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STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard to the Matter of the Fact-Finding Between:

THE CITY OF MASSILLON)	
)	96-MED-09-0741
-AND-)	96-MED-09-0742
)	
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL, INC.,)	
HENDERSON LODGE NO. 105)	

APPEARANCES

For The City

Leslie Iams Kuntz, Esq.,	Counsel
Alan Climer	Safety-Service Director
Mark Weldon	Chief of Police

For The Lodge

Charles M. Choate	FOP/OLC - Representative
Robert Williams	Lieutenant - FOP
Joseph A. Herrick	Sergeant - Chairman
Tony Masoccia	Patrolman - FOP
James Thornsberry	Patrolman - FOP

 BEFORE ALAN MILES RUBEN, FACT-FINDER

Cleveland-Marshall College of Law
 Cleveland State University
 1801 Euclid Avenue
 Cleveland, OH 44115
 Tele: (216) 687-2310
 Fax: (216) 687-6881

BACKGROUND

The Employer, The City of Massillon, Ohio, exercises Charter and Statutory authority, inter alia, for the provision of law enforcement services.

The Union, Henderson Lodge, No. 105, Fraternal Order of Police/Ohio Labor Council, Inc., is the exclusive representative of two Bargaining Units representing sworn Police Officers. The largest Unit, consisting of thirty-nine Patrolmen, was certified by the State Employment Relations Board at #92-MED-01-0034. Some six Officers in the ranks of Lieutenant and Sergeant were certified as a separate Unit by the Board at #92-MED-01-0035.

The Units have been combined for collective bargaining purposes since the first Contract negotiations in 1981.

The parties were most recently signatories to a Collective Bargaining Agreement entered into as of April 1, 1994 for an initial term which expired on December 31, 1996.

Pursuant to the Contractual requirement, timely notice was given of intent to modify or amend the Agreement, and negotiations proceeded looking towards the execution of a successor Agreement.

After negotiations proved unsuccessful in resolving all issues relating to the adoption of a new Agreement, the undersigned was appointed Fact-Finder by the State Employment Relations Board on November 29, 1996.

At the direction of the parties a Mediation and Fact-Finding hearing was scheduled for Tuesday, February 4, 1997, at the City Hall in Massillon, Ohio.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and Ohio Revised Code Section 4117.14(C)(3)(a).

By the date of the Fact-Finding proceedings, the parties had tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis the following Articles of the 1994 Contract:

Article 2 - Conflict With Law and Separability

Article 3 - Non-Discrimination

Article 4 - Recognition

Article 5 - FOP Security

Article 14 - Personnel Files

Article 19 - Trading Time

Article 21 - Memorial & Funeral Funds

Article 23 - Acting Pay

Article 25 - Death Benefits

Article 30 - Jury Duty Leave

Article 33 - Holivac

Article 35 - Police Olympics

Article 37 - Uniform Maintenance Allowance/
Protective Clothing

Article 39 - Working Out Of Classification

The parties also reached tentative agreement on technical amendments to Article 1, Section 1.1 - Agreement/Purpose and Article 21, Section 21.1 - Memorial and Funeral Funds. The parties further tentatively agreed to amend Article 40, Section 40.1 - Duration to provide for a Contract term of three years.

These Articles of the 1994 Agreement, are, as so amended also to be carried forward and incorporated into the successor Agreement.

Remaining unresolved were proposals submitted by the parties for new Article and amendments to the existing Articles of the 1994 Agreement as follows:

Article 6 - FOP Representation

Article 7 - Management Responsibilities

Article 8 - Bargaining Unit Member Rights

Article 9 - Discipline

Article 10 - Grievance Procedure

Article 11 - Labor Management & Safety Committee

Article 12 - Seniority

Article 13 - Probationary Periods

Article 15 - Minimum Manpower

Article 16 - Layoff and Recall

Article 17 - Vacancies

Article 18 - Hours Of Work & Overtime

Article 20 - Special Events

Article 22 - Wages and Compensation

Article 24 - Injury On Duty/Disability Pay

Article 26 - Insurances & Health Coverages
Article 27 - Leaves of Absence
Article 28 - Sick Leave
Article 29 - Military Leave
Article 31 - Trauma Leave
Article 32 - Compensatory Time Off
Article 34 - Vacation
Article 36 - Education Allowance
Article 38 - Past Practices/Prevailing Rights
Article 41 - (New) - Substance Abuse Screening
Article 42 - (New) - Family & Medical Leave
(Unnumbered) - Wage Schedule

The proposals relating to these Articles were considered at the February 4, 1997 hearing which was then recessed. The hearing was resumed on February 11, 1997, continued on March 6, 1997, and concluded on March 12, 1997.

In making his recommendations upon all of the unresolved proposals for amendments to existing Articles and the addition of new Articles to the Contract, the Fact-Finder has been guided by the factors set forth in O.R.C., Section 4117.14(C)(4)(e), and Ohio Administrative Code, 4117-9-05(K) namely:

"(a) Past collectively bargained agreements, if any, between the parties;

"(b) Comparison of the unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to

factors peculiar to the area and classification involved;

"(c) 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;

"(d) The lawful authority of the public employer;

"(e) The stipulations of the parties;

"(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment."

FINDINGS AND RECOMMENDATIONS

I. Article 6 - FOP Representations

Sections 6.2 & 6.4 of Article 6 read as follows:

"Section 6.2 - Release time shall be granted for members of the Lodge Negotiating and Grievance Committees in compensation for hours spent by each member in negotiations or grievance hearings. The release time shall be granted at a rate of one (1) hour earned and shall be taken at the discretion of the employee provided the release time does not create overtime or does not effect the minimum manpower section of this Agreement, provided the three (3)-day notice is given.

....

"Section 6.4 - Reasonable provisions shall be made by Management so that Bargaining Unit members selected by the Lodge as representatives on their negotiating committee and scheduled for duty may be carried on special assignments for the entire assigned shift for the purpose of

negotiating during the term of this Agreement.

...."

The City contends that these provisions are ambiguous and create implementation problems because they do not specify how many members of the Bargaining Units may be released to participate in negotiations, and when members of the Grievance Committee are entitled to be granted "release time."

With respect to negotiations the City points out that as the text now stands, the number of members of the Bargaining Units who might attend negotiations is unlimited.

Turning to the subject of release time for Grievance Committee members, the City contends, and the Lodge concedes, that release time is unnecessary when the members are involved simply in meeting with the Chief or other representatives of the City in connection with grievances since these sessions tend to be brief, and can readily be accommodated during scheduled work hours. However, attendance at hearings at which evidentiary presentations are made is a different matter. The length of time typically involved is significantly greater and so is the time required for preparation.

The Fact-Finder believes that as the period of the present Contract draws to a close there is legitimate need for increasing the number of bargaining unit members given release time to engage in negotiations. He, also agrees that members attending evidentiary hearings require release time.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 6, Sections 2 & 4 be amended to read as follows:

"Section 6.2

"Release time shall be granted for members of the Lodge Negotiating and Grievance Committees in compensation for hours spent by each member in negotiations or evidentiary hearings, but not for attending step grievance meetings with the Chief or his designee or the Mayor or his designee. "The release time shall be granted at a rate of one (1) hour earned and shall be taken at the discretion of the employee provided the release time does not create overtime or does not effect the minimum manpower section of this Agreement, provided the three (3)-day notice is given."

...

"Section 6.4

"Reasonable provisions shall be made by Management so that three (3) Bargaining Unit members per unit selected by the Lodge as representatives on their Negotiating Committee and scheduled for duty may be carried on special assignments for the entire assigned shift for the purpose of negotiating during the term of this Agreement.

"Upon advance approval by the Chief of Police or his designee, time off may be allowed of up to eight (8) hours per person each week for a maximum of six (6) members of the Negotiating Committee, designated in advance, during the last sixty (60) days of this Agreement, exclusive of any extension."

II. Article 7 - Management Responsibilities.

Article 7 contains a statement of Management's Rights but omits from the list of Management prerogatives the right to adopt reasonable rules and procedures.

The Lodge acknowledges that it is an inherent prerogative of Management to establish policies and set them forth in written rules and procedures. Indeed, the Department has long promulgated such policies. However, the Lodge insists that any unilateral adoption of policies, whether in the form of rules, regulations or otherwise, should be subject to the grievance procedure, unless consented to by the Lodge.

The Fact-Finder judges the positions of both parties on this subject to be sound, and capable of being harmonized by providing that new policies be subject to Section 7.2, which makes the exercise of any Management Right alleged to be in conflict with provisions of the Agreement grievable.

The Fact-Finder accordingly finds appropriate and recommends that Section 7.1 be amended by the addition of a new sub-section (M) to read as follows:

"Section 7.1(M) - Adopt or modify reasonable rules, regulations, policies and procedures subject to Section 7.2. Proposals for the adoption of new or the amendment of existing rules, regulations, policies, or procedures shall be presented to the Labor Management & Safety Committee for consideration prior to their effective date."

