, it is no longer willing to continue the present guaranty.

The Union notes that the Contracts entered into with the Fraternal Order of Police, Ohio Labor Council, Inc., for Patrolmen, Sergeants and Lieutenants on July 30, 2008 continued a "minimum manning" provision which required one Dispatcher to be assigned to each shift.

A minimum manning provision, however, is, of course, not quite the same thing as a minimum Unit size term.

The Fact-Finder agrees that just because the City has agreed to adopt such a job security provision in the past,

it is not obligated to treat the subject as a mandatory subject of bargaining in the future.

Nonetheless, the City acknowledges that it has no present plans to reduce the number of Dispatchers in the Unit. Indeed, the present members incur substantial overtime assignments.

There may come a time when retention of a mandatory unit size becomes improvident, but that time is not now.

Turning to the City's adjunct proposal to allow it to revise the text of the exemption from the requirement of prior notification to the Union before any change in work hours, the Fact-Finder observes that the City has not provided any explanation as to why the present text is inadequate.

Accordingly, the Fact-Finder does not find appropriate and does not recommend any change this Article and therefore recommends that the existing text, as renumbered, be carried forward without change and incorporated into the successor Agreement as set forth in Appendix "1"

Present Article XXXII "Wages and Salary Schedule":

A. The 2005 Contract:

Since January 1, 2007 the hourly "Start" wage rate for newly hired Dispatchers has been \$13.60. After completion of a 180 day probationary period Dispatchers have been paid

\$13.95 per hour. After one-year of service the Dispatchers have reached the top wage rate of \$17.54 an hour (the "Work" rate).

B. The City's Proposal:

The City offers "for 2008 and 2009 ... a lump sum payment equivalent to a 3% general wage increase of the member's annual salary as if a general wage increase had occurred. Effective January 1, 2010 the member's wage rate will be adjusted by 6% (for 2009 & 2009) [sic] and the employee will receive the 3% general wage increase for 2010 that other units have already received."

Effective January 1, 2011 and January 1, 2012, unit members' would also receive a 1% adjustment for each of those years.

The City's would further create a five-step wage progression schedule, viz. - "Entry, After Probation; after one-year; after two-years and after 3-years."

C. The Union's Proposal:

For all existing rate steps the Union seeks a 6% increase retroactive to January 1, 2008, a second 6% increase retroactive to January 1, 2009 and a third 6% increase to become effective on January 1, 2010. It opposes the introduction of additional steps into the wage structure.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATIONS:

In light of the continued recession, the City justifiably seeks to be conservative in its spending proposals, but it does not argue "inability to pay".

It goes without saying, Dispatchers top wage rates are well below that paid Patrol Officers in the Department. The 2007 top hourly rate (after three-years) for Patrol Officers was more than \$10.00 greater than that available to Dispatchers (\$27.84 vs. \$17.54).

Clearly, the Dispatchers are entitled to receive at least the benefit of the same annual 3% wage increase provided "across-the-board" to the other Police Bargaining Units.

He therefore finds appropriate and recommends that present Article XXXII and Appendix "A", as renumbered, be amended as set forth in Appendix "2" hereto, and as so amended be carried forward and incorporated into the successor Agreement.

The question before the Fact-finder is whether Dispatchers are entitled to more.

This Unit of six members finds there is value in being small. Within reasonable bounds, an additional increase in their compensation is unlikely to have a material impact

upon the City's total expenditures and its budgetary constraints.

Although the Fact-Finder concludes that the City is financially able to do more, the precise issue before him is whether Dispatcher salary levels are demonstrably in need of adjustment beyond the annual 3% increases agreed upon with the other Police Units.

Here, the Fact-Finder considers the wages paid to Dispatchers in comparable communities.

All of the City's Dispatchers are at the top wage step.

On February 25, 2008, the Mayor directed a "Dispatcher pay comparison" study be made. The Cities included in this comparability survey were only Wickliffe, Willoughby Hills, Willowick and Willoughby. The results are portrayed below:

A 2000 Fact-Finding Report found that only the cities of Willoughby, Wickliffe and Willowick were comparable based upon "population, proximity to the City, department size and overall quality of available data."

Then, a 2005 Fact-Finding Report, issued during the period of "Fiscal Emergency", rejected data from the far larger City of Mentor and the far smaller jurisdiction of Mentor-on-the-Lake, as well as the City of Painesville, Madison Township and the Lake County Sheriff's Department.

