

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

Nov 24 10 54 AM '97

In the Matter of Fact Finding Between:

City of Oakwood

and

S.E.R.B. Case No. 97-MED-08-0797

Fraternal Order of Police
Oakwood Local No. 107

APPEARANCES:

For the City:

John C. Lombard, Esq.
Coolidge, Wall, Womsley & Lombard
Dayton, Ohio

For the F.O.P.:

Peter J. Rakay, Esq.
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Dayton, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Background:

The City of Oakwood performs its public safety functions in a unique manner. Rather than maintain a separate Fire Department with fire suppression and emergency medical run functions, and a separate Police Department with traditional policing functions, as is typical, indeed almost universal, the City maintains a combined safety force: all Safety Department employees are expected to function as policemen, firemen, and emergency medical personnel. They work 24/48 hour schedules: twenty-four (24) hours on-duty and forty-eight hours off-duty.

In reaching the Recommendations made herein the Fact Finder has taken into consideration the criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. References in this Report to the current Contract are more accurately a reference to the parties' most recently-expired collective bargaining agreement, too cumbersome a phrase to keep repeating.

ISSUE NO. 1: ARTICLE 1. COOPERATION ["New" Paragraph 2)

Positions of the Parties and Evidence:

The current Contract provides that the parties will use their best efforts to furnish safety services in a proper and uninterrupted manner; achieve better understanding between the City, the bargaining unit employees and the Lodge; and promote mutual respect and fair dealing between the City, the bargaining unit employees and the Lodge. The City would retain this provision unchanged.

The F.O.P. proposes to retain current Contract language and add two additional paragraphs. The first additional paragraph would read as follows:

"The City shall take no action which unjustly and arbitrarily has an adverse effect on the rights, privileges, and working conditions enjoyed by the members at the present time. This would include, but is not limited to, ordering members to obtain paramedic certification unless mutually agreed upon."

The F.O.P. asserts it seeks "contractual protection regarding . . . retaliatory tactics." As for the proscription against mandating paramedic certification, the F.O.P. asserts that such certification is not one of the qualifications for employment and hence is unreasonable. The record reflects that a bargaining unit officer was recently directed to obtain paramedic training and certification.

The City retorts that paramedic services are an essential function of the Department. The City characterizes the F.O.P.'s proposal as analogous to "someone applying for a job as grounds keeper, but saying that he does not want to be made to cut the grass."

Rationale:

The record fails to reflect that existing contractual grievance and arbitration provisions and/or statutory unfair labor practice procedures are inadequate to address the F.O.P.'s concerns. Accordingly the F.O.P.'s proposed addition of a paragraph 2. to Article 1 will not be recommended.

Recommendation:

It is recommended that the parties retain current Contract language and not add the paragraph 2. that the F.O.P. proposes.

ISSUE NO. 2: ARTICLE 1. COOPERATION ["New" Paragraph 3]

Positions of the Parties and Evidence:

The F.O.P. would further add to Article 1. a new paragraph 3, reading as follows:

"It is the responsibility of the City to provide and maintain safe working conditions, tools, equipment, and work methods for all Safety Department members. No member shall be disciplined in any manner for initiating a complaint and/or grievance regarding safety and/or environmental conditions of their quarters."

The F.O.P. asserts that numerous safety concerns that it has have not been adequately addressed by the City, and a contractual springboard for grieving such concerns is necessary. Similar language is set forth in the Cincinnati firefighters contract, asserts the F.O.P.

The City resists the F.O.P.'s proposed language, characterizing same as a standard of strict liability, an impossible standard for employees engaged in safety force duties. The City also contends that the F.O.P.'s standard is so broad as to open the floodgates to grievances for every perception of a possible safety issue. The City counters with a proposal for both parties to mutually provide a work environment "free as practicable from recognized hazards," and a declaration that both parties and the employees will comply with all legally established safety and health requirements.

Recommendation:

The parties' relationship is a mature one and of longstanding. Yet prior Contracts have not contained an express commitment for either the City, the Union, or the employees to maintain safe working conditions. The inference is that, given the very nature of the safety work engaged in by the bargaining unit, the members,

their bargaining representative, and the City, are all sensitized to the need for a safe working environment, and all strive to attain it, with the consequence that no express contractual provision in the matter has been necessary. As for the City's proposal that the Union provide a safe work environment, I am uncertain as to what the City's proposal would have the Union do and I am uncertain as to what means the Union has available to it to meet the expectation of the City's proposed language. Suffice it to say that a case for such an express provision at this time has simply not been made out. All individuals and institutions covered by specific Federal, State, and City safety and health laws are of course required and expected to comply with said laws provisions, and any retaliation for complying or seeking compliance with same would be arbitrary and capricious and hence presumably grievable under the existing grievance/arbitration machinery. For those reasons neither parties' general safety proposals are recommended at this time.

Recommendation:

It is recommended that neither parties' general safety concepts be contractualized at this time.

ISSUE NO. 3: ARTICLE 7. TUITION REIMBURSEMENT

Positions of the Parties and Evidence:

The current Contract provides that contingent upon a passing grade or a B-, depending upon the grading system, the City will reimburse employees' tuition costs for job-related courses (as determined by the City) up to a maximum of \$800.00.

The City's proposal would maintain current Contract language except that it would increase the maximum annual reimbursement from \$800.00 to \$900.00 and it would add the following language:

"If the City determines a major is job-related, then any class taken in fulfilling requirements for that major will be eligible for reimbursement."

The City takes the position that its proposal is reasonable and that it is consistent with the practice of surrounding communities. Surrounding community data furnished by the City reflect that of those communities providing for tuition reimbursement a majority cap and/or pay less than 100% of tuition costs or both.

The F.O.P. would reduce eligibility to a "C" grade and provide for 100% tuition reimbursement. It points to Beaver Creek and Moraine collective bargaining agreements in support of its position. In light of tuition increases, some bump up is necessary.

The City argues that because of the phenomenon of grade inflation, a "C" grade for eligibility is simply too lenient. And a 100% reimbursement would result in the City losing control over the matter, asserts the City. The City also asserts that the benefit is underutilized. The Union contends that it would be better utilized if it were enhanced.

Rationale:

The comparable data more greatly favors the City's position and since that position encompasses a justified increase in the cap to this benefit, the City's position shall be recommended.

Recommendation:

It is recommended that the parties adopt the City's position in this matter.

ISSUE NO. 4 - ARTICLE 9. VACATION

Position of the Parties and Evidence:

The F.O.P. proposes to add one (1) day at each Article 9 Vacation pay step for employees on a 24/48 schedule, and two (2) days at each step for employees on an 8-hour schedule. It points out that there has been no increase in the vacation benefit since 1986, and that it is not at the top in this benefit vis-a-vis police and fire units in the surrounding and geographically near municipal jurisdiction.

The City correctly points out that except for the 16 year level, the City is equal to or better than its comparable geographically near municipalities. It also contends that in the summer months and in the holiday months it already experiences scheduling problems. The City contends that under the terms of the current Contract "the City grants so much time off . . . that 70% of the time it operates at a minimum staffing level of four officers on duty out of a seven officer crew. This means that when the crew is at minimum staffing and someone calls in sick, etc., . . . overtime is necessary." Under the current Contract ". . . on average an individual only works 92 24-hour days a year with 66% of that time on standby. Additional time off compounds the City's scheduling problems. The City also urges that this Union proposal be viewed in the context of other time-away-from-the-job components, such as EDD's, of the parties' Contract. The F.O.P. asserts that the vacation benefit should be viewed standing alone.

Rationale:

Although the vacation benefit has not been improved for a long period of time, it generally fares well compared to other comparable jurisdictions. Given the schedule constraints any enhancement of this benefit poses, and the comparables which favor the status quo, no change in the current Contract's vacation benefit will be recommended.