III. Article 8 - Bargaining Unit Member Rights.

Present Article 8 fails to distinguish between a member's Contract rights in internal Departmental investigations and his statutory and Constitutional rights in criminal proceedings. The City points out, and the Fact-Finder agrees,

that the Collective Bargaining Agreement cannot control a criminal proceeding and a Prosecutor's activities with respect to such proceeding. Bargaining Unit members should not be misled into thinking otherwise.

Further, Article 8 presently provides that citizen complaints about Police conduct received eleven or more days after the date of the event are deemed to be unsubstantiated, and the accused member need not submit a written report, unless the nature of the complaint could lead to criminal charges. The City proposes to increase the interval to thirty days because of concern over potential civil liability for an Officer's actions if the City is deprived of the ability to adequately consider the complaint, and, if warranted, to discipline the employee.

The Fact-Finder believes the City's position has merit.

Finally, the City seeks to have access to documentary evidence, which the Lodge or a Bargaining Unit member intends to introduce at a grievance hearing or a pre-disciplinary hearing, in advance of the hearing.

The Fact-Finder believes that such full disclosure facilitates achievement of the objective of pre-disciplinary hearings and grievance proceedings, which is to expeditiously and fairly resolve the issues in controversy.

When both parties have full access to the facts, they are able to realistically reappraise their positions, settlement possibilities are thereby enhanced.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section 8.1, Sub-Sections 8.1(E), (H), (I), (K) and (L) be amended as follows:

"8.1 (Amend first sentence to read as follows:)

"When a Bargaining Unit Member is under investigation or is subject to questioning for any reason by the Employer, the following standards shall apply:

"8.1 (E)

"Any interrogation, questioning, or interviewing of a Bargaining Unit Member for any internal investigation of any type will be conducted at hours reasonably related to his shift, preferably during his work hours. Interrogation sessions shall be for reasonable periods of time and time shall be allowed during such questioning for attendance to physical necessities.

"8.1 (H)

"Any evidence obtained in the course of internal investigation through the use of questionable procedures, such as administrative pressure, threats, coercion, or promises shall not be admissible in any subsequent disciplinary hearing. However, notification to a Bargaining Unit Member that potential corrective action could result if the Bargaining Unit Member continues to refuse to answer questions or participate in any investigation shall not be construed as administrative pressures, threats, coercion, or promises for the purposes of the Paragraph.

"8.1 (I)

"When an anonymous complaint is made against a Bargaining Unit Member on duty and there is no corroborative evidence of any kind, then the complaint shall be classified as unsubstantiated and the accused Bargaining Unit Member shall not be required to submit a written report. Also, when a citizen

complaint is filed greater than thirty (30) calendar days after the date of the alleged event complained of, and where the complaint, if true, could not lead to a criminal charge of any type, such complaint shall be classified as unsubstantiated and the accused Bargaining Unit Member shall not be required to submit a written report; but, he shall be notified orally or in writing of such claim.

"8.1 (K)

"A Bargaining Unit Member and his non-employee representative, when one is involved, who is charged with violating Police Rules and Regulations shall be provided access to all transcripts, records, written statements, video, and audio tapes. Such access shall be provided reasonably in advance of any hearing. Access to transcripts, records, written statements, video and audio tapes made or kept by the Bargaining Unit member or his representatives, which are intended to be introduced at grievance step hearings or prediscipline hearings shall also be provided to the Employer reasonably in advance of any hearing.

"8.1 (L) Revise reference to "Article 9, Section 2" to read "Article 9, Section 9.2"

...."

IV. Article 9 - Discipline.

Article 9 provides for a Disciplinary Hearing conducted according to Constitutional Due Process requirements.

The City proposes three changes in the language to remove ambiguity and incorporate present practice.

First, the City proposes that, as part of the discovery process, both parties have the obligation to exchange documentary materials which they intend to introduce at a hearing. Second, the City seeks to incorporate the holding of a prior arbitration Award that the right of cross-examination

extends only to those witnesses actually called by the City, and the failure of the City to call a potential witness does not violate the Contractual rights of the Bargaining Unit member. Finally, the City wants to make explicit that, in accordance with existing practice, when an employee is placed on leave after an indictment or arrest on a felony charge, the leave of absence is "unpaid."

The changes proposed by the City are essentially "housekeeping" changes, reflective of current practice and the Fact-Finder sees no reason why they ought not to be incorporated into the Collective Bargaining Agreement.

Hence, the Fact-Finder finds appropriate and recommends the adoption of the following amendments to Article 9, Sections 9.2, 9.3 and 9.4:

"Section 9.2, (Amend second paragraph to read as follows:)

"Disciplinary hearings will be conducted by the Safety Director or his designee. The employee may choose to:

"Section 9.2. Sub-Section C

"Elect in writing to waive the opportunity to have a disciplinary hearing. Failure to elect and pursue one of these three options will be deemed a waived of the employee's right to a disciplinary hearing.

"At the disciplinary hearing, the hearing officer will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee. At the hearing, the employee may present any testimony, witnesses, or documents which he feels may be germane to the charges. The employee shall provide a list of witnesses, a copy of all

transcripts, records, written statements, video and audio tapes which are intended to be introduced at a predisciplinary hearing, and the name and occupation of his representative, if any, to the Employer as far in advance as possible, but no later than eight (8) hours prior to the hearing. It is the employee's responsibility to notify his witnesses that he desires their attendance at the hearing.

"The employee will be permitted to confront and cross-examine witnesses called by the Employer. A written report will be prepared by the hearing officer concluding whether or not the alleged misconduct occurred. The Employer will decide what discipline, if any, is appropriate. A copy of the hearing officer's report will be provided to the employee within five (5) calendar days following its preparation.

"Section 9.3

"Disciplinary action may be appealed through the grievance and arbitration procedure as set forth in Article 10.5. Appeals from disciplinary actions must be filed at the appropriate level of the grievance procedure within seven (7) calendar days from the receipt of discipline by the employee.

"Section 9.4

"Any employee under indictment or arrested for a felony shall be placed on unpaid leave of absence until resolution of the court proceedings. An employee may use accrued vacation, holiday, holivac, or personal time during the leave. An employee found guilty by the trial court may be discharged. An employee found innocent of the charges shall be paid for all lost time and shall have any vacation, holiday, holivac, or personal time restored to his credit. The Employer shall continue to pay the employee's insurance premiums during the leave of absence."

V. Article 10 - Grievance Procedure.

The City seeks a more expeditious processing of grievances over the imposition of serious disciplinary

sanctions by allowing them to be filed directly at Step Three of the grievance procedure. It also asks that the time within which notice must be given to the Office of the Mayor of a desire to meet with the Mayor or his designee be reduced from ten calendar days to three working days. Finally, the City wants to require the Lodge to file a request for arbitration within thirty days of a final Answer denying a grievance.

The common purpose of the proposed changes is to shorten the period within which disputes remain unresolved. Expeditious handling of the grievance procedure enables conflicts to be resolved more promptly and is thus desirable so long as adequate time for preparation and presentation of the grievance remains.

Consequently, the Fact-Finder finds appropriate and recommends the adoption of the following amendments to Article 10, Sections 10.5, 10.6 and 10.7:

"Section 10.5, Disciplinary grievances involving suspension, reduction in rank, pay, or a discharge are to be appealed directly to Step 3 of the grievance procedure as specified in Article 9.3. All other grievances related to disciplinary action are to be filed at Step 1.

"Section 10.6, Step 3

"A grievance unresolved at Step 2 may be submitted by the grievant to the Office of the Mayor or his designee within seven (7) calendar days of receipt of the Step 2 answer. If the grievant desires to meet with the Mayor or his designee, the grievant or his union representative shall so notify the Office of the Mayor within three working days of the time of filing at Step 3. The Mayor or his designee shall provide a

written response to the grievant within fourteen (14) calendar days of such meeting.

"Grievances unresolved at Step 3 may be submitted to arbitration upon request of the FOP in accordance with the provisions of Section 10.7 of the Article.

"Section 10.7

"The FOP, based upon the facts presented, has the right to decide whether to arbitrate a grievance. Within thirty (3) calendar days from the date of the final answer on a grievance from Step 3, the FOP shall notify the Mayor, in writing, of its intent to seek arbitration of an unresolved grievance and the FOP shall also file a request to arbitrate with FMCS within thirty (30) days of the final answer from Step 3."

VI. Article 11 - Labor Management & Safety Committee.

The City seeks to have whichever party requests a meeting of this joint committee to provide in advance, a written agenda and the names of its representatives scheduled to attend the meeting.

