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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 97-MED-09-0871
	*	
Fact-finding between:	*	
	*	
Corrections Commission	*	Fact-finder:
of Northwest Ohio	*	
	*	Martin R. Fitts
and	*	
	*	
CCNO Corrections Officers	*	January 23, 1998
Association, Local 64, IUPA	*	
	*	

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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

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Appearances

For the Corrections Commission of Northwest Ohio (the Employer):

Timothy C. McCarthy  
 James Dennis  
 Dennis Sullivan  
 Scott Bradbee

For the CCNO Corrections Officers Association (the Union):

William A. Dunn  
 Anthony R. Smith  
 Dave Thomas  
 Linda Sobczak  
 Troy Dwyer

## PRELIMINARY COMMENTS

The bargaining unit consists of corrections officers employed at CCNO. There are approximately 115 employees in the bargaining unit.

The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on December 1, 1997. A mediation session was held with the Fact-finder on December 15, 1997, and a brief session was held on December 23, 1997.

The fact-finding hearing was held on January 6, 1998 at Northwest State Community College. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were eleven issues at impasse: Grievance Procedure; Discipline; Hours of Work/Overtime; Work Schedule; Sick Leave; Vacations; Fringe Benefits; Shift Premium; Residency; Wages; and Duration. No further mediation was attempted at the hearing, and thus eleven issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) 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, if any, between the parties;
2. Comparison of 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, and 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; and
6. Such other factors, not confined to those listed above, which

## Findings and Recommendation

The current agreement is the first collective bargaining agreement between this Union and the Employer. Three years ago the parties agreed to split the expenses of arbitration. The Employer offered no compelling reasons for a change to a "loser pay" system. Having only one grievance taken to arbitration in three years for a bargaining unit of over 100 people is not an indication to the Fact-finder that the Union has abused the process. The Employer has considerably greater economic resources than the relatively small bargaining unit, and for this reason the Fact-finder agrees with the Union that the "loser pay" clause could have a detrimental effect on the Union. Given the lack of any evidence that the Union has abused the grievance process, the Fact-finder sees no reason to change the arbitration section in the current agreement, and thus does not recommend the Employer's proposed change.

## Issue: Discipline

### Positions of the Parties

The Employer proposes changing the agreement to allow the Employer to require an employee who receives a disciplinary suspension to utilize sick leave or vacation time in lieu of being off work without pay. It believes that this would be an effective method of disciplining employees for excessive absenteeism, as well as allowing employees who are suspended to utilize earned sick or vacation leave instead of losing pay.

The Union objects to this proposal, but stated that it could agree if the option to use vacation and sick time was the employee's, and not the Employer. It argued

that the Employer was contradicting itself by proposing this at a time it was trying to find ways to reduce the use of sick time by employees.

### Findings and Recommendation

The Employer correctly assumes that punishing an employee who is abusing sick leave by giving them a suspension from work can have the effect of rewarding that employee with exactly what they want, time off work. The Employer's proposal would give it an innovative option for use in those cases of excessive absenteeism.

The Union obviously sees some merit in the Employer's proposal, as indicated by its counter proposal that the use of sick leave or vacation be the employee's choice in the case of a disciplinary suspension. An employee so suspended could avoid the loss of a pay by forfeiting a sick day or vacation day instead. While the Union argued that the employee would be hurt twice, this is absolutely not the case. The forfeiture of the sick or vacation time would be in lieu of being suspended without pay, not in addition to it. For an employee suspended for something other than absenteeism, the loss of a sick day or vacation day is probably a much preferred penalty than being off the job without pay. Having the option would be a plus for the employee, but it would call into question the "corrective" value of the discipline.

The Fact-finder understands the sensitivity of this issue with the Union, but is persuaded that the Employer can utilize the new tool of forcing the use vacation or sick leave in lieu of suspension in a corrective manner. Since the Employer stated that the purpose of this discipline is to have a tool to use against excessive absenteeism, the Fact-finder believes that it is only fair to so restrict its use to suspensions due to excessive absenteeism and not other violations. The appropriate language is thus reflected below. Further, as this is a new level of discipline, the Fact-finder also recommends a change in Article 9 of the agreement to allow for the

removal of this new discipline after two years. Language for this is also found below.

