

FACTFINDING REPORT

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

July 15, 1999

In the Matter of :

City of Mentor)

and)

Ohio Patrolmen's Benevolent Association)

Mentor Patrolman's Association)

Case No. 99-MED-01-0077
Patrolmen

APPEARANCES

For the Employer:

Gary C. Johnson, Attorney
Gina A. Kuhlman, Attorney
Richard A. Amriott, Police Chief
Dan Graybill, Assistant City Manager
Roseanne Graham, Personnel Analyst

For the Union:

S. Randall Weltman, Attorney
Steven Graham, President
Steven Rogge, Vice President
Daniel R. Grein, Chief Negotiator
Tim Allen, Union Representative
Paul Szabo, Union Representative
Timothy Nekić, Patrolman
Joseph Sutton, Patrolman

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Mentor and the police patrolmen who are represented by the Mentor Patrolman's Association which is affiliated with the Ohio Patrolmen's Benevolent Association. They are negotiating for a successor agreement to the one which expired on April 11, 1999.

When the parties were unable to reach agreement, impasse was declared. The Factfinder was appointed on March 19, 1999. Mediation sessions were held on April 12, 1999; May 3, 1999; and May 10, 1999. During those sessions many of the outstanding issues were resolved. However, when no overall settlement was reached, a factfinding hearing was conducted on May 28, 1999.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted 16 issues to the Factfinder. For each issue he will summarize the positions of the parties, present a brief discussion of the issue, and offer his recommendation. Where appropriate the Factfinder will supply the recommended contract language.

1) Article IX, Section 9.1 - Pay Rates - The current contract establishes a six step salary schedule with a top rate of \$47,398. The union demands 4.5% wage increases effective April 12 of 1999, 2000, and 2001. The city offers 2% wage increases in 1999, 2000, and 2001.

Union Position - The union argues that its wage demand is justified by the wage increases granted in other jurisdictions. It states that jurisdictions in Cuyahoga, Franklin, Hamilton, and Lake Counties with populations greater than 47,000 granted gross wage increases of 4.0% in 1999 and 3.89% in 2000. The union indicates that in Lake County cities with populations of more than 15,000 plus Euclid the average increase in total compensation was 3.75% in 1999 and 2000.

The union challenges the city's claim that funds are tight. It points out that although a road levy failed, a fire levy passed. The union notes that the general fund ending balance grew from \$8.0 million in 1995 to \$10.1 million in 1997. It indicates that police department expenditures come from the general fund.

The union contends that its wage demand is supported by the increase received by the city manager. It observes that the News Herald reported that he got a 4.5% salary increase effective April 1, 1998.

City Position - The city argues that its offer ought to be recommended. It points out that its patrolmen are very highly compensated. The city reports that the average total compensation for a ten-year patrolman in ten Lake County cities plus the Lake County deputies is \$45,793 compared to \$52,101 in Mentor. It observes that the average top

wage for State Employment Relations Board Benchmark data for cities with populations between 25,000 and 50,000 is \$41,601 compared to \$47,358 in Mentor.

The city contends that the changes in the cost-of-living support its position. It indicates that between 1984 and 1998 the consumer price index rose 48.8% while wages increased 140.0%. The city stresses that an April 14, 1999 article in the Plain Dealer reported that the rate of inflation remained low.

The city states that although it is not arguing an inability to pay, caution is in order. It calculates that step salary increases in 1999 will be \$2,794,844 or 1.9% of payroll. The city claims that ending balances have decreased and a levy was recently rejected. It stresses that nothing requires that the patrolmen's wages be in the top few in the state but only that they be fair.

Analysis - The Factfinder cannot recommend the city's wage offer. While he appreciates the fact that the wages of patrolmen in Mentor are near the top in Ohio, it is the result of many years of bargaining. The city's wage proposal would result in a significant reduction in Mentor's wages relative to other cities.

The city's financial position appears strong. While the general fund ending balance declined from \$10,174,572 in 1997 to \$8,078,939 in 1999, the ending balance in 1999 was nearly identical to the 1995 ending balance. Although a road levy was rejected, a fire levy passed.

The Factfinder must also reject the union's wage demand. The union's data indicates that gross wage increases in Lake County plus Euclid average 3.75% in both 1999 and 2000. Even selecting certain high wage departments state-wide, the average gross increase is 4.04% in 1999 and 3.89% in 2000.

The Factfinder recommends that wages be increased 3.5% April 12 of 1999, 2000, and 2001. This is consistent with the report in the first quarter 1999 issue of the SERB Quarterly which indicates that in 1998 first year wage increases averaged 3.6% followed by increases of 3.34% and 3.38%. The Factfinder's recommendation of 10.5% over three

years exceeds the average of 10.32% for the state. Generally, wage increases exceeding the average increase occur where wages have lagged behind similar jurisdictions or where there has been an improvement in the financial outlook. Neither applies in the case of Mentor.

