

STATE OF OHIO

JUL 7 1997

IN THE MATTER OF FACT-FINDING
BETWEEN
CITY OF WILMINGTON
AND
FRATERNAL ORDER OF POLICE/OLC INC.
DISPATCHERS

BEFORE: Robert G. Stein
SERB CASE NO. 97-MED-09-0877

PRINCIPAL ADVOCATES FOR THE UNION:
Guy Kauffman, Staff Representative
FRATERNAL ORDER OF POLICE/OLC, INC.
163 Ellington Rd.
Dayton OH 45431

and

PRINCIPAL ADVOCATES FOR THE CITY:
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INTRODUCTION

The bargaining unit is comprised of five (5) employees holding the classification of Dispatcher with the City of Wilmington. The dispatchers have had a bargaining relationship with the City for a number of years. The Fact-finder, at the request of the parties, acted as a mediator for six (6) days of mediation (pre Approved by SERB). The parties originally brought to mediation 21 unresolved articles, many of which had multiple issues included in them. Through the concerted effort of the parties 13 articles and all their sub-parts were resolved in the mediation process. The parties submitted the remaining 8 issues to fact finding.

The Fact-finder had the advantage of becoming very familiar with the issues and interests of both sides through hours of mediation. Therefore, this report will minimize the rationale of the parties on each issue.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 Article 17 Hours of Work and Overtime

Union's position

See Appendix 1 (Proposal), Appendix 2 (Position).

Employer's position

See Appendix 3 (Proposal), Appendix 4 (Position).

Discussion

The issues of hours of work and scheduling are major issues for both parties. The Employer is seeking a scheduling system that will ensure coverage for both regular and on call hours. The Employer is also seeking to minimize the need for overtime and to place a cap of 40 hours on compensation time. The FOP is seeking regular scheduled hours for its bargaining unit members

and the preservation of compensatory time with a cap of 40 hours. The parties are close together on the issue of compensation time.

Hours and overtime are directly affected by the number of personnel in the dispatch office. Employee turnover and absenteeism have been major concerns of the Employer and the employees in the department. The parties spent a great deal of time in mediation talking about proper staffing levels and the need to add more dispatchers. Some dispatchers are putting in a considerable number of hours because of the problem with employee staffing and turnover. The Employer has made a commitment in its proposed language to bring the staffing level to 8 dispatchers. The Employer and the FOP are "on the same page" regarding the need to hire dependable and long term employees.

The issues of scheduling and overtime are issues that need to be individually tailored to each work setting and are heavily dependent upon the mission and the "work design" of a department. Comparables offer some guidance in these matters; however, they are limited in their utility because of the uniqueness of each employer and the employees who perform the work.

Recommendation

See Appendix A for recommended language

Union's position

See Appendix 5 (Proposal), Appendix 6 (Position).

Employer's position

See Appendix 7 (Proposal), Appendix 8 (Position).

Discussion

The four components contained under with the issue of wages and compensation are a general wage increase, shift differential increases, a new training rate, and a new benefit of longevity pay. Internal comparables are strong factors that must be considered by fact finders when dealing with employers who have multiple bargaining units. Because of its size the dispatcher unit is positioned to follow patterns established by the bigger bargaining units such as the patrol officers and the fire fighters. The pattern established by recently concluded bargaining with the police officers and fire fighters is reflected in the Employer's proposal. The Employer proposes increases of 3%, 3%, and 3.5% over three years. On the basis of external comparables, these rates of increase reflect the general range of increases being bargained by other public sector bargaining units in Ohio.

The parties are proposing the same wage increases in years one and two of their wage proposals and are only 1/2% apart in the third year of their wage proposals. I find no compelling evidence to justify departing from the wage pattern established by the much larger police and fire bargaining units.

In terms of shift differential, the Employer is offering an increase that reflects internal consistency. Internal consistency is particularly persuasive in light of external comparables that demonstrate the bargaining unit would favorably compare with other cities if it paid a shift differential of .30 cents for second shift and .40 cents for third shift.

The training rate of .50 cents per hour appears reasonable and is not uncommon in public sector jurisdictions. However, not all employees are good trainers, and management generally retains the right to select trainers and to designate when training occurs. However, it is a good practice to seek volunteers to become trainers because these are the employees who are likely to be the most highly motivated.

The new benefit of longevity increases being sought by the Union is not supported by internal comparables. As stated earlier, this is a very small unit of employees and new benefits that have city-wide implications, such as longevity pay, are not customarily established by small bargaining units. (i.e. "The tail seldom wags the dog").

Recommendation

See Appendix B for recommended language.

ISSUE 3 Article 19 Call In and On Call Time

Union's position

See Appendix 9 (Proposal), Appendix 10 (Position).

Employer's position

See Appendix 11 (Proposal), Appendix 12 (Position).

Discussion

A considerable amount of time in mediation was spent on this critical subject area. The nature of this bargaining unit's work requires around-the-clock coverage, and the availability of personnel in an emergency is essential. On the other hand it is vital that employees have predicable and uninterrupted breaks from this tedious and sometimes stressful work. A balance must be struck between these two needs.

I find the Employer's proposal to be consistent with industrial practice, and it meets both parties' needs for predictability. The employees have historically received a

stipend for carrying a pager, yet the on call obligation placed on employees was not clearly understood. If an on call obligation can be better defined in advance, employees will be able to plan their lives around these important obligations.

I find the Employer's argument in resisting a stipend increase to be out of line with normal adjustments that are made in such areas. The value of carrying a stipend must be kept consistent with the newly defined obligations proposed by the Employer. The only way this can be achieved is through reasonable monetary adjustments.

The FOP proposed a graduated increase over a three year period, representing three adjustments in three years. I find this amount to be in excess of the rate of inflation. Secondly, adjusting this stipend three times in three years appears to be an unnecessary administrative burden. A single increase covering all three years is a more reasonable approach to improving this benefit. The fact that the entire system of on call is being restructured by the Employer's proposal provides a reasonable basis for increasing the on call stipend. An employee should receive a reasonable stipend for the inconvenience of restricting his or her mobility and lifestyle during twelve weeks of the year.

The Employer's proposal to include penalties for non response to pages is understandable in light of the vital need to cover the dispatch unit. Employees who accept obligations and don't fulfill them should be held accountable. However, I find that the Employer's proposal prematurely presumes the need for a

harsh penalty. Discipline is to be corrective in nature and not unnecessarily punitive. There is no evidence to indicate that the employees in the bargaining unit require the level of discipline being proposed by the Employer in order to ensure proper responses to pages.

There is a completely new scheduling system being put into place, and there is a need to add several new staff to the department. Given these variables, it seems reasonable that the issue of penalties for failing to respond to a page should be determined by the Employer in the future.

Recommendation

See Appendix C for recommended language

ISSUE 4 Article 26

Sick Leave

Union's position

See Appendix 13 (Proposal), Appendix 14 (Position).

Employer's position

See Appendix 15 (Proposal), Appendix 16 (Position).

Discussion

The issue of time off the job was a focus of this fact finding hearing and was heavily debated during the bargaining and mediation phases of negotiations. The police and fire fighter units in the City have adopted a sick leave "no fault" program similar to the one being proposed by the Employer in the instant negotiations. The Employer's arguments in this matter are supported by the fact that one of these large units is also represented by the FOP. This fact further strengthens the Employer's position and provides comparable reasons why it should be recommended. The Employer made it clear in its remarks and proposals that sick leave misuse needs to be brought under control. In my opinion the data support the Employer's position.

The Union proposes to stay with current contract language regarding sick leave and rejects the notion that a "no fault" policy is needed in this bargaining unit. This argument is not supported by the unit's history of sick leave use. Sometimes small units such as the dispatch unit operate like a small business in which everyone depends on one another, knows one another, and absenteeism is minimal. If this were the case, a "no fault" policy would be unnecessary. However, when a small unit experiences considerable absenteeism, the problem quickly becomes an issue of great concern.

However, the issue of under staffing must be considered in this case based upon the parties' agreement to increase the staff by 60%. The Union argued effectively that staffing is directly

related to the issue of absenteeism. The Union also pointed out that during the past three years the bargaining unit has experienced a rash of injuries and illnesses. When a unit only has five employees and one or two employees experience unexpected illness or injury, this can drastically affect the unit's performance.

It is difficult of determine whether sick leave is being misused or whether the last three years represented a period of unfortunate luck for bargaining unit employees. However, there is no doubt the staffing shortage has only exacerbated an already difficult situation. The Employer provided testimony that it is working diligently to increase the size of the staff to eight employees during the next several months. That change should alleviate the need for employees to be continually called to fill in for absent employees, a situation that in itself could lead to employees being susceptible to illness from overwork.

There is no question that the Employer should have a uniform approach to sick leave monitoring for all of its employees. What was accepted by the majority of employees in other bargaining units in the City should be fair for the small number in this bargaining unit. However, when the number of employees in the bargaining unit is far below an optimal level, a unit operates in constant crisis and dependable people are sometimes overused to the point of their exhaustion. The evidence current before the fact-finder indicates the bargaining unit is critically understaffed. There was no indication that the police and fire

units have experienced the same staff shortage that the dispatch unit has faced.

Dispatch bargaining unit employees should be treated the same as other bargaining units. It is not reasonable to subject a severely understaffed unit to the rigors of a "no fault" sick leave program until staffing levels at least begin to approach full strength (See Article 17.3). This position is consistent with the parties' agreed upon concerns for proper coverage.

The Employer's proposed "incentive" plan of providing a year's worth of bonus (\$200) for a few months of perfect attendance represents a positive interim program to improve attendance. Hopefully, bargaining unit employees will respond favorably to this chance to earn extra money by resisting the temptation to unduly use sick leave, while the Employer has the opportunity to increase staffing.

Recommendation

See Appendix D for recommended language

ISSUE 5 Article 28 Personal Day Leave

Union's position

See Appendix 17 (Proposal), Appendix 18 (Position).

Employer's position

See Appendix 19 (Proposal), Appendix 20 (Position).

Discussion

The Union is requesting the maintenance of current contract language. The Union argues that employees need personal leave as it currently exists in order for employees to have necessary time off due to family or personal needs. The Employer is seeking more control over the personal leave provision. A controversy exists between the Union and the Employer over the obligation of the Employer to approve all personal leave requests. I find that the language of this article provides employees with a guaranteed benefit that is subject to operational limitations.

The language of this provision provides employees with the right to take three (3) personal leave days per year. However, the scheduling of these days can be reasonably managed by the Employer. It is common for employers in the public sector to restrict personal leave use in times of emergency and when more than one staff member in a unit wants the same day off. In the latter case, seniority is often used to determine who gets the day off. It is also reasonable for an employer to restrict the use of sick leave if other employees in a unit are absent due to illness or for other reasons.

Recommendation

See Appendix E for recommended language

ISSUE 6 Article 41 Duration

Union's position

The Union proposes a 3 year agreement.

Employer's position

The Employer proposes a 3 year agreement.

Discussion

There is no dispute between the parties on this issue.

Recommendation

The Agreement shall be 3 years in length. It shall run from January 1, 1998 to December 31, 2000.

Union's position

See Appendix 21 (Proposal), Appendix 22 (Position)

Employer's position

The Employer rejects the Union's proposal. See Appendix 23 (Position).

Discussion

The Employer rejects the Union's proposal for additional leave due to the fact that it believes employees have far too much time off already. The Employer also argues that no comparable data exist regarding stress leave. The Union argues that employees are exposed to a great deal of stress and may need to take time off following a traumatic situation. The life and death accounts of 911 calls that are periodically a main feature of local and sometimes national news broadcasts provide sufficient reason to believe that dispatchers can be placed in some serious and stress producing situations. Wilmington dispatch has experienced such a situation during the past year.