The Fact-finder recommends that Article 8, Section 8.3 read as follows:

Section 8.3

Forms of disciplinary action shall include:

- a. Verbal reprimand
- b. Written reprimand
- c. Forfeiture of vacation or sick leave in lieu of suspension (to be used as discipline only in cases involving excessive sick leave usage or pattern absenteeism)
- d. Suspension
- e. Demotion
- f. Discharge

The Fact-finder recommends that the first sentence of Article 8, Section 8.4 be amended to read as follows:

Whenever the Employer determines that an employee's conduct may warrant a forfeiture of vacation or sick leave, a suspension (without pay), or termination, a disciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct.

The Fact-finder recommends that the following paragraph be added to Article 9, Section 9.5:

Any forfeiture of vacation or sick leave shall be removed from an employee's personnel file after two (2) years from the date of the forfeiture, provided that no further disciplinary action has been taken against the employee during the intervening two (2) years, and further provided that the employee makes a written request for removal.

## Issue: Hours of Work/Overtime

### Positions of the Parties

There were five issues under this category. One of them, the Union's proposal to add the clarifying language of "work release" in two places in Section 11.2 was accepted at the hearing by the Employer, and will be so reflected in the Fact-finder's recommendation below.

The Employer proposed adding to the agreement a clause stating that paid sick leave, vacation, personal days, and discretionary time would not count as hours worked for the purposes of computing overtime. This would represent a change in the current practice followed by the Employer, on which the present agreement is silent. The Union originally countered by agreeing to eliminate sick leave only as counting as hours worked, but revised its position at the hearing to oppose the Employer's entire proposal.

The Union proposed modifying the current language of the agreement regarding overtime beginning after 86 hours in a 14 day work period for Corrections Officers that are assigned to security, to overtime beginning after a 8 and 1/4 hour workday or a 41 and 1/4 hour workweek. The Employer noted that the present language complies with the Fair Labor Standards Act (FLSA), and desires to retain the current language.

Another Union proposal is for the inclusion of language calling for all corrections officers not assigned to security to be paid overtime after an 8-hour workday rather than after a 40-hour workweek as the current agreement calls for. The Employer desires to retain the current language, which complies with the FLSA.

The last issue was a proposal to add language that would prohibit non-bargaining unit members from working overtime unless it was a mandatory overtime situation. After some discussion on this at the hearing, the Employer agreed to accept the Union's proposal with the deletion of the phrase "unless it becomes mandatory." This is reflected below in the Fact-finder's recommendation.

### Findings and Recommendation

Regarding what counts as hours worked, when an employee is on a vacation day, personal day, or sick leave, they remain on "active pay status" for the purposes of computing seniority and PERS. This "active pay status" is common language in labor agreements, including county jails with which the Fact-finder is familiar. The Employer presented no compelling reason to change the present agreement in this manner; therefore, the Fact-finder recommends the retention of the language in the current agreement.

Regarding the number of hours that must be worked before overtime rates apply, the Employer cited its current practice as being in compliance with the FLSA. The Union argued that although the law permits this, it does not make the practice fair when the actual effect is that the employees in this bargaining unit are treated substantially different than others who receive overtime pay immediately after working their normal work week hours. The FLSA allows members of bargaining units who are subject to roll calls to work more than the standard 80-hour week in order to accommodate a smooth transition between shifts without unduly burdening employers with regular overtime. This is tacitly acknowledged in the current agreement, where the parties have agreed that the normal work day for corrections officers, except for some specific exceptions, is 8 and 1/4 hours, and the normal work week is 41 and 1/4 hours. This would amount to 82 and 1/2 hours in a "normal" fourteen day period.

The Fact-finder agrees with the Union that it is only fair that employees who work over what is their "normal" amount of time should immediately be compensated at overtime rates, just as other employees are. The Fact-finder agrees with the Employer that since its current payroll system is designed for a 14-day work period, that retaining this standard is fair. While the uniqueness of this facility makes using comparables difficult, it is clear that those cited by the Union showed overtime being paid immediately after 40 hours. However, it is the Fact-finder's experience that there are county jails using the 41 and 1/4 hour work week as a standard for their corrections officers. The Fact-finder believes that fairness dictates that these employees should be compensated at overtime rates for all hours worked over 82 and 1/2 hours in a fourteen day period, and this is reflected in the recommended language for Section 11.2 below.

Regarding the Union's proposal that overtime begin, for corrections officers not assigned to security, after an 8 hour workday in addition to the current language calling for overtime after a 40 hour workweek, the Union offered no compelling reason for a change in the current language. The Fact-finder agrees with the Employer that current language should be retained.

