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STATE EMPLOYMENT
RELATIONS BOARD

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

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IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**

Employee Organization,

and

CITY OF MARION,

Employer.

REPORT OF FACT FINDER

CASE NO. 96-MED-10-0146

DATE OF HEARING: July 23, 1996

PLACE OF HEARING: Marion, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Ross Rader, Staff Representative
Terry J. Foos, Patrolman
Mark A. Young, Patrolman
Michael M. Radcliffe, Patrolman
Brian Liston, Patrolman

FOR THE EMPLOYER:

Dale Osborn, Safety Service Director
Frank Arnold, Chief of Police
Sherri Spitzer, Human Resources Director
Bob Cramer, City Auditor

PROCEDURAL BACKGROUND

On May 31, 1996, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(C)(3). The fact-finding hearing was held on July 23, 1996, at the offices of the City of Marion. The report and recommendations of the fact finder are to be served upon the parties no later than August 14, 1996, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of a successor collective bargaining agreement between the City of Marion, Ohio ("Marion" or "City") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") for a bargaining unit consisting of those individuals serving as Patrol Officers in the City's Police Department. At the present time, there are approximately 41 Patrol Officers in the unit. The prior agreement became effective on July 1, 1993 and expired on June 30, 1996.

Prior to the fact-finding hearing, the parties engaged in six formal negotiation sessions. The last session was held on June 21, 1996. They also participated in one mediation session with a SERB mediator. As a result of these sessions, the parties were able to reach agreement on most issues. The parties have agreed that the new agreement will be effective from July 1, 1996, to June 30, 1999. The text of the issues on which the parties have tentatively agreed is found at Tab 2 of the notebook containing the FOP's submission at the fact-finding hearing and the fact finder hereby incorporates these tentative agreements by reference into this Report as Recommendations.

MEDIATION

On July 23, 1996, the parties discussed the advisability of having the fact-finder attempt to mediate the unresolved issues prior to conducting the fact-finding hearing. The representatives of the both parties thought that further mediation would not be productive. The offer of the fact finder to mediate was therefore declined.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the 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, 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;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

SENIORITY

1. Background

Sections 15.1 (definition of seniority) and 15.3 (deviation) of the expired agreement are not in dispute. The City proposes the elimination of Section 15.2, which sets forth a procedure for the assignment of Patrol Officers to shifts based on seniority. The specific shift assignment of an officer also determines which days an officer will have off. Thus, seniority determines both hours of work and days off. Shift assignments, under the expired agreement, are bid on for each calendar year. The assignments are required to be completed and posted by December 1 of each year.

2. Position of the City

The current system results in officers with the least amount of seniority working the most hazardous shifts. Generally, the daytime shift (7:00 a.m. to 3:00 p.m.), is the most desired shift and is selected by those officers with the most seniority. The City contends that it is dangerous to have the least experienced officers on the evening (2:45 p.m. to 10:45 p.m.) and night (10:30 p.m. to 6:30 a.m.) shifts. These shifts are more dangerous as they are busier, and the type of calls are more likely to involve hazardous situations. The City states that the current system results in more work related injuries, as an officer with limited experience is more likely to become involved in a physical altercation.

The problem of having less experienced officers on the more hazardous shifts is exacerbated by the hiring patterns in Marion over the last 14 years. From 1982 to 1989, Marion hired no Patrol Officers. The majority of current Patrol Officers have been hired since 1989, including eight officers who were hired in the last year. Given this hiring pattern, the current assignment system results in the following average years of experience per shift:

Daytime	19 years
Afternoon	4 years
Night	3 years

The City contends that it takes three years of work experience as a officer to become a well-rounded, "roadworthy," police officer. By having relatively less experienced officers working together, these officers do not receive the benefit of learning from working with the more experienced officers. In addition, the community would benefit from having more experienced officers on duty during the more demanding hours.

2. Position of the FOP

The FOP contends that assignment on the basis of seniority does not result in any significant problems. It points out that some of the new officers have had law enforcement experience prior to being hired by the City. While these officers may not have had experience working in Marion, their prior experience benefits the community and their fellow officers.

The FOP takes issue with the City's contention that less experienced officers are more likely to be injured on the job. It asserts that more injuries occur on the afternoon

and night shifts because the situations encountered by officers on these shifts are more likely to involve violent behavior. The fact the officers are less experienced does not necessarily result in more injuries, as any officer working the afternoon and night shifts is more likely to be injured.

