

**STATE OF OHIO**  
**STATE EMPLOYMENT RELATIONS BOARD**

DEC 9 10 35 AM '97

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**In the Matter of** )  
**Fact-Finding Between:** )  
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**FRATERNAL ORDER OF POLICE,** )  
**LODGE NO. 15** )  
**(Patrolmen & Sergeants)** )  
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 )  
**-and-** )  
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**CITY OF NORTH ROYALTON** )  
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**Case Nos. 96-MED-09-0779**  
**96-MED-09-0780**

**Jonathan I. Klein,**  
**Fact-Finder**

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**FACT-FINDING REPORT**  
**and**  
**RECOMMENDATION**

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Appearances

For Union:

Frank G. Bolmeyer, Esq.  
James P. Sammon, Esq.  
Attorneys for Lodge 15  
Dale Krejci, Sgt.  
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Lou Gnezda, Ptl.

For Employer:

Joseph F. Lencewicz  
Christopher Lencewicz, Esq.  
Representatives for the City  
Paul Bican, Chief of Police  
James A. Swider, Finance Director

Date of Issuance: December 5, 1997

## **I. PROCEDURAL BACKGROUND**

This matter first came on for hearing on March 21, 1997, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on November 29, 1996. The hearing was conducted between the City of North Royalton ("City" or "Employer"), and the Fraternal Order of Police, Lodge No. 15 ("Union"), at the North Royalton City Hall located at 13834 Ridge Road, North Royalton, Ohio. The bargaining units involved in the fact-finding process consist of the full-time patrolmen and sergeants employed in the City's police department. There are currently seven full-time sergeants and thirty patrolmen who are members of the respective units. The parties agreed that the fact-finding hearing and report would apply to both bargaining units.

Prior to the fact-finding hearing, the parties engaged in negotiations to resolve their differences over multiple sections of the collective bargaining agreement. On March 21, 1997, an initial fact-finding hearing was scheduled, but the parties were in disagreement over the precise issues to be presented at the hearing. After considerable discussion, and inasmuch as each party had filed unfair labor practice charges against the other which remained pending, it was mutually agreed that fact-finding would be deferred until the State Employment Relations Board ("SERB") had ruled on both charges. On June 17, 1997, the parties entered into a settlement agreement which was filed with SERB, and which authorized SERB upon its approval to treat as a joint motion to dismiss the unfair labor practice charge and complaint with prejudice. (Union Ex. 20; City Ex. 2, Tab 1). This left fifteen (15) issues for the fact-

finding process of which three issues were later resolved between the parties prior to the fact-finding hearing scheduled for August 18, 1997.

As a consequence of the settlement agreement and subsequent resolution of three issues prior to hearing, Duration, Funeral Leave and Insurance, the following issues were submitted by each party based on the proposals as contained in each of their pre-hearing briefs dated on or about March 21, 1997.

1. Salary Schedule
2. Uniform Allowance
3. Shift Differential
4. Relief Sergeant Pay
5. Longevity
6. Sick Leave Bonus
7. Holidays

The remaining issues, listed below, were addressed on the following basis: the Union submitted the previous, tentative agreements on each issue, and the City proposed to maintain current contract language, or the status quo.

8. Educational Pays
9. Employee Rights
10. Vacations
11. Promotions
12. Disciplinary Procedure (Section 39.06).

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations except for those tentative agreements which are submitted with respect to any of the open issues. In making

the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, and in their respective position statements.

## **II. FACT-FINDING CRITERIA**

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATION**

#### **Introduction**

The City is a chartered municipality located in southeast Cuyahoga County with a population of 25,000 to 27,000. It is bordered by the cities of Parma, Strongsville, Brecksville and Medina County. The parties agreed that any increases in compensation and other economic issues shall be retroactive to January 1, 1997. (Union Ex. 4).

Generally, the positions of the parties can be described in the following manner. The Union posits that the City is financially well-off, with 1,538 families out of 10,088 households earning in excess of \$75,000, and the median household income in 1996 was \$41,985. (Union Ex. 3). The City is enjoying a period of growth, including new subdivisions where homes cost \$150,000 to \$250,000. Utilizing community size, wealth as determined by average median income and average home sale price, the Union selected as comparables the cities of Brecksville, Solon, Westlake, Strongsville, South Euclid, Middleburg Heights, Broadview Heights, and Parma Heights.

The City urges that the positions which it has taken are consistent with its desire to reduce what it refers to as "non-productive costs": longevity, pension, workers compensation, medical insurance, vacation, holidays, personal leave, sick time, and disability leave. When such costs are compared to wages, they amount to 74 percent of wages. The City desires to pay its employees a fair wage, reduce time paid for time not worked (non-productive costs), and to enter into a collective bargaining agreement which does not restrict the City's ability to

manage the police department. It references as comparable jurisdictions the cities of Berea, Brecksville, Broadview Heights, Brunswick, Independence, Middleburg Heights, Parma, Parma Heights, Seven Hills and Strongsville.