In consideration of the above, the Fact-finder recommends that Article 11, Section 11.2 read as follows:

Section 11.2

Overtime. With the exception of Corrections Officers assigned to warehouse, recreation, laundry, tool key and armory, work release, electronic monitoring and classification duties, hours worked in excess of eighty-two and one-half hours (82 and 1/2 hours) shall be compensated at the rate of one and one-half (1 and 1/2) times the regular hourly rate. Hours worked by Corrections Officers assigned to warehouse, recreation, laundry, tool key and armory, work release, electronic monitoring

## Findings and Recommendation

Regarding the number of positions on each shift selected by seniority, the Union makes a convincing argument that seniority ought to count for something. Its proposal acknowledges the Employer's contention that second shift is traditionally the least senior shift, as it retains the current percentage of positions to be selected by seniority. However, the Union's proposal goes too far in taking the percentages to 75% for the first and third shift. A slight increase, to 65%, is more in order. This is an issue which can be revisited as the workforce gains in overall seniority, when the seniority of all three shifts will have increased, but for now modest gains are called for. While the Employer spoke of increases in "use of force" instances on shifts where less senior employees are concentrated, no specific statistics were presented. The Employer's concerns regarding less senior employees being concentrated on one or two shifts are likely to diminish as the entire workforce gains seniority. Adoption of the Fact-finder's recommendation will still enable the Employer to have a mix on all three shifts.

Regarding the "special response team" language, the Union's desire to eliminate the reference in this section is driven by its dislike for the special response teams as it is by the potential situation of a Corrections Officer being bumped from his or her shift preference due to this assignment. The Employer noted that service on a special response team is voluntary, and that anyone adversely affected regarding shift preference could simply resign from the team. Further, it noted that CCNO has never exercised their right of assignment in this regard. The Union simply does not present enough reasons to delete this section. It can cite no harm having been done to any employee, and with the voluntary nature of this assignment it is doubtful that there has been any. The Fact-finder agrees with the Employer that the reference to "special response teams" should remain in the agreement, and this is reflected below in the recommended language. Retention of the use of a percentage formula rather than the fixed numbers proposed by the

Employer is also recommended, as the Employer failed to present a convincing case that a change was warranted.

In the recommendation below, the Employer's figures for staffing levels on each shift that were presented at the hearing (1st shift - 31; 2nd shift - 29; 3rd shift - 26) were used to calculate the current number of positions affected. Considering all of the above, the Fact-finder recommends that Section 12.2 of Article 12 should read as follows:

Section 12.2

Shift Selection. The following percentage of positions on each shift shall be selected by Corrections Officers on the basis of seniority:

1st Shift: N/65% (21 positions currently)

2nd Shift: N/52% (15 positions currently)

3rd Shift: N/65% (17 positions currently)

N/Positions are rounded out to the closest full position.

No more than three Corrections Officers per shift who have selected that shift preference in accordance with seniority may be assigned to a different shift to assure proper coverage of needed security posts, i.e. intake and gender issues, and special response teams.

In the event the employer exercises its right to assign employees to a different shift in accordance with the preceding sentence, any employees reassigned from the shift they have selected shall be reassigned in reverse order of seniority beginning with the least senior of the employees who were able to elect their shift (i.e. under the current staffing, the 21st position on first shift; the 15th position on second shift; the 17th position on third shift).

The selection process for shift assignment for a given calendar year shall be completed by November 15th of the prior year.

## Issue: Sick Leave

### Positions of the Parties

The Union proposes adding language to Article 16, Section 16.3 c. to include medical, dental, or optical exams or treatment for an employee's "child or step-child" as a reason for an employee to utilize sick leave. The Employer wishes to retain current language.

Both the Union and the Employer desire to make changes in Section 16.4. The Union wishes to delete language which requires an employee to provide a doctor's slip in cases where the use of sick leave is excessive or demonstrates a pattern of absenteeism. The Employer desires to reduce from three days to two the number of days an employee may be absent without providing a doctor's slip.

The Union's proposal stems directly from several instances where employees were called in to explain absences, with some receiving discipline as a result. Several of these are now awaiting arbitration. The Union feels that without a definition of "excessive" or "pattern" it's members have no idea what the Employer is requiring.

The Employer's proposal to require a doctor's slip after two days rather than three reflects it's desire to crack down on what it believes to be excessive use of sick leave.

