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STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter of Fact-Finding Between:

THE CITY OF STRONGSVILLE)	
)	99-MED-09-0829
-AND-)	
)	
THE FRATERNAL ORDER OF POLICE)	
PARMA LODGE NO. 15)	

APPEARANCES

For The City

James A. Budzik,	Attorney
Amy L. Phillips	Attorney
Don Batke	Director of Finance
Charles W. Goss	Chief of Police

For The Union

Frank Bolmeyer	Attorney
Bradley Busch	Patrol Officer
John T. Janowski	Patrol Officer
Gregory A. Madama	Patrol Officer
Robert Kustis	Detective

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The Employer, the City of Strongsville, has a population of some 48,000, according to a 1998 estimate, and occupies approximately twenty-five square miles in Southwestern Cuyahoga County. It exercises statutory and charter authority to provide, inter alia, police, fire and municipal services to its residents.

The City's Police Department consists of the Chief, one Assistant Chief, five Lieutenants, five Sergeants and, as of the date of the hearing, fifty-seven Patrol Officers. The Patrol Officers, with whom we are presently concerned, constitute a separate Bargaining Unit represented exclusively by the Fraternal Order of Police, Lodge No. 15.¹

The City and the Fraternal Order of Police are signatories to a Collective Bargaining Agreement entered into as of January 1, 1997 for an initial term which expired on December 31, 1999.

Negotiations looking towards the execution of a successor Contract proceeded and the parties reached tentative agreement on the text of the following Articles:

1. The City's Building Inspectors and Service Workers constitute separate Bargaining Units, each of which is represented by the International Brotherhood of Teamsters, Local 52.

The City's Firefighters are represented by the International Association of Firefighters, Local 2882, and the Radio Dispatchers are represented by the American Federation of State, County and Municipal Employees.

Article XI - Seniority
Article XIII - Attendance at Training Schools, Sessions,
Seminars or City Business
Article XVI - Personal Leave
Article XIX - Compensatory Time
Article XX - Sick Leave
Article XXI - Benefits
Article XXIV - Call-Out Pay
Article XXV - Clothing Allowance
Article XXVI - Vacations (Section 26.03 only)
Article XXI - Lay-Offs

The parties further agreed that all Articles and Sections of Articles not referred to above nor set forth below as the subject of proposals of one or both parties, are to be carried forward and incorporated into the new Agreement mutatis mutandis.

Finally, the parties agreed that any terms of the successor Agreement involving "increases in rates of compensation and other matters with cost implications" are to be retroactive to January 1, 2000.

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative agreements.

The parties were unable to agree upon the text of the following Articles or Sections:

Article XVIII, Section 18.01 - Overtime
Article XXI, Section 21.01 - Benefits
Article XXII, Section 22.01 - Injury Wage Continuation
Article XXIII, Sections 23.01, 23.02 - Wages, Longevity
and Professional Pay
Article XXVI, Section 26.01 - Vacations
Article XXXII - Duration

In consequence, impasse was declared and the undersigned was appointed Fact-Finder by the State Employment Relations Board on December 1, 1999.

At the direction of the parties the Fact-Finding proceedings were scheduled for March 31, 2000 at the Strongsville Municipal Building.

Timely in advance of the meeting the parties provided the Fact-Finder with the statements required by Ohio Revised Code Section 4117.14(C)(3)(2) and Administrative Code Section 4117-9-05(F).

At the beginning of the proceedings the Fact-Finder unsuccessfully attempted to mediate the issues. Thereafter, he convened an evidentiary hearing.

Thereat, the parties submitted documentary and testimonial evidence with respect to Collective Bargaining Agreements entered into by the City of Strongsville and (1) Ohio Council 8, and Local 2681 of the American Federation of State, County and Municipal Employees for a Unit of Radio Dispatchers, (2) Teamsters Local Union No. 52, International Brotherhood of Teamsters for a Unit of Building Inspectors, (3) Teamsters Local No. 52 for a Unit of Service Workers, (4) the International Association of Firefighters, Local 2882 for a Unit of Firefighters and (5) Parma Lodge 15 for the Unit of Patrol Officers.

The parties also offered copies of Collective Bargaining Agreements between the following Cities and Unions covering Patrol Officer Units: Rocky River and the Ohio Patrolmen's

Benevolent Association; Parma and Ohio Patrolmen's Benevolent Association North Royalton and the Fraternal Order of Police, Lodge No. 15; North Olmsted and the Fraternal Order of Police, Ohio Labor Council; Middleburg Heights and Ohio Patrolmen's Benevolent Association; Garfield Heights and Fraternal Order of Police, Lodge 67; Mapple Heights and Fraternal Order of Police, Lodge No. 15; Brookpark and Fraternal Order of Police, Lodge No. 15 and Broadview Heights and Fraternal Order of Police, Parma Lodge No. 15.

The parties entered into evidence appropriation ordinances from the cities of Garfield Heights, Berea, Maple Heights and Rocky River.

The parties also supplied population statistics based upon the census estimate of July 1, 1998; data from the State Employment Relations Board; the 1998 Report of the Strongsville Police Department; the Mayor's Newsletter for Spring, 2000, and tabulations of vacation, sick leave and personal day utilization for Strongsville Patrol Officers.

The Fact-Finder received the City of Strongsville's 1999 Annual Information Statement, issued in connection with the debt obligations of the City, together with the City's appropriation ordinance for 2000, and its fiscal year 2000 annual budget.

Finally, the parties introduced newspaper accounts dealing with the rate of inflation and developments within the City of Strongsville.

The parties were unable to agree upon a list of cities deemed comparable to Strongsville.

Common to their respective schedules were five cities: Berea, Middleburg Heights, North Olmsted, North Royalton and Parma.

The City suggested six other cities which it advocated were similar to Strongsville in relevant characteristics: Broadview Heights, Brookpark, Garfield Heights, Maple Heights, Parma Heights and Rocky River.

For its part, the Union identified Beachwood, Brecksville, Euclid, Fairview Park, Solon and Westlake as communities to be included in any comparability survey.