Meetings are typically more effective when there is a written agenda to be followed, and scheduling becomes easier if the identity of the representatives are known in advance.

At present, responsible Bargaining Unit members are required to report all unsafe conditions relating to Police operations to the Chief. The City would mandate such notification be given before the member may report the condition to any outside agency.

It seems appropriate to permit the Department to remedy unsafe conditions before outside intervention is sought. However, it seems to the Fact-Finder appropriate to include

all unsafe working conditions whether or not they can be viewed narrowly as "relating to Police operations."

Finally, the City would discontinue the provision of release time for members of the Committee while performing Committee duties.

However, Lodge participation in Committee meetings inures to the benefit of the Department and the City, and the Fact-Finder sees no reason why the off-duty members required to attend such meetings should not receive the appropriate amount of release time.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 11, Section 11.1, 11.4, 11.5 and 11.8 of the Contract be amended as follows:

"Section 11.1

"The Labor Management and Safety Committee shall consist of members and one (1) alternate appointed by the FOP, and members of Management. It is mutually agreed that this committee shall meet on a quarterly basis or as mutually agreed, after a written request from either party for the purpose of:

"A. To disseminate general information of interest to the parties.

"B. To give the FOP Representatives the opportunity to share the views of their members and/or suggestions on subjects of interest to their members.

"C. To discuss ways to improve efficiency within the Department.

"D. To promote harmonious relations between the Employer and the FOP in the best interest of the community.

"E. To discuss safety and health issues of the Department.

"The party requesting such a meeting shall furnish a written agenda and the name of the representatives scheduled to attend the meeting.

"Section 11.4

"All Bargaining Unit Members are responsible to report, in writing all unsafe working conditions to the Chief of Police prior to reporting to any outside agencies. No Bargaining Unit Member shall be subject to any disciplinary action for such reporting.

"Section 11.5

"If the unsafe condition remains uncorrected after seven (7) calendar days, following the written report submitted to the Chief of Police, the employee may report said condition to the appropriate state and federal agencies.

"Section 11.8

"All off-duty members of the Labor Management and Safety Committee shall be paid the appropriate amount of release time while attending Labor Management Committee meetings."

VII. Article 12 - Seniority.

The Contract presently provides that "continuous service shall not be considered broken due to absence caused by military, pregnancy, injury, sick and other City approved leaves of absence as allowed by this Agreement."

The City proposes to enumerate those events which will cause a break in employees' seniority and include among those events all suspensions.

It is generally accepted that a resignation or discharge which has become final will interrupt an employee's seniority.

But, giving the same effect to any suspension, no matter how limited, is not acceptable. Short-term suspensions may be imposed for relatively minor offenses. Discontinuance of the accrual of seniority is a serious form of punishment which ought to be reserved for the more serious offenses. Suspensions of thirty days or longer are typically imposed for violations of a serious nature, and hence the Fact-Finder believes that an employee's seniority accumulation ought not to be interrupted unless he has been subject to a suspension of thirty days or longer.

Accordingly, the Fact-Finder finds appropriate and recommends the following amendment to Article 12, Section 12.1:

"Section 12.1

"For the purpose of this Agreement, seniority shall be defined as total continuous service in the City Police Department. Continuous service shall not be considered broken due to absence caused by military, pregnancy, injury, sick, and other city approved leaves of absence as allowed by this Agreement. The following shall cause a break in the employee's seniority: suspension for 30 calendar days upheld or accepted, termination upheld or accepted, and resignation."

VIII. Article 13 - Probationary Periods.

Article 13, Section 13.1 presently provides for a probationary period of one year commencing "on the first day for which the employee receives compensation from the Employer."

The City complains that many of the newly hired members of the Bargaining Unit have to attend the Police Academy for a substantial period and consequently the City has significantly less than a full year within which to evaluate the performance of new hires. The City is concerned about its ability to adequately perform the review function.

The City suggests that the one year probationary period ought to begin on the date of successful completion of the Police Academy training when such training is required.

Article 13 already extends the probationary period when work time has been lost due to "illness or injury." The City proposes to correspondingly extend the probationary period for a recruit who has been absent pursuant to any other kind of leave.

The Fact-Finder concurs that the extensions of the probationary period sought by the Employer are merited, and impose no undue burden upon the probationary employee. Accordingly, the Fact-Finder finds appropriate and recommends that Article 13, Section 13.1 be amended as follows:

"Section 13.1

"Every newly hired employee shall be required to successfully complete a probationary period. The probationary period shall begin on the date of hire or date of successful completion of the Police Academy training, whichever is later and shall continue for a period of one (1) calendar year. A probationary employee who has lost work time due to illness or injury, a military leave, or other leave of absence shall have his probationary period extended by the length of the time lost. A new hire

probationary employee may be terminated at any time during his probationary period and shall have no right to appeal of the termination under this Agreement. In all non-disciplinary matters, the probationary employee is entitled to Union representation including the Grievance and Arbitration procedure."

IX. Article 15 - Minimum Manpower.

Article 15, Section 15.1 provides as follows:

"Section 15.1

"There shall be one (1) Supervisor in charge, one (1) Jailer, and one (1) Communications Officer working at all times, plus the following minimum number of Police Officers on patrol at all times:

"6:00 a.m.-2:00 p.m. shift: Four (4) Officers, Sunday through Saturday.

"2:00 p.m.-10:00 p.m. shift: Four (4) Officers, Sunday through Thursday; Five (5) Officers, Friday and Saturday.

"10:00 p.m.-6:00 a.m. shift: Four (4) Officers, Sunday through Thursday; Five (5) Officers, Friday and Saturday."

The City proposes to reduce the number of Officers on the 6:00 a.m.-2:00 p.m. shift from four Officers to two Officers. It similarly proposes to reduce the number of Officers on the two remaining shifts from four Officers to two Officers on Sundays through Thursdays, and from five Officers on Friday and Saturday down to three Officers.

The Lodge objects to any such reduction on the ground the safety of the on-duty Officers would be compromised since fewer Officers would be able to respond to a call for assistance, and the time required to respond to such a call

would likely be increased because the Officers would have to cover a larger geographic area.

The Fact-Finder agrees with the Lodge that the reduction of manpower is not warranted. There is no evidence of record which suggests that such a reduction in the incidence of crime has occurred as which would warrant a reduction in the number of Police Officers needed on duty. Nor, is there any other reason to believe that any shift is over-manned.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 15 be carried forward and incorporated into the successor Agreement without change.

X. Article 16 - Layoff and Recall.

The present text of Article 16 provides for "bumping rights" in the case of the elimination of a position, but is silent with respect to whether bumping will be permitted in layoff situations and, if so, what procedure is to be followed.

The Fact-Finder also notes some internal inconsistencies in the stated layoff priorities.

To remedy these problems, the Fact-Finder finds appropriate and recommends the following amendment of Article 16, Section 16.1:

"Section 16.1

"The Employer may layoff Bargaining Unit Members within any rank or ranks as a result of lack of work or funds. In the event of a layoff, the Employer shall notify the affected employee or employees fifteen (15) calendar days in advance of the effective

date of the layoff. The Employer, upon request from the FOP, agrees to discuss with representatives of the FOP the impact of the layoff on Bargaining Unit Members. When a layoff occurs, the Bargaining Unit Member or Members with the least rank seniority in each designated rank shall be laid off first.

"When a Member in the rank of Lieutenant is laid-off, he (or she) shall be entitled, in accordance with his Departmental seniority, to bump into the rank of Sergeant and displace the Member in that classification who has the least Departmental seniority and is junior in Departmental seniority to the Lieutenant.

"If no Sergeant has less Departmental seniority than the Lieutenant, the Lieutenant shall be entitled, in accordance with his Departmental seniority, to bump into the rank of Patrol Officer and displace the Member in that classification who has the least Departmental seniority and is junior in Departmental seniority to the Lieutenant.

"When a Member in the rank of Sergeant is laid-off, he (or she) shall be entitled, in accordance with his Departmental seniority to bump into the rank of Patrol Officer and displace the Member in that classification who has the least Departmental seniority and is junior in Departmental seniority to the Sergeant."

XI. Article 17 - Vacancies.

Under the present Contract vacancies in four classes of positions are exempt from the job-bidding process and may be filled at the discretion of the Chief of Police.

The City seeks to add to the list all new positions, and the position of School Patrol, D.A.R.E. Officer and Administrative Supervisor.

The Fact-Finder does not find the evidence persuasive that these positions ought to be excluded from the bidding process because they involve policy-making responsibilities or otherwise occupy a special relationship with the Chief of Police so that it is appropriate for the Chief to personally select the individual he wishes to fill the vacancy.

Article 17 also provides that if, upon completion of the bidding process, no bids are received, the Chief is required to assign a bargaining unit member to the posted position in reverse Departmental seniority.