### Findings and Recommendation

The Fact-finder believes that the Union's proposal to include "child or step-child" in the section regarding use of sick leave for doctor's appointments is simply

concerned with arbitrary enforcement of this provision, it did not demonstrate that the Employer had acted arbitrarily during the life of this agreement. In fact, the Employer had called in a number of employees to discuss its concerns prior to issuing discipline to any of them, and many did not receive discipline. The Fact-finder agrees with the Employer that the Union has the option of grieving any discipline that it feels is unfair, and in fact several grievances were filed following the Employer's issuance of discipline in this regard. The reasonableness of discipline is always an issue considered by an arbitrator, so the Union is afforded the necessary protection that the Employer will not abuse its authority under the existing language. For this reason the Fact-finder recommends the Employer's proposal for the current language to be retained.

#### Issue: Vacations

#### Positions of the Parties

Both the Employer and the Union are proposing to change the current vacation schedule to allow for a maximum of 120 hours vacation after seven completed years of service rather than the existing eight. The Union is also proposing to change the vacation schedule as follows: a maximum of 160 hours after 14 years of service rather than the existing 15; a maximum of 200 hours after 21 years rather than the existing 25; and a new clause calling for a maximum of 240 hours after 25 years of service. The Employer proposes keeping the current language the remainder of the vacation schedule.

#### Findings and Recommendation

The Union based its proposal on the section of the Ohio Revised Code (ORC 325.19) dealing with vacations for county employees. The Employer argued that its

Employer at the hearing.

The third proposal of the Union was that the Employer provide, at no cost to the employees, group dental and optical coverage. The Employer opposed this proposal, and called for existing language to prevail. It noted that it already provides 100% of the cost of health insurance, and feels that the present insurance coverage includes some, although limited, dental benefits.

### Findings and Recommendations

Regarding notification, the Employer argued that the proposal is not needed because as a practical matter it happens anyway. It noted that all decisions by the Commission are made in open meetings, and the Union is aware of the content of those meetings. This is not necessarily advance notice, however. The Union's proposal is fair, as its members are affected by any changes in coverage or carriers. Becoming aware of contemplated changes in advance is a courtesy which allows the Union the opportunity to present a thoughtful comment on any changes rather than simply react after a decision is already made or about to be made. If the Employer is correct in asserting that as a practical matter this occurs already, then it should have no quarrel with this language being added to the agreement.

Regarding the increase in life insurance, the Fact-finder recommends the agreed upon increase to \$20,000 of coverage.

Regarding the proposal for optical and dental coverage, the Union argument was basically that they wanted the coverage. No specifics were presented by the Union, and no estimates as to the cost to the Employer. It would be irresponsible for the Fact-finder to blindly recommend the addition of such coverage without regard to the financial impact to the Employer.

Considering the above, the Fact-finder recommends that Section 24.1 of the agreement read as follows:

Section 24.1

**Insurance Benefits.** The Employer will continue to provide the current group health insurance plan in effect on the effective date of this Agreement, or substantially similar plans with other carriers, to all regular full-time employees, the full cost of which shall be paid by the Employer. The Employer shall notify the Union as far in advance as is practicable if any change in insurance coverage or carriers is contemplated. The Employer shall also provide a life insurance benefit in the amount of Twenty Thousand Dollars (\$20,000) at no cost to the employee.

**Issue: Fringe Benefits - clothing allowance**

Positions of the Parties

The Union proposes to increase the clothing allowance to \$600, up from the current \$400 which it noted has not been increased since the facility opened. The Employer provided evidence that the average usage was only \$318 per employee. It noted that when an employee has gone over the \$400 in a year, it has carried over the negative balance into the following year. It also noted that when employees have been promoted or transferred, necessitating a completely new style of uniform, it has covered that expense for the employee. Lastly, it noted that a voucher system is used, thus this is not a cash benefit to the employees.

Findings and Recommendation

The Union offered no compelling reason to increase the uniform allowance other than it has not been increased. No evidence was presented by the Union to demonstrate that the current amount of \$400 is inadequate and causing a hardship

## Findings and Recommendation

Regarding the Employer's proposal, it seems fair that an employee receive the allowance after they have actually incurred the expenses. However, it would be unfair to an employee that started shortly after the quarter begins to be denied the dry cleaning allowance for yet another quarter before becoming eligible. What seems the most reasonable and fair is that the allowance be pro-rated for those employees who have been employed for less than an entire quarter in a manner as follows: employees with at least two months of employment shall receive 2/3's of the allowance, and those with at least one month of employment shall receive 1/3 of the allowance. This should not prove unreasonable for the Employer to administer, yet still fairly addresses the issue of providing the allowance only for those who have actually incurred dry cleaning expenses.