The chase for comparability, as this Arbitrator has observed, is often illusory.

"Both parties submitted lengthy lists of communities deemed comparable. The Fact-finder observes that, not unexpectedly, the City's nominees tend to include departments offering terms less favorable than those available in Willowick. In contrast, the Union's candidates included, in the main, departments providing benefits more favorable than those available in Willowick.

"The selection of representative communities is not easily made.

"This Fact-Finder believes that ideally comparable communities ought to be located nearby in the same labor market ... be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with similar need for police protection, and maintain similarly sized Police Departments.

"Unfortunately, developing a list of comparable communities which meets all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from a community which does meet the criteria."

City of Willowick, 110 LA 1146 (Ruben, 1997), quoted in Elkouri & Elkouri, "How Arbitration Works" (5th Edition) 1999 Supplement (Goggin & Ruben Eds.)

So in the present case, while both parties have limited their choice of comparable departments to cities located in Cuyahoga County, that is where consistency ends.

By way of illustration, the Union would equate Brecksville's population of 12,623 with Strongsville's 41,304.

And, the City, for example, would equate Broadview Heights Police Department which consists of five members with Strongsville's Department with a present complement of fifty-seven Officers.

Moreover, some of these cities are experiencing rapid population growth and commercial development. Others have remained stagnant or are declining.

Yet, population estimates as of July 1, 1998 were offered for only eleven of the cities, while the population of the remainder was listed according to the 1990 census report.

Appropriation ordinances of the cities of Garfield Heights, Berea, Maple Heights and Rocky River were presented, but no data was submitted with respect to their revenues and General Fund balances.

Upon such an incomplete, piecemeal evidentiary record the Fact-Finder will exercise his judgment and separately consider the data from the five communities both parties agree are comparable to Strongsville and the City's and Union's lists of other communities.

In making his recommendations upon all of the disputed issues the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e), and Ohio Administrative Code, 4117-9-05(K) namely:

"(a) Past collectively bargained agreements, if any, between the parties;

"(b) Comparison of the unresolved issues relative to the employees in the bargaining unit involved 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, 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 the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment."

CONTRACT PROVISIONS AT ISSUE:

I. Article XVIII - Overtime:

The 1997 Contract:

The expired 1997 Agreement provided:

"18.01 Overtime pay for employees shall be at the rate of one-and-one-half (1-1/2) times the employee's regular hourly rate of pay for hours worked over and above the eighty (80) hours in a two (2) week period. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement.

"18.02 For the purpose of overtime computation longevity compensation shall be included in the base rate for such computation. All other hours paid, but not worked, excluding sick leave by reason of hazardous job-related injury, shall be excluded from the computation of overtime."

THE UNION'S PROPOSAL:

The Union seeks to have Bargaining Unit members paid at the time and one-half overtime rate for all hours worked in excess of a regular tour of duty, (presently eight hours), in a twenty-four hour period. It argues that the additional stress and inconvenience occasioned by working beyond an employee's normal shift justifies the premium compensation independent of whether or not the Officer works more than eighty hours during the course of a two week period.

The Union would amend Article XVIII, Section 1 to provide as follows:

"Overtime pay for employees shall be at the rate of one-and-one-half (1-1/2) times the employees regular hourly rate of pay for hours in excess of a single tour of duty in a twenty-four (24) hour period or eighty (80) hours in a two (2) week period.

Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement."

THE CITY'S POSITION:

The City rejects the Union's demand for a daily overtime rate as an attempt to avoid the eighty (80) hour actual work requirement. The City submits that none of its Bargaining Agreements with Unions representing employees in other Departments nor its policies for non-Bargaining Unit employees grant overtime pay for hours worked beyond a regular shift unless the total exceeds forty hours in a work week or eighty hours over two work weeks.

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

Even if an employee does not work a forty hour week because of holiday, vacation, sick leave or other time-off, an employee who is required to work more hours than called for by his regular shift is subject to two special burdens. First, when an employee who has not been scheduled for overtime is called-in early or held-over after the end of his shift, the employee's plans for leisure activities are disrupted.

Second, regardless of advance notice, the extra duty hours impose additional stress, calling upon the Officer's reserves of stamina and energy.

The Fact-Finder notes that all five of the Police Departments the parties agree are comparable to Strongsville recognize these considerations and provide time and one-half compensation for all hours worked over eight hours in a day. So also, five of the other six Departments on the Union's list

of comparables also offer time and one-half pay for hours worked in excess of eight in a day.

Moreover, the Radio Dispatchers, represented by the Ohio Council 8 and Local 2681 of the American Federation of State, County and Municipal Employees, are paid at "the rate of one and one-half (1-1/2) times the employees regular hourly rate for any time worked over and above eight (8) hours in a single day"

Although the two Agreements between the City and the Teamsters Local Union No. 52 International Brotherhood of Teamsters, covering respectively Building Inspectors and Service Workers, only provide overtime pay for all hours worked over forty in the regular work week, if these employees are called to work outside of their normal work hours, they must be paid for a minimum of two hours.

As to the Firefighters Contract, there are, of course significant differences in the scheduling of Firefighters as compared with all other employees. Firefighters have average work weeks of fifty-three hours, consisting of twenty-four hours of on-duty time followed by consecutive forty-eight hours of off-duty time. Nevertheless, Firefighters who are called-out or held over to suppress a fire or assist in a rescue, disaster or other emergency are paid one and one-half times their applicable hourly rate for the overtime with a minimum of two hours of such pay.

The Union's proposal here is modest. It would permit the City to schedule shifts of more than eight hours without being

obliged to pay the overtime premium rate. The Union seeks such premium pay only when an employee is called upon to work more hours than called for in his regular shift assignment, whether the tour is for eight, ten or twelve hours.

The Fact-Finder sees no persuasive reason why a Patrol Officer's daily overtime should not be compensated at the time and one-half rate.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of the Union's proposal.