Recommendation - The Factfinder recommends the following contract language:

Effective April 12 of 1999, 2000, and 2001 wages shall be increased by 3.5%.

2) Article IX, Section 9.10 - Longevity - The current contract provides for longevity payments starting with \$300 after five years of service increasing to \$1500 after 17 years. The union demands that longevity be increased to \$100 per year of service starting at five years with a payment of \$500. The city offers no increase in longevity.

Union Position - The union argues that longevity ought to be increased. It indicates that longevity has not been enhanced in several years and notes that the city can afford to do it. The union states that its plan is in effect in Eastlake, Painesville, Willoughby Hills, and Wickliffe. It claims that increases in longevity will reduce turnover.

City Position - The city argues that there is no basis to increase longevity. It asserts that it has a "mainstream" longevity plan. The city indicates that its longevity payments at 10 and 20 years exceed the average for cities in Lake County.

Analysis - The Factfinder cannot recommend an increase in longevity. Although longevity payments in area police departments vary in amount and timing, the city is correct that it offers a "mainstream" longevity plan. Furthermore, data on total compensation indicates that even if longevity in Mentor is less than some cities, it is more than outweighed by higher base wages and other elements of compensation.

Recommendation - The Factfinder recommends current contract language.

3) Article IX, Section 9.12 - Firearms Proficiency Allowance - The current contract provides a firearms proficiency allowance of \$350 for sharpshooter, \$400 for expert, and \$450 for distinguished expert with no payment to those at the marksmen level. The union demands increasing the proficiency allowance by \$1000 so that a patrolman at the marksman level would receive \$1000 and someone at the distinguished expert level would get \$1450. The city opposes any increase in the allowance.

Union Position - The union argues that its demand ought to be granted. It maintains that it will move it closer to Willoughby which it claims is the most comparable community. The union indicates that the increase is designed to accomplish parity with regard to the paramedic allowance paid to most firefighters in the city.

City Position - The city opposes any increase in the firearms proficiency allowance. It points out that seven of the departments in Lake County do not have a firearms allowance and it pays the second highest allowance among the four departments with allowances. The city acknowledges that Willoughby agreed to a \$1100 firearms allowance because the firefighters received a paramedic bonus of the same amount. It stresses that Mentor has eliminated the paramedic bonus.

Analysis - The union was unable to justify an increase in the firearms proficiency allowance. Very few of the departments in Lake County offer such compensation. Only Willoughby provides a larger bonus but Willoughby's total compensation in 1998 was less than Mentor's.

Recommendation - The Factfinder recommends current contract language.

4) Article X, Section 10.3 - Court Time - The current contract states that when an employee is required to appear in "Court" as a result of his duties or a subpoena, he is entitled to certain compensation. The city seeks to define "Court" as "municipal courts, common pleas courts, or federal court." The union wishes to retain current contract language.

City Position - The city argues that its demand is justified. It contends that when unfair labor practices charges are filed, it should not have to pay patrolmen who appear before SERB. The city states that none of the other jurisdictions in the county pay court time in such cases.

Union Position - The union indicates that it was willing to discuss the changes that the city seeks. It indicates that it properly conditioned the discussions on resolving the grievances pending over a number of employees' appearances before SERB. The union stresses that it is unwilling to agree to new contract language without settling the outstanding grievances.

Analysis - The Factfinder must recommend a change in the current contract language. He believes that the intent of court time provisions in police contracts is to compensate police officers when they appear in court or administrative agency proceedings in connection with the performance of their police functions. The Factfinder does not feel that court time is appropriate in cases such as SERB proceedings.

This conclusion is supported by the language in police contracts in Lake County. For example, Mentor-on-the-Lake requires compensation for a court appearance which results from an officer's "actions on behalf of the City." Willowick requires compensation for an officer for an appearance in court "relating to police business where such attendance is required."

Recommendation - The Factfinder recommends the following contract language:

When an employee is required to appear before a court or administrative agency as a result of his actions as a police officer on behalf of the city at times other than time abutting his scheduled duty hours, he shall receive compensation at time and one-half (1 1/2) his regular base hourly rate of pay with a minimum of three (3) hours pay at time and one-half (1 1/2) his regular base hourly rate of pay.

5) Article X, Section 10.5 - Comp Time Bank - The current contract provides for a comp time bank of 80 hours and includes no provision for cashing out comp time. The union wishes to increase the comp time bank to 480 hours and allow a cash-out of accumulated hours in June and December. The city opposes both of the union's proposals.