Under the current practice, field training officers are used to train new officers. These field training officers work on all of the shifts to provide training in handling various types of situations. In addition, the current practice allows the Police Chief to assign officers with less than one year of experience to any shift, without regard to seniority. This procedure mitigates the problems perceived by the City.

The FOP asserts that there is a correlation between the use of shift selection by seniority and shift differential pay. Of nine comparable cities¹, three cities, Kent, Massillon and Xenia, allow shift selection by seniority. These are also the only cities of the nine that do not provide officers with shift differential pay. In the six cities that do not allow officers to select shifts based on seniority, officers are paid shift differential, ranging from 30 to 50 cents per hour. In Marion, officers are being asked to give up shift selection by seniority without any corresponding offer to provide shift differential pay. The City is thereby asking officers to give up an important benefit without giving them anything in return.

¹Beavercreek, Bowling Green, Fairborn, Fairfield, Kent, Lancaster, Massillon, Newark and Xenia. These are the same nine comparable cities which will be referred to throughout this report.

3. Discussion and Findings

The City has offered a variety of reasons in support of its proposal to eliminate the use of seniority to select shift assignment. One of the most compelling arguments made by the City is the need for less experienced officers to have the benefit of working with experienced officers. An excellent opportunity for informal training exists when a new officer works with an experienced officer. There is a great need for this informal instruction as formal training cannot possibly prepare a police officer to handle the numerous variety of situations which he or she will encounter while on patrol.

Another compelling argument made by the City is that officers should have more experience before working on the more hazardous shifts. As the mission of the police department is to protect citizens and their property, it is logical to attempt to ensure that officers who are assigned to a particular shift are capable of providing a high level of service. The fact that officers working night shift have only three years of experience and those on afternoon shift have only four years indicates that there may be a problem in providing the most effective and efficient police protection.

The need for the effective and efficient assignment of officers must be balanced with the seniority rights of officers. Certainly, officers should derive some benefit from their years of service to the community. However, this benefit must be provided without causing any reduction in the quality of police protection provided to the community.

4. Recommendations.

The fact-finder will accept the City's proposition that it takes three years for an officer to develop sufficient experience to become fully competent. This proposition

was not seriously disputed by the FOP. It would benefit the community in the short run and on a long term basis to allow the Police Chief to use his discretion to assign Patrol Officers with less than three years of experience on the City's police force. This will enable the chief to assign the less experienced officers to assignments which will maximize their development into professional officers. It will enhance the opportunity for new officers to learn from working with seasoned officers. This procedure will also prevent a situation where most of the officers on any particular shift have less than three years of experience. However, seniority rights should continue to be recognized and the experienced officers should continue to have the right to exercise their seniority in the selection of shift assignments following the discretionary assignments made by the Chief.

The fact finder recommends that Article 15, Section 2, be modified to allow the Police Chief to use his discretion to assign officers with less than three years of experience on the City's police force. As recommended, Article 15 of the collective bargaining agreement will provide as follows:

ARTICLE 15

SENIORITY

SECTION 15.1 DEFINITION

Seniority shall be defined as the length of total accumulated service with the Marion Police Department as a sworn Police Officer. Approved leaves of absence shall not be considered a break in service.

SECTION 15.2 SENIORITY RIGHTS

Once each year members assigned to the Uniform Division (Patrol Officers) will have an option to exercise seniority rights in determining the shift and days off they shall be assigned to work.

Each year, within one week after shifts and days off have been selected by Captains and Sergeants, the Chief, at his discretion, will determine shift assignments for all officers with less than three (3) years of seniority as of November 1. The Chief will then submit to the most senior officer in the Uniform Division a list of the remaining positions for each shift. This list will contain the number of positions along with the days off each position will carry. The senior Officer will make his selection by filling his name in one of the listed positions and forwarding the list to the next most senior Officer. The list will continue from most senior to least senior until all members have made a selection. This schedule shall be completed and posted by December 1st of each year.

SECTION 15.3 DEVIATION

Deviation from the above completed list must be through the Labor/Management Committee. This Committee will hear any proposed changes and make a recommendation to the Safety/Service Director. The Safety/Service Director will have the authority to affirm or reject the Committee's recommendation.

