

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS

REPORT & RECOMMENDATIONS  
OF THE FACT FINDER

AS ISSUED

Tuesday, August 24, 1999

IN THE MATTER OF:

City of East Cleveland

(Employer)

-and-

Ohio Patrolmen's Benevolent Association

(Union)

SERB Case No. 98-MED-07-0676

(Corrections Officers)

HEARING:

As the result of an evidentiary session held on May 18, 1999, at the  
East Cleveland City Hall, in East Cleveland, Ohio.

APPEARANCES:

*On Behalf of the Union:*

Jeff Perry

Pamela Y. Bynum

Business Agent

Corrections Officer

*On Behalf of the Employer:*

Helen Forbes Fields

Charles Teel

Maria Valle-Johnson

Special Legal Counsel - City of East Cleveland

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STATE EMPLOYMENT  
RELATIONS BOARD

## SUBMISSION

The City of East Cleveland and the OPBA, representing the City's approximately four Corrections Officers, have had an ongoing collective bargaining relationship culminating in a contract that obtained from January 1, 1995 until December 31, 1997. As provided by ORC 4117.14(C)(5), a mutual agreement to extend negotiations for a successor Collective Bargaining Agreement was entered into by the Parties, as well as an agreement to apply negotiated terms retroactively to January, 1, 1998.

During the course of their negotiations the Parties attempted settlement of issues in dispute, and toward that end held five meetings. However, impasse was reached on a number of issues, and the Parties requested of the State Employment Relations Board the participation of a Fact-finder.

In accordance with the provisions of Rule 4117-9-05(E) of the Ohio Administrative Code, the undersigned was appointed Fact-finder in the matter, effective on December 1, 1997. A brief attempt to mediate remaining issues was made on May 18, 1999. Mediation again proving fruitless, the Parties were afforded an opportunity to present evidence and testimony supporting their respective positions, and the matter was declared closed, as of that date.

## ISSUES AT IMPASSE

The Parties initially identified two issues as remaining unresolved, with tentative agreements pending regarding a number of other proposals:

1. Article XX / Article XXVII – Definition of Auxiliary Officer
2. Article XXIV - Clothing Allowance/Side Letter Agreement

## 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

Once a thriving suburb of Cleveland, its western neighbor, the City of East Cleveland has suffered a decline in both population and resources in the period since World War II. The heavy industry that supported the City's prosperity closed; today, the Post Office and McDonald's rank among the community's top ten employers. The resulting loss of jobs led to a decline in population from 40, 000 in the 1950 census to 33,000 in 1990. Remaining City residents rank among the poorest in Cuyahoga County; 45% are below the poverty line, and a majority rely on some form of public assistance.

In 1988 the State Auditor's Office declared East Cleveland to be in a condition of fiscal emergency and the City's finances were placed under the administration of a Financial Planning and Supervision Commission. The Commission undertook draconian fiscal measures: spending was restricted; hours in most City departments were reduced; and municipal employees were laid off, including 19 police officers. In 1998 the stringent fiscal

controls imposed by the oversight Commission resulted in the City's removal from emergency status. However, the community's financial circumstances remain critical, with little immediate prospect for increase in revenue base.

With the layoff of police officers during the fiscal emergency, and in the face of increased violent crime, East Cleveland administrators supplemented the police department with auxiliary officers, most of whom lacked the training and qualifications of the City's regular uniformed officers. At times 3 or 4 of the City's eight officer shifts were staffed by auxiliary personnel. Hired through an outside contractor, some were regular City employees, among them members of the present bargaining unit representing Corrections Officers. When necessary, these employees were assigned auxiliary police duties in lieu of their regular assignments, functions that sometimes included life-threatening assignments normally restricted to regular police officers.

In consideration of this background, the following recommendations are respectfully submitted:

## **FINDINGS AND RECOMMENDATIONS**

### ARTICLE XX / ARTICLE XXIV- Definition of Auxiliary Officer

#### City Proposal

East Cleveland proposes to define auxiliary officers as voluntary and/or temporary employees in accordance with the City's Charter and a September, 1990 directive of the Police Chief. It seeks to memorialize this definition in the language of Articles XX and XXVII of the collective bargaining agreement.

In the past, says the Employer, Auxiliary Police Officers frequently constituted a significant percentage of each shift, and often performed duties not normally assigned auxiliary units in other communities, including placing such officers in life threatening positions. Moreover, East Cleveland contends that regular City employees, including members of the present bargaining unit who also served as auxiliary police, were sometimes utilized in patrol capacities, leaving their regular assignments unmanned. In 1998, with a new administration, the City maintains it reduced auxiliary assignments to one per shift, and among other measures limited the duties of such officers to non-life threatening functions. In addition, it applied a requirement that each auxiliary officer complete sixteen hours of voluntary assignment per month before becoming eligible for paid opportunities with the police or other City departments.