Union Position - The union argues that its demand to increase the comp time bank ought to be adopted. It points out that it is demanding the number of hours allowed under the Fair Labor Standards Act. The union notes that the maximum hours in selected other departments are:

Willoughby	Unlimited
Maple Heights	Unlimited
Euclid	480 hours
Cleveland	480 hours
Ohio Highway Patrol	240 hours
Eastlake	160 hours
Painesville	120 hours
Wickliffe	100 hours
Shaker Heights	100 hours

It claims that the chief and the two captains, who have unlimited comp time banking, have banked between 133 1/2 and 2163 hours.

The union contends that patrolmen have accumulated a significant number of comp time hours. It reports that in 1998 ten of the approximately 60 officers reached the 80 hour maximum and in 1999 seven officers are at the maximum.

The union maintains that its cash-out proposal ought to be adopted. It indicates that it is the same procedure as enjoyed by patrolmen in Willoughby.

City Position - The city argues that there is no basis for increasing the comp time bank. It reveals that when it shops for bond rates, it must declare banked comp time hours as part of its liabilities. The city reports that in any event as of April 30, 1999, only eight officers had more than 72 hours and only six officers had accumulated 80 hours.

The city also opposes the comp time buy-out. It claims that most cities do not offer this benefit. The city indicates that a comp time buy-out creates more work for the finance department. It insists that it is not a finance company and that if employees need the money, they should take their overtime as cash.

Analysis - The Factfinder sees no reason for a significant increase in the comp time bank. While a number of departments allow for much greater accumulations than the city, few members of the bargaining unit have banked very many hours. The data submitted by the city indicate that as of April 30, 1999 the average patrolman had only 32.85 hours in his comp time bank. Despite this figure the Factfinder will recommend that the maximum accumulation be increased to 100 hours to accommodate the small number who are at the current cap.

The Factfinder cannot recommend the union's demand for a cash-out. The data submitted by the city suggests that the cash-out is not included in many area contracts. Patrolmen who anticipate the need for cash should opt to be paid for overtime rather than banking the money with the city.

Recommendation - The Factfinder recommends current contract language except that the comp time bank be increased to 100 hours.

6) Article X, Section 10.10 - (NEW) - Shift Selection - The current contract has no provision governing shift selection. The union demands that shift assignment be based on seniority. The city opposes the union's demand.

Union Position - The union argues that the parties have demonstrated a strong intent to use seniority as the criterion for decisions regarding benefits. It observes that under Article XXIV, Section 24.8, seniority governs entitlement to compensation, vacation, holidays, leaves of absence, longevity, and days off. The union claims that shift selection is not included in the section because patrolmen rotated shifts until 1994.

The union contends that the city is obligated under the contract to apply seniority to shift selection. It bases this claim on the language in Article XXIV, Section 24.8, which states that the use of seniority is "not limited to" the enumerated areas.

The union acknowledges that the city has "pretty much" lived up to its commitment to honor seniority. It states that a large percentage of the members of the bargaining unit have been assigned to one of their desired shifts. The union claims, however, that the results have been "far from perfect." It further asserts that the high percentage of employees who got their preferred shift does not reflect "the stress that the annual uncertainty produces for all officers [or] the bitter disappointment and harsh personal and familial effect that is sustained by individuals when seniority fails to govern." (Union Pre-Hearing Statement, page 9).

The union maintains that there has been no standard method for shift selection. It reports that strict seniority governed in 1994 and 1995. The union states that in 1996 patrolmen submitted three preferences for shift assignment and the city considered seniority along with staffing needs in making assignments. It indicates that in 1997 patrolmen again submitted three preferences and the 18 most senior employees were to be granted their desired shift. The union observes that for 1998 officers supplied only two choices and 1997 performance appraisals were considered along with seniority. It states that in 1999 patrolmen again submitted three preferred shifts but no explanation was provided regarding assignments to shifts.

The union charges that senior patrolmen have not always gotten their preferred shift. It indicates that in 1998 some of those who did not get assigned to the shift they indicated filed grievances. The union reports that they were told that the reason was their poor performance evaluations even though some patrolmen with poor evaluations did get their preferred shifts. It claims that in 1999 Daniel Grein and five other patrolmen received none of their preferred shifts. The union notes that it filed an unfair practice charge on behalf of Grein, who is 14th on the seniority list, charging retaliation for union

activities. It notes that Scott Bell, who is sixth on the seniority list, indicated in an affidavit that he felt that he was unfairly treated for several years. The union suggests that Joseph Sutton, who is 24th on the seniority list, did not initially get his preferred shift because his wife spoke in favor of 12-hour shifts at a city council meeting. It notes that Timothy Nekić, who is 13th on the seniority list, indicated that there were times he did not receive his first choice of shifts.

