

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

CITY OF MIDDLETOWN, OHIO

- AND -

S.E.R.B. CASE NO. 95-MED-10-0881
(Corrections Officers)

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

STATE EMPLOYMENT
RELATIONS BOARD
DEC 22 9 59 AM '95

APPEARANCES:

For the City: Leslie S. Landen
Assistant Law Director
Middletown, Ohio

For the F.O.P.: Guy Kauffman
Staff Representative
F.O.P., O.L.C., Inc.
Dayton, Ohio

REPORT & RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

ATTACHMENT # 1

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INTRODUCTION:

At the outset, a mediation effort was made. As a consequence thereof, the following issues were resolved and not brought to Fact Finding, albeit the parties were at impasse on the issues: holidays; personal days; longevity days; reduction of sick time accrued; sick leave incentive program; clothing allowances; injury leave; life insurance; mid-term bargaining; grievance proceedings; tuberculosis claims; and, labor-management meetings.

In arriving at the recommendations hereinafter made concerning the issues remaining at impasse, I have taken into consideration the following statutory factors:

- (1) Past collective bargained agreements, if any between the parties;
- (2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and,
- (6) Such factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUE # 1 - APPENDIX A - HEALTH INSURANCE

Evidence & Parties Positions:

The City seeks the following Health Insurance provision as Appendix A to the Contract:

APPENDIX A

HEALTH INSURANCE

1. Members shall be provided medical insurance coverage in accordance with the Certificate of Insurance on file in the Finance Department.
2. Member Contribution:
 - (a) Member contribution for medical coverage will not exceed 10% of the estimated annual cost of the City's medical insurance plan. Annual member drug and dental contribution increases from 1989 forward will not exceed 5% annually.
 - (b) Effective January 1, 1996, the member shall contribute to the annual cost of the City's medical insurance plan as follows:

Family plan - \$16.73 per month
Single plan - \$13.47 per month
3. If the City's total cost for its health care plan in any given year exceeds the total cost for the prior year by more than 9%, employees shall pay this excess amount, subject to the limitation set forth in paragraph 2-a above. The amount in excess of 9% increase, if any, shall be apportioned among the health care plan members as follows:
 - (a) Each employee with a family contract shall pay 2.5 times the amount that an employee with a single contract pays.
 - (b) The total excess cost (above the 9% which the City pays) will be divided among the plan members as follows:

The total number of single contracts, and 2.5 times the total

number of family contracts will be added. This sum shall then be divided into the excess cost. The result of this division will be the cost of a single contract. That cost will be multiplied by 2.5 to determine the cost of a family contract.

The F.O.P. would have Appendix A provide as follows:

1. Members shall be provided medical insurance coverage in accordance with the Plan Document dated January 1, 1995.
2. Member Contribution:
 - (a) Employee contribution for medical coverage will not exceed 10% of the estimated annual cost of the City's medical insurance plan. Annual member drug and dental contribution increases from 1990 forward will not exceed 5% annually.
 - (b) From January 1, 1995, through December 31, 1995, a member's contribution shall be \$16.73 each month for the family plan and shall be \$13.47 each month for the single plan.
3. Optical Coverage will be added to the City's Medical Insurance Plan.

The City is opposed to adding Optical Coverage. It asserts that "the general direction of the health insurance in the public sector is moving toward the reduction of benefits and the increase in employee participation "such that the F.O.P.'s proposal is "out of step."

The City additionally asserts that reference to the Certificate on file in the Finance Department is necessary to contractualize the relatively recent change in third party administrators and to contractualize the coronary care network

"which is merely the creation of a network within the network," already in place in the Certificate, to take effect at the first of the year. The City characterizes this coronary care network as a "minor change."

As for its proposed cap upon the cost incurred by the City in administering the health care program, such is "critical" to it, asserts the City, "in order for the City's Financial Plan to be successful and insure stability." The City cites internal comparables in support of its proposal asserting that its proposal is virtually identical to the cap accepted over the last couple of years by all three of the City's AFSCME units and the two units of sworn Police Officers. The City points out that "if the total health care cost for 1996, 1997, and 1998 increase at a rate of less than 27%, employees will bear no cost." It also asserts that "since the cap is based on City-wide cost, no single catastrophic situation in [this small unit] would be devastating." Pointing out that "eleven percent of the respondents to the 1994 SERB Health Care Report reduced benefits in the last twelve months," the City asserts that its cap proposal "allows the City to provide a quality health care program to its employees." Furthermore, asserts the City "with the present contribution far below those typically paid by employees (\$19.63 and \$59.04 per month for single and family plans, respectively, according to the 1994 SERB Health Care Report), the proposed rates will not result in an unreasonable contribution rate by the employees even if the cap requires an

increase."

The F.O.P. asserts it is opposed to what it characterizes as a City proposal "to raise our insurance premiums." The F.O.P. contends that "several other City bargaining units never had to pay for their insurance until this year," whereas the bargaining unit "has always had to pay." The F.O.P. asserts that "raising our insurance to what the F.O.P. and I.A.F.F. pay puts as paying a higher percentage since our annual salaries are considerably less."

Additionally, the F.O.P. asserts that the fixing of benefits or "benchmarking" benefits to a date certain, namely, January 1, 1995, is necessary in order to stabilize and render certain what the health care benefit is to be for the term of the Contract.

As for the "cap concept," as indicated, the F.O.P. is opposed to it. However, if it were to be recommended, the F.O.P. urges that it would be more appropriate to cap the cap. In that regard, it appears that the Patrol Officers' Contract contains such a cap-on-the-cap concept. The F.O.P. suggests that the 9% cap formula of paragraph 3 of the City's proposal ought not to exceed \$4.00 per month per bargaining unit member in light of the relatively low wages of the bargaining unit as compared to other Police Department employees enjoying a \$30.00 cap-on-the-cap. The City, preferring no cap-on-the-cap, urges the internal comparables cap of \$30.00 as opposed to the \$4.00 urged by the F.O.P. were the cap-on-a-tap concept recommended.

