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**STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO**

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In the Matter of Fact-Finding Between	*	FINDINGS AND
	*	RECOMMENDATIONS
FRATERNAL ORDER OF POLICE	*	
LODGE NO.15 AND BROOKPARK	*	
PATROL UNIT	*	CASE NO. 9 <sup>a</sup> -MED-02-0079
	*	
and	*	June 17, 1999
	*	
CITY OF BROOKPARK	*	Charles Z. Adamson, Fact-Finder

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**APPEARANCES**

For the Fraternal Order of Police. Lodge No.15  
and Brookpark Patrol Unit:

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For the City of Brookpark:

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The undersigned was appointed Fact-Finder in this dispute by the State of Employment Relations Board (SERB) on April 12, 1999 pursuant to § 4117-14(3) of the Administrative Code. The bargaining unit involved herein consist of a unit of all patrolmen, patrolwomen and detectives. The collective bargaining agreement expired December 31, 1998.

I.

**HEARING**

A hearing was held on May 20, 1999 in Brookpark, Ohio. Both parties attended the hearing and elaborated upon their positions regarding the remaining issues at an impasse through their representatives as listed on the preceding page.

II.

**MEDIATION**

After mediation the case proceeded to hearing on the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

1. Compensation
2. Shift Differential Pay
3. Court Appearances
4. Holidays/Time-Off Policy
5. Association Representation
6. Hospitalization
7. Extra Training Pay

### III.

#### CRITERIA

In compliance with *Ohio Revised Code*, § 4117.14C(4)(e) and *Ohio Administrative Code* Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements between the parties;
- (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;
- (3) The Interest 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (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.

#### ISSUES AND RECOMMENDATIONS

##### COMPENSATION

##### 1. The Union's Position

The Union seeks a three percent (3%) increase retroactive to January 1, 1999, and a three-and-one-half percent (3 ½%) increases effective on January 1, 2000 and January 1, 2001. It points out that this proposal is consistent with the increase recommended as to the Employer's firefighters by Fact-Finder Thomas

R. Skulina in January, 1999. The Union asserts that the Employer's proposal of a three percent (3%) increase for three (3) years effective upon ratification would result in a one-and-one-half percent (1 ½%) reduction in 1999 since the agreement would not become effective until at least June, 1999.

Several reasons are offered by the Union in support of its proposal. Among these reasons are affordability by the Employer, maintenance of parity with the firefighters' increase, an increase in workload and decrease in manpower, support for the increase by data from comparable communities and keeping pace with inflation.

It notes that there was a twenty-three percent (23%) increase in police calls in 1998 as compared to 1997 with much of the increase due to the annexation by the Employer of the north side of Brookpark Road from Cleveland, an area containing a number of bar and adult-related entertainment facilities. Further, the Patrol Unit has decreased by eight (8) officers since 1994.

The Union maintains that SERB Clearinghouse wage increase data for all Cuyahoga County police departments in the years 1999 and 2000 supports the Union's wage proposal. 1999 wage increases averaged 3.5% while the average increase for 2000 was 3.77%. The fact that the Union is relying upon percentage increases rather than wage rates is a more reasonable basis for comparison, since there is a disparity in size and wealth of the communities reflected in the SERB report.

## **2. The Employer's Position**

The Employer maintains that a wage increase of nine percent (9%) for the years is reasonable since it is facing a serious economic crisis because of outstanding costs arising in several areas including substantial legal fees, an airport dispute with the City of Cleveland, a tax refund owed Ford Motor Company, money owed the Fire Union for a contract dispute settlement and a revision of the capital budget by the Employer's City Council.

It asserts that the three (3%) annual wage increase is consistent with national trends and that its police officers receive a competitive wage as compared to similar communities in the area.