Recommendation:

It is recommended that the parties retain the provisions of the current Contract at Article 9. Vacation.

ISSUE NO. 5 - ARTICLE 25 - WORK WEEK SCHEDULE

Positions of the Parties and Evidence:

This issue is the flashpoint in this proceeding. As the excerpts from the parties' formal positions set forth below illustrate, there is considerable acrimony from the parties on this issue.

Thus the F.O.P. asserts that "in the late 1970s, the F.O.P. made concessions to such time-honored [24/48 duty schedule] schedule for training and special assignment, and later gradually made concessions in response to the city's perceived need to man the first relief (midnight) shift in a flexible manner, including a 3-1 ratio for first relief shifts worked to 24 hour work days. Now that such shift is being manned "off the crew" in generally equal eight hours shifts by all F.O.P. crew members, there is no need for any additional "flexibility" by the City. This ratio concession alone gives the City approximately 4000 more police patrol hours. The quid pro quo for such concession was the continuation of the 24/48 duty schedule with the exception of the equalized first relief 8 hour shifts.

Upon coming to Oakwood, the City Safety Director supported equalizing first relief hours by this off-the-crew manning ostensibly to ease the City's scheduling needs, and now in an about face, seeks to impose a far worse and unpredictable burden on a majority of the F.O.P. employees. The F.O.P. needs a return to the protection of the reality which has worked for 50 years and a protection from the tyranny of the scheduling language belatedly proposed by the City which would jeopardize safety of citizens and

employees, split the F.O.P.'s ranks, and result in unwarranted defections and disruption to employees' lives.

Thus, the F.O.P. historically went overboard to make concessions in response to the City's cries for flexibility. The City never fully utilized such contractual flexibility, and now, because of the off-the-crew manning of the first relief shift, has no need for variance from the 24/48, except for training and special assignment. The alleged premise for such purported flexibility simply does not exist."

The City on the other hand asserts that "the current schedule places an unreasonable emphasis on standby time and does not provide the City adequate flexibility in scheduling existing personnel for street patrol work. The City already has the prerogative of scheduling six officers to a daily duty schedule. An additional three would provide the best balance and the best service to the citizen.

About 95% of the Safety Department calls relate to duties typically performed by a police officer. Yet, two thirds of an employee's time is spent on stand-by where less than 5% of the calls are generated. It only makes sense that given the nature of the calls for service the City would want to direct its resources to the vast majority of those calls. However, under the 24/48 schedule, on the average, an employee is only scheduled to work 92-8 hour police shifts per year. By placing that same employee on an 8-hour schedule, that employee is now scheduled for 22 police shifts per year. Having employees working an 8-hour shift will significantly enhance community security and improve service

delivery to citizens. A modification to the current 24/48 schedule will allow the City to devote personnel to better conduct programs such as community-oriented policing, establish a more comprehensive traffic enforcement protocol, particularly along the school/pedestrian walkways and better anticipate and respond to problem situations.

Because the City is proposing a mixed schedule, the modifications proposed will also have the effect of giving an even more rapid response to fire and rescue calls. It is interesting to note that a number of the F.O.P.'s proposals would, in fact, even more seriously limit the City's ability to effectively manage the work force.

Safety officers are quite skilled. It is becoming increasingly important, however, that the City is able to schedule officers in such a way that their skills can be fully utilized. In fact, most consolidated safety departments have long ago abandoned the traditional 24 hour on duty and 48 hour off duty schedule for either a mixed schedule or one that utilizes a daily duty schedule entirely. The City has told the F.O.P. it intends to put in place a daily duty scheduled for the six most junior officers at the beginning of the year. An additional three officers so assigned would better balance the schedule for citizens and officers alike."

Both parties submitted evidence in support of the positions they have taken. They also submitted evidence in support of their respective challenges to the other parties' evidence and contentions.

The F.O.P.'s proposal is attached as Appendix #1; the City's proposal is attached as Appendix 2.

From all of the evidence and contentions certain conclusions emerge. Historically the parties have delivered the City's safety force services through a unique combined safety force, wherein all employees function as firemen, policemen, and emergency medical response employees, and they have delivered that service on the basis of the 24/48 schedule, twenty-four hours on duty and forty-eight hours off duty. This schedule created problems in staffing the first relief shift or midnites for police work. Through the years in successive bargaining agreements, the parties have addressed that resulting in more and more straying from strict adherence to the 24/48 hour schedule. In 1981 the parties adopted a concept of guaranteeing to senior members of the force a 24/48 hour schedule. This guarantee concept has evolved in a manner to protect some 15 senior employees. Notwithstanding this protection, during the current Contract the parties reached an understanding whereby virtually all the force shares equally in the burden of staffing the midnite shift for police work. The City indicated that it perceived upheaval and morale problems if it fully implemented the bargained provision of Article 25. Management has shifted its focus from just the need to staff the midnite shift adequately, to also delivering more "modern" police services and community police functions such as bike patrols and out-reach programs, etc. It perceives that these functions can best be delivered by all but twelve employees being put on an 8-hour schedule. The F.O.P. contests that perception and asserts that

these community policing functions can be adequately provided with the present scheduling practices.

Rationale:

While the record shows that some of the Public has requested some of the innovative policing concepts, it falls far short of a Public clamor for such services; citizen dissatisfaction is not a factor here. Nonetheless the City of course has the prerogative to fashion what services it will deliver. At the same time the City recognizes that a morale problem would likely develop were it to implement and exercise its current Contract's expressly provided for prerogatives. This morale factor is in my view accounted for by the Statute, wherein it is provided that the interest and welfare of the public must be taken into account in Fact Finding. A demoralized work force does not serve the interest and welfare of the public. The Statute also provides that the Fact Finder shall take into account "such other factors not confined to those listed . . . normally or traditionally taken into consideration" in the determination of issues at impasse. In that regard, once at impasse the parties anticipate that recommendations for change, especially changes of major proportions, will only be made incrementally. These factors persuade me to recommend the F.O.P.'s proposal on this issue. The F.O.P.'s proposal is more incremental; provides more incentive to work more closely with the City to achieve the City's goals which is sorely needed here; and appears to better ameliorate the potential morale problems potentially contemplated scheduling changes might bring about. The record supports the conclusion that there is a reasonable prospect that

the F.O.P. proposal can result in meaningful accomplishment of many of the City's "missed opportunities" for community policing goals, if perhaps not all of them. Such is the essence of incrementalism.

Recommendation:

It is recommended that the F.O.P.'s proposal, as set forth in Appendix I, be adopted by the parties.

ISSUE NO. 6 - ARTICLE 6 - WAGES, Section 6.2 Base Wages

Positions of the Parties and Evidence:

The F.O.P. proposes a 5.5% across-the-board at each premium base step from 10/27/97 to 10/26/98; 5.5% across-the-board at each premium base rate step from 10/27/98 to 10/26/99; and 5.5% across-the-board at each premium base step from 10/27/99 to 10/26/2000, with appropriate changes in the annual aggregate compensation and average uniform biweekly pay reflecting the increases across-the-board for each step for all three years.

The City proposes an across-the-board increase of 3.7%, 3.6%, and 3.6% each year of the Contract, the Contract year to commence at the signing of the Contract. The City notes taht this is the same as last year's settlement with the Safety Department's Lieutenants and service employees. Historic increases and the CPI are reflected in the City exhibit reproduced below:

F.O.P. Wage Increases
1990-1996

<u>Year</u>	<u>Amount of Increase</u>	<u>CPI</u>
1990	4.5%	6.1%
1991	5.0%	3.1%
1992	5.0%	2.9%
1993	5.5%	3.3%
1994	4.6%	2.7%
1995	4.7%	2.9%
1996	4.8%	2.8%
Total	34.1%	23.8%

Comparable wage data furnished by the City is attached as Appendix III.

