

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD  
MAR 5 10 47 AM '99

In the Matter of Fact Finding Between:

City of Beavercreek, Ohio

and

S.E.R.B. Cases No. 98-MED-10-1039  
98-MED-10-1040

Beavercreek Fraternal Order of  
Police Lodge No. 160

Appearances:

For the City:

Charles A. King  
Director of Labor Relations  
Clemans, Nelson & Associates, Inc.  
Cincinnati, Ohio

For the F.O.P.:

Susan D. Jansen, Esq.  
Logothetis, Pence & Doll  
Dayton, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan  
Fact Finder

I. Background:

Following a day of mediation efforts on March 12, 1999, these cases came on for hearing in Beavercreek, Ohio on March 20, 1999. What follows is a summary of the evidence on the fifteen (15) issues in dispute; the parties' contentions and arguments, the Fact Finder's Recommendations and the Rationale for same. In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth below, whenever such factors were put forward by the parties, to wit: the factors of past collectively bargained agreements; comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standard of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

References to the "current Contract" more accurately refer to the parties' most recently expired Agreement.

## II. Overview

As shall become apparent, the F.O.P. has secured a strong Contract over the course of its collective bargaining relationship with the City. Here the City has a new Chief and new Labor Relations Consultant. Understandably the City seeks to diminish the strength of the current Collective Bargaining Agreement. However, by and large the City has failed to offer any meaningful quid pro quo to accomplish its goals at the bargaining table, or to assist the Fact Finder in rationalizing Recommendations which would better meet its goals.

## III. Issue #1: Article I - Purpose, Section 1.06

### Evidence and Parties' Position:

The current Contract, at Section 1.06, under the bold caption "DEFINITIONS," states: "As used in this Agreement, the following terms shall have the meaning hereinafter described:," followed by subparagraphs A. through P., defining certain terms used in the text of the parties' Agreement, the City proposes to add to Section 1.06, the following language:

"This section is included for definitional purposes only. The parties agree that the following definitions neither create nor grant any substantive contractual rights."

The F.O.P. opposes this additional language.

The City contends that the new and additional language that it seeks would clarify that the terms included in the Article are for definitional purposes only, and do not confer any substantive rights on the parties. The City asserts that the F.O.P. has

agreed that these terms are definitions only, but has been reluctant to include the proposed language.

The F.O.P. notes that a definitional Section 1.06 has been in the Agreement since 1985. It contends that no problems have arisen as a result of this Section. While parties have had one scheduled arbitration due to a change in footwear initiated by the Chief which the bargaining unit grieved, and that grievance cited past practice, terms defined at 1.06 paragraph J., the grievance was not drafted by a labor relations expert and the grievance was ultimately settled. The F.O.P. contends that just one grievance over a period of several years wherein Section 1.06 is arguably referenced as a confirmation of a past practice based right simply fails to constitute a "problem" warranting the change the City proposes. Pointing to the provisions of Article XXIV, Sanctity of Agreement, by and large preserving past practices, the City asserts no valid basis exists to resist its proposed change.

Rationale:

It appears that the parties link Article XXIV with Article I, Section 1.06 to some extent. They are agreed that current Contract language obtain vis-a-vis Article XXIV. I'm therefore reluctant to change Section 1.06. The City has presented no evidence to overcome my reluctance in this regard.

Recommendation:

It is recommended that the parties retain the language of Section 1.06 in the current Contract.

Issue #2: Article VII - Grievance Procedure, Section 7.02 D.

Evidence and Parties' Positions:

The City would delete the provision at Section 7.02 D. of the current Contract which defines as grievable disputes concerning the meaning of "Laws and Rules governing the relationship between the City and its Employees." Grievances over "Laws" and "Rules" are not proper subjects of grievances, asserts the City, and hence 7.02 D. should be deleted. The City notes that 7.02 B. already provides for grievability over the reasonableness of Rules, and hence the provisions at 7.02 B, plus the inherent grievability of Rules inconsistent with the Agreement, render the "Rules" aspect of Section 7.02 D. unnecessary. The F.O.P., relying on Article XVI's provisions providing that the City shall adopt no ordinances or resolutions contrary to the terms and conditions of the Agreement as sufficient protection, is not opposed to the deletion of "Laws" from 7.02 D., but it does resist deletion of 7.02's reference to "Rules." This reference has long stood in Section 7.02 D. and the City puts forth no reason sufficient to warrant its removal.

Rationale:

The current Contract's language at 7.02 deals with the grievability of issues involving the "meaning, interpretation, application" of Rules, whereas the narrower provisions of 7.02 B. provide only for the grievability of the "reasonableness" of work Rules. Hence 7.02 D. is not simply redundant of 7.02 B.

