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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Fact-Finding Proceedings

Case Nos.: 99-MED-10-0999

ROBERT C. DEVLIN

FACT-FINDER

In the Matter of: :

OHIO PATROLMEN'S  
BENEVOLENT ASSOCIATION :

May 2, 2000  
May 8, 2000

-and- :

CUYAHOGA METROPOLITAN  
HOUSING AUTHORITY :

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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

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APPEARANCES

On Behalf of the Union:

- Mark J. Volcheck, Esq.
- Dale Homerick, Negotiator
- Tyrone Copper, Negotiator
- Louis Scibelli, Negotiator

On Behalf of the CMHA:

- Lessie Milton James, Esq. - Attorney
- LaVerne Boyd, Esq. - Acting General Counsel
- Tyrone Smith - Director of Human Resources
- John Bowen - Employee Relations
- John Race - Deputy Chief
- Miles T. Cobbs - Deputy Chief
- Mark Prok - Budget Manager
- Bo Truett - Assistant to CFO

## PRELIMINARY COMMENTS

The State Employment Relations Board appointed the fact-finder who was duly notified by George M. Albu, Administrator, Bureau of Mediation, by letter on December 1, 1999.

The fact-finding proceedings were held at the CMHA building located at 1441 West 25<sup>th</sup> Street, Cleveland, Ohio 44113. Hearings were held Tuesday, May 2, 2000 and Monday, May 8, 2000.

The Cuyahoga Metropolitan Housing Authority services 12,000 residential units and 30,000 residents in locations scattered throughout the county. The Police Department has an authorized strength of 86 police officers.

Articles of the Collective Bargaining Agreement which are not addressed in this report are those which fall into one of the following categories:

1. Current language is satisfactory to the parties;
2. Resolved by negotiation prior to fact-finding;
3. Resolved by negotiation/mediation during fact-finding.

It should be noted that the parties agreed that the word “employer” is to be replaced by “CMHA” throughout the Collective Bargaining Agreement.

Along with the testimony and exhibits, consideration was given to the criteria set forth in the Ohio Administrative Rules and the Ohio Revised Code.

The Fact-Finder would be remiss if he did not compliment the parties on the preparation and presentation of their respective positions and the degree of professionalism displayed throughout the proceedings.

## **ISSUES AND RECOMMENDATIONS**

### **ARTICLE III SECTION I**

#### **RECOGNITION**

**ISSUE:** This issue, proposed by the CMHA, seeks to eliminate the last sentence of the section which deals with the obligation to negotiate.

**POSITION OF THE CMHA:** It is the position of the CMHA that this sentence is unnecessary and lends only clutter in the Collective Bargaining Agreement.

**POSITION OF THE UNION:** It is the position of the Union that no controversy has arisen which might necessitate such change.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that the sentence does little, if anything, to augment the rights of either party. O.R.C. §4117.04 and O.R.C. §4117.11 address the obligations of the parties to negotiate.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation of the Fact-Finder Article III, Section read as follows:

**Section 1.** The CMHA agrees that it has and will continue to recognize the OPBA as an exclusive representative for negotiating wages and salaries, hours of work, and all other terms and conditions of employment for all sworn police officers in the CMHA Police Department.

## ARTICLE VI

### MANAGEMENT RIGHTS

ISSUE: This issue, proposed by the CMHA, seeks to identify more specifically the rights of management.

POSITION OF THE CMHA: It is the position of the CMHA that this matter should be addressed with a greater degree of specificity.

POSITION OF THE UNION: It is the position of the Union that no change is necessary as no problem exists under current language.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that Management Rights are not best illustrated by enumeration but rather by subtraction. Quite simply, management has all rights which have not been eliminated or modified by Collective Bargaining Agreement or otherwise. A list can be, at best, illustrative and not exhaustive.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article VI read as follows:

## ARTICLE VI

### MANAGEMENT RIGHTS

The CMHA shall have the exclusive right to manage the Police Department except as modified and limited by:

1. The Collective Bargaining Agreement;
2. Extant past practices;

3. Law; and
4. Public Policy.

## ARTICLE VII, SECTION 5

### EMPLOYEE RIGHTS

ISSUE: This issue, proposed by the CMHA, seeks to update the use of Polygraph, Voice Stress Analysis, or similar devices in internal affairs investigations.

POSITION OF THE CMHA: It is the position of the CMHA that with the proper safeguards, these devices should be available to management unilaterally. The CMHA relies on the Ohio Supreme Court Case, *City of Warrensville Heights v. Jennings, et al.*, 58 Ohio St. 3d 206, 1991.

POSITION OF THE UNION: It is the position of the Union that the proposal of CMHA seeks to remove a previously bargained right.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the City of Warrensville Heights case is not necessarily on all fours with the facts in this proposal. The Court held that it was not necessary to have a contractual provision permitting the use of such devices. In our situation we have a contractual provision forbidding the use of such devices without the permission of the employee.

Furthermore, the CMHA proposal does not include the predicate provisions outlined by the Court.

However, it is also the opinion of the Fact-Finder that members of a Police Department should project the highest degree of integrity and, like Caesar's wife, be

above suspicion. Proceedings that do not threaten constitutional rights should not be precluded. Indeed, police could gain more in public respect than they could possibly lose in foregoing a perceived protection.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article VII, Section 5 read as follows:

**ARTICLE VI, SECTION 5**

**Employee Rights**

**Section 5.** Neither CMHA nor OPBA recognize the polygraph, the Voice Stress Analyzer, or any similar device as the sole factor in determining guilt. If, in the course of an internal affairs investigation, the Chief of Police determines that a polygraph examination, Voice Stress Analysis, or analysis from a similar device is necessary, the employee under investigation shall submit to same upon the order of the Chief.