Rationale:

These small bargaining units can ill afford to go their separate way when it comes to health insurance. And the City is moving toward a universal comprehensive program with caps on its liability for all City employees and the bargaining units need to be on board. Moreover, National and State-wide trends point toward employee participation in the health care premium. At the same time, these units have recently accepted significant changes in their traditional health care benefits. Thus, only modest and incremental change can now be justified. Accordingly, the cap-on-the-cap concept is appropriate. And, given the so recent program changes, along with the relatively low wages of these bargaining units vis a vis other units with cap-on-a-cap provisions, the \$4.00 cap-on-a-cap is deemed appropriate. The important point is that the bargaining units' health insurance program is in step with other major City units. And, out-of-step, as the City asserts, is the optical care demand of the F.O.P. It thus can't be recommended.

Stability, a matter always in the public's interest, a factor which must be considered, fully supports the "benchmarking" to 1-1-95 that the F.O.P. seeks.

In light of all of the foregoing, therefore, it shall be recommended that the 1-1-95 benchmark be made a part of the party's Contract; that the cap be made a part thereof; that the cap-on-the-cap be made a part thereof; and that optical insurance NOT be made a part thereof.

Recommendation:

It is recommended that the parties Appendix A - Health Insurance read as follows:

A - Health Insurance read as follows:

- "1. Members shall be provided medical insurance coverage in accordance with the Certificate of Insurance on file in the Finance Department as of 1-1-95 with the exception of the coronary care network within the network which may be added thereto.
2. As per the City's proposal.
3. As per the City's proposal, but adding thereto a subparagraph (c) reading as follows:
 - (c) The total excess cost (above the 9% which the City pays) shall in any event and notwithstanding the formulae hereinabove, not exceed \$4.00 per month per bargaining unit member."

ISSUE # 2 - ARTICLE XXIII - HOURS OF WORK and OVERTIME

Evidence and Positions of the Parties:

At the present time the parties' Contract adds "holidays for which the employee is paid" to the 40 hours definition of the FLSA, which otherwise does not regard such time as countable in its 40 hours benchmark. The F.O.P. would also add "vacation days, longevity days and personal days for which the employee is paid" into the count toward the 40 hours triggering overtime pay of time and one-half. The City resists such. The City would also remove paid holidays and revert to the FLSA minimum. The F.O.P. also seeks to increase the amount of compensatory time which an employee can accrue from its present amount of 360 hours to 480 hours, the maximum allowed by the FLSA. The City is

opposed to such and indeed seeks to eliminate compensatory time entirely.

The F.O.P. asserts that the inclusion of vacation days, etc., "... reduces the penalization by the employer of members who use the accrued time and must work what is otherwise considered overtime." It also asserts that its compensatory time proposal "should, if properly administered through scheduling by the employer, save money and also permit employees more latitude to earn time off."

In support of elimination of compensatory time, the City contends that "in the long term compensatory time can be very expensive, particularly in a unit such as this where employees must be replaced when they ultimately take that time away from work." Buy-outs of comp time are also expensive, asserts the City.

On the addition of vacation days, etc., toward the count of the 40 hours which triggers overtime pay, the City contends that "permitting this type of amendment could result in an individual being on vacation for an entire week and coming in on one day to work when called in and being paid overtime for that day." This type of increased expenditure is not warranted, asserts the City, nor does it meet the concerns expressed by the FLSA.

Rationale:

Directly to the point, neither party makes its case for the changes it proposes under the applicable statutory criteria. The F.O.P. already enjoys a 40 hour count standard superior to the

FLSA minimum standard, and the increase in accrued compensatory time allowed have been great (some 300%) over a relatively short period of time. No case for still further growth in these benefits at this time has been made. Likewise, no case for elimination of these past bargained for benefits is made out. Hence, the status quo shall be recommended.

Recommendation:

It is recommended that the parties' retain the provision of Article XXIII in the about to expire Contract.

ISSUE 3 - ARTICLE XVII - SICK LEAVE

Evidence and the Parties' Positions:

The City would cap the amount of sick leave which can be converted to vacation. It asserts that "during the conciliation in 1993, the sick leave conversion to vacation provisions ... were substantially altered by the conciliator. In this alteration, no limits were placed on the number of days that could be converted for vacation use. ... The City has simply proposed that these employees be limited to converting to 4 vacation days per year, as is the limitation placed on all other employees in the City.

The F.O.P. seeks the status quo. Alternatively, if the cap concept is recommended, the F.O.P. would have the ratio be 16 hours for 1 vacation day, and would increase the City's proviso language to "not more than 160 sick leave hours."

Rationale:

With respect to the cap, the ratio, and the City's proposed proviso vis a vis "conversion to vacation credit," I find that the lack of any cap on the number of days which can be converted to vacation carries the potential for serious and expensive scheduling problems. Internal comparables favor a limit. The record shows that all other City employees are limited to converting to but 4 vacation days per year. However, the record also reflects that dramatic alterations in this conversion benefit were brought about in conciliation as recently as 1993. This mitigates against dramatic change again so soon. Accordingly, while the cap concept is worthy, I shall recommend the F.O.P. suggestion of 160 hours in-the-event-the-cap-concept-were-persuasive instead of 80 hours. This has the advantage of an incremental approach moving the bargaining unit closer to internals, while still preserving the superiority of their benefit.

In my view, changing the ratio from 20 sick leave hours to 1 vacation day to 16 sick leave hours to 1 vacation day is simply counterproductive and no comparable data to support such was introduced. The recommendation incorporating all the above follows.