II. Article XXII - Benefits (Holidays):

The 1997 Contract:

Article XXII, Section 21.01 of the expired 1997 Contract provided:

"21.01 Holidays. In lieu of eleven (11) holidays, employees shall be credited with one (1) day off with pay for each full month on the payroll, to a maximum of eleven (11) days off per calendar year. Employees who wish to take holiday time off must receive advance approval of the Chief or his designee. An employee may carry over no more than four (4) days from one calendar year to the next. Under no circumstances shall employees be granted pay in lieu of time off earned under this section.

...."

THE UNION'S PROPOSAL:

The Union seeks to provide compensation at the overtime rate for all hours worked on Christmas, Thanksgiving, the Fourth of July and New Year's Day. The Union suggests that these particular holidays are special occasions for celebrations with family and friends and participation in

community sponsored events. Consequently, Officers required to work on those days suffer a special hardship warranting extra compensation.

The Union would amend Section 21.01 to read as follows:

"12.01 Holidays. In lieu of eleven (11) holidays, employees shall be credited with one (1) day off with pay for each full month on the payroll, to a maximum of eleven (11) days off per calendar year. Employees who wish to take holiday time off must receive advance approval from the Chief or his designee. An employee may carry over no more than four (4) days from one calendar year to the next. Any remaining unused holidays above four (4) shall be paid in cash by the first pay in February. Employees who work on Christmas, Thanksgiving, Fourth of July and New Year's Day shall be compensated at the overtime rate for all hours worked."

THE CITY'S POSITION:

The City wants to retain the current text and opposes any additional overtime compensation for Patrol Officers. The City reminds the Fact-Finder that in common with the Fire Department, the Police Department must operate 365 days a year, 24 hours a day. The Firefighters do not receive any additional pay for working on a holiday. Police Officers understand when they are hired that they might have to work on holidays as part of their regular responsibilities.

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

The Fact-Finder understands the City's position that since the Police Department is in continuous operation throughout the year, it is part of every Officer's duty to work on at least some of the community recognized holidays.

On the other hand, the Fact-Finder is sensitive to the special deprivation to which Officers are subject when they are assigned to work on the most significant family holidays - Thanksgiving and Christmas.

This sacrifice in any given year is not shared equally by all members of the Bargaining Unit, and, there is no evidence of record that there is a system in place whereby Officers rotate their duty obligation so as to equalize the burden over time.

An overtime premium is paid for work on Thanksgiving and Christmas in three of the five Departments both parties agree upon as comparable - those of North Royalton, Parma and North Olmsted. Moreover, the overtime rate applies for work on three or more holidays in the six additional communities on the Union's list of comparables, and for work on at least two holidays in five of the six communities on the City's list.

The significance of the fact that City employees outside of the Police Department are not paid for working on holidays is minimized because City offices are closed on holidays and therefore the classifications of office-based employees would not be scheduled to work.

Accordingly, the Fact-Finder finds appropriate and recommends that Article XXI, Section 21.01 of the successor Agreement be amended to read as follows:

"12.01 Holidays. In lieu of eleven (11) holidays, employees shall be credited with one (1) day off with pay for each full month on the payroll, to a maximum of eleven (11)

days off per calendar year. Employees who wish to take holiday time off must receive advance approval from the Chief or his designee. An employee may carry over no more than four (4) days from one calendar year to the next. Any remaining unused holidays above four (4) shall be paid in cash by the first pay in February. Employees who work on Christmas or Thanksgiving shall be compensated at the overtime rate for all hours worked."

III. Article XXII - Injury Wage Continuation:

The 1997 Contract:

Article XXII, Sections 22.01 and 22.02 of the expired 1997 Contract provided:

"22.01 An employee who is unable to perform his regular duties as a result of hazardous duties, as defined below, within the scope of his employment as a full-time employee of the City, if such injury prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related injury but for a period not to exceed one hundred eighty (180) calendar days from the date that such service related injury was incurred. During such injury leave, compensation shall be paid in accordance with this Section whether or not the regular employee has accumulated sick leave. Hazardous duty is defined as injury resulting from those active police duties inherently dangerous and unique, such as apprehension or attempted apprehension of suspects, active intervention to prevent the commission of crimes and the pursuit of suspects. After the expiration of the one hundred eighty (180) calendar days, an employee may request an extension of an additional sixty (60) calendar days of injury leave. Such extension shall be discretionary upon the Employer and denials of extensions shall not be grievable.

"22.02 An employee who is unable to perform his regular duties as a result of the performance of non-hazardous duties within the scope of his employment as a full-time employee of the City, if such injury

prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related injury but for a period not to exceed one hundred eighty (180) calendar days that such service related injury was incurred. During such injury leave, compensation shall be paid in accordance with this Section, whether or not the regular employee has accumulated sick leave. In the event accumulated sick leave is available, however, the first five (5) days of said service related injury shall be charged to said employee's accumulated sick leave credit or if less than five (5) days accumulated sick leave credit available, the existing sick leave credit then available shall be charged and any remaining service related injury shall be charged to injury leave. In no event will an employee receive more than his regular compensation while on injury leave. After the expiration of the one hundred eighty (180) calendar days, an employee may request an extension of an additional sixty (60) calendar days of injury leave. Such extension shall be discretionary upon the Employer and denials of extensions shall not be grievable.

...."

THE CITY'S PROPOSAL:

The City seeks to reduce the present one hundred and eighty day compensated leave period for hazardous duty related injuries to ninety calendar days, but increase from sixty days to ninety calendar days the discretionary extension of such leaves.

In the City's view, an employee who is not able to return from injury after ninety calendar days should seek a disability retirement under the Police and Fire Pension Fund and benefits from the Workers' Compensation Bureau.

In support of its proposal the City notes that in the recently concluded Service Workers Contract the one hundred

and eighty day injury leave provision was deleted in its entirety.