However, such order to be valid must include as part of such order:

1. The subject of the intended inquiry which is specifically and narrowly related to the performance of the officer's official duties.
2. An acknowledgment that the officer's answers cannot be used against him in any subsequent criminal prosecution.
3. That the penalty for refusal is dismissal.

**N.B.** The CMHA referred to this Section as 4 but the current Collective Bargaining Agreement addresses this matter in Section 5.

## **ARTICLE VII, SECTION 7**

### **Employee Rights**

**ISSUE:** This issue, proposed by the Union, seeks written notice of the final disposition of all investigations of employees in the bargaining unit.

**POSITION OF THE UNION:** It is the position of the Union, that an employee should not be distracted by the prospect of waiting for a second shoe to land.

**POSITION OF THE CMHA:** The CMHA presented no persuasive agreement against the inclusion of this section.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that closure is, or should be, desirable for both parties.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation that Article 7 be included and read as follows:

## **ARTICLE VII**

### **EMPLOYEE RIGHTS**

**Section 7.** The CMHA shall present to the employee, in writing, a copy of all final dispositions regarding all matters investigated including matters not resulting in discipline.

**N.B.** The OPBA referred to this in its proposal as Article VI, Section 7.

**ARTICLE X, SECTION \_\_\_\_\_**

**DISCIPLINE**

**ISSUE:** This issue, proposed by the Union, seeks to add a section prohibiting any person or group of people other than the CMHA from inquiring, recommending, reviewing, or influencing or affecting, hear or be advised of any matters relating to discipline or civilian and/or departmental complaints against any officer.

**POSITION OF THE UNION:** It is the position of the Union that this proposal is admittedly preventative and anticipatory.

**POSITION OF THE CMHA:** The position of the CMHA was unclear to the Fact-Finder.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that the proposal is too broad and too vague. It is also the opinion that such a section is unnecessary.

**RECOMMENDATION OF THE FACT-FINDER:** The recommendation of the Fact-Finder to the New Section is as follows:

**DO NOT ADD**

**ARTICLE X - SECTION 5**

**DISCIPLINE**

**ISSUE:** The issue proposed by the Union, seeks a new section which would provide for the delay of the imposition of discipline other than discharge until the grievance and arbitration procedures have been exhausted or otherwise terminated.

POSITION OF THE UNION: It is the position of the Union that when the income of the employee is stopped others may suffer. The Union maintains that this result is unfair especially in those instances in which the discipline is not sustained after being referred to the grievance and arbitration procedures.

POSITION OF THE CMHA: It is the position of the CMHA that it is operating a Police Department and not a social agency. It does not participate in the budgeting of finances of the employees and should not be involved in any societal problems resulting from such budgeting not providing for emergencies.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that he is quite sympathetic with the plight of any employee who is suspended without pay. This situation is exacerbated in those instances in which suspension is found to be unwarranted.

However, to be most effective, discipline must not be delayed. Furthermore, no persuasive evidence was presented by the Union demonstrating the reality and extent of the problem which it would like to eliminate.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to the section is as follows:

**DO NOT ADD**

## ARTICLE XIII

### ARBITRATION PROCEDURE

ISSUE: This issue, proposed by the CMHA, presents a rather wide-sweeping overhaul of the current article. The more significant changes involve the establishment of a panel from which arbitrators are to be selected and a provision whereby the losing party bears the cost of arbitration.

POSITION OF THE CMHA: It is the position of the CMHA that its proposal presents a procedure that would serve the parties better than the current procedure.

POSITION OF THE UNION: It is the position of the Union that the current procedures are adequate and that such a comprehensive change might act to the detriment of potential grievants.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the timing of this proposal is unfortunate. The arbitration procedure is so fundamental to an effective Collective Bargaining Agreement that a comprehensive change should be discussed and negotiated before the normal negotiations in order that sufficient time and thought is devoted to the problem. For example, the problem of establishing a panel, if that is the desire of the parties, would be time consuming.

In passing, the Fact-Finder is constrained to observe that a “loser pay” policy can have a chilling effect on the pursuit of grievances especially in those cases in which the union has limited resources.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to Article XIII is as follows:

**DO NOT CHANGE**

**ARTICLE XVIII, SECTION 7**

**SENIORITY**

**ISSUE:** This issue, proposed by the CMHA, seeks to break seniority in cases in which an employee is laid off for a period of time in excess of twelve (12) months regardless of his length of service prior to lay off.

**POSITION OF THE CMHA:** It is the position of the CMHA that the present policy may result in excessive training costs in bringing the recalled police officer up to required standards mandated by the State of Ohio.

**POSITION OF THE UNION:** It is the position of the Union that it sees no reason to reduce a protection that the employees are currently enjoying.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that although current language could result in training time and expense, no persuasive testimony or evidence was presented to indicate that the magnitude of the problem justified the curtailing of recall rights.