### **3. Findings and Recommendations**

The Union's position as to a wage increase for this unit is reasonable under the circumstances. There is considerable merit in attempting to achieve parity between the wages of the police officers and firefighters. Also, the members of this unit should not have their first year's wage increase substantially diluted by making it effective upon ratification rather than retroactive to the applicable contract's expiration. Accordingly, the undersigned recommends that the unit involved herein be granted the following wage increase:

3% effective January 1, 1999

3.5% effective January 1, 2000

3.5% effective January 1, 2001

### **SHIFT DIFFERENTIAL PAY**

#### **1. The Union's Position**

The Union proposes the following addition to Article 15 in respect to shift differential pay:

Section 5. Shift Differential Pay. Employees who are scheduled to work between the hours of 11:00 p.m. and 7:00 a.m. shall receive as additional compensation Fifty Cents (\$.50) per hour for all hours worked. Employees who are scheduled to work between the hours of 3:00 p.m. and 11:00 p.m. shall receive as additional compensation Twenty-Five Cents (\$.25) per hour for all hours worked.

It believes that a premium should be paid for hardships and difficulties engendered by working rotating shifts and refers to a Harvard Medical School

study which concludes that constant shift rotation results in decreased life expectancy. It admits that shift work is known to be part of a police officer's job. According to the Union, the following is the shift differential for comparable communities:

Middleburg Heights – Twenty Cents (\$.20) – Afternoons

Thirty Cents (\$.30) - Nights

Parma Heights – Thirty Cents (\$.30) – Afternoons

Sixty Cents (\$.60) Nights

North Royalton – Twenty-Five-Cents (\$.25) – Afternoons

Thirty-Eight-Cents (\$.38) - Nights

## **2. The Employer's Position**

The Employer opposes shift differential pay. It notes that only five (5) of the fourteen (14) Western Cuyahoga County cities pay shift differential to police officers and believes that it is not appropriate to initiate this benefit at this time.

## **3. Findings and Recommendations**

The Union has not sufficiently substantiated the necessity for adding shift differential to the patrol officers' wage package. Accordingly, I recommend that the Union's proposal not be adopted.

## **EXTRA TRAINING PAY**

### **1. The Employer's Position**

The Employer proposes to eliminate the educational bonus in Article XV, Section 2 of the expired agreement which provides various annual percentage bonuses for employees who have received additional education. A bonus of two percent (2%) of the top patrolman salary is awarded for completion of Forty-four (44) credit hours in Law Enforcement and a four percent (4%) bonus is awarded for an Associate Degree in Law Enforcement. In place of this bonus system the

Employer proposes a three percent (3%) wage adjustment in 1999 to all unit employees in addition to the regular wage increase, resulting in a total of six percent (6%) in wage increases for the first contract year. All subsequent general wage increases would be added to the general increase of the base salary in the first year. According to the Employer, of the twenty-six (26) patrol officers in the unit, fifteen (15) are currently in the four percent (4%) bonus category, two (2) are in the two percent (2%) category and seven (7) receive no educational bonus. Currently, the aggregate wage adjustment for the total unit is 2.48% as a result of bonuses for education. Of thirteen (13) Western Cuyahoga County police officer bargaining units, eight (8) have no payments for additional education; the Rocky River unit is the only unit that receives a higher educational incentive than the Employer's patrol officers.

## **2. The Union's Position**

The Union's figures differ as to the officers receiving educational bonus pay. It asserts three (3) officers receive two (2%) bonuses and twelve (12) officers receive four percent (4%) bonuses. It notes that extra training pay has been provided the patrol unit since 1977 and that since 1987 the Employer has attempted to either change or eliminate this provision without success. Harry Graham refused to alter the percentage extra training contract provision as a fact-finder in 1987 and as a conciliator in 1990. Another attempt by the Employer to eliminate the extra training pay ultimately failed in 1994.

The Union proposes that the extra training pay could be eliminated by payment to all unit members of additional compensation based on four percent (4%) of their salary plus \$1,000.00. It maintains that the payment of a lesser amount would be inequitable and contrary to the bargaining history between the parties. As an alternative to the Union's proposal, it requests that the fact-finder recommend the status quo in respect to this provision.