The City's proposal would require amendment of the text of present Section 22.01 to read as follows:

"22.01 An employee who is unable to perform his regular duties as a result of hazardous duties, as defined below, within the scope of his employment as a full-time employee of the City, if such injury prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related injury but for a period not to exceed ninety (90) calendar days from the date that such service related injury was incurred. During such injury leave, compensation shall be paid in accordance with this Section whether or not the regular employee has accumulated sick leave. Hazardous duty is defined as injury resulting from those active police duties inherently dangerous and unique, such as apprehension or attempted apprehension of suspects, active intervention to prevent the commission of crimes and the pursuit of suspects. After the expiration of the ninety (90) calendar days, an employee may request an extension of an additional ninety (90) calendar days of injury leave. Such extension shall be discretionary upon the Employer and denials of extensions shall not be grievable."

THE UNION'S POSITION:

The Union adamantly opposes any reduction in the amount of injury leave available to an Officer injured in the line of hazardous duty. Injuries such as those resulting from gunshot wounds occurred in a battle with criminals may take many months to heal properly, and it is only fair that the City compensate those Officers who risk life and limb to prevent crimes and apprehend suspects.

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

The City seeks to reduce its exposure to wage continuation obligations in the event of a compensable hazardous duty injury, and allow any long term disability therefrom to be treated under the Workmens' Compensation program.

In common with stock market values, experience is no predictor of future incidents of injuries occurring in the line of duty. Nonetheless, it is noteworthy that only two or three cases were referred to at the hearing, and there is no reason to believe that the rate will increase significantly in the life of the successor Agreement.

Of the five communities agreed on by the parties as comparable to Strongsville, three offer wage continuation for ninety days subject to a discretionary ninety day renewal. Two others offer 180 days or six months.

Of the six additional communities cited by the Union, one does not limit the time within which an injured employee will receive his regular salary, while three others allow compensation to continue for 180 days, 180 work days and six months, respectively. Of the remaining two Cities, one limits injury compensation to forty-five work days and the other to sixty work days.

Turning to the six communities relied on by the City, three allow compensation for 180 days or 180 work days, while the other three cut-off wage payments after ninety days,

subject, in two jurisdictions, to an additional ninety day discretionary extension.

The record does not indicate whether the parties have made a cost-benefit analysis of adding disability insurance as part of the injury compensation program, but, in other employments, a combination of wage continuation, disability insurance and Workers' Compensation has proved to be a superior approach to the problem.

On the present record the Fact-Finder believes that no inequity would be created if the period during which hazardous duty injury compensation is paid were to be reduced to 120 calendar days, subject to a discretionary extension of an additional sixty calendar days.

Accordingly, the Fact-Finder finds appropriate and recommends the parties adopt and carry forward into the successor Contract the following text of Article XXII, Section 22.01 to read:

"22.01 An employee who is unable to perform his regular duties as a result of hazardous duties, as defined below, within the scope of his employment as a full-time employee of the City, if such injury prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related injury but for a period not to exceed one hundred and twenty (120) calendar days from the date that such service related injury was incurred. During such injury leave, compensation shall be paid in accordance with this Section whether or not the regular employee has accumulated sick leave. Hazardous duty is defined as injury resulting from those active police duties inherently dangerous and unique, such as apprehension or attempted apprehension of

suspects, active intervention to prevent the commission of crimes and the pursuit of suspects. After the expiration of the one hundred and twenty (120) calendar days, an employee may request an extension of an additional sixty (60) calendar days of injury leave. Such extension shall be discretionary upon the Employer and denials of extensions shall not be grievable.

IV Article XXIII - Wages:

The 1997 Contract:

The expired 1997 Contract provided for the following pay schedule:

"23.01 For the term of this agreement, employees who progress through Step A1, Step A2 and Step A3 shall be paid as follows:

"Step A1 - \$27,410.00

"Step A2 - \$29,632.00

"Step A3 - \$32,035.00

"Probationary employees shall progress through the probationary steps as currently set forth in the Departmental rules and regulations.

"Step B. An employee shall be placed t Step B of the pay scale on the first day of the next full pay period immediately following satisfactory completion of the probationary period.

"Step C. An employee shall be placed at Step C of the pay scale on the first day of the next full pay period immediately following one year service at Step B.

"Step D. An employee shall be placed at Step D of the pay scale on the first day of the next full pay period immediately following one year service at Step C.

"Step E. An employee shall be placed at Step E of the pay scale on the first day of

the next full pay period immediately following one year service at Step D.

<u>Ptl.</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
1/01/99	\$37,279.	\$40,083	\$43,102	\$46,343
			
	"		

THE CITY'S PROPOSAL:

The City offers to grant wage increases in the amount of 3.5% in the first year of the Agreement retroactive to January 1, 2000, a 3.5% increase effective January 1, 2001 and a 3.25% wage increase effective on January 1, 2002. The City insists that its offer is consistent with the pay raise negotiated with the Service Department Employees and increases the real income of Patrol Officers over and above increases in the cost of living.

The City would therefore adjust the wage schedule to read as follows:

"23.01 For the term of this agreement, employees who progress through Step A1, Step A2 and Step A3 shall be paid as follows:

- "Step A1 - \$27,410.00
- "Step A2 - \$29,632.00
- "Step A3 - \$32,035.00

"Probationary employees shall progress through the probationary steps as currently set forth in the Departmental rules and regulations.

"Step B. An employee shall be placed at Step B of the pay scale on the first day of the next full pay period immediately following satisfactory completion of the probationary period.

"Step C. An employee shall be placed at Step C of the pay scale on the first day of the next full pay period immediately following one year service at Step B.

"Step D. An employee shall be placed at Step D of the pay scale on the first day of the next full pay period immediately following one year service at Step C.

"Step E. An employee shall be placed at Step E of the pay scale on the first day of the next full pay period immediately following one year service at Step D.

<u>Ptl.</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
1/01/00	\$38,584.	\$41,486	\$44,611	\$47,965
1/01/01	\$39,934	\$42,938	\$46,172	\$49,644
1/01/02	\$41,232	\$44,333	\$47,673	\$51,257

...."

THE UNION'S PROPOSAL:

The Union seeks a two year Contract with a 4% increase retroactive to January 1, 2000 and an additional 4% increase effective on January 1, 2001.

