

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

State Employment Relations Board

AUG 15 10 03 AM '96

IN THE MATTER OF:

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

"Employee Organization"

and

CITY OF KIRTLAND

"Employer"

CASE NO. 95-MED-08-0684

FACT-FINDER:

DONALD N. JAFFE
1410 Terminal Tower
Cleveland, Ohio 44113
(216) 241-3737

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

APPEARANCES:

Representative on Behalf of
Employee Organization:

Jon Heineman, Business Agent
Ohio Patrolmen's Benevolent Association
10 Beech Street
Berea, Ohio 44017
(216) 891-9600

Representative on Behalf of
Employer:

James A. Budzik, Esq.
Johnson, Balazs & Angelo
3600 Terminal Tower
Cleveland, Ohio 44113
(216) 696-5222

DATE OF REPORT: AUGUST 15, 1996

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
BACKGROUND	3
RECOMMENDATIONS	3
ARTICLE VII - AGENCY SHOP	3
ARTICLE XIII - DUTY HOURS	4
ARTICLE XIV - OVERTIME PAY	5
ARTICLE XIX - FUNERAL LEAVE	6
ARTICLE XXIII - INSURANCE	6
ARTICLE XXIV - LONGEVITY	7
ARTICLE XXV - WAGES	8
ARTICLE XXVII - UNIFORMS	9
ARTICLE XXVIII - EDUCATIONAL PAY	9
ARTICLE XXXIII - DRUG TESTING	10
ARTICLE XL - DURATION	10
ARTICLE XLII - ARBITRATION PROCEDURE	11

I. INTRODUCTION

These matters come before the Fact-Finder as a result of a referral on December 1, 1995 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "OPBA" or "Association") and the City of Kirtland (hereinafter referred to as "City" or "Employer"). After initial referral, the parties requested a series of extensions of the scheduling of the fact-finding hearing for purposes of allowing the parties to explore further a potential resolution for a new Collective Bargaining Agreement. Ultimately, the Fact-Finder was notified that the negotiations had not produced a concluded agreement and request for commencement of fact-finding was made. A fact-finding hearing for the taking of evidence, submission of issues and presentation of the parties' respective positions was held, by mutual agreement of the parties, on July 18, 1996. The hearing was conducted at the Kirtland City Hall, Kirtland, Ohio.

The Fact-Finder received numerous exhibits and extensive material presented by both parties, including the parties' respective pre-hearing statements. In addition, the Fact-Finder received, as evidence, the current Collective Bargaining Agreement between the parties covering the period from January 1, 1994 through December 31, 1995. Included within the exhibits presented, for comparative purposes, was the Collective Bargaining Agreement between OPBA and the City of Mentor-on-the-Lake for the period from January 1, 1993 to December 31, 1995 (City Exhibit 8) and a copy of the Fact-Finder's Report dated March 21, 1996, between OPBA and the City of Mentor-on-the-Lake (SERB Case Nos. 95-MED-10-0944, 0945 and 0946) (City Exhibit 9).

The Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code

§§4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6). In addition, the Fact-Finder has reviewed and taken into consideration the various exhibits and position statements submitted by the parties, some of which will be discussed in further detail *infra*.

Appearing on behalf of the parties, in addition to the respective representatives designated on the face sheet of this Report, were the following:

On Behalf of OPBA:

Charles Tercek, Patrolman, OBPA Representative

On Behalf of the City:

Mario Marcopoli, Mayor, City of Kirtland
Dennis Yarborough, Chief of Police, City of Kirtland

Initially, the Fact-Finder must commend the representatives of OPBA and the City of Kirtland for presenting their respective positions in an articulate, detailed and highly professional manner. There were a number of issues presented, and they are not easily resolved, as is evident by the fact of the parties' actual impasse and the necessity for the instant fact-finding protocol. The thoroughness of the parties' presentations significantly assisted the Fact-Finder in his task. In preparing this Report and Recommendations, the Fact-Finder has attempted to summarize the salient aspects involved where considered pertinent and relevant. Brevity, therefore, should only be construed as an attempt to contain the length of this Report and not to diminish the importance of each issue or the significance of the material presented by the respective parties in support of their particular positions. This Report and Recommendations would be of inordinate size if all of the arguments, pro and con, and all of the material were discussed and analyzed at length. The Fact-Finder has attempted to balance the rights and responsibilities of all of the parties involved in the instant fact-finding. See,

generally, the comments expressed by Justice Douglas in *Johnson v. University Hospital of Cleveland* (1989), 44 Ohio St.3d 49, 58.