Accordingly, East Cleveland asks the fact-finder to recommend inclusion of its definition in the final language of the contract.

## Union Position

The OPBA argues that present contract language should be retained. The provisions proposed by the City, says the Union, were never discussed in the course of negotiations, having been unilaterally placed in the contract draft by the City. The present language has obtained through a number of collective bargaining agreements, and the OPBA contends there is no valid rationale for changing the provisions now.

Moreover, the Union argues that the City's requirement that Auxiliary Police Officers complete 16 hours of volunteer service before becoming eligible for paid police duties violates provisions of the Fair Labor Standards Act.

For these reasons, the OPBA asks the fact-finder to recommend continuation of current contract provisions regarding Auxiliary Police Officers.

## Findings and Recommendation

It is altogether reasonable that the City would seek to control the use and assignment of its Auxiliary Police Officers. Indeed, it would seem irresponsible of the administration to place auxiliary personnel, who lack the training and qualifications required for regular police positions, in situations in which their own lives and those of East Cleveland citizens might be in jeopardy. Moreover, auxiliary units are by definition intended to supplement rather than displace regular City patrol officers. Consequently, it must be determined that the City's proposal to control the scheduling of auxiliary police and to limit their assignment to parades, traffic functions and other relatively safe contributions to the public welfare has merit.

Further, notwithstanding recent Supreme Court rulings limiting the application of the FLSA and other Federal law to State and municipal employers, the matter of violation of the Fair Labor Standards Act is beyond the intent or jurisdiction of the fact-finding process.

Therefore, East Cleveland's proposal to include a definition of auxiliary officer in the language of the present collective bargaining agreement is recommended.

Article XXIV - Clothing Allowance/  
Side Letter Agreement

## City Proposal

East Cleveland proposes a side letter of agreement superseding Article 29.3, which currently provides a \$150.00 stipend to Corrections Officers for maintenance of an off-duty service revolver. Under the side letter, the City would pay the stipend only to specifically named Corrections Officers currently eligible, contingent on their providing proof of State certification to carry a firearm, including fulfillment of the annual firearm qualification.

The City argues that Corrections Officers are not required to carry firearms in their official capacity, but that its proposed letter of agreement seeks to continue the benefit for those Corrections Officers who retain their firearm eligibility.

The letter also proposes to assign the overtime transport of prisoners for medical treatment only to Corrections Officers who possess State firearms certification.

### Union Position

The OPBA asserts that it entered discussions regarding the letter of agreement on the basis that all bargaining unit members that maintained their status as auxiliary police officers would be eligible for the stipend. In addition, says the Union, the understanding was to be that all Corrections Officers who were also auxiliary officers would be sent to the range at City expense.

According to the Union, the letter submitted by the City failed to meet these conditions, and consequently the OPBA urges the fact-finder to recommend that current contract provisions be retained.

### Findings and Recommendation

The letter of agreement proposed by the City of East Cleveland as an amendment to the collective bargaining agreement specifically names those members of the bargaining unit eligible to receive the firearms allowance. This delineation would effectively afford certain Corrections Officers benefits not available to other members of the bargaining unit who might acquire the necessary certification during the course of the contract. Moreover, one of the three OPBA members listed as eligible for the allowance in the letter does not currently hold the necessary certification.

City support for required range qualification is apparently a matter of past practice, and is not specified in Article XXIV; East Cleveland's obligations in this regard must be addressed in another forum. However, the uniform applicability of the current contract language to all members of the bargaining unit commends it to more egalitarian application. Accordingly, retention of the current contract language is recommended.

SUMMARY OF RECOMMENDATIONS

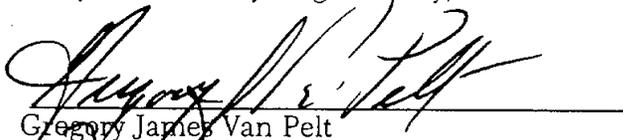
Article XX / Article XXVII  
Definition of Auxiliary Officer

City Position

Article XXIV - Clothing Allowance/  
Side Letter Agreement

Current Contract Language

Respectfully submitted, this 24th day of August, 1999  
At Lyndhurst, Cuyahoga County, Ohio



Gregory James Van Pelt  
Fact-finder  
State Employment Relations Board