According to the Union, the increase is necessary to maintain its position with other comparable Cuyahoga County Police Departments and to equilibrate its base compensation with that available to Strongsville Firefighters.

The Union therefore proposes the following adjustments in the wage schedule:

"23.01 For the term of this agreement, employees who progress through Step A1, Step A2 and Step A3 shall be paid as follows:

- "Step A1 - \$28,506.00
- "Step A2 - \$30,817.00
- "Step A3 - \$33,316.00

"Probationary employees shall progress through the probationary steps as currently set forth in the Departmental rules and regulations.

"Step B. An employee shall be placed at Step B of the pay scale on the first day of the next full pay period immediately following satisfactory completion of the probationary period.

"Step C. An employee shall be placed at Step C of the pay scale on the first day of the next full pay period immediately following one year service at Step B.

"Step D. An employee shall be placed at Step D of the pay scale on the first day of the next full pay period immediately following one year service at Step C.

"Step E. An employee shall be placed at Step E of the pay scale on the first day of the next full pay period immediately following one year service at Step D.

<u>Ptl.</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
1/01/00	\$38,770	\$41,686	\$44,826	\$48,197
1/01/01	\$40,321	\$43,353	\$46,619	\$50,125

...."

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

The Union proudly asserts that Patrol Officers have earned the proposed increase 4% through meritorious service and freedom from significant disciplinary problems. The Police Department responded to a record high 20,499 calls for services requiring immediate response in 1999 without any offsetting increase in the number of personnel available to respond to them. The work loads of the individual Officers have also increased as a result of the introduction of "community policing" practices.

Strongsville is one of the most affluent of the cities in Cuyahoga County, with a median household income in 1989, the last year for which census data was available, of \$56,332.00.

The average sale price of homes in this predominantly residential community in 1998 was \$172,830.00.

Strongsville also boasts of significant commercial development, including the opening in 1996 of South Park Center, one of the largest shopping malls in the State.

The City achieved a General Fund Surplus in 1999 well within the 5% to 10% of estimated expenditures recommended by prudent financial analysts and bond rating agencies for fiscal stability. Moody's Investors Service has assigned its municipal bond rating of Aa3 to the City's currently outstanding general obligation bonds.

The Fact-Finder finds that the City has the resources to pay the wage rate increases sought by this Bargaining Unit. However, two problems must be considered in evaluating the Union's proposal.

First, the Fact-Finder must recognize the possibility that any improvement in Police Patrolmen's compensation may trigger a competitive demand for equal treatment by other Bargaining Units, and put pressure upon the City to increase non-Bargaining Unit members' compensation, as well.

Second, the Fact-Finder must realize that the City's resources, although extensive, are limited, while the demands upon them are infinite. Every dollar paid in Bargaining Unit

salaries means \$1.00 less available for other programmatic purposes.

With those considerations in mind, the Fact-Finder examines the external and internal comparability claims made by the Union to justify its demands.

In recent years, the top step base wages of Strongsville Police Officers have ranked in the top quarter in the array of wages paid by communities deemed comparable, and the Union seeks to maintain and improve that position.

The Fact-Finder notes that, according to the State Employment Relations Board's Clearinghouse Benchmark Report, the current average top level base wage rate for thirty-nine reporting Cities within Cuyahoga County is \$44,713.00.

Of the five cities both parties agree are comparable to Strongsville, four have established base wage rates for the year 2000. The salaries range from a low of \$45,219.00 in Berea to a high of \$47,676.00 in Middleburg Heights.

The average for the group is \$46,518.00.

Of the six additional communities relied upon by the City, four have settled top level base wage rates for 2000. The rates range from a low of \$43,775.00 in Parma Heights to a high of \$48,365.00 in Rocky River. The average for this group is \$45,527.00.

Five of the six communities proffered by the Union have negotiated top level base wage rates for 2000 the rates range from a low of \$42,380.00 in Euclid to a high of \$51,731.00 in Solon. The average for the five is \$48,459.00.

Those 2000 base wage rates in the thirteen communities were the result of wage increases averaging 3.86%.

Only four communities reported having entered into Contracts providing base wages rates for the year 2001 - Brookpark, Parma Heights, Rocky River and Fairview Park. Two of the four offer 3% increases, one a 3.5% rise and one, 4% increment.

Only Parma Heights and Rocky River reported having agreed upon salaries for the year 2002. Rocky River provided a 3% increase in base wage rates while Parma Heights offered only 2.5%.

The recently expired 1997 Contract provided Strongsville Police Officers with a 3.75% increase in each of the three years of its term. And, the Contracts with the Strongsville Radio Dispatchers and Firefighters Units provided for base wage rates increases of 3.75% for 2000.

Both internal and external comparative data suggest that a base wage rate increase of 3.75% for 2000 would maintain the Patrolmen's relative salary position vis a vis, their peers in comparable Departments.

Extrapolating the available data to the years 2001 and 2002, it appears to the Fact-Finder that increasing base wage rates by the same 3.75% would be equitable to members of the Bargaining Unit, maintain their real wages in the face of anticipated increases in the cost of living, and keep step with the compensation paid to Officers in comparable

communities, while, at the same time, not imposing an undue financial burden on the City.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of the following wage schedule as Section 23.01 in the successor Agreement:

"23.01 For the term of this agreement, employees who progress through Step A1, Step A2 and Step A3 shall be paid as follows:

"Step A1 - \$28,506.00

"Step A2 - \$30,817.00

"Step A3 - \$33,316.00

"Probationary employees shall progress through the probationary steps as currently set forth in the Departmental rules and regulations.

"Step B. An employee shall be placed at Step B of the pay scale on the first day of the next full pay period immediately following satisfactory completion of the probationary period.

"Step C. An employee shall be placed at Step C of the pay scale on the first day of the next full pay period immediately following one year service at Step B.

"Step D. An employee shall be placed at Step D of the pay scale on the first day of the next full pay period immediately following one year service at Step C.

"Step E. An employee shall be placed at Step E of the pay scale on the first day of the next full pay period immediately following one year service at Step D.