**RECOMMENDATION OF THE FACT-FINDER:** The recommendation of the Fact-Finder as Article XVIII, Section 7 is as follows:

**DO NOT CHANGE**

**ARTICLE XIX, SECTION 1**

**DUTY HOURS**

**ISSUE:** This issue, proposed by the CMHA, represents a comprehensive overhaul of current procedure. Some of the more salient features of the proposal are the changes to an eighty (80) hour base to a forty (40) hour base and the elimination of notice in case of a change.

**POSITION OF THE CMHA:** It is the position of the CMHA that such change is essential to efficient management.

**POSITION OF THE UNION:** It is the position of the Union that it opposes these changes because, *inter alia*, the removal of the notice requirement.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that no persuasive evidence or testimony was presented to justify this change.

**RECOMMENDATION OF THE FACT-FINDER:** The recommendation of the Fact-Finder as to Article XIX, Section 1 is as follows:

**DO NOT CHANGE**

**ARTICLE XIX, SECTION 2**

**DUTY HOURS**

**ISSUE:** This issue, prepared by the CMHA, seeks to reword the sentence which reserves its right to manage.

**POSITION OF THE CMHA:** It is the position that the rewording clarifies the intent of the parties.

POSITION OF THE UNION: The Union presented nothing in opposition.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that this proposal was agreed upon by default.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XIX, Section 2 reads as follows:

**ARTICLE XIX**

**DUTY HOURS**

**Section 2.** Whenever a shift position is added or when a presently occupied shift position becomes available due to termination, retirement, etc. and CMHA intends to fill said shift opening, the present employees may bid for shift opening based upon their seniority in that classification. Placement of the successful bidder under this section shall not be denied arbitrarily or capriciously. Nothing herein shall be construed as limiting the right of CMHA to schedule shift hours and/or make assignments according to operational needs.

**ARTICLE XX, SECTION 1**

**OVERTIME PAY AND COURT TIME**

**ISSUE:** This issue, prepared by the CMHA, seeks to change the overtime rules from more than eight (8) hours per day to more than forty (40) hours per week. It also seeks to mandate that overtime be compensated by way of compensatory time as long as the time does not exceed 480 hours.

POSITION OF THE CMHA: It is the position of the CMHA that the FLSA does not require time and one-half (1-½) after eight (8) hours work in a day but only after forty (40) hours in a week. It is further the position of the CMHA that this change might alleviate some of the pressure it is experiencing due to the budget crunch. Likewise, the mandatory banking of compensatory time (with the 480 hour limit) would defer some of its cash requirements.

POSITION OF THE UNION: It is the position of the Union that the change from a daily basis to a weekly basis in arriving at overtime hours is an unwarranted wage cut.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that saving money to finance a wage increase by revising the overtime pay procedure is merely smoke and mirrors. The employee would be losing in overtime pay that which he might receive in a base pay increase.

However, it is the opinion of the Fact-Finder that the proposal to pay overtime in compensatory time has a great deal of merit. It provides a method of deferring cash outlays. A review of the history of labor relations will reveal that this is precisely the reason that compensatory came into being in the public sector.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XX, Section 1 read as follows:

**ARTICLE XX, SECTION 1**

**OVERTIME PAY AND COURT TIME**

**Section 1.** All the employees, for work performed in excess of eight (8) hours in one (1) day, when approved of or scheduled in advance by the immediate supervisor, shall be compensated by way of compensatory time computed at one and one-half (1-½) times the employee's regular hourly rate. Upon accruing in excess of 480 hours of compensatory time the employee shall receive overtime compensation in cash at the same rate that the compensatory time is computed. CMHA shall be the sole judge of the necessity for overtime.

**ARTICLE XX, SECTION 5**

**OVERTIME PAY AND COURT TIME**

**ISSUE:** This issue, proposed by the CMHA, seeks to reduce the guaranteed time for court appearances from four (4) hours to two (2) hours.

**POSITION OF THE CMHA:** It is the position of the CMHA that the current provision is overly generous. The Collective Bargaining Agreement for Cleveland State University provides a minimum of two (2) hours with the option of returning to duty for a total of four (4) hours.

**POSITION OF THE UNION:** It is the position of the Union that this proposal represents a wage cut.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the CMHA did not present sufficient persuasive evidence or testimony in support of this issue.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to Article XX, Section 4 is as follows:

**DO NOT CHANGE**

**ARTICLE XX, SECTION 5**

**OVERTIME PAY AND COURT TIME**

ISSUE: This issue, proposed by the CMHA, seeks to reduce the pay for range time.

POSITION OF THE CMHA: It is the position of the CMHA that it will compensate the employee for time spent at the range when required by the CMHA with a minimum pay of two (2) hours rather than the guaranteed four (4) hours currently provided by the Collective Bargaining Agreement. It is further the position of the CMHA that two (2) hours is closer to the time actually spent.

POSITION OF THE UNION: Again, it is the position of the Union that this proposal simply represents a wage cut.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the CMHA did not present sufficient persuasive evidence or testimony in support of this issue.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to Article XX, Section 5 is as follows:

**DO NOT CHANGE**

**ARTICLE XX, SECTION 6**

**OVERTIME PAY AND COURT TIME**

ISSUE: This issue, proposed by the CMHA, seeks to modify the mandatory training section by including a two (2) hour guarantee.

POSITION OF THE CMHA: The CMHA offered no reasons for the change.

