

**HAND DELIVERED**

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

2008 MAR 31 A 9:13

In The Matter Of Fact-Finding : SERB Case Number:  
Between The : 2007-MED-09-0941  
CITY OF ST. MARYS, OHIO, :  
Employer : Date of Fact-Finding Hearing:  
And The : March 21, 2008  
OHIO PATROLMEN'S BENEVOLENT :  
ASSOCIATION, :  
Union : Howard D. Silver  
Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: City of St. Marys, Ohio, Employer

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For: Ohio Patrolmen's Benevolent Association, Union

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This matter came on for a fact-finding hearing at 10:00 a.m. on March 21, 2008 within a conference room within the city of St. Marys Municipal Building at 101 East Spring Street, St. Marys, Ohio 45885. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Both parties have met their obligations within this fact-finding process as required by law.

This matter proceeds under the authority of Ohio Revised Code Chapter 4117.14 and in accordance with Ohio Administrative Code section 4117-09-05.

#### BACKGROUND

The parties to this fact-finding, the Ohio Patrolmen's Benevolent Association, (hereinafter the Union), and the city of St. Marys, Ohio, (hereinafter the Employer), were parties to a collective bargaining agreement in effect from January 1, 2005 through December 31, 2007.

The parties met to bargain a successor negotiated Agreement on December 12, 2007. The bargaining unit represented by the Union is comprised of four full-time dispatchers employed within the St. Marys Police Department. At the December 12, 2007 bargaining session a tentative agreement was reached as to all language to be included within the successor Agreement, with two of the four bargaining unit members participating in these negotiations.

Subsequent to December 12, 2007, the bargaining unit voted three to one against ratifying the tentative Agreement reached by the parties on December 12, 2007.

This fact-finding has been convened to assist the parties in constructing a successor Agreement to be effective January 1, 2008 and to continue in effect until the conclusion of December 31, 2010.

By the time of the fact-finding on March 21, 2008 the parties had agreed to language to be included within their successor Agreement among a majority of Articles but had yet to reach agreement on twelve Articles, and the Union proposed the addition of a new Article. The Articles not agreed by March 21, 2008 are Article 7, Applicability of Laws and Civil Service Regulations; Article 12, Grievance Procedure; Article 17, Holidays; Article 19, Overtime Pay; Article 21, Health Insurance; Article 24, Sick Leave; Article 29, Military Leave; Article 32, Probationary Period; Article 33, Drug/Alcohol Testing; Article 35, Wages; Article 36, Shift Assignments; and Article 38, Duration. The new Article proposed by the Union for inclusion in the successor Agreement is entitled Physical Fitness Program.

#### DISCUSSION AND RECOMMENDED LANGUAGE

The fact finder includes herein by reference all of the Articles tentatively agreed by the parties for inclusion in their successor Agreement as if fully rewritten herein, and recommends

these tentatively agreed Articles for inclusion in the parties' successor Agreement.

Those Articles not agreed by the parties are addressed below.

Article 7 - Applicability of Laws and Civil Service Regulations

The Employer proposes a change to the language of Article 7, section 7.3 that would remove: "...It is the parties' intent to exclude any statutory protections afforded probationary dispatchers," and replace it with: "...Probationary employees who are disciplined or terminated at any time during their probationary period shall have no right to appeal to the St. Marys Civil Service Commission or to the grievance procedure contained herein."

At the fact-finding hearing the Union withdrew its objection to the Employer's proposal concerning Article 7. The fact finder recommends the changes proposed by the Employer to Article 7, section 7.3, and recommends the maintenance of current contract language in Article 7, sections 7.1 and 7.2.

RECOMMENDED LANGUAGE - ARTICLE 7, Applicability of Laws and Civil  
Service Regulations

Section 7.1. Maintain current contract language.

Section 7.2. Maintain current contract language.

Section 7.3. The parties hereby declare that it is their intent to specifically waive the applicability of O.R.C. Section 737.12 and Section 4111.03 of the Ohio Revised Code and any other Sections of the Ohio Revised Code or City Ordinance in conflict with the provisions herein. Probationary employees who are disciplined or terminated at any time during their probationary period shall have

no right to appeal to the St. Marys Civil Service Commission or to the grievance procedure contained herein.

Article 12 - Grievance Procedure

The Employer proposes changing language within Steps 1, 2, and 3 of Article 12 that would remove an obligation to attempt to resolve the grievance through an immediate supervisor before proceeding to subsequent steps of the grievance procedure. The changes to Step 1 within Article 12 as proposed by the Employer would also change to whom the formal grievance is to be submitted. Under prior language the grievance was presented, in writing, to the grievant's immediate supervisor. Under the Employer's proposed changes, Step 1 would require the filing of a grievance, in writing, with the Chief of Police or his designee. The time periods for filing a grievance would remain unchanged, however, that being ten working days after the occurrence of the incident giving rise to the grievance (prior language refers to the "facts giving rise to the grievance") or within ten working days after the employee should reasonably have become aware of such incident (prior language refers to "...employee should reasonably have discovered such facts.")

The fact finder is of the opinion that each party should be permitted to wield some discretion as to whom is to receive official actions from the other party. In this case the issue is who on behalf of the Employer is to receive a grievance filed on behalf of an employee. The fact finder is of the opinion that the

Employer is entitled to designate who, on behalf of the Employer, the grievance is to be received. The Employer proposes a change from the immediate supervisor to the Chief of Police or the Chief's designee, and the fact finder heard little in the way of complaint about such a change from the Union.

