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**IN THE MATTER OF FACT-FINDING
BETWEEN**

CITY OF AVON)	CASE NO. 08-MED-07-0717
)	
)	
AND)	
)	<u>FINDINGS</u>
)	AND
FRATERNAL ORDER OF POLICE)	<u>RECOMMENDATIONS</u>
OHIO LABOR COUNCIL, INC.)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

**Lucy DiNardo
Staff Representative FOP**

FOR THE CITY

**Sandy Conley
Account Manager Clemens-Nelson**

SUBMISSION

This matter concerns fact-finding proceedings between the City of Avon (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the FOP or Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter.

The fact-finding hearing was held on January 16, 2009 in Avon, Ohio. The proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceedings, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit consists of five full time sergeants, and three full time lieutenants in the police department.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Therefore, the following recommendations on the outstanding issues are hereby submitted.

1. WAGES

The Union has proposed to increase the rank differential for both sergeants and lieutenants to 15%. The Union further proposes that there be a stipend of \$1,500 in anticipation of extra duties assigned by the Chief of Police or as a result of special detail assignments given to other members of the patrol division.

The Employer proposes to maintain the existing rank differentials of 12% for both the sergeant and lieutenant positions. The Employer further proposes to establish a new starting differential rate for the first year of 9%.

The Union maintains that the increase in the rank differential for sergeants is warranted due to their increased workload. The Union points out that the sergeants' rank differential had been 15% until the final year of the prior contract when a reduction to 12% was awarded by a conciliator. However since that time, the City has grown with the sergeants being given more responsibilities in supervising a greater number of road patrol officers. As a result, the sergeants' duties have increased dramatically.

Likewise, the Union claims that the lieutenants have been given more duties with respect to scheduling and training the detective bureau, road division, dispatch and jail. Like the sergeants' rank differential, the lieutenants' differential had been at 15% until the last year of the previous contract. The Union believes that due to the extra duties being assigned to both sergeants and lieutenants, a return to the 15% rank differential is warranted.

The Union submitted wage comparables for cities in the area. It claims that such data shows that wages for sergeants and lieutenants fall below the average comparable salary.

The Employer believes that the 12% rank differentials which were established through fact-finding and conciliation in 2006 and 2007 respectfully, are reasonable and should be retained. The Employer points out that the conciliator took into consideration the fact that the police department has grown and with an increased number of lieutenants, the duties imposed upon the sergeants had lessened considerably. The Employer maintains that there has not been any significant increase in the duties of the sergeants which would warrant a return to the 15% rank differential. Similarly, the lieutenants' rank differential of 12% is fair and there is no justification for increasing it to a 15% differential as requested by the Union.

The Employer further maintains that comparable wage data supports its position. The Employer submits that the pay for sergeants and lieutenants in Avon is above the average in comparable jurisdictions. The sergeant's pay is approximately \$3,088 above the average and the lieutenant's wage is slightly below the average pay. The Employer argues that comparables support its position that there should be no increase in the rank differential for either sergeants or lieutenants. Further, a lesser rate for the first year in a position of higher rank would allow for a learning curve for the position before the highest rate or full differential is received.

ANALYSIS – This fact-finder recommends that the current rank differential of 12% for both the sergeant and lieutenant position be retained with no change. There was insufficient basis established for the Employer’s proposal for a lesser starting differential for first year promotional employees. However, the Union’s proposal for an additional stipend is recommended in the amount of \$1,000 for the sergeants for the reasons indicated herein.

This fact-finder finds that the current rank differential of 12% for sergeants and lieutenants is reasonable and in line with that provided in comparable jurisdictions. The parties indicated that historically the City of Avon has compared itself to cities within Lorain County and the cities of Bay Village and Westlake found in western Cuyahoga County. Such a comparison shows that the average for rank differentials for sergeants in these comparable jurisdictions is approximately 12.7%. For lieutenants, the rank differential in these other comparable cities averages 12.9%. Therefore, it is apparent that Avon’s current rank differential of 12% for sergeants and lieutenants is in line with the rank differentials found in comparable jurisdictions.

Evidence of wage comparability further supports the retention of the current 12% rank differentials. It was shown that for 2008, the top sergeant’s pay in Avon was \$64,667 which is about \$2,600 above the average in the comparable jurisdictions. The lieutenant’s maximum salary in Avon is \$72,425 which is about the same as the average top salary for lieutenants in the area. It should be noted that even the Union’s analysis

indicates that the salaries for sergeants and lieutenants in Avon are higher than some comparable cities and lower than others.

This fact-finder recognizes the testimony offered by bargaining unit members pertaining to their current job duties. However, it was shown that sergeants and lieutenants are not being required to perform any job responsibilities which fall outside of their classification requirements of the position. There is also evidence that the duties performed by sergeants and lieutenants are the typical type of duties performed in other jurisdictions by those ranking officers.

