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

**REPORT & RECOMMENDATIONS  
OF THE FACT FINDER**

**AS ISSUED  
MAY 1, 1998**

**IN THE MATTER OF:**

**City of Lorain  
(Employer)  
-and-  
Fraternal Order of Police  
Lodge No. 3  
(Union)**

**Case No. 97-MED-09-0943/44**

**HEARING:**

As the result of mediation and evidentiary sessions held on March 29, 1998 and April 9, 1998, respectively, at the City of Lorain City Hall in Lorain, Ohio.

**APPEARANCES:**

*On Behalf of the Union:*

**Robert M. Phillips  
Corey J. Earl  
Terrance V. Udovich  
Geno R. Taliano**

**Advocate  
President, FOP Lodge No. 3  
Past President, FOP Lodge No. 3  
Negotiation Representative**

*On Behalf of the Employer:*

**Mark Mihok  
Robert M. Dunnigan**

**Personnel Director  
Witness**

**GREGORY JAMES VAN PELT  
LABOR ARBITRATION  
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### SUBMISSION

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective on December 1, 1997.

The Parties attempted settlement of issues in dispute, and accordingly entered into a mutual agreement to extend the period for fact finding, as provided for in ORC 4117.14(C)(5).

There being no settlement within the extended period, an attempt was made to mediate issues at impasse between the Parties on March 29, 1998. This attempt failed to result in agreement, and it was determined to present the matter to the Factfinder for his recommendations. Accordingly, the Parties were afforded an opportunity to present evidence and argument in support of their respective positions on April 9, 1998. A statement of the Union's position was submitted to the Parties prior to mediation, and positions of both Parties were submitted to the Factfinder prior to the evidentiary hearing.

### ISSUES AT IMPASSE

The Parties identified eight issues as unresolved:

1. Article XXXI - Wages
2. Article XI - Discipline
3. Article XXIII - Clothing Allowance <sup>settled at hearing</sup>
4. Article XXIII - Uniform Maintenance Allowance
5. Article XXII - Insurance Coverage
6. Article XXIV - Educational Reimbursement <sup>withdrawn</sup>
7. Article XLI - National Guard Duty
8. Article XIV - Hours of Work and Overtime Compensation
9. Article XVII - Negotiations
10. Article XIX - Longevity

11. Article XXI - Holidays
12. Article IX - Grievance Procedure
13. Article XLII - Police Academy Tuition Reimbursement

#### **STATUTORY CONSIDERATIONS**

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K):

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2)** Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3)** The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### BACKGROUND

In late March and early April of 1996, the Parties agreed to re-open negotiations on the wage provisions of their collective bargaining agreement, which became effective on January 1, 1995 and obtained until December 31, 1997. At that time this Factfinder heard that Lorain was a City that had struggled through a period of financial difficulty to emerge with good prospects. According to testimony at the time, the strength and stability of the community's tax base was sound; major employers in the community were expanding operations; and the City retained a \$1,612,000 General Fund Surplus in 1995.

Two years later, the City's prospects are dulled somewhat by the elimination of Ford's Thunderbird automobile, a classic whose passing meant an unanticipated loss of jobs at the Lorain facility that had produced components of the vehicle. Nevertheless, Lorain is far from the fiscal dangers that have threatened it in the past. In 1996, the City's General Fund showed a cash surplus of \$1,349,000. While the fund showed a mild negative balance in February of 1998, the ramifications of the Ford plant closing appear less dire than the City had initially believed. Moreover, funds from the City's 1/4 % Police Levy had accumulated to a fund balance of \$1,447,179. 00 at the end of 1996 and continues to grow, despite annual expenditures for Police purposes as permitted under the enabling legislation.

In passing Ordinance No. 22-92, the City Council prudently sought to protect the fund from uses other than the improvement of Lorain's Police services. Accordingly, it specifically restricted use of Levy proceeds to the hiring of new personnel; the training of new and existing personnel; the purchase of new equipment, with allocation of excess funds exclusively to capital improvements. The levy could not be used to pay the salaries of police positions existing at the time of its passage. Ironically, these reasonable restrictions now leave Lorain in the position of having surplus funds, clearly intended to improve the quantity and quality of the City's Police protection, unavailable for the essential purpose of retaining experienced officers. Meanwhile, Lorain's General Fund labors to afford increases in veteran's salaries.

During mid-term wage negotiations the City desired that increases in salary to FOP members be linked to improvements in their ability to perform their duties. Accordingly, it asked from the Union the opportunity to institute a Master Police Officer program that would provide Lorain Officers monetary incentives to develop job-related skills.