But, in an April 22, 2008 a Fact-Finding Report conducted following a bargaining impasse between the Patrol and Rank Officers and the City, the Fact-Finder found the following Cities to be comparable: Wickliffe, Willowick, Mentor, Willoughby, Lyndhurst, Maple Heights, Painesville, Parma Heights, South Euclid and Niles. However, he found some of these cities were more equal than others. Without identifying which particular cities were "more comparable", he wrote that: "the appropriate weight was given, to the information, relating to [all] those jurisdictions, however, heavier weight was awarded to the jurisdictions more similar to the City of Eastlake and the City's duly respective Bargaining Units."

A review of the top wage level paid Dispatchers in jurisdictions that the City now suggests are "comparable" -

Kirtland, Lake County, Mentor, Mentor-on-the-Lake, Wickliffe, Willoughby, Willoughby Hills, Willowick - discloses that the salaries paid Eastlake Dispatchers are well below that of every other jurisdiction except Mentor-on-the-Lake and Kirtland, as shown on the following schedule:

The Fact-Finder further observes that the Dispatcher salaries for the forty-two cities surveyed in SERB's June 26, 2009 Benchmark Report calculated the average top level salary to be \$42,812.00, well above that of Eastlake's \$36,483.00.

Whatever comparative measuring rod is used, it is clear that Eastlake's Dispatchers wage compensation is substantially below the average, and further supplementation is warranted.

With one exception, the Fact-Finder does not believe that in light of present economic uncertainties the supplement should be accomplished by an additional adjustment in the Dispatchers base wage rates, because once granted, they tend to become permanent and resistant to concessionary "give backs".

He finds it appropriate, instead, to provide for alternative forms of compensation which relieve the City not only from this constraint, but equally important, the significant cost of "roll-ups" which attach to wage rates.

As explained below he recommends that there be included in the successor agreement new Articles providing for a \$500.00 annual allowance for L.E.A.D.S. certification or recertification, and a \$1,000.00 signing bonus.

L.E.A.D.S. Certification:

Dispatchers, as part of their job duties, must qualify and maintain their L.E.A.D.S. Certification.

Since the Division's Patrol Officers must maintain their firearms licenses in order maintain their position with the Department, and receive a \$500.00 "firearms proficiency pay", it is analogously appropriate for Dispatchers to receive a bonus for their qualifying and re-qualifying so as to maintain their L.E.A.D.S. Certification.

The "L.E.A.D.S. Certification bonus" does not require the City to include such payments in its "roll-ups" obligations.

Given the limited number of Bargaining Unit members such a bonus would not significantly affect the City's finances. Moreover, it recognizes qualification unique to the Dispatchers which they obtain by training and study, and should not trigger a competitive "me too" initiative from other Units.

Accordingly, the Fact-Finder finds appropriate and recommends that a new Article as set forth in Appendix "3" be incorporated into the successor Contract.

Signing Bonus:

The present members of the Bargaining Unit have stayed with the City during its period of economic adversity and were not tempted to resign and transfer to another City offering higher wages.

As a one time bonus, not subject to "roll-ups", and in consideration of the Dispatcher's relatively low compensation vis a vis their counterparts in comparable jurisdictions, as well as to Patrol Officers, and in light of the fact that the City will not be unduly impacted because the small size of the Bargaining Unit, the Fact-Finder finds appropriate and recommends that the current members of the Bargaining Unit who remain employed as of the execution of the successor Agreement receive a signing bonus of \$1,000.00.

Since this compensation would be available only to the Bargaining Unit members who were employed as of July 1, 2008, and remained employed as of the beginning of the successor Agreement, it is appropriate that the signing bonus not be made part of the Contract itself, but be expressed in a "Side Letter".

Accordingly, the Fact-Finder finds appropriate and recommends the parties adopt a "Side Letter" as set forth in Appendix "4".

Shift Differential:

The exception to the Fact-Finder's preference for wage adjustments - outside of the wage rates deals with the issue of "shift differentials".

The frictions which arise from employees who are assigned to shifts inconsistent with the schedules of family members and social obligations are well known, and typically are addressed by a reward of a "shift differential". But, higher pay for those who work other than on the daylight shift also creates problems when the junior Dispatchers working those shifts receive more compensation than their senior colleagues.

In the interest of minimizing discord in the Bargaining Unit and moving Dispatcher pay towards the average of comparable jurisdictions, the Fact-Finder concludes that in lieu of a separate shift differential payment, all members of the Bargaining Unit receive an hourly wage supplement of \$.31 for each hour actually worked in performing Dispatcher duties.