Upon review of the comparable jurisdictions offered by both parties, the fact-finder determined that due to a lack of probative evidence which would establish comparability, the cities of Berea, Brunswick, Independence, Parma and Seven Hills will not be considered. Moreover, both Westlake and Solon are excluded due to their high median household and per capita incomes. The fact-finder further discounts South Euclid, which despite comparability with the City on a number of demographic factors, is geographically remote in a county with numerous municipalities of far greater proximity to the City. South Euclid also appears to have been cited by the Union primarily as a result of its favorable compensation package. This leaves the following municipalities which will be referenced for comparability purposes throughout this fact-finding report: Brecksville, Broadview Heights, Middleburg Heights, Parma Heights and Strongsville.

**Issue 1: Article XX Salary Schedule<sup>1</sup>**

The Union proposes that the patrol unit receive a 4.25 percent increase effective January 1, 1997, and again as of January 1, 1998. It reasons these increases are fully

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1. The parties confirmed that the agreement on a two year duration for the collective bargaining agreement restricts the recommendation on wages to 1997 and 1998.

warranted because: 1) the City can well afford the increase; 2) the department has seen a large increase in its work load; and 3) the proposed increase would move the patrolmen from a last place ranking among comparables, to second to last place. The comparable jurisdictions fully justify the annual increases of 4.25 percent, and the City does not maintain an inability to pay the requested increase.

Evidence of the increased work load of the City's police department is shown by Union Exhibit 13. During the period 1992 to 1996, the reported crime tally reflects an increase in total crime types from 1,449 to 3,225, an increase of 123 percent. Between 1995 and 1996, a similar statistical analysis reveals an increase of 25.7 percent. In recognition of these increases, the City hired eight new police officers. Therefore, the Union urges, the proposed wage increase is warranted based upon the services provided to the community. Compilation by SERB of wage settlement averages for police department contracts executed in 1995 and 1996 reveal that the averages over their term were 3.72% in 1995, and 3.82% in 1996. (Union Ex. 14).

According to the Union, an above average wage increase is warranted based upon the data of comparable jurisdictions. (Union Ex. 12).<sup>2</sup> Even with the requested increase, the patrol unit would move up only slightly in its low ranking among comparable bargaining units.

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2. Corrections to Union Ex. 12A were authorized at hearing, and submitted via correspondence from the Union's counsel dated September 5, 1997, and September 11, 1997.

The salary increase for the patrol officers would cost \$46,488 of which \$10,816 is attributable to the hiring of eight new patrolmen.

The City urges that the patrol officer wages should be increased by 3.5 percent in 1997, and 3 percent in 1998, including elimination of Saturday and Sunday premium pay. It emphasizes the impact of other cost factors, and the wages cannot be viewed in isolation. The proposed increase is entirely in line with the percentage increases of employees doing comparable work which vary between 3 percent and 4.25 percent. (City Ex. 7) In the City's view, the Union fails to take into account the roll-up costs, and only proffers the raw numbers which fail to fully account for time not worked in terms of benefits tied directly to wage increases. (City Ex. 4).

James A. Swider, the City's finance director, testified the City is not a wealthy community such as Pepper Pike or Beachwood, for example, where the income tax rate is higher and greater industry exists. In contrast, the City has a small industrial base. Any anticipated increase in the City's income tax from 1 to 2 percent is designated to be divided as follows: 50 percent for road repair and maintenance; 25 percent for recreation; and 25 percent for police and fire department capital improvements. In his opinion, the City is not wealthy even if the levy passes.<sup>3</sup> In the final analysis, Swider opined that the City was on budget in 1996, and any tentative agreements entered into prior to the fact-finding hearing were made

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3. The fact-finder takes judicial notice of the fact an increase in the income tax rate was rejected by the voters on November 4, 1997.

without knowledge of the financial data contained in City Exhibit 4. Swider claimed the comparables cited by the Union are distorted. In any event, he stated the City's ability to pay does not encompass a 4.25 percent increase as proposed by the Union.

On cross-examination, Swider admitted that any time wages are increased, the roll-up costs likewise increase, and that all cities have similar costs. He also admitted that he performed no comparison analysis of the "non-productive costs" incurred by any of the comparable jurisdictions. Swider further indicated that the tax increase would bring in approximately \$2 million to the City, but that there would be no increase in the monies available for wages as the tax monies have already been dedicated. When asked to identify a comparable city, Swider mentioned Middleburg Heights.

The City urged that its proposal on wages, City Exhibit 5, be recommended. It has offered 3.5 percent on the basis of eliminating Saturday and Sunday premium pay which no other comparable bargaining unit enjoys.