The fact finder recommends the changes proposed by the Employer to Step 1 within Article 12.

The change to Step 2 within Article 12 as proposed by the Employer would add an obligation to the grievant if the grievant were to move the grievance to Step 2 after Step 1 had been completed. The additional obligation is an explanation from the grievant as to why the Step 1 decision by the Employer was unacceptable.

The Union sees no reason to require a grievant to provide an explanation as to why the Step 1 decision of the Employer was unacceptable. The fact finder shares the Union's view in this regard. Once a grievance has been addressed at Step 1 it is presumed that both parties understand the points of contention arising from the grievance. If the Employer is confused by the motive of a grievant in moving to Step 2 a grievance that had been denied at Step 1 by the Employer, there is no bar to a communication between Union officials and Employer representatives as to the sticking points in reaching a resolution of the grievance. The fact finder views the addition of an obligatory explanation as to why the Step 1 decision by the Employer was unacceptable to the grievant to be an unnecessary and burdensome

obligation upon a grievant who is invoking the procedures expressed within Article 12, the parties' contractual grievance procedure.

The fact finder does not recommend the Employer's proposed changes to Step 2 within Article 12 and recommends the maintenance of current contract language for Article 12, Step 2.

Within Article 12, Step 3 the Employer proposes adding language that would change what had been a unilateral decision by each party to request from the American Arbitration Association a panel of arbitrators, to a joint request for such a panel. The Union strongly opposes this change, finding that the proposed alteration would create confusion about what is required to secure a panel of arbitrators from the American Arbitration Association for the purpose of arbitrating a grievance.

The fact finder shares the Union's unease about changing what had been a unilateral decision to move a grievance to arbitration to an action that is to be jointly requested by the parties. The question arises, under the language proposed by the Employer for Step 3, what would happen if, intentionally or through an oversight, the party who did not desire moving the grievance to arbitration failed to join in the request for the panel of arbitrators. Under such facts a question would arise (that does not have to be resolved in this case) as to whether such a request could support further action when joint authorization had not been secured. The fact finder prefers to recommend language that avoids creating ambiguity and sees no reason, in the context of a contested procedure, to require both parties to agree to having the

unresolved grievance resolved by a neutral third party. The fact finder does not recommend the change to the language of Step 3 of Article 12 that would require a joint request for a panel of arbitrators.

The last change proposed for Article 12 by the Employer is also found in Step 3, language that would specify the manner in which an arbitrator is to be chosen, through alternately striking names from a list of arbitrators until one name remains. This is a common method for determining the selection of an arbitrator and the fact finder heard little in the way of opposition to this method of selecting an arbitrator. The fact finder therefore recommends the language proposed by the Employer that would specify alternating the striking of names from a list of arbitrators until only one name remains.

RECOMMENDED LANGUAGE - Article 12 - Grievance Procedure

Sections 12.1, 12.2, and 12.3. Maintain current contract language.

Section 12.4. The parties mutually desire to provide for the prompt adjustment of grievances, with a minimum amount of interruption of the Employer's operations and services. Every responsible effort shall be made by the parties to effect resolution of grievances at the earliest step possible. In furtherance of this objective, the following procedure shall be followed:

Step 1:

A grievance must be reduced to writing and presented to the Chief of Police or designee within ten (10) working days of the occurrence of the incident giving rise to the grievance or within ten (10) working days after the employee should reasonably have become aware of such incident. The Chief of

Police or designee, shall schedule a meeting to discuss the grievance with the grieved employee(s), and one (1) Union representative within five (5) working days after receiving the grievance. The Chief of Police or designee, shall answer the grievance in writing within five (5) working days after the meeting. If the employee does not invoke Step 2 of this procedure within five (5) working days after the answer is received from the Chief of Police or designee, said alleged grievance shall be considered satisfactorily resolved.

Step 2:

If the grievance is not resolved at Step 1, the employee may submit the grievance, in writing, to the Director of Public Service and Safety or designee, within five (5) working days after the Step 1 reply. The Director or designee shall have five (5) working days in which to schedule a meeting with the grieved employee and the appropriate Union representative. The Director or designee shall investigate and respond in writing to the grievant and appropriate Union representative within five (5) working days following the meeting.

Step 3:

The decision of the Director of Public Service and Safety or designee shall be final, conclusive, and binding on all parties unless, within ten (10) working days after receipt of the Director's answer, the Union notifies the Director that the Grievance is to be submitted to arbitration. The arbitrator shall be chosen by mutual agreement of the parties. If no agreement is reached, either party may request the American Arbitration Association (AAA) to provide a panel of fifteen (15) arbitrators from Ohio who are members of the National Academy of Arbitrators. The parties shall select an arbitrator by alternately striking names from the list until only one (1) name remains. Each party shall have the option to completely reject the list of names provided by AAA and

request another list, but neither party may reject the entire list more than once in regard to a particular grievance.

