

STATE EMPLOYMENT
RELATIONS BOARD
SEP 10 10 11 AM '99

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-finding]
Between:]
]
]
CITY OF ST. MARYS,]
Employer]
]
and]
]
Ohio Patrolmen's Benevolent]
Association,]
Employee Organization]

Case No. 99-MED-05-0504
Raymond J. Navarre
Fact-finder

FACT-FINDING REPORT
and
RECOMMENDATIONS

Date of Issuance: September 8, 1999

Date of Hearing: August 20, 1999

Location of Hearing: St. Marys Building
St. Marys, Ohio

Present for the Fact-finding: Pete B. Lowe
 Bernard Bogan
 Clemans, Nelson & Associates, Inc.
 Representing the City of St. Marys

 Michael L. Weadock, City of St. Marys
 Susan Backs, City of St. Marys

 Joseph M. Hegedus
 Climaco, Climaco, Lefkowitz &
 Garofoli Co., L.P.A.
 Representing Ohio Patrolmen's
 Benevolent Association

 Thomas C. Schnarre, OPBA
 David Thornsbury, OPBA

Note that for purposes of identification in this document, The City of St. Marys and their representatives will be referred to as the **City** and representatives of Ohio Patrolmen's Benevolent Association (OPBA) and their representatives will be referred to as the **Union**.

Time: The Fact-finding started at 9:00 AM and concluded about 2:40 PM.

BACKGROUND

The bargaining unit in this matter consists of approximately five (5) Full-time Sergeants with St. Marys Police Department.

There is no current collective bargaining agreement with the OPBA. This is an initial agreement.

Please note there is a difference as to the Article Numbers and Section Numbers in the documents presented by the two parties involved, the City and the Union. The Fact-finder will use the *numbering* as presented by the Union since the Union was the first in making the presentation in the consideration of each issue. However, both parties agreed

Background (continued)

that the *numbering* of the articles and sections of the final agreement would be done by them. There should be no difficulty in respect to the *numbering* because both parties are using the same titles for the articles being considered.

FACT-FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the fact-finder 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 City and the Union to the Fact-finder will be considered in what follows.

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

OPEN ISSUES

Issue 1.	Article 15	HOLIDAYS	Sections 4 & 5
Issue 2.	Article 16	VACATION	Sections 7 & 8
Issue 3.	Article 17	OVERTIME PAY	Sections 1 & 2
Issue 4	Article 18	LONGEVITY	Sections 2 & 4
Issue 5	Article 20	LIFE INSURANCE	Section 1
Issue 6	Article 24	SICK LEAVE	Sections 2, 4 & 7
Issue 7	Article 39	WAGES	
Issue 8	Article 40	DURATION	Section 1

CONSIDERATION of the ISSUES

Issue 1 Article 15 HOLIDAYS

Section 4

In Section 4, the number of personal leave days is in dispute. The Union proposes five (5) personal leave days and the City is proposing four (4). The Union says that the Sergeants always had five (5) days and the numbers should continue.

The City says that it is trying to keep all city employees' contract uniform and the four (4) personal leave days are competitive when compared to other public employees doing comparable work in the area.

In examining the employees' contract offered in exhibit, the Fact-finder notes there is already a lack of uniformity.

Considering the financial impact, the comparables for the area and other considerations, the Fact-finder 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 include the following wording in Section 15.4: **All full-time permanent employees shall receive five (5) personal leave days per year.** The wording of the remaining part of the section shall be as in the current language of the Police Officer's Agreement in the article on Holidays.

In addition, both parties agreed the following wording should be included. **A newly promoted Sergeant will carryover any unused personal days credited prior to promotion and will not be credited any additional personal days for the remainder of the year in which the employee is promoted.**

Section 5

Section 5 is additional language proposed by the Union. The proposal would allow the Staff Sergeant the option of working or taking off any holiday listed in Section 1, anytime the observance of the Holiday falls on a day when the Staff Sergeant is regularly scheduled to work.

The Union supports the proposal by arguing that the Staff Sergeant should have the right to choose to work or not to work. Not allowing the employee to work would impact the employee economically.

Section 5 (continued)

The City maintains that scheduling is a management right and should be at the discretion of the Chief.