Regarding the Union's proposal, it is true that the Union provided no evidence relative to the inadequacy of the current allowance. The Fact-finder must assume that at the inception of the current agreement the parties concluded that \$90 per quarter was fair. While dry cleaning costs, as most costs, have risen, it is difficult to believe that the costs are rising at 10% per year. A more modest increase in the dry cleaning allowance seems more reasonable and adequate to cover rising costs that are incurred by the employees. For this reason, the Fact-finder believes that an increase of \$5 in each of the three years of this agreement is reasonable.

Thus, the Fact-finder recommends that Section 24.3 - dry cleaning allowance, read as follows:

Section 24.3

Dry Cleaning Allowance. The Employer shall provide to eligible employees whose uniforms are not exchanged and laundered by the Employer a dry cleaning allowance in the amount of Ninety-five Dollars (\$95.00) per quarter during calendar year 1998, One Hundred Dollars (\$100.00) per quarter during calendar year 1999, and One Hundred and Five Dollars (\$105.00) per quarter during calendar year 2000. Eligible employees shall be all those that have been employed for the entire quarter. The allowance shall be pro-rated for those employees who begin employment during the quarter in the following manner: employees who have completed two months of employment in the quarter shall receive two-thirds (2/3's) of the allowance; and employees who have completed one month's employment in the quarter shall receive one-third (1/3) of the allowance.

Issue: Wages

Positions of the Parties

The Employer proposed a 3% across the board increase. The Union proposed an entirely new wage schedule that would provide step increases based on years of seniority. The Union feels that this will address the need to give employees a reason for staying at the facility. It noted that the new state prison in Toledo will be hiring during the life of this agreement, and that the Employer will need a wage schedule that enables it to retain its corrections officers. The Union presented comparables of the Lucas County Sheriff's Office which showed that it has a wage schedule with step increases. It also showed comparables of other area jurisdictions (City of Toledo police department, City of Wauseon police department, and Defiance County Sheriff's Office) showing that 4% increases have been won in recent contract negotiations throughout the area served by the CCNO.

The Union's proposal has merit, in that the facility has now been open seven years and its workforce is gradually becoming more senior. The Employer had argued with respect to shift preferences that seniority was valued at the facility, and adoption of a step increase wage schedule will help reward such value. The Union's proposal, however, is too sweeping. It attempts to make a giant leap all at once, when reason dictates a more modest approach. One particular defect is that it stretches the time before an employee reaches full pay rate to three years, which is longer than the probationary period of one year. This would not be fair for new hires. Also, it increases the overall wage structure too much initially and over the life of the agreement. Finally, the Fact-finder is satisfied that step increases are fairly common for corrections officers at county jails in the area, and notes that step increases also appear in the State of Ohio's contract covering its corrections officers.

### Findings and Recommendation

The Fact-finder proposes the wage schedule below, which for the employees with less than five years seniority will amount to a 3.87% increase, and for those with five years seniority and above will result in a 5.9% increase in the first year. The schedule calls for step increases after 5, 10, 15, and 20 years of service. It calls for a 2% differential between the steps. It retains the wage differential for new hires, with a small increase after six months, and gets an employee to the full pay rate after one year. The schedule also calls for increases in the wages of approximately 4% in the second year and in the third year of the agreement.

In consideration of the above, the Fact-finder recommends that Article 25,

Wages read as follows:

Wages

Section 25.1

Base Hourly Rate. The base hourly rates for Corrections officers shall be as follows:

<u>Years of service</u>	<u>1/1/98</u>	<u>1/1/99</u>	<u>1/1/2000</u>
<u>Probationary rates</u>			
New hire rate	9.61	9.99	10.39
6 months	9.87	10.26	10.67
<u>Full rates</u>			
1 year	11.00	11.44	11.90
5 years	11.22	11.67	12.14
10 years	11.44	11.90	12.38
15 years	11.67	12.14	12.63
20 years	11.90	12.38	12.88

Employees shall move to the next step immediately upon acquiring the appropriate service time.

Issue: Shift Premium

Positions of the Parties

The Union proposed a shift premium of \$0.50/hour for employees working

the afternoon shift and \$0.25/hour for employees working the night shift. It argued that a shift premium would alleviate the problem of employees not wanting to work afternoons or nights, and would also have the effect of retaining employees. The Employer opposed this, noting that it would cost CCNO about \$48,000, about equal to a 0.75% increase. It also noted that according to SERB figures, less than 20% of jurisdictions pay a shift premium.