Furthermore, there appears to have been no problem with this provision and hence no reason to change it exists.

Recommendation:

It is recommended that the parties' Agreement at 7.02 D. read as follows:

"D. The meaning, interpretation or application pertaining to Rules governing the relationship between the City and its employees."

Issue #3: Article VIII - Discipline

Evidence and Parties' Positions:

The City asserts that discipline for minor infractions, oral and written reprimands should not be subject to the same amount of cumbersome "procedure" as more severe disciplinary measures such as suspension or discharge. According to the City, such cumbersomeness with respect to, for example, oral reprimands, runs the risk of escalating the level of discipline; for the same cumbersome procedure, a disciplinary lay off might as well be imposed. Thus the City would significantly simplify procedures for the imposition of oral and written reprimands. The City also would delete the current Contract's provisions at 8.02 A.3 providing for formal notice of the right to be represented by an attorney-at-law. Recent judicial opinion asserts that there is no right to outside counsel asserts the City. Additionally, the City proposes that Section 8.08, which currently provides that "no polygraph shall be given for investigation purposes unless requested by the Employer to be used as an investigative tool only," also should provide that "this section shall not be read

so as to preclude the Employer from requesting that an employee submit to a polygraph," and that "the employee shall have the right to refuse any such request."

The F.O.P. opposes the City proposed changes to the Contract's Discipline provisions. It points out that a great deal of time in the 1995 negotiations for the current Contract was spent making significant changes to those very Sections which the City is proposing to change once again. Moreover, asserts the F.O.P., there were no disputes over these provisions during the term of the current Contract, and accordingly, what the F.O.P. characterizes as "wholesale" changes are not now warranted. More specifically with respect to Section 8.08 and the City's proposal for having the City expressly granted the right to request a polygraph, with a commensurate employee right to refuse any such request, the F.O.P. expresses concern about adverse inferences being drawn following an employee's refusal to an Employer request. Concerning outside Legal Counsel, referenced in Section 8.03 A.3., the F.O.P. notes that this provision was added in just the last negotiations. It's perceived as a valuable right since there are occasions where the individual employee's interest differs from the interest of the Lodge on a situation. And parties can provide in a collective bargaining agreement the right to private counsel.

The F.O.P. would add to Section 8.04 A. the sentence: "The employee has the right to waive the seven (7) days notice." The F.O.P. would also add to Section 8.04 C., the sentence: "this

purging schedule shall also apply to any documents which could be considered counseling of record such as, but not limited to, critical incident reports and sick leave abuse letters." The City is opposed to these changes. It asserts that O.R.C. 149.43 prohibits the addition sought to 8.04 C., and it points out that some "critical incident reports" can be complimentary of an employee. The F.O.P. retorts that it obviously refers only to negative "critical incident reports" and O.R.C. 149.43 would not be violated by its proposal since it does not call for the destruction of records.

Rationale:

The Statute calls for weight to be given to past collectively bargained provisions for a reason and that is, for stability. It's a particularly weighty factor where substantial changes have been made, as here, in the contract's provisions in the Contract just proceeding the Contract at impasse. This is especially so, where as here, no specific problems in administration of the Contract's provisions have been shown. The City has not put forth sufficient reason to dilute the substantial employee protections and safeguards in disciplinary matters secured in the current Contract. Accordingly, current Contract provisions will be recommended, with the caveat that the F.O.P.'s suggested addition to 8.04 A., which represents a most modest concession to the City's "cumbersomeness" concerns, will also be recommended.

Recommendation:

It is recommended that the parties retain and continue the current Contract's provisions at Article VIII - Discipline, with the addition to 8.04 A. of the sentence: "The employee has the right to waive the seven (7) days notice," said sentence to appear at the end of the current Contract's provisions at 8.04 A.

Issue #4: Article IX - Lay Offs and Promotions

Evidence and Parties' Positions:

The record reflects that in the parties' last negotiations they entered into a Memorandum of Understanding on June 7, 1996, wherein they agreed to establish "through the Labor-Management Committee promotional qualifications and a promotional process . . . ." This goal was not achieved. Both parties spent considerable time seeking to establish who was most at fault for no agreement having been reached. Meetings were held between the Chief and various F.O.P. Officers and several components of an objective process, such as seniority were agreed to, but other factors were not agreed to, such as peer evaluations. Differences also exist concerning the respective weight to accord the various factors to be considered in making promotion decisions. The City also sought a rule of one, whereas the F.O.P. sought a rule of three. The F.O.P. proposes a detailed promotional scheme setting forth the component and percentages it desires to see in a promotional process. In support of the rule of three, the City introduced data from suburban jurisdictions it asserts are comparable to Beavercreek, indicating that the rule

of three was more commonplace than the rule of one. In any event the City at this juncture seeks current Contract language. It points out that current language has been in the Contract for quite some time, and it has produced quality candidates to date. No changes are warranted, argues the City.