### **3. Findings and Recommendations**

Extra training pay has provided incentive to patrol officers to receive additional education in law enforcement since 1987. Considering its long history in the collective bargaining relationship between the Employer and the unions that have represented the employees, there would have to be a significant and compelling reason either to recommend a change or elimination of this provision at this juncture. Accordingly, since the evidence reflects no such reasons for either elimination or change, the undersigned recommends that the status quo continue in this regard.

### **COURT APPEARANCES**

#### **1. The Union's Position**

Currently, unit members receive two (2) hours at the overtime rate for court appearances outside of normally scheduled hours. The Union wants to increase this payment to three (3) hours at the overtime rate because of the inconvenience and scheduling difficulties engendered by court appearances which disrupts the officer's personal time off and could create additional costs for child care. It notes that Berea and Parma Heights provide court appearances pay at a minimum of three (3) hours overtime.

#### **2. The Employer's Position**

The Employer opposes the additional overtime hour and maintains that the current two (2) hour provision is adequate under the circumstances. It notes that in 1998 it paid unit members for four hundred ninety-one (491) hours court time at a cost of approximately \$10,306.00. It calculates an additional \$6,000.00 in costs based on the Employer's 1999 wage projections.

### **3. Findings and Recommendations**

The Union has not substantiated its case for granting an additional overtime hour for court appearances. Accordingly, the undersigned recommends that the current contract provision in this respect be continued in the future contract.

### **HOLIDAYS/TIME OFF POLICY**

#### **1. The Union's Position**

The Union proposes the following provision be added to Article 14 of the contract:

Section 3. Requests for time off must be submitted in writing in advance of the anticipated time off. Time off shall be granted to employees when at least two (2) Patrol Officers and the Shift Sergeant are scheduled to work at their respective normal rates of pay. If the Shift Sergeant is on time off for any reason, time off will be granted to the employees as long as three (3) Patrol Officers are scheduled to work. Two (2) Patrol Officers will be working at their normal rate of pay and the Senior Patrol Officer will be the Officer-in-Charge paid at the Sergeants rate of pay. Time off will not be granted to employees if the above standards are not met.

The Union asserts that it has become progressively more difficult for unit members to obtain time off during the summer months when officers are on vacation due to a decrease in manpower. It claims that numerous denials of time off requests have occurred during the past contract period and that denials of reasonable requests have created some ill feelings among unit members. The Union maintains that its proposal would not create overtime and was not an attempt to establish minimum manpower requirements. It asserts that three (3) officers on a shift is reasonable and it is not necessary for an additional officer to be called in on overtime to fill out the shift.

## **2. The Employer's Position**

The Employer believes that its current practice of allowing time off if there are three (3) patrol officers and a supervisor on a shift is adequate and that this has been the general past practice under most circumstances. It also feels that any change in this provision could lead to overtime. The Employer argues that a safety force situation never remains static and does not want to be bound by new standards since emergency situations can always occur.

## **3. Findings and Recommendations**

Because of the nature of the safety forces operations, the undersigned is reluctant to recommend any changes to manning and staffing of shifts. Accordingly, it is concluded that the Union's position in this regard has not been substantiated and it recommended that the Union's proposal not be adopted.

## **ASSOCIATION REPRESENTATION**

### **1. The Union's Position**

The last collective bargaining agreement for this unit was between the Employer and the Ohio Patrolmen's Benevolent Association (O.P.B.A.) and furnished a total of seventy-two (72) hours time off for O.B.P.A. directors to attend Union meetings. The O.B.P.A. had two (2) directors who were allowed three (3) hours off per month for director meetings resulting in seventy-two (72) hours per year. The Union seeks to increase this total by eight (8) hours with no carry over from year to year. It proposes the following language in this respect:

### **ARTICLE 6. Section3**

Section 3. Department representative and Officers of the Fraternal Order of Police shall be afforded eight (8) hours time off per year to attend to Union meetings. There shall be no carry-over of hours from one calendar year to the next. This provision shall not create overtime situations for the Department.

The Union indicates that it is seeking more involvement in Union affairs from its members so there will be two (2) department representatives for each shift. It also notes that meeting attendance is mandatory for the President and Secretary of the bargaining unit.