The union maintains that there are departments where patrolmen select shifts by seniority. It points out that in Kirtland, the only department in Lake County on fixed shifts, shift assignments are based on seniority. The union submitted contracts showing that Akron, Barberton, Brunswick, and the Ohio Highway Patrol bid shifts by seniority. It claims that a survey conducted at a recent memorial parade indicated that Madison Heights (Michigan), North Royalton, Parma, and West Bloomfield (Michigan) have seniority shift assignment by contract and Boston Heights, Brooklyn, Cleveland, and Euclid have it by policy.

City Position - The city argues that senior patrolmen have generally been assigned to their preferred shift. It points out that in 1998, 15 of the 20 most senior patrolmen got their first choice. The city notes that in 1999, 17 of the 20 most senior patrolmen received their first choice.

The city disputes the union's charge that certain shift assignments were improper. It indicates that a K-9 officer could not get his preference because a more senior K-9 officer had to be accommodated. The city notes that Nekić's assignment was changed so that he wound up on his desired shift. It claims that Grein was assigned to the 4-alpha shift because he is needed on that shift due to his special training in accident scene investigation.

The city contends that comparables do not support the union's position. It observes that none of the departments in Lake County are on fixed shifts except Kirtland. The city acknowledges that shifts in Kirtland are selected based on seniority but notes that

the department has only five full-time patrolmen and three shifts. It states that although the Ohio Highway Patrol selects shifts by seniority, troopers are required to rotate to a different shift after two three-month periods on a shift. The city objects to the data presented by the union which it collected at a memorial parade.

The city maintains that it tries to recognize seniority in making shift assignments. It indicates that it has a lot of young officers so that patrolmen must be assigned to assure that the young officers have mentors and the shifts have the needed experience. The city asserts that even if shift selection were based on strict seniority, it would be impossible to satisfy everyone.

Analysis - The Factfinder appreciates the importance of shift assignment to the patrolmen. The shift to which he is assigned has a major impact on his life. It may force him to delay his plans to further his education or impact his obligation to share in caring for children or elderly parents.

The city also has a strong interest in shift assignments. It is responsible for providing the best possible service to the community. This may dictate shift assignments contrary to the wishes of some patrolmen.

The Factfinder believes that the parties can probably agree on several points. First, seniority should be viewed as a very important factor in making shift assignments. Second, in certain cases seniority cannot control a shift assignment when certain specialities or special skills are involved. For example, when the senior K-9 officer indicates his shift preference, the less senior K-9 officer should not be assigned to the same shift. Third, in some circumstances an individual officer's shift preference cannot be accommodated because of performance problems or the need to have a balance of young and experienced officers on a shift. Finally, shift assignments should not be used to retaliate against an officer.

It is also important to recognize that no matter what system of shift selection exists, not everyone will be happy. Where strict seniority prevails, less senior officers may

be upset at being unable to get their desired shifts. In fact, in a department which has little turnover and is not growing, a less senior officer may have to wait a number of years before getting a preferred shift assignment.

When the shift assignment procedure recognizes exceptions to seniority, there are certain to be discontent patrolmen. Even though it is possible in the abstract to recognize the need for exceptions to seniority in shift assignments, the officer whose seniority is overlooked is unlikely to understand his assignment. Furthermore, human nature may make it difficult for the city to disregard personalities, grudges, and friendships in making shift assignments where strict seniority does not govern.

The documents submitted by the parties makes it possible to assess the results of the shift assignment process for 1998 and 1999. In 1998 there were 35 nonprobationary patrolmen. For the 18 most senior officers, 15 (including two whose shift assignments were changed) got their first choice and four got their third choice. One of the four receiving his third choice was assigned to the day shift for performance reasons and one was denied his choice because of a special request by a less senior officer. Not surprisingly, the bottom 17 did not fare as well. Nine got their first choice, two got their second choice, five got their third choice, and one expressed no preference.

The results of the shift assignments in 1999 are similar. At that time there were 46 nonprobationary officers. Of the top 23, 19 got their first choice, one got his second choice, one got his second choice, one got his third choice, and two got none of their choices. Of those who got none of their choices, one was the less senior K-9 officer who had to defer to the more senior K-9 officer and the city claimed that the special training of the other employee dictated his shift assignment. Again, the bottom 23 did not do as well. Fourteen got their first choice, three got their second choice, three got their third choice, and three got none of their choices.

Overall, it is difficult to conclude that there is any problem with shift assignments. In 1998 83% of the top half of the seniority list got their preferred shift. The following

year 82% got their first choice. If the less senior K-9 is excluded, 86% got their preferred shift.

The difficulty is that a few officers felt that they were denied their preferred shifts in retaliation for their union activity or for some other improper reason. Where an employee believes that he has been discriminated against because of union activity, he can file an unfair practice charge with SERB. However, in other circumstances there is no effective way to seek redress. If an employee continues to feel that he has been treated improperly, he is likely to respond negatively and to try to convince co-workers that he was treated unfairly.

