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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between
FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

and

ERIE COUNTY SHERIFF

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**FINDINGS AND
RECOMMENDATIONS**

CASE NO.: 96-MED-10-0872

March 11, 1997

Charles Z. Adamson, Fact-Finder

Appearances

For the Fraternal Order of Police, Ohio Labor Council, Inc.:

Phil Hatch
607 Lee Street
Marion, Ohio 43302

For the Erie County Sheriff:

Terry R. Griffith, Esq.
Assistant County Prosecutor
Erie County Prosecutor's Office
Sandusky, Ohio 44870

The undersigned was appointed Fact-Finder in this dispute by the State Employee Relations Board (SERB) on November 29, 1996 pursuant to Section 4117-9-05 of the Administrative Code. The bargaining unit involved herein consists of all non-deputized dispatchers employed by the Erie County Sheriff's Department.

I.

HEARING

A hearing was held on February 27, 1997, in Sandusky, Ohio. Both parties attended the hearing and elaborated upon their positions regarding the remaining issues at impasse through their representatives as listed on the preceding page.

II.

MEDIATION

After a period of mediation the case proceeded to hearing. The issues remaining at impasse are the following:

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|----------------------------------|-------------------------------|
| 1. Holidays | 9. Wages |
| 2. Sick Leave | a. Rates of Pay |
| 3. Personal Days | b. Shift Premium |
| 4. Leaves of Absence Without Pay | c. Longevity Pay |
| 5. Hours of Work/Overtime | d. Call-In Pay |
| 6. Maintenance of Practice | e. Court Time Compensation |
| 7. Uniform Maintenance | f. Compensatory Time-Overtime |
| 8. Weather Closings | g. PERS Pickup |
| | h. Severance Pay |
| 10. Outside Contractors | |
| 11. Working Outside of Class | |
| 12. Front Door | |
| 13. Prescription Card | |

III.

CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(e) and Ohio Administrative Code Rule (4117-9-05(J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements 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.

ISSUES AND RECOMMENDATIONS

HOLIDAYS

1. The Union's Position

At present dispatchers who work on holidays receive additional holiday premium pay of eight (8) hours compensation in addition to their regular pay for that date. The Union believes that employees working on holidays should be paid their holiday premium pay at a time and a half rate. In addition, it asserts that the dispatchers should receive Easter Sunday as a holiday, as well as the day after Thanksgiving. It claims that other county employees, except for the Sheriff's Department, receive the day after Thanksgiving as a holiday.

2. The Employer's Position

The Employer opposes the Union's time and a half holiday premium proposal. It asserts that this is not an appropriate method of compensation for holidays when the dispatcher unit works under a twenty four (24) hour day, seven (7) day operation. It also opposes the two additional holidays indicating that these holidays are not received by corrections officers.

3. Findings and Recommendations

The dispatchers who work in the county jail are employed on a twenty-four (24) hour, seven (7) day operation. The current holiday premium provision adequately compensates unit members for working on holidays. In addition, since the correction

officers do not receive the two additional holidays sought by the Union there appears to be no basis to grant them to the dispatchers. Accordingly, I recommend that all of the Union's holiday proposals not be adopted.

SICK LEAVE

1. The Union's Position

The Union asserts that the sick leave provision should be amended to reward employees who do not use any sick leave in a period of three (3) consecutive months with one (1) extra personal day off for each three (3) month period where sick leave is not taken. It states that this is an attendance incentive that appears in a number of public employee contracts.

As for the Employer's sick leave proposals, the Union asserts that the current contract language is adequate to deal with the reasons for illness as well as any problems in respect to misuse of sick leave. It maintains that the present policies, as set forth in the last collective bargaining agreement, adequately address all sick leave issues.

2. The Employer's Position

The Employer proposes language allowing it to request a medical examination for an employee prior to returning to work from sick leave/injury leave. Currently, contract language limits such examinations to situations where the employee is on medical leave. In addition, the Employer proposes a two (2) hour call in requirement for sick leave or other emergency leave to replace the current contract language requiring that an employee

call in one (1) hour prior to sick leave or other emergency leave. According to the Employer, the one (1) hour call in requirement does not provide sufficient time to replace employees who notify the Employer prior to taking sick leave or other emergency leave.