Based upon the comparable jurisdictions, the following wage data for ten-year officers is relevant and material to this issue:

<b>CITY</b>	<b>1996 - PATROL</b>	<b>1997 - PATROL</b>	<b>1997 - RANK DIF.</b>
Brecksville	\$43,756	\$45,112	11 percent
Broadview Heights	\$40,483	\$42,204	11 percent
Middleburg Heights	\$40,414	\$42,141	15 percent
Parma Heights	\$37, 936	\$41,412 <sup>4</sup>	13 percent
Strongsville	\$41,497	\$43,053	13 percent
<b>Averages</b>	<b>\$40,817</b>	<b>\$42,784</b>	<b>12.6 percent</b>
<i>North Royalton</i>	<i>\$39,270 (3.8% ↓ the 1996 average.)</i>	<i>City prop. \$40,643 — 5% ↓ 1997 avg. Union prop. \$40,938 - 4.3% ↓ 1997 avg.</i>	<i>City prop. 12 % Union prop. 15%</i>

As this evidence succinctly demonstrates, to award the City's position would result in a significant erosion of the patrol bargaining unit's relative wage position vis-a-vis other comparable units. Indeed, even with the Union's wage proposal for 1997, a decrease in the patrolmen's relative wage position will occur. The fact-finder further notes that the City does not take the position of an inability to pay the requested increase. Despite suffering a defeat of the proposed income tax increase, there was no evidence that any new funds which might have been generated by that increase would have been available for wage increases in any event. Further, there was no data to show that the "pay for time not worked" is any more or less,

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4. The 1997 wage for Parma Heights is calculated using six months at the yearly rate of pay of \$38,884.76, and six months at the yearly rate of \$39,273 per the applicable agreement language. To this sum is added 6 percent of the minimum yearly straight time earnings of \$38,884.76, which is designated as an emergency response allowance.

taken as a percentage of total compensation for the bargaining units in question, when compared with other jurisdictions. There was inadequate evidence, however, to justify more than a 4 percent increase effective January 1, 1998.<sup>5</sup>

The Union proposes that the sergeants receive an increase in rank differential from the current 13 percent to 15 percent. It argues that there are no lieutenants in the police department, and the City's sergeants serve as the first and second line supervisors. Three of the sergeants function in an administrative capacity, and perform the work done by lieutenants in other departments. Because of the new hires and an average of only 4.4 years of experience among the patrolmen, more duties have fallen upon the sergeants which are supervisory nature.

In the City's view, the comparable data indicate that the current rank differential is out-of-line with other departments, and the claim of administrative duties is erroneous. (City Ex. 2, Tab 8). The sergeants are working day shifts, they enjoy better working conditions and have no shift rotation. Further, the police chief recognizes the need for an additional level of supervision in the department which cannot be achieved simply by an increase in the rate of pay for sergeants. Only three of the sergeants perform the administrative work, yet the Union's request is for all sergeants to receive an increase in the rank differential. A 12% differential is all that is warranted.

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5. Evidence submitted by the Union indicates that Strongsville's patrolmen will receive a 4 percent increase effective January 1, 1998, and again on January 1, 1999.

The Union offered the testimony of Sgt. Clark Chilcott, an administrative sergeant. He is responsible for five to six different commands, including vehicle maintenance, training, and fugitive warrants. Contrary to the structure of the City's police department, in other jurisdictions sergeants do not command fellow sergeants which is the work of lieutenants. Sgt. Chilcott indicated that the additional 2 percent increase which the Union has requested represents the difference in compensation enjoyed by lieutenants in other jurisdictions. The seven sergeant plan was implemented a decade ago to save the City money. Rather than the ideal ratio of five patrol per sergeant, there are seven patrol per sergeant with an anticipated increase to eight patrol on a shift per sergeant. Chilcott also described the delegation to the administrative sergeants of the power to perform internal investigations, and the patrol sergeants view the administrative sergeants as "a pain in the ass."

Sgt. Chilcott's testimony was echoed by Sgt. Krejci. Krejci stated the sergeants are also responsible for the jail when the jail administrator is not present. According to Krejci, the sergeants do more than first line supervisors, and all that the sergeants are requesting is to receive fair compensation, and that a new rank of lieutenants be implemented. In rebuttal, the City offered the testimony of Chief Bican, who noted that there are three to five officers on a shift at any one point in time. He disputed the charge that the sergeants had any direct supervisory capacities, but insisted the captain or chief are the responsible supervisors.

Chief Bican agreed that on occasion the administrative sergeants reviewed the work of the other sergeants, but any improprieties are turned over to the captain. He disputed any

claim that there might be disciplinary problems with the new hires, and it was generally the senior employees who presented the greatest problems. Simply stated, the City reasons that the sergeants' work in the City is more demanding, but that is a part of the position's normal job functions. In the best of worlds, the City would agree that rank differential should fluctuate based upon the experience of the supervised patrol. It emphasizes that sergeants in comparable jurisdictions do the same job as these sergeants, and any improvements reside with changes in the organizational structure, rather than as a pay issue.

On cross-examination, Chief Bican agreed that some sergeants in the department perform the work duties which belong to lieutenants in other cities. A conscious decision was made to take a portion of the obligation to complete the necessary paperwork off of the road sergeants and place that responsibility with the administrative sergeants. The chief acknowledged that the sergeants' duties will increase, and he wants lieutenants for disciplinary purposes as is the case with most departments this size. When pressed, the chief agreed that the administrative sergeants function as lieutenants in other departments, except for the fact that the City's sergeants only supervise patrol.