The Fact-finder agrees with the City's position and makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that Section 5 as proposed by the Union **not** be contained in the agreement.

Issue 2 Article 16 VACATION

Section 7

The Union's proposal has four points. Vacation requests of sixteen (16) hours or less will be granted if forty-eight (48) hours notice is given or any time the shift can be voluntarily filled from the pool of available candidates. Vacation requests of more than sixteen (16) hours shall be approved if at least seven (7) days notice is given. Any vacation request outside the above time limits will be granted subject to the operational needs of the department. Vacation may be taken in minimum units of one (1) hour.

The City proposal covers the same points but with different language. The language is as follows. Vacation requests of sixteen (16) hours or less are scheduled only in accordance with the Employer's workload requirements and approval of immediate supervisor. Vacation requests of more than sixteen (16) hours must be submitted and approved by the immediate supervisor prior to the schedule being posted each month, unless manpower would allow someone to be off at the discretion of the supervisor. All vacation leaves must be approved by the Chief of Police.

The Employer has the authority to determine the number of employees within each department and/or work unit who may be on vacation leave at the same time. Vacation may be taken in minimum units of one-half (1/2) day.

Considering the exhibits of both parties and the arguments presented, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and statutory criteria, the Fact-finder's recommendation is that the wording of Section 7 shall be as follows.

Issue 2 (continued)

Vacation requests of sixteen (16) hours or less shall be scheduled only in accordance with the Employer's workload requirements and with the approval of the employee's immediate supervisor. Vacation requests of more than sixteen (16) hours must be submitted and approved by the immediate supervisor prior to the schedule being posted each month, unless manpower would allow someone to be off at the discretion of the supervisor. However, all vacation leaves must be authorized by the Chief of Police, and the parties agree that the Employer has the authority to determine the number of employees within each department and/or work unit who may be on vacation at the same time. Vacation may be taken in minimum units of one-half (1/2) day.

Section 8

In respect to Section 8, the Union proposes that Sergeants be permitted to sell back one week (40 hours) of earned but unused vacation time.

The City's position is against the proposal.

Both presented exhibits and arguments. Considering these, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and statutory criteria, the Fact-finder's recommendation is that Section 8 contain the following wording. **In lieu of vacation, Sergeants shall be permitted to sell back up to one week (40 hours) of earned but unused vacation each year on their anniversary date at the rate of pay at which the vacation time was earned.**

Note that both the City and the Union agreed to an additional section to this Article with the following wording.

A newly promoted Sergeant will carryover unused vacation accrued prior to promotion and will then accrue vacation in accordance with the Article.

Issue 3 Article 17 Overtime Pay

Sections 1 and 2 (Both sections are being taken together.)

The union's proposal is that all hours in paid leave status, sick time included, shall be considered as hours worked when calculating overtime compensation. Also, the Union proposes that the employees covered by the collective bargaining agreement be permitted to earn compensatory time in lieu of pay when overtime is earned.

These positions were supported by exhibits and comparables.

The City proposes to eliminate sick leave from hours worked in calculating overtime, except when the employee is mandated to work additional hours outside the employee's regularly scheduled shift. The City also proposes to eliminate compensatory time. Considering the exhibits, comparables and arguments presented, the Fact-finder 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 the following wording in this Article and the sections noted.

Section 1.

Full-time employees shall receive overtime pay at the rate of one and one-half (1½) times the basic rate per hour for all hours worked in excess of forty (40) hour standard workweek or eight (8) hour standard workday. Vacation, compensatory time, and personal leave days shall be considered as hours worked for the purpose of calculating an employee's entitlement to overtime compensation. All other leaves of absence, whether with pay or not, shall be excluded as hours worked for the purpose of calculating an employee's entitlement to overtime compensation. If an employee uses sick leave hours during a pay period, any mandatory hours worked in addition to the employee's regularly scheduled shifts shall be compensated for at the overtime rate established in this article.

Section 2.

Each employee covered by this bargaining unit shall be permitted to earn compensatory time in lieu when overtime is earned. Such compensatory time shall be earned at the rate of one and one-half (1½) times the amount of actual hours of overtime worked. For the purposes of determining overtime, Section 1 of this Article, defining overtime, shall be used. Compensatory time, when taken, will be considered as active pay status. No eligible employee shall be permitted to accumulate in excess of sixty (60) hours of compensatory time at any one time.