In support of its proposal the F.O.P. asserts that "the average raise for F.O.P. members over the last 15 years has been 5.9% per

year. This is extremely reasonable in view of the fact that the F.O.P. members still have a relative low wage per hour worked, and other safety departments in the area perform only single safety functions and work fewer hours. Although performing all three Safety functions, most bargaining unit members have been scheduled on a firefighters' type 24 hours on 48 hours off bases which results in over 2600 hours per year actually scheduled. In addition, given the multiple functions, police, fire, medical and emergency, which must be performed during these hours and the city's tremendous cost savings from having a functionally combined department, there can be no valid comparison with any other safety department. These factors have been previously recognized in other Fact Finding recommendations . . ."

The F.O.P. also asserts that the City has cash reserves of \$11 million and a carryover of not less than \$1.5 million, and hence has the ability-to-pay.

The City asserts that currently the average wage settlement is approximately 3%. It also emphasizes the tame inflation rates. Then too it points to the paramedic bonus; the equivalent of an .8% increase. And it notes the City's high tax rates.

Rationale:

Here again the parties presumably anticipate a compromise recommendation on this issue; such is one of the "other factors" the Statute contemplates. Then too historically (past collectively bargained agreement) more often than not increases have been in the high 4's. Adjoining Kettering has adopted 4%. Given the unique combined skills and savings to the City from this combined concept,

Oakwood properly exceeds the norms for Police standing alone or Fire standing alone. Tame inflation rates must be recognized. Accordingly, similar to the last Contract, when tame inflation also prevailed, and all the other factors, 4.7%-4.6%+4.6% will be recommended. Additionally, I find no basis for denying retroactivity.

Recommendation:

It is recommended that the parties adopt a 4.7% across-the-board increase at each premium base step from 10/27/97 to 10/26/98; 4.6% across-the-board at each premium base rate from 10/27/98 to 10/26/99; and 4.6% across-the-board at each premium base rate step from 10/27/99 to 10/26/2000, with appropriate changes in the annual aggregate compensation and average uniform biweekly pay reflecting the increases across-the-board for each step for all three years.

ISSUE NO. 7 - ARTICLE 6. WAGES,
Section 6.1 ("New" Language on Paycheck Availability]

Positions of the Parties and Evidence:

The F.O.P. would add to the current Contract's language at Section 6.1 the following language:

"Paychecks will be dated, available and negotiable on every other Thursday at 0700 hours in the dispatch area. If Thursday is a holiday, then the paychecks will be dated and available on Wednesday. Late signing of pay sheets (time cards) will not delay in any way the receipt of the paycheck."

The F.O.P. asserts, and the City acknowledges, that the F.O.P.'s proposal codifies and contractualizes a practice only recently changed by the City. The City's newly appointed Finance Director instituted a policy whereby paychecks would be dated Friday, would not be made available until the pay sheets had been signed and turned in, and for convenience would be available on Thursday morning. The City asserts that these changes were made in anticipation of going to a direct deposit system to be made available to all City employees by early 1988. In defending these changes and resisting the F.O.P.'s proposal, the City relies on the following memo to the Finance Director from the State Auditor's Officer's agent:

"We feel it is good accounting practice and would improve internal control if each employee is required to sign their weekly time cards before the Finance Director prepares the payroll check. Also internal control would be strengthened if the City were to date payroll checks as of a pay date that coincides with the City's policy."

The City characterizes this memo as "an opinion from the State Auditor's Office that it is improper to pay employees until their time cards have been turned in and verified." The City also furnished correspondence to it from Bank One which serves to

bolster its contention that the changes put in place by the new Finance Director are necessary for the direct deposit option.

The F.O.P. asserts that the City's changes in the practice shortly before the Contract's expiration were unilateral; such proposed changes ought to have been negotiated. F.O.P. witness Muntz indicated that the City's new time sheet signing policy recently resulted in him signing the time sheet before he worked all of the hours indicated thereon. Muntz also testified that the Union grieved the City's unilateral changes but have subsequently withdrawn the grievance, seeking resolution instead in negotiations.

Rationale:

Presumably direct deposit will result in savings in administrative costs for the City and be more convenient for employees. And while I read the letter from the accounting firm retained by the State Auditor's Office as falling short of setting up "requirements," as the City characterizes it, it does nonetheless constitute a cautionary tale, apprising the city that its customs vis-a-vis paycheck procedures do not qualify as good accounting practices. Do these circumstances constitute sufficiently changed circumstances to warrant vitiating past paycheck practices? This forum can't answer that question. But were the Fact Finder to recommend contractualization of that practice, he would, I believe improperly, answering that question and doing so in a potentially binding fashion.

Recommendation:

The F.O.P.'s proposal for new language on paycheck availability in Section 6.1 is not recommended.

ISSUE #8: ARTICLE 6. WAGES ["New" Section 6.7 Longevity Pay]

Position of the Parties and Evidence:

The F.O.P. seeks to add longevity pay to the bargaining unit's compensation package. It proposes a Section 6.7 reading as follows:

"6.7 On an employee's anniversary date, the employee shall receive longevity pay on each anniversary date as set forth below (5-10 years - \$250.00; 11-14 years - \$500.00; 15-19 years - \$750.00; 20+ years - \$1000.00)."

Characterizing same as "modest," the F.O.P. asserts it is proposed in part to reward long-term employees and to encourage employees to stay in the department. The F.O.P. asserts the bargaining unit is aging. The City clearly has the ability to pay asserts the F.O.P. Nine of fifteen comparable jurisdictions provide for longevity pay.

The City contends that current wages and benefits are superior and hence there is no need for longevity pay. Presently vacations are tied to longevity and in this manner longevity is appropriately recognized.

Rationale:

I'm constrained to agree with the City's position that in light of the bargaining unit's level of compensation, no additional pay in the form of longevity pay is called for. This conclusion is bolstered by the lack of any evidence of any turnover in employment, especially in senior ranks. Accordingly, the F.O.P.'s proposal will not be recommended.

Recommendation:

Longevity pay is not recommended.

ISSUE NO. 9 - ARTICLE 10 - EXTRA DAYS OFF
Section 10.1, Section 10.2 and Section 10.4

Positions of the Parties and Evidence:

The F.O.P. makes the following proposal:

"ARTICLE 10. EXTRA DAYS OFF

Section 10.1 change eleven (11) extra days off to twelve (12) extra days off.

Section 10.2 delete scheduling of EDO's. Replace with following language: "For the purposes of scheduling vacation and EDO's, every day will be available, regardless of unscheduled leave, special assignment, or crew shortages for other reasons. Two (2) members shall have the right to be scheduled off duty on vacation and/or EDO every day. Vacation and EDO's will be picked by seniority and, if the member has the earned time available, the time off will be scheduled by the crew supervisor. Vacation of one (1) to three (3) days will be scheduled at least one (1) work day in advance and four (4) or more vacation days will be scheduled seven (7) days in advance each calendar year. EDO's will be scheduled ten (10) days prior to the start of the EDO period."

Section 10.4 change five (5) personal leave days to six (6) personal leave days."

Note that Section 10.2 contemplates a system of scheduling vacations as well as EDO's, and hence calls for the deletion of Section 9.9, Scheduling of Vacation, of Article 9. Vacation.

The F.O.P. asserts that the proposed increase in extra day off (EDO) is equitable and will offset the 2600 plus scheduled duty hours. The F.O.P. has not received any increase in EDO's since 1990. It should be noted that several area fire departments which do exclusively fire, have 13-15 EDO's. These departments are not required to do an eight (8) hour police shift or have such extensive on duty training. The personal leave day change provides equity for the eight (8) hour shift employees.