All procedures relative to the hearing shall be in accordance with the rules and regulations of the AAA. The arbitrator shall hold the arbitration hearing promptly and issue a decision within a reasonable time thereafter. The arbitrator's decision shall be limited strictly to the arbitrator's interpretation, application or enforcement of those specific articles, and/or sections of this Agreement in question. The arbitrator's decision shall be consistent with applicable law. The arbitrator shall not have the authority to add to, subtract from, modify, change or alter any provision of this Agreement, nor add to, subtract from or modify the language herein in arriving at a determination on any issue presented that is properly within the limitations expressed herein. The arbitrator's decision shall be expressly confined to the precise issues submitted for arbitration and the arbitrator shall have no authority to determine any other issues not submitted or to submit observations or declarations of opinion which are not directly essential in reaching a decision on the issue in question. The arbitrator shall be without authority to recommend any right or relief on an alleged grievance occurring at any time other than the contract period in which such right originated or to make any award based on rights arising under any previous agreement, grievance or practices. The arbitrator shall not establish any new or different wage rates not negotiated as part of this Agreement. In the event of monetary award, the arbitrator shall limit any retroactive settlement to the date the grievance was filed.

The question of arbitrability of a grievance may be raised by either party prior to the arbitration hearing on the grounds that the matter is non-arbitrable or beyond the arbitrator's jurisdiction. The first question to be placed before the arbitrator will be whether or not the alleged grievance is

arbitrable. If the arbitrator determines the grievance is within the scope of arbitrability, the alleged grievance will be heard on its merits before the same arbitrator.

Decisions of the arbitrator will be final, conclusive and binding upon the parties. All costs involved in obtaining the list of arbitrators shall be borne by the party requesting arbitration, subject to reimbursement should the grievance be ruled in the requesting party's favor. All costs directly related to the services of the arbitrator shall be borne by the losing party. Any expenses of any witness shall be borne by the party calling the witness. Each party shall pay its own expenses incurred with respect to preparation and presentation of its case to the arbitrator. The fees of the court reporter shall be paid by the party asking for one, but the fee will be shared equally if both parties desire a court reporter's recording or request a copy of any transcripts.

Any request for arbitration which is not actively pursued for a period of thirty (30) days or more, without a mutual agreement by the parties to extend such period, shall be considered resolved based on the Employer's last answer.

Sections 12.5, 12.6, 12.7, 12.8, and 12.9.

Maintain current contract language.

#### Article 17 - Holidays

Under current Contract language each bargaining unit member receives three personal days of leave annually. The Union proposes an annual increase of one day, that is, from three days to four days for each bargaining unit member. The Union points out that the two other bargaining units employed by the St. Marys Police Department authorize four days of personal leave annually for

patrol officers and five personal leave days annually for sergeants.

The Employer argues that there is no reason to add a personal leave day to each bargaining unit member and the personal leave days bargained by the other bargaining units were agreed based on the particular decisions made in the bargaining between the Employer and those bargaining units.

The fact finder is usually loathe to add a benefit based solely on a unilateral request. The fact that other bargaining units receive a different number of annual personal leave days lends some support, but the Employer's argument, that each bargaining unit is governed by the particular package of items agreed to be included within its negotiated Agreement, is well-taken.

The fact finder in this proceeding recommends the extra day of personal leave requested by the Union in compensation for a recommendation by the fact finder that the pay increases expressed within Article 35, Wages, begin not on January 1, 2008 but on the first day of the first full pay period within January, 2008. The first full pay period within January, 2008 begins on Monday, January 7, 2008. From January 1, 2008 through January 6, 2008 there are four work days, one of which, January 1, 2008, is New Years' Day and therefore a holiday.

As will be delineated in the discussion about Article 35 below, the fact finder believes that the avoidance of having to prorate four days of pay for a pay increase, and the ability to

move all bargaining units onto the same payment schedule allows the Employer greater efficiency through simplification of how pay increases are to be paid and calculated. The loss of the increase in pay over the four work days among January 1, 2008 to January 6, 2008 is more than compensated by the extra personal leave day. The fact finder believes the increased ease with which pay increases may be calculated by the Employer and the coordination of payment schedules with other city employees are sufficiently valuable to support the extra personal leave day. The extra personal leave day would locate the dispatchers at the lower range of the number of personal leave days granted by the city among its three bargaining units employed within the Police Department.

RECOMMENDED LANGUAGE - Article 17 - Holidays

Sections 17.1, 17.2, 17.3, and 17.4.

Maintain current contract language.

Section 17.5. All full-time, permanent employees shall receive four (4) personal leave days per year. A personal leave day for the purpose of this Article shall be eight (8) hours pay at the employee's regular straight time rate of pay. Personal leave may be used for any matter of a personal nature and shall be scheduled and approved at least forty-eight (48) hours in advance. In an emergency situation, the Chief of Police shall have the authority to waive the forty-eight (48) hour advance notice. Personal leave shall be taken in minimum units of eight (8) hours. Personal leave days shall not be allowed to carry over into the following year. Any unused personal leave days shall be forfeited.

Section 17.6. A newly hired employee will receive the following number of personal leave days during the first year of employment:

<u>Hire Date</u>	<u>No. of Personal Leave Days</u>
January-March	4
April-June	3
July-September	2
October-December	0

Employees who terminate their employment prior to December of any year will have their personal leave days prorated based on the number of months worked in the last year of their employment pursuant to the following schedule:

<u>Months worked</u>	<u>Days deducted</u>
less than 3 months	4
at least 3 months but less than 6 months	3
at least 6 months but less than 9 months	2
9 months or more	0

Any employee who uses personal leave days in excess of the above schedule, shall have the value of such days deducted from the employee's final paycheck. If insufficient monies are available in the employee's final paycheck, the employee shall immediately reimburse the City using other means.