<u>Ptl.</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
1/01/00	\$38,677	\$41,586	\$44,718	\$48,081
1/01/01	\$40,127	\$43,145	\$46,395	\$49,884
1/01/02	\$41,632	\$44,763	\$48,135	\$51,755

V. Article XXIII - Wages & Longevity New Professional Wage Supplement:

THE UNION'S PROPOSAL:

The Union seeks to add a new Section 23.07 to Article XXIII to read as follows:

"23.07 - Professional Wage Supplement. Any employee who undertakes specialized training and is granted accreditation or certification for firearm proficiency shall be paid a professional wage supplement of fifteen hundred dollars (\$1,500.00) each year."

The Union asserts that Strongsville's Firefighters receive annual Paramedic stipends of \$1,500.00 and that Police Officers deserve a corresponding professional wage supplement. The Union claims that Police must exercise greater discretion and make many more difficult judgment calls than Firefighters.

Recognizing the substantial training that Firefighters must receive to qualify as Paramedics, the Union asserts that Police must also undertake significant education. They must, for example, complete eighteen weeks of training at the State Police Academy or a similarly certified program. Moreover, they must spend forty eight hours to achieve radar operation certification, three days to learn to perform intoxolizer testing and some forty hours attending an advanced "DUI" school in addition to passing a firearm proficiency test.

Presently, the City requires all newly hired Officers to possess a four year degree in criminal justice or a related curriculum, and every tenured member has had to have received an associate degree.

The Police Chief and Assistant Chiefs have received salary parity with the Fire Chief and his staff. The concept of parity ought to extend down the line.

THE CITY'S POSITION:

The City opposes any firearm proficiency or professional allowance. It argues that compensation parity between the Firefighters and Patrol Officers is not a legitimate demand. All Fire Department new hires must be Paramedics at the time of their appointment. The required training costs between \$10,000 and \$15,000. The special stipend in the current Collective Bargaining Agreement was instituted over a decade ago to serve as a reward to those employees who have obtained this extensive training at their own expense.

On the other hand, every Police Officer is required by law to be proficient in the use of a firearm and must re-qualify periodically. The City suggests there is no merit in providing a supplement to an employee for fulfilling a job requirement.

THE FACT-FINDER'S FINDING AND RECOMMENDATION:

For over ten years the City has elected not to maintain a separate team of emergency response service personnel, but, rather, to require that its Firefighters assume this independent responsibility. In consideration for the rendition of this special service, and by way of reimbursement for the training costs involved, the City has offered the Firefighters a substantial annual supplement.

The Union now seeks a \$1500.00 annual supplement for Patrol Officers in order to achieve parity in total compensation with Firefighters.

The Fact-Finder appreciates the fact that is the wage supplement that effectively differentiates the total pay of Firefighters from that of Police Officers.

He also understands the rigor of the training that Police Officers must undergo.

And, finally, he recognizes that, at least for new recruits, they must have earned, at their own expense, a four year degree in a law enforcement related field.

While these considerations militate in favor of a professional wage supplement, the Fact-Finder, upon this record, cannot agree that the Patrol Officers are entitled to "parity" with the Firefighters.

The Fact-Finder notes that there is no history of equalization of compensation between the two uniformed forces.

The Police Officers' Contracts had never had the equivalent of a "me too" provision.

Nor, does the Fact-Finder conclude on the present record that a tradition or custom of compensation parity between Firefighters and Patrol Officers exists on a County, State or National basis.

The Fact-Finder is not disposed to inaugurate an "equal worth" criterion for setting wage rates in the Civil Service. The occupations of Firefighter and Police Officer are

distinct, requiring vastly different skills, training, job duties and work schedules.

Moreover, only a minority of jurisdictions cited as comparable by the parties provide a professional supplement or firearm proficiency allowance.

In the Fact-Finder's judgment, although the equitable considerations advanced by the Union do not call for the remedy it seeks, they do make out a case for the provision of some supplement to their wages. The Fact-Finder concludes that a reasonable supplement amount would be \$500.00 per annum.

Accordingly, he finds appropriate, and recommends that a new Section 23.07 be added to Article XXIII and incorporated into the successor Contract to read as follows:

"23.07 In order to encourage continuing professional training and proficiency, similar to the Paramedic Pay Supplement granted by the Employer to its employees represented by the Fraternal Order of Police, Local #15, all employees who (a) undertake specialized training and (b) are granted accreditation or certification in at least five (5) of the following fields, to wit:

- "1. Domestic violence response;
- "2. Firearm proficiency;
- "3. Blood alcohol analysis;
- "4. K-55 Unit and S-80 Unit radar operation;
- "5. Approved defensive tactics techniques; and
- "6. L.E.A.D.

"shall be paid an annual professional wage supplement of five hundred dollars (\$500.00) provided, however, that such employees shall maintain such accreditation or certification

in all five (5) fields under professional guidelines and requirements established by the State of Ohio or the Chief of Police for the City of Strongsville, Ohio.

"Such wage supplement shall be paid by separate check to qualifying employees with their pay for the first pay period in July of each year."

VI. Article XXVI - Vacations:

The 1997 Contract:

The expired 1997 Agreement provided in relevant part:

"26.01 All full-time employees of the City shall be entitled on the anniversary date of each year to the following paid vacation provided they have worked at least one thousand forty (1,040) hours in the preceding anniversary year and have accrued the required years of service as follows:

"A. Each employee who has completed one (1) year of continuous employment beginning with his first dates of employment shall receive two (2) weeks vacation, with pay after such anniversary date.

"B. Each employee who has completed six (6) years of continuous employment beginning with his first date of employment shall receive three (3) weeks vacation, with pay after such anniversary date.

"C. Each employee who has completed twelve (12) years of continuous employment beginning with his first date of employment shall receive four (4) weeks vacation, with pay after such anniversary date.

"D. Each employee who has completed eighteen (18) years of continuous employment beginning with his first date of employment shall receive five (5) weeks vacation, with pay after such anniversary date.

...."