The Factfinder believes that the solution is obvious. The contract should require the city to make shift assignments just as it has in the past. In other words, assignments should be based on seniority tempered by factors reflecting the needs of the department and the public interest. However, if an employee feels that his shift assignment is improperly motivated, he can file a grievance guaranteeing a speedy and inexpensive resolution of the issue.

Recommendation - The Factfinder recommends the following contract language:

The Chief of Police shall be responsible for shift assignments. Each nonprobationary officer shall submit his first, second, and third choice of shift. After taking into account the balance of experience on the shifts, job performance, special training and expertise, and other factors reflecting the needs of the department and the community, Officers shall be assigned to shifts based on seniority. This procedure relates to the assignment to permanent shifts and is not intended to preclude a decision to work rotating shifts.

7) Article X, Section 10.1 - Work Week - The current contract specifies that the work week shall consist of 40 hours as scheduled by management. The union proposes language establishing twelve-hour shifts as had existed by policy under the prior collective bargaining agreement. The city opposes any change in the contract.

Union Position - The union argues that twelve-hour shifts ought to be reinstated. It indicates that the twelve-hour shifts were the product of bargaining between the parties. The union claims that the purpose of the change to twelve-hour shifts was to ensure proper manpower coverage, reduce the use of sick leave, and provide more desirable days off for less senior officers.

The union objects to the city's sudden, unilateral decision to return to eight-hour shifts effective February 15, 1999. It charges that the change was made because of the union's role in the controversy over ticket quotas. The union notes that it filed an unfair labor practice charge alleging that the change was in retaliation for the exercise of its rights under Chapter 4117 of the Ohio Revised Code.

The union asserts that the twelve-hour shift schedule achieved its goals. It points out that a survey of its members revealed that more than 85% preferred the longer shifts and felt that it impacted their lives positively. The union notes that members felt that there were no problems with the use of sick leave, supervision, communication, or the quality of work performance. It observes that an article in the Plain Dealer named six area departments working twelve-hour shifts and reported that the cities found that twelve-hour shifts boosted morale and created no problems.

City Position - The city adamantly opposes the implementation of twelve-hour shifts. It acknowledges that in April 1998 it agreed to go to the longer shifts but emphasizes that it did so with the stipulation that it could return to eight-hour shifts after 30-day notice to the union. The city states that it went back to eight-hour shifts because sick leave usage increased, the quality of reports declined, supervision suffered because of the overlap of shifts, and other problems.

The city maintains that the union's demand is not supported by comparisons to other departments. It reported that no departments in Lake County are on twelve-hour schedules. The city observes that based on the Factfinder's award the City of Ashtabula recently returned to eight-hour shifts.

Analysis - The Factfinder cannot recommend the twelve-hour shifts sought by the union. While there are a few departments in Cuyahoga County and elsewhere working twelve-hour shifts, the rule is still eight-hour shifts.

The Factfinder believes that alternative work schedules may be an area which might be worth future consideration. He is aware of reports that have both praised and condemned twelve-hour shifts. The Factfinder is convinced that before any experimentation can be successful, relations between the parties must improve.

Recommendation - The Factfinder recommends current contract language.

8) Article XIV, Section 14.1 - Uniform Allowance - The current contract establishes a uniform allowance of \$500 and a cleaning allowance of \$400 for patrolmen and \$550 for detectives and crime prevention officers. The union seeks to increase the uniform allowance by \$25 for each year of the contract and to raise the cleaning allowance by \$150. The city rejects the union's demand to increase the uniform allowance but offers to provide up to \$8 per week for dry cleaning.

Union Position - The union argues that its demand to increase the uniform and cleaning allowances is justified. It points out that a patrolmen's initial uniform is provided but he must then furnish any further uniform items. The union notes that patrolmen use a purchase order to buy items and are required to get two quotes. It claims that at current prices the purchase of boots and a couple of pants exhausts the uniform allowance and forces employees to spend their own money on uniforms.

The union complains that cleaning costs are high. It acknowledges that Jay Dee Cleaners picks up items for cleaning at the station and does the work at a discount. The union, however, calculates that cleaning three shirts and pants per week plus occasional cleaning of other uniform items would cost \$673 per year at Jay Dee Cleaners and even more at other places.

City Position - The city argues that the current uniform allowance is sufficient. It reports that at the end of 1998 \$14,534 in unspent uniform allowances was carried over to 1999. The city observes that many employees have accumulated significant balances with the highest being more than \$1600.

The city contends that its proposed maintenance allowance is adequate. It points out that the uniforms are wash-and-wear and can be laundered at a very low cost. The city claims that \$8 per week is sufficient for those who wish to have their uniforms cleaned by Jay Dee Cleaners.