The Employer further proposes new language to provide for progressive discipline for repeated use of sick leave without physician slips.

Finally, the Employer opposes the Union's sick leave bonus reward provision as being an additional cost that is not warranted. It would also cause staffing problems according to the Employer.

3. Findings and Recommendations

The Union has not substantiated its case for granting employees a sick leave bonus. Accordingly, I recommend that this proposal not be approved.

The Employer made several proposals to change the sick leave provision in the contract. First, I find that the Employer has not sustained the burden of showing that medical examination provisions in the contract should be expanded to requiring an examination for an employee prior to returning to work from sick leave/injury leave. Accordingly, I recommend that this proposal be rejected.

The Employer's proposal requiring a two (2) hour call in for a sick leave or other emergency leave replacing the current provision requiring a one (1) hour call would assist the Employer in attempting to replace employees who called in on sick or emergency leave. Accordingly, I recommend this proposal.

Finally, as for the Employer's proposal for a system of progressive discipline for repeated use of sick leave without physician slips, I find that the Employer has not substantiated the need for this proposal and recommend that it not be adopted.

PERSONAL DAYS

1. The Union's Position

The Union takes the position that employees should be allowed five (5) personal days off rather than the current contractual three (3) days off.

2. The Employer's Position

The Employer opposes the Union's request for two (2) additional personal days. It asserts that granting the Union's proposal would result in the unit having the most personal days off in the State of Ohio. In addition, this proposal would add additional costs to the contract.

3. Findings and Recommendations

The Union has not substantiated its position as to increasing the number of personal days in the contract. Accordingly, I recommend that its proposal not be adopted.

LEAVES OF ABSENCE WITHOUT PAY

1. The Union's Position

The Union asserts that it is sufficient that both parties agree in the contract to abide by the provisions of the Family and Medical Leave Act. It indicates concern about the personal privacy of employees being invaded by medical records not being kept

confidential when documentation is provided in accordance with the Employer's proposal. Consequently, its agreement to conform with the law is deemed to be the appropriate response to this issue.

2. The Employer's Position

The Employer would like to include in Article 19, Section 1, specific language as to supporting medical documentation, including prognosis of the serious health condition and the date of anticipated return to duty without restrictions. It asserts that these requirements are set forth in the Family and Medical Leave statute. If the detailed statutory requirements were included in the contract, employees applying for family and medical leave would know exactly what is required of them in the way of certification

3. Findings and Recommendations

Both parties agree that Section 19.01 of Article 19 should be entitled "Family and Medical Leave" and that the reference to the probationary period in this paragraph should be deleted. They made strong arguments in support of their positions. The Employer indicated that the Family and Medical Leave Act provisions would be easier to administer if the contract contained specific language regarding supporting medical documentation. On the other hand, the Union expressed grave concerns as to personal privacy issues arising out of the failure to insure confidentiality of medical records. The Family and Medical Leave Act sets forth in detail the requirements for substantiating documentation. The Union is required, and agrees, to abide by the Act's provisions. Since the

documentation requirements are set forth in the statute, I do not find it necessary to repeat them in the collective bargaining agreement. Accordingly, I recommend that the Employer's proposal in this respect not be adopted.

HOURS OF WORK/OVERTIME

1. The Union's Position

The Union proposes that the last sentence in Article 20, Section 1 - "Sick leave shall not be counted towards hours worked for purposes of overtime payments," shall be deleted. It further proposes that the contract establish permanent shifts based on departmental seniority with employees bidding for shifts twice a year. In addition, it proposes that days off on shift be regulated by departmental seniority. Finally, it proposes that overtime be offered to full-time unit employees prior to it being offered to part-time employees.

The Union feels that all time worked, straight time and overtime, should be counted toward sick leave. The current practice of bidding for shifts in accordance with seniority should be memorialized in the contract for the unit's protection in the future. Also, it wants to make certain that the contract protects employees from part-time employees being assigned overtime that could have been offered to full-time employees.