Rationale:

Consistent with other rationales offered herein, the case for change has not been made. In this arena the Contract has historically allowed Management considerable leeway and discretion in its promotional decisions. There was no evidence that this discretion has been abused, to justify contractualizing the factors and proportions only the F.O.P. seeks.

Recommendation:

It is recommended that the parties retain current Contract language in Article IX - Lay Offs and Promotions.

Issue #5: Article X - GENERAL PERSONNEL POLICIES, SECTION 10.02 PERSONNEL FILE

Evidence and Parties' Positions:

The F.O.P. believes supervisors keep files on employees separate and apart from the "official" personnel file. Accordingly, it seeks to delete the "personnel" reference in Section 10.02, and expand the provisions of 10.02 to "employee files," period. It also seeks a "new" provision spelling out that employee files include files maintained in "the supervisor's office." The City seeks current Contract language. It asserts

it does not authorize the maintenance of employee files by the Supervisors and has no knowledge of any such files being kept.

Rationale:

Suffice it to say that nothing brought forth in the record serves to disprove the City's representation that employee files are not maintained by the Department's supervisors. Accordingly, current Contract language shall be recommended.

Recommendation:

It is recommended that the parties retain current Contract language at Article X - General Personnel Policies, Section 10.02 Personnel File.

Issue #6: Article XI - HOLIDAYS, SECTION 11.01 B.2

Evidence and Parties' Positions:

The F.O.P. would add to Section 11.02 B. 2. the following provision:

"If an Employee is required to work on a holiday which is the Employee's regularly scheduled day off, or if the Employee is called in prior to the start of his regular shift or held over after the end of his regular shift, the Employee shall receive pay computed at the rate of two and one-half (2-1/2) times 1/2080th of the Employee's base annual rate for all hours worked on such holiday."

Such a provision is necessary, argues the F.O.P. because the Department is understaffed thereby increasing the chances of being called-in on a Holiday. The City says that its Holiday Pay provisions are well within those of other Dayton suburbs as set forth in its comparables for such jurisdictions, and no such jurisdictions pay double time and one-half. The F.O.P. challenges the legitimacy of the City's comparables, pointing out, for

example, that Centerville is non-union, and that the jurisdictions' populations are not set forth in the City's Comparable Exhibit. The City retorts that all said jurisdictions are geographically near to Beavercreek and other than Montgomery and Greene Counties, City of Dayton suburbs. The F.O.P. also notes that the Holiday provision has not changed since 1987.

Rationale:

The City's current Holiday provisions are well within the mainstream of comparable jurisdictions, whereas the F.O.P.'s proposal is not. Accordingly, current Contract language shall be recommended.

Recommendation:

It is recommended that the parties retain current Contract language at Article XI - Holidays, Section 11.01 B. 2., and indeed all of Article XI as in the current Contract.

Issue #7: Article XII - VACATION LEAVE

Evidence and Parties' Positions:

The current Contract's Vacation Article contains ten, (10) sections designated Sections 12.01 through 12.10. In the current Contract, Sections 12.04 and 12.05 provide as follows:

"12.04 Requests for vacation must be submitted thirty (30) days in advance. If two or more Employees, working the same shift, request vacation for the same period, the Employee with the most seniority by grade shall be given preference.

12.05 Employees who request non-scheduled vacations for a period of time other than that covered by Section 12.04 above must request same no less than twenty-four (24) hours in advance of taking such leave for approval by the supervisor unless otherwise approved by the Chief or his designee."

The F.O.P. would delete the terms "no less than twenty-four (24) hours" in Section 12.05. It asserts that current practice is for Supervisors to approve such non-scheduled vacation leave requests notwithstanding less than 24 hours notice, and that it simply seeks to contractualize this current practice.

It was the Chief's testimony that on May 13, 1997, he had put out a memo from Lt. Sampson, Operations Division, putting all on notice that the parties' Agreement on non-scheduled vacation leave had a 24 hour notice provision. The Memo read in relevant part:

"When an officer requests time off as Comp. Time or vacation time, please insure that Sections 17.02 and 12.05 are followed in regard to the 24 hour provisions of these clauses. . . . You may want to refresh your officers on these particular sections of the contract. . . ."

The Chief indicated that officers were just taking a day off when it appeared a nice day was in the offing, and doing so with less than 24 hours notice. If supervisors are granting non-scheduled vacation leave with less than 24 hours notice, they are doing so in contravention of the May 13, 1997 Memo.