The City notes that this process results in a probationary Officer being given the assignment, and potentially "stuck in the undesired bid position throughout the entire probationary period so that the City would not be able to move the probationary employee to other positions in order to fully assess his capabilities."

The Fact-Finder agrees that it is important to allow the City to assess the probationary employee's abilities in all aspects of police work.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 17, Section 17.4 be amended to read as follows:

"Section 17.4

"Upon completion of the bidding process, if no bids are received, the Chief of Police shall assign a Bargaining Unit Member to the posted position by using reverse Departmental seniority, excluding bargaining unit members who are in their initial (new

hire) probationary period. That is, the Bargaining Unit Member with the least departmental seniority shall be assigned to the position unless the employee is serving such probationary period."

XII. Article 18 - Hours of Work and Overtime.

Article 18 presently provides for three, fixed-hour shifts. In addition, it permits eight classes of positions to be scheduled at times which may diverge from the standard shifts.

The City would abolish all fixed shifts in favor of flexible schedules to be set at the discretion of the Chief. Further, the City would completely revamp the procedures for rotation of voluntary and mandatory overtime, and place restrictions on shift assignments, including prohibiting ranking Officers on the same shift from having overlapping days-off, and prohibiting Bargaining Unit members who are "romantically involved" from being assigned to the same shift. Finally, the City would propose to eliminate premium pay for hours worked on a "call-out" basis and for court appearances.

The City has been unable to offer any evidence that the present fixed shift scheduling system impedes the efficient operation of the Department or is otherwise in need of reform. Fixed shifts provide a measure of stability so that Officers can reasonably plan their family and social activities. The Fact-Finder does not believe any change is warranted.

When Officers are called-out to work other than at their regularly scheduled hours, the resulting disruption of their personal lives is universally thought deserving of special

compensation. The Fact-Finder sees no reason why the compensation of Officers who suffer the inconvenience should be reduced.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 18 be carried forward and incorporated into the successor Agreement without change.

XIII. Article 20 - Special Events.

The City proposes additions to this Article to make clear that Bargaining Unit members who work "private details" are responsible to assure that proper tax withholdings are made, and, further, that any member who has accepted a "special event" assignment may not later refuse the assignment in order to work some other available overtime unless the Officer in charge of the special event gives his prior approval.

Both of these objectives are fair and reasonable, and do not impose any burden upon members of the Bargaining Unit.

Accordingly, the Fact-Finder finds appropriate and recommends the amendment of Article 20 to read as follows:

"Section 20.1

"The Employer will advertise for special events, such as parades, football games, etc., for which the Police Department has sufficient prior knowledge. The procedure for advertising shall be as follows:

"1. The date, time, location and closing date for voluntary acceptance of overtime assignment will be posted for a period of not less than three (3) calendar days on the Department's bulletin boards.

"2. In the event that there are not enough volunteers to cover the special event

advertised, The Employer has the right to assign off-duty Officers to cover such event by reverse seniority. However, no Bargaining Unit member shall be ordered to work on their day off until all other eligible Bargaining Unit Members have been ordered to work.

"Section 20.2

"The Bargaining Unit members agree that they shall be solely responsible to ensure that the proper tax withholdings are made with regards to any payment received for working private details, which do not qualify as special events pursuant to this provision.

"Section 20.3

"Any Bargaining Unit Member who has voluntarily accepted a special event assignment may not refuse to work said assignment in order to work any other offered overtime, unless prior approval is granted by the Officer in Charge of the special event."

XIV. Article 22 - Wages and Compensation.

The present text of Article 22, Section 22.1 provides that the annual salary schedules become effective with the pay period closest to April 1st of each year, the anniversary date of the 1994 Contract. Since the new Contract will become retroactively effective to January 1, 1997, the Lodge requests that the inception dates of annual salary increments be correspondingly changed.

The Fact-Finder agrees with the Lodge's position.

Next, Section 22.7 provides that the mandated employee contribution to the Police and Fireman's Disability and Pension Fund of Ohio shall be picked-up on behalf of the employee by the City. The Section goes on to state, however, that if the employee's percentage of contribution is increased

beyond the present ten percent, the City will then pick-up and pay the additional contribution.

The City proposes to eliminate the automatic assumption by the City of increases in the contributions required by the Fund. The City argues that any future increases should be evaluated as to their impact upon the parties and be subject to negotiation at the time that such increases occur.

Whether, and to what extent, such increases in employee contributions will occur, is, at the moment, unknown. The Fact-Finder finds merit in letting the parties evaluate the impact of any such changes, and assess whether there are tax benefits or other advantages to be gained by allowing the Employer to "pick-up" the increases and deduct the amounts from the employee's gross pay.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 22.1 and Section 22.7 of Article 22 be amended as follows:

"Section 22.1

"All salaries provided for in this Agreement shall be paid in biweekly installments in accordance with the attached salary schedule. The salary schedule is to become effective with the pay period closest to January 1st of each year.

....

"Section 22.7

"The portion of the employee contribution to the Police and Fireman's Disability and Pension Fund of Ohio equal to ten percent (10%) of the employee's earned compensation shall be picked-up (assumed and paid) on

behalf of the employee and in lieu of payment to the employee and by the employee, by the City of Massillon. The provisions of this paragraph shall apply uniformly to all Bargaining Unit Members, and no employees shall have the option to elect a wage increase or other benefit in lieu of the payment provided herein. The Employer shall, in reporting and making remittance to the Police and Fireman's Disability and Pension Fund of Ohio, report that each employee's contribution has been made as provided by statute. The sum paid hereunder by the Employer on behalf of the employee, i.e., ten percent (10%) of the employee's earned compensation, is not to be considered additional salary or wages and shall not be treated as increased compensation and shall be deducted from gross pay. For purposes of computing the employee's earnings or basis of his contribution to the Police and Fireman's Disability and Pension Fund of Ohio, the amount paid by the Employer on behalf of the employee as his statutory obligation is intended to be and shall be considered as having been paid by the employee in fulfillment of his statutory obligation."

XV. Article 24 - Injury On Duty/Disability Pay.

Article 24 presently provides for continuation of an Officer's regular salary for up to three months in the event the employee is disabled due to injury arising out of the performance of his duties.

The City would amend this provision to provide that pending a final determination that an injury is in fact job related, the City may require the bargaining unit member to utilize accrued sick leave.

The City failed to present credible evidence that Bargaining Unit members have been falsely claiming that they had suffered disabling injuries or illnesses during the course of the performance of their duties. The City could cite only

a single case in recent years where the cause of the disability had been disputed.

The potential problem can best be handled by making salary continuation payments, but, in the case of a contested claim, conditioning such payments upon the member executing a written authorization to repay the City if the claim is finally denied as non-work related.

Accordingly, the Fact-Finder finds appropriate and recommends the addition to Article 24 of a new Section 24.3 as follows:

"Section 24.3

"In the event of a contested claim, the member will be granted injury on duty pay only upon execution of a written authorization to repay the employer in the event that the claim is finally denied as a non-work related injury or illness by either the Bureau of Workers' Compensation or an arbitration decision.

"The authorization shall provide for repayment by payroll deduction in equal installments for twenty-six (26) pays or in the event that the employment is terminated prior thereto, from the final pay. The employer reserves the right to pursue all civil remedies to collect any amounts due under this provision."

Existing Sections 24.3, 24.4, 24.5 and 24.6 are to be renumbered consecutively beginning with Section 24.4 and ending with Section 24.7.

XVI. Article 26 - Insurances and Health Coverage.

The Contract presently provides that the City is obligated to furnish fully paid family or single coverage

hospitalization insurance providing benefits equal to, or better than, the self-funded plan furnished as of January 1, 1992, for all employees who actually work a minimum of thirty-five hours a week.

The City proposes to offer employees a choice of plans at least one of which will contain the identical coverage as set forth in the present plan which has continued in effect since the expiration of the 1994 Contract.

Offering employees an opportunity to select a plan which best suits their needs so long as one of those plans contains benefits at least equal to the present program, is not objectionable, and should be permitted.

However, the City also seeks to have each bargaining unit member contribute twenty percent of the premium cost of the plan. Presently, the entire cost of health insurance is paid by the City.

The City further proposes to increase the employees' obligation to pay for prescription drugs from the existing \$2.00 per prescription to \$10.00 for each brand name prescription and \$5.00 for each generic prescription.

As the City points out, the overwhelming majority of public employer collective bargaining agreements require employees to pay a portion of health insurance costs.

However, that has not been the case with this Bargaining Unit and, in view of the recent leveling-off of hospital and medical costs, the Fact-Finder does not believe that a change in the pre-existing policy is warranted at this time. Indeed,

the City's total outlay for insurance for all employees actually declined in 1996 over 1995. Whereas in 1995 the City expended some \$1,107,644.00 for insurance covering all of its employees, the total for 1996 was reduced to \$1,079,216.00. Should medical costs resume their upward spiral, the City will have a very potent argument for changing the existing policy during the next set of negotiations.