He therefore finds appropriate and recommends that the parties adopt in their successor Contract a new Article entitled "Dispatch Differential Pay" as set forth in Appendix "5" attached hereto.

The City also proposes to extend the Contract thru 2011, two-years beyond the terms of the Contracts with Patrol and Rank Officers and other Units.

The City points-out that the negotiations over a successor Contract have gone on for eighteen-months after the expiration of the 2005 Contract, and seeks "breathing room" before returning to the bargaining table. The Fact-Finder is not persuaded that such decoupling of the terms of the Dispatcher's Contract from that of the Patrol Officer's Agreement is sound.

At this writing, there are signs that the economic conditions are stabilizing, but the commencement of recovery and its strength remain uncertain. And, it is these conditions that will ultimately determine the City's financial position.

Under these circumstances, the Fact-Finder does not find that settling the wages and working conditions now for two additional years as suggested by the City is appropriate.

VI. Present Article XXIX - "Holidays":

A. The 2005 Contract:

Section 29.01 of the expired Contract provided for twelve paid holidays, viz, New Years Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day,

Thanksgiving Day, the day after Thanksgiving, Christmas Eve Day, Christmas Day, Birthday and Veteran's Day.

Section 29.03-29.05 stated:

"29.03: Employees shall have the option of either taking the time-off with pay or to be paid for the holidays at their straight-time rate of pay and shall notify the Chief of their election. Any such payments shall be made the first pay period of December.

"29.04: Should an employee elect to take the time-off instead of pay for the holidays, the employee shall designate the days he wishes to take-off which shall be subject to the advance approval of the employee's supervisor as to when they may be taken.

"29.05: Any employee electing to take time-off for holidays shall be required to take the time during the year it is earned and not be able to carry the time over into the next calendar year."

B. The City's Proposal:

The City seeks to require that employees take holiday time-off with pay, and eliminate their option to elect to work a holiday.

It also proposes to convert the fixed Birthday and Veteran's Day holidays into two floating holidays, instead.

C. The Union's Proposal:

The Union wants to retain the right of employees to take the holiday time-off with pay, or to work the holidays. It does not object to the substitution of two floating holidays for the present Birthday and Veteran's Day observances.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATIONS:

The City insists that it is unreasonable to allow employees to dictate to their Employer its holiday scheduling needs by working holidays when operational needs do not require such work, and to allow an employee to "cash-out" the unused holiday time.

The City's position is supported by the practice in six of the eight communities which it considers comparable which do not allow the employees to determine whether they will work on a holiday, and, if they do, to cash-out un-worked hours. None of the members of the other Division Units, nor of the Firefighters, have this option. These employees are all required to schedule their holiday time-off, and cannot work the holiday and cash-out the holiday hours unless upon Management's request.

The Fact-Finder finds the practice in comparable Dispatcher Units as well as the other Eastlake Bargaining Units to be persuasive on the issue.

On the other hand, he finds no objection to allowing the substitution of "floating holidays" for the birthday and Veteran's Day holidays, subject to obtaining the prior approval of the employee's Supervisor so that the days

designated are convenient in light of the Department's overtime considerations.

Accordingly, the Fact-Finder finds appropriate and recommends that present Article XXIX "Holidays", as renumbered, be amended to read as set forth in Appendix "6" hereto, and as so amended, carried forward and incorporated into the successor Contract.

However, flexibility should be build into the system so that in the event the employee is unable to schedule the holiday time-off in a given year, the Dispatcher will be allowed to carry-over the hours that could not be scheduled at least into the first quarter of the following year.

For that reason the Fact-Finder recommends that a "Section 3" to be added to the existing "Memorandum of Understanding - Holiday Time Schedule" appended to the expired Contract, so that the Memorandum of Understanding, as amended, reads as set forth in Appendix "7", and as so amended be carried forward and appended to the successor Contract.

VII. Present Article XXXVI - "Uniform Maintenance Allowance:

A. The 2005 Contract:

The expired Contract provided for a \$725.00 annual uniform allowance with payment to be made on a

reimbursement basis. Newly hired employees received a uniform allowance of \$300.00 plus a prorated share of the annual uniform allowance.

B. The Union's Proposal:

The Union proposes to adjust uniform allowance by \$75.00 so that employees would be entitled to a reimbursement allowance of up to \$800.00 per year.