2. The Employer's Position

The Employer opposes the Union's sick leave proposal on the grounds that it would place too much of a burden on the department's payroll clerk. It also opposes the

Union's proposal that all overtime work should be offered to full-time bargaining unit employees before being offered to part-time employees and the Union's proposal of establishing permanent shifts on a semi-annual basis of seniority. The Employer notes that the unit involved herein consists of only six (6) employees and maintains that a unit of this small size requires that management have flexibility both as to shift assignments and the use of part-time employees. It cannot grant provisions in the contract to the Union which an employer with a larger work force might consider possible.

3. Findings and Recommendations

The key factor in considering the Union's proposals in this respect is the small size of the unit. Since there is only one payroll clerk dealing with payroll for both the dispatchers and correction officers, placing an additional burden on the clerk to factor in sick leave while calculating overtime is not warranted. Furthermore, considering the size of the unit the Union has not substantiated its position as to shift preference bidding and assignment of overtime. Accordingly, I recommend that all three Union proposals as to Article 20, Hours of Work/Overtime not be adopted.

MAINTENANCE OF PRACTICE

1. The Union Position

The Union takes the position that the maintenance of current practice provisions, Article 24, Section 4, should be retained for the reason that there is nothing wrong with it and consequently it should not be changed.

2. The Employer's Position

The Employer proposes the deletion of the maintenance of current practice provision. It provides for the continuation of all policies and procedures currently in effect which are not specifically provided for in the collective bargaining agreement and which have not been amended or altered by the collective bargaining agreement "...unless changed circumstances dictate otherwise". The Employer asserts that the Union should bargain for each and every benefit. Since the parties have had a "zipper clause" in the collective bargaining agreement for the last twelve (12) years, this type of language is unenforceable according to the Employer.

3. Findings and Recommendations

The maintenance of current practice provision in the latest collective bargaining agreement between the parties exists in a number of collective bargaining agreements in both the private and public sector in a similar form. Whether or not the Employer's argument that the zipper clause in the collective bargaining agreement makes the maintenance of standards clause redundant, and whether or not the Employer is correct that this type of language is enforceable, is immaterial. Its inclusion in the collective bargaining agreement provides the Union with a sense of security. Accordingly, I do not recommend the adoption of the Employer's proposal to delete the maintenance of current practice provision.

UNIFORM MAINTENANCE

1. The Union's Position

The Union proposes that the \$3.80 per week dry cleaning fee be raised to a fee of \$5.00 per week paid on a bi-weekly basis. It would allow the cleaning of one uniform per week. It asserts that the cost of dry cleaning has increased and the unit members should be compensated in this respect.

2. The Employer's Position

The Employer opposes any increase in its compensating unit members \$3.80 for dry cleaning each week. It asserts the \$3.80 amount is sufficient since the proposed increase represents a substantial increase over the life of a three (3) year contract. It also points out that some uniforms are washable and don't require dry cleaning.

3. Findings and Recommendations

It is undisputed that the cost of dry cleaning uniforms continues to increase. The Union's proposal to raise the weekly dry cleaning fee from \$3.80 per week to \$5.00 per week is a reasonable one. Accordingly, I recommend its adoption.

WEATHER CLOSINGS

1. The Union's Position

The Union proposes that the practice of compensating employees at time and a half the hourly rate when there are weather closings of county offices should be reflected

in the collective bargaining agreement. It feels that the better resolution of this matter is to set forth the practice in the agreement rather than merely relying on the practice.

2. The Employer's Position

The Employer opposes the Union contract proposal. It bases its objection on the fact that the operation of the county jail is a twenty four (24) hour/seven (7) day operation and is not comparable to other county operations which do not operate on this schedule. Further, the Employer points out that corrections officers currently receive extra compensation for showing up when county buildings are closed because of weather, this practice having been in existence for the last two years.

3. Findings and Recommendations

Evidence indicated that for the last two years, dispatchers have been receiving extra compensation for showing up when county buildings are closed because of weather. Since this practice has been operating in a satisfactory manner, I see no necessity for incorporating a provision in this respect in the collective bargaining agreement. Accordingly, I recommend that the Union's proposal in this respect not be adopted.