The Fact-Finder takes a somewhat different view with respect to the requested increases in co-payments for prescription drugs whose prices have continued to increase significantly.

It is cost efficient to encourage employees to utilize generic drugs where available in lieu of "brand name" prescriptions. Considering that there are generic equivalents to most of the brand names, the Fact-Finder does not find requiring bargaining unit members to pay \$10.00 per brand name prescription to be unreasonable. However, the requested increase to \$5.00 for generic prescriptions would significantly increase the annual cost especially for Bargaining Unit members with several children.

The Fact-Finder believes that since at present Bargaining Unit members pay up to \$2.00 for prescriptions, an increase to \$3.00 for generic drugs would not be unduly burdensome and, at the same time, increase the incentive for substituting generic drugs for the brand name equivalent.

Finally, the City proposes to increase the amount of fully paid life insurance offered to employees from \$5,000.00

to \$10,000.00. Obviously, the Lodge has no objection to the increase.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 26, Sections 26.1, 26.3 and 26.4 be amended as follows:

"Section 26.1

"All Bargaining Unit members who are normally scheduled to work or who actually work a minimum of thirty-five (35) hours per week for the Police Department shall be furnished a fully paid family or single coverage hospitalization plan. The Employer will offer such Bargaining Unit members at least one plan which has been bid for the identical coverage as contained in the self funded plan as of 12/31/96.

....

"Section 26.3

"Each Bargaining Unit member shall be provided with a "Drug Card." With the use of this card the Bargaining Unit member could pay up to a maximum of Ten Dollars (\$10.00) per brand name prescription and Three Dollars (\$3.00) per generic prescription. The remainder of the prescription cost shall be paid by the Employer. The fees paid by the Bargaining Unit member while using this card may not be included in their total annual deductible.

"Section 26.4

"All Bargaining Unit Members shall be furnished with a fully paid life insurance policy of Ten Thousand Dollars (\$10,000.00). The coverage shall provide double indemnity provisions for accidental death or dismemberment. The Employer shall provide, at no cost to the Bargaining Unit members, this policy.

...."

XVII. Article 29 - Military Leave.

The present text of Article 29 no longer reflects the applicable Federal Law concerning call-up of employees to active duty, nor the rights of employees to return and be reinstated to their employment.

The City proposes to set forth the legal entitlements of Bargaining Unit members who are called to military service, and the Fact-Finder believes that the revision is appropriate.

However, since the Federal Law and Regulations governing military service are apt to change, the Fact-Finder believes that a provision should be added which would require the adjustment of the provisions of Article 29 to reflect any future changes.

Accordingly, the Fact-Finder finds appropriate and recommends the amendment of Article 29 to read as follows:

"Section 29.1

"Bargaining Unit Members who are members of the Ohio National Guard, the Ohio Defense Corps, the Naval Militia, or members of other reserve components of the Armed Forces of the United States, and who have been employed for at least ninety (90) days, shall be granted an extended leave of absence without pay for military duty in accordance with law, and after discharge, shall be restored to employment with the Employer upon request.

"Section 29.2

"Any Bargaining Unit Member who is temporarily called for mandatory active duty (e.g., summer training) shall be granted a leave of absence for the duration of such active duty and shall be paid the difference between his regular pay and his service pay

(upon receipt of a service pay voucher) for a period not to exceed one hundred seventy six (176) hours in any calendar year. Said Member shall accumulate vacation and sick leave credit during the period of his leave.

"Section 29.3

"Bargaining Unit members on military leave who thereafter return to employment with the Employer shall receive retirement credit for all time spent in active military service.

"Section 29.4

"An employee who re-enlists while on active duty, or a commissioned officer who voluntarily enters on extended active duty beyond that required upon accepting a commission, is not eligible for reinstatement with the Employer.

"Section 29.5

"Employees who are members of the Ohio National Guard will be granted emergency leave for mob, riot, flood, civil defense, or similar duties when so ordered by the Governor to assist civil authorities. Such leave will be without pay if it exceeds authorized paid military leave for the year. The leave will cover the official period of the emergency.

"Section 29.6

"A veteran separated or discharged under honorable conditions must make application for re-employment to his or her former classification within ninety (90) days after discharge or release from hospitalization due to in service injury or illness which has not exceeded a period of more than one (1) year. The following procedures shall apply:

"1. Reinstatement shall be accomplished within thirty (30) days after application is received by the Employer providing the veteran has remained physically qualified to perform the duties of the classification. Where a disability in the military service precludes restoration to the original classification the veteran shall be

reinstated to a classification and position of like status and pay, compatible with his or her physical condition, provided such classification and position are available;

"2. A photostatic copy of the discharge or certification of service must accompany all requests for reinstatement or reappointment;

"3. The veteran is entitled to salary benefits or other advancement accruing to the position during military absence as follows:

"a. Sick leave - that amount which had been accumulated at the time of entering service.

"b. Vacation leave - time spent on military leave will be counted in determining the employees length of service, but no vacation credit will be accumulated during the time spent on military leave.

"c. Change in classification or pay range which would have accrued to the employee if he or she had been on the job; and

"d. Any automatic salary adjustments associated with the position that the employee would have received had he or she been on the job.

"Section 29.7

"The foregoing provisions of this Article reflect accurately the applicable provisions of existing federal law and regulations. In the event of a change in such law or regulation, provisions of this Article will be amended to accurately reflect such changes."

XVIII. Article 28 - Sick Leave.

The Contract provides for the use of sick leave for absences due to illness, injury, pregnancy or child birth or death in the immediate family of the member, subject to the approval of the Chief of Police.

The Article is silent with respect to a member's obligation to verify an illness nor does it deal with excessive absenteeism or other abuse of sick leave. The parties have been content to leave such matters to Departmental policy and practice. Thus, provisions concerning the implementation of leaves for sickness and injury are contained in Departmental policies revised as of May 1, 1989.

The City seeks to incorporate into the Contract the requirements for illness verification and the prohibitions upon abuse of the sick leave privilege.

The Lodge seeks maintenance of the status quo, and insists that these matters ought to continue to be addressed in the Departmental policies which would be subject to challenge through the grievance procedure.

The Fact-Finder agrees with the Lodge that there is no pressing reason to include the sick leave procedures in the Contract.

XIX. Article 31 - Trauma Leave.

Article 31 currently provides:

"Section 31.1

"Any time any Bargaining Unit Member uses force resulting in death, or serious physical harm, to a suspect, the member shall be relieved from all duties until the determination is made by competent authority that the act was justified. Upon returning to work, the member may be assigned to at least two (2) weeks of duty that does not require the carrying of firearms.

....."

The City proposes that a member not be relieved from active duty if both the member and the City agree to his continuance.

The Lodge argues that at least in the case where an Officer's use of force results in death, the Officer ought to be relieved of all duty for an appropriate period of time. The concern is that the Bargaining Unit member's judgment may be impaired because of the psychological trauma, and he may not act in his best interest. There is also concern that because of minimum manning requirements, the City may pressure the Officer to remain on duty.

The Fact-Finder agrees with the Lodge that in the event an Officer has killed a suspect he ought be relieved of duty and have the opportunity for counseling.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 31.1 of Article 31 be amended as follows:

"Section 31.1

"Any time any Bargaining Unit Member uses force resulting in death, or serious physical harm, to a suspect, the Member shall be relieved from all duties until the determination is made by competent authority that the act was justified; however, the Member and the Employer may agree that said Member does not need to be relieved in the event that the force has not resulted in a death. Upon returning to work, the Member may be assigned to at least two (2) weeks of duty that does not require the carrying of firearms.

....."

XX. Article 32 - Compensatory Time Off.

Section 32.1 of Article 32 presently provides:

"Section 32.1

"Compensatory time off in lieu of any overtime pay shall be granted at the option of the Bargaining Unit Member. If the Member elects to take compensatory time off in lieu of overtime pay for any time worked, such compensatory time shall be granted on a time and one-half (1-1/2) basis. Accumulated compensatory time off shall be granted to a Member upon request, following the guidelines set forth in this Article.

...."

The City would eliminate the option of taking compensatory time off instead of overtime pay, and require that after the execution of the successor Agreement, "all compensatory time previously accumulated must be utilized. If a bargaining unit member has not utilized the previously accumulated compensatory time then ... the excess hours will be paid at the Member's current hourly rate."

The City argues that the unlimited use of compensatory time requires the City to call-in other employees on an overtime basis thereby exacerbating its already acute overtime cost.