The City would alter Section 12.04 as follows, delete Section 12.05, and renumber the remaining Sections, unchanged as to content. The City asserts that currently the Agreement contains language which is inconsistent and can be confusing to those not acquainted with the procedures used to make vacation requests. Thus the City would amend Section 12.04 to read as follows:

"12.04 Employees wishing to exercise seniority in vacation selection must submit their vacation requests at least thirty (30) days in advance. If two or more Employees, working the same shift, request vacation for the same period, the Employee with the most seniority by grade shall be given preference. An employee may not exercise seniority to bump a lower seniority employee from a scheduled vacation less than thirty (30) days prior to the scheduled vacation. Vacation requests submitted less than thirty (30) days in advance shall be granted on a first come, first served basis, and must be submitted no less than twenty-four (24) hours in advance of taking such leave for approval by the supervisor unless otherwise approved by the Chief or his designee."

Rationale:

In my view, Article XXIV of the Agreement would appear to sanction the anti-bumping provision the City seeks to contractualize, and the other concepts it seeks in its revised Section 12.04 already exist in the current Contract. It also appears that the F.O.P. seeks to avoid the impact of the clear language of Section 12.05 of the current Contract, reasserted in the management memo of May 13, 1997, by way of contractualizing a "practice" whose very existence is here challenged. In these circumstances neither party's requested changes to Article 12 shall be recommended.

Recommendation:

It is recommended that the parties retain the current Contract's provisions at Article XII - VACATION LEAVE.

Issue #8: Article XIII - SICK LEAVE, SECTION 13.07

CONVERSION OF SICK LEAVE, PARA. G.

Under the current Contract, Section 13.07 G. provides that:

"In any one calendar year, sick leave may be converted to vacation as provided below:

. . . .  
G. At retirement, an Employee may convert any sick leave days to regular pay. This conversion will be on the basis of two (2) sick leave days for one (1) of regular pay."

The F.O.P. seeks to enhance sick leave cash out at retirement. Thus the F.O.P. would alter the second sentence of Section 13.07 G. to read as follows: "This conversion will be on the basis of one (1) sick leave day for one (1) of regular pay." Of some fourteen (14) purportedly comparable jurisdictions within a ten (10) mile radius of Beavercreek, three--namely Riverside, West Carrolton, and Moraine--provide for a 1 for 1 ratio as proposed here argues the Union. I note that even these jurisdictions would limit the amount of days so converted; make same contingent upon a set number of years of service; or contingent upon hire on or before a certain date. The F.O.P. also cites some past separations and settlement agreements where a 1 for 1 sick leave conversion was a component.

The City proposes no changes to Article XIII - Sick Leave, asserting in particular that the City's sick leave conversion provisions are already among the richest in the comparable labor market. The City's "comparables" suburban Dayton jurisdictions and County government in Greene and Montgomery Counties substantiate its claim in this regard.

Rationale:

Suffice it to say that neither party's comparable data, a significant statutory factor to be considered, serves to support an enhancement at this time of an otherwise generous sick leave

conversion at retirement benefit in the context of a Contract, as noted hereinabove, which provides strong rights and other benefits as well. Accordingly, the status quo shall be recommended.

Recommendation:

It is recommended that the parties retain the current Contract's provisions at Article XIII - SICK LEAVE and at Section 13.07, Conversion of Sick Leave, paragraph G in particular.

Issue #9: Article XV - OVERTIME

Evidence and Parties' Positions:

The parties are agreed to 15.08 so that Section is not in issue. The City would change Section 15.02 to read as follows:

"15.02. All duty time in excess of a normal watch when authorized by a supervisor, will be considered overtime and paid as such. The word period for dispatchers and clerical personnel shall not exceed forty (40) hours of work in a seven (7) consecutive calendar day period. The work period for all sworn officers shall not exceed eighty-six (86) hours in a fourteen (14) calendar day period. The work periods are defined by the Employer. All time worked in excess of an Employee's defined work period shall be compensated as overtime.

The City asserts that Section 15.02 as it exists in the current Contract does not accurately reflect the employee's work schedules and the City seeks to amend the language to reference the correct work schedules of the employees.

The F.O.P. is opposed to such changes and seeks current Contract language. The F.O.P. notes that Section 15.02 currently specifies that "All duty time in excess of the normal watch or in excess of 80 hours bi-weekly when authorized by a supervisor will be considered overtime and paid as such." The Employer proposes

changing that language so that the work period for all sworn officers shall not exceed 86 hours in a 14-calendar day period. This proposal has the obvious effect of permitting the Employer to schedule sworn officers for six (6) additional hours in a 14-calendar day period without paying overtime.