POSITION OF THE UNION: The Union rejected the proposal because the CMHA gave no explanation or rationale.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that he is reluctant to recommend a proposal that the proponent has not explained and the other party rejects.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to Article XX, Section 6 is as follows:

**DO NOT CHANGE**

**ARTICLE XXII, SECTION 2**

**HOLIDAYS**

ISSUE: This issue, proposed by the CMHA, seeks to eliminate the option of working or not working on holidays.

POSITION OF THE CMHA: It is the position of the CMHA that the present system is a managerial nightmare and places an extreme burden on the Chief to be certain of adequate staffing.

POSITION OF THE UNION: The Union flatly rejects this proposal and wants no change in the current language.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the proposal of the CMHA is very sound. Under the current language in the Collective Bargaining Agreement it is theoretically possible to have absolutely no patrolmen working any holiday. We should keep in mind why we have a Police Department and a Chief to manage it. The Chief should not be so limited in his authority to schedule.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder as follows:

#### **ARTICLE XXII, SECTION 2**

##### **HOLIDAYS**

**Section 2:** An employee scheduled to work a holiday by the Chief of Police or his designee will be paid at the employee's regular rate of pay plus an additional twelve (12) hours of compensatory time.

#### **ARTICLE XXIII, SECTION 3**

##### **HOLIDAYS**

**ISSUE:** This issue, proposed by the CMHA, seeks to stipulate the amount of notice required to apply for time off in lieu of compensatory time provided in Section 2 of this article.

POSITION OF THE CMHA: It is the position of the CMHA the time limit is quite reasonable and is consistent with the efforts of the Chief to run a tight and orderly department.

POSITION OF THE UNION: The Union flatly rejects this proposal and wants no change in the current language.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-finder that this proposal is consistent with sound management.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XXII, Section 3 read as follows:

### **ARTICLE XXII, SECTION 3**

#### **HOLIDAYS**

**Section 3** - Should an employee request to take the time off instead of receiving compensatory time for the holidays, the employee shall designate in writing within at least ten (10) business days of the requested time off, the days he wishes to take off, which shall be subject to the advance approval of the Chief or his designee.

### **ARTICLE XXIV, SECTION 2**

#### **SICK LEAVE**

**ISSUE**: This issue, proposed by the CMHA, seeks to add a sentence to the section placing a ceiling on the number of hours of sick time that an employee may accumulate.

POSITION OF THE CMHA: The position of the CMHA on this proposal was unclear.

POSITION OF THE UNION: Not unlike its position on many of the CMHA proposals, the Union flatly rejects this proposal without being specific.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that no persuasive reason was presented in support of this change.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to this Article XXIV, Section 2 is as follows:

**DO NOT CHANGE**

**ARTICLE XXIV, SECTION 9**

**SICK LEAVE**

ISSUE: This issue, proposed by the CMHA, seeks to reduce the conversion rate of accumulated sick leave at the time of retirement and also to establish a ceiling in terms of hours for such conversion.

POSITION OF THE CMHA: It is the position of the CMHA that such action could alleviate the budget crunch.

POSITION OF THE UNION: As indicated above the Union rejects any change to the entire article.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that no persuasive testimony or evidence was presented to justify the proposal.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to Article XXIV, Section 9 is as follows:

**DO NOT CHANGE**

**ARTICLE XXIV, NEW SECTION (CMHA)**

**SICK LEAVE**

ISSUE: This issue, proposed by the CMHA, seeks to add a section mandating that an employee must exhaust all his benefit time prior to using unpaid sick leave.

POSITION OF THE CMHA: It is the position of the CMHA that this is rather common provision which reduces absences and helps insure adequate personnel to properly staff the force and meet its objections.

POSITION OF THE UNION: It is the position of the Union that it simply rejects the proposal.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the proposal not only has merit but also is widely present in collective bargaining agreements.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that a new section be added to Article XXIV and read as follows:

**ARTICLE XXIV, SECTION 11**

**SICK LEAVE**

**Section 11.** An employee must exhaust all of his benefit time prior to using unpaid sick leave, Benefit time is defined as all vacation time, personal time and sick leave that has been accrued by the employee.

**ARTICLE XXIV, NEW SECTION**

**SICK LEAVE**

**ISSUE:** This issue, proposed by the Union, seeks a new section whereby an employee who is cleared for work by his personal physician but nevertheless refused work until cleared by a CMHA will be placed on paid administrative leave.

**POSITION OF THE UNION:** It is the position of the Union an employee may be unfairly deprived of work simply by a delay in clearance by a CMHA physician.

**POSITION OF THE CMHA:** It is the position of the CMHA that it is the responsibility of the CMHA and its physicians to determine clearance for an employee to return to work. Further, it is not willing to delegate this authority to the employee's personal physician. Until cleared for work, the employee is on sick leave, paid or unpaid.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that the position of the CMHA is well taken.

**RECOMMENDATION OF THE FACT-FINDER:** The recommendation of the Fact-Finder as to this new section in Article XXIV is as follows:

**DO NOT ADD**

**ARTICLE XXV, SECTION 2**

**SICK LEAVE BONUS**

**ISSUE:** This issue, proposed by the CMHA, seeks to place some parameters on the practice of donating accumulated sick time.

POSITION OF THE CMHA: It is the position of the CMHA that the current language is an administrative nightmare.

POSITION OF THE UNION: It is the position of the Union that this proposal unduly diminishes its established benefit.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that this is a reasonable restraint on a most unique benefit.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XXV, Section 2 read as follows:

### **ARTICLE XXV**

#### **SICK LEAVE BONUS**

**Section 2.** With the prior approval of the Chief or his designee, a member of the bargaining unit may be permitted to donate his or her accumulated sick time to the account of any other member of the bargaining unit under the following conditions.