The Fact-Finder rejects the position of the City that the accrual of compensatory time-off in lieu of overtime pay should be abolished. Instead, it seems reasonable to the Fact-Finder to place limits on the hitherto unrestricted accumulation of compensatory time-off.

A reasonable limitation would address the overtime cost concerns of the City and, at the same time, not prevent an Officer who works significant amounts of overtime from taking needed time-off to rest or attend to social or family matters.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 32 be amended by the addition of new Sections 32.4 and 32.5 as follows:

"Section 32.4

"Bargaining Unit Members may accumulate up to two hundred forty (240) compensatory hours. In the last week of May and the last week of November, the accumulated hours in excess of sixty (60) hours will be paid to the Bargaining Unit Members in the first pay in June and the first pay in December at the Members' current hourly rate.

"Section 32.5

"Not more than 120 hours of accumulated compensatory time may be taken as time-off in any calendar year under this Agreement."

XXI. Article 34 - Vacation.

Article 34, Section 34.7 of the current Agreement provides as follows:

"Section 34.7

"Vacation time off shall be granted in eight (8) hour segments at the option of the Member. If the Member elects to take vacation time off in eight (8) hour segments, such vacation time shall be granted by his Shift Commander or Officer in Charge as provided herein:

"When a Member schedules a vacation day off and at such time the scheduling does not create overtime, the Member shall be granted his requested vacation day off provided

three (3) days notice has been given and the scheduled time off is not more than ten (10) days in advance of the request. The Member's vacation time off shall be reduced by the eight (8) hours the Member was off. However, when the scheduled time off is more than ten (10) days in advance of the request and an overtime situation is created for any reason, the Member's balance of vacation time off shall be reduced at the rate of one and one-half (1-1/2) times the hours the Member was off.

"When a Member schedules a vacation day off and at that time it creates an overtime situation, the Member shall be granted his requested vacation day off provided a three (3) day notice has been given. However, his balance of vacation time shall be reduced at a rate of one and one-half (1-1/2) times the hours the Member was off. Vacation time shall be granted in hourly increments.

"Vacation time off may be granted with less than three (3) days notice at the discretion of the Shift Commander or in his absence the Officer in Charge based on personnel requirements and the work load."

The City seeks to require vacation time to be taken in eight hour segments and be scheduled "in accordance with the work load requirements of the divisions. Once the vacation has been approved by the Employer, alteration of vacation days off by the Employer shall be based only on unforeseen emergency needs."

The City would further provide that when a member schedules a vacation day-off at a time when no overtime would be created, the Department "may," but does not have to, grant the request.

The City has failed to provide any compelling evidence why additional discretion is needed with respect to vacation scheduling. The present Contract provision is replete with

notice requirements, and vacation requests need not be granted if the scheduling would create an overtime situation. And, if the request is granted and an overtime situation is thereby created, the member's vacation time balance is reduced at a rate of one and a half times the actual number of hours the member was off-duty.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 34 be carried forward and incorporated into the successor Contract without change.

XXII. Article 36 - Education Allowance

The Contract presently provides for bargaining unit members who have obtained the Police Specialist rating to receive an annual stipend of \$750.00.

The City proposes to make the annual payment contingent upon the member taking not less than ten hours of additional training at the member's own expense.

The City has encouraged Officers to obtain a Police Specialist rating because it enhances the credentials and ability of its staff. For those who have achieved the status, the Fact-Finder does not believe that the City ought to be relieved of the obligation it undertook to provide additional compensation.

The Contract also provides for reimbursement of tuition charges and text book costs to employees who pass law enforcement related courses given by an accredited college or university in pursuit of a Bachelor's or Associate Degree.

Further, the Contract authorizes additional compensation to Bargaining Unit members who have completed such courses or obtained such degrees.

"\$3.20 - annually per earned credit hour on a quarterly basis.

"\$4.82 - annually per earned credit hour on a semester basis.

"\$600.00 - annually for an Associate Degree.

"\$600.00 - annually for an Associate Degree plus \$3.20 - annually per earned credit hour over the Associate Degree on a quarterly basis.

"\$600.00 - annually for an Associate Degree plus \$4.82 - annually per earned credit hour over the Associate Degree on a semester basis.

"\$1,200.00 - annually for a Bachelor's Degree.

....."

The City now complains that too often an Officer takes courses but never obtains a college degree. The City wants to encourage its employees to finish their education and to improve the quality of their performance. For this purpose the City would provide reimbursement for tuition and book expense only if the employee receives a grade of "C" or better in a course, but would provide additional compensation only if the employee receives a Degree.

The Fact-Finder understands that the educational institutions which Police Officers attend grade students on a letter scale. Although a grade of "D" will enable a student to pass a course, the student must maintain a "C" average in

order to continue in the degree program. Since it is not merely the mechanical passing of a course which prompts the payment of compensation, but rather the fact that the Officer has learned something of significance from the course, the Fact-Finder agrees that this objective will be promoted if the reimbursement of tuition and book outlays is made contingent upon the Officer studying and demonstrating his knowledge of the course sufficient to meet the minimum graduation requirement by earning a "C" grade.

The Fact-Finder is also in sympathy with the objective of the City to encourage Officers to further "professionalize" by obtaining a college degree and not merely to complete some courses. However, since the City wishes to discontinue payment of additional compensation based upon course completion, the Fact-Finder believes it is only fair to increase the annual amounts of additional compensation payable to an Officer who receives an Associate or Bachelor's Degree. Accordingly, the Fact-Finder finds appropriate and recommends that Article 36, Sections 36.5, 36.6 and 36.7 be amended as follows:

"Section 36.5

"All Bargaining Unit Members shall be given the opportunity to attend a fully accredited college or university to obtain a Bachelor's or Associate degree. Pursuant to a recognized law enforcement curriculum approved by the Safety Director.

"Bargaining Unit Members must apply to the Chief of Police who will process the request to the Safety Director for authorization to

attend schooling before each semester or quarter. The application letter must be submitted not less than twenty (20) days before the beginning of the semester or quarter. The Safety Director will send his reply to the request not later than fifteen (15) days before the semester or quarter begins.

"Section 36.6

"Reimbursement of tuition and text books shall be made to the Member by the City after completion of courses. The Member must receive a grade of "C" or better and receipts must be furnished upon completion in order to be reimbursed. The Member shall have the right to keep all text books.

"Upon completion the Bargaining Unit Member must submit a transcript of the grades and paid receipts to the Chief of Police, who along with the Safety Director, will give the Auditor authority for payment. All receipts must be delivered to the Chief of Police within forty-five (45) days after the end of the semester or quarter. This statement is to include the total amount owed to the Member. A copy of any degree earned must be delivered for the Member's personnel file.

"Section 36.7

"Bargaining Unit Members shall receive compensation for education according to the following scale:

"\$900.00 - annually for an Associate Degree.

"\$1,800.00 - annually for a Bachelor's Degree.

"Section 36.8

"These additional payments as specified shall be in addition to the Member's regular rate of pay and shall be in two (2) equal payments on the first pay in June and December, provided those qualified have attained their degree or certification at least five (5) days prior to the set date of payment. The Chief of Police and the Safety Director shall automatically authorize

payment. In no case will reimbursement or compensation be granted for any studies beyond the Bachelor's Degree."

XXIII. Article 37 - Uniform Maintenance Allowance/
Protective Clothing

Presently bargaining unit members receive semi-annual allowances of \$300.00 for the purchase and maintenance of Police uniforms.

The City proposes to subject each expenditure to review with "verification and substantiation" to be provided by the employee.

The City has failed to present any evidence of "abuse" which would warrant the institution of an oversight procedure.

The City also is obligated to provide \$7,500.00 a year to replace worn-out and out-dated protective clothing and equipment as jointly decided by the Lodge and the Chief of Police. The City proposes to permit the Chief of Police to make the decision unilaterally, with the Lodge being relegated to a "consultation" role.

Here, too, the Fact-Finder finds nothing in the record which would suggest that the Lodge's deliberative role should be rescinded.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 37 be carried forward and incorporated into the successor Agreement without change.

XIV. Article 38 - Past Practices/Prevailing Rights.

Section 38.2 of Article 38 presently provides:

"Section 38.2

"During the term of this Agreement, if negotiations with any other Employer-employee bargaining ... [Unit result in the Unit receiving] financial benefits from the Employer which are more liberal than those within this Agreement, the Employer and the FOP shall meet to work out comparable benefits for the Union."

The City proposes to eliminate this Section out of fear that another bargaining unit will obtain a specific financial benefit greater than that enjoyed by the Police in exchange for the reduction or elimination of some other financial benefit, and that the Lodge would demand entitlement to the same enhanced benefit.

The evidence of record reveals that the Lodge has never sought to "cherry pick," as the Employer suggests it might do, but rather that the Lodge has always understood that the financial benefits in another collective bargaining Contract, must be considered as a whole. The right to equalization is triggered only when the entire package is of greater value.