The problem of providing a separate leave for job stress arises from the fact that individual employees have different levels of tolerance for stress. In addition, the very nature of

dispatching is having to deal with stressful situations. People who chose to go into this type of work should have a higher tolerance for stress than the average person. I am not discounting the fact that in extreme situations dispatchers can become ill from stress. However, it is not clear how much of the stress experienced by employees is also related to the current staffing situation.

Recommendation

No new contract language.

ISSUE 8 Article 44

Mid-Term Bargaining Procedure

Union's position

See Appendix 24 (Proposal), Appendix 25 (Position).

Employer's position

See Appendix 26

Discussion

The Union's position is not supported by historical or comparable data. There is no data to suggest that the parties have experienced a need for mid-term bargaining. The Employer points out that the parties have agreed to a "zipper clause" in order to provide a period when bargaining does not occur. Zipper clauses are common in private and public contracts and exist to prevent the parties from being in a constant state of bargaining. In addition, the grievance procedure, as argued by the Employer, provides redress to the Union to address problems of contractual non compliance.

Recommendation

No new contract language.

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above
recommendations to the parties this 6th day of July,
1998 in Summit County, Ohio.

Robert G. Stein, Fact-finder

Dispatchers**ARTICLE 17 - HOURS OF WORK AND OVERTIME***Union Proposal*

Section 17.1 a. - The **standard work period week** for all bargaining unit employees shall consist of forty (40) hours based on five consecutive eight (8) hour days and two (2) consecutive days off. ~~in a seven (7) day work period as established by the Employer.~~

b. - Shifts will be established and maintained, in writing, by the Employer for the purpose of shift bidding.

c. - The Employer will not establish shifts that rotate, float, or swing outside of the limitations set forth in "a" for the purpose of avoiding overtime.

d. - Bargaining unit employees will bid, by seniority, twice a year, in January and June, for established shifts unless a vacancy occurs. Then, bargaining unit employees shall, by seniority, bid for shifts immediately, as provided in Article 14 Section 14.2.

Section 17.2 - Overtime will be paid at a rate of time and one half for time when an employee is called in early to work, or held over after a shift is complete. Employees will have a minimum of eight (8) hours between shifts, except in the case of emergency.

Section 17.3 - No employee shall be required to begin two (2) shifts within any twenty four (24) hour period except in the case of mandated overtime as defined in Section 17.5 b. of this Article or Appendix C of this Article.

Section 17.4 Any member of the bargaining unit may request that any or all of his hours worked in excess of eight (8) hours in a day or forty (40) hours within any work week, ~~seven (7) day work period~~ be paid by compensatory time at the rate of one and one half (1 1/2) hours of compensatory time off for each hour worked in excess of the above. The granting of such compensatory time off shall be at the sole discretion of the employer and shall not interfere with the effective and efficient operation of the department. **Maximum accrual of compensatory time is 40 hours.**

Section 17.5 Overtime will be distributed in accordance with Section 17.5 a., b. and c. when there are less than eight (8) trained, full-time bargaining units employed in the department. Overtime will be distributed in accordance with Appendix C when there are eight (8) or more trained, full-time bargaining units employed in the department. ~~The City will distribute overtime in the following manner:~~

Dispatchers

APPENDIX C - OVERTIME DISTRIBUTION*Union Proposal*

Overtime will be distributed in the following manner when there are at least eight (8) trained, full-time bargaining units employed and working in the dispatch department.

a. First, the Employer will ask bargaining units, by seniority, for volunteers to fill any overtime hours as soon as the Employer discovers that those hours exist as outlined in Section 17.5 a.

b. Second, the Employer will page the on call person or persons to fill the overtime hours that exist. See Article 19 for On-Call paging system.

c. Third, the Employer will assign/mandate those overtime hours not filled by steps "a." and "b." to the bargaining unit employee who has worked the least amount of overtime hours in the current calendar year. Vacation, personal, compensatory, holiday and sick leave will not be canceled to fill overtime hours by assignment. If the employee with the least amount of overtime worked is not available due to one of the above approved days off, the employee with the next least amount of overtime hours worked in the current calendar year will be assigned the overtime hours not filled by steps "a." and "b.".

1. Employees who are on approved time shall have that time off considered as the eight (8) hours of their regular shift plus the eight (8) hours immediately before and the eight (8) hours immediately after their normal shift.

This provides for a 24 hour block of approved time off.

2. Assigned/mandated overtime must be up to four (4) hours abutting the normal shift of the employee who is being assigned or up to twelve (12) hours on the employee's day off. Assigned/mandated overtime may not begin less than eight (8) hours following the employee's last hour worked or end less than eight (8) hours before the employee's regular schedule to work again. This provides for a maximum 12 hour shift with an 8 hour rest period for the employee.

3. The Employer will contact employees for assigned/mandated overtime as soon as steps "a." and "b." of Appendix C have been exhausted and he knows hours exist to be filled by assignment/mandate. The employee who is on duty at the time overtime hours are discovered will be released from duty as soon as possible.

a. Bargaining units may volunteer, by seniority, to fill any overtime hours. If ample time exists, the overtime hours may be posted and employees may sign up, by seniority, to fill those hours. When there is no advanced knowledge that overtime will be necessary, the employer will send out a blanket page to all employees advising there is overtime available and the hours that need to be filled. Employees wishing to volunteer for the overtime will call the Employer within 15 minutes of the page. If there is no response for volunteers, the Employer will proceed to step b. ~~An employee will be assigned to a "floating" schedule to be primary coverage for open shifts. This "floater" will be contacted to work overtime;~~

b. The Employer will assign/mandate those overtime hours not filled by step "a." to the bargaining unit employee who has worked the least amount of overtime hours in the current calendar year. Vacation, personal, compensatory, holiday and sick leave will not be canceled to fill overtime hours by assignment. If the employee with the least amount of overtime worked is not available due to one of the above approved days off, the employee with the next least amount of overtime hours worked in the current calendar year will be assigned the overtime hours not filled by step "a." ~~—If a floater is unavailable, the individual who is on duty at the time that it is discovered that overtime is necessary will be notified as soon as possible and will be requested to stay on duty for up to a period of four (4) hours while the supervisor finds a replacement following the procedure set forth in paragraphs (c) and (d) of this section;~~

~~c. Voluntary overtime will be issued on the basis of seniority. The supervisor shall ask employees, on the basis of seniority, for volunteers to work overtime. If no employee agrees to work the overtime, the supervisor will request employees to work mandatory overtime by first attempting to contact the employee who has not worked overtime for the longest period of time.~~

~~d. Scheduled overtime when the floater and intermittent dispatchers are not available will be assigned to the full-time dispatcher who has worked the least amount of overtime.~~

c. If the overtime hours are not filled after exhausting steps a. and b. above, the Employer will use the on-call paging system outlined in Article 19 to fill the overtime hours.

1. Employees who are on approved time shall have that time off considered as the eight (8) hours of their regular shift plus the eight (8) hours immediately before and the eight (8) hours immediately after their normal shift. This provides a twenty four (24) hour block of approved time off.

2. Assigned/mandated overtime must be up to four (4) hours abutting the normal shift of the employee who is being assigned or up to twelve (12) hours on the employee's day off. Assigned/mandated overtime may not begin less than eight (8) hours following the employee's last hour worked or end less than eight (8) hours before the employee's regular schedule to work again. This provides for a maximum 12 hour shift with an 8 hour rest period for the employee.

3. The Employer will contact employees for assigned/mandated overtime as soon as step "a." has been exhausted and he knows hours exist to be filled by assignment/mandate. The employee who is on duty at the time overtime hours are discovered will be released from duty as soon as possible.

4. Sick leave abuse or manipulation of approved time off by any employee or the Employer to avoid assigned/mandated overtime will be subject to disciplinary action or the grievance procedure.

Section 17.6 - The employer agrees to hire a minimum of two (2) additional full time bargaining unit dispatchers bringing the total to a minimum of eight (8). ~~an additional dispatcher, bringing the total to six full-time dispatchers, to be assigned to relieve current scheduling difficulties.~~

Section 17.7 - Shift schedules will be posted no less than two (2) weeks in advance. No employee's shift hours will be changed to avoid overtime. Open shifts will be treated as overtime and filled according to Section 17.5 of this Agreement.

ARTICLE 17 - HOURS OF WORK AND OVERTIME*Union Position*

The Union's proposed language in Section 17.1 a., b., c. and d. establishes a normal work week (five days on, two consecutive days off and eight hour shifts) for members. This standard provides regularity to the members on duty and stability in their personal lives off duty.

Section 17.2 remains as current contract language in regard to overtime payment and a minimum of 8 hours between shifts which provides stability to the bargaining unit members and is operationally workable for the employer.

The Union's language as proposed in Section 17.3 clarifies the question of time off and defines it as 24 hours in duration rather than a calendar day.

The Union's proposed language in Section 17.4 regarding compensatory time is strongly supported by the comparable contracts. It is also a past practice that has proven workable. If the Employer fulfills its obligation to the Union by hiring the additional personnel for the department, compensatory time and/or overtime will diminish.

The language proposed in Section 17.5 which includes Appendix C is the Union's attempt to form a workable compromise with the Employer's proposed language. The Union's language provides a balance between voluntary and mandatory overtime and insures that the functions of the Dispatch Center are provided to the community as a priority.

The fact that the department is not fully staffed at this time is an issue. The Union wishes to allow the Employer to utilize the on-call system at both levels of employment in the department, as the third step in filling overtime hours when there are less than 8 employees in the department and as the second step when the department is at full staff with at least 8 employees. The Union's comparable data shows that the voluntary process is the standard and should be the first step in either case.

Section 17.6 addresses the need for more personnel in this department to provide the services necessary to the community. This will ease the pressure on the few current members, reduce sick leave and overtime problems.

Section 17.7 allows members to know, in advance, what their work schedules will be and allows members to plan family and off-duty activities.

Article 17
Employer Proposal
City of Wilmington
and Fraternal Order of Police,
Ohio Labor Council
Dispatcher ~~March 11~~ April 13, 1998

ARTICLE 17 - HOURS OF WORK AND OVERTIME

Section 17.1. The standard work period for all bargaining unit employees shall consist of forty (40) hours based on five (5) consecutive eight (8) hour days and two (2) consecutive days off in a seven (7) day work period as established by the Employer. This section shall be in effect if both of the following apply; (1) It is after July 1, 1998. and (2) the bargaining unit is at "full strength" as defined in Section 17.3.

- A. Shifts, work days and days off, will be established by the Employer.
- B. Bargaining unit employees will bid, by seniority, twice each year in January and June for established shifts unless a vacancy occurs. When the Employer determines that a vacancy exists, the employees will be permitted to bid by seniority as provided in Article 14.

Section 17.2. Overtime will be paid at a rate of time and one half for time worked in excess of forty (40) hours per week. ~~when an employee is called in early to work, or held over after a shift is complete.~~

Section 17.3 For purposes of this Article, the Employer is defined as being at "full strength" when eight (8) qualified dispatchers are in the employment of the Employer.

Section 17.4 **Members of the bargaining unit may accrue a maximum of forty (40) hours of compensatory time for use each calendar year. Once the forty (40) hour maximum is reached, members of the bargaining unit may not accumulate additional compensatory hours for the remainder of the calendar year. This is not a rolling balance and may be accrued only once each calendar year. Any member of the bargaining unit will be paid overtime rate (time and one-half) for all hours worked in excess of forty (40) in a work week if the member requests such payment or once the member reaches the forty (40) hour maximum compensatory time accrual.**

Section 17.5. The City will distribute overtime to the employee scheduled to be on call. Pursuant to Section 17.9, when another dispatcher is on leave for more than one (1) day, the eighth dispatcher will be reassigned to cover for absent employees rather than offering overtime.

Section 17.6. The Employer agrees to hire the number of dispatchers necessary to reach full strength as defined in Section 17.3. This provision in no way obligates the Employer to reduce or waive qualifications for the dispatcher position, or to hire an unqualified person to fill a dispatch position.