Article 19 - Overtime Pay

The Union proposes adding language to Article 19, section 19.1 that would add to the hours that are to be included in calculating whether an overtime eligible status has been reached. The hours for this calculation that appear in current Contract language are: vacation, hours worked on a holiday, compensatory time, personal leave, and hours worked in excess of forty-hours per week or eight hours per work day. The Union proposes adding funeral leave and sick leave supported by a physician's statement as new categories

of hours to be included in calculating whether an overtime eligible status has been obtained.

The Employer has no objection to including funeral leave but does object to the inclusion of sick leave. The Employer points out that sick leave has never been included in prior language for this purpose and urges that sick leave be excluded from the parties' successor Agreement in Article 19.

The fact finder recommends the inclusion of funeral leave within Article 19, section 19.1 as a category of hours to be used in calculating overtime eligibility, but does not recommend the inclusion of sick leave supported by a physician's statement. Sick leave is a benefit intended to compensate an employee during an illness or injury sufficiently serious to keep the employee from active duty. The fact finder finds no reason why the hours an employee was paid due to an inability to perform assigned work should serve as a basis for overtime eligibility.

RECOMMENDED LANGUAGE - Article 19 - Overtime Pay

Section 19.1. Full-time employees shall receive overtime pay, at the rate of one and one-half (1-1/2) times the basic rate per hour, for all hours worked in excess of the forty (40) hour standard workweek or eight (8) hour standard workday. Vacation, hours worked on a holiday, compensatory time, personal leave days, and funeral leave shall be considered as hours worked for the purpose of calculating an employee's entitlement to overtime compensation. All other leaves of absence, whether with pay or not, shall be excluded as hours worked for the purpose of calculating an employee's

entitlement to overtime compensation. For overtime purposes, a "day" shall be defined as beginning at 11:01 p.m. and ending at 11:00 p.m. the next calendar day.

Sections 19.2, 19.3, 19.4, and 19.5.

Maintain current contract language.

#### Article 21 - Health Insurance

The parties have agreed to changes to the language of Article 21, section 21.3 that would increase the amount the Employer agrees to pay in annual premiums for each eligible employee who requests coverage, by \$400.00 in 2008 (\$5,200 to \$5,600); by \$500.00 in 2009 (\$5,200 to \$5,700); and by \$600.00 in 2010 (\$5,200 to \$5,800). The language of this section provides that premium costs in excess of the amounts specified above shall be paid equally by the Employer and the covered employee.

The changes to the premium amounts referenced above refer to family coverage. The changes to Article 21, section 21.3 as agreed by the parties increase premiums to be paid by the Employer under a single plan by \$100.00 for each of the years 2008 through 2010, from \$2,450 to \$2,550 in each of these years. Premiums in excess of \$2,550 for single plan coverage, under the language agreed by the parties, are to be paid equally by the Employer and the employee.

The fact finder recommends the inclusion of the language agreed by the parties for Article 21, Health Insurance, in the parties' successor Agreement.

RECOMMENDED LANGUAGE - Article 21 - Health Insurance

Section 21.1 and 21.2.

Maintain current contract language.

Section 21.3. The premiums relating to the benefits and coverages under this plan shall be paid in the manner explained in this section. The Employer agrees to pay premiums for each eligible employee requesting coverage as follows:

FAMILY PLAN - \$5,600.00 per year in 2008  
\$5,700.00 per year in 2009  
\$5,800.00 per year in 2010

SINGLE PLAN - \$2,550.00 per year in 2008-2010

Any costs which exceed the above specified amounts shall be paid equally by the Employer and the employee; provided any employee selecting the single plan shall not pay a greater percentage of the plan's total cost than the percentage of the total cost paid by an employee selecting the family plan.

The employee's share shall be paid through a weekly payroll deduction and the computation of the employee's share shall be as follows:

The annual premium for each type of policy shall be determined by the Employer in accordance with the recommendation of the third party administrator. After this determination, the Employer's share as specified above shall be subtracted from the annual cost of the applicable plan. These results shall both be divided by two (2) to determine the 50% shares for Employer and the covered employee. The 50% share that is computed for the employee will then be divided by fifty-two (52) and the result will then become the employee's weekly contribution for health insurance coverage. This computation will be done for each employee using the applicable cost for whichever plan (single or family) is requested by the employee.

Sections 21.4, 21.5, 21.6, 21.7, 21.8, and 21.9.

Maintain current contract language.

Article 24 - Sick Leave

The Employer proposes a deletion in Article 24, section 24.2(B) that would change the language that appears therein which now reads: "...is on a leave of absence (whether with or without pay)" to language that would read: "...is on a leave of absence (without pay)..." The fact finder heard no objection from the Union about this change and the fact finder recommends the change proposed by the Employer to Article 24, section 24.2(B).

The Employer proposes that language in Article 24, section 24.9, in subparagraphs 3, 4, and 5, which had read: "eight (8) hours (1 day)" be changed to: "...up to eight (8) hours [one (1) day]." These changes are found once in subparagraph 3, once in subparagraph 4, and twice in subparagraph 5. Without objection from the Union, the fact finder recommends the changes to Article 24, section 24.9, subparagraphs 3, 4, and 5, as proposed by the Employer.

