

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS**

STATE EMPLOYMENT  
RELATIONS BOARD

MAR 10 9 40 AM '97

**REPORT & RECOMMENDATIONS  
OF THE FACT FINDER**

IN THE MATTER OF:

**City of Garfield Heights**

*(Employer)*

*-and-*

**Fraternal Order of Police**

**Lodge No. 67**

*(Union)*

Case No. **96-MED-09-0830**

**96-MED-09-0831**

**HEARING:**

As the result of mediation sessions held on December 18, 1996 at the Cleveland Marriot South Motel in Independence, Ohio and an January 7, 1997 and January 21, 1997 at the Employer's facility in the City of Garfield Heights, Ohio.

**APPEARANCES:**

*On Behalf of the Union:*

Robert M. Phillips  
Dennis Welch  
Robert Sacrett  
Gary Wolske  
Larry Szczepanski  
Paul Mazzola

Attorney  
Patrolman  
Sergeant  
Lieutenant  
Patrolman  
Detective

*On Behalf of the Employer:*

Marc J. Bloch  
Thams P. Murphy

Attorney  
Chief of Police

**Gregory James Van Pelt**

Fact Finder

2203 Murray Hill Road

Cleveland, Ohio 44106-2640

## SUBMISSION

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective December 4, 1996.

An attempt was made to mediate issues at impasse between the Parties on December 18, 1996. Further mediation sessions were held on January 7, 1997 and January 21, 1997. During the discussions, the Parties tentatively agreed to resolution of a number of issues previously at impasse. The proceeding recommendations are the result of that mediation process.

## ISSUES AT IMPASSE

The Parties initially identified eleven issues at impasse:

- I. Article XII - Employee Rights
- II. Article XX - Overtime, Call-In Pay and Court Time
- III. Article XXI - Holidays
- IV. Article XXIII - Sick Leave
- V. Article XXVI - Longevity
- VI. *Perfect Attendance\**
- VII. *Shift Differential\*\**
- VIII. Firearm Proficiency Allowance
- IX. *Education Pay\*\*\**
- X. Field Training Officer
- XI. Injury Leave

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\*Withdrawn or settled

## **BACKGROUND**

The City of Garfield Heights is unusual in that the wages paid its Police Officers are provided through a "me-too" Charter provision. By means of that provision, the City's Police wage scale is established according to the rates paid officers in several surrounding communities. Moreover, any additional funds needed to afford parity are likewise authorized and levied by the legislation. Accordingly, wages and the City's ability to pay them were not at issue here.

In part because the Charter provision eliminates the often difficult bargaining over wages, and in part because the Parties involved hold each other in professional esteem and mutual respect, the negotiations were characterized by unusually good faith in the bargaining process. This is not to say, however, that all issues were readily accepted by both Parties.

The bargaining unit here is split between Patrol Officers and promoted personnel, including Sergeants and Lieutenants. Naturally, each group within the bargaining unit represented perspectives affecting similarly-situated bargaining unit members. The result of this amalgam was discussion of a range of issues, some of which were ultimately withdrawn; some of which were modified; some of which were accepted. As a product of the negotiating sessions, the following recommendations reflect the direction of the Parties and the findings of the Factfinder.

## **ARTICLE XXII** **EMPLOYEE RIGHTS**

Throughout the negotiations, the FOP expressed some concern regarding the handling of unsubstantiated complaints registered against officers, and at present retained in their personnel files. The maintenance of such complaints, even when unsubstantiated, was felt by Officers to unjustly prejudice review of their files in disciplinary and legal matters. Legal and liability considerations led the City to maintain that some record of even unsubstantiated complaints was necessary. The Parties agreed to resolve these difficulties through joint discussions following ratification of the Agreement, and the following contract language is therefore recommended:

- Section 1 - *The personnel file for employees shall be maintained under the custody and control of the Chief of Police or his designee. Upon written request to the Chief, an employee shall have the right to review their own personnel file once every year and prior to any disciplinary meeting/hearing. A minimum of twenty-four (24) hours notice is required when requesting said review.*
- Section 2 - *Employees who are the subject of investigations of any nature shall be afforded their constitutional rights as required by law, including Miranda and Garrity rights. Investigations shall be done at reasonable times and places and shall be conducted in a manner consistent with professional law enforcement standards.*
- Section 3 - *While employees may not alter any documents reviewed in their personnel file, they may offer written clarification, explanation or rebuttal to any of the file's contents by following the departmental chain of command.*

**ARTICLE XX**  
**OVERTIME, CALL-IN PAY AND COURT TIME**

The following contract language is recommended:

- Section 1 - *All employees, for work performed in excess of the regular eight (8) hours per shift when approved by the Chief, shall be compensated, at employee's election, either at (a) the rate of one and one-half (1 ½) times the employee's regular hourly rate for all overtime or (b) compensatory time computed at the rate of time and one-half to be taken in the future as approved by the Chief. Compensatory time shall be accumulated and used in accordance with the Fair Labor Standards Act and regulations promulgated pursuant to it. Compensatory time may be cashed in once per year during the first full pay period in December. No less than twenty (20) nor more than one hundred (100) hours shall be cashed in per calendar year.*

\* \* \*

- Section 4 - *Employees assigned as "Field Training Officers" shall be paid an additional One (1) hour for each shift worked in such capacity, to be paid at the end of the training cycle. Compensation may be at the Employee's regular hourly rate, or taken as compensatory time off.*

**ARTICLE XXI  
HOLIDAYS**

The following contract language is recommended:

**Section 2** - *In addition to the benefits provided in Section 1, each employee shall be compensated at a rate of one and one-half (1 ½) times the employee's regular hourly rate for each hour worked if they are required to work by the Chief on Independence Day, Memorial Day, Thanksgiving Day, Christmas Eve, Christmas, New Year's Eve or New Year's Day.*

**ARTICLE XXIII  
SICK LEAVE**

The following contract language is recommended:

**Section 10** - *Upon retirement, death or leaving the service of the employer, a full-time employee shall be entitled to receive a cash payment equal to his hourly rate of pay at retirement multiplied by fifty percent (50%) of the total number of accumulated but unused sick leave hours earned by the employee as certified by the Chief. In the case of death of the employee, the benefit provided under this Section will be given to his family.*

**ARTICLE XXVI  
LONGEVITY**

The following contract language is recommended:

**Section 1** - *The Employer will annually pay employees in accordance with the following longevity schedule for their years of full-time, continuous service to the City:*

<u>Years of Service</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
<i>5 to 10 years</i>	<i>\$800.</i>	<i>\$900.</i>	<i>\$1,000.</i>
<i>10 to 15 years</i>	<i>\$900.</i>	<i>\$1,000</i>	<i>\$1,100.</i>
<i>15 to 20 years</i>	<i>\$1,000.</i>	<i>\$1,100</i>	<i>\$1,200.</i>
<i>20 years or more</i>	<i>\$1,100.</i>	<i>\$1,200.</i>	<i>\$1,300.</i>

**ARTICLE XXVIII**  
**UNIFORM ALLOWANCE**

The following contract language is recommended:

**Section 1** - *Effective upon ratification, all employees shall receive Seven Hundred Twenty-Five Dollars (\$725.) as a uniform allowance. Effective July 1, 1998, all employees shall receive Seven Hundred Seventy-Five Dollars (\$775.) as a uniform allowance. Effective July 1, 1999, all employees shall receive Eight Hundred Fifty Dollars (\$850) as a uniform allowance.*

**ARTICLE XXXV**  
**HIGH RISK INJURY LEAVE**

The following contract language is recommended:

**Section 1** - *Whenever a full-time police employee during the lawful performance of assigned duties, including training, as a direct result of a "high risk" situation or circumstance, suffers injuries causing total disability for more than three (3) full work days, "high risk" sick leave may be granted in lieu of regular sick leave beginning with the fourth work day taken for sick leave during such total disability, not to exceed ninety (90) calendar days. If, at the end of such ninety (90) day period, the employee is still totally disabled and unable to report for work, the "high risk" leave may, at the City's sole discretion, be extended for additional ninety (90) calendar day periods. "High Risk" sick leave shall not be deducted from the employee's accumulated sick leave account.*

**Section 2** - *"Total Disability" shall mean the physical inability of an employee to perform regularly assigned duties at the station and/or otherwise engage in any other gainful employment.*

**Section 3** - *In order to qualify for "High Risk" sick leave, the following criteria shall be certified by the Chief of the Division and approved by the Safety Director and the Mayor:*

- 1) *The injuries are the direct result of:*
  - (a) *An accident occurring when lights and sirens are being used pursuant to Division rules and regulations;*
  - (b) *A non-chargeable automobile accident occurring during the scope and course of employment;*

- (c) *A fight, effecting an arrest or controlling a domestic violence situation, or during a SWAT team call-out for any critical incident;*
  - (d) *The use of a firearm, knife, chemical agent, impact weapon, or other dangerous weapon; or*
  - (e) *An injury which occurs while on the street as a result of directing traffic or investigating a traffic violation or traffic accident.*
- 2) *The event herein described must be duly logged and a written report submitted to the Chief's Office during the shift in which it occurs, or as soon thereafter as practicable.*
  - 3) *Medical evidence has been provided within a reasonable period of time [no more than fourteen (14) days] from the employee's treating physician and/or the City physician, establishing the cause, nature and extent of the injuries; the likelihood of the term of disability; and the medical probability of full recovery and eventual return to work.*
  - 4) *The Employee shall have applied for and have been found eligible to receive coverage under Worker's Compensation of Ohio and the Employee signs a waiver and assignment to the Employer for amounts payable under such Worker's Compensation for temporary total disability benefits, and for any other Employer-paid insurance benefits.*
  - 5) *The Employer shall have the right at any time during the process to request medical verification of the Employee's injury from his doctor. In addition, the Employer shall have the right, at its expense, to send the Employee to a doctor of its own choosing for medical verification. In the event there is a dispute between the Employee's physician and the City's doctor, the Parties agree to send the Employee to a third, neutral doctor, whose decision regarding the process will be final.*

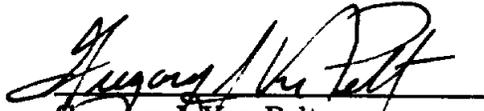
**Section 4 -** *In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief.*

**NEW ARTICLE**  
**FIREARM PROFICIENCY ALLOWANCE**

The following contract language is recommended:

- Section 1** - *During the term of this agreement, all Employees shall be required to complete the Firearms Requalification Program consistent with Ohio Revised Code Section 109.801, et seq. In order to receive the allowance set forth below, each Employee must meet or exceed the standards as contained within the provisions of the Revised Code referenced above.*
- Section 2** - *Satisfactory qualification shall be evidenced by a written letter or memorandum of qualification from the police department range or training officer to the individual Employee involved, and to the City.*
- Section 3** - *Upon evidence of satisfactory qualification, each member shall be entitled to a Seven Hundred Dollar (\$700.) proficiency allowance, payable in the first full pay period in April of each contract year.*

Respectfully submitted,  
February 19, 1997.

  
Gregory J. Van Pelt  
Factfinder