### Findings and Recommendation

The Fact-finder believes that this report provides significant improvement in shift selection preferences and overall wages that will improve the Employer's ability to retain employees. A recommendation that includes shift premiums would be too excessive. In consideration of this, the Fact-finder recommends against the adoption of the Union's proposal regarding shift premiums.

### Issue: Residency

#### Positions of the Parties

The Union proposes a new article for the collective bargaining agreement which will amend the Employer's current policy regarding residency. At present the Employer requires all new hires to have established residency within six months of their date of hire. The Union argued that the probationary period for new hires is one year, thus the a new hire from outside the five-county area must actually make the move prior to becoming a permanent employee. It believes that this is an extremely unfair requirement, and asked if it really mattered to CCNO if an employee waited until six months after being permanently hired before moving into the five-county area.

The Employer countered that the residency rule exists as a result of the desire of the members of the commission to gain some economic benefit for the costs of construction and operation of the jail. Further, Mr. Dennis stated that he routinely has granted six-month extensions for those who have demonstrated a hardship in complying within the specified period, and stated that on two occasions he had granted additional six-month extensions.

### Findings and Recommendation

This issue is not currently addressed in the collective bargaining agreement, therefore the burden is on the Union to present clear and convincing reasons why it should appear as a new section. The Union argument centered around the fairness of the residency rule, yet no evidence was provided demonstrating specific instances where the rule had proven a hardship to the bargaining unit members. The Union did not dispute the testimony of Mr. Dennis, which was that there have been routine extensions granted for those who needed them.

This is a condition of employment that is known to all the employees upon their hiring. The Employer cited the political importance of its existing residency policy to the Commission members. In the absence of a compelling reason to restrict this management right, the Fact-finder cannot recommend the inclusion of this proposal of the Union in the agreement.

### Issue: Duration

### Positions of the Parties

The parties agreed at the hearing that the contract shall be effective January 1, 1998 through December 31, 2000, and this is reflected in the Fact-finder's

recommendation below.

The Union proposed a new clause in this section that would provide for release time with pay for the members of the Union's negotiating team. It stated that employees cannot afford to take the time off without pay to participate. It acknowledged that the Employer made some accommodations during this round of negotiations, but noted that this is not contractual, and there is no guarantee that the Union will be afforded this consideration in future negotiations. It argued that the better prepared and able the Union is at the bargaining table, the better the results and the better the relationship will be between the parties.

The Employer pointed to the efforts it made this time to allow for a reasonable schedule for negotiations, but expressed its concern that a clause without a cap on the amount of time could have the effect of lengthening the negotiating process.

### Findings and Recommendation

Regarding the effective dates of this agreement, the Fact-finder recommends that Section 32.1 of Article 32 - Duration read as follows:

Section 32.1 This Agreement shall be effective January 1, 1998 and shall remain in full force and effect until December 31, 2000.

Regarding the issue of release time for negotiations, both sides presented compelling arguments in favor of their positions. In fact the Employer had made reasonable accommodations for the Union in this round of bargaining. The Fact-finder believes that the Employer has shown its good faith in allowing the Union negotiating team the opportunity to be present at bargaining sessions. However, some language to protect that ability is in order. Likewise, some protection must be given to the Employer that only a reasonable amount of time will be involved, and

that negotiations will not become protracted. The Fact-finder recommends the language below as a compromise.

The Fact-finder recommends that a new section, Section 32.3, be added to the agreement and read as follows:

Section 32.3 Prior to the commencement of negotiations, the Employer and the Union shall mutually agree upon a reasonable timetable for the negotiating process. Once agreed upon, the members of the Union's negotiating team shall be excused from duty with full pay and benefits during the actual negotiating sessions. Ample time shall be allowed to leave work and report to the negotiating site. Those Employees who participate in negotiations and are assigned to the night shift and work the night before negotiations shall be excused from duty for the last four (4) hours of their work assignment with full pay and benefits. Should the negotiations extend beyond the initial agreed upon timetable, the Employer shall not unreasonably deny the above considerations to the members of the Union negotiating team.

**Additional recommendations of the Fact-finder**

The Fact-finder has reviewed all the tentative agreements reached by the parties during these negotiations, and recommends them as well.



Martin R. Fitts      1/23/98  
Fact-finder