However, this fact-finder does find that there was evidence presented which supports a \$1,000 stipend for the sergeants. It was shown that due to the growth of the police department, as well as the reassignment of lieutenants mainly to administrative duties, the workload for sergeants has become much more demanding. Moreover as indicated, the rank differential for sergeants was reduced from 15% to 12% in the final year of the prior contract pursuant to a conciliator's award. Therefore based on the evidence presented, this fact-finder would recommend that the sergeants receive a signing bonus of \$1,000 upon the ratification of the Agreement or issuance of a conciliator's award.

RECOMMENDATION

It is the recommendation of this fact-finder that the current 12% rank differential for sergeants and lieutenants be retained. However, a \$1,000 stipend is to be provided to the sergeants.

APPENDIX A - WAGES

Current rank differential of Twelve Percent (12%) for Sergeants and Lieutenants shall remain the same with no change.

Upon ratification of the Agreement or issuance of a conciliator's award, as may be applicable, Sergeants shall receive a signing bonus of One Thousand Dollars (\$1,000).

There is to be no new provision as proposed by the Employer for a different starting differential rate for newly promoted sergeants.

2. HEALTH INSURANCE

The City proposes that employees contribute 20% of the premium cost for health insurance with no employee maximums. The Union proposes a decrease in the maximum amount of employee contributions towards healthcare. The current monthly maximum of employee contribution for single coverage is \$100, and for family coverage \$250.

The Employer contends that its healthcare proposal is appropriate because all other city employees contribute a straight 20% of monthly premium costs with no maximums. The City points out that recently a fact-finder awarded the Employer's proposal herein to be applicable to the dispatcher unit. The City argues that it cannot justify treating the bargaining unit employees involved here any differently than other employees.

The Union contends that its proposed decrease in the maximum amount of employee contribution towards healthcare is in line with that paid for by the Lorain County Sheriff. The Union points out that the City's plan is part of the Lorain County Healthcare Plan. The Union submits that the amount currently paid by bargaining unit members is excessive when compared to the twenty other entities covered by the Lorain County Healthcare Plan.

ANALYSIS – This fact-finder would recommend the change proposed by the Employer which would be to retain the 80/20 split for health insurance premiums but with no employee maximums stated. This fact-finder would not recommend any

decrease in the maximum amount of employee contributions towards healthcare as proposed by the Union.

Internal comparables support the recommendation to change the current employee contribution provision. It was shown that all other bargaining units in the City currently provide that employees are to contribute on a monthly basis 20% of the healthcare premium with no maximums. Recently, a fact-finder awarded the Employer's proposal of retaining the 80/20 split for premiums "with no caps." There does not seem to be any justification for treating the sergeant and lieutenant bargaining unit any differently than other city employees. Therefore, it is reasonable to provide as is the case with all other city employees that bargaining unit members are to contribute 20% of the monthly premium for healthcare costs with no employee maximums.

RECOMMENDATION

It is the recommendation of this fact-finder that with respect to Health Insurance Coverage there should be a 80/20 split of monthly premiums with no caps.

HEALTHCARE INSURANCE COVERAGE

The City shall pay eighty percent (80%) of the premium/contribution costs for health coverage for each eligible fulltime employee enrolled in any of the health coverage plans offered by the City.

The current maximum caps listed are to be removed from the Contract.

3. UNIFORM ALLOWANCE

The Union proposes to increase the uniform allowance from the current \$850 to \$1,500. The Union also proposes certain modifications to the equipment which is to be provided by the Employer to sergeants and lieutenants for use during their employment with the City. The Employer opposes any increase in the annual uniform allowance.

The Union contends that the increase in the uniform allowance is justified because recently the City has been working in conjunction with the U.S. Marshall's Fugitive Task Force. As a result, most bargaining unit members have purchased additional equipment on their own. The Union is seeking an increase in the uniform issuance and allowance for safety reasons. The Union points out that the City agreed to engage in warrant searches and house raids for the U.S. Marshall's Task Force but it is unwilling to provide the safety equipment needed by the employees to perform these life-threatening duties. Ballistic helmets and raid vests are two items specifically needed by all police officers. The Union also stated that bullet proof vests should be replaced upon the recommendation of the manufacturer and not as determined by a captain or lieutenant assigned to check the vests for wear and tear.

The Employer contends that the current uniform allowance is adequate. It submits a wage/benefit survey which shows that the current \$850 per year uniform allowance in Avon is only slightly below the \$912 average for uniform allowance in neighboring jurisdictions. It points out that bulletproof vests are replaced after five years

or if a warrant defect is detected. The Employer further maintains that appropriate items are issued to the bargaining unit members as required for their own safety.