Issue 3 (continued)

When an employee has accumulated sixty (60) hours of compensatory time, any overtime earned beyond this amount shall be automatically paid at the overtime rate of pay on the next regular paycheck. Upon earning overtime, the employee shall report to the Chief of Police or his designee prior to turning in the regular payroll on each Monday morning that the employee desires to receive compensatory time in lieu of payment for the overtime earned in the preceding pay period. Requests for taking compensatory time in lieu of overtime pay shall be subject to the approval of the Chief of Police or his designee. No compensatory time will be approved for a paid holiday.

Compensatory time off shall be granted in accordance with the Fair Labor Standards Act.

If an employee leaves the service of the City of St. Marys with compensatory time remaining on the books, the employee shall be permitted to cash in any compensatory time due up to the sixty (60) hour limit at the employee's most current hourly rate of pay.

Issue 4 Article 18 Longevity

Section 2 and 4.

There are two points of dispute in this Article. There is a dispute as to the amount of longevity and as to the eligibility to receive the payment. Since these two points are so related, the two shall be considered together.

The Union proposes to raise the longevity to \$30.00 for each year of continuous employment and to prorate the longevity for employees who retire prior to December 1. To support this proposal, the Union noted there have been no increases since 1995 and also referred to comparables.

The City proposes to maintain the longevity at \$20.00 for each year of continuous employment and require the employee to be employed on December 1 to receive the longevity payment. The City offered both exhibits and arguments to support their position.

The Fact-finder considering the material presented by both the City and the Union, makes the following recommendation.

Issue 4 (continued)

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the Collective Bargaining Agreement contains the following language.

Section 2. The amount of such annual longevity payment shall be equal to twenty-five dollars (\$25.00) for each year of continuous employment.

Section 4. To be eligible for such longevity payment, an employee must be employed by the Employer on December 1 of each year.

Issue 5 Article 20 LIFE INSURANCE

Section 1

The dispute in this article concerns only the amount of the life insurance.

The Union proposes to raise the amount of insurance coverage to twenty thousand dollars (\$20,000.00) and used comparables to support the position.

The City proposes to keep the amount of the life insurance coverage at fifteen thousand dollars (\$15,000.00), which is the amount each City employee has at the present time. The City presented exhibits and arguments to support this position.

Considering the arguments and comparables presented and the overall economic impact of all the recommendations made in this fact-finding, the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact and the statutory criteria, the Fact-finder recommends the following wording be contained in the Collective Bargaining Agreement in this section.

Section 1. The City shall provide group term life insurance in the amount of fifteen thousand dollars (\$15,000.00) upon the life of each non-probationary, permanent, full-time employee.

Issue 6 Article 24 SICK LEAVE

There are three points of dispute in this Article. It is the Fact-finder's opinion that the three points are so interrelated that they should be considered together as the positions of both parties are examined. Therefore, the recommendations will be given after a review of the positions.

The Union proposes that an employee earn sick leave credit when on sick leave and for overtime hours. Also, the Union proposes to require an employee to furnish a statement from a physician when the sick leave exceeds three (3) days.

The City proposes to require a certificate from a physician when the sick leave exceeds two (2) days. Also, the City proposes to **not** allow sick leave credit for overtime hours and while an employee is on sick leave.

Exhibits and arguments were presented by both parties. Considering these, taking the three sections in dispute together and looking at the economic implications, the Fact-finder recommends the following.

RECOMMENDATION

After considering the findings of fact and statutory criteria, the Fact-finder recommends the following wording be contained in the Collective Bargaining Agreement in the sections being considered.

Section 2. No sick leave credit will be earned for overtime hours worked or while an employee: is on sick leave; is on leave of absence (with or without pay); is laid off; is suspended; or is absent without leave.

Section 4. Sick leave shall be charged in minimum units of one-half (1/2) hours. An employee shall be charged for sick leave only for hours upon which the employee would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal workday or normal workweek earnings. An employee who is scheduled to work on a holiday, but is absent, shall not be eligible for sick leave on the holiday.