Recommendation:

It is recommended that the parties' Contract read as follows:

ARTICLE XVII - Sick Leave

1. Unchanged.
2. Unchanged.

3. Unchanged.
4. Unchanged.
5. Unchanged.
6. Unchanged.
7. Unchanged.

8. Conversion to Vacation Credit. Employees may convert sick leave credit to vacation once a year on the following basis:

(a) An employee with more than 280 sick leave hours credit may convert all those hours over 160 hours to vacation credit at the rate of 20 sick leave hours for one vacation day, providing that not more than 160 sick leave hours are as converted in any one vacation year.

(b) An employee with more than 800 sick leave hours may convert all those hours over 400 to vacation credit at the ratio of twenty (20) sick leave hours for one (1) vacation day, providing that not more than 160 sick leave hours are so converted in any one vacation year.

(c) The employee must have accumulated these hours prior to January 1 of the year in which these days are to be converted and must have sufficient hours at the time of conversion.

9. Unchanged.
10. Unchanged.

ISSUE # 4 - ARTICLE XV - LONGEVITY

Paragraph 2. Longevity Pay Provision

Evidence and Parties' Positions:

The current Contract reads as follows:

"2. Longevity Pay Provision:

Each member will receive longevity pay calculated and paid in the following manner:

- After 20 years of service with the Employer - 3%
- After 15 years of service with the Employer - 2%
- After 10 years of service with the Employer - 1%

Longevity pay is due by the first pay day in December of the year in which it is due and shall be paid in a separate check."

The F.O.P. would change this provision to read as follows:

- After 20 years of service with the Employer - 4%
- After 15 years of service with the Employer - 3%
- After 10 years of service with the Employer - 2%
- After 7 years of service with the Employer - 1%

It asserts that it is "predicated on external comparables, as well as the continuous dedicated service provided by the employees."

The F.O.P. introduced the following external comparable data:

LONGEVITY PAY

1. Mansfield P.D.:

- Completion of 3 years of service \$300.00
- Completion of 4 years of service \$400.00
- Continues with \$100.00 per year for each additional year of service.
- Example - Completion of 9 years \$900.00

2. Euclid P.D.:

- Five or more years 3.5% of Employee's base salary, but not less than \$120.00.
- Ten or more years 5% of Employee's base salary, but not less than \$180.00.
- Fifteen or more years 6.5% of Employee's base salary, but not less than \$300.00.
- Twenty or more years 8% of Employee's base salary, but not less than \$420.00.

3. Mentor:

- Five years, but less than nine . . . \$11.54 bi-wkly (\$300.04)
- Nine yrs., but less than thirteen . . . \$26.92 bi-wkly (\$699.92)
- Thirteen, but less than seventeen . . . \$42.31 bi-wkly (\$1100.06)
- Seventeen or more yrs. of service . . . \$57.69 bi-wkly (\$1499.94)

4. Marion County:

Per Contract, Longevity is added to base rate of pay as follows:

5th year Anniversary	. . . . .	\$.20 per hr (\$416)
10th year Anniversary	. . . . .	\$.30 per hr (\$624)
15th year Anniversary	. . . . .	\$.40 per hr (\$832)
20th year Anniversary	. . . . .	\$.45 per hr (\$936)

5. Montgomery County:

Five years, but less than ten	. . . . .	\$250.00
Ten years, but less than fifteen	. . . . .	\$350.00
Fifteen years, but less than twenty	. . . . .	\$400.00
Twenty or more years	. . . . .	\$500.00

6. Warren County:

Not addressed in this contract.

7. Lima P.D.:

Not addressed in this contract.

8. Lakewood P.D.:

Paid semi-annually - first pay in June and December.

5 years	. . . . .	\$250.00	. . . . .	\$500.00 annually
6 years	. . . . .	\$262.50	. . . . .	\$525.00 annually
7 years	. . . . .	\$275.00	. . . . .	\$550.00 annually
8 years	. . . . .	\$287.50	. . . . .	\$575.00 annually
9 years	. . . . .	\$300.00	. . . . .	\$600.00 annually
10 years	. . . . .	\$312.50	. . . . .	\$625.00 annually

Semi-annual payments increase \$12.50 (\$25.00 per year) for each additional year of service.

9. Allen County:

Not addressed in this contract.

MIDDLETOWN CURRENT CONTRACT:

After 10 years of service	. . . . .	1%
After 15 years of service	. . . . .	2%
After 20 years of service	. . . . .	3%

Example: Employee at top pay with 10 years of service; receives \$256.50.

Comparables prove that Middletown Correction Officers are not only years (3 to 5) behind in timely Longevity Compensation, but also lacking in amounts of Longevity Compensation.

The City seeks the status quo. It points out that those City employees who receive longevity pay "receives it at the schedule presently included in this group's contract. To increase this ultimately costs the City an additional 1% of each individual's wage from their seventh year forward of service ... [A]dditional supplement to the incomes of these employees is not necessary."

Rationale:

The F.O.P.'s comparables are somewhat flawed in that Counties and not Cities are asked to be compared. But Counties have markedly different funding bases than do cities. Also, the internal comparables favor the City's position and not that of the F.O.P. In my view, no sound basis has been advanced to significantly improve the longevity pay provision, but significant improvement is what the F.O.P. seeks.

In my judgment, the focus of economic advancement ought to be on the employees' wages.

Recommendation:

It is recommended that the current Contract's provision at Article XV, paragraph 2. Longevity Pay Provision, be retained.

ISSUE # 5 - ARTICLE IX - DISCHARGES, SUSPENSIONS AND PENALTIES

Evidence and Positions of the Parties:

This Article spells out rights and procedures regarding the

matters recited in the title. Subparagraph 5(b) of the current Contract provides for a Loudermill hearing, as follows:

"5. A disciplinary suspension or discharge requires:

(b) A pre-suspension hearing be held, unless waived by the employee, before a neutral and detached administrator who was not involved in any of the events giving rise to the suspension. This administrator shall be appointed by the City Manager or his designated representative. The employee shall be afforded, at the hearing, the right to question witnesses and a fair opportunity to be heard in opposition to the charges against him."