Unfortunately, the program presently languishes undeveloped, and while FOP members continue to train, no specific curriculum directs or measures their progress.

The basic collective bargaining relationship here is one of good faith and mutual respect between the Parties. It is with these considerations, and those directed by statute, that we address the issues that follow, with the goal of maintaining that relationship.

## **FINDINGS AND RECOMMENDATIONS**

### **Article XXXI - Wages**

#### ***City's Position:***

The Employer maintains that present economic circumstances in the community require restraint in wage increases for its Police Officers. The Ford plant closing will affect not only Ford employees, but the entire community, the City says. Accordingly it offers bargaining unit members a signing bonus of \$500 in the first year of the Agreement; a two percent (2%) increase over base salaries in the second year; and, a three percent (3%) increase in the year 2000.

In addition, the City seeks a reduction of the current rate for entry level officers at 90% of base pay to 80%, applicable to all Officers hired following acceptance of the Agreement. It also seeks a corresponding extension of the entry-level reductions to cover a period of three years.

In support of its proposal, the City points out that entry-level salaries for Lorain are above average for similarly-situated communities, while maximum salaries are low. It seeks to balance that relationship by extending the period over which new recruits reach full base pay.

#### ***FOP's Position:***

While the Union concedes that Ford Motor Company is restructuring its business in Lorain, it argues the sky is not falling on the City. Lorain's carryover was \$1.65 million, the Union argues, and all projections, it says, show a stable economic future. In comparison to other police departments in the County, the City of Lorain -the County's largest- ranks in the lowest 25% in wages. Consequently, it asks four percent (4%) increases in each of the three contract years.

The FOP agrees that a balance between maximum and minimum salaries might appropriately be addressed by extending the period for recruits to reach full pay status. On the other hand it argues that attempts should equally aim at elevating maximum salaries, and offers this contention in support of 4% annual increases to bargaining unit member's base salaries.

***Discussion:***

When this Factfinder finished his recommendations in the mid-contract wage negotiations almost two years ago, it was with great regard for the respect between these Parties and encouragement for the future of the relationship. That relationship resulted in both Parties embracing the idea of wage increases based on professional development.

But in their enthusiasm for the concept, it seems apparent both the City and bargaining unit members underestimated the time and resources necessary to institute such a goal. Great questions remain Parties regarding the efficacy and implementation of a Master Police Officer program. With focus and determination, it is possible the next contract negotiations could include a viable, professional development based wage incentive proposal. However, it is clear that the present contract cannot include such provisions.

It can, nevertheless, include continued recognition of the concept. Consequently, it seems appropriate to memorialize these intentions by providing an incentive bonus as recognition that bargaining unit members continue their professional development, despite lack of a Master Police Officer curriculum. While the Parties have referred to the concept as a, "signing bonus" it strikes the Factfinder that "Professional Development Incentive" more accurately reflects the concept of merit-based wage increases. Accordingly, the Factfinder will recommend such bonus, in lieu of a percentage wage increase, for the first effective year of the Agreement.

However, the City's offer of \$500 on signing to each bargaining unit member amounts to less than the relevant Consumer Price Index. It is also less than appropriate in light of the Union's continued commitment to the Master Police Officer program and its agreement to moderate entry-level minimum salaries. Accordingly, the Factfinder recommends a \$1,000 incentive bonus. He also recommends the City's proposal to extend entry-level pay status for new hires to a period of three years.

In the second year of the Agreement, the City proposes to pay a two percent (2%) increase in bargaining unit members' base salaries. However, in seeking to balance its minimum and maximum salaries, the City acknowledges that Lorain Officers are in need of elevation in maximum base salary, in order for the City to compete with its Lorain County neighbors in the attraction and retention of quality personnel. Consequently, the Factfinder recommends a three percent (3%) increase in base for the second year of the Agreement, as well as the third.

***Recommendation:***

Changes to Article XXXI, and other appropriate provisions of the Agreement to reflect the following:

- 1998 - *One Thousand Dollar (\$1,000) Professional Development Incentive, to be paid on ratification of the Agreement.*
- 1999 - *Three percent (3%) increase in base pay*
- 2000 - *Three percent (3%) increase in base pay*

*The following provisions, applicable to new hires after the date of ratification:*

- Entry-level Officers - receive 80% of base salary.*
- After one year - 90% of base salary*
- After two years - 95% of base salary*
- After three years - 100% of base salary*

**ARTICLE XI - DISCIPLINE**

***City's Position:***

The City proposes to extend the "washout" of disciplinary records from the present two years to five years in cases of 3 day or more suspensions, and to ten years for suspensions of 30 days or more.