Section 7. An employee either using excessive amounts of sick leave or with an illness of disability exceeding three (3) consecutive workdays shall be required to furnish a statement from a physician before returning to work, notifying the Employer that the employee was unable to perform the employee's duties during the period of absence and is able to return to work.

Issue 7 Article 39 WAGES

The Union proposes that the a wage increase occur upon the execution of the agreement. The proposal would have probationary Sergeants earning a base wage at least six (6) percent above the top base wage rate for Police Officers in St. Mary Police Department. In addition, all probationary Sergeants would earn a base wage at least twelve (12) percent above the top base wage rate for Police Officers in St. Marys police Department.

The City proposes a wage increase of one and one-half (1½) percent for all steps each January their proposed duration, January 2000, January 2001 and January 2002.

Arguments, exhibits and comparables were offered to support the positions held by the parties.

The Fact-finder taking into account all recommendations being made in the fact-finding, makes the following recommendation.

RECOMMENDATION

After considering the findings of fact and the statutory criteria, the Fact-finder recommends the following wording for this article. **At the signing of the contract, the employees covered by the Collective Bargaining Agreement shall receive a three (3) percent increase in all the steps, across the board. On January 1, 2000, the employees covered by the agreement shall receive a four (4) percent increase and on January 1, 2001, the employees covered by the agreement shall receive a three (3) percent increase. All increases are for all steps, across the board.**

Issue 8 Article 40 Duration

Section 1

The Union proposes that the Collective Bargaining Agreement be in effect for October 1, 1999 (or the date of signing) to December 31, 2001.

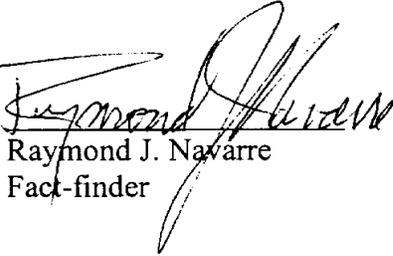
The City's proposal is for the Collective Bargaining Agreement to be in effect for Thirty-six (36) months, from October 1, 1999 (or the date of the signing) to October 1, 2002.

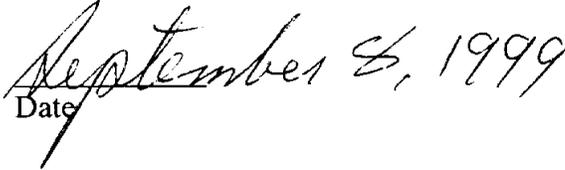
Both the Union and the City presented arguments to support the positions. The Fact-finder considering retroactivity involved in conciliation, the thirty-six (36) month limitation for Collective Bargaining Agreements and the economic implications, makes the following recommendation.

Issue 8 (continued)

RECOMMENDATION

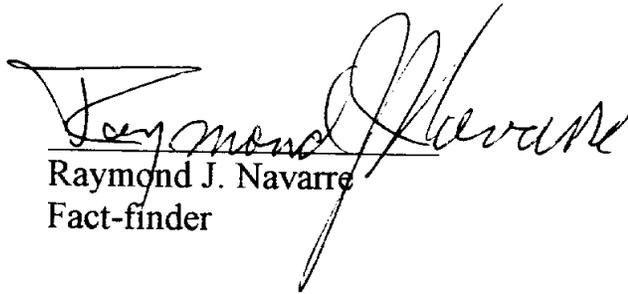
After considering the findings of fact and the statutory criteria, the Fact-finder recommends that **the Collective Bargaining Agreement be in force from October 1, 1999 (or the date of signing) to December 31, 2001.**


Raymond J. Navarre
Fact-finder


Date

CERTIFICATE OF SERVICE

Originals of the foregoing Fact-finding Report and Recommendations were served upon Pete B. Lowe, Vice-President, Clemans-Nelson & Associates, 417 North West St., Lima, Ohio 45801-4237, and upon Joseph M. Hegedus, Attorney At Law, Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A., 175 South Third St., Suite 820, Columbus, Ohio 43215-5134, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State St., Columbus, Ohio 43215-4213, each by United States mail, sufficient postage prepaid, this 8th day of September, 1999.


Raymond J. Navarre
Fact-finder