The fact-finder notes several factors which are key to a determination of the rank differential issue. First, less than a majority of sergeants function in the administrative sergeant position that forms the foundation for the Union's proposal. Further, while the evidence suggests that these sergeants, in particular, function in a different capacity than road sergeants, this is not to say that there is sufficient, probative evidence which proves that the

bargaining unit as a whole warrants payment of both their current rank differential, together with an additional two percent arguably associated with lieutenants, or a total rank differential of 15 percent. Third, the fact remains that relative to the comparable jurisdictions, the sergeants presently receive a rank differential slightly higher than the average. *See supra table at 10.*

There is a well-defined need to create a lieutenant classification within the department for numerous reasons. While the sergeants clearly do more than their share, the evidence does not warrant a change in the current rank differential of 13 percent at this time. Accordingly, the fact-finder cannot recommend either the Union's or the City's position on this issue, and the current contract language shall remain in effect.

The City further challenged the payment of weekend premiums to employees who work Saturday and Sunday. The current agreements provided that employees who work eight hours or more on Saturday or Sunday shall receive a flat rate of seven dollars per shift in addition to hours worked at the applicable rate of pay. No evidence was presented with respect to any comparable jurisdictions which have a similar wage provision. The fact-finder agrees with the Employer that this provision appears without contractual support from other jurisdictions, and the positions of patrolmen and sergeants must be staffed seven days per week, twenty-four hours per day. After due consideration, the fact-finder concludes that there is no reasonable justification for this form of compensation other than its presence in the current agreement, and hereby recommends its elimination from the collective bargaining agreement.

**Final Recommendation**

It is the fact-finder's final recommendation that increases in the base wage rates for patrolmen shall be 4.25 percent effective January 1, 1997, and 4.0 percent effective January 1, 1998. The rate of pay for sergeants shall be calculated using a 13 percent rank differential from the highest base rate of pay for patrolmen. The current language pertaining to Saturday/Sunday premium pay, ₱20.05 and 20.03 of the patrolmen and sergeants agreements, respectively, shall be eliminated from the agreement.

**Issue 2: Article XXIV - Uniform Allowance**

The pertinent language at issue concerns the City's contribution per ₱24.05 of the patrolmen agreement of up to \$500 for the cost of individual bullet proof vests. The Union asserts that this sum is inadequate, and the cost has increased for vests so as to justify an increase in the amount to \$650. The City urges this is simply a cost issue, and the documentation, City Exhibit 9, demonstrates that protection at the appropriate threat level is available below \$500. Moreover, copies of purchase orders as recent as July 16, 1997, for such body armor proves that protection has been provided for less than \$500.

The evidence is overwhelming that the current agreement language is adequate to secure body armor for bargaining unit members. If, as claimed by Patrolman Sperber, the Union's proposal is to ensure that an employee obtains a preferred vest which he or she will be

more likely to wear, this is indeed a question of preference, rather than one of contractual obligation. There is no compelling reason the City must provide such sums as to permit an employee to purchase the top-of-the-line body armor, rather than an amount necessary to acquire a vest which meets the standard level of threat. Any cost of body armor which an employee would prefer that is above the \$500 allowance should be paid for at the employee's own expense.

#### **Final Recommendation**

It is the fact-finder's final recommendation that there be no modification in the amount of the allowance (up to \$500) for the cost of individual bullet proof vests as contained in Article XXIV, ¶24.05.

#### **Issue 3: Article XX - Shift Differential (New)**

The Union proposes new contract language which would provide for a shift differential of \$.50 per hour for all hours worked between 4:00 p.m. and midnight, and \$1.00 per hour for all hours worked between midnight and 8:00 a.m. It urges that the difficulties with shift work have been thoroughly documented by the Harvard Medical School. Further, if the City did not insist on the rotation of shifts, but implemented permanent shifts, this provision would not be necessary. According to Patrolman Wayne Sperber, it becomes increasingly difficult to make the necessary adjustments to shift changes which occur every twenty-eight days on road patrol. There are some officers who do not rotate and some who work straight days. In

addition, the Union noted that the City's AFSCME unit currently enjoys a shift differential for the winter schedule and no rotation.

The City countered that the question is merely an economic one, and upon cross-examination Sperber agreed that the proposal sought additional money to compensate for the impact on an officer's health. Further, the chief stated that the bargaining units had been offered permanent shifts, but a majority of the employees declined to accept the offer. If the jurisdictions listed in City Exhibit 2, Tab 11 are reviewed, all those jurisdictions have rotating shifts, and those that provide shift differential have base wages which are lower than the City.