The city maintains that its offer compares favorably to other Lake County departments. It indicates that uniform and cleaning allowances in 1999 are as follows:

Willoughby	\$950
Painesville	750
Willoughby Hills	750
Eastlake	675
Willowick	675
Wickliffe	675
Madison	650
Kirtland	600
Mentor-on-the-Lake	590
Sheriff	None

Analysis - The Factfinder cannot recommend the union's request for an increase in the uniform allowance. The information provided by the city indicates that not only did 58 of 74 department members carry over unspent money into 1999 but many employees had significant balances in their accounts. In addition, the data reveal that the combined uniform and cleaning allowance in the city far exceeds all other departments in Lake County except Willoughby.

The Factfinder does recommend that the union's demand for an increase in the cleaning allowance be granted. An examination of Jay Dee Cleaners price list suggests that an officer who wants to look sharp could easily exhaust the current cleaning allowance.

Recommendation - The Factfinder recommends the current contract language except that the cleaning allowance shall be raised by \$50 each year of the contract.

9) Article XVII, Section 17.01(i) - Vacation Accrual - The current contract grants employees service credit for computing vacation entitlement for full-time employment with the State of Ohio or any political subdivision subject to a maximum credit of five years. The union seeks to expand the service credit to include time spent on full-time active duty in the armed services. The city rejects the union's demand.

Union Position - The union argues that employees who have full-time military service should get vacation credit for the time. It points out that such employees have devoted part of their lives and careers to serve their country. The union insists that employees who have served in the military are just as deserving as those who have worked for the State of Ohio or a political subdivision. It indicates that under its proposal ten patrolmen would be entitled to an additional week of vacation.

City Position - The city argues that the union's demand should be denied. It states that no other city provides the benefit that the union is seeking. The city notes that the union's proposal would reward a select few. It asserts that the current vacation schedule is adequate.

Analysis - The Factfinder finds no basis for recommending the union's demand. He is unaware of any city which provides vacation credit for full-time military service acquired before employment with the city.

Recommendation - The Factfinder recommends current contract language.

10) Article XVII, Section 17.2(i) - Vacation Scheduling - The current contract requires an employee who has not pre-scheduled vacation to request vacation at least 30 days in advance and requires the city to approve or disapprove requests within five work days from the date of the request. The union proposes to delete the 30-day

request period and to continue to require the city to respond in five work days. It wishes the same procedure to apply to scheduling of holidays under Article XVI, Section 16.2(g) and comp time under Article X, Section 10.5. The city opposes the union's demand.

Union Position - The union argues that its proposal is justified. It indicates that the city does not consider vacation, holiday, and comp time requests until 30 days before the time being requested. The union claims that this is not sufficient time to make travel plans to attend events such as weddings.

City Position - The city rejects the union's proposal. It contends that it is difficult to approve time off more than 30 days in advance because it does not know what the manpower situation will be. The city claims that it has tried to accommodate requests for time off and does not want to agree to longer advance notice because it will force it to deny requests.

Analysis - The Factfinder believes that there are two essential facts related to this issue. First, the city needs to retain the right to approve or disapprove requests for time off. It is essential that the city maintain appropriate manning levels and not have to pay excessive overtime. Second, it is clear that the farther in advance the union requires the city to act on requests for time off, the more likely the request is to be turned down because of the greater uncertainty over manning.

With these two points in mind, the Factfinder cannot recommend the union's proposal. However, he believes that if the parties had been able to discuss the issue in more detail, they may have been able to come up with a system that would be better than the current arrangement. This is an issue that might profitably be discussed at a labor-management committee meeting.

The Factfinder's recommendation is also based on the assumption that the current practice regarding requests for time off is continued. Discussions in mediation revealed that in certain circumstances the city has approved request for time off long in advance of

the time being requested. In fact, there was no testimony of a request being denied that created more than some inconvenience.

Recommendation - The Factfinder recommends current contract language.

11) Article XXII, Sections 22.1(a) and 22.3 - Medical Benefits - The city offers four health insurance plans -- three options under QualChoice plus Prucare. The current contract includes no deductibles or co-pays for options 1 and 2 of QualChoice. The city proposes deductibles of \$100/\$200 (single/family), a 10% co-pay, and an out-of-pocket maximum of \$200/\$400. The union opposes any change in the premiums and co-pays in Section 22.1(a) and proposes eliminating the language from Section 22.3 which gives the city the right to require employees to pay part of the premiums.

City Position - The city argues that the changes it seeks are appropriate. It claims that carriers are not anxious to bid on 100% coverage. The city states that its proposal for a 10% co-pay is better than the typical 20% co-pay.

The city contends that health insurance costs are rising. It points out that the premiums for QualChoice family coverage have risen from \$375.42 in 1996 to \$443.28 in 1999 with similar increases for single coverage. The city notes that a Plain Dealer article dated June 3, 1998, suggests that premium increases for 1999 will be 12%-15% for traditional plans and 5%-7% for health maintenance organizations.