WAGES-RATES OF PAY

1. The Union's Position

The Union proposes a five percent increase for the dispatchers for each year of the contract. It asserts that Erie County warrants comparison with Geauga County which has a comparable population of about 80,000 and also has a tourist industry. It notes that

police dispatchers at the top pay level in the City of Oregon receive a higher hourly rate than their counterparts in Erie County.

2. The Employer's Position

The Employer proposes that each bargaining unit employee shall receive the sum of \$250.00 in a lump sum payment in the last pay period in each of the three contract years. It opposes the Union's position of a five percent increase per year for each employee. It asserts that currently the dispatcher's unit is the highest paid county sheriff dispatcher unit in the State of Ohio, including those units which have several pay steps; the unit involved herein has no pay steps. The Employer notes that the City of Oregon police dispatcher contract has seven (7) pay steps. It asserts that the Sheriff's budget has increased 34.7 percent as a result of the most recent collective bargaining agreement. It maintains that if wages are continually raised eventually the Sheriff's Department will consume the majority of the Erie County general fund budget. Its estimate of the cost of the Union's wage proposal is \$49,400.00 over the life of the agreement.

3. Findings and Recommendations

The record reflects that in the last eight (8) years since 1988 unit employees have received substantial raises. According to the SERB Clearinghouse Benchmark Reports, the dispatchers are the highest paid dispatchers employed by county sheriff departments in Ohio, including units with a progression of a number of pay steps. Under these circumstances, neither a recommendation supporting the Union's five percent per year

increase, nor a recommendation as to the Employer's \$250.00 per year bonus for each of three (3) years is warranted. Accordingly, I conclude and recommend that the dispatchers receive a 2.5% raise for each year of the three (3) year contract.

WAGES-SHIFT PREMIUM

1. The Union's Position

The Union believes that the dispatchers shift premium should be raised from \$.05 per hour on the afternoon shift to \$.40 per hour. It proposes that the night shift premium be raised from \$.10 per hour to \$.80 per hour.

2. The Employer's Position

The Employer maintains that the current shift premium of \$.05 an hour for the afternoon shift and \$.10 an hour for mid-night shift is appropriate considering the current high rate of base pay. It notes that this provision has a potential to affect two thirds of the unit members if the Employer grants the Union's request to raise shift premiums. This would result in additional costs of \$4,368.00 for the evening shift and \$8,736.00 for the night shift for the term of the proposed contract.

3. Findings and Recommendations

The Union has not sufficiently substantiated the necessity for a change in the shift premium for the unit involved herein, in view of the current compensation of these employees. Accordingly, I recommend that the current shift premium for the dispatchers remain the same as the premium provision reflected in the last contract.

WAGES-LONGEVITY PAY

1. The Union's Position

Currently the following is the dispatcher unit longevity pay schedule:

<u>SERVICE</u>	<u>ANNUALLY</u>
6 years	\$166.00
13 years	312.00
20 years	520.00

The Union proposes the following longevity pay schedule:

0-5 years	None
6-10 years	425.00
11-15 years	550.00
16-20 years	675.00
21-25 years	800.00
26-30 years	850.00

2. The Employer's Position

The Employer asserts that the current longevity pay contract language should be maintained in the new agreement. It claims that this language is uniform in the rest of the county, and is either comparable to or exceeds, the longevity pay of similar units within the state. The Employer opposes the Union's increases in longevity at all steps, noting that it is economically unreasonable and damaging to the Sheriff's budget; it will cost \$2,624.00 for the life of the three (3) year contract, as well as having potential long-range costs in future contracts.

3. Findings and Recommendations

The Union's longevity pay proposal provides for substantial increases in longevity pay. This provision would also be at variance with a standard longevity provision currently applicable to all county employees. Because of the cost involved the undersigned is reluctant to recommend the Union's proposal to apply to a unit of employees that is currently well compensated. Accordingly, I recommend that the Union's proposal in this respect be rejected and that the longevity provision remain the same as the previous contract.