The evidence supports a conclusion that some form of shift differential is warranted in this case. Article XI of the applicable agreements provides for monthly work schedules and patrol shift rotations on a regular basis. While it was suggested that an offer of permanent shifts was made and rejected, the safety director and the mayor have the authority to determine whether shifts shall rotate on a regular basis or not. (City Ex. 2, Tabs 2 and 3, ¶11.04). Second, the comparable jurisdictions of Parma Heights and Middleburg Heights each pay shift differentials.<sup>6</sup> Third, shift differential is not a foreign concept to the City which has agreed to pay a shift differential to service workers represented by AFSCME who do not

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6. Middleburg Heights pays a shift differential of \$.20 per hour for working 3:00 to 11:00 p.m., and \$.30 per hour for work between 11:00 p.m. and 7:00 a.m. For these identical shifts in the City of Parma Heights, the shift differential is \$.30 per hour and \$.60 per hour, respectively.

engage in shift rotation. The City's assertion that shift differential is paid only in those comparable jurisdictions with lower base rates of pay is inaccurate, for Middleburg Heights and Parma Heights currently compensate comparable bargaining units at ten years of service \$2,871 and \$2,142 higher in base wage, respectively, than the City.

However, the amount of the shift differential requested by the Union is excessive. Article XX shall contain a new paragraph compensating those employees who work between the hours of 4:00 p.m. and midnight an additional \$.20 per hour, and an additional \$.30 per hour for employees who work between the hours of midnight and 8:00 a.m. Before the City cries foul and complains of a substantial cost increase to the City, even if one assumes the thirty-seven employees listed on City Exhibit 4 rotate equally among shifts every month, the maximum total cost of the shift differential will be approximately \$9,620, compared with the current total cost of Saturday/Sunday premium pay of \$9,552. This projected cost of shift differential also may be high in that it presupposes that all bargaining unit employees have shift start and end times which correspond precisely to the hours noted above, whereas the proposed language has been modified to specify that such compensation is to be paid only for those hours worked during the respective shift differential periods. In the fact-finder's opinion, this rearrangement of funds will address a more pressing need of the bargaining units without posing any significant cost increase to the City.

Final Recommendation

It is the fact-finder's final recommendation that the following paragraph be added to Article XX of each collective bargaining agreement.

Those employees who are scheduled to work a shift, all or part of which falls between the hours of 4:00 p.m. and midnight, shall receive an additional compensation of \$.20 for each hour actually worked within said period. Employees who are scheduled to work a shift, all or part of which falls between the hours of midnight and 8:00 a.m., shall receive an additional compensation of \$.30 for each hour actually worked which falls within said period.

Issue 4: Article XX - Relief Sergeant Pay (New)

The Union has proposed that a position in the Patrol Division of the department known as the relief sergeant receive special compensation of one dollar per hour worked. In support of this request, the Union notes that there are four sergeants assigned to the patrol division. There are three separate platoons consisting of a sergeant and five patrolmen who work shifts which rotate every twenty-eight days. The relief sergeant fills in for the shift sergeants on their days off which requires the relief position to work five eight hour shifts per week, two or three shifts from 4:00 p.m. to midnight, and two or three from 12 midnight to eight a.m. In other words, the relief sergeant is changing shifts a number of times within one week, and he has the same duties as the other road sergeants.

The City reasons that there are no other comparable jurisdictions which might support the Union's proposal, and the relief sergeant works one out of the five days each week as a regular sergeant. The chief pointed out the relief sergeant works no double backs, and the

position has existed in the department for years. It is a less demanding job than that of a regular sergeant, and at least once each week the relief shift sergeant has the assistance of a regular shift sergeant with no supervisory responsibility.

On cross-examination, the chief admitted that only the dispatchers may work two different shifts within the same week, but no other sergeants do. Chief Bican also agreed that the relief sergeant represents a unique position, and he did not dispute the fact that the present schedule "takes a toll" on the relief sergeant. However, he further indicated that he has offered four, ten-hour afternoon shifts as the work schedule for the relief sergeant. The City contends that it simply does not need to increase its economic burden; there are no administrative and/or scheduling responsibilities for the relief sergeant to attend to; and in the event relief pay should be granted, no such pay should occur on the one day each week the relief sergeant works with a regular shift sergeant.

The fact-finder recognizes that the relief sergeant is a "unique position." There is no comparable position shown by either party, and it is equally difficult to find any evidence of the statutory criteria which might guide a recommendation on this issue. It is noted that balanced against the rather arduous shift changes, is the fact the occupant of the relief sergeant position was not shown to have any of the administrative or scheduling responsibilities attendant with the normal shift sergeant position, yet he receives compensation at the sergeant rate of pay. Further, the ability to alleviate the numerous shift changes for the relief sergeant rests with the City as suggested by the testimony of the chief of police. In sum, for the two

year duration of the current agreement, no changes in the rate of pay for the relief sergeant position are hereby recommended.

**Final Recommendation**

It is the fact-finder's final recommendation that the Union's proposal for additional compensation for the relief sergeant position should not be included in the agreement.

**Issue 5: Article XXI - Longevity**

The Union proposes to increase longevity payments for employees of twenty-years service to \$2,000 from the current \$1,500 for employees with fifteen years or more of service. It reasons that the average age of employees in the department is low, and retirement is generally achieved after twenty-five years of service. The rationale, not surprising, is that long-term employees should be rewarded, and due to the relative youth in the department such a proposal if adopted would have no significant economic impact as it would only apply to three employees.