The City would delete the phrase "a neutral and detached administrator who was not involved in any of the events giving rise to the suspension" and substitute in lieu thereof the phrase: "the Chief of the Division of Police." The F.O.P. seeks the status quo.

The City asserts its proposal will "shorten the disciplinary process. ... [T]he intent of this change is to place the pre-disciplinary hearing before the Chief ... prior to the time that he makes his recommendation to the City Manager. This ensures the employee a fair opportunity to advise the Chief of his position ... before any recommendation is made to the City Manager.

The F.O.P. professes to have concerns about perceptions of favoritism, citing some purportedly lenient discipline of a Lieutenant for purported sexual harassment, in support of its opposition.

Rationale:

Given the sensitivity of discipline and discharge matters

and the potential for confrontational interactions by the parties over such, even assuming the City's proposal would bring about a measure of greater efficiency, in the face of the bargaining unit's opposition (and without in any way indicating that the alleged favoritism exists), I see no basis for changing the status quo. The City has not put forth a sufficiently compelling case for change in the face of the F.O.P.'s strong opposition and the lack of evidence that present procedures are seriously flawed.

Recommendation:

It is recommended that the parties retain the current Contract's provisions at Article IX, Paragraph 5(b).

ISSUE # 6 - ARTICLE XIX - UNPAID LEAVE

Evidence, Positions of the Parties and Rationale:

The parties are agreed to add a new paragraph to their Unpaid Leave Article, reading as per the "Recommendation" paragraph below and such shall therefore be recommended.

Recommendation:

It is recommended that the parties' Agreement provide:

"Family and Medical Leave. An employee may take Family and Medical Leave in accordance with the provisions of the Family and Medical Leave Act and the appropriate City policy and procedures, as promulgated by the City Manager, governing such leave."

ISSUE # 7 - ARTICLE XXVII - TERMINATION

Evidence and Positions of the Parties:

Citing the need for stability and the City's need to "forecast its financial liabilities in the future," the City seeks a three year Contract. The F.O.P. seeks a two year Contract. Alternatively, the F.O.P. could live with a three year Contract and a wage only reopener in the third year. The City asserts it could live with that too.

Rationale:

In effect there is a consensus on a three year contract with a wage reopener for the third year. The statutory [O.R.C. 4117] procedure ought to apply in the event of impasse.

Recommendation:

It is recommended that the parties contract provide:

"Article XXVII - TERMINATION

This Agreement shall become effective January 1, 1995 and shall remain in force until December 31, 1998, provided, however, that wages for the third year of the Contract shall be reopened, and the provisions of Ohio Revised Code Chapter 4117 shall apply."

ISSUE # 8 - ARTICLE XXII - WAGES

Evidence and Positions of the Parties:

The City makes the following assertions and relies on the following facts and counter-arguments to the F.O.P. to support its position with respect to both the Corrections Officers and the Dispatchers. It's position with respect to the corrections Officers is "a three year contract with wage increases annually of 2.5%, 2.5%, and 2%, respectively."

The City asserts that "the economic situation of the City of Middletown can be described as stable, but still of some concern. Since 1990 the City has been spending tax dollars at a more rapid rate than they are generated. Financial projections in June of 1995 predicted a deficit in that year of nearly \$634,000.00 in the General Fund. The administration is hopeful that the actual deficit will be less than this amount, but with year-end figures still forthcoming, the exact results of the 1995 year are presently unknown. The City's 1996 budget is presently projecting a very, very small budget surplus. This surplus is the result of the implementation of the Financial Plan adopted by the city, which includes strict limitations on personnel costs. Specifically, over the last several years, the City has made a concerted effort to keep wage increases at a rate very near or below the Consumer Price Index. Based on increases in the late 1980's and early 1990's which exceeded Consumer Price Index increases, this fiscal strategy is sound. In addition, the cost of health care over the last few years has been far less mercurial than in past years.

The largest employer in the city is AK Steel, formerly Armco Steel Company, LP. Since the early 1980's, AK has been reducing the personnel employed at the local mill. The reduction of personnel at AK exceeds 3,000 workers since the mid-1980's. Since AK's employment base is three to four times larger than any other employer in town, this downsizing significantly impacts the City's income tax revenues. The City's income tax revenues have

begun to level out since 1989. The consequence is that inflation is reducing the value of those revenues. Demographically, the number of jobs available in the city has been declining, while the population continues to grow. Moreover the number of residents working in the City is also declining. Fewer jobs in the City mean reduced income taxes. Fewer residents working in the City suggests a larger portion of income tax dollars going to neighboring subdivisions. More people signals an increase in the cost of providing services.

A financial plan reflective of these changing demographic factors has been developed for the immediate future. That plan anticipates some increases in fees, reorganization of some divisions and departments, and most importantly, control on increasing personnel costs. From 1986 through 1993, the personnel costs paid from the City's General Fund increased more than 50%, or at a rate of about 7.7% per year. This increase was fueled by health care costs, wage increases, and fringe benefit adjustments. The Financial Plan does not anticipate, nor can the City afford, increased personnel costs of this magnitude.

The two bargaining units involved in this fact-finding have been a part of the City of Middletown labor relations landscape virtually all of the years since the implementation of public employee bargaining in the State of Ohio. The employees in these two units were hired as civilian replacements for police officers to perform certain functions which did not require the presence of sworn personnel. As a result, in the early years of their

existence, these bargaining units were provided wages which were substantially below those of police officers, and a benefit package which was not comparable to those provided to sworn employees. Adjustments to that process began in the last 1980's, with significant wage increases provided to those employees in order to make the positions more competitive with other communities. In the last 1980's and early 1990's, other fringe benefit areas were also upgraded in order to make employment with the City of Middletown as a Dispatcher or Correction Officer a more attractive option.