- a. The donor must have at least 80 hours of accrued sick time;
- b. The donor may only donate a total of 40 hours of his sick time per calendar year.
- c. The donee can receive sick time contributions only for a serious health condition or terminal illness of the donee or the donee's spouse or child.
- d. The amount of sick time contributions can receive cannot exceed 160 bonus hours.

## ARTICLE XXVI, SECTION 2

### PERSONAL LEAVE

ISSUE: This issue, proposed by the Union, seeks to reduce the advance time for a request for personal days from five (5) days to four (4) hours.

POSITION OF THE UNION: It is the position of the Union that emergencies arise (such as car trouble) which make it impossible for the employee to make the request five (5) days in advance.

POSITION OF THE CMHA: It is the position of the CMHA that such a change would totally emasculate the section.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that indeed changing the notice from five (5) days to four (4) hour is throwing the baby out with the bath water. It panders to the exception rather than the rule. However, it is felt that some accommodation can be reached.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XXVI, Section 2 reads as follows:

## ARTICLE XXVI

### PERSONAL LEAVE

Section 2. A request for personal leave shall be made to the Chief of Police or his designee at least five (5) days prior to the requested personal day. Approval or denial of same shall be made by the Chief of Police or his designee at least forty-eight (48) hours prior to the requested personal day. In the case of a *bona fide* emergency the request may be made less than five (5) days prior to its requested personal time.

Approvals of such requests will not be unreasonably denied. Personal days shall only be taken with its advance approval of the Chief of Police or his designee.

**ARTICLE XXVII, SECTION 1**

**LINE OF DUTY INJURY LEAVE**

**ISSUE:** This issue, proposed by the Union, seeks to remove the restrictions on the types of injury which would qualify an employee for this benefit.

**POSITION OF THE UNION:** It is the position of the Union that the types of injuries are too narrowly defined. The Union feels that any incapacitating events occurring in the course of active duty should qualify an officer for Line of Duty Injury Leave. For example, current contract language would exclude burns and internal injuries.

**POSITION OF THE CMHA:** It is the position of the CMHA that such a change is not necessary.

**OPINION OF THE FACT-FINDER:** It is the position of the Fact-Finder that the position of the Union is well taken.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation of the Fact-Finder that Article XXVIII, Section 1 read as follows:

**ARTICLE XXVIII**

**LEAVE OF DUTY INJURY TIME**

**Section 1.** In the event an employee suffers an injury in the course of active duty with the CMHA which requires substantial recuperation time or time off of work, he shall be entitled to Line of Duty Injury Leave.

**ARTICLE XXVIII, SECTION 2**

**LINE OF DUTY INJURY LEAVE**

**ISSUE:** This issue, proposed by the CMHA, seeks to replace Section 2 and 3 of the current Collective Bargaining Agreement. It proposes to grant paid leave until such time the employee begins receiving Workers' Compensation payments.

**POSITION OF THE CMHA:** It is the position of the CMHA that this proposal is administratively straight forward and the employee has continuous income.

**POSITION OF THE UNION:** The Union presented no persuasive argument against the proposal.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that the proposal of the CMHA is well taken.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation of the Fact-Finder that Article XVIII, Section 2 read as follows:

**ARTICLE XXVII**

**LINE OF DUTY INJURY LEAVE**

**Section 2.** Line of duty injury leave shall consist of paid leave time. To qualify for this leave the employee must file and be eligible for Workers' Compensation benefits. Said employee shall receive injury leave from the time of the injury until the employee begins receiving Workers' Compensation payments. Upon receiving Workers' Compensation comprehensive payments the injury leave shall cease.

**N.B.** - Section 4 becomes Section 3.

**ARTICLE XXXII**

**COMPENSATION**

**Issue:** Both parties had proposals for an increase in the basic compensation for Sworn Police Officers:

1. Employees with six (6) years or less of services

**PERCENTAGE SCHEDULE INCREASES**

<b><u>EFFECTIVE DATE</u></b>	<b><u>OPBA</u></b>	<b><u>CMHA</u></b>
1/01/2000	4	2
2001 Anniversary	4	0
2002 Anniversary	4	0

2. Employees with more than six (6) years of service:

**PERCENTAGE INCREASE**

<b><u>EFFECTIVE DATE</u></b>	<b><u>OPBA</u></b>	<b><u>CMHA</u></b>
01/01/2000	6	4
2001 Anniversary	5	3
2002 Anniversary	5	3

**POSITION OF THE UNION:** It is the position of the Union that comparables more than justify its proposal.

**POSITION OF THE CMHA:** It is the position of the CMHA that budgetary restrictions limit any offer it can make.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that comparables do indeed indicate that the sworn Police Officers lag behind other police departments. It is also the opinion of the Fact-Finder that they face a challenging jurisdiction. Their duty is certainly not in the area of traffic, barking dogs, and domestic violence as experienced by many of the suburbs.

However, it is also recognized that the CMHA is limited in its resources. Taxes and bond issues are certainly not available to it. The testimony of Mr. Prok and Mr. Truett was not very helpful in establishing what funds could be made available.