THE UNION'S PROPOSAL:

The Union wishes to advance the vacation entitlement steps so as to provide three weeks vacation after five years of service, four weeks after ten years, and five weeks after fifteen years. It also seeks to add a sixth week of vacation after twenty years.

The Union insists that the stress of Police work justifies the earlier accrual of the longer vacations, and that the reduced service periods necessary to qualify for a third, fourth, and fifth week of vacation and the addition of a sixth week, are compatible with the vacation schedules in comparable Police Departments.

The Union would therefore amend the text of Section 26.01 to read as follows:

"26.01 All full-time employees of the City shall be entitled on the anniversary date of each year to the following paid vacation provided they have worked at least one thousand forty (1,040) hours in the preceding anniversary year and have accrued the required years of service as follows:

"A. Each employee who has completed one (1) year of continuous employment beginning with his first dates of employment shall receive two (2) weeks vacation, with pay after such anniversary date.

"B. Each employee who has completed five (5) years of continuous employment beginning with his first date of employment shall receive three (3) weeks vacation, with pay after such anniversary date.

"C. Each employee who has completed ten (10) years of continuous employment beginning with his first date of employment shall receive four (4) weeks vacation, with pay after such anniversary date.

"D. Each employee who has completed fifteen (15) years of continuous employment beginning with his first date of employment shall receive five (5) weeks vacation, with pay after such anniversary date.

"E. Each employee who has completed twenty (20) years of continuous employment beginning with his first date of employment shall receive six (6) weeks vacation, with pay after such anniversary date.

...."

THE CITY'S POSITION:

The City opposes any acceleration of the vacation schedule.

The City points out that the current vacation qualifying service periods is followed by all other city employees, Bargaining Unit and non-Bargaining Unit employees alike. It seeks to maintain that consistency.

The City also calls the Fact-Finder's attention to Article XVI of the current Contract which allows employees to earn personal leave with pay at the rate of three (3) hours for each calendar month of service completed without incurring a non-exempted absence. Thus, employees can earn almost the equivalent of an extra week of vacation by regularizing their attendance.

The advancement of vacation entitlements sought by the Union would create an unreasonable burden upon the Department, equivalent to the loss of the services of two Patrol Officers for the entire year.

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

With the exception of the Radio Dispatchers who operate under a two-tier system with longer accrual intervals for those hired after January 1, 1994, all City employees are entitled to two weeks vacation after one year of service, three weeks vacation after six years, four weeks after twelve years and a maximum of five weeks vacation after eighteen years.

Under the present schedule, only four Officers will have finished eighteen or more years of service during the term of a three year successor Agreement so as to be eligible for a five week vacation. An additional seventeen Officers will have completed at least twelve years of service and have become eligible for four weeks of vacation. Twenty-two other Officers will have served for a minimum of six years and have qualified for three weeks of vacation.

The remaining Officers will have completed less than six years of service and will be entitled to only a two week vacation.

Under the present schedule the total number of vacation weeks for the Bargaining Unit as a whole would increase from 161 in the first year of a successor Agreement, to 173 in the second year and to 182 weeks in the third year.

If the Union's proposal were adopted, then, over the three year term of a successor Agreement, three members of the Bargaining Unit would become entitled to six weeks of vacation, five Officers would receive five weeks, twenty-five

would become eligible for four weeks, and thirteen would achieve three weeks. The remaining Officers would accrue only two weeks of vacation.

In sum, the adoption of the Union's proposal would result in an increase of twenty-one vacation weeks in the first year of the new Agreement, fourteen additional weeks in the second year and nineteen more weeks in the third year.

The City estimates coverage of the additional vacation weeks would result in \$23,400.00 in overtime in the first year of the Contract, \$15,596.00 in the second and \$21,166.00 in the third year, for a total of \$60,162.00 over the life of the successor Contract.

The overwhelming majority of the cities cited by the parties as comparable to Strongsville accrue two weeks vacation after the first year, three weeks after the fifth year, and four weeks after the tenth year.

Thus, three of the five communities both parties agree are comparable to Strongsville - Middleburg Heights, North Olmsted and North Royalton - adhere to that schedule, while a fourth, Berea, deviates by allowing four weeks of vacation only after eleven years. The remaining community, Broadview Heights, provides three weeks after seven years and four weeks after twelve years.

Four of the six additional communities identified by the City in its array of comparables provide three weeks of vacation after five years of service, one offers it after six years of service and one after seven years of service.

Four of the cities on Strongsville's list offer four weeks of vacation after ten years of service, one community provides four weeks after eleven years of service, and the other makes four weeks available only after twelve years of service.

Of the additional six communities cited by the Union, five provide three weeks of vacation to employees with five years of service, and four of the six offer four weeks of vacation after ten years of service. The remaining two offer four weeks after twelve and thirteen years, respectively.

With respect to the qualifying period for entitlement to five weeks of vacation, however, the seventeen cited communities go off in different directions. Eight provide five weeks of vacation after fifteen years of service, two allow it after seventeen years, four, in common with Strongsville, offer five weeks after eighteen years one permits five weeks after completion of twenty years and the last grants five weeks only after twenty-five years of employment.

Thirteen of the seventeen listed cities provide a sixth week of vacation - but here again there is no consensus on the accrual rate. Six communities provide six weeks of vacation - four after twenty years, one after twenty-one years, one after twenty-two years and five more after twenty-five years of continuous service.

The foregoing recapitulation of vacation times made available by the cities that one or both parties deem

comparable to Strongsville, reveals that Strongsville's accrual schedule of three and four week vacation entitlements is out of step. Strongsville delays offering three weeks of vacation by one year longer than most of these cities, and postpones providing four weeks of vacation by two years beyond the average.

Nevertheless, the City argues that it allows "personal hours" for employees who do not use their sick leave entitlements, and employees can accrue almost the equivalent of an additional week of vacation time through regularizing their attendance. In fact, all fifty-seven Patrol Officers have available such hours, ranging from a low of six to a high of thirty-six, the average being almost twenty-four hours. Thus, the additional week sought by the Union, so the City maintains, can be achieved through this personal leave route.