WAGES-CALL IN PAY

1. The Union's Position

The Union proposes a four (4) hour minimum call in time or actual time worked, whichever is greater. If the payment for call in work results in an employee working more than eighty (80) hours in a fourteen (14) day period, the hours exceeding eighty (80) hours would be paid at the time and one half rate.

2. The Employer's Position

The Employer proposes to maintain the current language in respect to call in pay which provides compensation for work in this status based on actual time worked. Currently, if the payment for the call in time results in the employee working more than eighty (80) hours in a fourteen (14) day period, the hours exceeding eighty (80) will be

paid at the time and a half rate. It opposes the Union's call in proposal in its entirety because of cost ramifications.

3. Findings and Recommendations

I find that a two (2) hour minimum call in time provision applied to this unit is fair and reasonable and it is recommended that it be adopted.

WAGES-COURT TIME COMPENSATION

1. The Union's Position

The Union proposes a four (4) hour minimum, or actual time worked, whichever is greater, for court time appearances.

2. The Employer's Position

The Employer opposes this provision asserting that the current compensation for actual time worked or a minimum of two (2) hours, whichever is greater, adequately deals with court time. Changing the minimum to four (4) hours would be another unnecessary cost addition to the contract.

3. Findings and Recommendations

It is concluded that the Union has not proved its argument to change the court time minimum pay. Accordingly, I recommend that the Union's proposal not be adopted and that the court-time provision remain the same as the provision in the latest contract.

WAGES-COMPENSATORY TIME-OVERTIME

1. The Union's Position

The Union proposes that the employees have the right to accumulate compensatory time instead of being paid overtime with the limitation as to accumulation of 120 hours per calendar year. It would be the employees' responsibility to indicate whether the overtime would be paid for a pay period, or allowed to be accumulated as compensatory time. Compensatory time could be used by an employee notifying the employer at least fourteen (14) days in advance of the date the time was to be taken by the employee. The Union asserts that this provision would allow flexibility for employees with families who would prefer the time off rather than being paid for the time.

2. The Employer's Position

The Employer asserts that because of the small size of the unit this provision would adversely impact on the manning of a 24 hour operation. It opposes this provision for this reason.

3. Findings and Recommendations

It is recognized that compensatory time is valued by employees with families who could use the extra time. However, the Union has not overcome the Employer's manning and staffing argument. Accordingly, this provision is not recommended for inclusion in the contract.

WAGES-PERS PICK UP

1. The Union's Position

The Union proposes that the Employer shall pickup 1/4 of the employees' PERS deduction for each year of the three (3) year contract. The Union supports its PERS pick up proposal by arguing that this is not an unique proposal since a number of collective bargaining agreements for police departments and sheriff departments throughout the State of Ohio provide for PERS pickups.

2. The Employer's Position

The Employer opposes the Union's PERS proposal. It asserts that this is an economic issue which results in an indirect wage increase. The cost of this benefit would be the equivalent to granting employees additional compensation each year. It points out that a PERS pick up plan is not utilized by any appointing authority or bargaining unit in Erie County.

3. Findings and Recommendations

It is apparent that any PERS pickup provision comes within the purview of wage increase. No PERS pickup plan is used by any Erie County appointing authority or is applied to any bargaining unit in the County. Accordingly, for this reason and because of the plan's substantial economic ramifications, I find that this proposal is not warranted and recommend that it be rejected.

WAGES-SEVERANCE PAY

1. The Union's Position

The Union proposes to change Article 27, Section 2, which provides for accrued sick time at the time of severance be paid at the rate of 25% of 960 hours, up to a maximum of 240 hours. It proposes that the accrued sick time be paid at the rate of 50% of the employee's accumulated hours. This would reward employees who do not use their sick leave.

2. The Employer's Position

The Employer proposes to maintain the current language in this respect. It is comparable to all other units employed by Erie County and comparable to other public employee benefits throughout the State of Ohio. Furthermore, since retirement or resignation is solely at the employee's option the Employer cannot make concrete plans for this situation.

3. Findings and Recommendations

The Union has not substantiated the need to change this provision so that one unit of employees would vary from Erie County practice this in respect. Accordingly, I recommend that this provision not be adopted.