The City counters that the proposed increase seeks an unacceptable increase in longevity for the twenty-year and above employee by 33 percent. It is a wholly unjustified increase which, for the three employees affected by the proposal, is tantamount to a 1½ percent wage increase in each year of the agreement. Finally, the City's longevity schedule is higher than other comparable departments.

The fact-finder examined the comparable data with respect to longevity, and some departments are higher, some lower. The Union is somewhat disingenuous in its approach which looks only at the longevity dollars generated at the twenty year mark, rather than the accumulation of longevity payments over the course of the longevity schedule. When viewed in this fashion, it is apparent to the fact-finder that some departments are above, and some below the City in longevity. There is no evidence, however, which persuades the fact-finder that a change in the current longevity schedule is warranted at this time.

#### Final Recommendation

It is the fact-finder's final recommendation that the Union's proposal to modify the longevity schedule contained in Article XXI should not be incorporated into the collective bargaining agreement.

#### Issue 6: Article XIV - Sick Leave Bonus

Under the current language of the agreement, an employee is granted one bonus day off with pay for not using sick leave time in any quarterly period, January through March, April through June, July through September and October through December. The Union proposes to add an additional bonus day off if an employee uses no sick time during the calendar year as tentatively agreed to between the parties on December 19, 1996. The current contract language has been in the collective bargaining agreement between the parties for ten years, and

represents a method to encourage attendance. There is no evidence of abuse of the sick leave bonus in the department.

In contrast, the City wants to eliminate this contractual provision in its entirety. Sick leave is meant to be an insurance policy for non-job related injuries, rather than a means to accrue personal days. It highlights what it classifies as liberal time off in the agreement for holidays and vacations. Moreover, the preponderance of comparable cities do not grant this kind of bonus. Employees who are sick should not be tempted to come to work simply to gain additional personal time off. A debt of sick leave bonus has built up, and despite the suggestion of Sgt. Chilcott that time off should be offered in lieu of pay to rectify the situation, the City urges that compensatory time off will only trigger additional costs via overtime. However, the Union counters the City simply wants to reverse itself from what had been agreed to in the tentative agreement, and invoke a wholesale change in sick leave bonus.

Even the Union's witness, Sgt. Chilcott, recognized that there is a problem with the accrual of unused, sick leave bonus. Nevertheless, the Union's proposal seeks to add to the sick leave bonus controversy by affording another way to earn one additional bonus day off with pay by non-use of sick leave. The fact-finder recognizes that regardless of the duration of such a provision in past collective bargaining agreements, the sick leave bonus in this case appears as nothing more than a mechanism to transfer additional monetary payments to bargaining unit employees in lieu of appropriate wage increases. In 1996 alone, the City made bonus sick leave payments in the amount of \$8,785. (City Ex. 4).

Sick leave earned under the terms of the agreement should be utilized when needed without fear of retaliation, or anxiety over the loss of bonus payments currently provided for under Article XIV of the agreement. The abuse of sick leave is already agreed by the parties to constitute just and sufficient cause for discipline under Article XIII, ¶13.07. Without evidence of the economic justification for or proof of the mutual benefit from the breadth of the current contract language on this issue, the fact-finder determines that some change is needed. Tentative agreements are what their name implies, and as such they may be predicated on specific resolution of other economic or non-economic issues. When final agreement has not been reached, such agreements may have little or no probative value when subsequently repudiated by one party or the other.

To award the non-use of sick leave to the extent currently provided under the agreement strikes the fact-finder as clearly excessive and unwarranted. Change does not mandate the complete and total abolishment of sick leave bonus overnight, and modification of the current language is hereby recommended for the two years of the agreement.

#### Final Recommendation

It is the fact-finder's final recommendation that Article XIV, ¶14.01 pertaining to sick leave bonus be modified to read, as follows:

- 14.01 Each employee shall earn one (1) bonus day off with pay for not using sick leave time in any quarterly period. Quarterly periods shall be January through March, April through June, July through September and October through December. However, no employee shall be granted more than two (2) bonus days off with pay in a single calendar year, and

bonus sick leave shall not be carried over from one calendar year to another.

**Issue 7: Article XVII - Holidays**

Under the current contract language, employees receive holiday pay for the equivalent of thirteen days, including one-half days for Christmas Eve and New Year's Eve, and two personal days. The Union submits the City entered into a tentative agreement which effectively added one additional paid holiday, but it now proposes to reduce the paid holidays to eleven days. The Union argued that it received additional holidays in the past in lieu of a pay raise, including 1993. In 1985, for example, the bargaining units received only a two percent increase in pay and two personal days off. Since then, however, two and one-half holidays have been added.

The City urges that the tentative agreement to add an additional holiday was predicated upon a 2.8 percent wage increase. At hearing, the City submitted that the 13 holidays provided to the bargaining units are more than the number of holidays enjoyed by most other employees doing comparable work. In response to the fact-finder's request to clarify its submission with regard to the comparable data's inclusion or exclusion of personal days in order to make a more accurate comparison, the following data relative to the comparable cities identified by the fact-finder was submitted.<sup>7</sup>

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7. See correspondence from Joseph Lencewicz, dated September 4, 1997.