The scheduling language reflects the ongoing difficulty between the parties in approaching this off duty time in a fair and equitable manner. Basically, the F.O.P. feels strongly that these earned benefits should be available for use in a predictable manner using defined, objective standards, which has not been the case during the immediately previous contract.

The City asserts that these provisions present critical issues to the City. The practice as spelled out in the contract has been the development of an annual vacation schedule in the LMC context which allows senior people preference in choosing time off. This means that junior employees may not be allowed vacation time at Christmas, Thanksgiving or in the key summer months. Such scheduling limitations based upon seniority occur in virtually every organization. The thrust of the F.O.P. proposal would require the City to grant vacation time regardless of the staffing consequences and require that the City staff the schedule with overtime. Furthermore, specifying or referencing a minimum number of officers per crew begins to encroach upon a minimum manning clause which is a non-bargainable issue and would represent a significant departure from current language and past practice. Also, including non-supervisory unit personnel (Lieutenants) is inappropriate. The existing language has worked well and gives both parties flexibility in accommodating mutual needs during the course of any contract year.

The City introduced comparable data on the number of EDO's in nearby jurisdictions' fire departments, including Dayton's, which was reported as having 15. The F.O.P. challenged that figure,

asserting Dayton had 18 EDO's. Based on its data, the City points out that the average number of EDO's is 9, such that the City's 11 is above the average, with only Moraine and Dayton higher. The City argues that the Union's proposal reduces flexibility in scheduling, which with minimum staffing levels obtaining some 70% of the time, would exacerbate current scheduling problems and increase already high levels of overtime. The F.O.P. challenges the validity of the City's 70% assertion, and points to the Kelly memo (former Safety Director, now City Manager) which recites that the City will be required to give additional time off in the future.

Rationale:

With the number of EDO's two (2) days above the average in comparable jurisdictions, the current EDO benefit cannot legitimately be characterized as inadequate. And in light of existing scheduling problems, the frequently thin margin of sufficient coverage, and overtime outlays, I am not inclined to recommend the F.O.P.'s proposal at this time.

Recommendation:

The F.O.P. proposed changes to Article 10 are not recommended. Rather it is recommended that the provisions of Article 10 of the current Contract be retained.

ISSUE NO. 10: ARTICLE 11 - SICK LEAVE

Positions of the Parties and Evidence:

The current Contract provides as follows:

"Section 11.1. Rate of Accumulation. For purposes of this article, a day shall mean one (1) eight (8) hour day. Sick leave with pay is earned by employees at the rate of one and one-fourth days per month of satisfactory employment, credited as earned and limited to a maximum in any one year to fifteen (15) days.

Section 11.2. Maximum Accumulation. Employees may accumulate sick leave under Merit Service Rules up to a maximum of one hundred thirty-five (135) days."

The F.O.P. seeks to change the accumulation rate in Section 11.1 from 15 days per year to 24 days per year (2 days per month) and to change the maximum accumulation of Section 11.2 to 200 days. The F.O.P. would also add a new Section 11.8 providing for a sick leave incentive rewarding low sick leave usage with lump sum annual payments up to a maximum of \$1000.00 for using but 4 hours or less. The F.O.P. would also add the following new provision as Section 11.9:

"Section 11.9. Family Medical Leave Act. Any member using time off under the Family Medical Leave Act shall be entitled to use any combination of earned, paid leave (sick leave, vacation, EDO, PL days), at the discretion of the member."

In support of its proposals the Union asserts that the current rate of accumulation has been in existence since 1972, and the maximum accumulation has been in effect since the '70s as well. The F.O.P. notes that as many as six comparable jurisdictions safety departments have unlimited sick leave accumulation or an accumulation amount above the 135 day maximum (1600 hours) allowed by Oakwood. The F.O.P. also asserts that some three comparable jurisdictions provide a sick leave non-usage incentive, and more

and more collective bargaining agreements provide for the use of sick leave for FMLA type issues.

The City resists any changes. It takes the position that its rate of sick leave accumulation is reasonable according to area practice (thirteen out of eighteen comparable jurisdictions have the same rate) and that in any event it ought not to be expected to be at the top, or nearby so, vis-a-vis these area jurisdictions, with respect to every element of the Contract, albeit it is so with respect to many other contract elements. The City also contends that since employees already have 120 days of injury leave, there is no need to increase the number of sick days available. The City further notes that currently the average sick leave balance for bargaining unit members is 74 days and well below the current maximum, which demonstrates that there is no need for the increase sought by the Union. With respect to the Union's proposal for Section 11.9, the City asserts that its provision permitting the use of sick leave "at the discretion of the member" serves to convert sick leave to personal time off with pay. The City also points out that the thrust of the FMLA is unpaid time off and that hence it is simply a different concept than sick leave. The City contends that current City Personnel Regulations fully comply with the FMLA requirements. As for the sick leave incentive proposal of the F.O.P., the City points out that the overwhelming majority of comparable area jurisdiction safety departments do not provide for such.

The F.O.P. counters that of comparable area jurisdictions, only Centerville, which has no collective bargaining agreement, has a

lower accumulation cap. The F.O.P. also points out that injury leave is a different concept from sick leave.

Rationale:

The City fares well vis-a-vis other comparables in the matter of the rate of accumulation of sick leave, but is out of the mainstream on the maximum accrual rate. No change is therefore called for with respect to the rate of accumulation. A modest increase in the maximum accrual would move the City more into the mainstream. It will be recommended that the parties increase the maximum accrual to 150 days, such as in the West Carrolton Police Department, which also accrues sick leave at a 1.25 rate per month as here.

No need for any sick leave incentive has been demonstrated and comparable jurisdictions overwhelmingly do not provide for such a benefit. Accordingly, sick leave incentive provisions will not be recommended.

As the City points out the FMLA's unpaid leave provisions simply represent a different concept than is involved with sick leave. There is no evidence that a majority of comparable jurisdictions (indeed any) provide for such a benefit. Accordingly, Section 11.9 as proposed by the F.O.P. will not be recommended.

Recommendation:

It is recommended that the current Contract's provision at Article 11 - Sick Leave remain the same, except that Section 11.2 shall be modified to read as follows:

"Section 11.2. Maximum Accumulation. Employees may accumulate sick leave under Merit Service Rules up to a maximum of one hundred thirty-five (135) days."

ISSUE NO. 11: ARTICLE 14 - LIFE INSURANCE

Positions of the Parties and Evidence:

Currently employees enjoy a \$40,000.00 life insurance benefit. The F.O.P. would increase it to \$60,000.00. The City would increase it to \$50,000.00. The F.O.P. contends that its proposal is a reasonable amount, reflecting the value of a stressful, safety related position and will not result in an expenditure nearly as great as the value of the improvement of the benefit to the employees.

The City points to its comparable data which reflects that of some seventeen geographically near safety departments only three, Vandalia Police and Fire and Centerville Police, exceed its offer of \$50,000.00. The City further asserts that its offer well exceeds the average of \$35,562.00, and hence it is a reasonable one.

Rationale:

The Union makes a valid point when it points out that enhancing this benefit is not a costly proposition. However, the overwhelming majority of comparable jurisdictions are below the City's offer. The circumstance serves to lend much support for the City's offer, and undermine somewhat the Union's offer. I'm constrained to recommend the City's proposal.

Recommendation:

It is recommended that the parties retain the language of Article 14 of the current Contract except that they increase the face amount of \$40,000.00 to \$50,000.00.

ISSUE NO. 12: ARTICLE 17 - UNIFORM ALLOWANCE

Positions of the Parties and Evidence:

This provision applies only to the City's two plainclothes detectives. Currently the City pays an annual allowance of \$900.00. The F.O.P. would increase it to \$1200.00 per year. The City urges no change.