The negotiation of the 1993 contracts was particularly contentious, and resulted in both units proceeding to the conciliation process. The result of that conciliation were significant changes in the contracts of both units. In that conciliation, the Correction Officers received union business leave which they had not previously had, and were also granted pay for off-duty time spent in negotiations. They were also provided with an additional holiday and an additional personal day. The vacation schedule of the bargaining unit was increased to match that presently provided to the sworn personnel in the Police Department, and the members of the unit were given the ability to convert sick leave into vacation at increased rates and without limitation. Shift differential was increased, uniform allowance was increased and shift differential was granted to be paid on all overtime. In addition to these various items, this bargaining unit received a 3% pay increase and a one

year contract.

The Dispatcher unit also received significant benefit in the 1993 contract as a result of the conciliation award. An additional holiday was granted to the Dispatchers at that time. The Dispatchers also received a 4% increase. In previous years, the Dispatchers had received two personal days, which was one more than was received by other city employees, and they still retain that number of personal days.

Therefore, many of the items which are before the Fact Finder in this particular dispute are items which have been supplemented in recent years by either negotiation or by the conciliation process. Given the necessity of controlling personnel costs, the City is particularly disturbed by these demands.

In addition to some significant bargaining history, there is a significant history regarding the operation of the dispatch and jail area and the personnel used in those areas. Historically, both of these units have complained mightily of the lack of personnel within the unit and the tremendous amount of stress placed upon the unit by the limited number of employees who perform these jobs. Within the last year, the City has increased the number of Dispatchers on staff from 10 to 17, and the number of Corrections Officers from 9 to 12. In addition, significant capital dollars have been spent on improving the dispatch facility, including an installation of an entire new computerized facility in the early 1990's. The jail office has been nearly

doubled in size in an effort to provide these employees with a more efficient and pleasant work place.

All of these changes have been accompanied by adjustments in scheduling, job duties and other miscellaneous work related issues. These adjustments have been, without exception, subject to conferences with the employees in order to obtain sufficient input to implement these changes. This has resulted in many employee requests being granted and the employees being given an opportunity to be happier and more productive."

The City uses as comparables cities with full-service jails and capacities ranging between 20 prisoners and the 400 housed in the Dayton Rehabilitation Center, and its City ranks in the upper third. The City also points to a CPI-W for the Cincinnati region of 2.77 for 1995. The City asserts that "since 1989 these [corrections] employees have exceeded the CPI by more than 5% and therefore a wage increase slightly below the estimated 1995 CPI is not unreasonable."

The City additionally asserts that "a comparison of historic wage increases within the City of Middletown establishes that this unit has maintained pace with all of the units and the non-organized employees in the City of Middletown, with the possible exception of the Police unit. There is some variance between this unit and the Fire and Public Works units of approximately 1 to 1-1/2%, but over a period of 7 years, this difference of percentage could be reflected in other fringe benefits which this unit chose to accept as opposed to greater wage increases."

The F.O.P. makes the following assertions and relies on the following facts and counter arguments to the City, to support it's position that a wage increase for Corrections Officers of 5% the first year and 24.75% increase the second year ought to be recommended. It asserts that "such is well supported by the external comparables and in line with the internal comparables, when the work environment, schedules, duties and responsibilities are considered. ... When the new city jail was opened in 1976, it was staffed by sworn Police Officers. This had previously been the practice in the old city jail and was continued. These sworn Police Officers were accompanied and assisted by female civilian employees known as 'Matrons.' These matrons were needed primarily to search incoming female inmates as they were booked into the facility and otherwise attend to their unique needs as female inmates. They had other duties of a general nature and were subordinate to the sworn Police Officers. The pay for these 'Matrons' at this time was barely above the minimum wage. The responsibility for the safety, security and operation of the jail, on a daily basis, was left to the Police Officer on duty.

At some point in time it was decided to replace the five sworn Police Officers assigned to the jail with five 'Corrections Officers.' These five Corrections Officers would be civilian employees and would not sworn officers. This was done for at least two reasons. The first reason was to fill a need for more Police Officers to patrol the streets and the second reason was that it would be more cost effective. Corrections Officers could

be paid at a substantially lower rate than Police Officers resulting in a significant savings for the City.

On April 11, 1988, five male employees were hired as Corrections Officers pursuant to this goal of replacing the five sworn Police Officers then working in the jail. The job title of 'Matron,' as it applied to the five female employees in the jail, was eliminated and the five female and five male employees were now known as 'Corrections Officers.' These ten Corrections Officers would now share the same duties and responsibilities and would be equal partners in this endeavor. The full responsibility for running and operating the jail that had previously fallen to the sworn Police Officers would now go to these ten people.

Since this transition many changes have evolved and new responsibilities have accrued. Corrections Officers must now attend three weeks of formal training sanctioned by the State of Ohio and must be certified by the State. Continued training on an annual basis is also mandated by the State. Almost three years ago the use of computers was introduced and all Corrections Officers must be computer literate. Requirements in this area continue to grow almost daily. Some examples of computer use in the jail are medical records, dispensing of medication, jail activity, prisoner commissary funds and commissary activity, court dockets, booking and releasing prisoners, visitations, current rosters and turnkeys. Soon to be added are check writing capabilities for commissary money control and medical expenses

charged to inmates. These are a few examples and the list continues to grow. All of these functions require accuracy and completeness. As can readily be discerned this job has little resemblance to the job that prevailed when the Police Officers were responsible for the jail. A Police Officer can't work the jail now because he does not know the job. Union representatives have met with City representatives in the past to update the official job description for Corrections Officers. This has met with limited success and a continued resistance to change has existed. The last attempt was in 1993.