The city asserts that the health insurance offered by other Lake County jurisdictions supports its position. It submitted a brief summary of the contractual provisions of nine jurisdictions regarding co-pays and premium contributions.

Union Position - The union argues that there is no basis to change the medical insurance provisions in the current contract. It points out that the increases in the premiums between 1996 and 1999 were minimal. The union notes that the city offered a year-old newspaper article in support of its claims that premiums will rise. It asserts that

even if premiums rise nationally, they may not rise in the Cleveland area because the local healthcare market is very competitive.

The union stresses that under prior collective bargaining agreements the city had mechanisms to deal with rising healthcare costs. It observes that Section 22.3 of Article XXII gave the city the right to require an employee premium contribution if premiums exceeded those paid in 1993 but chose not to invoke this right. The union notes that Section 22.3 also provided that a labor-management group would be established to discuss healthcare cost containment but none was ever formed.

The union charges that the city is not serious about its medical insurance proposal. It claims that the city made its demand only to counter the union's wage demands.

Analysis - The Factfinder cannot recommend the changes that the city seeks. First, the premium the city pays for medical insurance is relatively low. The 1999 premium for family coverage under QualChoice is \$443 and \$398 for Prucare. This is significantly less than what many other employers pay for essentially the same coverage. Second, while an article that appeared in the Plain Dealer on June 3, 1998, predicted that health insurance premiums would increase significantly for both traditional plans and health maintenance organizations, the article focuses on national trends. Nothing in the record indicates that costs will rise to the same extent in the Cleveland area where there is strong competition between healthcare providers.

The Factfinder does not dismiss the possibility that the city will face larger premium increases in 2000 than what it has experienced in the past few years. The city, however, will have two ways to deal with this possibility. Article XXII, Section 22.3 in the current contract reserves to the city the right to require employee premium contributions of \$15 per month for single coverage and \$25 per month for family coverage if premium costs increase over the levels that existed in 1993. The Factfinder will recommend that this provision be retained in the contract but modified to allow the city to require premium contributions if premium costs exceed those of January 1, 1999.

The same section of the contract provides for the establishment of a labor-management group to discuss healthcare cost containment. While the committee was never established under the prior contract, it is an option should the parties face higher premium costs and the possibility of employee premium contributions.

Recommendation - The Factfinder recommends that current contract language be retained except that in Article XXII, Section 22.3 the base for premium cost changes be changed to January 1, 1999.

12) Article XXII, Section 22.1(e) - Life Insurance - The current contract provides for \$40,000 of term life insurance. The union seeks to increase the amount to \$50,000. The city opposes the increase.

Union Position - The union argues that its demand is justified. It indicates that \$50,000 is closer to the top wage for a patrolman than \$40,000. The union maintains that the cost of the increase would be small.

City Position - The city maintains that no increase is justified. It points out that other jurisdictions in Lake County provide life insurance ranging from \$10,000 to \$35,000. The city claims that since the wages and benefits it pays exceed virtually everyone in the state, there is no reason to increase this part of the benefit package.

Analysis - The Factfinder recommends the union's demand be rejected. The city currently provides more life insurance than any other jurisdiction in Lake County. The wages paid by the city allow patrolmen who believe they need more life insurance to purchase it themselves.

Recommendation - The Factfinder recommends current contract language.

13) Article XXII, Section 22.1(f) - NEW - Vision Insurance - The current contract does not provide for vision insurance. The union seeks to add vision

insurance that covers one examination and up to \$500 for glasses or contact lenses per person per year. The city rejects the union's demand.

Union Position - The union argues that its demand ought to be granted. It points out that proper vision is essential for police officers. The union states that an eye exam and fitting contact lenses costs approximately \$80 and glasses or contact lenses can cost up to \$400.

The union maintains that comparable data support its position. It reports that Euclid, Wickliffe, and Willoughby offer vision insurance. The union observes that a 1998 report from SERB indicates that approximately 50% of public employers in Ohio provide vision insurance at an average monthly cost of \$7.40 for single coverage and \$13.40 for family coverage.

City Position - The city opposes the union's demand. It points out that Prucare, which is available to employees, includes vision coverage. The city claims that most jurisdictions do not have vision insurance and that any plan where the monthly cost is \$13.40 is junk. It maintains that a more realistic cost is \$40 per month which is equal to 1% of payroll

Analysis - The Factfinder cannot recommend the adoption of vision insurance. It appears that a very limited number of local police departments offer vision insurance. The Factfinder would suggest that if a labor-management committee is convened to discuss health insurance costs and options, the possibility of adding vision insurance be added to the agenda.

Recommendation - The Factfinder recommends that the union's demand be denied.

