

STATE EMPLOYMENT  
RELATIONS BOARD

FEB 11 10 37 AM '98

**STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO**

In the Matter of ]  
Factfinding Between: ]  
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Ohio Patrolmen's Benevolent ]  
Association, Employee ] SERB Case No. 97-MED-10-1160  
Association ]  
 ]  
 ]  
and ] Raymond J. Navarre  
 ] Factfinder  
 ]  
 ]  
City of Lorain, ]  
Employer ]

**FACTFINDING REPORT  
and  
RECOMMENDATIONS**

Date of Issuance: February 9, 1998

Date of Hearing: January 23, 1998

Location of Hearing: Lorain City Building  
Lorain, Ohio

Present for the Factfinding: Jeff Perry  
Representing Ohio Patrolmen's Benevolent  
Association  
Cherry Celiac  
Susan Needy  
Liana J. Burger

Mark Mihok, Personnel Director  
Representing City of Lorain  
William M. Engle

Note that for purposes of identification in this document, The City of Lorain and its representatives will be referred to as the **EMPLOYER** and representatives of The Ohio Patrolmen's Benevolent Association and its representatives will be referred to as the **UNION**.

Time: The Factfinding started about 10:00 a.m. and concluded about 1:45 p.m.

## BACKGROUND

Before the Factfinding began, the persons present were asked to affirm that what they said was the truth and the whole truth. They all so affirmed.

The collective bargaining unit in this matter consists of approximately nineteen (19) employees as Telecommunicators.

The Ohio Patrolmen's Benevolent Association (OPBA) became the unit's exclusive representative in 1997. The current collective bargaining agreement was in effect until December 31, 1997.

The employees serve and protect the safety of the citizens of Lorain, Ohio by performing telecommunications duties.

The Employer is the city of Lorain, Ohio, Police Department.

Prior to the Factfinding, the parties met/conferred on four (4) occasions.

The unresolved issues submitted to Factfinding were as follows.

- Issue 1      Discipline/Corrective Action Article 11
- Issue 2      Hours of Work and Overtime Compensation Article 13
- Issue 3      Training Time Article 15
- Issue 4      Vacations Article 18
- Issue 5      Holidays Article 19
- Issue 6      Insurance Coverage Article 20
- Issue 7      Clothing/Maintenance Allowance Article 21
- Issue 8      Shift Differential Article 26
- Issue 9      Wages Article 27
- Issue 10     Shift Preference Article 37
- Issue 11     Educational Reimbursement New Article
- Issue A      Grievance Procedure Article 9
- Issue B      Layoff and Recall Article 12
- Issue C      Court/Call-In Assignment Article 14
- Issue D      Vacations Article 18
- Issue E      Holidays Article 19
- Issue F      Insurance Coverage Article 20
- Issue G      Sick Leave Article 23

Issue H      Bereavement Leave Article 24

Issue I      Wages Article 27

Issue J      Drug Testing (New Language)

The Employer and the Union presented the Factfinder with statements regarding their positions on the unresolved issues.

#### FACTFINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the Factfinder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

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

#### FINDING of FACT and RECOMMENDATIONS

The unresolved issues submitted by the Employer and the Union to the Factfinder will be considered in what follows.

Below, the finding of fact will be presented for each issue, followed by the Factfinder's recommendation in respect to that issue and when applicable, the language recommended for the bargaining agreement. The Factfinder's report needs to be considered in its entirety as to the overall effect on the parties and their bargaining positions.

UNRESOLVED ISSUES

Issue 1 DISCIPLINE/CORRECTIVE ACTION Article 11

The present wording of Section 11.6 says that in the following situations, the records may not be used for disciplinary purposes:

when the records of disciplinary action are more than two (2) years old consisting of a verbal, a written reprimand or a suspension of less than ten (10) days

when the records of disciplinary action are more than five (5) years old involving a suspension from ten (10) days to thirty (30) days, or a reduction or demotion

when the records of disciplinary action are more than ten (10) years old consisting of a suspension of more than 30 days.

The Employer maintains that the current language is adequate and the records cannot be used for discipline when the time expires. Also, the expunging of the records would give the wrong impression.

The Union maintains that since the Employer can no longer use the discipline, it is of no value to anyone and could only be misused.

Since, in the situations listed above, the records cannot be used for discipline purposes and seem to have no other use or value, they ought to be expunged.

**RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, the Factfinder's recommendation is that the collective bargaining agreement include the following wording.

DISCIPLINE/CORRECTIVE ACTION

Section 11.6 All discipline involving a reduction, demotion, suspension or discharge shall be appealable at the option of the employee through the grievance procedure or to the Civil Service Commission but not both.

Records more than two (2) years old of disciplinary action consisting of a verbal, written reprimand or a suspension of less than ten (10) days, shall be expunged from the employee's record.

Records more than five (5) years old of disciplinary action involving a suspension of from ten (10) days to thirty (30) days, or of a reduction or demotion, shall be expunged from the employee's files.

Records more than ten (10) years old of disciplinary action consisting of a suspension in excess of thirty (30) days, shall be expunged from the employee's files.

Issue 2 HOURS OF WORK AND OVERTIME COMPENSATION Article 13

The Union is asking for the lunch period to be increased to one (1) hour from one-half (1/2) hour as contained in the collective bargaining agreement at the present time. The Union bases their proposal on three points. First, extra time for lunch would allow the telecommunicators to leave the jail for an hour and get outside. This would relieve stress. Decrease in stress will increase productivity and improve performance. Second, there is no lunch room available within the Lorain Police Department. Third, both City workers and Steel workers have one (1) hour lunch and they make up more than one-half of the employees of the City of Lorain.

The Employer had no proposal for this Article.

The arguments presented by the Union have much merit. The Factfinder's recommendations follows.

**RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, the Factfinder's recommendation is that the collective bargaining agreement contain the wording proposed by the Union. The collective bargaining agreement in Section 13.1 shall give a one (1) hour paid lunch period.

Issue 3 TRAINING TIME Article 15

The present collective bargaining agreement in Section 15.3 gives employees who train other employees .8 hours compensatory time for each eight (8) hours of training and the compensation is provided in the form of a four (4) hour compensatory slip.

The Employer wants Section 15.3 deleted. The Employer argues that unit members should not receive extra compensation for training. They are not working extra hours, just different duties.

The Union proposes to increase the compensatory time to 1.6 hours for each hour of training and to increase the compensatory slip to eight (8) hours.

Considering the arguments as well as the practice in other comparable situations, the Factfinder makes the following recommendation.

### **RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective bargaining agreement contain Section 15.3 as it is in the present agreement, with no change in language.

#### Issue 4 VACATIONS Article 18

The Union is requesting that employees having a length of service of fifteen (15) years but less than twenty-two (22) years receive 160 hours of vacation and an employee with twenty-two (22) years or more receive 200 hours of vacation.

Further, the Union wants the Chief of Police to have jurisdiction over the scheduling of vacations and have in the time of emergency, authority to suspend, postpone or cancel vacations days.

Also, the Union wants vacations to be taken in a minimum of one (1) day increments.

The Employer proposes that employees with one (1) year of service but less than ten (10) years receive 80 hours of vacation and employees with more than ten (10) years receive 120 hours of vacation.

The Employer proposes to delete Section 18.2 and reduce the accrual period in Section 18.4 to one (1) year.

Examining the arguments presented, considering similar agreements and the economic impact of other recommendations, the Factfinder makes the following recommendation.

### **RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, it is the Factfinder's recommendation that the collective bargaining agreement contain the language of the present agreement as to Article 18, Sections 18.1, 18.2, 18.3 and 18.4.

Issue 5 HOLIDAYS Article 19

Basically the present agreement gives the employees eleven (11) holidays per year and when an employee completes six (6) months or more of continuous service, the employee receives two (2) other days off with pay, the employee's birthday and a personal day. Section 19.3, in lieu of the days off listed above, gives leveling off time of one hundred and four (104) hours. Section 19.4 says in addition to the holidays an employee is entitled to one (1) day of eight (8) hours for duty related stress. Section 19.5 grants an employee eight (8) hour compensatory time slips for each full day a majority of non-uniformed employees of the Employer are released from duty for holidays not otherwise provided for in Sections 19.1 and 19.2. Section 19.6 states employees who take time off from work based on the Family Medical Leave Act, all sick, compensatory, vacation and holiday time be paid for the time prior to going on unpaid status.