### **3 The Employer's Position**

The Employer asserts that in its previous relationship with the O.P.B.A., that the Union was afforded forty (40) hours of paid leave to attend Union meetings. This would be worth approximately \$840.00 for a ten-year employee. The Employer indicates that it lacked any information to justify an increase. It points out that the Fire Union receives five (5) twenty-four (24) hour paid days for union leave. The Employer concludes that the granting of ten (10) day's leave would set an expensive precedent and proposes forty (40) paid hours time off per year to attend Union meetings with no carry-over.

### **4. Findings and Recommendations**

Granting reasonable time off to attend Union meetings can result in the maintenance and improvement of the collective bargaining relationship between the parties. Since an examination of the Employer's contract with the O.B.P.A. reflects that the O.B.P.A. received seventy-two (72) hours for attending Union meetings, it would be unreasonable to grant the current bargaining representatives a lesser amount. Accordingly, I recommend that the Union receive seventy-two (72) hours in this regard so that the status quo can be maintained. The Union's contract language as to no carry-over and no creation of overtime is also recommended.

## **HEALTH INSURANCE**

### **(Prescription Drug Coverage)**

#### **1. The Employer's Position**

The Employer proposes the following provision for health insurance and prescription drug coverage which the Fire Union and the Employer have agreed to in respect to the firefighters' unit:

**Section1. Hospitalization Insurance.** The City will provide and pay for the full premium on behalf of each full-time employee for hospitalization and medical service coverage under a Super Med or at the employee's option, a Super Med Select Type plan, or its equivalent, including a self-insured program with Medical Mutual as the Third Party Administrator. Prescription drug coverage for current employees only shall be as follows:

1. Generic Drug - \$2.00 deductible
2. Legend (name brand drug when generic is not available) - \$4.00 deductible
3. Legend (name brand drug when generic is available) - \$9.00 deductible

The City shall have the right to choose an alternative insurance carrier and/or provide other delivery systems, after discussion with the Union, provided that the benefits in such new policy are equivalent to the current policy. Further, the parties agree that the City will no longer provide insurance for retirees and the employee's spouse only with the following provisions:

The City of Brook Park agrees that it will pay contributions required by the Police and Firemen's Disability and Pension Fund. Further, the City of Brook Park agrees that if hospitalization insurance coverage is terminated by the Police and Firemen's Disability and Pension Fund, it shall reinstate affected employees to the current City insurance plan. Provided, however, that the City shall not pay for retiree insurance effective upon ratification of this agreement except as provided as follows:

- 1999 -- \$200 bonus to current retirees
- 2000 -- \$100 bonus to current retirees

The Employer proposes to change prescription drug coverage with deductible amounts of \$2.00, \$4.00 or \$9.00 depending upon whether generic or brand name drugs are used. This would result in a significant savings for the

Employer and the plan would be closer to the \$5.00/\$10.00 prescription deductibles in the Police and Firemen's Disability and Pension Fund. In addition, the Employer proposes to drop retired police officer prescription coverage since the retirees already receive prescription drug coverage from the Police and Firemen's Disability and Pension Fund.

The Employer argues that it should not have to pay twice for retiree's prescription coverage. Further, it asserts it has no statutory obligation to provide retirees with coverage since they do not fall within the statutory definition of a public employee. Since retirees already receive prescription coverage and because changing the plan would result in substantial savings, adopting the same provision as the Fire Union contract referred to above warrants its recommendation by the undersigned.

## **2. The Union's Position**

The Union proposes that the Employer continue prescription coverage which has been historically provided to retirees of the police department. The Union agrees to the increased contributions toward prescription deductions, but maintains that the retirees should continue to be included in the coverage. It maintains that although retirees are not bargaining unit members, the Union has no right to negotiate away rights of retirees who have neither been involved in pre-fact-finding negotiations nor represented by counsel.

