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**IN THE MATTER OF FACT-FINDING
BETWEEN**

CITY OF YOUNGSTOWN)	
)	CASE NO. 97-MED-10-1118
AND)	
)	
YOUNGSTOWN POLICE ASSOCIATION)	<u>FINDINGS</u> AND <u>RECOMMENDATIONS</u>

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE CITY

**Edwin Romero, Esq.
John A. McNally, Esq.
Chief Richard Lewis**

FOR THE UNION

**S. Randall Weltman, Esq.
Donald P. Scott**

SUBMISSION

This matter concerns fact-finding proceedings between the City of Youngstown (hereinafter referred to as the City) and the Youngstown Police Association (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed James M. Mancini as fact-finder in this matter. The fact-finding proceedings were conducted on March 3, April 24 and June 2, 1998.

These fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

This fact-finder in rendering the following findings of fact and recommendations of the issues at impasse, has taken into consideration all the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before.

1. INSURANCE BENEFITS

The Union proposes an increase in life insurance benefits to \$20,000 effective thirty days following the execution of the contract and then to \$30,000 effective January 1, 1999. The Union further proposes that the City provide single coverage for vision and dental insurance. Beginning January 1, 1999, the Union proposes that the City also provide fully paid family coverage for vision and dental insurance.

The City proposes to increase insurance benefits to include family dental and family vision with an employee co-pay premium of \$10.00 each pay period. The City does not propose any new life insurance benefit for the bargaining unit. The City would also ask that language be included whereby the Union would use every power at their disposal to persuade their members to shift from the traditional plan to the PPO plan.

The Union contends that past collective bargaining history supports its insurance benefit proposal. During negotiations leading to the previous 1995-97 labor contract, the City agreed to provide the patrol unit with fully paid life insurance in the amount of \$10,000 and single coverage for both dental and vision insurance. The Union presented evidence which showed that these additional insurance benefits were financed by the City through direct payment to the Union who in turn purchased the benefits for its members. The amount that the City agreed to pay to the Union for these additional insurance benefits was approximately \$57,000 per year. In consideration of the additional insurance benefits provided by the City, the Union agreed during negotiations to give up

life insurance benefits for retirees as well as the payment to employees for non use of health insurance coverage.

The Union submits that the above insurance benefits provided to the patrol unit by the City were not similarly provided to other city bargaining unit and non-union employees. There was no life insurance, dental or vision coverages provided to other city employees for the period 1995-98. However, the City beginning in January, 1998 has provided dental and vision coverage to the Teamsters Unit. The City paid for the entire single coverage for these insurance benefits for the Teamsters Unit. For family coverage, the City pays \$52.66 per month with an employee paying approximately \$23.00 per month for such coverage. The Union argues that because it enjoyed a greater insurance benefit in these areas than the Teamsters in the past, it should continue to do so by having the City pay for the entire family coverages for both dental and vision insurance. In effect, the Union wants to maintain its relative position regarding life, dental and vision coverages in comparison to other city employees as it has enjoyed in the past. The only way to maintain its relative position regarding insurance coverages is to have the City pay for the entire cost of family coverage for both dental and vision coverages.

The Union submitted health insurance comparables which it claims supports its position that the City should provide for fully paid dental and vision insurance. The cities cited included several in the immediate geographical area such as Warren, Austintown Township and Boardman. All of these jurisdictions provide dental insurance coverage and life insurance of varying amounts for their patrol units.

The City contends that in general in the past all city employees have been treated the same with respect to insurance benefits. During negotiations leading to the 1995-97 agreement, the patrol unit specifically agreed to give up certain benefits including life insurance for retirees in return for a payment from the City which was equivalent to the benefits relinquished by the Union. This amounted to approximately \$42,000. The City also agreed to pay to the Union an additional \$15,000. In effect, the additional benefit which the patrol unit received over that provided to other bargaining units was only the \$15,000 paid to them by the City. Thus, the City did not provide fully pay single dental and vision coverage for the bargaining unit. There is absolutely no basis for the Union to now claim that they should also be provided with fully paid family coverage for dental and vision insurance.

The City maintains that its proposal to provide the same dental and vision insurance to this bargaining unit as that provided to the Teamsters unit is reasonable. Under the Teamster's agreement, the City pays for the full cost of single coverage for dental and vision insurance. For family coverage, the employee contributes \$23.00 per month. With the one exception noted above, the police unit has always followed the Teamsters with respect to insurance benefits and should likewise do so in the instant case.

The City further contends that it does not have the ability to fund the additional cost of the Union's insurance proposal. The City currently remains under a state fiscal watch. As attested to by the Finance Director, the City currently has a deficit which exceeds 3 million dollars. The Finance Director further indicated that there is no

additional money available in the current budget to transfer to the police department to fund the additional cost of the Union's insurance proposal. At the end of 1997, the General Fund had a negative balance of \$128,777. Even the police levy fund only had an ending balance of \$20,268. The City also cited insurance comparables in support of its position.