14) Appendix A - Performance Incentive Program - The current contract has a sick leave bonus plan where employees receive up to \$200 depending on their accumulated hours of sick leave and the number of sick days they have taken during the

year. However, if the bargaining unit as a whole used an average of more than 40 hours of sick leave between December 1 and November 30, the amount of the bonus is reduced. If the average use of sick leave exceeds 48 hours, no bonuses are paid.. The union proposes replacing the current program with a strictly individual plan where an employee who uses no sick leave gets up to 40 hours of sick leave converted to vacation. Under the union's plan the amount of vacation received is reduced by 8 hours for each day of sick leave used so that an employee who uses five sick days receives nothing. The city wishes to retain the present scheme.

Union Position - The union argues that the sick leave incentive program should be based on individual performance. It maintains that it is rare for any incentive program to be based on group performance, much less a sick leave program.

City Position - The city argues that the present system works. It points out that individual employees get varying amounts of sick leave bonus for not using sick leave and at the same time the plan works to generate concern within the entire bargaining unit concerning the abuse of sick leave. The city claims that the union did not show any good reason to change the plan.

Analysis - The Factfinder cannot recommend that the current plan be continued. It appears unreasonable to deny a bonus to an individual who uses no sick leave because other members of the bargaining unit may have abused sick leave. Furthermore, if an individual believes that he will not get a bonus because other members of the bargaining unit abuse sick leave, he is apt to conclude that he might as well do the same. This possibility would appear to doom the plan to fail.

Although the union has proposed a strictly individual incentive system, he cannot recommend it. The plan would appear to be too costly and, given complaints about difficulties scheduling time off, granting additional vacation rather than cash would seem to make no sense. The Factfinder, therefore, will recommend that the current plan be

continued except that the requirement relating to bargaining unit use of sick leave be eliminated.

Recommendation - The Factfinder recommends that sections (b) and (c) be eliminated from the plan and sections (a), (d), (e) and (f) be retained.

15) New Article - Quotas - The union demands a new article that would prohibit the city from implementing a quota system. The city opposes the union's demand.

Union Position - The union argues that its proposal ought to be adopted. It states that its proposal is similar to a provision in the Ohio Highway Patrol contract which states that the employer "shall not establish a quota system for the issuance of law enforcement violations." The union indicates that its proposal is taken verbatim from an August 31, 1998, memorandum issued by Richard Amriott, the police chief, and Julian Suso, the city manager and director of public safety, which eliminated "separate goals or guides for the separate categories of traffic stops, speeding tickets, arrests, etc."

City Position - The city characterizes the union's demand as "ludicrous." It maintains that it has the right to control the quantity and quality of an employee's work and that it is not a proper subject for bargaining. The city reports that no contract in the area has a provision similar to what the union is proposing.

Analysis - The Factfinder must reject the union's demand. The city has the right to evaluate the performance of patrolmen. The language which the union proposes, even though it comes from a memorandum issued by the chief and the city manager, might intrude on that right. At the same time the Factfinder is confident that the city will not impose a quota system which would likely lead to public concern.

Recommendation - The Factfinder recommends that the union's proposal be denied.

16) New Article - Bulletin Boards - The current contract has no language dealing with bulletin boards. The union proposes that the city provide it with a locked bulletin board which would be maintained by the union leadership who would be subject to discipline for any violation of the department's rules and regulations. The city offers to provide two bulletin boards provided it has the right to approve what is posted.

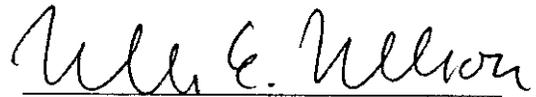
Union Position - The union argues that its demand is justified. It maintains that it has the right to communicate with its members. The union acknowledges that it cannot post material that is inflammatory in nature. It indicates that the language regarding bulletin boards in the Kirtland contract is agreeable and that the provision in the Eastlake agreement is satisfactory if the section requiring the employer's prior approval of material that is posted is deleted.

City Position - The city argues that its position ought to be accepted. It points out that most police contracts do not have bulletin board language in which case the police chief controls what is posted. The city claims that in those contracts with bulletin board provisions nothing prohibits the employer from policing and removing items from the bulletin board. It indicates that the language in the patrolmen's contract should be consistent with its contracts with the other city unions.

Analysis - The Factfinder believes that the primary concerns of both parties regarding bulletin boards can be met. The union wants to be able to post notices of interest to its members without seeking the prior approval of the city. The city wants to prohibit the union from posting inflammatory or derogatory material and wants the union president to authorize everything that is posted.

Recommendation - The Factfinder recommends the following contract language:

The city shall provide the union with two bulletin boards in mutually agreeable locations. All material that is posted must be authorized by the union president. No material which is inflammatory or derogatory with regard to the city or its employees shall be posted. The union shall provide the police chief a copy of all material that is posted at the time it is posted.



Nels E. Nelson
Factfinder

July 15, 1999
Russell Township
Geauga County, Ohio