## **3. Findings and Recommendations**

The police retirees receive prescription coverage from the Police and Firemen's Disability and Pension Fund so that removing them from coverage of the collective bargaining agreement's prescription plan would not result in them being without coverage. Further, if possible it is preferable to have the same health coverage for an employer's safety forces. Accordingly, I recommend that

the contract provision referred to above which has already been approved for inclusion in the firefighter's contract be included in the contract involved herein.

### **MISCELLANEOUS**

The parties have tentatively agreed to the following contract provisions and I recommend their inclusion in the applicable contract:

1. Article 2, Section 3 – Recognition
2. Article 12, Section 2 – Leaves
3. Article 12, Section 7 – Leaves (Leave Donation Program)
4. Article 16, Section 1 – Holidays
5. Article 26, Section 1 – Shift Trade/Rescheduling
6. Article 18, Sections 5 & 6 – Miscellaneous
7. Article 26, Section 3 – Insurance

The parties have stipulated and agreed to the following contract provisions which are set forth more fully below and which are recommended by the undersigned:

#### **ARTICLE 12, Section 6 – LEAVE OF ABSENCE WITHOUT PAY**

- (a) The Chief of Police may grant a leave of absence without pay to employees. The employee must request in writing all leaves of absence without pay. The request shall state the reason(s) for taking such leave of absence and the dates for which leave is requested. The leave may be granted for a maximum duration of six (6) months. This leave is in addition to any leave provided by the Family Medical Leave Act or other provisions of this Collective Bargaining Agreement.

- (b) If it is determined that the leave is not actually being used for the purpose it was granted, the Chief of police may cancel the leave and direct the employee to return to work.
- (c) An employee who fails to return to service from a leave of absence without pay, may be removed from service. A member who fails to return to duty and is subsequently removed from service, is deemed to have a termination date corresponding to the starting date of the leave of absence without pay.
- (d) Upon completion of a leave of absence, the member is to be returned to his/her classification formally occupied. Time spent on authorized leaves of absence without pay will count toward seniority, lay off purposes and for computing the amount of vacation leave, provided the member is properly returned to service and is not serving a probationary period.
- (e) Members that do not return to service from a personal leave of absence shall not receive service credit for the time spent on such leave.
- (f) This provision is not subject to the grievance procedure.
- (g) Except for seniority, no other employee benefits are accrued under this provision.

**ARTICLE 12, Section 8 – MATERNITY LEAVE**

\* \* \*

Section 8. Maternity Leave. (a) When a female employee learns that she is pregnant she shall notify her immediate Supervisor in writing. Should the Officer's physician determine that she is no longer able to perform the regular duties of Patrol Officer, this information shall be provided to the Chief immediately. The Officer will then be assigned to a position that is within her medical restrictions.

Section 8. (b) When an officer is required to be absent from work due to pregnancy, child birth or related medical conditions she shall be entitled to use any available paid leave during her period of absence. If the employee wishes to

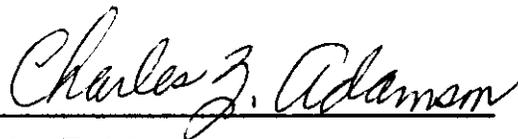
forego use of paid leave, she may request an unpaid leave of absence pursuant to Section 6. Time off under this provision will not cause a loss in seniority.

**ARTICLE 12, Section 9 – FAMILY MEDICAL LEAVE ACT**

Section 9. (a) Employees may request and be granted time off without pay pursuant to the Family Medical Leave Act of 1993 (FMLA). Such time off without pay shall not exceed twelve (12) weeks in any twelve (12) month period. Leave under this provision shall be computed when first approved. During such leave, the employees shall continue to receive health insurance benefits with the same conditions as set forth in Article 16.

**ARTICLE 17, Section 3 – CLOTHING ALLOWANCE**

Section 3. The City agrees to purchase or replace soft body armor for all employees as soon as practicable. Employees agree to wear soft body armor. In the event specifications change for soft body armor, the parties agree to meet and review such specifications to determine if the soft body armor should be replaced. The City agrees to reimburse employees for soft body armor purchased on or after January 1, 1999 upon presentation of appropriate receipts.



Charles Z. Adamson

Fact-Finder

June 17, 1999