The F.O.P. points out that its proposal would cost the City but \$600.00 per year and that they can well afford it. Clothing costs are rising, asserts the F.O.P.

The City points out that the average for comparable nearby safety departments is but \$652.46, and hence there is no basis for change. The City's comparable data shows that only Beaver Creek Police detectives and Moraine Fire Department employees, at \$1040.00 and \$1003.00 respectively exceed the City's current allowance. Some eleven (11) other nearby safety departments pay much closer to the average.

Rationale:

The comparable data introduced clearly supports the City's position. Accordingly, no increase will be recommended.

Recommendation:

It is recommended that the parties retain the language of the current Contract at Article 17.

ISSUE NO. 13 - ARTICLE 18 - GRIEVANCE PROCEDURE

Positions of the Parties and Evidence:

The parties currently have a four-step grievance/arbitration process, the fourth step being arbitration. The City seeks to add provisions for the outset of the process reading as follows:

"An employee or group of employees having a grievance will first attempt to resolve it informally by meeting with his/her or their immediate supervisor concerning the incident that gave rise to the grievance. At this step, the grievance shall not be in writing. Following the meeting, the supervisor shall render a decision no later than five (5) calendar days from the date of the meeting. Said decision may not be in conflict with the expressed terms of this Agreement. If the employee or employees are not satisfied with the response from the supervisor at this step, the grievant(s) will pursue the following formal step."

The City would also change the response times for the Captain and Public Safety Director from five calendar days to seven calendar days at Step 1 and Step 2, respectively.

The City asserts that these changes are an attempt to try and resolve grievances informally before they are reduced to writing. The increased response time to render an answer being sought is in response to the heavy work schedule and the difficulty in trying to meet with a grievant before formulating a written response. The City points out that current Contract language provides for forfeiture and the granting of the grievance on a non-precedent

setting basis if the time frame for Management's Step 1 and Step 2 answers are not met.

The F.O.P. resists any change, asserting that current provisions provide ample opportunity for discussion, and that an informal discussion normally precedes the filing of a written grievance in any event. The F.O.P. also asserts that requests for extensions of time to answer grievances are always granted.

Rationale:

Complex enough, I don't believe the case has been made for the creation of what in effect would be a fifth step to the grievance process. With respect to the requests for an elongation of the response time from 5 days to 7 days, in light of the forfeiture provisions, such request is granted. The extension to seven (7) days from five (5) can hardly be characterized as unduly delaying the process.

Recommendation:

It is recommended that the parties retain the language of Article 18 of the current Contract, except that the reference to the City's first and second step response times shall be changed from 5 calendar days to 7 calendar days.

ISSUE NO. 14A - ARTICLE 19 - ADDITIONAL WORK AND
ADDITIONAL COMPENSATION, Section 19.5

Positions of the Parties and Evidence:

The current Contract provides in relevant part as follows:

"Section 19.5. An off duty employee who is required to appear in any civil or criminal court to testify as a witness on any legal complaint instituted as a result of an alleged violation of law occurring within the city, shall be paid additional compensation provided for in Section 19.1 or Section 19.2 above, on the basis of a minimum of two (2) hours work for each day's appearance in Oakwood municipal court, and on the basis of a minimum of three (3) hours work for each day's appearance in any other court. . . ."

The F.O.P. seeks to change the minimums to four (4) hours for Oakwood Court, and five (5) hours for other courts. It asserts that the minimum hours for pay have not been increased since 1974 and hence they should be moderately increased. It points to the City's comparable data and asserts that most two (2) hour minimum jurisdictions are fire units, who testify in Court far fewer times than do police units. The F.O.P. notes too that the bargaining unit does not get portal to portal pay.

The City is opposed to any change. It contends that the rationale for Court time minimum pay is that an officer can be inconvenienced by being called to Court and not having to testify but still have his day interrupted. The City asserts that large municipal courts are not run efficiently, but Oakwood's court is well organized and run and appearances are with a minimum of inconvenience. If appearances run longer, obviously employees are paid for actual time worked at the overtime rate. The City points out that last year it spent \$21,000.00 for Court appearances, and any increases would be proportionate. The City's comparable data

of nearby jurisdiction shows that of some ten (10) police units, all but two had three (3) hour minimums. Three fire units had no court time provisions, three had a two hour minimum, and one had a three hour minimum.

Rationale:

It is clear that the comparable data supports an increase of the minimum to three (3) hours. Only separate fire units have no provision or the two hour provision; police units are typically at three hours. Under the parties' longstanding contractual scheme, a differential has been provided for between Oakwood court appearances and other jurisdiction appearances. Accordingly it shall be recommended that the minimum be increased to three and four hours respectively.

Recommendation:

It is recommended that the parties retain the language of Section 19.5 except that the minimum for Oakwood municipal court shall be three (3) hours, and the minimum for other courts shall be four (4) hours.

ISSUE NO. 14B - ARTICLE 6 - WAGES
["New" Section 6.7 Paramedic Certification]

Positions of the Parties and Evidence:

The City proposes an annual bonus for paramedic certification as follows:

"6.7. Paramedic Certification. In addition to the annual aggregate compensation listed under Section 6.2, employees who hold and maintain paramedic certification shall receive a lump sum payment of \$400.00 each contract year. Such payment shall be made on or before the first non-pay Friday following Thanksgiving. Employees who either receive their certification or fail to maintain their certification during the course of a contract year shall receive a pro-rated lump sum payment."

Some three nearby fire departments maintain similar or related contractual provisions. The City asserts that based on the Wage proposals this represents an .8% increase in compensation. The F.O.P. counters, seeking a \$1000.00 bonus.

Rationale:

Given the presence of such a provision in comparable jurisdictions, and the City's offer, such shall be recommended. The record evidence does not at this time justify the level of bonus the F.O.P. has countered.

Recommendation:

The City's proposal for a new Section 6.7 Paramedic Certification, more fully set forth above, is recommended.

ISSUE NO. 14C - ARTICLE 19
["New" Section 19.9 Training]

Positions of the Parties and Evidence:

The F.O.P. would add the following new Section:

"Section 19.9. Training. When two (2) or more members assigned to the same twenty-four (24) hour shift are assigned to training for more than one (1) hour out of the City on the same day, the training will be done on an overtime basis, i.e., fire tower type training, outdoor range, et al."

The F.O.P. contends that on duty training such as fire tower training on a simulated fire scene, is strenuous and rigorous. It feels that such training should not be done during the regular twenty-four (24) hour shift since it leaves employees drained to perform their regular duties once the training is completed.

Presently while training is underway those in training are replaced by other officers on an overtime basis. The F.O.P. contends that their proposal would increase overtime only minimally.

The City characterizes the F.O.P. proposal as a staffing proposal, and, as such, it is not bargainable. It points to the SERB Board's order in the matter of F.O.P. Lodge No. 44 v. City of Dayton, Case No. 95-ULP-07-0417, dismissing an unfair labor practice charge against the City for refusing to bargain over, among other matters, minimum staffing levels. The F.O.P. counters that under the Board's ODOT decision balancing tests, its proposal passes muster as a subject of mandatory bargaining.

The City additionally contends that in any event, one of the benefits of the 24/48 schedule is the ability to schedule training

during straight time hours. The City notes that overtime is already high.

Rationale:

It would be unusual for a Fact Finder to recommend a provision that expressly required overtime assignments. Suffice it to say that the F.O.P. has not made out a case under the statutory factors for doing so.

Recommendation:

It is recommended that the parties not adopt the F.O.P.'s proposal for a new Section 6.7.