HOURS OF WORK AND OVERTIME

1. Background

The parties have reached a tentative agreement on all sections of Article 16, Hours of Work and Overtime, except for Section 16.3, which contains the provisions for determining overtime. The expired agreement provides that overtime will be paid at a rate of one and one-half of the regular straight time rate for all "hours worked" in excess

of eight hours per day or forty hours per week. "Hours worked" is defined as all hours that an employee is in "paid status."

The City has proposed changing the definition of "hours worked" to exclude sick leave hours. Under this proposal, an employee who is off work and is paid sick leave would not be able to count those hours for the purpose of computing overtime.

2. Position of the City

The City points out that sick leave is actually a benefit which is different from vacation, personal days, and compensatory time. As it is a benefit, it should not be included in calculating overtime. There is a potential for abuse because an employee can sign up for overtime and then report off as sick for part of the same week. The employee may actually only perform services for forty or fewer hours but is currently still eligible for overtime pay if his sick leave hours, together with the hours actually worked, total more than forty. The City asserts that, under its proposal, the employee will continue to be paid overtime for working more than eight hours per day or forty hours per week, but the potential for abuse will be eliminated.

There are two other bargaining units in the City's police department, one unit for Captains and Sergeants and one unit for civilian employees. The City points out that both of these other units have agreed to eliminate sick leave from overtime calculations in recent negotiations.

3. Position of the FOP

The FOP contends that there is no evidence of a problem with Patrol Officers abusing sick leave in order to receive overtime pay. The abuse potential which the City

uses as a reason for its proposal is purely speculative. The FOP proposes that the language in the expired agreement be retained.

The FOP presented evidence showing the contractual provision for overtime calculation in nine comparable cities. In all nine of the cities, overtime is calculated based on all hours in paid status.

4. Discussion and Findings

The City's rationale for its proposal is that it will prevent abuse. It is true that a dishonest employee might sign up for overtime with the intention of calling off sick during the same week. However, the City admits that there is no problem of this type of abuse by the employees of this unit. Thus, the purpose of the proposal is to prevent future abuse.

While good management may require taking steps to prevent problems before they occur, the City has not presented any evidence to the fact finder showing that this abuse is a potential problem. If an employee is abusing sick leave in the manner described by the City, it has the right to take other measures, such as the imposition of discipline, to control the problem.

The fact finder has considered the fact that two other bargaining units in the police department have agreed to this proposal. While this is strong evidence of the acceptability of the proposal and gives the City's arguments more credibility, it not sufficient evidence, standing alone, to persuade the fact finder to recommend a similar change in the unit of Patrol Officers. There may have been a specific reason that another unit agreed to the proposal. It could have been used as a bargaining tool to obtain a provision that was important to that unit. Also, it may have been that this

proposal was not of any importance to the other unit. For example, if the members of a unit do not often work overtime, the adoption of the City's proposal would have little practical effect. In addition, the FOP has presented unrefuted evidence showing the practice in nine comparable cities is to calculate overtime based on all hours in paid status.

5. Recommendations

The fact finder recommends that the language in Article 16, Section 3, of the expired agreement be retained in the new agreement.

WAGES

1. Background

Section 17 of the expired agreement contains three sections relating to wages. The wage rates for Patrol Officers are set forth in Section 1. Section 2 contains provisions relating to the City's payment of part of an employee's contribution to the Police and Firemen's Disability and Pension Fund of Ohio ("pension fund"). Section 3 sets forth provisions for determining wage rates following personnel actions.

Both parties have submitted proposals for increasing wage rates. The City proposes wage increases of 3 per cent per year for each year of the contract. The FOP proposes wage increases of 6 per cent per year for each year of the contract. The parties are in agreement in retaining the current four step wage progression with the employee advancing to the next highest step after twelve months in a step.

The expired contract requires that the City pay six per cent of the employee's earned compensation as a contribution to the pension fund. The employee is required to pay the additional amount of the employee's contribution. The City is also required by state law to contribute a percentage of the earned compensation of each employee to the pension fund. The payment made pursuant to Section 17.2 is an additional amount over the amount the City is required by law to pay. Neither party has proposed a change in this practice.

The top wage rate, Step F², is currently \$15.98 per hour (\$33,238 annually). The current Step A rate is \$12.93 per hour (\$26,894 annually).

2. FOP Position

The FOP states that during the term of the expired agreement, the Patrol Officers lost six tenths of one per cent in comparison to the cost of living. It contends that the Patrol Officers must have a higher wage increase in the new agreement in order to make up for the loss and to ensure that they don't again lose out to inflation.