Section 17.7 The employees are permitted to trade work times and days off with the prior written approval of the Director. It is understood that employee initiated trades of work time or days off will not be approved if the trade results in overtime work for either employee.

Section 17.8 Prior to July 1, 1998, if the employment of qualified trained dispatchers drops below full strength as defined in Section 17.3, the Employer will establish schedules and shifts as provided for in the prior contract between the parties. During the term of the contract, if the employment of qualified, trained dispatchers falls below full strength as defined Section 17.3, the Employer will establish schedules and shifts as necessary until full strength is achieved again.

Section 17.9 The eighth dispatcher (listed as H on the schedule) will work a full time schedule as listed on Exhibit _____, except when another dispatcher is on a leave of more than one (1) day. When another dispatcher is on a leave of more than one (10 day the eighth dispatcher will be reassigned to cover for the absent employee instead of utilization of the "on call" procedure. The "on call" procedure will be used for any one day or portion of one day absence.

FOR THE EMPLOYER	DATE	FOR THE UNION	DATE
_____		_____	
_____		_____	
_____		_____	
_____		_____	

WILMINGTON DISPATCH

WILMINGTON DISPATCH SCHEDULE

EMPLOYEE	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
A	OFF	7--15	7--15	7--15	7--15	7--15	OFF
B	15--23	15--23	15--23	15--23	15--23	OFF	OFF
C	OFF	OFF	23--7	23--7	23--7	23--7	23--7
D	7--15	OFF	OFF	11--19	11--19	11--19	7--15
E	23--7	23--7	OFF	OFF	19--3	19--3	15--23
F	11--19	11--19	11--19	OFF	OFF	15--23	11--19
G	19--3	19--3	19--3	19--3	OFF	OFF	19--3
H	3--11	OFF	OFF	3--11	3--11	3--11	3--11

ON CALL

WEEK OF CALL	1 EMPLOYEE	2 EMPLOYEE
JUNE 29 - JULY 5	A	F
JULY 6 - JULY 12	E	B
JULY 13 - JULY 19	C	D
JULY 20 - JULY 26	F	A
JULY 27 - AUGUST 2	B	E
AUGUST 3 - AUGUST 9	D	C
AUGUST 10 - AUGUST 16	A	F
AUGUST 17 - AUGUST 23	E	B
AUGUST 24 - AUGUST 30	C	D
AUGUST 31 - SEPTEMBER 6	G	H
SEPTEMBER 7 - SEPTEMBER 13	F	A
SEPTEMBER 14 - SEPTEMBER 20	B	E
SEPTEMBER 21 - SEPTEMBER 27	D	C
SEPTEMBER 28 - OCTOBER 4	H	G
OCTOBER 5 - OCTOBER 11	A	F
OCTOBER 12 - OCTOBER 18	E	B
OCTOBER 19 - OCTOBER 25	C	D
OCTOBER 26 - NOVEMBER 1	G	H
NOVEMBER 2 - NOVEMBER 8	F	A
NOVEMBER 9 - NOVEMBER 15	B	E
NOVEMBER 16 - NOVEMBER 22	D	C
NOVEMBER 23 - NOVEMBER 29	H	G
NOVEMBER 30 - DECEMBER 6	A	F
DECEMBER 7 - DECEMBER 13	E	B
DECEMBER 14 - DECEMBER 20	C	D
DECEMBER 21 - DECEMBER 27	G	H
DECEMBER 28 - JANUARY 3	F	A

Article 17. Hours of Work & Overtime

Article 17 has proven to be one of the most controversial subjects of these negotiations. Both parties have proposed major changes to the existing contract language in this article. For its part, the Employer has been hard hit by excessive sick leave usage and correlative accrual of compensatory time to cover for absent employees. *See Tabs 10, 11, 12.** Indeed, the average bargaining unit member has utilized **ten (10) weeks** of time off work this past year. *See Tab 8.* That time includes vacation, personal leave, compensatory time off and sick leave. For compensatory time alone the average is 154 hours or nineteen (19) days each in 1997. *See Tab 10, 21.* Under the circumstances, the Employer proposes establishing a cap on compensatory time limiting employees to a total annual accrual of forty (40) hours of compensatory time. The reduction in compensatory time off will result in the dispatchers actually working an additional 84 days annually.

The Employer is empowered to determine the number of full-time employees necessary to carry out the mission of this department. Nonetheless, the Employer has agreed to increase the bargaining unit by 33 1/3%, bringing the number of full time dispatchers to eight (8). This in itself is a substantial gain for the Union.

As part of this Article the Union has proposed a convoluted system of calling in dispatchers to work when an unscheduled absence occurs. The Union's position demands that the Employer: (1) utilize seniority and proceed through the entire list of employees to ascertain who voluntarily will work overtime for an unscheduled absence, and then (2) utilize the pagers to page the "on call" dispatcher who may not be available, and then (3) determine the dispatcher who has the least amount of hours of overtime for the year to this point and mandate overtime for that dispatcher who may be out of the area, sick, or just unavailable, and then (4) possibly go to the next dispatcher for overtime. In most unscheduled absences, management is only provided one (1) hour of notice prior to the call off. The Union proposal potentially takes hours to implement. The responsibility of the Employer to provide service is paramount in comparison to seniority rights which the Union is attempting to gain. The Employer should not be required to surrender the critical management right to determine the means by which operations are to be conducted and to make work assignments just because some employees have decided that other interests are more important than the demands of their jobs.

The Union stated early on in negotiations that it wanted fixed shifts and fixed consecutive days off. The Union also wanted to shift bid, by seniority, twice a year. **Management agreed** and proposed a work schedule that would fix shifts and fix days off for six (6) months at a time with bidding to occur twice a year based upon seniority. Additionally, the Union negotiator suggested a system of placing employees on call for set periods of time so that some "regularity" in work schedules could be attained for each dispatcher. **Once again management agreed** and proposed an on call schedule such that employees would be on call once every six (6) weeks and serve as a back up on call every three (3) weeks.

The Union has rejected the Employer's plan offering all of the elements originally requested by the Union. **Quite apart from raising genuine doubts regarding the Union's willingness to bargain in good faith, the failure to accept this plan makes it abundantly clear that the Union accepts no accountability for the bargaining unit members' appearance at work. The Union favors contract language requiring management to become markedly less efficient in administering the provision of dispatch services to the citizens of the City and County.**

The Employer contends that the bargaining unit staffing problems will be remedied only when the bargaining unit members' absences are brought under control and the employees accept the responsibility to be at work as scheduled. The City's proposal regarding this issue, coupled with the limits on compensatory time proposed within this same article and the "no fault" sick leave provision proposed in Article 26, are all necessary in order to provide the mandated dispatch services in an orderly, fiscally responsible manner.

* "Tabs" refer to evidence previously submitted to the factfinder at hearing.

Dispatchers**ARTICLE 18 - WAGES AND COMPENSATION**

Section 18.1 - Effective on the first day of the first full pay period following January 1 of ~~1995, 1996 and 1997~~, 1998, 1999 and 2000, the pay ranges to which bargaining unit employees are assigned shall be in accordance with Appendix A and Appendix B of this agreement.

Section 18.2 - Each bargaining unit employee who has not reached the top step in his salary range in the Employer's pay plan shall be granted the appropriate step level increase on his anniversary date as provided for in such pay plan and this Agreement.

Section 18.3 - The Employer will pay a shift differential to the members of the bargaining unit. The shift will be determined by the majority of time spent in any set of hours. Second shift: 1500 hours to 2300 hours. Third shift: 2300 hours to 0700 hours. Employees eligible for shift differential will receive such shift differential for all hours of the shift, including the hours outside of the above limits which are a normal part of the shift.

Section 18.4 - The employees will receive shift differential payment only for time actually worked, not for sick leave, disability leave, vacation, personal leave, holiday time off or compensatory time off. Authorized shift differential will be expressed as (flat rate) cents per hour. The established rate shall be ~~twenty-five cents (\$0.25)~~ **thirty five cents (\$0.35)** per hour for second shift and ~~thirty-five cents (\$0.35)~~ **forty five cents (\$0.45)** per hour for third shift.

Section 18.5 - The City of Wilmington will not make non-disciplinary deductions from employee paychecks without the permission of the employee except as otherwise provided by law. Deductions for union dues which are currently being made shall continue to be made unless the employee or the union notifies the City Auditor's Office to the contrary.

Section 18.6 - The Employer will compensate the full time bargaining unit member who is acting supervisor at a rate of 10% above his regular rate of pay for eight (8) hours per day during the period he serves in that capacity. If he is called into the dispatch center during his off hours, he will be compensated at an overtime rate of pay figured on the acting supervisor rate of pay for the time he spends in the dispatch center. He will be paid for at least one (1) hour overtime any time he responds on off duty time and up to the actual amount of time he is in the dispatch center.

Section 18.7 - The Employer will compensate the full time bargaining unit member who is training another employee at a rate of fifty cents (\$0.50) per hour or part of an hour spent training said employee, above his regular rate of pay.

APPENDIX AREGARDING ARTICLE 18 - WAGES

<u>STEP</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
A	9.91	3% 10.21	3% 10.52	4% 10.94
B	10.39	3% 10.70	3% 11.02	4% 11.46
C	10.93	3% 11.26	3% 11.60	4% 12.06
D	11.45	3% 11.79	3% 12.14	4% 12.63
E	12.02	3% 12.38	3% 12.75	4% 13.26
E+5 - 10 years	12.33	3% 12.70	3% 13.08	4% 13.60
E+10 - 15 years	12.63	3% 13.01	3% 13.40	4% 13.94

APPENDIX B - LONGEVITY RATE

Effective January 1, 1998 each of the following longevity pay rates will apply to each member of the bargaining unit:

<u>Years of Service;</u>	<u>Annual Longevity rate;</u>
<u>Five and Six</u>	<u>\$ 250.00</u>
<u>Seven and Eight</u>	<u>\$ 500.00</u>
<u>Nine and Ten</u>	<u>\$ 750.00</u>
<u>Eleven and Twelve</u>	<u>\$ 1,000.00</u>
<u>Thirteen and Fifteen</u>	<u>\$1,250.00</u>
<u>Sixteen and Nineteen</u>	<u>\$1,500.00</u>
<u>Twenty or more</u>	<u>\$1,750.00</u>

Longevity payment will be made either with each paycheck or in an annual lump sum during the pay period which includes the first day of December, at the sole discretion of the employee. Employees electing the lump sum payment shall be paid on a pro-rate basis if they leave the City Service prior to receiving payment.

ARTICLE 18 - WAGES AND COMPENSATION*Union Position*

The Union's language in Section 18.1 acknowledges the change in the new contract period for 1998, 1999 and 2000. It also includes Appendix A which reflects a 3%, 3% and 4% wage increase. Appendix B is new language proposed by the Union that awards members who treat their position as career employment.

It should be noted that the Police Department, which has a greater membership but are sworn employees has been permitted to reduce their wage metrics from 15 years top step to 4 years top step in the pay range.

Additionally, the Union has proposed in the pre-fact finding report and again in this report, comparable data which demonstrate the justification for the proposed annual wage increase. While Wilmington is fourth (4th) out of the six (6) comparable Units, the fifth (5th) position, Washington Court House, has an excellent longevity program which accelerates that Unit above Wilmington's annual income.

In Section 18.4 the Union has proposed an increase in shift differential which provides an increased stipend for members who must work shifts that are more disruptive to their family and home lives.

Section 18.7 Union proposed language recognizes the extra responsibility for training and being held accountable for training new personnel.

Finally, the Union is requesting that wages for 1998 be retroactive to January 1, 1998. The City/Union agreement regarding this issue is contained in the Union's pre-fact finding evidence manual, section #1, page 11.

Article 18. Wages & Compensation

Wages

The Employer proposes bargaining unit wage increases of 3% in 1998, 3% in 1999, and 3 ½% in 2000. **These are the same percentage wage increases already agreed to by and implemented in the City's Firefighter and Police collective bargaining agreements.**

On behalf of its six (6) member dispatcher bargaining unit, the Union demands raises of 3% in each of the first two (2) years of the contract, **and 4% in the third year.** This position is out of step with Wilmington's other bargaining units, and must be rejected.