There has been and continues to be a stigma and/or stereotype attached to this highly stressful and responsible job. We believe this stigma and/or stereotype has sustained the image of this job, specifically within the City of Middletown, and has created an unfair and unrealistic approach to the wage structure for Corrections Officers. It seems that no matter how this job evolves it will always be viewed the same. This is unjust and unfair and needs to be corrected. We feel that a catch up adjustment is in order to make Corrections Officers pay commensurate with other City employees with similar responsibilities and duties. Catch up raises are not foreign to the City of Middletown. The most recent one that comes to mind occurred in 1994. Due to the compaction of wages between the ranks of Police Lt. and Police Major the Deputy Chiefs were given a 16.3% increase. In our opinion this increase was fully justified and proper. These catch up raises occur from time to

time in different departments and circumstances and are necessary to insure fairness."

The Union does not suggest that anyone employed by the City of Middletown is being paid more than is appropriate. The Union is saying however, that in the scheme of things, that the position of Corrections Officer is very much underpaid considering their job requirements, responsibilities, stress factor, possibility of physical injury and exposure to disease compared to other city employees. This coupled with the City's obvious ability to pay as evidenced by the fact that they pay a Senior Clerk Typist over three thousand dollars more per year than is paid a Corrections Officer. A Lead Meter Reader is also paid over three thousand dollars more per year than a Corrections Officer. Further, a Senior Account Clerk is paid almost two thousand dollars more per year than a Corrections Officer. As the Finder of Fact reviews our Exhibit A, it will be noticed that there are many other job classifications with less responsibility and are much less demanding and stressful than the job of Corrections Officer but which are paid at a higher rate. Again, we are not saying these people are overpaid, we are saying that we should take our proper position among these job classifications and pay scales. The City's ability to pay is clear as evidenced by their pay schedules for all City employees."

Additionally, the Union points to a 3.6% North Central CPI of 3.6% reflecting "the annual rate of change in the Urban Wage

Earners and Clerical Worker Index released in June, 1995." It also points to the health and good earnings of such major City employers as AK Steel.

As for comparables, the F.O.P. relies on the following:

CORRECTIONS OFFICER COMPARABLES FOR 1995

AGENCY	MINIMUM		MAXIMUM
MARION	\$25,401	KETTERING	\$31,323
KETTERING	24,401	MARION	29,879
MENTOR	23,339	MENTOR	29,675
LIMA	22,318	LIMA	28,038
MONTGOMERY CTY	21,258	MONTGOMERY CTY	26,332
WARREN COUNTY	20,405	WARREN COUNTY	26,042
EUCLID	17,544	EUCLID	22,238

MINIMUM		MAXIMUM	
MEAN \$22,095	MEDIAN \$22,318	MEAN \$27,647	MEDIAN \$28,038
STARTING PAY MEAN	\$22,095	STARTING PAY MEDIAN	\$22,318
MIDDLETOWN STARTING PAY	18,517	MIDDLETOWN STARTING PAY	18,517
DIFFERENCE 19.3% or	\$3,578	DIFFERENCE 20.5% or	\$3,801
MAXIMUM PAY MEAN	\$27,647	MAXIMUM PAY MEDIAN	\$28,038
MAXIMUM PAY MIDDLETOWN	25,605	MAXIMUM PAY MIDDLETOWN	25,605
DIFFERENCE 7.98% or	\$2,042	DIFFERENCE 9.5% or	\$2,433

Rationale:

The Fact Finder has carefully reviewed the parties respective positions and their evidence in support thereof, and, directly to the point, believes that an across-the-board wage increase of 3.5% in the first year of the Contract and of 3% in the second year of the Contract, with a wage re-opener in the

third year of the Contract is in order. This represents a range where most private sector and public sector increases presently reside. It also represents an increase over and above the Cincinnati region CPI, which, being more specific, is more appropriate to use here than is the more encompassing North Central CPI. Additionally, the City's external comparables, based on other municipalities is somewhat more persuasive than those of the F.O.P., which include Counties. This is because the revenue base of cities differs from the revenue base of counties.

A major part of the F.O.P.'s case is the contention that an "equity pay adjustment" is in order here. I'm not persuaded. The external comparables don't confirm such. As for internal comparables, the F.O.P.'s position overlooks the fact that job descriptions alone fall far short of establishing the precise interrelationship between jobs. Additionally, as the F.O.P. itself points out, the job descriptions apparently have not kept pace with changing duties. The internal pay inequity alleged has not been established.

The recent past also supports an increase in the "threes" range, since the current contract so provided. Then too, the 3.5% in the first year provides some cushion in the event the Health insurance triggers additional costs to the unit members, and it is an appropriate response and quid pro quo for the health insurance cap put in place here.

Recommendation:

It is recommended that the Corrections Officers' Contract

provide for an across-the-board increase of 3.5% in the first year of the Contract, and a 3% increase in the second year of the Contract, with a wage reopener in the third year of the Contract.

This concludes the Fact Finder's Report and Recommendations.

Dated: December 15, 1995



FRANK A. KEENAN
Fact Finder

INTRODUCTION:

Several issues initially at impasse were resolved prior to the hearing. The statutory factors of past collectively bargained contracts, etc., as more fully delineated in the Introduction to the Corrections Officers Report (Attachment #1) were also taken into consideration here.

ISSUE # 1 - ARTICLE XXII - WAGES (Including Shift Differential and Specialty Pay)

EVIDENCE AND POSITIONS OF THE PARTIES:

The F.O.P. seeks a 5% across-the-board increase in the first year of the Contract; 4% the second year of the Contract; and a wage reopener the third year of the Contract. The F.O.P. would also increase shift differential to the level of Corrections Officers. The City proposes three 2% across-the-board increases. It is not, however, adamantly opposed to a wage reopener in the third year.