The Employer proposes changes to the language of Article 24, section 24.9, subparagraph 7 that would include a definition of "immediate family." Prior Contract language references the definition of "immediate family" in paragraph 7 of the Funeral Leave Article in the parties' Agreement, Article 25.

The Employer recommends small changes in descriptions of the persons who fall under the definition of "immediate family" for

purposes of the sick leave Article. For example, the Employer suggests "employee's parent" instead of listing mother, stepmother, father, and stepfather. The Employer's suggested language would also remove from Article 24, section 24.7 an agreement to pay one hundred percent (100%) of the employee's regular rate under Funeral Leave.

The fact finder recommends the maintenance of current Contract language within Article 24, section 24.9, subparagraph 7. The changes proposed by the Employer do not appear intended to change what is meant by the language in the predecessor Agreement and the fact finder finds no reason to replace language with other language intended to effect the same result.

The Union proposes a change to Article 24, section 24.11 that would increase the cap on accrued but unused sick leave that may be cashed out at a maximum of twenty-five percent (25%), among those employees having ten or more years of continuous service with the Employer, upon disability or service retirement. The Union would increase the existing cap from 1,200 hours and a maximum payment of 300 hours to a maximum cap of 1,920 hours with a maximum payment of 480 hours.

The Employer opposes the increase in the cap proposed by the Union for Article 24, section 24.11 on the ground it is uncalled for and unsupported.

The cashing out of accrued but unused sick leave at twenty-five percent (25%) represents a net gain to the Employer when the cost of using accrued sick leave at eight hours per day is compared

to the conversion of sick leave to cash at the rate of two hours per day (twenty-five percent of eight hours). Sick leave that is accrued but unused represents work days during which an employee reported for duty, and the unused sick leave remains a benefit accrued but at no cost, at that time, to the Employer. To compensate this unused accrued sick leave at the time of a retirement costs the Employer one-quarter of the value of the benefit had it been used during active service. The conversion of unused sick leave, therefore, is viewed as an incentive to refrain from using sick leave by offering a reward, cash, discounted to twenty-five percent (25%) of the number of hours accrued but unused.

If converting 25% of 1,200 hours of accrued unused sick leave saves the Employer a certain amount of money over the long term, converting 1,920 hours of accrued unused sick leave would appear to save the Employer even more money.

The 1,920 hours of convertible accrued but unused sick leave at retirement appears within the collective bargaining agreement of the sergeants employed by the St. Marys Police Department. The firefighters' cap is 1,590 hours, but the differences in scheduling between firefighters and police division personnel account for much of this discrepancy.

The fact finder recommends the changes to Article 24, section 24.11 as proposed by the Union, increasing the cap on the conversion of accrued unused sick leave from 1,200 hours to 1,920 hours.

The Employer recommends adding language to Article 24, section 24.12 that would deny an eight-hour vacation bonus, otherwise payable based on not utilizing sick leave or leave without pay during the first half of the calendar year, if the employee had received a disciplinary suspension during those six months. A similar bonus, to be paid under similar circumstances during the second half of the calendar year, would also, as proposed by the Employer, include this limitation. The Employer also proposes that language be included specifying that employees must be employed in a full-time bargaining unit position for the entire six-month period to be considered for the vacation bonus.

The fact finder recognizes the anomaly of presenting a bonus to an employee who has, in the recent past, received a disciplinary suspension for misconduct. The fact finder recommends the language proposed to be added to Article 24, section 24.12 by the Employer.

RECOMMENDED LANGUAGE - Article 24 - Sick Leave

Section 24.1. Maintain current contract language.

Section 24.2. No sick leave credit will be earned for overtime hours worked or while an employee:

- A. is on sick leave;
- B. is on a leave of absence (without pay);
- C. is laid off;
- D. is suspended; or
- E. is absent without leave.

Sections 24.3, 24.4, 24.5, 24.6, 24.7, and 24.8.

Maintain current contract language.

Section 24.9. Sick leave may be granted to an employee under the following circumstances:

1. Illness or injury of the employee, or illness or injury in the employee's immediate family, which requires the employee's personal care and attendance.
2. If, through exposure to a contagious disease, the presence of the employee at work would jeopardize the health of others.
3. An employee may use up to eight (8) hours [one (1) day] sick leave to take a member of the employee's immediate family to or from the hospital and/or doctor, or to make arrangements for the care of the ill or injured person, provided no other person is available.
4. An employee may use up to eight (8) hours [one (1) day] sick leave on the day surgery is to be performed on the employee's spouse and/or children, if such occurs on a working day.
5. An employee may be granted up to eight (8) hours [one (1) day] sick leave on the date of birth of the employee's child and up to eight (8) hours [one (1) day] sick leave on the day the child is brought home from the hospital, if either occurs on a working day.
6. Sick leave shall not be used by an employee for convalescence of a member of the immediate family.
7. Death of a member of the employee's immediate family. Sick leave usage is limited as described in the Funeral Leave Article of this Agreement. Sick leave used as funeral leave under this Agreement shall be paid at one hundred percent (100%) of the employee's regular rate.

8. For the purposes of this Sick Leave Article, the definition of "immediate family," for use other than as described in paragraph 7 above, shall be spouse, child, stepchild, employee's parent, grandparent, grandchild, mother-in-law, father-in-law, or other person who stands in place of the employee's parent (in loco parentis). In the event of a death as described in paragraph 7 above, the "immediate family" shall include those family members as indicated in Article 25.
9. Upon request to the Employer, an employee who becomes pregnant shall be granted Family and Medical Leave as provided in Section 23.6 of this Agreement. Paid sick leave may only be used for the period of time the employee is unable to perform the essential functions of the employee's position as certified by a physician.