ANALYSIS – This fact-finder would recommend that the uniform allowance be increased to \$900 effective January 1, 2009 for all fulltime sergeants and lieutenants. The uniform allowance shall be increased further to \$950 on January 1, 2010. In addition under Section 5 of the Uniform Allowance Provision, there is to be certain modifications as basically agreed to by the parties for issuance of job related equipment to sergeants and lieutenants. It should be noted that the parties agree to eliminate Section 1 which pertains to the dispatcher's unit.

The evidence shows that the current uniform allowance of \$850 falls slightly below that provided to similarly situated employees in comparable jurisdictions. The average uniform allowance in these other jurisdictions is \$925 per year. Therefore, it would be reasonable to increase the uniform allowance for the bargaining unit here to bring it more into line with that provided to safety forces in the area.

This fact-finder would also recommend certain changes in the listing of job related equipment which is to be made available to sergeants and lieutenants for use during their employment with the City. This would include providing two carriers for the life of the employee's bullet resistant vest. In addition, ballistic helmets are to be provided to bargaining unit members. There was insufficient basis established for any additional items requested by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder that there be an increase in the uniform allowance and changes to items of job related equipment to be made available to sergeants and lieutenants as more fully set forth below:

UNIFORM ALLOWANCE

*NOTE – Take out dispatch language.

Section 1. Increase to \$900 per year effective January 1, 2009.
Increase to \$950 per year effective January 1, 2010.

Section 5. Include the following listing of items of job related equipment that are to be provided to Sergeants and Lieutenants by the City as follows:

- (1) bullet resistant vest and two carriers per life of vest
- (1) leather duty belt
- (6) leather belt keepers
- (1) canister 10% OC pepper spray
- (1) pepper spray holder
- (1) safariland holster
- (1) service weapon
- (3) service weapon magazines
- (1) leather pair of magazine pouches
- (1) 26 inch ASP expandable baton
- (1) leather ASP holder
- (1) two-way portable radio
- (1) leather radio holder
- (1) leather flashlight holder
- (1) leather glove pouch
- (1) rain coat
- (1) rain hat cover
- (1) mini flashlight
- (1) ballistic helmet, gas mask, flex cuffs
- (1) gear bag
- (2) pairs of handcuffs
- (2) leather handcuff cases
- (3) badges (2 breast, 1 hat)

Each officer is responsible for the proper care and maintenance of City-issued equipment items and will return such items to the City upon separation from employment, except as may be specifically set forth otherwise in this agreement.

When replacement of equipment items by the City is authorized by the Employer, the cost shall be borne by the Employer. Bullet resistant vests shall be worn at all times when an officer (inclusive of detectives) is on duty and/or in uniform, except when a member of the bargaining unit is teaching or attending classes or seminars.

4. WORK WEEK/SCHEDULED HOURS

The Employer proposes to remove “sick days” from consideration when calculating duty hours or compensable time for the purposes of overtime computation. The Union opposes any change in the current provision.

The Employer contends that the modification it proposes would provide City-wide consistency for the calculation of overtime. All City employees, except for those bargaining units within the Department of Police, do not have sick leave counted towards overtime.

The Union points out that the fact-finder for the dispatcher unit agreed with its position in this case. Currently, the patrol as well as dispatch bargaining units contain the language found in the sergeant and lieutenant agreements.

ANALYSIS – This fact-finder has determined that the current provision which includes considering “sick days” as hours worked for the purposes of overtime computation should be retained. It was shown that the patrol and dispatch bargaining units within the Police Department both contain this current language within their agreements. Moreover, the fact-finder in the recent dispatcher’s unit fact-finding agreed with the Union that the status quo should be retained. There simply was insufficient basis at this time for modifying the provision as suggested by the City.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the pertinent Overtime Computation Provision.

WORK WEEK/SCHEDULED HOURS

Retain current provision which provides that sick days be included as compensable time for the purpose of computing overtime.

5. EDUCATIONAL INCENTIVE

The Union proposes to increase the educational incentive to \$850 of additional compensation for employees who obtain an Associates Degree. The current provision provides for \$650 of additional compensation each year. The Union further proposes to increase the amount of additional compensation for an employee who obtains a Bachelor Degree from the current \$1,000 to \$1,500. The Union also seeks to add a new provision to establish full tuition and book reimbursement for employees attending classes in the field of Criminal Justice and/or any Police Science related degree of study.

The Employer proposes to retain the current provisions with the exception of a clarification to establish the same requirements for an Associate or a Bachelor Degree. Currently, the requirement for an Associate Degree is a degree in Police Science. The current requirement for a Bachelor Degree is a degree in Police Science or Police Science related study.