The Employer's proposal must be considered generous in the current economic climate. Inflationary pressures now are extremely low, reaching the lowest point of inflationary growth since 1986. The Consumer Price Index has risen only 2.1% (for CPI-U), and 1.8% (for CPI-W) over one year ago in the Cincinnati area. (Bureau of Labor Statistics CPI Hot Line Statistics, as disseminated on April 20, 1998).

A number of dispatcher contracts -- particularly those of small cities outside of major urban areas and wealthy suburbs -- provide wage increases similar to those proposed by the Employer. For example, a SERB Clearing House Report dated December 24, 1997 shows that the following cities negotiated raises in the 3%-3.5% range: Alliance, Athens, Avon, Barberton, Beachwood, Beavercreek, Bellefontaine, Bellevue, Brookpark, Brunswick, **Celina,*** Chillicothe, Clyde, Cuyahoga Falls, **Deer Park,*** East Palestine, Eastlake, **Eaton,*** Euclid, Fairborn, Fairfield, **Franklin,*** Galion, Hilliard, Lakewood, **Lebanon,*** Lima, Louisville, Lyndhurst, Marietta, Marysville, Mayfield Heights, Middletown, Mount Vernon, Napoleon, North Olmsted, Ravenna, Shelby, South Euclid, Tallmadge, **Urbana,*** **West Carrollton.*** Additionally, the following cities granted raises of less than 3%: Belpre, Circleville, Maumee, **Reading,*** and **Washington C.H.*** (*Comparable cities by population and geographic location). *See Tabs 1, 2, 3, 4, 5.*

Longevity

The Union's demands for longevity pay also should be denied because no other bargaining unit within the City has such a provision. Longevity pay represents a method for bargaining unit employees to receive an additional financial benefit hidden from taxpayer scrutiny by arcane terminology. The Employer is opposed to the use of gimmicks to give employees pay raises. Barring compelling reasons for doing otherwise, the cash benefits to employees should be covered by their wages. This is the reason that several contracts ago the City "bought out" any longevity pay provisions and rolled those in existence into wages.

Shift Differential

On the issue of shift differential, the City has proposed an increase of \$.05 cents per hour which is consistent with the other labor contracts within the City. The Union's demand for an additional \$.05 should be rejected. Of the ten (10) comparable cities, only five (5) provide shift differential. Celina has \$.35 per hour for 2nd and 3rd shift; Deer park has \$.20 and \$.25 respectively; Eaton and West Carrolton have \$.30 and \$.35 respectively; Lebanon pays \$.25 and \$.35 -- the same as Wilmington.

The Employer is opposed to the Union's proposal to increase the "shift differential" compensation of bargaining unit members. This scheme gives employees premium compensation rates for working a shift characterized by the Union as undesirable. Shift differentials are beginning to fade from common usage in Ohio's collective bargaining agreements. In the current financial climate, any needed increase in compensation is more than adequately addressed in the Employer's wage proposal for 3%, 3%, and 3 ½% increases respectively over the next three (3) years.

Article 18
Employer Proposal
City of Wilmington
and Fraternal Order of Police,
Ohio Labor Council
Dispatcher ~~March 11~~ April 13, 1998

ARTICLE 18 - WAGES AND COMPENSATION

Section 18.1. Effective on the first day of the first full pay period following January 1 of ~~1995, 1996 and 1997~~ **1998, 1999 and 2000**, the pay ranges to which bargaining unit employees are assigned shall be in accordance with Appendix A of this agreement.

Section 18.2. Each bargaining unit employee who has not reached the top step in his salary range in the Employer's pay plan shall be granted the appropriate step level increase on his anniversary date as provided for in such pay plan.

Section 18.3. The Employer will pay a shift differential to the members of the bargaining unit. The shift will be determined by the majority of time spent in any set of hours. Second shift: ~~1800~~1500 hours to ~~2400~~2300 hours. Third shift: ~~2400~~2300 hours to ~~0600~~0700 hours. Employees eligible for shift differential will receive such shift differential for all hours of the shift, including the hours outside of the above limits which are a normal part of the shift.

Section 18.4. The employees will receive shift differential payment only for time actually worked, not for sick leave, disability leave, vacation, personal leave, holiday time off or compensatory time off. Authorized shift differential will be expressed as (flat rate) cents per hour. The established rate shall be ~~twenty five cents (\$0.25)~~thirty cents (\$.30) per hour for second shift and ~~thirty five (\$0.35)~~forty cents (\$.40) per hour for third shift.

Section 18.5. The City of Wilmington will not make non-disciplinary deductions from employee paychecks without the permission of the employee except as otherwise provided by law. Deductions for union dues which are currently being made shall continue to be made unless the employee or the union notifies the City Auditor's Office to the contrary.

Section 18.6. The Employer will compensate the full time bargaining unit member who is acting supervisor at a rate of 10% above his regular rate of pay for eight (8) hours per day during the period he serves in that capacity. If he is called into the dispatch center during his off hours, he will be compensated at an overtime rate of pay figured on the acting supervisor rate of pay for the time he spends in the dispatch center. He will be paid for at least one (1) hour overtime any time he responds on off duty time and up to the actual amount of time he is in the dispatch center.

APPENDIX A

[REGARDING ARTICLE 18 - WAGES]

<u>STEP</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
A	\$10.21	\$10.52	\$10.89
B	\$10.70	\$11.02	\$11.41
C	\$11.26	\$11.60	\$12.01
D	\$11.79	\$12.14	\$12.56
E	\$12.38	\$12.75	\$13.20
E + 5	\$12.70	\$13.08	\$13.54
E + 10	\$13.01	\$13.40	\$13.87

FOR THE EMPLOYER	DATE	FOR THE UNION	DATE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Dispatchers

ARTICLE 19 - CALL-IN AND ON CALL TIME

Section 19.1 Call-In Time. Any bargaining unit member who is called in to work shall be credited with not less than two (2) hours worked.

Section 19.2 On-Call Time. The number of hours in each month shall be divided by the number of employees who are currently working as dispatchers. Each dispatcher will be on-call for that number of hours each month as a "primary call person" and as a "secondary call person". Employees, by seniority, will sign up a month in advance for their on-call hours for the following month. Employees may trade on-call hours with each other as long as the supervisor is notified of the trade. Employees who are primary and secondary on-call shall remain within the calling range of their pager and physically able to report for duty. Failure to answer a page to report for duty when on call will result in discipline in accordance with Article 10 of this Agreement. The on-call dispatcher will not be paged to report to work until after steps "a." and "b." of Article 17, Section 17.5 or Step "a." of Article 17, Appendix C, depending on the current number of trained employees in the department, have failed to fill the vacant hours. ~~Each employee shall be given six (6) guaranteed no call days per month.~~ The City requires all dispatchers to carry a paging device at all times and requires such employees to remain within the calling range of such paging device when they are on call. Pursuant to the provisions of the Fair Labor Standards Act and its regulations, an employee shall not be compensated for time spent wearing a paging device so long as the employee is otherwise free to pursue his personal activities. The employee shall be paid in accordance with section 19.1 on those occasions when such employee is called in to work via such paging device. ~~Each employee required to wear a paging device shall be given assigned six (6) guaranteed "no call" days per month. On such "no call" days and vacation and personal days, the employee shall not be paged or otherwise called in to work unless a state of emergency is called by the Mayor.~~

Section 19.3 Pager Stipend. Each employee will wear a pager and will respond in accordance with City procedure and shall receive a stipend in accordance with the following schedule:

December 1, 1995	\$400.00	December 1, 1998	\$550.00
December 1, 1996	\$450.00	December 1, 1999	\$600.00
December 1, 1997	\$500.00	December 1, 2000	\$650.00

ARTICLE 19 - CALL-IN AND ON-CALL TIME*Union Position*

The Union's proposal consists of both new language and existing contract language. It is designed to optimize the paging process when there are 8, full-time, trained members and when the number of employees falls below 8.

The Union's position in Section 19.1 of this Article is to maintain current contract language.

The Union's position in Section 19.2 strives to equalize the amount of time each month that each employee is on-call. This position allows dispatchers, by seniority, to choose those hours that they are on-call and to trade those call days with each other when necessary as long as the Director is made aware of the trade. The Union's language further intends to guarantee the Employer that these employees who are on-call will be available during this on-call time to report to work.

The Union's position on this Article is a workable system when married with the Employer's need to cover the department at all times. When the Union's language in Article 17, including Appendix C of that Article, and its position in Article 19 are used in concert, the Employer's needs are met and the employee's need for a fair, equitable system are accomplished.

Further, the Union would propose in Section 19.3 that the pager stipend continue to be paid during the entire period of this successor agreement, at the close of which data will be available to determine any adjustment.

Article 19
 Employer Proposal
 City of Wilmington
 and Fraternal Order of Police,
 Ohio Labor Council
 Dispatcher March 11-April 13, 1998

ARTICLE 19 - CALL-IN AND ON CALL TIME

Section 19.1. Call-In Time. Any bargaining unit member who is called in to work shall be credited with not less than two (2) hours worked.

Section 19.2. On-Call Time. ~~Each employee shall be given six (6) guaranteed no call days per month. The City requires all dispatchers to carry a paging device at all times and requires such employees to remain within the calling range of such paging device when they are on call. Pursuant to the provisions of the Fair Labor Standards Act and its regulations, an employee shall not be compensated for time spent wearing a paging device so long as the employee is otherwise free to pursue his personal activities. The employee shall be paid in accordance with section 19.1 on those occasions when such employee is called in to work via such paging device. Each employee required to wear a paging device shall be given assigned six (6) guaranteed "no call" days per month. On such "no call" days and vacation and personal days, the employee shall not be paged or otherwise called in to work unless a state of emergency is called by the Mayor. The City requires all dispatchers to carry a paging device at all times and to remain within the calling range of such paging device, unless the employee is on a scheduled prior approved leave. Employees are required to respond to emergency calls. Each dispatcher shall have scheduled a maximum of one (1) week per month to be "on call." During such time the dispatcher is required to report for duty within thirty (30) minutes of being paged, competent to perform the job. Additionally, during the one week of "on call," the dispatcher may also be called in early or held over on any day when they are scheduled to work. It is the dispatcher's responsibility to insure that the paging device is working properly and that there is coverage of said calls. Trading of "on call" days is permitted provided that prior written notice of such trade is provided to the Director of Communications.~~

Failure to report fit for duty within thirty minutes of being paged when "on call" will result in a nongrievable ten (10) work day suspension for a first offense. A second offense within one (1) calendar year will result in a nongrievable thirty (30) work day suspension. A third offense within two (2) years of the first offense will result in termination, which may be arbitrated solely to review whether or not: 1) It is a third offense within the two (2) year period and 2) the employee failed to report within thirty (30) minutes of being paged. The arbitrator may not reduce the termination penalty if he/she finds a third violation within two (2) years occurred.

Section 19.3. Pager Stipend. Each employee will wear a pager and will respond in accordance with City procedure and shall receive a stipend in accordance with the following schedule:

Article 19
Employer Proposal
City of Wilmington
and Fraternal Order of Police,
Ohio Labor Council
Dispatcher ~~March 11~~ April 13, 1998

December 1, 1998~~5~~

\$55000.00

Section 19.4- Reopener. The parties agree to reopen the contract on December 1, 1998 to address the issue of pager stipends.

FOR THE EMPLOYER	DATE	FOR THE UNION	DATE
_____		_____	
_____		_____	
_____		_____	
_____		_____	

Article 19. Call In and On Call Time

Pager Stipend

The Union proposed that the Employer provide an increased “stipend” to employees for carrying a pager. The Employer has agreed to do so during the first year of the contract.