The F.O.P. asserts that in the current Contract the parties agreed to a relevant Memorandum of Understanding providing as follows:

#### ADDENDUM

#### COLLECTIVE BARGAINING AGREEMENT BETWEEN FRATERNAL ORDER OF POLICE AND CITY OF BEAVERCREEK

#### MEMORANDUM OF UNDERSTANDING

#### ALTERNATIVE SCHEDULES

The parties will continue to examine alternative work schedules for those employees normally and customarily working under the twenty-eight (28) day, eight (8) hour work day scheduling cycle. The alternative work schedules to be implemented on a trial basis and evaluated will include a schedule referred to as the "6-3 schedule" which is a schedule whereby employees' schedules may be converted to a six (6) days on and three (3) days off, eight and one-half (8-1/2) hours per day scheduling cycle. The second alternative work schedule to be implemented on a trial basis and evaluated will be referred to as the "4-3 schedule" which is a schedule whereby employees' schedules may be converted to a rotating days off schedule of four (4) days on and three (3) days off, ten (10) hours per work day.

These schedules, or other schedules mutually agreed to by the parties, may be temporarily put into effect for only those work groups to which the Lodge and Management agree. The experimentation with these work schedules will begin on January 1, 1997, however, the duration of the temporary schedule change must also be agreed to by mutual agreement of the parties prior to its implementation. The regular work day for employees temporarily working either the 6-3 schedule or the 4-3 schedule will be either eight and one-half (8-1/2) hours or ten (10) hours respectively at the straight-time rate.

The parties must mutually agree to implement on a permanent basis, a schedule which differs from the current twenty-eight (28) day, eight (8) hour work day scheduling cycle.

Absent agreement pursuant to the provisions and procedures set forth herein, all terms and conditions of the collective bargaining agreements will remain in full force and effect.

The F.O.P. takes the position that the City's proposal here is of heightened significance because in the above-referenced M.O.U. the parties agreed to examine alternative work schedules and implement such work schedules on a trial basis for evaluation. The F.O.P. agreed that while these temporary work schedules were in place, those hours worked in excess of 80 hours bi-weekly would be at the straight-time rate. The parties did examine alternate work schedules during the term of this Agreement.

During the instant negotiations, when the F.O.P. raised the issue of negotiating a work schedule to be put into place either on a temporary, experimental basis or on a permanent basis, the Employer took the position that scheduling was not a mandatory subject of bargaining and refused to discuss the matter, despite the fact the contract contained a Memorandum of Understanding on this very issue. In response, the F.O.P. put forth a formal proposal regarding scheduling and filed an unfair labor practice charge. Clearly, the Employer's proposal to expand upon the number of hours which employees may be required to work prior to the payment of overtime, will allow the Employer to institute work schedules unilaterally, without discussion with the F.O.P.,

in contravention of the spirit of the Memorandum of Understanding which was agreed to by the parties in the previous negotiations.

In this proceeding the City again asserts that the F.O.P.'s position is tantamount to an attempt to dictate schedules which is not a mandatory subject of bargaining. The City asserts that the F.O.P. had input into the City's preferred schedule.

Rationale:

The parties' experimentation committed to in the M.O.U. failed to result in the mutually agreed to changes in the work schedule and the trigger for the payment of overtime rates therein contemplated. Accordingly, the past collectively bargained agreements factor looms large. Concerning the non-mandatory subject of bargaining contentions of the City, it appears to me that while current Contract language may indirectly restrict scheduling options, it does not rise to the level of a contractual dictate of scheduling. Ultimately the issue of the mandatory or non-mandatory nature of this matter must be decided in other forums. Retention, therefore, of current Contract language in Article XV - OVERTIME shall be recommended.

Recommendation:

It is recommended that the parties retain the provisions of Article XV - OVERTIME as set forth in the current Contract, with the exception of Section 15.08, which shall read as mutually agreed as follows:

"15.08 Range and Training Time, Department Hearings

All of duty hours worked related to scheduled range training, scheduled training classes and scheduled mandatory

departmental meetings attended will be paid at time and one-half (1-1/2). Such range time, training time and departmental meetings will be compensated at a minimum of two (2) hours of actual time worked."

Issue #10: Article XVII - COMPENSATION TIME

Evidence and Parties' Positions:

The F.O.P. proposes that the parties retain current Contract language. Current Contract language provides as follows:

- "17.01 Employees who wish to receive compensation time, instead of overtime, for time worked above their eighty (80) hour bi-weekly pay period shall be allowed to accumulate such time up to 240 hours. Compensation time will be earned at the same rate of pay as overtime, one and one-half (1 1/2) times the employee's hourly rate.
- 17.02 Requests for compensation time off must be submitted twenty-four (24) hours in advance of taking such leave for approval by the supervisor unless otherwise approved by the Chief.
- 17.03 Employees may only take the compensation time off if it does not substantially interfere with the operation of the Department of Police.
- 17.04 Authorized Field Training Officers (FTO) shall be compensated at the rate of one and one-half hours (1 1/2) of compensatory time per day that they directly train a probationary officer or other officer assigned to a Field Training Officer.