<b>CITY</b>	<b># of Holidays</b>	<b># of Personal Days</b>	<b>Total Days</b>	<b>Premium Pay</b>
BRECKSVILLE	11	0	11	11 days @ 1½ premium + day off w/pay for ea. holiday wrkd.
BROADVIEW HEIGHTS	10	2 <sup>8</sup>	12	8 days @ 1¼ premium + day off
MIDDLEBURG HEIGHTS	11	2	13	None
PARMA HEIGHTS	12	0	12	5 days at 1½ premium
STRONGS-VILLE	11	0	11	None
<i>North Royalton</i>	<i>11</i>	<i>2</i>	<i>13</i>	<i>2 days @ 1½ premium</i>

When the comparables are viewed in this format, it becomes clear that some employees receive more holidays, others less. Moreover, while several jurisdictions afford no premium pay for holidays, several provide substantially greater compensation to comparable bargaining units. Viewing the totality of the evidence, the fact-finder concludes that no change in the current holiday language is warranted.

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8. Full-time employees hired prior to January 1, 1988, are entitled to the two personal days off per year with pay.

Final Recommendation

It is the fact-finder's final recommendation that Article XVII on Holidays retain the current contract language.

Issue 8: Article XXIII - Educational Pays

The Union proposal seeks to equalize the educational pays for sergeants and patrolmen. It initially proposed a tuition and book expense reimbursement provision which was withdrawn at hearing. Currently, patrolmen who receive a training certificate or equivalent attesting to satisfactory completion of all law enforcement courses offered towards an associate degree in law enforcement receive \$200 annually, or \$400 annually if the employee has received an associate degree in law enforcement. Sergeants, on the other hand, receive \$250 and \$500 for identical educational achievement.

The City seeks to maintain the status quo, although it does not like the situation. It desires to avoid any increase in money which would exacerbate the problem. It also notes that of the comparables, three do not provide any educational pay. Parma Heights pays \$200 for an associate or bachelor degree, while Middleburg Heights pays \$400 for a training certificate, \$650 for an associate degree, \$900 for a bachelor degree, and \$1,150 for a graduate degree. (City Ex. 2, Tab 18).

If the City agrees, even reluctantly, to provide educational pay to the employees within each bargaining unit, the fact-finder can discern no rational basis to differentiate between the

value assigned to a more highly educated law enforcement work force based solely upon rank.

The total cost to the City of educational pay equalization using the 1996 pay data will be \$1,200. Further, if the current educational payments are "suspect" because of questions the City may have as to whether they are being made for degrees unrelated to law enforcement training and/or education, that strikes the fact-finder as an enforcement and/or application problem with the current language, rather than a defect in the language itself. No alternative language was offered by the City.

#### Final Recommendation

It is the fact-finder's final recommendation that Article XXIII of each collective bargaining agreement, entitled "Educational Pays," shall provide, as follows:

- 23.01 An employee who has received a Training Certificate or equivalent attesting to the satisfactory completion of all law enforcement courses offered towards an Associate Degree in Law Enforcement, shall receive additional pay in the amount of Two Hundred Fifty Dollars (\$250.00), annually, which shall be payable in the last pay period in November of each year.
- 23.02 An employee who has received an Associate Degree or college credits equivalent to an AA in Law Enforcement, shall receive additional pay in the amount of Five Hundred Fifty Dollars (\$500.00), annually, which shall be payable in the last pay period in November of each year.

**Issue 9: Article XXVII - Employee Rights**

During the fact-finding hearing, there was considerable discussion concerning additional language proposed for Article XXVII in each agreement. The parties agreed to new contract language which shall be inserted in the collective bargaining agreement, as follows:

- 27.09 Whenever an employee receives a written reprimand or when other written disciplinary action is taken which will appear in the employee's personnel file the officer shall be provided a copy.
- 27.08 Upon completion of an investigation of a complaint against an employee, the employee shall be notified.

The Union's proposal concerning the use of polygraph examinations was held in abeyance, and having heard nothing further from the parties, the fact-finder declines to make any recommendation with respect to that proposed language.

**Issue 10: Article XVIII - Vacations**

The collective bargaining agreements currently provide that vacation time cannot be carried over from one year to another without the express written authorization of the City. However, after completing twenty years of service a patrolman may reserve up to two weeks of vacation per year not to exceed eight weeks, and a sergeant may reserve up to one week of vacation per year not to exceed five weeks, which vacation may be taken off as early retirement. The Union proposal seeks to permit employees with fifteen years of service to

reserve two weeks of vacation not to exceed eight weeks which may be taken as early retirement.

The fact-finder agrees with the City that such a proposal appears to run contrary to the notion of longevity payments; the Union's proposal will materially boost the costs of retirement which already include sick leave buyout and accrued vacation; the proposal is wholly without support from the comparable jurisdictions; and the current language already provides the bargaining unit members with the ability to reserve some vacation for early retirement.