The Employer believes the issue of providing stipends for carrying pagers must be revisited for the second and third years of the contract because the purported reason for providing this compensation – continued inconvenience of carrying a pager and being on call – will be sharply reduced under the Employer’s proposal. The Employer proposes a system wherein the dispatchers will have call in responsibilities only for one week at six (6) weeks intervals, rather than daily. The Employer feels that this on call procedure will bring a “regularity” to the dispatcher’s lives which was requested by their negotiator.

On Call Schedule

The Employer’s proposal also eliminates the need for the current six (6) “guaranteed no call days” per month. The Employer requires a regular schedule and an accountability on the part of the dispatchers to address absences. A need for certain on call dispatchers is made more acute given the frequency with which bargaining unit employees are off work.

Plainly, comparable data does not undermine the Employer’s position to the slightest extent. Of the ten (10) comparable cities, only Eaton and Lebanon provide for similar compensation (usually described as “on call pay”). *See Tab 25.*

Disciplinary Procedure for Absence

The Employer also proposes a disciplinary procedure to handle any situation in which a dispatcher does not answer the page or fails to appear at work fit for duty in a timely fashion following an “on call” page. This procedure consists of a ten (10) day nongrievable suspension for failure to appear fit for duty within thirty (30) minutes of receipt of the page for a first offense; a thirty (30) day nongrievable suspension for the second offense within a calendar year; and termination for a third offense within two (2) calendar years which can be arbitrated solely to review whether or not the offense occurred within the two (2) years and whether the employee failed to appear within the thirty (30) minute time period.

Therefore, the Employer requests the Fact Finder to reject the Union’s request for increases in the “pager stipend” in the second and third years of the contract, and to implement the Employer proposed on call schedule and disciplinary procedures.

Dispatchers**ARTICLE 26 - SICK LEAVE***Current Contract Language*

Section 26.1 An employee may request sick leave, provided he follows the notification and request procedures as required by the Employer. Sick leave may be requested for the following reasons:

- A. Illness or injury of the employee.
- B. Illness or injury of a member of the employee's immediate family where attention by the employee is reasonably necessary:
- C. Exposure of employee or a member of his immediate family with whom he resides to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
- D. Death of a member of the employee's immediate family.
- E. Medical, dental or optical examinations or treatment of the employee or a member of his immediate family; and
- F. Injury, illness, or disability related to pregnancy, childbirth and/or related medical conditions.

For purposes of this provision, the "immediate family" is defined as only: mother, father, brother, sister, child, spouse, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-child, legal guardian, or other person who stands in the place of a parent.

Section 26.2 The Employer maintains the right to investigate any employee's absence.

Section 26.3 For each completed hour in active pay status, an employee earns .0575 hours of sick leave not to exceed 120 hours per calendar year. Active pay status may be defined as hours worked, hours on vacation, holiday, funeral, and personal leave, and hours on paid sick leave. Sick leave credit shall not accrue while an employee is on any unpaid leave of absence, in layoff status, on disciplinary suspension, or in overtime status. Advance use of sick leave shall not be granted.

Section 26.4 Sick leave accumulation and conversion shall be:

- A. Each full-time employee of the bargaining unit who had accumulated sick leave time prior to November 3, 1985, at 12:01 a.m., shall retain sick leave time in a classification

designated "Accumulated Sick Leave Bank I". Provided, further, that for all sick leave time accumulated from after November 3, 1985, shall be in a classification designated "Accumulated Sick Leave Bank II".

- B. Upon qualifying for eligibility to receive his public employee retirement pension benefits each full-time bargaining unit employee shall be entitled to receive payment for sick leave accumulated at retirement as follows:
1. In an amount equal to three-fourths (3/4) the number of days of such accumulated sick leave in "Accumulated Sick Bank I" at the rate equivalent to such Employee's daily pay on the date of retirement.
 2. In an amount equal to one-fourth (1/4) the number of days of such accumulated sick leave in "Accumulated Sick Leave Bank II" at the rate equivalent to such employee's daily pay on the date of retirement, provided further, however, that payment for accumulated sick leave from "Accumulated Sick Leave Bank II" shall be limited such that the maximum payment which may be made from accumulated sick leave in "Accumulated Sick Leave Bank II" shall be for one-fourth (1/4) of one thousand two hundred (1200) hours.
- C. A full-time employee of the bargaining unit having accumulated sick leave in "Accumulated Sick Leave Bank I" may use such sick leave as provided in this Section, provided, however, that sick leave used from "Accumulated Sick Leave Bank I" may not be replaced, except where the use of such sick leave is in connection with a successful Workers' Compensation Claim to the extent of the claim disability. All sick leave accumulated from and after November 3, 1985, shall be accumulated in the classification designated "Accumulated Sick Leave Bank II".
- D. Each full-time employee of the bargaining unit who has more than one thousand two hundred (1200) hours accumulated sick leave in "Accumulated Sick Leave Bank II" shall on December 1 of each calendar year have the option with regard to the sick leave which he has become entitled to during that calendar year and which is in excess of one thousand two hundred (1200) hours in such employee's "Accumulated Sick Leave Bank II" as follows:
1. Carry forward the balance of sick leave credit.
 2. Receive a cash benefit conversion for the unused balance of sick leave credit. The cash benefit conversion shall be equal to one (1) hour of the employee's base rate of pay for every four (4) hours of unused sick leave credit that is converted.
 3. Carry forward a portion of the balance of sick leave credit and receive a cash benefit conversion of a portion of the sick leave credit.

The option for conversion of sick leave credit provided herein can only be utilized for sick leave credited an employee in the calendar year in which the credit is given. All sick leave credit balances that are carried forward are excluded from further cash benefits provided in this Section. The failure of an employee to utilize one of the sick leave conversion options provided in this Section shall result in the automatic carry-forward of any balance of sick leave credit. Any employee who separates from service during the year shall not be eligible under this Section for the cash conversion benefit of unused sick leave credit which has been credited during that calendar year.

Any cash benefit conversions of sick leave made in a calendar year under the provisions of this Article shall not be subject to contributions to any of the retirement systems either by the employee or the Employer.

An employee eligible to receive a cash benefit conversion or sick leave credit during a calendar year must indicate his desire to convert all or any part of such sick leave no later than December 1 of each year. For such notice to be effective, the employee must give such notice in writing to the Employer.

Section 26.5 Sick leave shall be charged in minimum amounts of one (1) hour.

Section 26.6 Employees absent on sick leave shall be paid at the same basic hourly rate as when they are working.

Section 26.7 An employee requesting sick leave for the purpose of medical, dental or optical examination appointments shall notify the Employer of the fact as far in advance as possible, in order that scheduling and work priorities might be adjusted accordingly. Such examinations shall be scheduled during an employee's non-work time whenever possible. An employee requesting sick leave for other proper purposes shall inform the Employer of the fact and the reason as soon as possible but no less than one (1) hour prior to the employee's starting time on the first day of absence and on each day of absence thereafter unless circumstances prevent such notification. Failure to do so may result in denial of sick leave for the period of absence. The employee will submit to such medical examination which the Employer deems necessary. The cost of such examination shall be absorbed by the Employer.

Section 26.8 Upon return to work, an employee shall complete and sign a request for sick leave use on a form provided by the Employer to justify the use of sick leave. The Employer may, when an employee utilizes sick leave for medical appointments as provided for in Section 26.7 above, or when an absence is for three (3) or more consecutive days, require the employee to furnish a statement from a licensed medical practitioner. Such statement shall include the general nature of the illness or injury, and the expected return to work date. Failure of the employee to provide such statement when requested shall result in the denial of sick leave pay.

Section 26.9 Vacation leave may be used for sick leave purposes, at the employee's request and with the approval of the Employer after sick leave is exhausted. Employees who have exhausted all sick leave and vacation leave credit may, at the discretion of the Employer, be granted a

personal leave of absence without pay for a period not to exceed six (6) months as provided elsewhere in this Agreement.

Section 26.10 A full-time bargaining unit employee who is employed by the Employer, and who has unused sick leave that was accumulated while employed by a previous Employer as provided for by applicable state law, may transfer such accumulated sick leave to the City of Wilmington. Such transferred sick leave shall be placed in "Accumulated Sick Leave Bank II" as defined elsewhere in this Article.

Section 26.11 The Employer may discipline any employee determined by the Employer to have been abusing sick leave. Such discipline may involve sanctions up to, and including, discharge. The Employer may refuse to pay employees for sick leave improperly taken. Sick leave abuse is defined as excessive, patterned and/or fraudulent use of sick leave. A hallmark of sick leave abuse is that the employee is not actually using sick leave for one of the appropriate reasons set forth above, but rather for some personal reason or to take additional paid time off. Patterns of absence include, but are not limited to, regular usage on the same day of the week, sick leave usage on days abutting holidays, payday or vacation days, and sick leave taken for portions of a day abutting the beginning, end and/or break time during a day or days. Excessive absence is absence of six (6) incidents or more within a six (6) month period, where no chronic condition exists which has been documented by a licensed medical practitioner, or when the incident is not in accordance with Section 9.5 of this Agreement.

At the predisciplinary conference called for excessive absence, the Employee may explain the facts and circumstances surrounding the use of sick leave in excess of the standard set forth above. The Employer will consider whether or not corrective action would be beneficial to prevent a reoccurrence of these incidents.

An Employee may petition the Employer at anytime to justify the specific use of a sick time incident. The Employer will consider the reasonableness of the incident, and will determine whether or not to excuse the incident and thereby delete the incident in calculating the six month standard.

Any sick leave which is used for the same illness or injury, even if the usage is not on consecutive days, will count as a single incident. For example, an Employee who is bitten by a dog, may receive rabies shots on a series of days over several weeks. In this instance, each on these sick days would be one part of a single incident for purposes of this section.

Section 26.12 If a full-time bargaining unit member becomes ill while on duty, he shall immediately notify his supervisor and will be relieved from duty as soon as a qualified replacement can be found. Absent emergency circumstances, the Employer will not normally schedule an employee to work if he has indicated that he will be taking sick leave for authorized purposes.

Section 26.13 Any dispatcher on duty will be given at least on (1) hour notice any time his relief has called in sick.

ARTICLE 26 - SICK LEAVE*Current Contract Language**Union Position***Article 26 - Sick Leave**

The Union proposal for Sick Leave is to maintain current contract language. This is well within the perimeters of 4117.14, G, 7 (a & b) and is strongly supported by the available comparable data which represents a community of interest, dispatchers, doing similar types of work rather than a pattern of bargaining as proposed by the Employer.

A review of the Employer's evidence would lead one to believe that the sick leave usage of this unit is out of control. Yet, careful analysis of the facts reveals that during the last 3 years this small unit of between 4 and 6 dispatchers has been plagued by a rash of injuries and illnesses. One member of this unit has undergone lengthy cancer treatment, another has required multiple bone surgeries due to a degenerative condition while a third member experienced protracted time off for a back injury. A fourth member has a child with asthma and finally, a fifth employee became pregnant requiring associated medical treatment and bonding time for mother and child.

When looking at the Employer's charts, graphs and data, the members of the department request that the neutral recognize that the Employer has failed to uphold its responsibility to operate this department in an effective and efficient manner. The members have suffered greatly from the stress of working in an understaffed department.

The Union views the preceding use of sick leave as valid absence based on a factual, non-abusive utilization of a fringe benefit.

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ARTICLE 26 - SICK LEAVE

Section 26.1. An employee may request sick leave, provided he follows the notification and request procedures as required by the Employer. Sick leave may be requested for the following reasons:

- A. Illness or injury of the employee;
- B. Illness or injury of a member of the employee's immediate family where attention by the employee is reasonably necessary;
- C. Exposure of the employee or a member of his immediate family with whom he resides to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
- D. Death of a member of the employee's immediate family.
- E. Medical, dental or optical examinations or treatment of employee or a member of his immediate family when such appointments cannot reasonably be scheduled during non-work time; and
- F. Injury, illness, or disability related to pregnancy, childbirth and/or related medical conditions.