II. BACKGROUND

The City of Kirtland is located in Lake County, west of the County seat of Painesville. It was indicated that the City of Kirtland is the smallest city, population wise, in Lake County, having a population of approximately 5,900. Other cities in Lake County, for example, are the City of Mentor (47,378), City of Willoughby (20,510), and the City of Painesville (15,216). The city closest to the City of Kirtland based on population in Lake County is the City of Mentor-on-the-Lake with a population of 8,271. It was testified that although the City of Kirtland is considered a "bedroom community" and having the smallest population, area wise it is the largest city within Lake County.

OPBA became the exclusive bargaining representative in 1989, and the bargaining unit consists of five full-time patrolmen, although, at the time of the fact-finding, there was one vacancy, and it was indicated by the City that there is an intention to fill that vacancy. The City has a current total of thirty full-time employees.

III. RECOMMENDATIONS

ARTICLE VII - AGENCY SHOP

The City has proposed to delete the present agency shop language on the basis that all of the members of the bargaining unit are dues paying members and, therefore, an agency fee requirement is somewhat redundant or unnecessary. The Association, on the other hand, contends that since the Collective Bargaining Agreement would span a period of several years and it is not known what might transpire with future employees, the current agency shop

provision should be retained. The present Agreement provides that members of the bargaining unit would either maintain their membership in OPBA, become a member of OPBA or pay a service fee to OPBA in accordance with the provisions of R.C. §4117.09. Considering the fact that an agency shop clause presently exists in the parties' Collective Bargaining Agreement, the Fact-Finder recommends that the current language in Article VII be retained.

ARTICLE XIII - DUTY HOURS

The City has proposed, in essence, retention of the current contract language but has requested a modification to Section 13.03, which, in effect, proposes to give the Chief of Police the discretion of determining the work week schedule, contending that it is the Chief of Police who has the authority to determine staffing and scheduling. In part, the City relies on R.C. §737.06 which states, in pertinent part: "The chief of police shall have exclusive control of the stationing and transfer of all patrolmen, auxiliary police officers and other officers and employees in the police department"

The Association, on the other hand, has proposed that there be a system of bidding, by seniority, relating to the work week scheduling with an adjustment of pay in the event of a reshuffling of schedule.

The Fact-Finder recommends that the present Sections 13.01, 13.02 and 13.03 be retained in their present language. The Fact-Finder recommends a new Section 13.04 and a new Section 13.05 to read as follows:

"13.04 Employees shall be permitted to select shifts by seniority on a shift bid basis every six (6) months. The Employer reserves the right to change shift hours and the posting of shift hours every six (6) months. To the extent reasonably possible and feasible, the posting of the schedules shall be undertaken at least thirty (30) days prior to the six (6) month scheduling.

13.05 Effective September 1, 1996 and for the duration of this contract, the Employer shall schedule on the basis of a minimum of five (5) available shifts, regardless of the actual number of employees in the bargaining unit. Any employee who is assigned to a shift other than his bid shift shall receive a shift differential of Seventy-Five Cents (75¢) per hour for all hours worked on the assigned shift."

ARTICLE XIV - OVERTIME PAY

Under the current contract, there is a provision that police officers performing work in excess of forty (40) hours are compensated at the rate of one and one-half (1-1/2) times the employee's regularly hourly rate but that for purposes of overtime, items such as vacation, sick leave, holiday or compensatory time is not construed as time actually worked. The Association proposes that vacation and holiday time be counted as time actually worked for purposes of overtime computation. After reviewing the arguments of the parties, the Fact-Finder recommends that the current contract language be retained.