C. The City's Proposal:

The City proposes to maintain the uniform allowance at its current rate.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union failed to offer of record evidence that uniform costs have so increased as to exceed the present allowance. In the present recessionary climate with deflation a significant threat, the Fact-Finder finds no reason to increase the uniform allowance and therefore recommends that Article 38, "Uniform Allowance, as renumbered, and set forth in Appendix "8", be carried forward without change and incorporated into the successor Agreement.

VIII. Present Article XXXIV - "Overtime Pay":

A. The 2005 Contract:

The expired Contract provides:

"34.01: All employees when performing assigned overtime work, will be entitled to receive pay at the rate of one and one-half (1 ½) times their regular rate for all hours actually worked in excess of eight (8) hours in any day or forty (4) hours in any week. All assigned overtime shall be subject to the provisions of Article 35.

"34.02: For the purposes of computing overtime payments, holidays and vacation days shall be counted as time actually worked.

"34.03: All employees shall receive their regular hourly rate for all hours worked, unless those hours worked are subject to the overtime provisions of this Article. In the event an employee works on a holiday, she shall receive one and one-half (1 ½) times her regular hourly rate of pay, plus her holiday pay.

"34.04: Any employee who is recalled to work after leaving work or on a day when she is not scheduled to work, shall be given a minimum of two (2) hours work or two (2) hours pay or comp time at her regular hourly rate, providing that the time worked or paid for does not abut the employee's work day.

"34.05: Compensatory time may be accumulated to a maximum of one hundred sixty (16) hours to be taken off at a future date, providing that the use of compensatory time is approved of in advance by the employee's supervisor and does not require the utilization of another employee on an overtime basis to work for the employee on comp time. The use of compensatory time shall not be denied for the sole purpose of imposing discipline. This may be adjusted to coincide with Federal legislation.

"34.06: Employees shall have the option of cashing-in comp time earned at a time-and-a half during the calendar year. In addition, employees may cash-up to an additional one hundred twenty (12) hours time earned at straight-time. This may be adjusted to coincide with Federal legislation."

B. The City's Proposal:

The City proposes to reduce Contractual overtime by eliminating the premium rate for "all hours worked in

excess of eight (8) hours in any day", and for holiday work so as to encourage regular attendance.

Employees who are absent during a workweek would receive only straight-time pay for daily overtime hours worked that week.

Following an Arbitration Award striking down a restriction on the use of FLSA compensatory time, the City also seeks to differentiate non-FLSA compensatory time by requiring that non-FLSA compensatory time may be taken only if it does not require assignment of another employee on an overtime basis.

Consistent with provisions in all other Division Contracts, the City further proposes to pay the straight-time hourly rate for regular shift hours worked on a holiday.

C. The Union's Proposal:

The Union proposes to retain the provisions of Article XXXIV without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Eastlake's overtime payments under the expired Contract totaled \$58,748.00, while the payments for 2008 alone amounted to \$25,493.00. The Fact-Finder agrees that

the City is justified in attempting to bring its overtime expenditures under control.

However, refusing premium pay for hours worked in excess of a regularly scheduled eight-hour shift is inappropriate. Some recognition should be paid to the fact that extra-hour scheduling tends to physically and mentally stress employees, and disrupts their expected leisure time activities. There is no consensus among comparable communities on the issue, and the Fact-Finder does not find the City's argument that the adoption of its proposal would serve as a disincentive to absenteeism, particularly when the City has not offered evidence that absenteeism has been a problem.

On the other hand, the Fact-Finder believes that a legitimate cost saving may be achieved by eliminating the premium pay for regular shift hours which are scheduled on a holiday. A Police Division is, of course, a three shift, twenty-four hour, seven days a week, continuous operation unit, so that employees will be scheduled to work on a holiday as part of their regular workweek. All of the other Division Bargaining Unit members receive straight-time pay for regularly scheduled holiday work, and the Fact-Finder perceives no especial circumstances justifying an exception for Dispatchers. The economic package

recommended by the Fact-Finder, if adopted, obviates the need for this form of additional compensation.

As to the "use of compensatory time" issue, the Fact-Finder recommends strict adherence to FMLA Guidelines which require that requests be denied only if the granting of the requests "would pose an undue burden upon the operations of the Employer". See, the Fair Labor Standards Act of 1938, 29 U.S.C. Sections 201, 207(D); 29 C.F.R. Sections 553.23, 553.25, 553.54(d); Christiansen vs Harris County, et al., 529 U.S. 576, (2000); Beck vs. City of Cleveland, 390 F.3d 912 (6th Cir., 2005); Canney vs. City of Brookline, 2000 WL 1612703 (D. Mass); Nebraska vs. City of Milwaukee, 131 F.Supp. 2d 1032, 1036 (E.D. Wis., 2000).