However, the Fact-Finder observes that such "sick leave bonuses" are not a fair equivalent of vacation time, since the earning of the bonus is dependent upon the non-utilization of another time-off entitlement.

Furthermore, the Fact-Finder notes that thirteen of the seventeen listed comparable cities offer one or more "personal days" or "sick leave bonus" days in addition to vacation entitlements.

Because of the stress involved in the law enforcement duties of Patrol Officers, and the fact that most will be subject to significant amounts of overtime in order to provide around-the-clock coverage, there is perhaps greater

justification for liberalizing the accrual of three and four weeks of vacation than with many other classifications of City employees.

However, the Fact-Finder does not see the need to decrease the present eighteen years service requirement to become eligible for five weeks of vacation, nor, at this time to add a sixth week of vacation which would benefit only one or three Officers, depending on whether the seniority threshold were set at twenty years or twenty-five years.

Were the accrual time for three weeks of vacation shortened from twelve years of continuous service to ten, and that for four weeks of vacation collapsed from eighteen years to fifteen, then, in the third year of a successor Agreement, eleven additional Officers would be entitled to four weeks of vacation instead of three, and, two more Officers would be entitled to three weeks of vacation instead of two.

Of course, the revised vacation schedule should not be effective in the middle of the current Contract year, but rather in the second year so as to avoid significant scheduling disruption.

The advancement of the vacation accrual time to earn three and four weeks of vacation would result in only an aggregate of nine additional weeks of vacation in the second year of the Contract at an estimated cost of \$10,000.00 and thirteen additional weeks in the third year at an estimated cost of \$14,500.00.

Accordingly, the Fact-Finder finds appropriate and recommends that the parties adopt the following provisions as Article XXVI, Section 26.01 of the successor Contract:

"26.01 During calendar year 2000, all full-time employees shall be entitled on the anniversary date of each year to the following paid vacation provided they have worked at least one thousand forty (1,040) hours in the preceding anniversary year and have accrued the required years of service as follows:

"A. Each employee who has completed one (1) year of continuous employment beginning with his first date of employment shall receive two (2) weeks vacation, with pay after such anniversary date.

"B. Each employee who has completed six (6) years of continuous employment beginning with his first date of employment shall receive three (3) weeks vacation, with pay after such anniversary date.

"C. Each employee who has completed twelve (12) years of continuous employment beginning with his first date of employment shall receive four (4) weeks vacation, with pay after such anniversary date.

"D. Each employee who has completed eighteen (18) years of continuous employment beginning with his first date of employment shall receive five (5) weeks vacation, with pay after such anniversary date.

"During calendar year 2001, and thereafter all full-time employees shall be entitled on the anniversary date of each year to the following paid vacation provided they have worked at least one thousand forty (1,040) hours in the preceding anniversary year and have accrued the required years of service as follows:

"A. Each employee who has completed one (1) year of continuous employment beginning with his first date of employment shall receive

two (2) weeks vacation, with pay after such anniversary date.

"B. Each employee who has completed five (5) years of continuous employment beginning with his first date of employment shall receive three (3) weeks vacation, with pay after such anniversary date.

"C. Each employee who has completed ten (10) years of continuous employment beginning with his first date of employment shall receive four (4) weeks vacation, with pay after such anniversary date.

"D. Each employee who has completed eighteen (18) years of continuous employment beginning with his first date of employment shall receive five (5) weeks vacation, with pay after such anniversary date.

...."

VII. Article XXXI - Duration:

The 1997 Contract:

The expired 1997 Contract provided as follows:

"31.01 This Agreement shall be effective as of January 1, 1997, and shall remain in full force and effect through December 31, 1999, unless otherwise terminated as provided herein.

"31.02 If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt.

"31.03 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this

Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and the Union and all prior Agreements, either oral or written, are hereby canceled. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right; and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement. This Agreement may only be amended or modified during the life of the Agreement by the express, mutual written consent of both parties."

THE CITY'S PROPOSAL:

The City seeks a three year Agreement retroactively effective to January 1, 2000 and extending through December 31, 2002. All previous Contracts with the Unions representing the several Bargaining Units have been for three year terms.

THE UNION'S PROPOSAL:

The Union seeks only a two year Agreement. The Union expresses its concern over the uncertainty of the future economic environment, and in particular, whether the rate of inflation will accelerate and require a higher wage rate than presently contemplated in order to prevent erosion of the Officers real wages.

THE FACT-FINDER'S ANALYSIS AND RECOMMENDATION:

The execution of a Collective Bargaining Contract with only a two year term would do little to contribute to the

stability and pacification of labor relations since in a little more than a year the negotiation process would resume. Furthermore, increasing the number of negotiations is not without representation cost to the parties, if, as to be expected based upon past history, the negotiating process will ultimately run the course of mediation, fact-finding and conciliation.

The Union's interest in a two year Agreement is based primarily upon the fear that economic gains seen as reasonable today may be eroded should inflation flare-up.

Although it is foreseeable that the rate of inflation might rise to more than 3% in the year 2002, the economic benefits in that year available to members of the Bargaining Unit as a result of the tentative agreements and the recommendations of the Fact-Finder should obviate any such concern.

Accordingly, the Fact-Finder finds appropriate and recommends that the parties enter into a three year Agreement retroactively effective as of January 1, 2000 and extending through December 31, 2002, and further recommends that the parties adopt as Article XXXI the following text for incorporation into the successor Agreement:

"31.01 This Agreement shall be effective as of January 1, 2000, and shall remain in full force and effect through December 31, 2002 unless otherwise terminated as provided herein.

"31.02 If either party desires to modify, amend or terminate this Agreement, it shall

give written notice of such intent no earlier than one hundred twenty (12) calendar days nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt.

"31.03 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and the Union, and all prior Agreements between the Employer and the Union either oral or written, are hereby canceled. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right; and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement. This Agreement may only be amended or modified during the life of the Agreement by the express, mutual written consent of both parties."

Report and Recommendations signed, dated and issued at
Cleveland, Ohio this 11th day of May, 2000.



Alan Miles Ruben
Fact-Finder

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