The Police Department is currently below authorized strength. An increase in compensation that is unrealistic might necessitate a further reduction in force. Such reduction would be counterproductive in that it would not only prevent the Police

Department from meeting its objectives but also could present a safety hazard to the remaining officers.

RECOMMENDATION OF THE FACT-FINDER:

It is the recommendation of the Fact-Finder that Article XXXII as follows:

ARTICLE XXXII

COMPENSATION

Effective and retroactive to January 1, 2000, sworn Police Officers shall be paid according to the following schedule:

Entry	-	1 <sup>st</sup> Anniv.	\$24,051.04
1 <sup>st</sup> Anniv.	-	2 <sup>ND</sup> Anniv.	\$25,923.04
2 <sup>nd</sup> Anniv.	-	3 <sup>rd</sup> Anniv.	\$27,899.04
3 <sup>rd</sup> Anniv.	-	4 <sup>TH</sup> Anniv.	\$29,989.44
4 <sup>th</sup> Anniv.	-	5 <sup>th</sup> Anniv.	\$32,059.04
5 <sup>th</sup> Anniv.	-	6 <sup>th</sup> Anniv.	\$35,108.32

Police officers with less than six (6) years experience as of January 1, 2000 shall receive a four percent (4) retroactive to January 1, 2000 and a step increase on their anniversary in 2000 per the above scale. Thereafter, they shall receive a step increase as the anniversary in 2001 and 2002.

Police officers with more than six (6) years experience on January 1, 2000 shall receive a four (4) percent increase in pay retroactive to January 1, 2000. Thereafter, they shall receive a four (4) percent increase on the anniversaries in 2001 and 2002.

Police officers completing their sixth year after January 1, 2001, shall receive a four (4) percent increase on their anniversaries in 2001 and 2002.

## **ARTICLE XXXV**

### **UNIFORM ALLOWANCE**

**ISSUE:** This issue, proposed by the CMHA, seeks a myriad of changes, i.e., purchase through the Administrative Lieutenant, purchase upon order of the Chief, and provision for a bullet proof vest.

**POSITION OF THE CMHA:** It is the position of the CMHA that the allowance be spent for approved uniform items. It is willing to pay for body armor (bullet proof vest) but only on assurance that the vest has, in fact, been purchased.

**POSITION OF THE UNION:** It is the position of the Union that the channeling of orders through the Administrative Lieutenant is unnecessary and could result in delays in obtaining uniform items.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that a common problem in uniform allowance is that it is often spent on other things. However, it is also the opinion of the Fact-Finder that it is not necessary to change the procurement system. The Chief should have the authority to order the officer to purchase the necessary approved items and maintain them clean, neat and in repair.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation of the Fact-Finder that Article XXXV should read as follows:

**Section 1.** Current language

**Section 2.** Current language

**Section 4.** All Police Officers will have the option of purchasing a bullet proof vest which will be paid for by CMHA on a reimbursed basis. Within the first month of hire and every five (5) years following, each Sworn Police Officer will be provided with up to Five Hundred Dollars (\$500.00) for the sole purpose of purchasing a bullet proof vest. The Officer will be required to submit a receipt for such purchase prior to being reimbursed.

**Section 3.** Additional approved uniform items shall be purchased by the employee upon order of the Chief of Police. Said additional items will be purchased from the employee's uniform allowance.

## **ARTICLE XXXIX**

### **LAYOFFS**

**ISSUE:** This issue, proposed by the CMHA, seeks to reduce recall rights from four (4) years to two (2) years. It also seeks to add a section required an employee recalled to work to report within ten (10) working days.

**OPINION OF THE FACT-FINDER:** This Article both as written in the current Collective Bargaining Agreement and proposed by the CMHA are incompatible and inconsistent with Article XVIII Seniority. The ten (10) working day rule advocated by the CMHA to be included in Article XXXIX is already included in Article XVIII. Also, we have the ludicrous situation in which an employee has seniority rights but no recall rights.

RECOMMENDATION OF THE FACT-FINDER - It is the recommendation of the Fact-Finder that the parties meet and resolve this problem.

**ARTICLE XXXXII - SECTION 1**

**LONGEVITY**

ISSUE: This issue, proposed by the CMHA, seeks to reduce the longevity payments and limit the time upon which it is based on service as a Police Officer.

POSITION OF THE CMHA: It is obviously the position of the CMHA that it wishes to contain its costs because of the budget crunch. Current language does not preclude employees who transfer in from receiving credit for their past service.

POSITION OF THE UNION: It is the position of the Union that it flatly rejects the monetary reductions. It also resists any change in the language, which resulted in a favorable arbitration ruling that included prior service in the longevity calculation.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that no persuasive facts were presented to justify the change in the longevity benefits. As to the prior service issue, benefits are either company/agency wide or departmental depending on the intent of the parties. Therefore, disagreements may be avoided by clearly stating the intent of the parties. The CMHA does not wish to credit years not served as a police officer. This desire does not appear to be arbitrary or capricious. There is a genuine nexus between time served as an officer and competency as an officer. However, those previously granted longevity based on prior service with the agency should not suffer.

RECOMMENDATION OF THE FACT-FINDER: It the recommendation that Article XXXXII, Section read as follows:

**ARTICLE XXXXII**

**LONGEVITY**

**Section 1.** Effective upon ratification, Police Officers shall be entitled to longevity payments according to the following schedule upon completion of the time served as a police officer.