Sections 24.10 and 24.11. Maintain current contract language.

Section 24.12. Employees who have demonstrated excellent attendance by not utilizing any sick leave or leave without pay and have received no disciplinary suspension(s) during the period January 1 through June 30 of each year this Agreement is in effect shall be granted eight (8) hours of bonus vacation. Further, any employee who demonstrates excellent attendance by not utilizing any sick leave or leave without pay and has received no disciplinary suspension(s) during the period of July 1 through December 31 of each year this Agreement is in effect shall be granted eight (8) hours of bonus vacation. Bonus vacation shall be scheduled in the same manner as other vacation time. Employees must be employed in a full-time bargaining unit position for the entire six (6) month period, as described herein, in order to be considered for the bonus vacation.

#### Article 29 - Military Leave

The Employer proposes changes to Article 29, Military Leave, so as to bring the language of this Article into accord with Ohio

Revised Code sections 5919.29 and 5923.21. The Union has no objection to making these changes for this reason. The fact finder therefore recommends the changes to Article 29, Military Leave, proposed by the Employer for inclusion in the parties' successor Agreement.

RECOMMENDED LANGUAGE - Article 29 - Military Leave

Section 29.1. Employees, who are members of the Ohio National Guard, the Ohio organized militia or other reserve components of the Armed Forces of the United States, shall be entitled to a military leave of absence from their duties, with full pay, for such time as they are performing service in the uniformed services for a period not to exceed one hundred seventy-six (176) hours in any calendar year.

The maximum days of paid and unpaid military leave is restricted to those situations wherein the employee has received military orders requiring the employee to report, and does not include voluntary technical training for which the employee volunteers or "orders" are not required.

Section 29.2. Maintain current contract language.

Section 29.3. Employees who are called or ordered to uniformed services for more than one hundred seventy-six (176) hours within one (1) calendar year because of an executive order issued by the President of the United States or an act of Congress, or because of an order to perform duty issued by the Governor pursuant to O.R.C. Section 5919.29 or 5923.21, shall be entitled during the period designated in such order or act to a leave of absence and pay in accordance with the lesser of the difference between the employee's gross monthly wage or salary and the gross uniformed services pay

and allowance for the same month or five hundred dollars (\$500.00) for each month of uniformed service.

Section 29.4. Maintain current contract language.

Article 32 - Probationary Period

The Employer wishes to add to Article 32, section 32.1 language that would allow the Employer to impose discipline upon a probationary employee without the disciplined employee having access to an appeal process. The language in the current Agreement within Article 32, section 32.1 sets a probationary period of one year during which a probationary employee may be terminated without appeal.

The Union opposes the language proposed by the Employer as to disciplinary action without appeal.

Article 32, section 32.1, in its present language, constructs a probationary period of one year to occur during the first year of employment. A probationary period allows an employee to prove his value to the Employer and allows the Employer the discretion to retain or dismiss the probationary employee without having its decision in this regard reviewed through an appeal process, including the Agreement's grievance procedure.

The language of Article 32, section 32.1 as proposed by the Employer is recommended herein because it constructs the same limitation allowed by Article 7, section 7.3. Considering the similar language recommended for Article 7, section 7.3, the fact finder sees no harm in reiterating this language in Article 32.

RECOMMENDED LANGUAGE - Article 32 - Probationary Period

Section 32.1. Upon appointment to the employee's position, the employee will be required to successfully complete a probationary period. The probationary period shall begin on the first day which the employee receives compensation from the Employer and continue for a period of one (1) year. Any period of unpaid leave of more than ten (10) workdays shall automatically extend the employee's probationary period for an equal period of time. Probationary employees may be terminated or disciplined any time during their probationary period and shall have no appeal.

Article 33 - Drug/Alcohol Testing

The Employer proposes and the Union has no objection to moving language that had appeared in Article 33, section 33.10 to Article 33, section 33.6. The language remains unchanged but the movement of this language would delete the need for a section 33.10 in Article 33 and would include this language with other language in Article 33, section 33.6.

The fact finder recommends the changes to Article 33, section 33.6 and the deletion of section 33.10 as proposed by the Employer.

RECOMMENDED LANGUAGE - Article 33 - Drug/Alcohol Testing

Sections 33.1, 33.2, 33.3, 33.4, and 33.5.

Maintain current contract language.

Section 33.6. In all cases of drug and alcohol abuse, the Employer will give strong consideration to the use of rehabilitation in conjunction with discipline. However, if circumstances warrant, the Employer reserves the right to impose appropriate discipline up to and including termination. The provisions of this article shall not

require the Employer to offer a rehabilitation/detoxification program to any employee more than once.

If an employee is not terminated for just cause as stated above, the Employer may require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. Discipline allowed by the positive findings shall be deferred pending rehabilitation of the employee within a reasonable period. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, compensatory days, vacation leave and personal leave days for the period of the rehabilitation or detoxification program. If no such leave credits are available, the employee shall be placed on medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program, and upon receiving results from a retest demonstrating that the employee is no longer abusing a controlled substance, the employee may be returned to the employee's former position. Such employee may be subject to periodic retesting upon the employee's return to work.