***FOP's Position:***

The FOP argues that no problems related to Employee records have occurred, and would therefore agree only to the retention and application of records of disciplines in excess of 90 days for a period of 3 years.

***Discussion:***

No compelling reasons were presented by the City for seeking revision of the present contract provisions. Accordingly, present contract language is recommended, with the addition of the Union's stipulation.

***Recommendation:***

Present Contract Language, with the additional provision that:

*Records of suspensions exceeding ninety (90) days shall not be used for disciplinary purposes after three (3) years.*

**ARTICLE XXIII - UNIFORM MAINTENANCE ALLOWANCE**

***FOP's Position:***

The bargaining unit proposes a Uniform Maintenance Allowance, arguing that while the City pays for initial purchase of required uniforms, individual Officers are required to maintain the issue, which requires not only laundry, but dry cleaning and other expenses. Accordingly, the FOP asks for \$300 per year in Uniform Maintenance Allowance.

***City's Position:***

The City argues that it pays for the initial purchase of Police Officers' uniforms, and proposes the current contract provisions be continued.

***Discussion:***

There is no doubt that Police uniform maintenance requires greater time and expense than simply dropping the garments in the home washing machine. However, it is also true that some personal responsibility for clothing maintenance would be required of Officers, no matter what they wore to work. Consequently, it seems appropriate the

City subsidize somewhat the cost of maintaining the uniforms, if only in the interest of public affairs. It also seems appropriate each bargaining unit member assume part of the responsibility. Accordingly, the establishment of a clothing maintenance allowance of \$100 is recommended.

***Recommendation:***

*The addition of Section 23.4, providing for a Uniform Maintenance Allowance of \$100 per year.*

## ARTICLE XXII - INSURANCE COVERAGE

***City's Position:***

In the past the City maintains it provided uniform health benefits to all City Employees. During its period of financial difficulty, says the City, it entered into agreements with various City bargaining units that resulted in different health care plans for each unit. It now seeks a more affordable approach by attempting to again provide a uniform, consistent plan to all City Employees.

In exchange for established but differing benefits, the City offered a flexible health benefit to all its Unions, tied to City savings in health care costs and apportioned to each bargaining unit member to be used for extra and voluntary benefits, such as dental care.

The present bargaining unit, says the City, is the only City Union to currently enjoy dental benefits. Instead of viewing the "flex" plan as an alternative to its present dental coverage, says the City, the Union would prefer to have both; a double benefit the City argues it cannot afford.

The City also proposes changes to Section 23.3, eliminating the life insurance benefit for retired Police Officers; and increasing the current \$25,000 Life Insurance coverage to \$30,000.

***FOP's Position:***

The Union points out that a Factfinding report in the Dispatchers' bargaining unit awarded that Union both "flex" and continued dental benefits. Accordingly, it proposes that Lorain Police Officers enjoy the same.

It rejects the City's proposal to eliminate life insurance coverage for retired officers; and insofar as the increase in benefits is tied to elimination of retiree's coverage, rejects the City's proposal in that regard, as well.

***Discussion:***

The Factfinder is aware that dental benefits are a significant matter, particularly to those Officers with families. And it is understandable that bargaining unit members would prefer to retain their existing dental benefits as well as enjoy the "flex" benefits offered by the City. However, Lorain's fiscal position is arguably tenuous, and its need to control and stabilize health care costs is clear. The "flex" plan is offered the bargaining unit as a reasonable alternative to the existing dental benefit, and recognized expert testimony is clear that it represents a better health care value for FOP members than does dental. Those Officers whose families benefit from dental insurance may use the "flex" money to pay for those benefits; those whose circumstances are otherwise may do otherwise.

The matter of eliminating life insurance coverage for retired Officers appears to have little advantage, even for the City, which faces the affect on its ability to attract and retain quality personnel and the morale of its veteran Officers. Moreover, the solidarity of the bargaining unit in opposing the proposal to the extent of rejecting an immediate 20% increase in life insurance benefits for themselves must be considered. The existing benefit should be retained.

***Recommendations:***

*Acceptance of health insurance coverage as described by the Employer, to include participation in the Employer's "flex" health benefit program; and in lieu of any and all present dental benefits, except as paid for by individual employees. Employees shall have the opportunity to continue present benefits on an individual or family basis.*

***City's Position:***

The Employer proposes language to bring contract provisions in line with state law.

***FOP's Position:***

The Union has no opposition to the Employer's proposal.