The Employer proposes:

- \* to reduce the holidays to eight (8) in Section 19.1
- \* to give two (2) personal days with pay each calendar year, Section 19.2
- \* to reduce the hours in Section 19.3 to eighty (80)
- \* to delete Section 19.4.

The Union proposes:

- \* to add to Section 19.3, **In addition, each employee shall receive one hour of overtime pay for each hour worked on any holiday listed in Section 19.1, beyond the regular hourly wage.**
- \* In Section 19.4 to increase the number of days to three (3) with an additional two (2) days for employees who work dispatch.

Considering the practice in comparable work situations and the economic aspects of other recommendations, the Factfinder makes the following recommendation.

### RECOMMENDATION

After considering the findings of fact above and the statutory criteria, it is the Fact-finder's recommendation that the collective bargaining agreement remain the same, the language be the same as the present agreement with one change. The change is as follows.

The following wording shall be added to Section 19.3 - **In addition, each employee shall receive one half (1/2) hour of overtime pay for each hour worked on any holiday listed in Section 19.1, beyond the regular hourly wage.**

Issue 6 INSURANCE COVERAGE Article 20

The Employer proposes to eliminate in Section 20.2 any life insurance coverage for an employee who retires after completing twenty (20) years or more of continuous service with the employer. In Section 20.4, the Employer wishes to reduce the three hundred dollars (\$300) and offer only the flex account.

The Union proposes:

- \* to increase the amount in Section 20.4 to five hundred dollars (\$500)
- \* to add in Section 20.1 dental coverage
- \* to continue the life insurance for retirees in Section 20.2.

Examining other collective bargaining agreements and comparable bargaining units, the Insurance Coverage shall be as follows.

**RECOMMENDATION**

After considering the finding of facts above and the statutory criteria, the Factfinder's recommendation is as follows.

The language of the collective bargaining agreement shall be the same as the language of the present agreement as to Section 20.1 **with the addition of dental coverage.**

The language of the collective bargaining agreement shall be the same as the language of Section 20.2 of the present agreement **with the elimination of life insurance coverage for retirees, eliminating the last sentence of the section.**

The language of the collective bargaining agreement shall be the same as the language of the present agreement as to Section 20.3, without any changes.

The language of the collective bargaining unit shall be the same as the language of Section 20.4 of the present agreement **with an increase to four hundred and fifty dollars ( \$450) flex account.**

Issue 7 CLOTHING/MAINTENANCE ALLOWANCE Article 21

The Employer proposes to keep the language the same. The Union proposes to increase the allowance to five hundred dollars (\$500).

Considering similar and comparable agreements, the Factfinder makes the following recommendation.

### RECOMMENDATION

After considering the finding of facts above and the statutory criteria, it is the Factfinder's recommendation that the language of Article 21, Sections 21.1 and 21.2 remain the same as the language of the present collective bargaining agreement, without change.

Issue 8 SHIFT DIFFERENTIAL Article 26

The Employer proposes no change, the article remain the same.

The Union proposes in Section 26.2 the amount for the second shift be increased to forty cents (\$0.40) and for the third shift to fifty cents (\$0.50).

Considering similar situations and the economic impact of all the recommendations, the Factfinder recommends the following.

### RECOMMENDATION

After considering the finding of facts above and the statutory criteria, it is the Factfinder's recommendation that the language of Article 26 of the collective bargaining agreement remain the same as the language of the present collective bargaining agreement, without change.

Issue 9 WAGES Article 27

The Employer proposes effective January 1, 1998 no increase over the base rate for 1997 and increases of two percent (2%) effective January 1999 and 2000.

The Union is basically proposing a six percent (6%) rate increase, increases in the base rates each year of the contract and a base rate for three (3) years and a fourth year in the year 2000. In addition, the Union proposes base rates for a shift supervisor. It was noted that this position is not filled at the present time.

Examining wages in comparable work situations and the economic impact of others recommendations made, the Factfinder recommends the following.

**RECOMMENDATION**

After considering the statutory criteria and the finding of facts above, the Factfinder's recommendation is that the collective bargaining agreement contain the following language in Section 27.1.

Section 27.1 Effective January 1, 1998, each member of the bargaining unit shall be paid a two percent (2%) increase over the base rate effective January 1, 1997. These rates, effective January 1, 1997 were:

Start:	\$10.24
1 year	\$10.74
2 year	\$11.38

Effective January 1, 1999, each member of the bargaining unit shall be paid a three percent (3%) increase over the base rate effective January 1998.