For purposes of this provision, the "immediate family" is defined as only: mother, father, brother, sister, child, spouse, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-mother, step-father, step-brother, step-sister, step-child, legal guardian, or other person who stands in the place of a parent.

Section 26.2. The Employer maintains the right to investigate any employee's absence.

Section 26.3. For each completed hour in active pay status, an employee earns .0575 hours of sick leave to a maximum accrual of one hundred twenty (120) hours in any calendar year. Active pay status for the purpose of this Article shall be defined as hours worked, hours on vacation, hours on personal leave, and hours on paid sick leave. Sick leave credit shall not accrue while an employee is on any unpaid leave of absence, in layoff status, on disciplinary suspension, or in overtime status. Advance use of sick leave shall not be granted.

Section 26.4. Sick leave accumulation and conversion shall be:

- A. Each full-time employee of the bargaining unit who had accumulated sick leave time prior to November 3, 1985, at 12:01 a.m., shall retain sick leave time in a classification designated "Accumulated Sick Leave Bank I". Provided, further, that all sick leave time accumulated from and after November 3, 1985, shall be in a classification designated "Accumulated Sick Leave Bank II."
- B. Upon qualifying for eligibility to receive his public employee retirement pension benefits, each full-time bargaining unit employee shall be entitled to receive payment for sick leave accumulated at retirement as follows:
 1. In an amount equal to three-fourths the number of days of such accumulated sick leave in "Accumulated Sick Leave Bank I" at the rate equivalent to such employee's daily pay on the date of retirement.
 2. In an amount equal to one-fourth the number of days of such accumulated sick leave in "Accumulated Sick Leave Bank II" at the rate equivalent to such employee's daily pay on the date of retirement, provided further, however, that payment for accumulated sick leave from "Accumulated Sick Leave Bank II" shall be limited such that the maximum payment which may be made from accumulated sick leave in "Accumulated Sick Leave Bank II" shall be for one-fourth (1/4) of one thousand two hundred (1200) hours.
- C. A full-time employee of the bargaining unit having accumulated sick leave in "Accumulated Sick Leave Bank I" may use such sick leave as provided in this Article, provided, however, that sick leave used from "Accumulated Sick Leave Bank I" may not be replaced. All sick leave accumulated from and after November 3, 1985, shall be accumulated in the classification designated "Accumulated Sick Leave Bank II".
- D. Each full-time employee of the bargaining unit who has more than one thousand two hundred (1200) hours accumulated sick leave in "Accumulated Sick Leave Bank II" shall, on December 1 of each calendar year, have the option with regard to the sick leave which he has become entitled during that calendar year and which is in excess of one thousand two hundred (1200) hours in such employee's "Accumulated Sick Leave Bank II" as follows:
 1. Carry forward the balance of sick leave credit.

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2. Receive a cash benefit conversion for the unused balance of sick leave credit. The cash benefit conversion shall be equal to one (1) hour of the employee's base rate of pay for every four (4) hours of unused sick leave credit that is converted.
3. Carry forward a portion of the balance of sick leave credit and receive a cash benefit conversion of a portion of the sick leave credit.

The option for conversion of sick leave credit provided herein can only be utilized for sick leave credited an employee in the calendar year in which the credit is given. All sick leave credit balances that are carried forward are excluded from further cash benefits provided in this Section. The failure of an employee to utilize one of the sick leave conversion options provided in this Article shall result in the automatic carry-forward of any balance of sick leave credit. Any employee who separates from service during the year shall not be eligible under this Article for the cash conversion benefit of unused sick leave credit which has been credited during that calendar year.

Any cash benefit conversions of sick leave made in a calendar year under the provisions of this Article shall not be subject to contributions to any of the retirement systems either by the employee or the Employer.

An employee eligible to receive a cash benefit conversion or sick leave credit during a calendar year must indicate his desire to convert all or any part of such sick leave no later than December 1 of each year. For such notice to be effective, the employee must give such notice in writing to the Employer.

Section 26.5. Sick leave shall be charged in minimum amounts of one (1) hour.

Section 26.6. Employees absent on sick leave shall be paid at the same basic hourly rate as when they are working.

Section 26.7. An employee requesting sick leave for the purpose of medical, dental or optical examination appointments shall notify the Employer of the fact as far in advance as possible, in order that scheduling and work priorities might be adjusted accordingly. Such examinations shall be scheduled during an employee's non-work time whenever possible. An employee requesting sick leave for other proper purposes shall inform the Employer of the fact and the reason ~~as soon as possible but no less than one (1) hour~~ at least ninety (90) minutes prior to the employee's starting time on the first day of absence and on each day of absence thereafter unless circumstances prevent such notification. Failure to do so may result in denial of sick leave for the period of absence. The

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employee will submit to such medical examination, including drug and alcohol screen, if appropriate, which the Employer deems necessary. The cost of such examination shall be absorbed by the Employer.

Section 26.8. Upon return to work, an employee shall complete and sign a request for sick leave use on a form provided by the Employer to justify the use of sick leave. The Employer may, when an employee utilizes sick leave for medical appointments as provided for in Section 28.7 above, or when an absence is for three (3) or more consecutive days, require the employee to furnish a statement from a Licensed Medical Practitioner. Such statement shall include the general nature of the illness or injury, and the expected return to work date. Failure of the employee to provide such statement when requested shall result in the denial of sick leave pay.

Section 26.9. Vacation leave may be used for sick leave purposes at the employee's request and with the approval of the Employer after sick leave is exhausted. Employees who have exhausted all sick leave and vacation leave credits may, at the discretion of the Employer, be granted a personal leave of absence without pay for a period not to exceed six (6) months as provided elsewhere in this Agreement. **Employees who qualify for FMLA leave will be subject to the provisions of such including the "rolling year" definition for the 12 week period.**

Section 26.10. A full-time bargaining unit employee who is employed by the Employer, and who has unused sick leave that was accumulated while employed by a previous Employer as provided for by applicable State law, may transfer such accumulated sick leave to the City of Wilmington. Such transferred sick leave shall be placed in "Accumulated Sick Leave Bank II" as defined elsewhere in this Article.

Section 26.11. NO FAULT PROVISION

1. **An employee receives 8 points per month for perfect attendance on their regular schedule during the month. Maximum accrual is +100 points.**

2. **For each absence due to illness or injury to themselves or their immediate family, the employee receives (-1) point for each hour of leave that is utilized. One to ~~four~~ three days of consecutive absence for the same illness or injury will be counted as "one occurrence" and a deduction of only eight (8) points will occur. Absences of more than three (3) consecutive work days shall be deducted at the rate of eight (8) points per day until an appropriate FMLA leave is applied for and approved. No deduction will be made for leave time utilized for an illness or injury which qualifies as a severe illness or injury pursuant to the FMLA.**

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3. In addition to the above, pPoints will not be deducted for vacation leave, personal days, jury duty, funeral leave, compensatory leave or FMLA leave.
4. Tardiness will be treated in 15 minute intervals for deduction purposes. (i.e. 1-15 minutes tardy will result in -.25 points; 16-30 minutes tardy will result in -.50 points; 31-45 minutes tardy will result in -.75 points).
5. Leaving the job before the end of a shift will be treated in the same 15 minute intervals as tardiness.

PENALTIES:* Each time an employee attains any of the totals listed below, the discipline indicated will be administered:

- 30 points, job counseling
- 40 points total, written reprimand
- 60 points total, 3 day suspension
- 80 points total, 5 day suspension
- 100 points total, termination

Two (2) penalties of the same type within any one calendar year automatically progresses to ~~at least~~ the next step on the third occurrence. More than three (3) penalties of the same type within any one calendar year automatically progresses to at least the next step.

Point totals to be utilized will be calculated at the time of utilization. Example: If an employee has -35 points on June 15th and then utilizes 8 hours of sick leave on June 16th, the employee will be considered to have -43 points and will be subject to a penalty of a written reprimand.

***Subject to FMLA considerations**

Any sick leave which is used for the same illness or injury, even if the usage is not on consecutive days, will count as a single incident. For example, an off duty Employee who is bitten by a dog, may receive rabies shots on a series of days over several weeks. In this

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instance, each of these sick days would be one part of a single incident for purposes of this section.

An employee who has perfect attendance for the twelve (12) month period ending on December 1st each year will receive a ~~\$100~~ \$200 net bonus payment before December 25th of that year. During the first year of the contract an employee need only have perfect attendance for the period of time from May 1st to November 30th to qualify for the bonus.

Section 26.12. If a full-time bargaining unit member becomes ill while on duty, he shall immediately notify his supervisor and will be relieved from duty as soon as a qualified replacement can be found. Absent emergency circumstances, the Employer will not normally schedule an employee to work if he has indicated that he will be taking sick leave for authorized purposes.

Section 26.13. Any dispatcher on duty will be given at least one (1) hour notice any time his relief has called in sick.

Section 26.14. Each full time bargaining unit employee who has accumulated more than one thousand two hundred (1200) hours accumulated sick leave in "Accumulated Sick Leave Bank II" shall, on December 1 of each calendar year, have the option of cash in all or any portion of those hours over 1200 at a rate of fifty percent (50%) his current hourly rate.

Section 26.15. The parties agree the City will comply with all applicable disability and family and medical leave laws, and where necessary will establish policies for compliance with those laws.

FOR THE EMPLOYER	DATE	FOR THE UNION	DATE
_____		_____	
_____		_____	
_____		_____	

Article 26. Sick Leave

In order to better cope with absenteeism problems, the Employer proposed "no fault" absenteeism provisions in its contract negotiations with Police, Fire and Dispatcher bargaining units. The Police and Fire units have accepted the Employer's proposal in this regard. Not surprisingly, the Dispatchers, with the worst record of absenteeism of all the units, have objected to the proposal. *See Tab 16, 17, 18, 19.*

A "no-fault" attendance plan is one that defines "excessive" absence or tardiness (usually by charging employees with a certain number of "points" for missing work) and triggers discipline automatically at fixed levels of absenteeism or tardiness, regardless of an employee's fault. *See M. Hill, Jr. & A. Sinicropi, Management Rights, at 69 (BNA 1986).*

In a fully "no fault" attendance policy, one often finds all absences (including paid sick leave days off) are included in the computations, and the employees are made aware in advance of the details of the policy. That type policy is assumed to discourage employees from taking time off unnecessarily or for minor "blahs". With due diligence given to the factual circumstances, many arbitrators hold appropriate discipline to be for just cause under such policies.

Kansas Power & Light Co., 87 LA 867, 871 (A.L. Belcher 1986).

"No fault" provisions similar to that proposed by the Employer have proven to be effective in other bargaining units across the state. Unscheduled time off has been reduced by no less than 30% in the worst case, and by as much as 60% in another case. The proposal rewards employees for perfect attendance each month with +8 points to a maximum of 100 points. For perfect attendance for an entire year, an employee receives a \$200.00 net lump sum payment in December. Each unscheduled absence results in -1 point for each hour of absence. One (1) to four (4) days of consecutive absence for the same illness or injury will be counted as "one occurrence" and a deduction of only 8 points will occur. No deduction will occur for FMLA related illness or injury. Each time an employee attains any of the totals listed in the proposal (-30, -40, -60, -80 or -100), the Employer will administer discipline. Two (2) penalties of the same type within one (1) calendar year automatically progresses the employee to the next step of discipline.

This no fault sick leave proposal has been accepted by all other bargaining units within the City and is being extended to cover the remainder of non-union employees within the employment of the City. The Employer submits that inclusion of a "no-fault" provision in the new dispatcher contract is a matter of the highest priority. The bargaining unit's rampant absenteeism must be brought under control.

Dispatchers**ARTICLE 28 - PERSONAL DAY LEAVE***Current Contract Language*

Section 28.1 - Full time bargaining unit employees shall be granted three (3) personal days of leave each calendar year. Such personal day leave shall not be deducted from any accumulated but unused sick or vacation leave that the employee may have accumulated.