In support of their respective proposals, both parties rely on essentially the same data as they relied on in the Corrections Officers' Fact Finding and the reader is referred to that document, Attachment #1.

The F.O.P. gives emphasis to the stress factor and highlights some comments made by Tod W. Burke, Ph.D., in an article entitled "Dispatcher Stress," wherein he notes that "three particular aspects of their work emerged as particularly stress-inducing. These included their low status within the

department's hierarchy, the high level of responsibility they felt toward others, and the lack of training provided to them."

The F.O.P. also offered the following narrative in support of its proposal:

"We have taken on numerous duties since the last contract. The City has hired new Dispatchers to help cover for this. However, our work load has still increased along with more responsibilities and a lot more stress. In January of 1995, we took over Fire Dispatch. The City hired 4 new Dispatchers for that. One of the four didn't make probation and another one of our employees resigned. We had already taken over Fire Disp when all of this was going on. We're responsible for training the new dispatches also. So we've had the responsibility of Fire Dispatch and training the new dispatchers at the same time. The Desk Officers are going out in January of 1996. The City has hired 4 more Dispatchers that are still being trained. they are in the process of hiring 2 more to get us up to the 17 Dispatchers which is what we need to put us at minimum staffing when the Desk Officers leave Jan. 1996. So we are still going to be training new dispatchers at the first of the year while we're taking on the Desk Officer's job. The City argue that we don't have any added stress or responsibilities because they've hired more people. Even with the new people, we're at minimum staffing, where if one person is off, they're going to have to be replaced. The City had poor planning when they implemented their plan. They added Fire and taking out the Desk Officers before the new people are trained, and some even hired. So for the past year we've had to take on the new jobs, train the new people, and cover all the overtime all at the same time. The City doesn't feel we need a raise because we were at an all-time high with overtime this year and cost the City a lot of money. We should not be punished for the City's poor planning.

The Union is requesting an increase in shift differential. Upon receiving this, it would put us the Corrections and FOP Contracts.

We've added a new item to this Article. At this time, the Desk Officers are in charge. They make all the important decisions and are to take charge if a situation arises. The Desk Officer has the ultimate decision when there's a disagreement on what to do. If a dispatcher does something wrong, the Desk Officer

also gets in trouble for allowing the Dispatcher to do this. The Desk Officers are going on the street as of Jan. 1996."

To address the upcoming lack of a Desk Officer, the F.O.P. asks that the Senior Dispatcher receive a 2% step increase while on duty. The City resists this specialty pay item, asserting that "there [are] [and presumably will be] no specific duties or extra requirements for a Dispatcher who happens to be the senior person on duty. The Dispatchers would not report to this individual nor would this individual have any supervisory responsibilities. The Supervisor would remain either a Desk Sergeant or an Administrative Lieutenant."

The F.O.P. supports it's across-the-board increase proposal with the following external comparable data:

UNION WAGE PROPOSAL

	<u>CITY</u>	<u>WAGES</u>
1	KETTERING	\$33,134
2	MIAMISBURG	\$32,000
3	BLUE ASH	\$31,928
4	BEAVERCREEK	\$30,936
5	FAIRBORN	\$30,534
6	WEST CAROLLTON	\$29,328
7	OXFORD	\$27,350
8	SHARONVILLE	\$27,343
9	LIMA	\$27,310
10	CENTERVILLE	\$27,000
11	HAMILTON	\$26,892
12	SPRINGFIELD	\$26,832
13	MIDDLETOWN	\$26,811
14	FAIRFIELD	\$26,478
15	READING	\$25,455
16	MANSFIELD	\$24,544
17	MORAIN	\$23,400

AVERAGES		\$28,839	
MEDIAN		\$27,310	
MIDDLETOWN	present	\$26,811	13TH/17
MIDDLETOWN	City prop.	\$27,347	8TH/17
MIDDLETOWN	Union prop.	\$28,151	7TH/17

The City asserts that municipalities such as Kettering, Blue Ash, and Beaver Creek flaw the Union's comparables because the demographics and higher median income in those municipalities make them markedly different from Middletown.

It supports its shift differential request with the following chart of internal comparables:

CITY COMPARISONS

SHIFT DIFFERENTIAL

<u>Corrections Officers</u>	60 cents for 3-11	45 cents for 11-7
<u>FOP</u>	60 cents for 3-11	45 cents for 11-7
<u>Dispatchers</u>	35 cents for 3-11	37 cents for 11-7

The City points out that "in the past, it has been the opinion of the city and of ... Conciliators that an increase in [shift differential] is not necessary, and that the present payment is appropriate."

RATIONALE:

In my judgment, weighing all the contentions and evidence will only support a mainstream across-the-board increase of 3.5% for year one of the Contract; 3% for year two; and a wage reopener for year three, for the reasons essentially advanced in the Corrections Officers' Report (Attachment #1). A shift

differential at parity with other Police Department personnel is compelling. However, in deference to the "past collectively bargained contracts" criteria, it will be recommended that such be delayed until the third year of the Contract. The City, as the Employer, has sole control of who it designates as its Supervisors and I'm constrained to take the City's word as to its intentions to not expect supervisory functions of the Senior Dispatcher. Accordingly, the Specialty Pay the Union seeks is without warrant.

RECOMMENDATION:

It is recommended that the parties' Contract reflect a 3.5% across-the-board increase in the first year of the Contract; a 3% across-the-board increase in the second year of the Contract; and a wage reopener for the third year of the Contract, with the statutory impasse procedures as recommended in the Corrections Officers' Report (Attachment #1). Specialty Pay is not recommended. The increase to \$.60 per hour differential for 3-11 and \$.45 per hour for 11-7 is recommended to take effect the first day of the third year of the Contract, and until then, the status quo shall apply.