The City proposes several changes. Thus the City proposes as follows:

"Section 17.01. employees who wish to receive compensatory time, instead of overtime, for time worked above their work period shall be allowed to accumulate such time up to two hundred forty (240) hours. Compensatory time will be earned at the same rate of pay as overtime, one and one-half (1 1/2) times the Employee's hourly rate.

Section 17.02. Requests for compensatory time off must normally be submitted sixteen (16) hours in advance of taking sick leave for approval by the supervisor.

Supervisors shall have discretion to grant requests upon shorter notice.

Section 17.03. Employees may only take the compensatory time off if it does not substantially interfere with the operation of the Department of Police.

the City would delete Section 17.04, on the understanding that the F.T.O. would simply get paid at time and one-half (1 1/2) rate for F.T.O. duties. The City points out that Section 17.01 refers to an eighty (80) hour biweekly pay period, whereas sworn employees within the bargaining unit are not currently on an eighty (80) hour biweekly schedule. The language should be amended to accommodate the sworn employees' current eighty-six (86) hour biweekly pay period.

Concerning Section 17.02, the City asserts that compensatory time should be used when time off is needed on short notice. The City justifies its proposed deletion of 17.04, on the grounds that in a continuous operation organization such as the Police Department, time off presents staffing problems and results in increased costs and decreased efficiency. The City would incorporate its time and one-half pay concept in a new provision at Article 20 - WAGES, ACTING SUPERVISOR PAY, SHIFT DIFFERENTIAL, reading as follows:

"Section 20.7. Field Training Officer Pay. Authorized Field Training Officers (FTO) shall receive one and one-half (1 1/2) hours of pay at the employee's regular hourly rate of pay for each day that they directly train a probationary officer or other officer assigned to a Field Training Officer."

In support of its provision the F.O.P. notes that the Section 17.01 issue and Contract provision is tied to Issue #9

and Article 15 overtime, and that it resists same on the same grounds. The F.O.P. contends the F.T.O.'s prefer remuneration based on comp time because of the added pressure of being a Field Training Officer.

The City additionally contends that Section 17.01, as applied to dispatcher and civilian employees of the Police Department is unlawful under FLSA laws. The F.O.P. retorts that historically this provision has not been applied to these employees.

The F.O.P. additionally asserts that Section 17.02 and 17.04 were just put into the Contract in 1993 and 1996, respectively, and there's no need to change them now.

Rationale:

As the F.O.P. points out, Section 17.01 is tied to Article 15 - Overtime. For the reasons noted with respect to Article 15 hereinabove, no change in Section 17.01 will be recommended. Concerning Section 17.02, the City's proposals appear to be an incentive for the use of comp time. As comp time complicates scheduling issues, and with the existence here of a somewhat understaffed situation, I'm inclined to recommend the City's proposal, which appears to be aimed at modestly reducing build ups of large compensatory time banks. Likewise, I'm inclined to recommend the deletion of Section 17.04, and the addition of the concept of the City proposed Section 20.7 Field Training Officer Pay. As presently proposed, the City's Section 20.7 is susceptible to the construction that only a full day's service

would warrant time and one-half, and that less than a full day's service as a training officer would only warrant straight time, a construction not intended. The Fact Finder's recommended proposal avoids that construction.

Recommendation:

It is recommended that Section 17.01 of the current Contract be retained.

It is recommended that the City's Section 17.02 proposal be adopted.

It is recommended that Section 17.03 of the current Contract be retained.

It is recommended that Section 17.04 be deleted and that the following Section 20.07 be adopted:

"Section 20.7. Field Training Officer.

Authorized Field Training Officers (FTO) shall receive one and one-half (1 1/2) hours of pay at the employee's regular hourly rate of pay for all assignments involving directly training a probationary officer or other officer assigned to a Field Training Officer."

Additionally, references in the current Contract herein recommended to be retained to "compensation time" (including the title of the Article) should be changed to "compensatory time."

Issue #11: Article XVIII - INSURANCE

Evidence and Parties' Positions:

Currently the City pays the full premium for health insurance. The City proposes introducing caps on the City's cost for monthly premium payments. The caps proposed, \$175.00 for single coverage, and \$525.00 for family coverage, are well

above current premium rates, hence the caps will have the effect of continuing the employees' fully paid insurance in the short term. However, due to the risk of increasing costs for insurance coverage, the City feels that it is necessary to introduce the concept of premium sharing. Such an arrangement is not uncommon, asserts the City, and is becoming the rule rather than the exception.