***Recommendation:***

*In the event an employee is scheduled for National Guard duty during hours which he is normally scheduled to work, he will receive the difference between the National Guard rate of pay and his established rate of pay, pursuant to state law.*

**ARTICLE XIV - HOURS OF WORK AND OVERTIME COMPENSATION*****FOP's Position:***

The Union proposes to eliminate language in Section 14.7 that limits Officers acting as Field Training Officers to eight hours of additional pay per week. The Union also proposes a Supervisory Field Training Officer position to be compensated at a rate of four hours per week, when so assigned.

***City's Position:***

The City opposes any proposal resulting in the accrual of additional compensatory time for bargaining unit members. The accumulation of such time results in a problematic liability, it says.

***Discussion:***

On-the-job training of inexperienced Officers is essential to the development of an effective police department. And it seems reasonable that Officers involved in the training of less experienced colleagues assume additional responsibilities, and consequently should be appropriately compensated for all the time spent in that endeavor. Therefore, it is not difficult to eliminate the restriction here, as proposed by

the FOP. However, little evidence was presented as to the need for a Supervisory premium, and the Union's proposal in that regard cannot be recommended.

***Recommendation:***

*Elimination of the phrase "up to eight (8) hours in a work week" as it appears in Section 14.7.*

**ARTICLE XVII - NEGOTIATIONS**

***FOP's Position:***

The Union proposes inclusion of language in the Agreement to provide for overtime pay for bargaining unit members involved in contract negotiations resulting in premium pay situations.

***City's Position:***

The City offers no specific objection to the proposal.

***Recommendation:***

Add to Section 17.1:

*Negotiating team members shall be entitled to overtime pay for those negotiations resulting in premium pay situations.*

**ARTICLE XIX - LONGEVITY**

***FOP's Position:***

The Union proposes the addition of \$50 per year to each of the past Agreement's 23 levels of longevity.

***City's Position:***

Naturally, the City opposes the Union's proposal on the basis of fiscal concerns.

***Discussion:***

The Union makes little argument that present levels of longevity benefits are substandard or inadequate. Moreover, it is clear that the City's ability to finance such an increase is limited by prudence. Consequently, present contract language is recommended.

***Recommendation:***

*Present contract language.*

**ARTICLE XXI - HOLIDAYS**

***FOP's Position:***

The Union proposes that an additional stress day be added to those presently included in Section 21.1. It also proposes language providing for 1 ½ time premium pay for bargaining unit members required to work on holidays.

***City's Position:***

The City makes no objection to the FOP's premium pay proposal, but rejects an additional holiday.

***Discussion:***

The payment of overtime to those bargaining unit members required to work on any given holiday is well-accepted in the contracts of public sector safety workers. It is therefore recommended here. However, the Union made little compelling argument that Lorain Police Officers are in need of time beyond the eleven enumerated holidays, two personal days off with pay enjoyed by non-probationary Officers, and the duty-related stress day already provided. The Union's proposal for an additional stress day is not recommended.

***Recommendation:***

Add to Section 21.1:

*Employees required to work on the above enumerated holidays shall be entitled to overtime compensation at one and one-half (1 ½) times their regular base rate of pay for all hours worked, in accordance with the provisions of Article XIV of this Agreement.*

**ARTICLE IX - GRIEVANCE PROCEDURE*****City's Position:***

The City requests language in the Step 4 arbitration provisions of Article IX to include by reference the Ohio Arbitration Law.

***FOP's Position:***

The Union has no objection to the inclusion of such language.

***Recommendation:***

To replace the first sentence of Step 4 - Arbitration, contained at Section 9.7 of the predecessor agreement:

*If the grievance is not satisfactorily resolved at Step 3, it may be submitted to arbitration upon request of the Union in accordance with this Section of the grievance procedure, and the provisions of Chapter 2711. of the Ohio Revised Code.*

**ARTICLE XLII - POLICE ACADEMY TUITION REIMBURSEMENT*****City's Position:***

The City proposes contract language to recover Police Academy tuition from those Employees who leave its employment within two years.

***FOP's Position:***

The Union has no objection to the City's proposal.

***Recommendation:***

To be included in the Agreement at above:

*All police officers hired on or after ratification of this agreement, shall reimburse the Employer for the cost of tuition to the Police Academy if the employee leaves employment with the Lorain Police Department within two (2) years of the employee's date of hire. In satisfaction of this agreement, the Employer may withhold wages and benefits due the Employee.*

Respectfully submitted,  
this 1<sup>st</sup> day of May, 1998,  
at Lyndhurst, Cuyahoga County, Ohio

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Gregory James Van Pelt

Factfinder