ARTICLE XIX - FUNERAL LEAVE

The Association proposes to increase funeral leave from the present provision of two (2) days to three (3) days and also proposes to expand the definition of "immediate family" as used in the Collective Bargaining Agreement to include grandparents, grandchildren and household members. The City contends that the funeral leave provision as presently provided is reasonable, as well as the definition of immediate family which is defined under Section 18.09. Upon consideration, the Fact-Finder recommends that the current contract language be retained. However, the Fact-Finder notes a typographical error in Section 19.02 and that, as corrected, Section 19.02 should read as follows:

"Immediate family shall be defined to the same parameters as in sick leave, Article 18.09."

ARTICLE XXIII - INSURANCE

The current contract provides, in essence, for a traditional type hospitalization with individual and family deductibles, a co-pay system utilizing an "in network" and an "out of network" factor. The Association proposes that the hospitalization insurance program presently in effect be continued. The City, on the other hand, proposes to utilize a managed care health plan (with an employee option of using Kaiser HMO plan) which would be applicable to City employees, including the members of the instant bargaining group. The City has contended that the proposed plan would reduce costs. The City indicated that its hospitalization costs for 1995 were \$121,000.00, and the present costs for 1996 are \$155,000.00. In addition to the implementation of managed care, the City also proposes that employees make a partial contribution to the premium of \$50.00 per month. The Fact-Finder has reviewed and considered this issue most extensively and, although he appreciates that change of any kind is not always easy or comfortable, in this instance, the Fact-Finder believes that a permitted conversion to a managed care system is reasonable and that an employee contribution toward the total premium is not unreasonable in the context of current health care costs. The Fact-Finder also notes that the proposed managed care system would be applicable to all City employees, thus, there would be a uniformity of administration and participation. The Fact-Finder does not, however, feel that a flat premium charge of \$50.00 should be imposed, and recommends a contribution level of \$25.00 per month. The Fact-Finder also proposes adjustments to deductibles and co-pay provisions in the event that there is a conversion to a managed care program. Accordingly, the Fact-Finder recommends that present Article XXIII (Sections 23.01 and 23.02) be deleted, and in lieu thereof, the following be substituted, including new Sections 23.03 and 23.04:

"23.01 Effective January 1, 1996 through
December 31, 1996, the Employer shall continue to pay the
necessary premiums for the employee health insurance which shall

be selected by the Employer. The Employer shall have the right to change insurance carriers or coverage so long as the employees retain comparable or better coverage. The HMO option shall continue to be available to employees.

23.02 During 1996, such coverage shall be comparable to the BC/BS Super Blue 2400 Plan or similar plan selected by the Employer. Such coverage requires the payment of annual deductibles of \$200.00 per person and \$400.00 per family, with a twenty percent (20%) employee co-pay, as applicable, with an out-of-pocket maximum of \$600/\$1,200 for in network use and \$2,500/\$5,000 out-of-pocket maximum of out of network use. The City shall continue to implement a prescription card program with a \$5.00 employee co-pay.

23.03 Effective January 1, 1997 or at any time thereafter during the term of this Agreement, the City may implement a Managed Choice Plan which would contain the limits, first dollar coverage, deductibles, insurance, maximum out-of-pocket payments and prescription drug benefits and plan highlights as set forth in Exhibit A (The Managed Choice Plan). In the event the Employer implements a Managed Choice Plan, all employees are required to contribute \$25.00 towards health insurance premiums through payroll deduction. The \$25.00 per month payment would be applicable regardless of another alternative plan selected by the employee or whether the employee selects single or family coverage.