ANALYSIS – This fact-finder has determined after carefully reviewing the evidence and arguments presented by the parties with respect to the Insurance Benefit issue that the Union's proposal, with a lesser amount for life insurance, should be adopted beginning in January, 1999. The evidence shows that the Union's basic insurance proposal is justified based upon past bargaining history as well as the insurance comparables which were submitted. The evidence failed to show that the City does not have the ability to fund the additional cost of the insurance proposal for fully paid family coverage for both dental and vision insurance. In addition, it would be reasonable to increase the current Life Insurance Provision to \$20,000 effective January 1, 1999.

Bargaining history between the parties clearly supports the Union's position here. The evidence showed that in negotiations leading to the 1995-98 labor contract, the Union was able to obtain an insurance benefit which was not provided to other city employees at the time. Specifically, the Union obtained sufficient funding from the City to provide for \$10,000 of life insurance benefits, and fully paid single coverage for dental and vision insurance. The City paid to the Union approximately \$57,000 per year which

was used to cover the cost of these insurance benefits. No such benefits were provided by the City to other employees at the time.

As a result of bargaining history, this fact-finder finds that it would be appropriate to continue to provide the patrol unit with greater life, dental and vision insurance benefits than that provided to other bargaining units in the City. The City recently agreed to provide the Teamsters unit with fully paid single coverage for both dental and vision insurance. Moreover, the City also agreed to increase coverage to include family dental and vision with a co-pay at \$10 each pay. In effect, the Teamsters unit now has greater insurance benefits than the patrol unit. However unlike the patrol unit, the evidence showed that the Teamsters did not negotiate away any contractual benefits in order to obtain these insurance benefits. In contrast during the last negotiations, the Union herein specifically gave up life insurance benefits for retirees as well as the premium payment for non use of hospitalization coverage for the additional insurance benefits provided by the City. There was a specific quid pro quo for the additional dental and vision insurance benefits which the Union was able to obtain for its members. Thus bargaining history supports the conclusion that the patrol unit should continue to enjoy a greater insurance benefit with respect to life, dental and vision insurance than that provided to other city employees. This means that they should continue to be provided with a greater insurance benefit than that accorded the Teamsters. In order to accomplish this end, the City should provide the patrol unit with fully paid family coverage for both dental and vision insurance.

The comparables submitted further support the recommendation that the City should provide fully paid family coverage for both dental and vision insurance to the patrol unit. In the immediate geographical area, the City of Warren as well as Austintown Township provide for fully paid dental coverage for its police units. Neighboring Boardman provides both dental and optical coverages for its police unit. In Canton which has a population similar to that of Youngstown, optical and dental are both provided in full by the city. Parma, which also is similar in size, provides dental and eye care for its police units. It should be noted that the comparables cited in the health insurance survey also supports an increase in life insurance for the bargaining unit. Most of the cities cited provide for at least \$20,000 of life insurance for their employees. It would be reasonable therefore to increase the current life insurance coverage for the bargaining unit here to \$20,000 beginning in January, 1999.

This fact-finder was not persuaded by the evidence produced by the City that it could not afford the cost of the additional insurance benefits recommended herein. Although the City is currently under a fiscal watch by the state, it is apparent that there are new revenue resources available to fund the additional cost of the insurance benefit proposal. For example, a recently enacted increase in the income tax rate will mean additional revenue specifically earmarked for the police department. Moreover, this fact-finder takes judicial notice of the so-called "windfall" which the City will receive from the State of Ohio Bureau of Workers Compensation in the amount of \$4,304,542. The Finance Director specifically acknowledged during her testimony that the City expected

to receive a Workers Compensation rebate. There was an indication that the City will use part of these monies to pay down its 3.08 million dollar debt. However, it is evident that at least some of the remaining portion of these monies would be available to fund the additional cost of the insurance proposal herein. The cost for providing \$20,000 in life insurance, as well as fully paid family coverage for both dental and vision insurance for the patrol bargaining unit is estimated at being \$40,824. This would include the additional cost of about \$2.20 per month for \$10,000 more in life insurance, as well as the additional \$23.00 per month for family dental and vision coverage. It should also be noted that the additional cost to the City for the insurance proposal could also be funded at least in part from the savings realized by employees changing to PPO. The City saves \$47.00 for each employee that makes such a change. Included in the insurance benefit proposal is a provision that the Union would make every effort to educate its members in regard to the value of being a participant in the City's PPO program. Finally this fact-finder, in recognition of the City's concern about its current financial situation, would recommend that the fully funded family vision and dental insurance plan for the patrol unit not take effect until the beginning of January, 1999. This will also help to avoid any current year cost implications created by "me too" provisions found in other bargaining agreements. By delaying the implementation of the insurance benefit until next year, it would also give the City the opportunity to plan for the additional cost of the insurance benefit.