Effective January 1, 2000, each member of the bargaining unit shall be paid a four percent (4%) increase over the base rate effective January 1999.

Issue 10 SHIFT PREFERENCE Article 37

The Employer proposes to remain with the language of the present collective bargaining agreement.

The Union proposes a new section allowing bargaining unit members to bid out all jobs except for supervisory positions.

Considering comparable work situations and the management rights, the Factfinder makes the following recommendation.

**RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, it is the Factfinder's recommendation that the collective bargaining agreement contain the same language as the present agreement as to Article 37, Sections 37.1 and 37.2, with no changes.

Issue 11 EDUCATIONAL REIMBURSEMENT New Article

The Union proposes a new article providing reimbursement for employees who wish to take job-related educational courses. The article covers such items as eligibility, approved courses,

institutions that qualify, approval process and yearly limits of reimbursement. Also, in the article, the Union proposes a stipend for employees successfully completing an Associate or Bachelor Degree.

Considering collective bargaining agreements for comparable work situations and the overall economic impact of recommendations made, the Factfinder makes the following recommendation.

### RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective bargaining agreement not contain an article on Educational Reimbursement.

#### Issue (A) GRIEVANCE PROCEDURE Article 9

The Employer desires to eliminate the "final and binding" language because it has been the Employer's experience that arbitrators have been pro-employee. Further, the Employer wishes to add at the beginning of the subsection: "The parties may choose by mutual consent the process of Special Expedited Arbitration."

The Union objects to the proposal because the sections have been in the Police Contract for years and have been used successfully. Also, The Arbitration procedure has been widely and successfully used for years.

Considering the above and agreements of comparable situations, the Factfinder makes the following recommendation.

### RECOMMENDATION

After considering the findings of fact above and the statutory criteria, The Factfinder's recommendation is that the collective bargaining agreement contain the language of the present agreement as to Article 9, GRIEVANCE PROCEDURE, without any changes.

Both the Employer and the Union agreed to the following and asked the Factfinder to note it in his report.

**Additionally, the City and the Union agreed to change the first sentence of 9.10 (A) of the City's proposal to, "The process of Special Expedited Arbitration may be selected by either party for any grievance involving ten (10) or less days of suspension and all non-disciplinary issues"**

Issue (B) LAYOFF AND RECALL Article 12

The Employer wishes to delete Section 12.9 and proposes to include in Section 12.1 the phrase "but not including the Police Levy Fund". The Employer says that the Police Levy Fund creates a dilemma causing unfairness to the more senior employees.

The Union would have the Article remain as it is in the present contract. The Union says it cannot accept a layoff when there are funds available in the Police Levy Fund.

Considering the arguments put forth, it seems that the dilemma created by the Police Levy Fund needs to be addressed as a separate issue from the collective bargaining agreement. The Factfinder makes the following recommendation.

**RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, the Factfinder's recommendation is that the collective bargaining agreement contain the language of the present collective bargaining agreement as to Article 12, without changes.

Issue (C) COURT/CALL-IN ASSIGNMENT Article 14

The Employer proposes to reduce the guaranteed minimum from four (4) hours to one (1) hour for appearances at Lorain Municipal Court and from six (6) hours to three (3) hours for appearances at Lorain County Courts. The Employer says the current amounts are excessive.

The Union wishes to remain with the language of the present agreement and notes that these amounts are exactly what the Police are compensated. The Union also notes that the present contract language started in January 1997.

The Factfinder considering the arguments presented, comparable work situations and the economic impact of the recommendations made, makes the following recommendation.

**RECOMMENDATION**

After considering the findings of fact above and the statutory criteria, the Factfinder's recommendation is that the collective bargaining agreement contain the same language in the present agreement and without changes.

Issue (D) VACATIONS Article 18

This issue on Vacations was covered above in Issue 4.

Issue (E) HOLIDAYS Article 19

This issue on Holidays was covered above in Issue 5.

Issue (F) INSURANCE COVERAGE Article 20

This issue on Insurance Coverage was covered above in Issue 6.

Issue (G) SICK LEAVE Article 23

The Employer proposes in Section 23.1 to change the pay for sick leave from the employee's regular hourly rate to as follows:

- First 40 hours in a calendar year - 100% of base rate.
- Second 40 hours in a calendar year - 75% of base pay.
- Each hour over 80 hours in a calendar year - 50% of base pay.