ISSUE NO. 15 - ARTICLE 23 -
LIMITATION ON HOUSEKEEPING DUTIES, Section 23.2

Position of the Parties and Evidence:

The current Contract provides as follows:

"Section 23.2. To the extent reasonably possible, the scheduling of in house work duties shall be approximately consistent and equitable among the three crews, taken as three separate units."

The F.O.P. would add to Section 22.2 the provision that "no unmarked cars assigned to supervisors shall be washed by on duty crew members." It is the F.O.P.'s position that washing of the Safety Director's City-owned vehicle is without the expectation of in-house work duties. The F.O.P. asserts that the former director's auto was not maintained by the bargaining unit. City witnesses challenged this assertion, indicating that at least several years ago the bargaining unit did so. The City also notes that other City Directors, such as the Finance Director and the City Engineer, have their City-owned vehicles washed by City employees. City witnesses indicated that it was not uncommon in comparable jurisdictions for City employees to wash and maintain City-owned vehicles.

Rationale:

The record fails to establish the validity under the statutory factors of the proscription the F.O.P. urges. Accordingly, such shall not be recommended.

Recommendation:

It is recommended that the F.O.P.'s proposed addition to Section 23.2 is not recommended.

ISSUE NO. 16 - ARTICLE 25. WORK WEEK SCHEDULE, Section 25.10

Positions of the Parties and Evidence:

The parties' current Contract provides as follows:

"Section 25.10. In the event of a crew transfer, the following will be the method used to determine the work schedule: The City will examine how the transfer fits into three consecutive pay periods beginning with the pay period within which the transfer takes place. Employees within those three consecutive pay periods scheduled (as a result of the transfer) to work fifteen (15) days shall be entitled to either one work day of overtime pay or an additional work day off at the choice of the city. Employees who are scheduled for 14 work days within those three consecutive pay periods shall not be entitled to any additional overtime or time off independent of the employee's work schedule so long as the employee is not working two consecutive 24-hour shifts in a row."

The F.O.P. would delete from sentence one the phrase "beginning with the pay period within which the crew transfer takes place" and would delete from sentence two the term "those." The F.O.P. asserts that these deletions constitute an attempt to clarify and make more equitable, language which has been in dispute between the parties. The F.O.P. asserts that the intent of the language was that no employee being transferred would have to work fifteen (15) days in any three (3) consecutive pay periods. The language, as previously written, presented difficulty in interpretation. The City on the other hand asserts that the present language is designed so that an F.O.P. member does not gain extra time off in the event of a transfer from one crew to another, while not penalizing them either. The effect of the proposed change is that on a crew transfer, an employee will automatically gain an extra 24 hour day off. The parties are agreed that the underlying issue seldom arises.

Rationale:

It appears to the Fact Finder that the parties have a different viewpoint as to what is the intent behind Section 25.10. I do not believe that it is the role of the Fact Finder to pick and choose which invoked intent should prevail. In retaining the current Contract's language, in the event of a future conflict, the parties can resolve their conflict through the grievance/arbitration machinery.

Recommendation:

It is recommended that the parties retain the language of Section 25.10 of the current Contract.

ISSUE NO. 17 - ARTICLE 25. WORK WEEK SCHEDULE
["New" 25.11]

Positions of the Parties and Evidence:

The F.O.P. would establish a provision providing as follows:

"Trade of times will be allowed without restriction on the number of trades; however, they must be paid back within 1 year. The City must give approval within 48 hours of the request being submitted unless the City can show compelling reasons why a trade should not be approved, i.e., no paramedic on duty. Trades of 8 hours or less will only need a verbal approval of the crew supervisor.

The City resists this provision. The City asserts that the present system permits trades within like classifications and requires them to be repaid within 30 days with prior approval. The City would maintain this system based on practice, with the modification that repayment of the trade be made within the pay period. The City indicated that its Finance Director advised it that such a modification was necessary. The City asserts that any contractualization of the practice will reduce Management's flexibility in this matter.

The F.O.P. asserts that its proposal is an attempt by it to recapture a longstanding past practice which was unilaterally stopped by the Safety Director.

Rationale:

As can be seen both parties seek changes in their past practice with respect to trade of times, to wit, a change in the time frame within which the trade must be paid back. The City would shorten it to two weeks and the Union would lengthen it to one year. I do not believe that the Fact Finding forum is the appropriate one for determining whether the parties' past practice, which apparently required payback within thirty (30) days, ripened into a binding

past practice and hence the equivalent of a contract term not to be unilaterally modified. Thus neither party has available to support its position the statutory factor of a past collectively bargained agreement. Given the complexity of the parties' schedule and scheduling problems, I believe that retention of the status quo is appropriate.

Recommendation:

It is recommended that neither party's proposal for a new 25.11 be adopted.

ISSUE NO. 18 - "NEW" ARTICLE ____ - SUBSTANCE ABUSE POLICY

Positions of the Parties and Evidence:

The City has proposed that an extensive and comprehensive Substance Abuse Policy encompassing for example reasonable suspicion testing, just cause testing, random testing, collection procedures, etc., become a new provision in the parties' Contract. The City asserts that the topic of such a policy was "mentioned" in negotiations; the F.O.P. asserts that it had not seen the proposal of the City until the commencement of the Fact Finding process. The City contends that its proposed policy comports with the Ohio Bureau of Workers Compensation guidelines, and would enable the City to obtain a 20% reduction in its workers compensation insurance premiums. The City submitted data indicating that in nearby safety departments nearly 40% of the police and fire departments have a substance abuse policy in place. The City also notes that employees in the City's Service Department have a substance abuse policy in place.

The F.O.P. asserts there is no evidence whatsoever of drug problem in the bargaining unit and that hence such a policy is unnecessary.

Rationale:

It appears that the detailed and extensive provisions of the City's proposal were not shared with the Union until the Fact Finding process commenced. The Statute sets forth a catch all provision whereby the Fact Finder is to take into consideration such factors as are normally taken into account in an impasse setting. In that regard where a complex proposal on such a serious

matter is proposed so late in the negotiation process, there can be no reasonable expectation that the Fact Finder would recommend its inclusion in the parties' Contract; there has simply been no negotiation by the parties over its terms. Accordingly, the city's Substance Abuse Policy will not be recommended.

Recommendation:

The City's Substance Abuse Policy provision is not recommended.

ISSUE NO. 19 - ARTICLE 29 - DURATION

Position of the Parties and Evidence:

Both parties are agreed on a three year Contract. They disagree as to its starting date. The F.O.P. would have the Contract come into full force and effect directly following the expiration of the current Contract, i.e., October 27, 1997. The City would have the Contract expressly provide that "the Contract shall be effective on the date of the Fact Finder's Report unless otherwise agreed to by the parties."

The issue here of course is retroactivity. The F.O.P. asserts that historically the parties successive collective bargaining agreements have been contiguous.

Rationale:

In light of the City's clear ability to pay the economic items recommended, I find no basis to deny the F.O.P.'s request for retroactivity. Indeed, the past collectively bargained agreement statutory factor favors such.

Recommendation:

It is recommended that the parties' Contract at Article 29 read as follows:

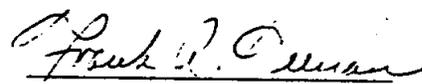
"

ARTICLE 29. DURATION

This Agreement shall be in full force and effect from and after October 27, 1997 through October 26, 2000. This Agreement shall thereafter be renewed for successive one (1) year periods unless written notice of a desire to re-negotiate is given by either party to the other at least sixty (60) days but not more than ninety (90) days prior to October 26, 2000 or any subsequent anniversary date. Upon the delivery of such a notice, the parties shall meet and negotiate with respect to a new contract, sufficiently in advance of the expiration date so as to enable the reaching of an agreement prior to expiration.

This concludes the Fact Finder's report and recommendations.

DATED: November 20, 1997

A handwritten signature in cursive script, reading "Frank A. Keenan". The signature is written in dark ink and is positioned above the printed name.