A larger wage increase is also justified by the fact that the police department is now accredited. The accreditation process, which the department recently completed, required all department employees, including Patrol Officers, to do additional work. In an accredited department, the officers are expected to act in more professional manner. There is also more work to do because of a large increase in the number of rules and regulations. Only the top two per cent of departments nationwide are accredited.

²The four steps are designated as Step A, Step C, Step E & Step F.

In Ohio, only 19 police departments are accredited. The average top wage for a Patrol Officers in an accredited department in Ohio is \$37,816. The top wage in Marion is \$33,238, which is \$4,578 below the average.

The FOP has submitted wage data from nine Ohio cities in the 25,000 to 45,000 population range, excluding cities in metropolitan areas. These cities average 33,000 in population and Marion has a population of 34,100. The average top base wage for 1996 in these cities is \$36,730. Marion's top wage rate is currently \$33,238.

The FOP points out that one of the other two police department bargaining units in Marion recently received wage increases totaling 18 per cent over three years and the other unit received 20 per cent over the same period.

3. Position of the City

The City presented evidence that the cost of living (CPI-U) from May 1995 to May 1996 increased by 2.9 per cent. Therefore, its proposal for a three per cent per year wage increase will probably allow the Patrol Officers to keep pace with inflation during the term of the new contract. Marion is a rural community, which has an income tax base which has stabilized. There is no reason to believe that revenues will increase during the next three years.

The City takes issue with the FOP's assertion that accreditation should automatically lead to higher wages. Much of the work of becoming accredited was done by the Captain, who prepared the policy and procedure manual.

The City contends that some of the cities that the FOP used for wage information are not really comparable. It states that Fairborn is more of a suburban area and police officers generally receive higher wages in suburban communities. In addition, Marion is

not as economically strong as some of the other cities. The City presented the following data from the 1990 census:

<u>City</u>	<u>Per capita income</u>	<u>Families below poverty level</u>
Marion	\$10,365	13.9 %
Fairborn	13,053	10.9 %
Bowling Green	10,354	6.2%
Beavercreek	18,362	2.6%

This data shows that Marion has a lower per capita income and higher percentage of families below poverty level than these cities. It points out that the income of Bowling Green residents is affected by the large number of college students. Without the students, its per capita income would be higher than Marion.

The City contends that the most comparable cities are Bowling Green and Lancaster, primarily based on the rural environment of all three cities. The top wage rate at Bowling Green in 1996 is \$35,649 and Lancaster is \$31,366. When the pension fund contribution is added in, the wages in Bowling Green remain \$35,649, Lancaster is \$32,116 and Marion is \$35,232.

As to the increases agreed to in the other police department units, the City asserts that these units agreed to other changes in their contract which will save the City money. These changes enabled the City to increase wages. For example, the supervisors agreed to flexible scheduling, which will significantly reduce overtime expense. The Patrol Officers have not agreed to other changes which will save money for the City. An additional reason for the increase in supervisory pay was to encourage people to take promotional exams. The last time a promotional exam was offered, nobody signed up to take it.

4. Discussion and Findings

In the new agreement, the top step base wage in 1996 based on the FOP proposal would be \$35,235. Under the City's proposal, it would be \$34,236. In making comparisons, it is important to consider the effect of the pension fund contribution. This contribution effectively adds six per cent to the wage. Taking the contribution into consideration, the FOP wage proposal is \$37,349 and the City's proposal is \$36,290.

To determine how each of these proposal compares to comparable cities, an adjustment for contributions to the pension fund is required. The City has pointed out that Beavercreek has a much high income level and Fairborn is more of a suburban community than Marion. For purposes of this analysis, these cities will be excluded from the data submitted by the FOP. The average 1996 top wage for the seven remaining cities, including pension fund contribution where applicable, is \$36,425.

Thus, the City's proposal is close to the average while the FOP proposal is about \$900 above the average. One benefit that Marion police officers have compared to these other cities is that they get to the top step more quickly (4 steps vs. 6.9 average). While this benefits the less experienced officers, it also means that an officer has no step increases after entering his fourth year of service.