Any employee in a rehabilitation or detoxification program in accordance with this Article will not lose any seniority or benefits, should it be necessary for the employee to be placed on medical leave of absence without pay for a period not to exceed ninety (90) days.

Sections 33.7, 33.8, and 33.9. Maintain current contract language.

Section 33.10. Delete language.

#### Article 35 - Wages

The parties have agreed to wage increases during each of the three years of the successor Agreement - 2008, 2009, and 2010. The wage increases for these three years are agreed to be,

respectively, 3.5%, 3.0%, and 3.0%. The only issue separating the parties as to Article 35 is when these annual pay increases are to be effective.

The Union has proposed January 1, 2008 as the date of the first annual pay increase and the Employer has proposed the first day of the first full pay period in January, 2008 as the date to be used.

The fact finder believes that beginning the wage increases on the first day of the first full-pay period of January, 2008 allows the Employer to avoid having to prorate for the four working days between January 1 and January 7, 2008. Using this payment schedule brings the bargaining unit in line with how wage increases are paid in other bargaining units employed by the city and increases administrative efficiency. The fact finder has recommended an additional personal leave day for each bargaining unit member in Article 17 and believes that this addition more than compensates the bargaining unit members for the four days of pay between January 1, 2008 and January 6, 2008 not increased by 3.5% under the Employer's proposal.

The fact finder recommends the Employer's proposal on wages as it relates to the first annual pay increase to occur on the first day of the first full pay period in January, 2008; in January, 2009; and in January, 2010.

RECOMMENDED LANGUAGE - Article 35 - Wages

Section 35.1. The following hourly wage rates shall apply during the term of this Agreement:

EFFECTIVE DATE	<u>STEPS</u>				
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
First day of first full pay period in January, 2008 (3.5%)	14.38	14.81	15.26	15.68	16.16
First day of first full pay period in January, 2009 (3.0%)	14.81	15.26	15.71	16.15	16.64
First day of first full pay period in January, 2010 (3.0%)	15.25	15.71	16.18	16.64	17.14

Sections 35.2 and 35.3. Maintain current contract language.

Article 36 - Shift Assignments

Article 36, section 36.1 provides that work shifts will be established with each dispatcher choosing her preferred shift by dispatcher seniority, with the dispatcher with the most seniority choosing first.

The parties' current Agreement has attached to it a letter of agreement that sets out four work shifts among each of four three-month periods that are to be bid upon by dispatchers based on their relative seniority. The Employer proposes moving this language to Article 36, section 36.2 and thereby imbed the schedule within the language of the parties' Agreement, rather than appending this language to the Agreement.

The shift schedules that appear within the letter of agreement attached to the parties' predecessor Agreement are proposed changed by the Employer through moving all times listed within the present schedule one hour forward. For example, in month one, shift one, under the prior language, began at 7:00 a.m. and concluded at 3:00 p.m. Under the Employer's proposal, the shift would begin at 8:00 a.m. and conclude at 4:00 p.m. The Employer points out that by moving the schedule forward one hour the schedule accords with work schedules in other bargaining units employed by the city. The Employer claims that by harmonizing these schedules administrative efficiency is increased and there is greater ease in substituting workers for dispatcher positions when needed.

The opposition to the change in the schedule comes primarily from a bargaining unit member whose schedule would be complicated by the change proposed by the Employer. This bargaining unit member attends a church service during the week that begins at 8:00 a.m. If the schedule were to be moved ahead one hour, this bargaining unit member would get off work at 8:00 a.m. rather than 7:00 a.m. and would find it impossible to attend the church service at 8:00 a.m.

The fact finder recommends the changes proposed by the Employer as to the shift assignment language to be included in Article 36, section 36.2. The fact finder does not minimize the complications this will cause the bargaining unit member but the fact finder finds the operational needs of the Employer are sufficiently improved by the change proposed to overcome the burden

such a change will impose upon the bargaining unit member. A selection of shifts on the basis of seniority is the fairest way to apportion these schedules and this process remains intact. The Employer's authority to set such a schedule is explicit in the language of the Contract. The fact finder recommends the language proposed by the Employer for inclusion within Article 36.

RECOMMENDED LANGUAGE - Article 36 - Shift Assignments

Section 36.1. During the duration of this Agreement, work shifts will be established with each dispatcher choosing a preferred shift by dispatcher seniority. The dispatcher with the most seniority choosing first, etc. These shifts will be chosen for a four (4) month period.

Section 36.2. The shifts for dispatchers shall be as follows unless the number of full-time, working dispatchers falls below four (4). Should this occur, temporary shifts will be instituted by the Chief of Police until replacement personnel can be hired and trained so that four (4) full-time dispatchers are available.