The Union presented a survey of educational incentive pay provided in neighboring jurisdictions. The Union submits that such comparable data supports its position for an increase in the amount of additional compensation for employees who obtain an Associate Degree or Bachelor Degree.

The Employer also submits comparable data which it states shows that an increase in educational incentives is not warranted. Such comparable data also indicates that there should be no new tuition reimbursement provision as proposed by the Union.

ANALYSIS – This fact-finder does not recommend any increase in the educational incentive as proposed by the Union. There simply was insufficient basis established for such a modification. The comparable data submitted indicates that the average educational incentive for an Associate Degree is \$632 per year and \$777 for a Bachelor Degree. It is apparent therefore that the educational incentive for the bargaining unit here of \$650 for an Associate Degree and \$1,000 for a Bachelor Degree in Police Science and/or related field is in line with that provided in other jurisdictions. Moreover with only one exception, there is no tuition reimbursement provision provided for in these other neighboring cities. As a result, this fact-finder would not recommend the new tuition reimbursement provision proposed by the Union. However, the modification to use “or a Police Science related degree” language for both Associate and Bachelor Degrees is recommended.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no increase in the amount of educational incentive and no new tuition reimbursement provision as proposed by the Union.

EDUCATIONAL INCENTIVE

No increase in the amount of Education Incentive.

No new tuition reimbursement provision.

Section 1. Add “or a Police Science related degree”.

6. SICK LEAVE

The Employer seeks to establish a maximum payment for sick leave upon retirement at nine hundred sixty (960) hours. The Union opposes any change in the current provision. The current provision provides that all sick leave days which have accrued at the retirement date for a fulltime employee shall be paid at a ratio of one day for each two days earned.

The Employer contends that its proposal is consistent with maximums already established with the other City labor agreements except for the patrol officers and rank within the Department of Police. The 960 hour maximum is also comparable or better than that provided by other comparable cities. The Union contends that this particular benefit should not be taken away simply because the Employer believes that everyone should be treated the same. The Union notes that the Fire Department's sick leave payout is capped up to a maximum of 1,200 hours.

ANALYSIS – This fact-finder recommends that the current payment upon retirement provision be modified to establish a maximum payment for sick leave upon retirement at 960 hours. This would be consistent with the maximum payments set forth in the other City labor agreements with the exception of the patrol officers and rank within the Department of Police. The modification recommended for sick leave conversion would be consistent with that provided to all other City employees who work 2,080 hours. The firefighters actually receive less of a sick leave conversion benefit based on the number of hours which they work.

Moreover, comparables indicate that the sick leave conversion modification recommended herein of a maximum of 960 hours would be in line with that provided in other neighboring cities. The average maximum in these other jurisdictions was shown to be at 897 hours. Moreover, the modification would be what the fact-finder recommended with respect to the dispatcher's unit. That fact-finder stated that there are benefits in having all employees entitled to receive the same maximum payout for sick leave upon retirement. As result, the dispatcher's unit is now capped at 960 hours with respect to the sick leave payout upon retirement.

RECOMMENDATION

It is the recommendation of this fact-finder that the current payment upon retirement provision be modified as proposed by the Employer.

SICK LEAVE

Section 8. Payment Upon Retirement

Modify to provide that there be a maximum of Nine Hundred Sixty (960) hours of pay.

7. DURATION

The Union proposes that the Agreement be effective as of January 1, 2009. The Employer proposes to have the Agreement commence prospectively with the first day of the first full pay period following the execution of the Agreement. Both parties are in agreement that the new Contract is to end on December 31, 2011.

The Union contends that it is only reasonable to provide for a retroactive application of the Agreement. The Union proposes a separate Memorandum of Understanding which would provide that all economic benefits be retroactive to January 1, 2009. The City contends that it would be unreasonable to provide for the retroactive application of the Agreement given the delays caused by the Union during negotiations.

ANALYSIS – This fact-finder would recommend that the Agreement commence retroactively to January 1, 2009 and end on December 31, 2011. It is reasonable to provide as the Union proposes that there be retroactive application of the Agreement as had been done in the past. The City's other labor agreements have also contained retroactive duration provisions. However, it is not recommended that a separate Memorandum of Understanding be provided as proposed by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder that the Agreement commence January 1, 2009 as proposed by the Union.

DURATION

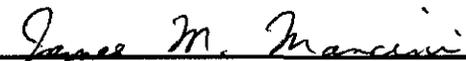
The Agreement shall become effective as of January 1, 2009 and shall remain in full force and effect through December 31, 2011.

No new Memorandum of Understanding.

CONCLUSION

In conclusion, this fact-finder hereby submits his recommendations on all of the outstanding issues presented. It is also the recommendation of this fact-finder that all previously agreed upon tentative agreements be incorporated into the parties' new Contract.

MARCH 11, 2009


JAMES M. MANCINI, FACT-FINDER