Frank A. Keenan

Fact Finder

APPENDIX I

K. ARTICLE 25 - Amended Proposal (Except for Sections 25.10 and 25.11)

Present language in Sections 25.1 through 25.9 shall be maintained for the life of the collective bargaining agreement, provided that the present practice of scheduling officers (except detectives and the youth officer) to the basic 24 hours on, 48 hours off duty schedule shall be maintained for the first 18 months of the collective bargaining agreement until March 27, 1999, after which time the City shall have the right to utilize the full provisions of Article 25.

APPENDIX II

ARTICLE 25. WORK WEEK SCHEDULE

Section 25.1. For the first 18 months of the contract the city will continue in effect a basic 24/48 hour work schedule. A committee consisting of three members of the FOP and three members of management will be formed to develop methodologies so as to implement those programs deemed appropriate by the city and as described as "Missed Opportunities" in the city's presentation to Fact-Finder Keenan for expanding safety department services to the community.

At the end of the 18 months the success of these initiatives will be evaluated by the city as to their effectiveness in serving the community. If the programs have been successful, as determined by the city, the schedule as outlined in the preceding paragraph will be continued. If, however, it is concluded by the city that the programs have not met their desired goals and objectives, the city may implement, for the balance of the contract, the work week schedule as set forth as Alternative Work Week Schedule B.

Section 25.21. Exclusive of reasonable changes in start up times, not to exceed one hour earlier or later than 0730 hours, the City will continue in effect a basic twenty-four hour on duty forty-eight hour off duty schedule. ~~for the fifteen most senior members of the bargaining unit.~~ For any employee(s) assigned to the 24/48 duty schedule, street police patrol will normally consist of not more than ~~the traditional~~ eight consecutive hours except in special circumstances where, in the opinion of the Public Safety Director, additional hours of street work are required.

Section 25.32. The City retains the right to alter this work schedule, ~~as in the past,~~ for the purposes of training and special assignment. Special assignments include, but are not limited to transfers to the detective section and the performance of special and/or routine investigative duties. The City shall retain the right to schedule such work schedules giving consideration to both the desires of the employee and the needs of the City.

The intent of the foregoing language is not to be interpreted that the City must maintain any certain crew size or strength but rather is to guarantee a place within a basic twenty-four hour on duty, forty-eight hour off duty schedule for the fifteen most senior members of the bargaining unit, independent of crew strength.

Section 25.43. First reliefs will be staffed by a combination of daily duty employees and 24/48 personnel as determined by the city after consultation with the F.O.P. ~~Employees shall provide thirty six (36) days of first relief tours in any 12 consecutive months. If the schedule requires employees to work between 37 and 40 first relief tours during any consecutive 12 months, the assignment of additional tours shall be by reverse seniority and with 24 hours notice, so long as that employee does not have previously scheduled time off. If the schedule requires employees to work more than 40 first relief tours during any consecutive 12 months, the assignment of additional tours will be by reverse seniority among those employees not included as one of the fifteen most senior members.~~

~~Employees scheduled for first relief duty shall begin their tour at 2330 hours and shall work three (3), eight hour first relief tours for every 24 hour work day with no more than three (3) consecutive, eight hour first relief tours being worked in succession, absent of compelling circumstances which would render the schedule unworkable (riots, major civil disorders, etc.). These first relief tours will be scheduled three (3) months in advance and selected by the employee on the basis of seniority. If an employee is scheduled for a 24 hour shift at the end of their first relief tours, the employee may be required to work up to 4 hours of police patrol during that 24 hour shift unless compelling circumstances require that additional hours be worked.~~

~~Effective January 1, 1995, the schedule for providing first relief duty as outlined herein shall remain in full force and effect for the length of this contract unless either party provides written notice to the other to modify or change the first relief schedule, subject to the performance criteria listed below. The criteria to be used in determining whether or not a scheduling modification or change is reasonable includes:~~

- ~~1. Overtime and related cost implications of the existing schedule;~~
- ~~2. Number of employees available for all shifts; and~~
- ~~3. Availability of specially trained personnel including ACCO's and paramedics for all shifts.~~

~~The parties agree to a quarterly review of the first relief schedule to be evaluated against said performance criteria. If there is no mutual agreement or understanding by both parties on whether or not the existing first relief schedule should be changed or modified, the parties will mediate the issue with the assistance of a mutually selected mediator. In the event the parties cannot mutually agree on a mediator, the parties jointly will request a list of seven arbitrators to serve as a mediator from the FMCS. The parties will select the mediator by the alternate striking of names, and either party may request a second list. The parties shall split the costs of the mediator and FMCS equally. The mediation period shall not exceed one (1) week. After one week, if there is no mutual understanding or agreement between the parties, and the bargaining concerns a change under Section 25.3 which governs the first relief schedule only, the parties shall submit the issue to binding arbitration for a decision. By mutual agreement, however, the parties may direct the FMCS appointed mediator to a concurrent role of mediator/arbitrator.~~

Nothing herein shall limit the ability of the city or the lodge to propose other scheduling alternatives for the first relief schedule so long as any change in the existing schedule is mutually agreed upon by both parties.

Section 25.54. Nothing contained in Section 25.24 or 25.32 shall be deemed to prohibit any of the fifteen most senior member of the bargaining unit from volunteering to work a daily duty schedule other than the twenty-four on duty, forty-eight hour off duty schedule, subject to provisions included herein. ~~Future reference to "senior" employee or member in the remainder of this section shall mean one of the fifteen most senior members of the bargaining unit.~~

(a) ~~Any of the fifteen most senior member~~ of the bargaining unit who volunteers for a daily duty schedule may be required to serve a minimum of six (6) months on said schedule.

(b) The City reserves the right to alter any daily duty schedule. Should the schedule for ~~which a senior member~~ of the bargaining unit volunteered be altered, such employee shall be permitted at his request to return to the twenty-four hour on duty, forty-eight hour off duty schedule within a reasonable time from the alteration of such daily duty schedule.

(c) If ~~an a senior employee~~ who volunteered for a daily duty schedule wishes to return to a twenty-four hour on duty, forty-eight hours off duty schedule at the end of any six (6) month period, that employee must make such written request to the Public Safety Director no later than thirty (30) days prior to the end of any such six (6) month period. Such six (6) month periods may be automatically renewed unless an employee makes such a written request.

(d) No ~~senior employee~~ shall be disciplined, or any other way unfavorably treated, because of a refusal to volunteer for a daily duty schedule assignment.

Section 25.65. ~~Any employee not one of the fifteen most senior members of the bargaining unit may be assigned either to a twenty-four hour on duty, forty-eight hour off duty type of schedule or to a daily duty schedule, as described below.~~

~~The number of protected members (fifteen) will be reduce to "twelve most senior members" if and when by attrition, the number of employees hired prior to January 19, 1989 reaches twelve members or less.~~

~~Such Employees~~ who are assigned to a daily duty schedule may work up to a maximum of one hundred and sixty (160) hours in any twenty-eight (28) consecutive day period, but shall not work more than seven (7) consecutive days without at least one (1) day interruption of said daily duty schedule. Such employees who are assigned to a twenty-four hour on duty, forty-eight hour off duty schedule shall not, when assigned such schedule, be scheduled in excess of forty (40) first relief tours of duty in any twelve (12) consecutive month period. However, first relief tours completed by such employees while scheduled on a daily duty schedule shall not be considered to apply to the maximum of forty (40) first relief tours while said employee may be assigned to a twenty-four hour on duty, forty-eight (48) hours off duty schedule.

The City retains the right to alter any work schedule for the purposes of training and special assignment. The City shall retain the right to schedule such work schedules giving consideration to both the desires of the employee and the needs of the City.