The City would also delete references to any specific plans or coverages within the insurance Article, asserting it needs the flexibility to compare and potentially change providers and coverages because the insurance industry is constantly changing. The City asserts that it is increasingly difficult to find the exact same coverage year after year, and the City must have some flexibility in order to provide reasonably priced coverage to its employees.

In support of its proposals the City refers to SERB's 1998 Report on the Cost of Health Insurance in Ohio's Public Sector. More particularly, the City points to the following data from said Report: the average employee contribution for family coverage Statewide for city employees is \$15.95 per month; more specifically, in the Dayton region municipal employees pay \$59.87 for family coverage. The Report also reflects that 75% of Employers in the Dayton region require an average employee contribution to the premium of \$67.83 or a 14.4% contribution. Family Plan rates since 1996 (April to April) have been as follows: 1996-1997 = \$442.65; 1997-1998 = \$442.65; 1998-1999 =

\$495.19; 1999-2000 = \$495.19. The Anthem Summary of Benefits document submitted by the City demonstrates that the City maintains a very good plan. The City contends that Section 18.01 C's "Lodge approval" language results in one group of City employees holding the City and other employee groups hostage.

The F.O.P. seeks current Contract language. It asserts that such an important benefit as Employer paid health insurance ought not to be changed and diluted on the basis of mere developing trends. It notes that current Contract language at Section 18.01 C. "subject to the approval of the Lodge," was agreed to in just the last negotiations in 1996, as was the dental insurance, all as a consequence of the Lodge's cooperation in fashioning the Plan's coverage so as to save money. The F.O.P. asserts that in the absence, as here, of a history of non-cooperativeness, it is unfair to assert that the Lodge is holding the City hostage.

Rationale:

As the F.O.P. points out, Employer paid health insurance is a particularly valuable benefit, and one that has obtained in numerous successive contracts. To alter this scheme and break the psychological barrier to Employee participation in the health insurance premium would require as a minimum some quid pro quo of meaningful significance. However, no such quid pro quo is being offered by the City. Here again, the statutory factor of past collectively bargained agreements weighs heavily. This is especially so in light of the quite stable dollar amounts of the

premium itself. Accordingly, current Contract language will be recommended.

Recommendation:

It is recommended that the parties retain the current Contract's language at Article XVIII - Insurance.

Issue #12: Article XIX - FRINGE BENEFITS

Evidence and Parties' Positions:

Both parties would make changes in various provisions of Article XIX. The City would change Section 19.01 B. to substitute Supervisor approval instead of the Chief and to add twenty-four (24) hours advance notice for approval of a personal day of absence. Changes to benefit levels are not warranted, urges the City, as the majority are either new to the Contract or were increased during the last negotiations. The City will agree to allow certain employees to purchase their service weapon upon retirement for the price of \$1.00. Both parties are agreed on modified language for the last paragraph of Section 19.04. The City would delete Section 19.05's reference to "personal career development" and substitute "bargaining unit classification." The City would further delete subparagraph B., and C. of Section 19.06 Retirement. The F.O.P. would retain these provisions.

The F.O.P. would increase by \$100.00 the education incentive bonus in Section 19.04. The F.O.P. would retain current language in Sections 19.01, 19.02, 19.03, 19.05, and 19.06, but would add to 19.06 a paragraph G, a provision allowing for purchase of

one's service weapon for \$1.00 for "disability retirement not related to stress."

Rationale:

I find that neither party has satisfactorily justified the changes they seek, other than the last paragraph of Section 19.04, and the extrication of the Chief from direct decisions concerning the granting of permission to take a personal day. The City's provision concerning the new benefit of purchasing one's service weapon, more conservative than that proposed by the F.O.P. will be recommended.

Recommendation:

It is recommended that the parties retain the provisions of Article XIX - Fringe Benefits, except as follows:

Substitute "Supervisor" for "Chief in Section 19.01 B.

The last paragraph of Section 19.04 shall read as follows:

"For those employees hired after January 1, 1996 and for those employees who have not earned any credits towards either an Associate's, Bachelor's, or Post Graduate Degree upon the effective date of this Contract, the degree earned must be in a field of study related to the Employee's bargaining unit work in order to qualify for the incentive."

Section 19.06, subparagraph G. [new] shall read:

"G. Upon age and service retirement, the Employee shall have the option to purchase his service weapon for the cost of \$1.00."