ISSUE # 2 - APPENDIX A - HEALTH INSURANCE

EVIDENCE, POSITIONS & RATIONALE:

Both parties take the same positions as taken in the Corrections Officers' case. For the reasons there advanced, the same Recommendation as there will be made.

RECOMMENDATION:

The parties' Contract at Appendix A shall read as does the Appendix A recommendation in the Corrections Officers' Report, Attachment #1.

ISSUE # 3 - ARTICLE XV - LONGEVITY

EVIDENCE, POSITIONS & RATIONALE:

In this Article the Union seeks some banking of longevity days and improved longevity pay. The City resists and seeks the status quo. Banking is costly and schedule-disrupting. As noted hereinabove, parity is compelling. It shall therefore be recommended, that this Contract read as Article XV in the Corrections Contract, as it does now.

RECOMMENDATION:

It is recommended that Article XV of the parties' Contract read as per the recommendation for Article XV of the Corrections Officers' Report, Attachment #1.

ISSUE # 4 - ARTICLE XXVII - TERMINATION [i.e., Duration]

EVIDENCE, POSITIONS & RATIONALE:

Both parties adhere to the proposals made vis a vis the Corrections Officers. The same recommendation, for the same reasons, is accordingly made.

RECOMMENDATION:

It is recommended that Article XXVII of the parties' Contract read as per the recommendation made with respect to that

Article for the Corrections Officers, Attachment #1.

ISSUE # 5 - ARTICLE XIV - VACATION

EVIDENCE, POSITIONS & RATIONALE:

Here the Union is seeking "a third week of vacation at seven years instead of at ten years." It asserts that it "is the only City Bargaining Unit who does not have this. This would [also] put us in the mainstream with external contracts." On the latter point, the F.O.P. does furnish external comparables data. The City points out that the bargaining unit essentially forbore an additional vacation week for an additional percentage (1%) on wages vis a vis corrections in the last negotiations for a one (1) year Contract. Once again, internal parity is compelling. Externals support such too. However, I believe the City is entitled to more of a run on the deal conciliated for but a one year contract. Hence, the F.O.P. sought provision, set forth as the recommendation, shall not be effective until the third year of the Contract.

RECOMMENDATION:

For the first two years of the Contract, the vacation provisions of Article XIV of the current Contract shall be retained. Paragraph 1.A. thereof shall, effective with the commencement of the third year of the Contract, read as follows:

- "1. A. Each employee will accrue vacation credit at a rate of 5/6 of a day for each calendar month employed in the vacation year, to a maximum of 10 working days in one year. After seven (7) years of service, each employee will earn vacation credit at the

rate of fifteen (15) working days per year. After fifteen (15) years of service, each employee will earn vacation credit at the rate of twenty (20) working days per year. After twenty (20) years of service, each employee will earn vacation credit at the rate of twenty-five (25) working days per year. An employee appointed effective the 16th of the month or earlier, earns vacation credit for that month."

Issue # 6 Article XIX - UNPAID LEAVE

Evidence, Position and Rationale

The parties are agreed to add a new paragraph to their Unpaid Leave article, reading as per the "Recommendation" set forth below:

RECOMMENDATION

It is recommended that the parties' Agreement provide:

"Family and Medical Leave. An employee may take Family and Medical Leave in accordance with the provisions of the Family and Medical Leave Act and the appropriate City policy and procedure, as promulgated by the City Manager, governing such leave."

Issue # 7 Article IX - DISCHARGES, SUSPENSIONS, AND PENALTIES

Evidence, Positions & Rationale:

The City seeks the same modifications to paragraph 5(6) here as it did with the Corrections Officers. The F.O.P. resists the change. For the reasons advanced in the Corrections Officer's Report (Attachment #1) no changes will be recommended.

RECOMMENDATION:

It is recommended that the parties retain the current Contract's provisions at Article IX, Paragraph 5(6).

Issue # 8 Article XXIII - HOURS OF WORK AND OVERTIME

Evidence, Positions & Rationale:

The F.O.P. seeks to increase the accrual rate of compensatory time from 240 hours to 420 hours, the maximum permissible under the FLSA. The City points out this is nearly a 100% increase in the present benefit. It also seeks to add vacation days to the 40 hour count, in addition to the addition of holidays which it already enjoys. The F.O.P. would additionally add the following provisions:

"All mandatory or forced overtime or mandatory training or classes will be paid at time and one half."

The City opposes such, asserting that it could well lead to grievances over what constitutes mandatory overtime. The City additionally asserts that what the F.O.P. seeks here "would be regardless of whether this overtime was in excess of 40 hours or was simply unscheduled time to be worked. There is no such requirement in the FLSA for payment of overtime in this type of situation, nor is there any good reason to impose such a requirement on the City at this time."

The F.O.P. also seeks a provision to the effect that:

"4. Shift differential shall be paid for any and all overtime worked."

The City takes the position that "the payment of such money is required by the FLSA, and no such language is required in this Contract."

For the reasons advanced in Attachment #1 the Corrections Report vis a vis the increase in compensatory time accrual and

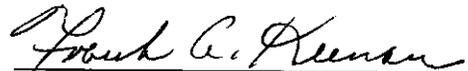
adding unworked time to the 40 hour count, the F.O.P proposed changes of those items will not be recommended. And essentially for the reasons advanced by the City, the mandatory overtime concept and overtime shift differential concepts shall not be recommended. It is therefore recommended that the status quo be retained.

RECOMMENDATION:

It is recommended that the provisions of Article XXIII of the present Contract be retained.

This concludes the Fact Finder's Report and Recommendations.

Dated: December 15, 1995



FRANK A. KEENAN
Fact Finder