Accordingly, the Fact-Finder finds appropriate and recommends that present Article 34 be amended as set forth in Appendix "9" hereto, and as so amended carried forward and incorporated into the successor Contract.

IX. Present Article XXXV - "Equalization of Overtime":

A. The 2005 Contract:

The expired Contract provided for employees who were offered overtime work, but who failed to accept the overtime, to be credited, for equalization purposes, with the overtime hours as if the employee had worked the hours.

If an insufficient number of qualified employees accepted the overtime opportunity, the City could assign the work, in its discretion, to qualified employees, giving consideration first to employees with lesser seniority.

Section 35.04 provided:

"35.04: As much as possible, Dispatchers who work pre-scheduled overtime due to vacations of one (1) week or more duration or extended sick leave or vacancy, shall split the overtime shift so the scheduled overtime shall, to the extent possible, be twelve (12) hours for both shifts (full and part-time)."

B. The City's Proposal:

The Employer seeks to amend the provision to conform with the procedure in force with respect to all the other Bargaining Units in the Police Department. The Contracts with the other Units provide for voluntary overtime posting for the entire shift, as opposed to split shifts, and mandate overtime on an entire shift basis.

C. The Union's Proposal:

The Union proposes to retain the existing overtime equalization procedure without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Fact-Finder finds the City's objective to standardize and simplify the overtime distribution procedure to be appropriate and recommends that present

Article XXXV, as renumbered, be amended to read as set forth in Appendix "10" attached hereto and, as so amended, carried forward and incorporated into the successor Contract.

X. Present Article XXXIX - "Duration":

A. The 2005 Contract:

The term of the expired Agreement was for three-years, and its terms have remained in effect post-expiration, pending the negotiation of successor Agreement.

B. The City's Proposal:

The City proposes that the new Agreement extend thru December 31, 2011 in light of the fact that negotiations for the successor Contract have gone on for some eighteen-months past the end of the original term, and the adoption of another three-year term would require the parties to begin negotiations within eighteen-months.

C. The Union's Proposal:

The Union seeks to maintain the past practice of entering into Contracts with three-year terms so that the successor Contract would expire on December 31, 2010.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Fact-Finder has already rejected the City's proposal for 1% pay increases in 2010 and 2011, which would

have left all other provisions unchanged - a proposal which presupposed a five-year term for the successor Agreement.

The Fact-Finder appreciates the City's desire for stability. But the City's proposal would place the expiration date of the Dispatcher's Agreement out of "sync" with the expiration date of the Patrol and Rank Officers Contract, as well as with the expiration of the Agreements with other Bargaining Units. The consequence would be that while other Unions would have an opportunity to seek improvements in the non-wage terms and conditions of employment for their members, Dispatchers alone of all Bargaining Unit employees, would be unable to participate in those forward looking negotiations.

For these reasons the Fact-Finder finds appropriate and recommends that the successor Agreement, become effective as of January 1, 2008 for an initial term of three-years.

Accordingly, the Fact-Finder recommends that Article XXXIX - "Duration", as renumbered, be amended as set forth in Appendix "11" hereto, and as so amended carried forward and incorporated into the successor Agreement.

Respectfully submitted,

Alan Miles Ruben
Fact-Finder

AMR:ljb

September 15, 2009

Michael D. Esposito, Esq.,
Clemans Nelson & Assoc.
FAX: 330-785-4949

Ms. Chuck Wilson
FOP, Ohio Labor Council
FAX: 330-753-8955

RE: SERB Case No: 2007-MED-09-0830
The City of Eastlake -and- FOP
Issue: Dispatcher Unit

Gentlemen:

Attached is my Report and Recommendation in the above-referenced Fact-Finding proceeding.

A hard copy has concurrently been place in the mail.

Sincerely,

Alan Miles Ruben
Fact-Finder

AMR:ljb
Enc.

NEW SIDE LETTER
SIGNING BONUS

Section 1. Each member of the bargaining unit who was employed as of July 1, 2008 and who remains employed as of the execution of the 2008 Contract shall be entitled to receive a one thousand dollar (\$1,000.00) signing bonus.