6 <sup>th</sup> year - 11 <sup>th</sup> year	\$ 500.00
12 <sup>th</sup> year - 16 <sup>th</sup> year	\$ 950.00
17 <sup>th</sup> year - 21 <sup>st</sup> year	\$1700.00
22 <sup>nd</sup> year - 26 <sup>th</sup> year	\$2200.00
27 <sup>th</sup> year and up	\$2700.00

Nothing herein shall be construed as reducing any time previously granted.

**ARTICLE XXXXII, SECTION 2**

**LONGEVITY**

ISSUE: This issue, proposed by the CMHA, seeks to add a section stipulating the date and the obligation of the employee to notify his superior in writing.

POSITION OF THE CMHA: It is the position of the CMHA that is a proper housekeeping proposal.

POSITION OF THE UNION: The Union offered no persuasive objection.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that this proposal has some merit.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XXXXII, Section 2, read as follows:

**ARTICLE XXXXII**

**LONGEVITY**

**Section 2** Longevity payments shall be added to the annual pay commencing on December 31 of the year in which the employee reaches the appropriate longevity period. The employee shall notify his immediate supervisor in writing during the month of December of the year affected.

**ARTICLE \_\_\_\_\_**

**DRUG/ALCOHOL TESTING**

ISSUE: The issue, proposed by the CMHA, seeks to add a drug and alcohol testing article.

POSITION OF THE CMHA: It is the position of the CMHA that such an article is necessary to support its policy. It is further the position of the CMHA that it is essential that people with guns, other weapons, and cars at their disposal be drug and alcohol free in order to protect not only the general public but also fellow employees from harm.

POSITION OF THE UNION: No persuasive agreement was presented by the Union in opposition.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that society has long since recognized the wisdom of attempting to insure that individuals in

sensitive positions be alcohol and drug free. The police are, or should be considered as, occupying sensitive positions.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that the following article be added.

**ARTICLE \_\_\_\_\_**

**DRUG/ALCOHOL TESTING**

It is the policy of CMHA that abuse of drugs or alcohol, or the illegal use of drugs or alcohol will not be tolerated in the work place. Drugs and alcohol pose a significant threat to public safety and to the welfare of CMHA residents and employees. Therefore, drug/alcohol testing will be conducted during preemployment, annual physicals, for reasonable suspicion and randomly.

All drug and alcohol screening tests will be conducted by medical laboratories licensed by the State of Ohio. The screening tests will be given to employees to detect the illegal use of a controlled substance as defined in the Ohio Revised Code, the use of alcohol or the abuse of legally prescribed drugs.

Employees who test positive or using alcohol or illegal drugs or abuse or abusing legally prescribed drugs will be subject to immediate dismissal. Refusal to submit to a drug or alcohol test, or adulteration of, or switching a urine or other sample will also be grounds for immediate dismissal. Participation in any alcohol or substance abuse rehabilitation program will not preclude disciplinary action against employees for any law or rule violation even though such law or rule violation may have been

connected in part with alcohol or drug abuse, and/or even the rehabilitation program is voluntarily undertaken.

Employees who may be drug/alcohol dependent are encouraged to voluntarily seek professional assistance through a treatment program connected with CMHA's Employee Assistance program. Employees who seek such assistance can consult directly with the Director of Human Resources or his designee. Discipline will not result to an employee who voluntarily discloses a drug/alcohol dependency, and who agrees to participate in a rehabilitation program, BEFORE any of the following triggering events:

1. The employee is asked to submit to a drug/alcohol test.
2. Pursuant to agency policy, the employee is required to submit to a drug/alcohol test.
3. The employee has violated any laws or rules of CMHA or of the Police Department involving the use of alcohol or illegal drugs, or the abuse of legally prescribed drugs.

Notwithstanding the above exceptions to discipline, if at any time while on duty an employee tests positive for alcohol or illegal drugs, or if such employee tests positive for abusing legally prescribed drugs, the employee will be subject to immediate dismissal.

**ARTICLE \_\_\_\_\_**

**NO STRIKE**

**ISSUE:** This issue, proposed by the CMHA, seeks to add a “no strike - no lock out” article.

**POSITION OF THE CMHA:** It is the position of the CMHA that such an article is necessary to protect the integrity of the Collective Bargaining Agreement.

**POSITION OF THE UNION:** It is the position of the Union that such an article is unnecessary because of Ohio Revised Code §4117.

**OPINION OF THE FACT-FINDER:** It is the opinion of the Fact-Finder that such an article does not harm the Union. It is further the opinion that if the law changes, either by legislative action or court interpretation, such article would be essential.

**RECOMMENDATION OF THE FACT-FINDER:** It is the recommendation of the Fact-Finder that the following article be added:

**ARTICLE XXXIV**

**NO-STRIKE**

The OPBA hereby affirms and agrees that it will not, either directly or indirectly, call, sanction, encourage, finance or assist in any way, nor shall any employee instigate or participate, either directly or indirectly, in any strike, slowdown, walkout, work stoppage, or other concerted interference with or the withholding of services from CMHA.

In addition, the OPBA shall cooperate at all times with CMHA in the continuation of its operations and services and shall actively discourage and attempt to

prevent any violation of this article. If any violation of this article occurs, the OPBA shall immediately notify all employees that the strike, slowdown, work stoppage, or other concerted interference with or the withholding of services from CMHA is prohibited, not sanctioned by the OPBA and order all employees to return to work immediately.