The Fact-Finder therefore sees no reason to eliminate Section 38.2, as the City requests, but rather believes the issue can be satisfactorily resolved by having the parties enter into a "Letter of Understanding" which confirms the parties' interpretation.

Accordingly, the Fact-Finder finds appropriate and recommends that the parties enter into a Side Letter of Understanding to read as follows:

"The City and the Lodge by the their undersigned representatives express their mutual understanding of the meaning of

Article 38, Section 38-2 of their Collective Bargaining Agreement as follows:

"In determining whether any other Employer - employee bargaining group receives financial benefits from the Employer which are more liberal than those contained within the Henderson F.O.P., Lodge No. 105 and City of Massillon Agreement, the financial benefits are to be considered in the aggregate and not on an individual basis. The parties recognize that any one benefit provided in a Contract with another group, may, as a matter of bargaining choice, be greater than the counterpart benefit level in the parties' Agreement, but it is not their intent to require comparability on a benefit-by-benefit basis, but rather on a "total benefit package" by "total benefit package" basis."

XXV. Proposed New Article 41 - Residency Requirement.

The City proposes the addition of a new Article to the Contract as follows:

"Article 41, Section 1

"All employees hired after the effective date of this Agreement must reside within the corporate limits of the City of Massillon."

The City has failed to present any evidence as to why selection of personnel for the Police Force should be limited to present residents of the City. As of the 1990 census, the total population of the City was 31,000, and the present estimate, is only 32,000. Considering the relatively small population of Massillon, the City could not be assured of obtaining the best possible recruits, and would be disabled from considering experienced Officers currently living in other jurisdictions.

Accordingly, the Fact-Finder does not find appropriate and does not recommend the adoption of a New Article 41 as proposed by the City.

XXVI. Proposed New Article 42 - Substance Abuse Screening.

The existing Contract does not provide for drug or alcohol testing.

Prior to the onset of the current negotiations, the City unilaterally adopted a comprehensive policy for drug and alcohol screening covering all employees. The Lodge filed an unfair labor practice complaint contending that the subject was a matter for negotiations, and could not be imposed without the Lodge's consent. The unfair labor practice complaint was resolved, and the parties agreed to negotiate a substance abuse testing policy.

At the negotiations the City proposed random drug and alcohol testing. The Lodge proposed testing only upon "reasonable suspicion," and adoption of the National Institute of Drug Abuse testing standards.

The evidence of record does not indicate any need for the adoption of a random drug testing policy for the Police Force.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of the Lodge's proposed "reasonable suspicion," substance abuse screening policy as Article 41 of the successor Contract, as follows:

"Section 41.1 - Drug and Alcohol Screening.

"A. Drug alcohol screening or testing shall be conducted upon the finding of reasonable suspicion.

"B. Procedure for Testing.

"1. A Supervisor who has reasonable suspicion of employee substance abuse will immediately relieve the employee from his duties and will immediately notify the Shift Commander of the reasons he suspects substance abuse. Under no circumstances will such employee be permitted to operate a motor vehicle, equipment, or other machinery or be in possession of a firearm. The Supervisor shall, before the end of the shift, complete and sign a complete report setting forth the facts upon which the Supervisor relied. The Chief or his designee will determine whether reasonable suspicion exists to warrant screening, and the determination will be based upon reliable information.

"2. If the Chief or his designee determines that an employee must participate in the screening process, it will be considered a direct order. The Chief or his designee will then telephone the Medical Provider to notify them that an employee is being transported for testing.

"3. A Supervisor will transport the employee to be screened directly to the Medical Provider, and the employee will remain under observation to ensure the integrity of the screening process. The Supervisor will provide the employee transportation home after the screening process. The employee will remain on administrative leave with pay until the test results are reported to the Employer. If the test results are negative, the Chief or his designee will inform the employee of the date the employee is to resume work.

"4. After an employee has been ordered to submit to substance abuse testing for reasonable suspicion, the employee shall be provided an FOP/OLC representative to accompany the employee and the Supervisor to the testing site. The employee may release the FOP/OLC representative if he desires. The Union shall designate names of members

in adequate numbers to be used solely for the purpose of representation during substance abuse screening.

"5. Except as otherwise provided herein, the cost of any substance abuse screening shall be borne by the Employer.

"Section 41.2 - Drug Screening process.

"A. The screening process, including collection of samples, testing methodology, screening standards, reporting of screen results, and the role of the Medical Review Officer (MRO) shall be performed in accordance with the National Institute on Drug Abuse (NIDA) Mandatory Guidelines for Federal Work place Drug Testing Programs, as the same may be amended from time to time, and shall be performed by a NIDA certified medical facility (Medical Provider).

"B. Sample Collection. Specimen collection will occur in a medical setting and the procedures should not demean, embarrass, or cause physical discomfort to the employee. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence. The employee designated to give a sample must be positively identified with photo ID or a fingerprint prior to any sample being taken.

"The Medical Provider will furnish the urine sample containers pre-labeled with the employee's identification number, date and time of collection. After collection, the sample will be sealed, the chain of custody form will be complete, and the employee will be asked to confirm the information contained on the sample container and the chain of custody form by signing the chain of custody form.

"C. Testing Methodology. The Medical Provider must have a current certification from the Secretary of Health and Human Services. The testing or processing phase shall consist of a two step procedure: a.) Initial Screening Step; b.) Confirmation Step.

"The urine sample is first tested using the initial immunoassay test to eliminate negative urine specimens from further consideration, and to identify the presumptively positive specimens that require confirmation or further testing. A specimen testing presumptively positive will undergo a confirmatory gas chromatography/mass spectrometry (GC/MS) test. An initial positive report will not be considered positive, rather it will be classified as confirmation pending. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than one (1) year. Any sample which has been adulterated or is shown to be a substance other than urine shall be reported as such. All results shall be evaluated by suitable trained medical or scientific personnel prior to being reported to the MRO. All test results shall be treated with the same confidentiality as other employee medical records and will be disclosed only to those administrative personnel involved in the screening, rehabilitation, or disciplinary process, unless required by law.

"Section 41.3 - Drug Screening Standards.

"The specific substances to be tested for, and the threshold substance levels that shall be considered a positive result are as follows:

DRUG	INITIAL SCREENING LEVEL	CONFIRMATION LEVEL
Amphetamines	1000ng/ml	300 ng/ml
Barbiturates	200 ng/ml	500 ng/ml
Benxodiazepines	200 ng/ml	300 ng/ml
Cannabinoids	50 ng/ml	15 ng/ml
Cocaine		
Metabolite	300 ng/ml	150 ng/ml
Methadone	300 ng/ml	300 ng/ml
Methaqualone	300 ng/ml	300 ng/ml
Opiates	300 ng/ml	300 ng/ml

(#25 ng/ml if immunoassay specific for free morphine)

Phencyclidine (PCP)	25 ng/ml	25 ng/ml
Propoxyphene	300 ng/ml	300 ng/ml

"Section 41.4 - Drug Screening Results.

"A. Negative Results. If the screen results are negative, the results will be reported in writing to the Medical Review Officer and the sample will be discarded, or pooled for use in the laboratory internal control program.

"B. Positive Results. If the results of the first screen are positive, the Medical Provider will immediately conduct a second screening using a different methodology on a different portion of the original sample. The Medical Provider will report the confirmation screen results, whether positive or negative to the MRO. Any adulterated sample, or samples otherwise tampered with, may be treated for disciplinary purposes as a positive result. If the confirmation screen results are positive, employees may request an additional screening, beyond the confirmation screening, by an NIDA approved alternate laboratory. The Employee will be solely responsible for the cost of any additional screening. For chain of custody purposes, the sample will be transferred to the alternate laboratory, and the alternate laboratory will complete the chain of custody form.

"If the confirmation screen results are positive, the Medical Provider will retain the sample for one (1) year in order to complete all additional screenings, and employee's appeals.

"Section 41.5 - Role of Medical Review Officer.

"A. The Medical Review Officer (MRO) is a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test results together with his or her medical history and any other relevant biomedical information. The MRO's primary responsibility is to review and interpret positive test results obtained through the drug screening program. In fulfilling these responsibilities, the MRO is to be guided by

the US Department of Health and Human Services Mandatory Guidelines for Federal Work place Drug Testing Programs.

"B. In any question arises as to the accuracy or validity of a positive result, the MRO should, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed. The MRO will then make a determination as to whether the result is scientifically sufficient to take further action. If records from collection sites or laboratories raise doubts about the handling of samples, the MRO may deem the urinary evidence insufficient and no further actions relative to individual employee(s) would occur.