Section 28.2 - The employee must request personal day leave usage as far in advance as possible in writing. The Employer has the discretion to refuse to grant any personal day use that is not requested more than twelve (12) hours in advance.

ARTICLE 28 - PERSONAL DAY LEAVE

Union Proposal

Article 28 - Personal Day Leave

The Union proposes to keep current contract language. This has proven effective for the employees and manageable for the employer.

Altering the use of personal leave to meet the needs of the employer defeats the intended purpose of such leave. The intended purpose of personal leave is to act as a relief valve for the employee who needs time off due to family or personal emergencies which could not be accommodated by any other leave.

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ARTICLE 28 - PERSONAL DAY LEAVE

Section 28.1. Full time bargaining unit employees shall be granted three (3) personal days of leave each calendar year. Such personal day leave shall not be deducted from any accumulated but unused sick or vacation leave that the employee may have accumulated.

Section 28.2. The employee must request personal day leave usage as far in advance as possible in writing. The Employer has the discretion to refuse to grant any personal day. ~~use that is not requested more than twelve (12) hours in advance.~~ It is understood that the Employer will approve at least one of the three (3) personal days each calendar year provided there is no other same shift dispatcher already granted approved leave on the day and shift requested at least twenty four (24) hours in advance of the beginning of said shift.

FOR THE EMPLOYER	DATE	FOR THE UNION	DATE
_____		_____	
_____		_____	
_____		_____	
_____		_____	

Article 28. Personal Day Leave

The Employer wishes to amend Article 28 of the agreement to make it clear that the Employer has the right to approve or deny any personal day leave requests. The Union contends that the current language obligates the Employer to approve all requests for personal day leave made twelve (12) or more hours in advance. This is a necessary clarification of the current agreement which has been the subject of prior grievances.*

The Employer submits that such a contract provision would be unreasonably disruptive to the Employer's scheduling efforts. Given the high absenteeism rate of this bargaining unit, the Employer is already hard-pressed to schedule sufficient staff members to carry out the department's duties. If the Employer has to grant personal leave day requests merely because those requests are made more than twelve (12) hours in advance of scheduled duty, scheduling will become virtually impossible. In short, the Union's position regarding the existing contract language usurps the Employer's right to effectively manage the work force and its inherent management right to schedule employees.

This particular provision of the contract became a topic of major discussion during this past Christmas season. Nearly every employee requested either vacation or personal leave for Christmas Day. Had the twelve (12) hour provision in the current contract been interpreted as the urged by the Union, there would have been no dispatchers on duty that day.

The unreasonable nature of the Union's interpretation is underscored by the contracts of similar bargaining units in Southwest Ohio, **none** of which contain a provision like that requested by this Union. The Employer has proposed a reasonable personal leave provision that allows enough flexibility for the employees and management as well. The Employer requests the Fact Finder to grant the City's proposal and put this issue to rest once and for all.

* None of these grievances have gone to arbitration.

Dispatchers

ARTICLE 42 - STRESS LEAVE*Union Proposal*

Section 42.1 - Each bargaining unit member will receive stress leave, as needed. Stress days off shall not be deducted from any other paid leave.

If an employee feels he needs to take a stress day off following a stressful or traumatic incident which occurs during his performance of required duties in the dispatch center, he will advise the Employer as soon as he realizes he is suffering from the incident, that he needs to take a stress day off. The Employer will not deny the request. Stress leave may be extended by the Employer based on the incident and the employee's physical and psychological need. Stress leave that is extended by the Employer will not be deducted from any other paid leave the employee has accumulated. Any tests or treatment required by the Employer shall be at the Employer's expense.

ARTICLE 42 - STRESS LEAVE
Union Position

Article 42 - Stress Leave

The Union's language reflects an avenue by which an employee who has undergone a traumatic experience while on duty may achieve psychological relief.

Article 42. Stress Leave

The Union proposes a new benefit for its bargaining unit article which would provide members three (3) days of "stress leave" per year. The Employer submits that the bargaining unit members already spend far too much time off the job and should not receive additional leaves of absence which are not given to any other City employee.

"Stress leave," above and beyond any vacation leave, sick leave, personal day leave, and disability leave which may be available to employees, is not commonly featured in collective bargaining agreements across the state. Indeed, none of the ten (10) comparable cities have such a provision. To date the Employer has yet to find such a provision in *any* contract. This is truly an aberrant request on the part of the Union and must be rejected.

Dispatchers

ARTICLE 44 - MID-TERM BARGAINING PROCEDURE

Union Proposal

Section 44.1 - Any change initiated, planned and implemented by the Employer during the term of this Collective Bargaining Agreement which effects the wages, hours, terms and/or conditions of employment outside the existing Collective Bargaining Agreement shall be bargained and resolved in accordance with the Dispute Resolution Procedure outlined in O.R.C. 4117.

ARTICLE 44 - MID-TERM BARGAINING PROCECURE

Union Position

Article 44 - Mid-Term Bargaining Procedure

The Union's Language as provided to the Fact Finder in it's original proposal reflects the Union's current position.

Article 44. Mid-Term Bargaining Procedure

The Union proposes a new Article 44 addressing a mid-term bargaining procedure, stating as follows:

In the event either party proposes a change in wages, hours, terms and conditions of employment during the term of this contract, the parties shall bargain the change. If the parties are unable to reach an agreement, the issue or issues shall be submitted to an interest arbitrator, mutually chosen by the parties, from a list supplied by F.M.C.S.

The City submits that this provision is inconsistent with the existing "zipper clause" contained in the preamble of the current agreement. That preamble states that the agreement sets "forth the full and complete understandings and agreements between the parties governing the wages, hours, terms and other conditions of employment" for bargaining unit employees. Having already closed the issues of wages, hours, and terms and conditions of employment for the life of the agreement, the parties cannot have an inconsistent provision implying that such matters may be reopened mid-term.

Furthermore, to the extent that an issue arises which is not covered by the contract, and that issue requires the parties' consultation or negotiation, the current agreement already contains Article 7 providing for Labor/Management meetings to address such matters. If a matter falling outside coverage of the contract and its zipper clause requires negotiation, and the parties reach impasse, the Employer is willing to address such an impasse in accordance with state laws existing at the time of the negotiations.

In closing, the Employer submits that this Fact Finder should not give the Union two different administrative and arbitral forums for addressing an alleged bargaining obligation. The Union proposal should be rejected.

ARTICLE 17 - HOURS OF WORK AND OVERTIME

Section 17.1. The standard work period for all bargaining unit employees shall consist of forty (40) hours based on five (5) consecutive eight (8) hour days and two (2) consecutive days off in a seven (7) day work period as established by the Employer. This section shall be in effect if both of the following apply: (1) It is after July 1, 1998, and (2) the bargaining unit is at "full strength" as defined in Section 17.3.

- A. Shifts, work days and days off, will be established by the Employer.
- B. Bargaining unit employees will bid, by seniority, twice each year in January and June for established shifts unless a vacancy occurs. When the Employer determines that a vacancy exists, the employees will be permitted to bid by seniority as provided in Article 14.

Section 17.2. Overtime will be paid at a rate of time and one half for time worked in excess of forty (40) hours per week.

Section 17.3. For purposes of this Article, the Employer is defined as being at "full strength" when eight (8) qualified dispatchers are in the employment of the Employer.

Section 17.4. Members of the bargaining unit may accrue a maximum of forty (40) hours of compensatory time for use each calendar year. Once the forty (40) hour maximum is reached, members of the bargaining unit may not accumulate additional compensatory hours for the remainder of the calendar year. This is not a rolling balance and may be accrued only once each calendar year. Any member of the bargaining unit will be paid overtime rate (time and one-half) for all hours worked in excess of forty (40) hours in a work week if the member requests such payment or once the member reaches the forty (40) hour maximum compensatory time accrual.

Section 17.5. The City will distribute overtime to the employee scheduled to be on call. Pursuant to Section 17.9, when another dispatcher is on leave for more than one (1) day, the eighth dispatcher will be reassigned to cover for absent employees rather than offering overtime.

Section 17.6. The Employer agrees to hire the number of dispatchers necessary to reach full strength as defined in Section 17.3. This provision in no way obligates the Employer to reduce or waive qualifications for the dispatcher position, or to hire an unqualified person to fill a dispatch position.

Section 17.7. The employees are permitted to trade work times and days off with the prior written approval of the Director. It is understood that employee initiated trades of work time or days off will not be approved if the trade results in overtime work for either employee.

Appendix A

Section 17.8. Prior to July 1, 1998, if the employment of qualified trained dispatchers drops below full strength as defined in Section 17.3, the Employer will establish schedules and shifts as provided for in the prior contract between the parties. During the term of the contract, if the employment of qualified, trained dispatchers falls below full strength as defined Section 17.3, the Employer will establish schedules and shifts as necessary until full strength is achieved again.

Section 17.9. The eighth dispatcher (listed as H on the schedule) will work a full time scheduled as listed on Exhibit ____, except when another dispatcher is on a leave of more than one (1) day. When another dispatcher is on a leave of more than one (1) day the eighth dispatcher will be reassigned to cover for the absent employee instead of utilization of the "on call" procedure. The "on call" procedure will be used for any one day or portion of one day absence.

Appendix B

ARTICLE 18 - WAGES AND COMPENSATION

Section 18.1. Effective on the first day of the first fully pay period following January 1 of 1998, 1999 and 2000, the pay ranges to which bargaining unit employees are assigned shall be in accordance with Appendix A of this agreement.

Section 18.2. Each bargaining unit employee who has not reached the top step in his salary range in the Employer's pay plan shall be granted the appropriate step level increase on his anniversary date as provided for in such pay plan.

Section 18.3. The Employer will pay a shift differential to the members of the bargaining unit. The shift will be determined by the majority of time spent in any set of hours. Second shift: 1500 hours to 2300 hours. Third shift: 2300 hours to 0700 hours. Employees eligible for shift differential will receive such shift differential for all hours of the shift, including the hours outside of the above limits which are a normal part of the shift.

Section 18.4. The employees will receive shift differential payment only for time actually worked, not for sick leave, disability leave, vacation, personal leave, holiday time off or compensatory time off. Authorized shift differential will be expressed as (flat rate) cents per hour. The established rate shall be thirty cents (\$.30) per hour for second shift and forty cents (\$.40) per hour for third shift.

Section 18.5. The City of Wilmington will not make non-disciplinary deductions from employee paychecks without the permission of the employee except as otherwise provided by law. Deductions for union dues which are currently being made shall continue to be made unless the employee or the union notifies the City Auditor's Office to the contrary.

Section 18.6. The Employer will compensate the full time bargaining unit member who is acting supervisor at a rate of 10% above his regular rate of pay for eight (8) hours per day during the period he serves in that capacity. If he is called into the dispatch center during his off hours, he will be compensated at an overtime rate of pay figured on the acting supervisor rate of pay for the time he spends in the dispatch center. He will be paid for at least one (1) hour overtime any time he responds on off duty time and up to the actual amount of time he is in the dispatch center.

Section 18.7. The Employer will compensate the full time bargaining unit member who is training another employee at a rate of fifty cents (\$.50) per hour or part of an hour spent training said employee, above his regular rate of pay. The Employer shall designate all trainers and shall schedule and approve all training hours.

APPENDIX A

[REGARDING ARTICLE 18 - WAGES]

<u>STEP</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
A	\$10.21	\$10.52	\$10.89
B	\$10.70	\$11.02	\$11.41
C	\$11.26	\$11.60	\$12.01
D	\$11.79	\$12.14	\$12.56
E	\$12.38	\$12.75	\$13.20
E + 5	\$12.70	\$13.08	\$13.54
E + 10	\$13.01	\$13.40	\$13.87

ARTICLE 19 - CALL-IN AND ON CALL TIME

Section 19.1. Call-In Time. Any bargaining unit member who is called in to work shall be credited with not less than two (2) hours worked.