It is recognized by the parties that CMHA is responsible for and engaged in activities which are the basis of health, welfare and safety of its citizens and that any violation of this article would give rise to irreparable damage to CMHA and the public at large. Accordingly, it is understood and agreed that in the event of any violation of this article, CMHA shall be entitled to seek and to obtain immediate injunctive relief, along with the OPBA holding the CMHA harmless from any and all costs arising from the violation of this article.

It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate discharge or other disciplinary action.

CMHA shall not lock out any employee for the duration of this agreement.

## **ARTICLE \_\_\_\_\_**

### **PROMOTIONS AND PLACEMENT**

**ISSUE:** This issue, proposed by the Union, seeks to place restrictions on management to promote or deploy personnel.

POSITION OF THE UNION: It is the position of the Union that it desires to have promotion through the ranks. It also wishes that probationary employees be excluded from specialized units.

POSITION OF THE CMHA: It is the position of the CMHA that it is obligated to obtain the best possible candidates for any position. It further points to the fact that younger and unknown officers are the best prospects for undercover work.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that in-house opportunity is a legitimate objective of any union. However, it should not intrude on the obvious rights management. Limiting participation in specialized units to non-probationary officers can seriously impact the effectiveness of these units.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to this new Article is as follows:

**DO NOT ADD**

**ARTICLE \_\_\_\_\_**

**PROVIDING OF SPACE**

ISSUE: This issue, proposed by the Union, seeks to have the CMHA provide space of the Union to conduct its business.

POSITION OF THE UNION: It is the position of the Union that this is necessary due to the large number of employees in the bargaining unit and state requirements as to voting and elections.

POSITION OF THE CMHA: It is the position of the CMHA that, at the moment, it does not feel that it has any space for such purpose.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that although O.R.C. §4117.11 (A)(2) permits such indirect financial support of a labor organization, it is best that these arrangements be non-contractual and at the pleasure of management.

RECOMMENDATION OF THE FACT-FINDER:

The recommendation of the Fact-Finder as to this New Article is as follows:

**DO NOT ADD**

**ARTICLE \_\_\_\_\_**

**DISCRETIONARY RANGE TIME**

ISSUE: This issue, proposed by the Union, seeks the right of the officer to choose at his discretion to practice at the firing range and receive four (4) hours straight time pay.

POSITION OF THE UNION: It is the position of the Union that this would improve the competence of the officer and would serve the objectives of the Department.

POSITION OF THE CMHA: It is the position of the CMHA that the proposal is unnecessary, covered in Article XX, and represents a totally uncontrolled expense item for the CMHA.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the position of the CMHA is extremely well taken.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the Fact-Finder as to this New Article is as follows:

**DO NOT ADD**

**ARTICLE XXXXIII, SECTION 2**

**DURATION OF AGREEMENT**

ISSUE: This issue, proposed by the CMHA, seeks a new section setting forth the basis for retroactivity.

POSITION OF THE CMHA: It is the position of the CMHA that this is necessary in order to avoid any misunderstandings.

POSITION OF THE UNION: The Union does not object but does not agree that it is necessary.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that such a section may not be necessary but it can do no harm.

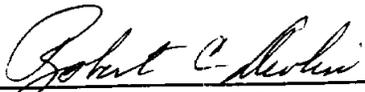
RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article XXXXVI, Section 2 read as follows:

**ARTICLE XXXXIII**

**DURATION OF AGREEMENT**

**Section 2.** The retroactivity referred to Section 1 of this article is the result of the agreement entered by the parties on November 30, 1999. A copy of such

agreement is marked Exhibit "A" and is attached hereto and made a part hereof as if fully rewritten herein.

  
\_\_\_\_\_  
ROBERT C. DEVLIN  
FACT-FINDER

Dated: June 5, 2000

**SERVICE**

A copy of the foregoing Report and Recommendations of the Fact-Finder has been sent to the following individuals by Overnight Express (unless otherwise indicated) on this 5<sup>th</sup> day of June, 2000:

George M. Albu, Administrator (By Regular U. S. Mail)  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215

Lessie Milton Jones, Esq.  
Kelley, McCann & Livingstone  
3500 BP Tower  
250 Public Square  
Cleveland, Ohio 44114-2302

Mark J. Volcheck, Esq.  
Climaco, Lefkowicz, Peca, Wilcox & Garofoli  
1228 Euclid Avenue, Suite 900  
Cleveland, Ohio 44115

  
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ROBERT C. DEVLIN  
FACT-FINDER

EXHIBIT A  
**ARBITRATION AGREEMENT**

It is hereby agreed by the Cuyahoga Metropolitan Housing Authority (Employer) that in consideration of the Ohio Patrolmen's Benevolent Association (Union) agreeing to waive the time limits for the fact-finder to conduct a fact-finding hearing and issue an opinion in the matter of contract negotiations between the Employer and Union (Sworn Officers), SERB Case No. 99-MED-10-0999, the Employer agrees to waive the limitation of the Conciliator's powers as provided in 4117.14(G)(11), in relation to increases in rates of compensation and other matters with cost implications awarded by the Conciliator. Thereby, the Employer agrees that increases in rates of compensation and other matters with cost implications awarded by the Conciliator may be effective in the 2000 calendar year.

FOR THE EMPLOYER:

Dated: 11/30/99

Jessie M. Jones

FOR THE UNION:

Mark Vetchel

EXHIBIT A