23.04 The Employer reserves the right to change insurance carriers or coverage during the term of this Agreement so long as the benefits are comparable or better as set forth in Sections .01, .02 and .03, above. In the event the City implements a plan with the current deductibles and co-payments of the 1996 levels, employees shall not be required to make premium contributions. As set forth in Section .03, in the event the Employer selects a managed care plan during the term of this Agreement, employees would receive those benefits levels, however, each employee would be required to make \$25.00 monthly premium payments by payroll deduction."

ARTICLE XXIV - LONGEVITY

The present Article XXIV provides for a longevity payment system ranging from \$550.00 to a maximum of \$2,100.00 paid in five (5) year increments commencing after the completion of five (5) years and progressing thereafter to twenty (20) years. The Association

proposes an increase in the present level of compensation but maintaining the same year of service eligibility brackets. The Association's contention is that longevity pay has been unchanged since 1990. In light of other provisions set forth herein, the Fact-Finder recommends that the present contract provisions be retained.

ARTICLE XXV - WAGES

The Association proposes an increase in wages of six percent (6%) per year for a three (3) year period (1996, 1997 and 1998). The City has proposed a wage increase of three percent (3%) effective upon the execution of a Collective Bargaining Agreement, a two percent (2%) increase effective the first full pay period of January 1997, and a two percent (2%) pay increase effective the first full pay period in January 1998. In its pre-hearing memorandum, the City stated: "The City submits that while it is not claiming that it has an 'inability to pay' in this case, the City specifically submits that it has a limited ability to pay and must keep within financial resources and budgetary constraints." The City introduced data dealing with its income and expenses. The Mayor of the City testified that, as regards the present contract (January 1, 1994 - December 31, 1995), the City had granted a four and one-half percent (4-1/2%) raise in 1994 and another four and one-half percent (4-1/2%) pay raise in 1995. The City has also contended that the general rate of inflation has been in a range of 2.6% to 3.0%. Upon consideration of all of the evidence, the Fact-Finder recommends that Article XXV be amended by providing a four percent (4%) wage increase effective at the beginning of the first full payroll period in January 1996; a four percent (4%) wage increase effective at the beginning of the first full payroll period in January 1997; and a four percent (4%) wage increase effective at the beginning of the first full payroll period in January 1998.

ARTICLE XXVII - UNIFORMS

The Association proposes to increase the present uniform allowance from Six Hundred Dollars (\$600.00) to Six Hundred Fifty Dollars (\$650.00) per year and to increase reimbursement allowance from Twenty-Five Dollars (\$25.00) to the actual value of the damaged article. The City proposes to retain the current contract language, contending that the present level of benefit is reasonable. Upon consideration, the Fact-Finder recommends that present Section 27.01, regarding uniform allowances, be retained in its current language form. However, as to Section 27.02, the Fact-Finder recommends an adjustment and increase to the amount of reimbursement. Accordingly, the Fact-Finder recommends that Section 27.02 be changed to read as follows:

"The Employer agrees to reimburse any employee a maximum of Fifty Dollars (\$50.00) per year, effective January 1, 1997, for replacement of glasses or protective eye wear, watches or dentures which are broken in the line of duty, excluding employee negligence. Employees must provide sufficient and adequate receipts for such reimbursement. Further, the City is entitled to any and all reimbursement, up to Fifty Dollars (\$50.00) for workers' compensation payments to employees for replacement items, effective January 1, 1997. The Union agrees that employees will sign an appropriate waiver form."

ARTICLE XXVIII - EDUCATIONAL PAY

The present Contract provides for an educational pay format allowing for City contribution for college credits completed and compensation for employees obtaining associate degrees, bachelor degrees or master's degrees in law enforcement. The Association proposes an increase in the present levels of contribution, whereas, the City has proposed a decrease in the level of contribution arguing, in essence, that the total pay package is reasonable and, thus, educational pay, *per se*, should be adjusted. The Fact-Finder believes that the present Article XXVIII has value in that, to some measure, it encourages police officers to pursue higher

education in law enforcement matters. Accordingly, the Fact-Finder recommends that the present contract language be retained. However, the Fact-Finder notes that there is an inadvertent typographical error in Section 28.06 and that such Section should read as follows:

"Employees shall be entitled to the highest allowance as set forth in Paragraphs 28.03, 28.04, or 28.05 and there shall be no pyramiding of such allowances."