OUTSIDE CONTRACTING

1. The Union's Position

The Union proposes to change Article 24, Section 3, so that it provides that the Employer and the County will agree not to have other persons or agencies perform work customarily and currently performed by bargaining unit employees. The current provision prohibits the contracting out of unit work to any other agency, but does not prevent the work from being assigned to other persons. The Union argues that granting this amendment will afford unit employees further protection against job erosion.

2. The Employer's Position

The Employer asserts that this provision is not necessary and that the current contract language affords adequate protection to unit employees.

3. Findings and Recommendations

The Union has not substantiated its case in respect to changing this contract provision. Accordingly, I recommend that the Union's proposal in this respect not be adopted.

WORKING OUT OF CLASS

1. The Union Position

The Union proposes that any time the dispatchers in the communication division are required to perform the duties of the records clerk they will be compensated at time and a half their regular rate for the time spent on record clerk's duties. The Union argues

that dispatcher's duties have increased because of the improvement in technology during recent years. As a result, an extra burden is placed upon the dispatchers when they also have to assume record clerk's duties. Consequently, they should receive extra compensation for performing the duties of the record clerk.

2. The Employer's Position

The Employer opposes this proposal indicating that the records clerk is a non-bargaining unit position compensated at \$9.22 an hour. Currently, the dispatchers are compensated at \$15.46 an hour. The Employer argues that the record clerk's duties are lower level duties as compared with the duties and responsibilities of the dispatchers. Compensating the dispatchers for performing lower level duties at time and a half their regular \$15.46 an hour rate is contrary to the current industrial relations practice of providing additional compensation for performing higher level duties, but not lower level duties.

3. Findings and Recommendations

The Union has not substantiated its case for paying a higher rate to the dispatchers for performing the lower level duties of the records clerk. Working at a lower level job performing simpler tasks and assuming less responsibility does not warrant additional compensation over and above the dispatcher's regular hourly rate. Accordingly, I recommend that the Union's proposal in this respect be rejected.

FRONT DOOR

1. The Union's Position

The Union proposes that a provision be added to the contract allowing the front door of the Sheriff's Office to remain unlocked during normal working hours. Currently, in addition to their regular duties, dispatchers operate a buzzer system where visitors are allowed entry into the jail premises. This is an additional duty besides their regular dispatching duties. The Union feels that it is unnecessary to require the dispatchers to perform this function between 8:00 a.m. and 8:00 p.m., the jail's normal working hours.

2. The Employer's Position

The Employer opposes this proposal. It asserts that one of the primary duties of the dispatcher as to the security of the jail is the releasing the front door to allow individuals to enter into the jail environment. It is an important function since the Sheriff's Office personnel's safety and security depend upon its performance. To permit access without control by unlocking the front door of the jail violates both state regulations and common safety procedures. The Employer notes that the Union requested this benefit during the last conciliation session involving this unit and the Union's request was not granted by the conciliator.

3. Findings and Recommendations

The Union's request for this provision is not recommended by the undersigned. Because of its nature the county jail must always be a secure environment. Granting this

provision would not provide the requisite safety and security that should be present at all times in the jail. Accordingly, this provision is not recommended for approval in the contract.

PRESCRIPTION CARD

1. The Union's Position

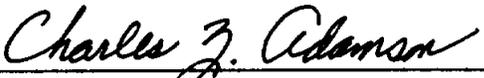
The Union proposes that the contract covering this unit contain a provision in its hospitalization and major medical section granting a prescription card to employees allowing them to obtain prescriptions by making a \$5.00 co-payment. The Union asserts that a number of public employee contracts throughout the state have provisions for employee co-payment for prescription drugs.

2. The Employer's Position

The Employer opposes the Union's proposal for a \$5.00 co-payment prescription card. It indicates that this would be an additional cost item that is not warranted under the circumstances.

3. Findings and Recommendations

Considering the total wage and benefit package afforded employees in the unit involved herein, the Union has not substantiated its case in respect to a \$5.00 co-payment prescription card. Accordingly, I shall not recommend approval of the Union's proposal in this respect.



Charles Z. Adamson
Fact-Finder

March 11, 1997
Date