MONTH ONE - JANUARY, MAY, AND SEPTEMBER

<u>SHIFT</u>	<u>HOURS</u>	<u>DAYS OFF</u>
1	8 a.m. to 4 p.m.	Wednesday and Thursday
2	4 p.m. to 12 a.m.	Friday and Saturday
3	12 a.m. to 8 a.m.	Alternates every 2 weeks; Wednesday and Thursday; Saturday and Sunday
4	8 a.m. to 4 p.m. Tuesday, Wednesday, Thursday 4 p.m. to 12 a.m. Friday and Saturday	Sunday and Monday

MONTH TWO - FEBRUARY, JUNE, AND OCTOBER

<u>SHIFT</u>	<u>HOURS</u>	<u>DAYS OFF</u>
1	8 a.m. to 4 p.m.	Saturday and Sunday
2	8 a.m. to 4 p.m. Wednesday 4 p.m. to 12 a.m. Thursday, Friday, Saturday, Sunday	Monday and Tuesday
3	12 p.m. to 8 a.m.	Alternates every 2 weeks; Wednesday and Thursday; Saturday and Sunday
4	4 p.m. to 12 a.m. Monday, Tuesdays, Wednesday, 8 a.m. to 4 p.m. Saturday and Sunday	Thursday and Friday

MONTH THREE - MARCH, JULY, AND NOVEMBER

<u>SHIFT</u>	<u>HOURS</u>	<u>DAYS OFF</u>
1	8 a.m. to 4 p.m.	Wednesday and Thursday
2	8 a.m. to 4 p.m. Tuesday, Wednesday, Thursday 4 p.m. to 12 a.m. Friday and Saturday	Sunday and Monday
3	12 p.m. to 8 a.m.	Alternates every 2 weeks; Wednesday and Thursday; Saturday and Sunday
4	4 p.m. to 12 a.m.	Friday and Saturday

MONTH FOUR - APRIL, AUGUST, AND DECEMBER

<u>SHIFT</u>	<u>HOURS</u>	<u>DAYS OFF</u>
1	8 a.m. to 4 p.m.	Saturday and Sunday
2	4 p.m. to 12 a.m. Monday, Tuesday, Wednesday 8 a.m. to 4 p.m. Saturday, Sunday	Thursday and Friday

- |   |   |   |
|---|---|---|
| 3 | 12 p.m. to 8 a.m.   | Alternates every 2 weeks;<br>Wednesday and Thursday;<br>Saturday and Sunday |
| 4 | 8 a.m. to 4 p.m. Wednesday<br>4 p.m. to 12 a.m. Thursday,<br>Friday, Saturday, Sunday | Monday and Tuesday  |

Dispatchers will be permitted to trade shifts by mutual agreement of the dispatchers involved and only with written approval of the Chief of Police.

The OPBA agrees the Employer shall not be restricted in any manner from employing and utilizing part-time dispatchers to cover shifts and there shall be no interference by the OPBA regarding the wages, hours, terms or conditions of employment for part-time dispatchers.

Article 38 - Duration of Agreement

The parties have agreed to a three-year contract, from January 1, 2008 through December 31, 2010. The fact finder recommends this Contract duration.

RECOMMENDED LANGUAGE - Article 38 - Duration of Agreement

Section 38.1. This Agreement represents the total and complete Agreement on all matters subject to bargaining between the Employer and the Union, and shall be effective on January 1, 2008, and shall remain in full force and effect until 12:00 midnight on December 31, 2010, provided, however, it shall be renewed automatically on its termination date for another year in the form in which it has been written, unless one party gives written notice as provided herein. The parties further agree that the next wage increase after

the expiration of this Agreement will not take effect prior to the first Monday in January, 2011.

Sections 38.2, 38.3, and 38.4. Maintain current contract language.

Article - Physical Fitness Program

The Union proposes new language for the parties' successor Agreement that would obligate the Employer to pay for an individual membership to the Auglaize-Mercer YMCA or Wapakoneta YMCA for each bargaining unit member who agrees to enroll in a physical fitness class as developed by these facilities. The language proposed by the Union states that the fitness program would be completely voluntary, and criteria for testing physical agility would require the approval of a physician. This language provides that the Employer and the Union will work together and cooperate to develop a physical fitness agility program.

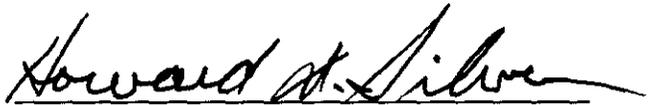
The fact finder does not recommend the addition of the new Article on physical fitness programming. The fact finder finds the language unnecessary. If the parties wish to develop a physical fitness and agility program they may do so without language in the successor Agreement expressing their intention to do so. The fact finder is of the opinion that a physical fitness program that includes testing for physical agility is sufficiently important to have it arise from negotiations between the parties rather than through a fact finder's recommendation based on a unilateral request.

RECOMMENDED LANGUAGE - New Article - Physical Fitness Program

The addition of this language is not recommended by the fact finder.

In addition to the language recommended by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles tentatively agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117., and sections 4117-9-05((k)(1)-(6) of the Ohio Administrative Code.



Howard D. Silver  
Fact Finder

March 31, 2008  
Columbus, Ohio

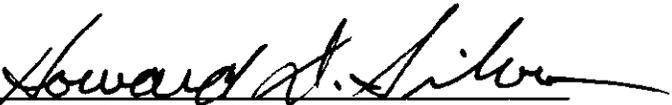
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the matter of fact-finding between the City of St. Marys and the Ohio Patrolmen's Benevolent Association was filed, via hand-delivery, with the State Employment Relations Board, and mailed, postage prepaid, to the following, this 31st day of March, 2008:

Patrick A. Hire  
Regional Manager  
Clemans, Nelson & Associates, Inc.  
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Lima, Ohio 45801-4237

and

Matthew B. Baker, Esquire  
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Howard D. Silver  
Fact Finder

March 31, 2008  
Columbus, Ohio