RECOMMENDATION

It is the recommendation of this fact-finder that the following Insurance Benefit Provision be included in the parties' agreement:

DENTAL AND OPTICAL INSURANCE

The City agrees to continue the program of providing single coverage for vision and dental insurance except that this benefit will be entirely funded and administered by the City.

Effective January 1, 1999, the City shall provide family coverage for vision and dental insurance. This benefit will be provided in the same manner as the City's single coverage vision and dental insurance (deductibles, coverage). This benefit will be entirely funded and administered by the City.

LIFE INSURANCE

The City agrees to continue the program of life, accidental death and dismemberment insurance now in force except that it will be entirely funded and administered by the City and its value will be increased as follows: Effective January 1, 1999 - \$20,000.

NEW SECTION

The Union will use every power at its disposal to persuade their members to shift from the traditional health insurance plan to the City's PPO plan.

2. RESIDENCY

The Union proposes a change in the current residency requirement. Specifically, the Union proposes that employees be required to be residents of the City of Youngstown for the first five years of their employment only. Employees may fulfill this requirement by living within ten air miles of the city or by living on the other side of a boundary street. Included in the Union's proposal is a provision whereby the City would be required to provide take home cars to at least ten patrolmen who remain city residents. Finally, the Union's proposal would provide that all employees who remain city residents beyond the required five years shall be relieved of any and all city income tax requirements. All employees who remain city residents beyond the required five years shall be entitled to free tuition at Youngstown State University.

The City proposes to retain the current residency requirement for all employees. The City opposes any contractual provision that would permit patrol officers to take home cars.

The Union contends that there are compelling reasons for changing the residency requirement. The Union cites the problems which the Youngstown City Schools currently face and the high crime rate in the City. There has been a great deal of drug activity and serious crime committed in and around the schools in recent years. Also, several police officers have experienced a loss of life within their families due to the high crime rate. It is unreasonable to expect police officers to send their children to such poorly rated and crime ridden schools. The Union notes that its residency proposal

would only allow those officers with more than five years of experience to reside outside of city limits.

With respect to its proposal regarding take home cars, the Union seeks parity with the ranking officers who currently are allowed such privileges. A Union witness estimated that there are approximately fifteen ranking officers who currently are permitted to take home cars.

The City contends that the residency requirement is not an issue properly before this fact-finder. By Charter Amendment, the residency requirement was enacted in November, 1988. Since that time it has withstood all challenges. The City claims that this fact-finder does not have the authority to issue any recommendation for any change in the residency statute under Section 4117.10 (A). With respect to take home cars, the City maintains that this is an economic issue. If patrol officers were allowed to take home nine or ten cars as the Union proposes, those cars would not be available during that time for use by the department. This would be clearly unreasonable and would work an economic hardship on the City.

ANALYSIS – This fact-finder after carefully reviewing the evidence presented would not recommend any change in the current residency requirement. Although this fact-finder believes that he does have jurisdiction to issue a recommendation regarding the residency issue, he finds that there was insufficient basis established in the instant matter for changing the residency requirement as proposed by the Union. The residency requirement has been in effect for ten years and applies to all employees. There was no

basis established by the Union for allowing patrol officers to be distinguished from other city employees with respect to residency requirements. It is apparent that city officials had the best interest of the City in mind when they duly enacted the residency requirement. Certainly, there are problems in the City with respect to the school system and the crime rate. However, such problems do not necessarily warrant a change in the residency requirement for this bargaining unit as opposed to all other city employees. Again, this fact-finder would recommend that the current residency requirement be retained.

With respect to take home cars, this fact-finder also finds that there was insufficient basis established for such a provision as proposed by the Union. Allowing ten patrolmen to take home cars would undoubtedly create a hardship on the police department. It was established that there is already a shortage of cars at any given time due to repairs, etc., and any further reduction in the availability of patrol cars would create additional problems for the department. Because of the hardship that the Union's proposal would work on the department, this fact-finder would not recommend a take home car provision.

RECOMMENDATION

This fact-finder does not recommend any residency or take home car provision as proposed by the Union.

RESIDENCY – No new contract language.

TAKE HOME CARS – No new contract language.

3. SENIORITY

The Union proposes a new shift by seniority provision. Under the Union's proposal, the department would be required to fill up to one-half or 15 assignments, whichever is greater, of each B and C-Turns by seniority and rank. The assignments would be for fixed shifts with the remaining portions of the B and C-Turns continuing as rotating shifts. The City opposes any new shift bidding provision. Current practice is to rotate officers on the B and C-Turns every two weeks.