Section 19.2. On-Call Time. The City requires all dispatchers to carry a paging device at all times and to remain within the calling range of such paging device, unless the employee is on a scheduled prior approved leave. Employees are required to respond to emergency calls. Each dispatcher shall have scheduled a maximum of one (1) week per month to be "on call." During such time the dispatcher is required to report for duty within thirty (30) minutes of being paged, competent to perform the job. Additionally, during the one week of "on call," the dispatcher may also be called in early or held over on any day when they are scheduled to work. It is the dispatcher's responsibility to insure that the paging device is working properly and that there is coverage of said calls. Trading of "on call" days is permitted provided that prior written notice of such trade is provided to the Director of Communications.

Failure to report fit for duty within thirty minutes of being paged when "on call" may result in corrective action.

Section 19.3. Pager Stipend. Each employee will wear a pager and will respond in accordance with City procedure (Section 19.2) and shall receive a stipend in accordance with the following schedule:

December 1, 1998 \$ 600.00

December 1, 1999 \$ 600.00

ARTICLE 26 - SICK LEAVE

Section 26.1. An employee may request sick leave, provided he follows the notification and request procedures as required by the Employer. Sick leave may be requested for the following reasons:

- A. Illness or injury of the employee;
- B. Illness or injury of a member of the employee's immediate family where attention by the employee is reasonably necessary;
- C. Exposure of the employee or a member of his immediate family with whom he resides to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
- D. Death of a member of the employee's immediate family.
- E. Medical, dental or optical examinations or treatment of employee or a member of his immediate family when such appointments cannot reasonably be scheduled during non-work time; and
- F. Injury, illness, or disability related to pregnancy, childbirth and/or related medical conditions.

For purposes of this provision, the "immediate family" is defined as only: mother, father, brother, sister, child, spouse, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-mother, step-father, step-brother, step-sister, step-child, legal guardian, or other person who stands in the place of a parent.

Section 26.2. The Employer maintains the right to investigate any employee's absence.

Section 26.3. For each completed hour in active pay status, an employee earns .0575 hours of sick leave to a maximum accrual of one hundred twenty (120) hours in any calendar year. Active pay status for the purpose of this Article shall be defined as hours worked, hours on vacation, hours on personal leave, and hours on paid sick leave. Sick leave credit shall not accrue while an employee is on any unpaid leave of absence, in layoff status, on disciplinary suspension, or in overtime status. Advance use of sick leave shall not be granted.

Section 26.4. Sick leave accumulation conversion shall be:

- A. Each full-time employee of the bargaining unit who had accumulated sick leave time prior to November 3, 1985, at 12:01 a.m., shall retain sick leave time in a classification designated "Accumulated Sick Leave Bank I." Provided, further, that all sick leave time accumulated from and after November 3, 1985, shall be in a classification designated "Accumulated Sick Leave Bank II."

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- B. Upon qualifying for eligibility to receive his public employee retirement pension benefits, each full-time bargaining unit employee shall be entitled to receive payment for sick leave accumulated at retirement as follows:
1. In an amount equal to three-fourths the number of days of such accumulated sick leave in "Accumulated Sick Leave Bank I" at the rate equivalent to such employee's daily pay on the date of retirement, provided further, however, that payment for accumulated sick leave from "Accumulated Sick Leave Bank II" shall be limited such that the maximum payment which may be made from accumulated sick leave in "Accumulated Sick Leave Bank II" shall be for one-fourth (1/4) of one thousand two hundred (1200) hours.
- C. A full-time employee of the bargaining unit having accumulated sick leave in "Accumulated Sick Leave Bank I" may use such sick leave as provided in this Article, provided, however, that sick leave used from "Accumulated Sick Leave Bank I" may not be replaced. All sick leave accumulated from and after November 3, 1985, shall be accumulated in the classification designated "Accumulated Sick Leave Bank II."
- D. Each full-time employee of the bargaining unit who has more than one thousand two hundred (1200) hours accumulated sick leave in "Accumulated Sick Leave Bank II" shall, on December 1 of each calendar year, have the option with regard to the sick leave which he has become entitled during that calendar year and which is in excess of one thousand two hundred (1200) hours in such employee's "Accumulated Sick Leave Bank II" as follows:
1. Carry forward the balance of sick leave credit.
 2. Receive a cash benefit conversion for the unused balance of sick leave credit. The cash benefit conversion shall be equal to one (1) hour of the employee's base rate of pay for every four (4) hours of unused sick leave credit that is converted.
 3. Carry forward a portion of the balance of sick leave credit and receive a cash benefit conversion of a portion of the sick leave credit.

The option for conversion of sick leave credit provided herein can only be utilized for sick leave credited an employee in the calendar year in which the credit is given. All sick leave credit balances that are carried forward are excluded from further cash benefits provided in this Section. The failure of an employee to utilize one of the sick leave conversion options provided in this Article shall result in the automatic carry-forward of any balance of sick leave credit. Any employee who separates from service during the year shall not be eligible under this Article for the cash conversion benefit of unused sick leave credit which has been credited during that calendar year.

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Any cash benefit conversions of sick leave made in a calendar year under the provisions of this Article shall not be subject to contributions to any of the retirement systems either by the employee or the Employer.

An employee eligible to receive a cash benefit conversion or sick leave credit during a calendar year must indicate his desire to convert all or any part of such sick leave no later than December 1 of each year. For such notice to be effective, the employee must give such notice in writing to the Employer.

Section 26.5. Sick leave shall be charged in minimum amounts of one (1) hour.

Section 26.6. Employees absent on sick leave shall be paid at the same basic hourly rate as when they are working.

Section 26.7. An employee requesting sick leave for the purpose of medical, dental or optical examination appointments shall notify the Employer of the fact as far in advance as possible, in order that scheduling and work priorities might be adjusted accordingly. Such examinations shall be scheduled during an employee's non-work time whenever possible. An employee requesting sick leave for other proper purposes shall inform the Employer of the fact and the reason at least ninety (90) minutes prior to the employee's starting time on the first day of absence and on each day of absence thereafter unless circumstances prevent such notification. Failure to do so may result in denial of sick leave for the period of absence. The employee will submit to such medical examination, including drug and alcohol screen, if appropriate, which the Employer deems necessary. The cost of such examination shall be absorbed by the Employer.

Section 26.8. Upon return to work, an employee shall complete and sign a request for sick leave use on a form provided by the Employer to justify the use of sick leave. The Employer may, when an employee utilizes sick leave for medical appointments as provided for in Section 28.7 above, or when an absence is for three (3) or more consecutive days, require the employee to furnish a statement from a Licensed Medical Practitioner. Such statement shall include the general nature of the illness or injury, and the expected return to work date. Failure of the employee to provide such statement when requested shall result in the denial of sick leave pay.

Section 26.9. Vacation leave may be used for sick leave purposes at the employee's request and with the approval of the Employer after sick leave is exhausted. Employees who have exhausted all sick leave and vacation leave credits may, at the discretion of the Employer, be granted a personal leave of absence without pay for a period not to exceed six (6) months as provided elsewhere in this Agreement. Employees who qualify for FMLA leave will be subject to the provisions of such including the "rolling year" definition for the 12-week period.

Section 26.10. A full-time bargaining unit employee who is employed by the Employer, and who has unused sick leave that was accumulated while employed by a previous Employer as provided for by applicable State law, may transfer such accumulated sick leave to the City of Wilmington. Such transferred sick leave shall be placed in "Accumulated Sick Leave Bank II" as defined elsewhere in this Article.

Section 26. 11. NO FAULT PROVISION

This provision shall become effective the first full month following the date the number of bargaining unit staff reaches six (6) employees (full-time equivalents).

1. An employee receives eight (8) points per month for perfect attendance on their regular schedule during the month. Maximum accrual is +100 points.
2. For each absence due to illness or injury to themselves or their immediate family, the employee receives (-1) point for each hour of leave that is utilized. One to three days of consecutive absence for the same illness or injury will be counted as "one occurrence" and a deduction of only eight (8) points will occur. Absences of more than three (3) consecutive work days shall be deducted at the rate of eight (8) points per day until an appropriate FMLA leave is applied for and approved. No deduction will be made for leave time utilized for an illness or injury which qualifies as a severe illness or injury pursuant to the FMLA.
3. In addition to the above, points will not be deducted for vacation leave, personal days, jury duty, funeral leave, compensatory leave or FMLA leave.
4. Tardiness will be treated in 15 minute intervals for deduction purposes. (i.e. 1-15 minutes tardy will result in -.25 points; 16-30 minutes tardy will result in -.50 points; 31-45 minutes tardy will result in -.75 points).
5. Leaving the job before the end of a shift will be treated in the same 15 minute intervals as tardiness.

PENALTIES:* Each time an employee attains any of the totals listed below, the discipline indicated will be administered:

- 30 points, job counseling
- 40 points total, written reprimand
- 60 points total, 3 day suspension
- 80 points total, 5 day suspension
- 100 points total, termination

Two (2) penalties of the same type within any one (1) calendar year automatically progresses to the next step on the third occurrence. More than three (3) penalties of the same type within any one (1) calendar year automatically progresses to at least the next step.

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Point totals to be utilized will be calculated at the time of utilization. Example: If an employee has -35 points on June 15th and then utilizes eight (8) hours of sick leave on June 16th, the employee will be considered to have -43 points and will be subject to a penalty of a written reprimand.

*** Subject to FMLA considerations**

Any sick leave which is used for the same illness or injury, even if the usage is not on consecutive days, will count as a single incident. For example, an off duty Employee who is bitten by a dog, may receive rabies shots on a series of days over several weeks. In this instance, each of these sick days would be one part of a single incident for purposes of this section.

An employee who has perfect attendance for the twelve (12) month period ending on December 1st each year will receive a \$200 net bonus payment before December 25th of that year. During the first year of the contract an employee need only have perfect attendance for the period of time from July 15th to November 30th to qualify for the bonus.

Section 26.12. If a full-time bargaining unit member becomes ill while on duty, he shall immediately notify his supervisor and will be relieved from duty as soon as a qualified replacement can be found. Absent emergency circumstances, the Employer will not normally schedule an employee to work if he has indicated that he will be taking sick leave for authorized purposes.

Section 26.13. Any dispatcher on duty will be given at least one (1) hour notice any time his relief has called in sick.

Section 26.14. Each full-time bargaining unit employee who has accumulated more than one thousand two hundred (1200) hours accumulated sick leave in "Accumulated Sick Leave Bank II" shall, on December 1 of each calendar year, have the option of cash in all or any portion of those hours over 1200 at a rate of fifty percent (50%) his current hourly rate.

Section 26.15. The parties agree the City will comply with all applicable disability and family and medical leave laws, and where necessary will establish policies for compliance with those laws.

ARTICLE 28 - PERSONAL DAY LEAVE

Section 28.1. Full time bargaining unit employees shall be granted three (3) personal days of leave each calendar year. Such personal day leave shall not be deducted from any accumulated but unused sick or vacation leave that the employee may have accumulated.

Section 28.2. An employee must request personal day leave in writing as far in advance as possible. The Employer has the discretion to refuse to grant any personal day use that is not requested more than forty-eight (48) hours in advance. In cases of emergency, the Employer may waive the notification requirement, subject to the employee subsequently providing proof of an emergency. The Employer retains the right to deny a personal leave request when more than one (1) employee requests the same day. If two (2) or more employees request the same day the most senior employee shall be given preference. The Employer also retains the right to cancel a scheduled personal leave day if a staff shortage exists for that day (e.g. sick leave call offs) or an emergency exists (e.g. natural disaster).

ARTICLE 42 - STRESS LEAVE

Section 42.1. An employee who takes sick leave related to a specific and traumatic dispatch related event may submit to the Employer a request that the first day of said leave be considered “stress leave” and not counted toward sick leave. The Employer has the sole right to accept or reject said request and said decision is not subject to review through the grievance procedure.