In Section 23.8, the Employer wishes to add "It shall be considered an abuse of sick leave, and subject to discipline, when a pattern of sick call-offs occur which can be associated with an event or occurrence (e.g. weekend, day before or after holiday, employee bowling league night).

The Union wishes to stay with the language of the present agreement. The Union says sick leave is something earned and the Employer's proposal would be cutting back on payments when the employee needs the benefit most.

The Employer's proposal as to defining abuse of sick leave is somewhat vague and arbitrary as well as lacking in specificity. If there is an abuse of sick leave there are other means within the collective bargaining agreement to address the issue without reducing the compensation.

The Factfinder makes the following recommendation.

### **RECOMMENDATION**

After considering the finding of facts above and the statutory criteria, The Factfinder's recommendation is that the collective bargaining agreement contain the same language as the present agreement as to Article 23, without change.

Issue (H) BEREAVEMENT LEAVE Article 24

The Employer proposes to make bereavement leave, at the discretion of the Police Chief or his designee, paid sick leave or personal leave. The Employer believes bereavement leave should be deducted from the employee's accrued time.

The Union proposes to stay with the language of the present agreement. The Union feels that people should not be hurt when they are already mourning.

Examining comparable work situations and considering the arguments put forth by the parties, the Factfinder makes the following recommendation.

**RECOMMENDATION**

After considering the finding of facts above and statutory criteria, it is the Factfinder's recommendation that the collective bargaining agreement contain the language of the present agreement as to Article 25, without change.

Issue (I) WAGES Article 27

This issue on Wages was addressed in Issue 9 above.

Issue (J) DRUG TESTING New Article

The Employer proposes that all employees be subject to periodic controlled substance drug testing. It proposes that the tests be conducted on a random basis and lays out the rules for random tests for controlled substance drugs. It further states that employees may be selected by a scientifically valid random process where each employee has an equal chance of being tested.

The Factfinder does note that in part B of the Employer's proposal, there is a reference to "a driver must proceed to a collection site to provide a urine specimen." The Factfinder did not know what this was referring to or the situation being addressed.

The Union expresses a concern that the Police Contract refers to Civil Service Rules which are more detailed and give employees more rights.

The Factfinder is well aware of the need for a Drug Testing Policy for employees. However, examining comparable work situations, Drug Testing Policies are often part of employment agreements rather than the collective bargaining agreements. The City of Lorain already has a well written Substance Abuse Policy which covers the situations which the Employer wishes to address in his proposal.

The Factfinder makes the following recommendation.

**RECOMMENDATION**

After considering the finding of facts and the statutory criteria, it is the Factfinder's recommendation that the collective bargaining agreement not contain the Drug Testing Article proposed.

**Date of the Agreement**

Both the Employer and the Union agreed that the date of the Collective Bargaining Agreement would be back to January 1, 1998.

**Length of the Agreement**

Both the Employer and the Union agreed that the length of the Collective Bargaining Agreement would be three (3) years.



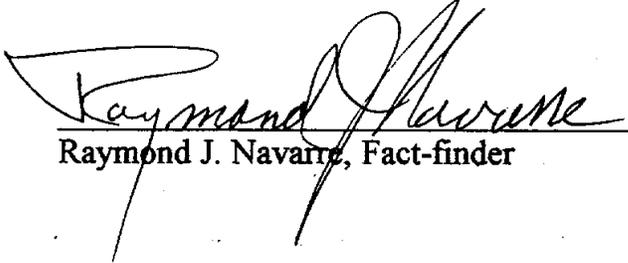
Raymond J. Navarre, Factfinder

Dated February 9, 1998

Case No. 97-MED-10-1160

**CERTIFICATE OF SERVICE**

Originals of the foregoing Fact-finding Report and the Recommendations were served upon Mark Mihok, Personnel Administrator, City of Lorain, 200 West Erie Avenue, Lorain, Ohio 44052, and upon Jeffrey Perry, Business Agent, Ohio Patrolmen's Benevolent Association, 10 Beech Street, Berea, Ohio 44017, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, each by United States mail, sufficient postage prepaid, this 9th day of February, 1998.

  
Raymond J. Navarre, Fact-finder