The Union contends that its shift assignment proposal is warranted based on the difficulties which officers now have with the rotating shifts on the B and C-Turns. The Union presented evidence which indicates that officers on these rotating shifts experience difficulty with their sleeping patterns and incur various health related problems as a result. Rotating shifts are also harder on the older more senior patrol officer. It is only reasonable to provide that one-half or 15 assignments of the B and C-Turns be by seniority and rank. This would be similar to the current contract provision which provides that all assignments to the day turn shifts in the A-Turn patrol are to be by seniority and rank.

The Union also cites comparables in support of its position regarding shift bidding. It maintains that all of comparables cited provide for permanent shifts by seniority. Finally, the Union points out that the previous Chief of Police had recommended that the department provide for bidding on shifts by seniority for the B and C-Turns.

The City presented several witnesses in defense of its position that there should be no shift assignments made on the basis of seniority for the B and C-Turns. The current Police Chief, Richard Lewis, stated that there would be significant managerial difficulties for making assignments on the basis of seniority for the B and C-Turns as opposed to the current A or Day Turn. According to the Police Chief, steady shifts would take away the ability of ranking officers to properly supervise patrol officers. The Chief noted that the ranking unit rotates every two weeks as the patrol now does on these particular shifts. It would be unreasonable to provide for permanent shifts by seniority for the patrol unit when at the same time the ranking officers would continue to rotate. The Chief indicated that it is absolutely essential that supervisors become familiar with each of the patrol officers under their jurisdiction so that proper assignments can be made. Moreover if the Union's proposal were adopted, one could end up with an entire shift of rookies which could cause problems for the department.

The Chief also raised concerns about what effect the shift by seniority provision would have on officers assigned to special units. This would include the Violent Crime Task Force, Internal Affairs, Bomb Squad, Crime Lab and Traffic Investigation sections of the department. In each of these areas, the Chief said that it is critical to have experienced personnel handle the particular duties involved. The City also presented comparables in support of its position for jurisdictions of similar size. The City claimed that these comparables showed that shift assignments by seniority are not common as the Union contends.

ANALYSIS – This fact-finder has determined from the evidence that there is some merit to the Union’s request for a Shift Assignment by Seniority Provision. It is evident that the current practice of rotating all of the officers on the B and C-Turns every two weeks causes a hardship for those involved. Such constant rotation of shifts effects an officer’s sleep pattern and can cause related health problems. The Union provided convincing evidence that the department would be better served by having at least some portion of the B and C-Turn assignments made by seniority and rank.

Moreover, the police department currently permits the A-turn shift to be assigned on the basis of seniority in rank. It would be reasonable to likewise provide that there be bidding on the B and C-Turn shifts. It should be noted that the previous police chief recognized the merits of allowing officers and supervisors to bid on all shifts of the Patrol Division. This fact-finder would agree that the time has now come to allow shift bidding by seniority for the B and C-Turns.

On the other hand, the City did present evidence which indicated that it would be inappropriate to provide that all assignments on the B and C-Turns be by seniority and rank. As attested to by the Police Chief as well as other city witnesses, managerial problems could arise if all of the B and C-Turn assignments are by seniority and rank. In an attempt to address City concerns, the Union modified its original position so that only one-half or 15 assignments of each B and C-Turn would be made by seniority and rank. However considering the concerns raised by the department, it would appear to be more reasonable to at least initially provide for one-third or 13 assignments, whichever is

greater, to be made by seniority and rank for each B and C-Turn. The assignments would be for fixed shifts with the remaining portion of the B and C-Turns continuing to be rotating. It should also be noted that by the language of the recommendation herein special units with the exception of the YMHA assignment would be excluded from assignment by seniority and rank. The YMHA assignment is a patrol function and as a result should be included in the Shift Assignment by Seniority Provision.

Comparables pertaining to shift bidding further supports this fact-finder's recommendation. That evidence shows that several of the neighboring jurisdictions, including the City of Warren, Boardman Township, and Austintown Township have shift assignment by seniority provisions in their police unit labor contracts. Likewise, the cities of Canton and Parma also have annual bidding by seniority provisions with respect to shift assignments for their patrol units.

RECOMMENDATION

This fact-finder recommends the following Shift Assignment Provision:

SHIFT ASSIGNMENT

The department shall be required to fill up to one-third (1/3) or thirteen (13) assignments (whichever is greater) of each B-Turn and C-Turn by seniority and rank. These assignments shall be for fixed shifts with the remaining portions of the B-Turn and C-Turn continuing to rotate. Such bids shall be solicited from all bargaining unit employees and shall be awarded within thirty (30) days of the execution of this Agreement. The parties shall mutually agree to the details of such bidding procedures. Thereafter such bids shall take place only when a vacancy occurs. All YMHA assignments shall be bid by seniority in the same manner as set forth above.

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

JUNE 19, 1998


JAMES M. MANCINI, FACT-FINDER