5. Recommendations

It is clear that the Patrol Officers suffered a reduction in real wages during the last contract. The FOP calculates that the loss was six-tenths of one per cent. The City's proposal does not include any compensation make up for this reduction. Assuming that the rate of inflation remains at about three per cent, the City's proposal

would just keep the purchasing power of the wages level. While the future rate of inflation (or deflation) is an unknown factor, the loss of purchasing power during the term of the last agreement is known. A wage increase of 4.5 per cent during the first year would make up for some of the loss of purchasing power and would place the Patrol Officers slightly above average relative to other comparable departments. The increase would also give some recognition to the fact that the department is now accredited. However, the wage in Marion cannot be made comparable to many of the other accredited departments, as the cities are are dissimilar in population or economics, or both.

In terms of the seven cities used for comparison, Marion Patrol Officers would rank fifth with a 4.5 per cent wage increase, when pension contributions are considered. The 1996 top wage (adjusting for pension fund contributions) in the seven cities used for comparison, excluding Beavercreek and Fairborn, will be as follows:

Massillon	\$40,131
Kent	38,418
Xenia	38,230
Fairfield	37,981
Marion	36,820³
Bowling Green	35,649
Newark	32,450
Lancaster	32,116

Thus, with a 4.5 per cent increase, Marion will be slightly above the group average of \$36,425, but will be squarely in the middle range of these comparable cities.

The wage proposed for Marion will be in effect until June 30, 1997. Three of the comparable cities will probably increase wages prior to that time. Collective bargaining

³Based on a wage increase of 4.5 per cent.

agreements in Kent and Massillon expire in December 1996, and the collective bargaining agreement in Fairfield expired in March 1996. The agreement in Bowling Green will expire in June 1997.

For the second and third years of the agreement, the fact finder feels that the Patrol Officers should receive wage increases which will enable them to at least keep pace with inflation. Ideally, they should be given a raise which would allow their purchasing power to increase. As stated above, officers do not receive step increases after their fourth year of service and must depend on pay increases to have any increase in pay. However, as the City does not have an expanding tax base, the size of the increase must be more conservative than it would be if the economic situation of the City was stronger. I therefore recommend an increase of 3.5 per cent effective July 1, 1997, and an additional 3 per cent effective July 1, 1998.

I also recommend that the wage increases become effective as of July 1, 1996. The City proposed that the wages be effective upon the approval of the new agreement by City Council. However, the parties have already reached a tentative agreement that the new collective bargaining agreement will become effective on July 1, 1996.

Therefore it is appropriate that the wage increases also become effective at that time.

I recommend that Article 17 of the collective bargaining agreement provide as follows:

ARTICLE 17

WAGES

SECTION 17.1 WAGE STEPS

Wages of all bargaining unit members shall be as follows:

	Step A	Step C	Step E	Step F
Effective 7/1/96	13.51	14.67	15.98	16.70
Effective 7/1/97	13.98	15.18	16.54	17.28
Effective 7/1/98	14.40	15.60	17.04	17.80

Step A is the probationary rate.

The City shall advance an employee to the next highest pay step on the first pay period following 12 months of service in each step.

SECTION 17.2 MEMBER'S CONTRIBUTION TO PENSION FUND

(Same language as in expired agreement.)

SECTION 17.3 PAY RATES DUE TO PERSONNEL ACTIONS

(Same language as in expired agreement.)

HOLIDAY AND VACATION SCHEDULING

1. Background

The FOP has proposed a change in Article 19, Section 4, Holiday and Vacation Scheduling. The parties have reached agreement on all other sections of Article 19. The expired agreement provides that vacation and holiday scheduling will be arranged

with the Police Chief or his designee. The employee is to be given the time off he or she desires whenever practicable. The order of preference (presumably in the case of conflicting requests) is governed by classification or seniority.

2. Position of the FOP

The FOP proposes to formalize the selection process for vacations and holidays. Officers would submit requests to the Chief during December for the next ensuing year. The requests would be honored on the basis of seniority. The Chief would be required to act on the requests by January 15. Once approved, leave could not be canceled except for an emergency. An officer could cancel a vacation or holiday request with advance notice of at least 14 days. After January 1, requests would be honored on the basis of time of request without regard to seniority.

The FOP asserts that the proposed procedure would stabilize the process of selecting time for leave. Under the current system, the Chief could cancel a vacation request and the officer would lose any deposit used to secure a reservation. The proposed system would only allow for cancellation in the event of an actual emergency.