Section 25.76. The City shall maintain such work schedules as are required by this Article, except to the extent that: any state or federal laws, regulations, orders, court or arbitrators' decisions, or the City incurring extraordinary expenses not reasonably contemplated during this most current negotiations, requires a change. As an example only, any decision or order requiring a 40 hour work week or its equivalent.

Section 25.87. The employee who is regularly scheduled on 24/48 hour shifts may be detached from his or her crew to serve 40 hours in not more than five (5) consecutive days of training or special assignment without the payment of overtime in lieu of two (2) 24 hours days. This section addresses the payment of overtime only and does not affect the City's right to schedule as set forth in other articles or sections of the contract.

Section 25.98. Maintenance of any work schedule shall not be deemed to restrict the right of the City to order employees to additional duty.

Section 25.109. Layoff. In the event of a reduction in force, employees will be laid off in inverse order of seniority (determined according to the most recent date of hire in the bargaining unit) providing merit between the employees involved is relatively equal.

Section 25.1140. In the event of a crew transfer, the following will be the method used to determine the work schedule: The City will examine how the transfer fits into three consecutive pay periods beginning with the pay period within which the transfer takes place. Employees within those three consecutive pay periods scheduled (as a result of the transfer) to work fifteen (15) days shall be entitled to either one work day of overtime pay or an additional work day off at the choice of the City. Employees who are scheduled for 14 work days within those three consecutive pay periods shall not be entitled to any additional overtime or time off independent of the employee's work schedule so long as the employee is not working two consecutive 24-hour shifts in a row.

ARTICLE 25. ALTERNATIVE WORK WEEK SCHEDULE B

Section 25.1. If at the end of the first 18 months of the contract the city determines that the programs it implemented during the prior 18 months are not meeting their desired goals and objectives, the city shall have the right to implement the following work week schedule.

Section 25.2. Exclusive of reasonable changes in start up times, not to exceed one hour earlier or later than 0700 hours, the City will provide for a basic twenty-four hour on duty forty-eight hour off duty schedule for the twelve most senior members of the bargaining unit. For any employee assigned to the 24/48 duty schedule, street police patrol will normally consist of not more than eight consecutive hours of patrol except in special circumstances where, in the opinion of the Public Safety Director, additional hours of street work are required.

Section 25.3. The City retains the right to alter work schedules, for the purposes of training and special assignment. Special assignments include, but are not limited to transfers to the detective section and the performance of special and/or routine investigative duties. The City shall retain the right to schedule such work schedules giving consideration to both the desires of the employee and the needs of the City.

The intent of the foregoing language is not to be interpreted that the City must maintain any certain crew size or strength but rather is to guarantee a place within a basic twenty-four hour on duty, forty-eight hour off duty schedule for the twelve most senior members of the bargaining unit, independent of crew strength.

Section 25.4. Employees assigned a 24/48 schedule will not be routinely scheduled for first relief duty. This shall not restrict the city's right, however, to schedule officers to overlap any of the three relief tours. Nor does this constraint restrict the city from scheduling officers for first relief duty when in the opinion of the Public Safety Director special circumstances warrant.

Nothing herein shall limit the ability of the city or the lodge to propose other scheduling alternatives for the first relief schedule during the term of this agreement so long as any change in the existing schedule is mutually agreed upon by both parties.

Section 25.5. Nothing contained in Section 25.2 or 25.3 shall be deemed to prohibit any of the twelve most senior members of the bargaining unit from volunteering to work a daily duty schedule other than the twenty-four on duty, forty-eight hour off duty schedule, subject to provisions included herein. Future reference to "senior" employee or member in the remainder of this section shall mean one of the twelve most senior members of the bargaining unit.

(a) Any of the twelve most senior members of the bargaining unit who volunteer for a daily duty schedule may be required to serve a minimum of six (6) months on said schedule.

(b) The City reserves the right to alter any daily duty schedule. Should the schedule for which a senior member of the bargaining unit volunteered be altered, such employee shall be

permitted at his request to return to the twenty-four hour on duty, forty-eight hour off duty schedule within a reasonable time from the alteration of such daily duty schedule.

(c) If a senior employee who volunteered for a daily duty schedule wishes to return to a twenty-four hour on duty, forty-eight hours off duty schedule at the end of any six (6) month period, that employee must make such written request to the Public Safety Director no later than thirty (30) days prior to the end of any such six (6) month period. Such six (6) month periods may be automatically renewed unless an employee makes such a written request.

(d) No senior employee shall be disciplined, or any other way unfavorably treated, because of a refusal to volunteer for a daily duty schedule assignment.

Section 25.6. Any employee not one of the twelve most senior members of the bargaining unit may be assigned either to a twenty-four hour on duty, forty-eight hour off duty type of schedule or to a daily duty schedule, as described below.

Such employees who are assigned to a daily duty schedule may work up to a maximum of one hundred and sixty (160) hours in any twenty-eight (28) consecutive day period, but shall not work more than seven (7) consecutive days without at least one (1) day interruption of said daily duty schedule.

The City retains the right to alter any work schedule for the purposes of training and special assignment. The City shall retain the right to schedule such work schedules giving consideration to both the desires of the employee and the needs of the City.

Section 25.7 The City shall maintain such work schedules as are required by this Article, except to the extent that: any state or federal laws, regulations, orders, court or arbitrators' decisions, or the City incurring extraordinary expenses not reasonably contemplated during this most current negotiations, requires a change. As an example only, any decision or order requiring a 40 hour work week or its equivalent.

Section 25.8. The employee who is regularly scheduled on 24/48 hour shifts may be detached from his or her crew to serve 40 hours in not more than five (5) consecutive days of training or special assignment without the payment of overtime in lieu of two (2) 24 hours days. This section addresses the payment of overtime only and does not affect the City's right to schedule as set forth in other articles or sections of the contract.

Section 25.9. Maintenance of any work schedule shall not be deemed to restrict the right of the City to order employees to additional duty.

Section 25.10. Layoff. In the event of a reduction in force, employees will be laid off in inverse order of seniority (determined according to the most recent date of hire in the bargaining unit) providing merit between the employees involved is relatively equal.

Section 25.11. In the event of a crew transfer, the following will be the method used to determine the work schedule: The City will examine how the transfer fits into three

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pay period within which the transfer takes place.
/ periods scheduled (as a result of the transfer) to
er one work day of overtime pay or an additional
yees who are scheduled for 14 work days within
be entitled to any additional overtime or time off
le so long as the employee is not working two

COMPENSATION
Hourly Rate,
Holiday Pay)

Annual Compensation

- \$48,420.00
- \$46,529.60
- \$45,176.83
- \$44,442.90
- \$44,421.05
- \$44,298.62
- \$43,837.60
- \$43,621.04
- \$43,077.28
- \$44,196.77
- \$43,728.32
- \$42,616.80
- \$42,547.68
- \$41,709.60
- \$41,264.88
- \$40,328.48

\$43,763.59

\$48,216.32

APPENDIX III

FUTURE NEGOTIATED WAGE INCREASES

1998

Huber Heights Fire	January 1998	4.0%
Kettering Fire	September 1998	4.0%
Kettering Police	March 1998	4.0%
Vandalia Police	January 1, 1998	3.5%
Beavercreek Police	January, 1998	3.5%
Vandalia Fire	January 1, 1998	3.5%
West Carrollton Police	January 1, 1998	3.5%
Miamisburg Fire	January 1, 1998	3.25%
Fairborn Police	July 4, 1998	3.0%
AVERAGE		3.58%

1999

Miamisburg Fire	January 1999	4.0%
Kettering Police	March, 1999	4.0%
Kettering Fire	September, 1999	4.0%
Vandalia Fire	January, 1999	3.0%
Average		3.75%