#### Final Recommendation

The fact-finder rejects the Union's proposal to modify ¶18.05 of Article XVIII, entitled "Vacations."

#### Issue 11: Article XXX - Promotions

The Union proposes a change to the current language of Article XXX concerning promotions in accordance with a tentative agreement reached on January 28, 1997. Current contract language requires the Civil Service Commission to furnish a list of the three highest scoring candidates on the promotional examination. The examination score counts as sixty percent of the employee's composite score. The top three candidates are evaluated by the chief of police on behalf of the City, and this in-house evaluation counts as ten percent of the

composite score. An assessment center performs an additional evaluation of the candidate, and the resulting score comprises the remaining thirty percent of the employee's composite score.

The Union proposal seeks to change this procedure so that the job evaluation performed by the chief (and mayor) is completed first, and the results of that evaluation are then sealed. The promotional examination would then be administered, and the list of three provided to an assessment center for evaluation. The relative weight of the evaluations and examination as to the composite score will remain the same.

As noted by the City, this proposal by the Union contains significant administrative drawbacks and would incorporate added expense and delay into the promotional process without the slightest assurance of greater fairness and equity. By its terms, the Union's proposal would require the mayor and chief to interview every single applicant for promotion despite the fact that many may not pass the promotional examination. Even if an applicant should pass the promotional examination, only the three candidates with the highest scores are even to be considered for promotion. As noted by Chief Bican at hearing, it takes days to perform a proper evaluation of candidates, and "it does not make sense to evaluate somebody who does not pass the examination." Finally, there is no evidence that the chief's evaluation altered the ranking of applicants in the last round of promotions by his input worth ten percent of the composite score.

In sum, the fact-finder concludes that the Union's proposal offers no discernible improvement over the current contract language on promotions, and the same cannot be recommended.

**Final Recommendation**

The fact-finder rejects the Union's proposal to modify Article XXX, entitled "Promotions," and current contract language shall be maintained.

**Issue 12: Article XXXIX - Disciplinary Procedure<sup>9</sup>**

Under the terms of the current agreement, discipline assessed against an employee shall not be implemented until either: 1) the matter is settled, or 2) the employee fails to file a grievance within the time frame provided by this procedure, or 3) the penalty is upheld by the arbitrator or a different penalty is determined by the arbitrator. (Article XXXIX, ¶39.06). The Union urges that confusion has arisen over the implementation of this contract language by reason of the fact that in practice discipline has been imposed only after the Step 3 hearing before the mayor under the grievance procedure contained in Article XL of the agreement, or when an arbitrator has ruled on the disciplinary action.

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9. There was a question at hearing as to the scope of the issue pertaining to disciplinary procedure. The fact-finder is bound by the settlement agreement between the parties dated June 17, 1997, which specifically refers to ¶39.06 of this article, and no other provisions of Article XXXIX will be addressed.

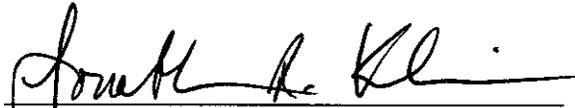
The chief agreed that historically, discipline has not been imposed prior to the Mayor's hearing or a subsequent arbitration ruling. As a consequence of the delay in the process, considerable efforts to affect the disciplinary decision are employed, and often political pressure is brought to bear. The City argues the current language precludes it from taking immediate disciplinary action, and undermines the administration's ability to effectively manage the department.

The fact-finder agrees with the City that the potential delay in the implementation of discipline may be too lengthy. Employing the time frame set forth in the grievance procedure to its fullest extent, a Step 3 decision may take approximately thirty days from receipt of the notice of discipline. Arbitration hearings and awards take far longer.

However, inasmuch as the scope of the issue was so narrowly defined, to recommend the language proposed by the City would conflict with other language contained in Article XXXIX over which the fact-finder has no jurisdiction. See ¶¶39.08 and 39.12. Even the Union's proposal by which it seeks to clarify the intent of ¶39.06 so as to correspond to the actual practice of not imposing disciplinary penalties until the Step 3 meeting, is precluded from implementation by the conflicting language of ¶39.08. For these reasons, the fact-finder must reject the proposals of both parties on this issue.

#### Final Recommendation

The current contract language of Article XXXIX, ¶39.06 shall be maintained.



JONATHAN I. KLEIN, FACT-FINDER

Dated: December 5, 1997

**CERTIFICATE OF SERVICE**

Originals of this Fact-Finding Report and Recommendations were served upon Frank G. Bolmeyer, Esq., Sammon & Bolmeyer, 1160 Rockefeller Building, 614 Superior Avenue, N.W., Cleveland, Ohio 44113-1311, and upon Joseph F. Lencewicz, J. F. Lencewicz & Associates, Suite 303, 45 East Washington Street, Chagrin Falls, Ohio 44022, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 5th day of December 1997.



JONATHAN I. KLEIN, FACT-FINDER