"C. The MRO must also assess and determine whether alternate medical explanations could account for any positive result. In reviewing the laboratory results, the MRO may conduct a medical interview with the employee, review the employee's medical history, or review any other relevant biomedical factors. The MRO shall also review any information provided by the employee attempting to show legitimate use of a drug. The MRO may perform limited physical examinations seeking, for example, needle tracks, in determining whether clinical signs of drug abuse are present.

"D. The MRO must ultimately determine whether some reason other than illegal drug use explains a drug-positive urine. If the MRO verifies illegal drug use, the information related to the use of illegal drugs will be disclosed to the Employer.

"E. Any medical information provided to the MRO that is not specifically related to the use of illegal drugs will be treated as confidential and not disclosed. If it is determined with reasonable certainty that there is a legitimate medical or other reason to account for the positive laboratory findings, no information will be disclosed and the test result will be reported as negative.

"Section 41.6 - Rehabilitation.

"A. If all of the tests are positive, the Employer shall require the employee to participate in a rehabilitation or detoxification program, as determined by appropriate medical personnel. The cost of the initial program will be covered by the employee's health insurance plan, and the Employer. Any subsequent programs will be covered by the employee's health insurance plan, and the employee themselves.

"B. An employee who participates in a rehabilitation or detoxification program shall be allowed to use any accumulated leave credit for the period of the rehabilitation for a period not to exceed ninety (90) days. If no such leave credit is available, such employee shall be placed on medical leave of absence without pay for a period of the ninety (90) days.

"C. Upon completion of the program and retest that demonstrates that the employee is no longer using a controlled substance or alcohol, the employee shall be returned to his position. Such employee may be subject to random testing upon return to his position for a period of one (1) year from the date of his return.

"D. Any employee in the above mentioned rehabilitation program will not lose any seniority or benefits should it be necessary that he be required to take a medical leave of absence without pay for a period not to exceed ninety (90) days.

"E. If the employee refuses to undergo rehabilitation or detoxification, or he fails to complete a program of rehabilitation, or if he should test positive at any time within one (1) year after his return to work upon completion of the rehabilitation program, such employee shall be subject to disciplinary action.

"Section 41.7 - Medical Release.

"For purposes of implementing the provisions of the Article, each bargaining unit member shall execute medical releases in order for the Employer to obtain the results of the substance abuse screening provided for in

the Article. The release referred to herein shall authorize only the release of examination results pertaining to the drug or alcohol screening test. Such medical releases shall be provided by the Employer.

"Section 41.8 - Alcohol Screening.

"A. Screening may also be given to employees based upon reasonable suspicion to detect the presence of impairment due to alcohol during working hours. Employees are prohibited from consuming alcohol preceding any scheduled working shift, and during any working shift, or from being otherwise impaired from alcohol. Impairment is defined as .05% or greater breath alcohol content, BAC.

"B. Alcohol testing shall be breath alcohol content (BAC) and such testing shall be given by a qualified individual who is employed by an outside agency. Testing shall be done in accordance with Ohio Revised Code Section 4511.19.

"C. If the results of the alcohol screening show that the breath alcohol content is .01% or above, the employee shall be given transportation home and must use any accumulated leave time for the remainder of the day. If the results of the test showed that the breath alcohol content is .01% to .04%, no further action will be taken against the employee on the basis of the screening. If the results of the test show that the breath alcohol content is .05% or above, the employee shall require the employee to participate in rehabilitation or detoxification as set forth in Section 6 of this Article."

XXVII. Proposed New Article 42 - Family & Medical Leave.

The Federal Family and Medical Leave Act which became effective after the negotiations for the present Contract, leaves the method of implementation of several of its provisions to the discretion of employers.

The City's proposal contains terms which have been widely adopted. The Fact-Finder finds the City's proposal accurately reflects the Federal legislation and provides for the exercise of discretion in a fair and reasonable manner.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of a New Article 42 - Family & Medical Leave as follows:

"Section 42.1

"This Article is intended to complement and/or be an addition to whatever leave rights employees may have under applicable laws. Employees may take up to twelve (12) weeks of unpaid leave of absence for the following reasons:

"(1) The birth of a child.

"(2) To receive a child for adoption or foster care.

"(3) To care for a "seriously ill" spouse, child, or parent if the parent has a serious health condition.

"(4) For the employee's own serious health condition that makes the employee unable to perform the functions of their position.

"Section 42.2

"Accumulative total of twelve (12) weeks within a twelve (12) month period may be used for any or all of the four reasons listed in Section 1. The twelve (12) month period is measured according to the "measuring forward method." This method measures the 12 month period forward from the date any employees first FMLA leave begins. An employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken. The next 12 month period would begin the first time FMLA leave is taken after completion of any previous 12 month period. An employee

may be required to substitute available earned paid leave, other than sick leave, for this type of leave. If spouses are both employed by the City of Massillon, the combined total leave time allowed for birth, adoption or care of a sick parent is twelve (12) weeks. If spouses cannot agree on time periods among themselves, the decision will be based upon the needs of the departments in which the spouses work. Workers' Compensation leaves are also included in the allowed twelve (12) weeks.

"Section 42.3

"While on family and medical leave, health insurance benefits will continue for any eligible employee. Any share of the premiums normally paid by an employee continues to be the responsibility of the employee. Premiums must be received by the 25th of each month or the last business day prior to the 25th, whichever is earliest. If premium payments are more than thirty (30) days late, coverage will cease. However, coverage will be reinstated upon return to work.

"Section 42.4

"As soon as an employee knows of his intention to request a Family and Medical Leave, the City Safety Director must be contacted. All leaves will be arranged through the Safety Director's Office. After each continuous four (4) week period of leave, an employee must update the Safety Director's Office as to his/her status and intentions to return to work."

XXIX. Wage Schedule.

The City proposes a wage increase of two percent in each of the three years of the Contract. The Lodge demanded a four percent across-the-board increase in each Contract year.

In support of its position the City noted its projected revenue growth for 1997 is only 1.5%, and is unlikely be significantly higher in the succeeding two years.

Yet, the City does not plead "inability to pay" and it anticipates maintenance of a healthy surplus.

The City laments that other bargaining units will aim to emulate any increase given to the Police Unit. That may be so, but each bargaining unit is free to make a claim for wage adjustments as its bargaining representative believes the circumstances affecting that particular bargaining unit warrant. Each unit is entitled to be judged on the merits of its claim, and, if it makes its case, it ought to be compensated accordingly. The City is entitled to "just say no" to any unjustified "me too" proposal.

The Lodge argues that Officer's current compensation is "out of line" with that paid to members of the Police Departments in other comparable municipalities.

According to a survey undertaken by the City of Akron, as of January, 1997, salaries for entrance level Police Officers ranged from \$18,760.00 in the City of Mansfield (which, however, was then in negotiations for a new Contract), to \$37,139.00 in the City of Westlake.

Of the forty cities responding to the survey Massillon ranked twenty-sixth.

However, the Fact-Finder takes into account the fact that several of the municipalities included had either significantly larger Departments, greater resources or were otherwise not really "comparable" to Massillon. Nonetheless, the Lodge has demonstrated that members of the Bargaining Unit are somewhat underpaid when compared with their peers.

The Lodge also points out that the rate of inflation for the region is expected to range between 2-1/2 and 3-1/2% for 1997, and, even assuming the continuing success of Federal Reserve policy in controlling the growth of the money supply, projections for 1988 and 1999 indicate that the rate of inflation will be at least 3%. Accordingly, the Lodge argues that acceptance of the City's proposal would result in an actual decline in the real income of its members.

Giving especial consideration to the City's financial situation, the Officers' relative wage position vis-a-vis their counterparts in other municipalities and the rate of inflation, the Fact-Finder finds appropriate and recommends an annual wage increase of 3.5%. The 1996 compensation total for the Department, including "roll-ups," was \$2,149,185.00. The recommended increases will result in an additional outlay for the first Contract year, including "roll-ups," of \$75,221.00, an amount which the Fact-Finder believes the City can afford.

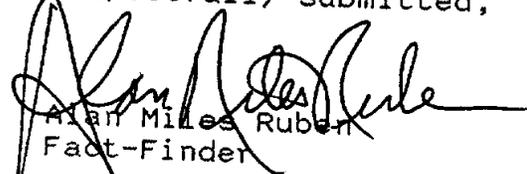
Accordingly, the Fact-Finder finds appropriate and recommends the adoption of the following amendment to the Wage Schedule:

"The wage schedule shall be amended by increasing each of the salary schedule steps by 3.5% effective the first pay of each year under this Contract."

Of course, since the 1997 increases here recommended were to become effective as of January 1, 1997, members are entitled to receive the withheld amounts as soon as practical after the adoption of the successor Contract.

Findings and Recommendations issued at Cleveland, Ohio
this 17th day of April, 1997.

Respectfully submitted,



Alan Miles Ruben
Fact-Finder

AMR:ljg