3. Position of the City

The City states that it not aware of any problems under the current system. The department has no history of canceling approved vacation requests. The Police Chief recalled one situation where he had to reduce the number of platoons when three officers were injured at the same time, and some vacations had to be changed. However, even in that situation, he was not aware of anyone losing a deposit.

3. Discussion and Findings

While the FOP's proposal might result in a more orderly process, it would also cause some inconvenience. Employees would have to decide on vacation periods a significant time in advance, which could be difficult for some employees, especially when a working spouse is unable to also schedule vacation as far in advance. The FOP has presented no evidence that the City has abused its discretion by canceling approved vacation requests. As the FOP has proposed the change, it has the burden of bringing forth evidence supporting the reason for the change.

The FOP has presented some information as to contractual provisions in comparable cities. While many of the collective bargaining agreements use the phrase "shall be granted" with respect to vacation requests, it is difficult to draw any conclusions without reading the entire provision. Even where the "shall be granted" phrase is used, all but one of the other collective bargaining agreements have language which allows the employer to cancel vacation under certain circumstances.

The language in the expired agreement does not give the Chief absolute discretion to cancel or deny requests for leave. The language requires that leave requests be granted "insofar as practicable."

5. Recommendation

Based on the above, the fact finder recommends that the language of the expired agreement in Section 19.4 be incorporated into the new agreement.

SICK LEAVE

1. Background

The expired agreement provides for 4.6 hours of sick leave for every 80 hours in active pay status. The agreement allows for the use of sick leave for the various traditional reasons, such as illness, medical appointments, caring for a family member, etc. The agreement requires an employee to furnish a medical statement from a physician or a sworn affidavit from the employee in the event of an absence of more than three consecutive days. The employer may also require a certificate or affidavit for an absence of less than three days. Failing to provide the certificate can result in disciplinary action.

The City has proposed a change in the sick leave provisions to a "no fault" system. Under this system, an employee would be assessed points for any incident of tardiness or absence. If an employee accumulates more than 12 points in any 12 month period, he or she could be disciplined up to and including termination, regardless of the reason for the absences.

2. Position of the City

The City asserts that the implementation of a no fault system will result in a more effective use of tax dollars. The proposed language would put the responsibility on the employee to control his or her use of sick leave. Allowing the accumulation of twelve points over twelve months is reasonable. An absence of one day will result in one

point. However, an employee who is absent for more than two days for a valid medical reason will only accumulate one point, regardless of the length of absence. Also, serious health problems would be covered by the Family Medical Leave Act.

The City has implemented the no fault system in other departments and it has resulted in less sick leave usage. The City asserts that, during the second quarter of 1996, 48.7 per cent of the Patrol Officers used at least some sick leave while only 21.4 per cent of the employees in the other police department units used sick leave. In addition, during the 12 month period from July 1995 to July 1996, 6 of 41 Patrol Officers received letters from the Police Chief relating to absenteeism.

3. Position of the FOP

The FOP asserts that there is no significant problem with sick leave abuse by Patrol Officers. It points out that the City is currently able to impose progressive discipline for sick leave abuse. There is no reason to implement a completely new system. The FOP contends that the only reason the City wants to impose this system is because it has been successful in having other bargaining units accept the proposal.

With respect to the higher usage of sick leave by Patrol Officers, the FOP states that the nature of the job results in high usage. A Patrol Officer must be able to function at a high level while on duty. The officer never knows what he or she will encounter while on duty. While an employee who works in an office might be able to function effectively even if he or she is sick, a Patrol Officer has no business reporting for work if the officer does not feel he or she can capably handle any situation which might arise.

4. Discussion and Findings

The City is correct in its position that no fault systems do place responsibility for controlling absences on the employee. In many cases, these systems are effective in reducing the use of sick leave. Employers are sometimes able to effectively discipline or discharge sick leave abusers who were difficult to discipline under a standard sick leave plan.

The FOP has raised some valid issues as to the nature of the work of Patrol Officers. The work of these officers is significantly different than many other employees of the City. It would not be in the best interests of the public for a Patrol Officer to report for duty if the officer felt that he or she could not effectively perform the required duties. A no fault system might compel an officer to report for work against his or her best judgement.