ARTICLE XXXIII - DRUG TESTING

The present Contract provides for drug screening/testing upon annual physical "and upon reasonable suspicion." The Contract further sets forth the protocol to be utilized, both as regards the testing procedure and for findings of positive reflecting some illegal controlled substance. The protocol also provides for a rehabilitation program. The City proposes a modification to the present Contract to include random testing. The Association contends that random testing is not necessary to be inserted because testing can be conducted at the time of an annual physical or if there is a reasonable suspicion. Therefore, the Association contends that the current contract language sufficiently protects the City's interests. Upon review of the present Article XXXIII and the parties' contentions, the Fact-Finder recommends that the current contract language be retained.

ARTICLE XL - DURATION

As previously noted, the present Contract is for a two (2) year period which expired on December 31, 1995. The Association has proposed that the new Collective Bargaining Agreement be for a period of three (3) years. The City has not adamantly opposed this suggestion, although, in the course of some of its contentions, it seems to suggest that a two (2) year contract should be used. However, the Fact-Finder notes that there were areas, such as wages, where a three (3) year time period was referenced. Current Ohio statutory law (Revised Code §4117.09(E)) permits a three (3) year contract period, and the Fact-Finder does

not feel that a three (3) year contract, in this instance, is out of the ordinary or unreasonable. Accordingly, the Fact-Finder recommends that the present Section 40.01 be deleted and, in lieu thereof, the following be substituted:

"This Agreement shall become effective at 12:01 a.m. on January 1, 1996 and shall continue in full force and effect, along with any amendments made and annexed hereto, until Midnight, December 31, 1998."

ARTICLE XLII - ARBITRATION PROCEDURE

The present Article XLII dealing with the arbitration protocol provides, in pertinent part, that arbitration hearings are conducted pursuant to the rules of the American Arbitration Association (Labor Panel), and that the arbitrators hearing the matter are selected from a permanent panel set forth under Section 42.07. During the course of the hearing, it was indicated that, in essence, the parties felt that the utilization of the Federal Mediation and Conciliation Service would be more appropriate and that the permanent panel should be eliminated because some of the individuals on the panel are no longer serving as arbitrators or have retired. In light of the general discussion with the parties pertaining to this Article, the Fact-Finder recommends that Section 42.01 be deleted and the following substituted in lieu thereof:

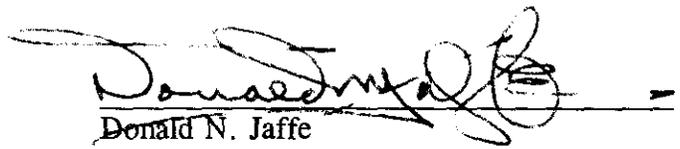
"In the event a grievance is unresolved after being processed through all of the steps of Grievance Procedure, unless mutually waived or having passed through the various steps by the time limit default(s) of the Employer, then within ten (10) days after the rendering of the decision at Step 4 or a time limit default by the Employer at Step 4, the aggrieved party may submit the grievance to arbitration. Within this ten (10) day period, the parties will meet to attempt to mutually agree upon an arbitrator. If such agreement is not reached, the arbitrator shall be selected in accordance with the rules and regulations of the Federal Mediation and Conciliation Service, and the arbitrator ultimately designated shall hear the grievance in question."

The Fact-Finder further recommends that Section 42.04 be deleted and that the following be substituted in lieu thereof:

"The hearing(s) shall be conducted pursuant to the rules and regulations of the Federal Mediation and Conciliation Service."

The Fact-Finder further recommends that Section 42.07 be deleted in its entirety and that the present Section 42.08 be renumbered as Section 42.07.

Respectfully submitted,



Donald N. Jaffe
Fact-Finder