Issue #13: Article XX - WAGES, ACTING SUPERVISOR PAY, SHIFT DIFFERENTIAL

Evidence and Parties' Positions:

The F.O.P. seeks an across-the-board increase of 6% effective January 1, 1999; again on January 1, 2000; and again on January 1, 2001. It also seeks a 20¢ increase in the night time and weekend differentials set forth in Section 20.06 A. and B. respectively. The City proposes a 2.5% increase effective January 1 of 1999; 2000; and 2001. It resists an increase in night and weekend differential. The evidence of record indicates that the City could afford the 6% increases the F.O.P. seeks so ability-to-pay is not in issue. But the real issue is whether such represents a fair and equitable increase. The parties' comparable data have several overlaps. The City relies on suburban Dayton jurisdictions as well as the counties of Greene and Montgomery. Counties have different funding bases and sources and hence the inclusion of counties skews somewhat the "averages" the City relies upon. Similarly, the F.O.P. relies on Dayton, a large municipality with significantly greater revenues. This somewhat skews the F.O.P.'s averages. And in any event, unlike many of the municipalities in both parties "comparables," Beavercreek does not have an income tax as a revenue source.

The record shows that during the current Contract the bargaining unit received three 3.5% increases. In the predecessor Contract they received three 4% increases. The F.O.P. notes that in the current Contract they received other

improvements, such as dental insurance; seniority bonus increases; and vacation accrual enhancements. The City relies significantly on the low CPI of but 1.6%, or lower more currently. It also relies significantly on internal comparables, to wit, the 2% increases given all non-union City employees. It notes that in the community at large, 3% increases are the norm. Its external comparables support the conclusion that its 2% proposal will maintain the bargaining unit's relative placement, contends the City.

The F.O.P. notes the somewhat understaffed situation of the bargaining unit; growth in the community; and consequently its increased work load. Its comparable data show that 4% and 3.5% increases are equal and each represents the most frequent rate of increase conferred in the jurisdictions it regards as comparable. Indeed the average increase among the F.O.P.'s comparables is 3.7%. It counters the significance of internal comparables with the proposition that to equate the bargaining unit here with same serves to strip the bargaining unit of their bargaining rights as a practical matter.

Rationale:

Not surprising this issue produced the most data and several members of the parties' respective negotiating teams weighed in on the subject. In my view, taking into account the low rate of inflation and its persistence and longevity, the norm in the nineties has been in the "threes." The evidence of record here confirms that. This being so and in light of the most recent

past collectively bargained agreement, I believe 3.5% per year of the Contract represents a fair and equitable adjustment and increase in compensation. No increase in differentials will be recommended at this time.

Recommendation:

It is recommended that the parties' Contract at Article XX provide as follows:

Section 20.01 - current Contract language

Section 20.02 - Effective January 1, 1999, 3.5% increase

Section 20.03 - Effective January 1, 2000, 3.5% increase

Section 20.04 - Effective January 1, 2001, 3.5% increase

Section 20.05 - current Contract language

Section 20.06 - current Contract language

Section 20.07 - See Issue #10, hereinabove

Issue #14: Article XXI - UNIFORM ALLOTMENT

Evidence and Parties' Positions:

The F.O.P. seeks to increase the non-uniformed employee, i.e., detectives, clothing allowance at Section 21.03 some ten (10) dollars from \$40.00 to \$50.00 per pay period. The City resists same, arguing that said allowance is already one of the most generous among comparable jurisdictions. Its comparables support this argument.

Rationale:

The record supports the City's position for maintaining the status quo. It makes more sense to focus direct economic improvements to the across-the-board wage increase.

Recommendation:

It is recommended that the parties retain the provisions of Article XXI - Uniform Allowance in the current Contract.

Issue #15: Article XXII - MISCELLANEOUS

Evidence and Parties' Positions:

The City would delete the second and last paragraph of Section 22.03, which reads as follows:

"Both parties agree to formally reconsider the minimum manning requirement for each shift during February of the second and third year of this Agreement."

The City takes the position that this was transitional language which has no application in this the successor Agreement.

Otherwise the City would make no changes. The F.O.P. would retain the provisions of Article XXII as per the current Contract.

The parties differ as to whether there has in fact been any "formal reconsideration" of the minimum manning concept.

Rationale:

Periodic formal reconsideration of the minimum manning requirement relates to a safety issue. Safety is paramount. I see no reason to delete the second and last paragraph of Section 22.03.

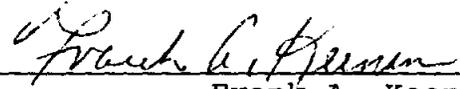
Recommendation:

It is recommended that the parties retain the provisions of Article XXII - Miscellaneous set forth in the current Contract.

It is further recommended that all tentatively agreed to Articles and provisions be made a part of the parties' Agreement.

This concludes the Fact Finder's Report and Recommendations.

April 8, 1999



Frank A. Keenan  
Fact Finder