5. Recommendations

The proposal of the City constitutes a major change in the manner in which sick leave is administered. The City has not shown that there is a need for such a drastic change. A change such as that proposed is better for all concerned if it is negotiated by the parties. In any event, the unique work of the Patrol Officers must be given consideration in developing a sick leave control program which will serve the interests of the parties and the public. Therefore, the fact finder recommends that the language in Section 23.2 of the expired agreement be incorporated into the new agreement.

WELLNESS PROGRAM

1. Background

In negotiating the last agreement, the parties agreed that they would meet to discuss the details of a wellness program. They agreed that the penalties for non-compliance would be determined. Further, it was agreed that if the parties could not reach an agreement within three months, the issue would be decided by a conciliator. However, no agreement was ever reached by the parties nor was the issue submitted to a conciliator.

In the current negotiations, the City has presented a proposal for a wellness program. The program includes progressive disciplinary steps if a physician finds that an officer is not meeting acceptable standards. The severity of the discipline increases every six months if the officer does not improve or attempt to improve.

2. Position of the City

The City emphasizes the importance of physical fitness for Patrol Officers. The officer may be required to engage in a physical altercation or may have to chase a suspect on foot. The wellness program will benefit both the officers and the City as studies have shown that officers in good physical condition are better able to cope with stress on the job and have fewer injuries. The wellness program has been in effect for three years but there is currently no mechanism to ensure that an employee will follow the recommendations of the physician.

3. Position of the FOP

The FOP asserts that it is not against fitness but opposes the City's proposal for several reasons. The proposal only address the penalty to be imposed for lack of compliance. The City has not provided the FOP with information concerning the standards to be used to evaluate employees. The FOP has some concerns related to regulation of off duty conduct, such as the extent to which a physician can require an officer to make lifestyle changes. Also, the FOP is concerned about employees who have a problem such as high blood pressure or high cholesterol, which has no immediate impact, but may cause medical problems in the future. The City has not addressed issues such as whether an officer could be disciplined or discharged for being unable to reduce his cholesterol level.

4. Discussion and Findings

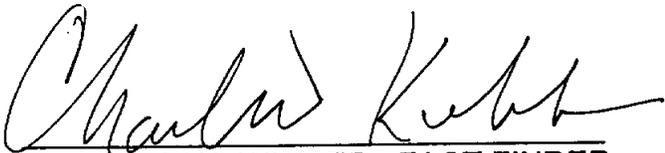
It is not clear as to the reason that the parties did not follow through on their agreement to negotiate a policy on wellness. The City is now asking the fact finder to recommend that a series of penalties for noncompliance become part of the collective bargaining agreement. A review of the proposal shows that discipline can be imposed when the "wellness physician" finds that an employee is not "within acceptable standards." According to the City, these standards would be medical standards rather than physical standards. In other words, an employee would not have to be able run a mile in a certain amount of time. The type of tests suggested by the City are flexibility, strength, and stress tests.

The fact finder feels that the FOP has raised some significant issues regarding the types of standards which might be imposed by a physician. There are numerous details which should be discussed and debated by the parties before this type of a system is implemented. Medical advice can vary from physician to physician. There is a potential problem if the employee's personal physician disagrees with the wellness physician. There is no provision for resolving disputes when there is a disagreement. These are only a few examples of some of the many details which need to be worked out by the parties.

The fact finder cannot recommend that the City's proposal be adopted. The proposal, as presented, is incomplete as it contains only the penalty provisions. The nature of the program and the standards required are not included as part of the proposal. In addition, there are no provisions for the selection of a physician or for resolving conflicting medical opinions.

The parties were on the right track when they agreed during the previous negotiations to meet and discuss the wellness program. I think it is in the best interests of both parties to make another attempt to reach a negotiated agreement on this issue. Therefore, I recommend that the language in Section 24.5 of the expired collective bargaining agreement be incorporated into the new agreement. The parties will have three months following ratification to reach a negotiated agreement. If no agreement is reached, the issue will be decided by a conciliator pursuant to Section 4117.14 (D) of the Ohio Revised Code.

Respectfully Submitted,



CHARLES W. KOHLER, FACT FINDER

Dated: August 14, 1996

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing report of the fact finder was served upon Mr. Ross Rader, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and Mr. Dale R. Osborn, Safety Service Director, City of Marion, 233 West Center Street, Marion, Ohio 43302; each by Federal Express overnight delivery on this 14th day of August 1996; and G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215; by regular U.S. Mail, postage prepaid, on this on this 14th day of August 1996.



Charles W. Kohler, Fact Finder