

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

OCT 15 P 1:52

October 9, 2002

In the Matter of Conciliation Between:

CITY OF EAST CLEVELAND)	
)	CONCILIATION AWARD
and)	
)	SERB Case No. 00-MED-05-0614
OHIO PATROLMEN'S BENEVOLENT)	Basic Police Officer (BPO) Unit
ASSOCIATION)	

APPEARANCES

For the City:

Frederick Englehart, Esq.	Counsel
Ronda G. Curtis	Asst. Director of Law

For the Union:

Mark J. Volcheck, Esq.	Counsel
David Perez	Negotiating Committeeman
Todd G. Carroscia	Negotiating Committeeman

Conciliator:

Virginia Wallace-Curry

BACKGROUND

The instant case involves the City of East Cleveland (the "City") and the Ohio Patrolmen's Benevolent Association (the "Union"). The bargaining unit consists of all non-civil service Police Officers in the classification of Basic Police Officer (BPO) working for the City. There are approximately six (6) in the bargaining unit.¹ This bargaining unit is engaged primarily in traffic enforcement activities and is separate from the bargaining unit of Ranking Police officers (Sergeants and Lieutenants) and the bargaining unit consisting of civil service Police Officers (non-rank).

There is presently no contract between the bargaining unit and the City. This is their first contract. The bargaining unit was certified by SERB on April 27, 2000.

The parties began negotiating in late 2000. They reached tentative agreement on all but one issue involving the residency requirement. The parties mutually agreed that statutory restrictions on the conciliator's power to award compensation shall be lifted and that the time requirements for fact-finding be extended. The parties mutually agreed to bypass the fact-finding process and proceed directly to conciliation.

A conciliation hearing on the remaining issue of residency was held on September 18, 2002 before Virginia Wallace-Curry. Pre-hearing statements were exchanged the day of the hearing. It was agreed by the parties that the tentative agreements reached by them were acceptable and should be incorporated in the Conciliator's award.

The Conciliator is required to select one party's offer or the other without modification. Selection is based upon the criteria set forth in Section 4117.14(g)(7) of the Ohio Revised Code.

¹At the present time, all PBOs are laid off. The City contends there is no plan to recall them due to financial difficulties.

They are:

- (a) Past collectively bargaining agreement, if any between the parties;
- (b) Comparison of the issues submitted to final offer settlement 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;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken to consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUE

Whether the BPO unit should be exempt from § 30-A of the City's Charter, requiring all city employees to be residents of the City of East Cleveland. The Union opposes the residency requirement and proposes the following article be incorporated into the parties' contract:

Article 32, Section 32.5 - Miscellaneous

No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.

POSITIONS OF THE PARTIES

Union's Position

The Union's proposal to contractually protect the unit from any residency requirement seeks parity with the other safety forces in the City. Furthermore, the proposal is justified by consideration of the public interest and safety of the employees and their families.

The Union argues that other comparable bargaining units and safety forces in the City are exempt from the residency requirement. Civil Service Police Officers in the City enjoy the identical provision proposed by the BPO unit. The City tried and failed to remove the provision from the contract in conciliation this year. The required training and certification requirements of a BPO are the very same as those of civil service Police Officer. Both are certified Ohio Peace Officers. They have every right and duty to arrest, detain and pursue criminals. The only distinction is that BPOs duties are primarily traffic enforcement. Thus, there is no reason to deny BPO Police Officers the same benefit enjoyed by civil service Police Officers.

Similarly, both the Ranking Police Officers and Firefighters in the City were able to successfully maintain a contractual bar against any residency requirement through conciliation awards for their last collective bargaining agreements.

In addition, the City recently (around September 2001) took over an ambulance service that was formerly run by Huron Road Hospital. The City Council exempted all EMS employees from any residency requirement. This, a review of the safety forces in the City supports the Union's proposal.

The interest in the public's welfare additionally supports the Union's position. A residency requirement would limit the pool of applicants from employment. The minimum job

qualifications for BPO Police Officers are the same as civil service Police Officers. Of the six (6) BPO Police Officers, five (5) are not and have never been residents of the City. All were hired after 1996, when the residency requirement became effective. Thus the danger of limiting the pool of qualified candidates for these important positions by requiring residency is proven by experience.²

The Union contends that there is a safety concern for the officers. Off-duty officers face potential problems living in the City because its small area, dense population and high crime rate would subject officers to a stressful home-life environment and possible harassment and retaliation from citizens with whom they interact. Just as other Police Officers in the Department are protected from such potential danger by collective bargaining agreements prohibiting a residency requirement, so too should the BPO Police Officers be protected.

Numerous employees are exempt from residency being a requirement of employment, including EMS, firefighters, ranking Police Officers and civil service Police Officers. Of the three hundred seventy-six (376) employees of East Cleveland, one hundred eighty (180), forty-eight percent (48%), are non-residents and half were hired after 1996. The residency exemption for EMS workers was instituted by City Council in the latter half of 2001. There is no logical explanation as to why this bargaining unit of BPO Police Officers should be treated differently

²The Union also contends that the City offers no proposal and instead relies on the Charter provision or a proposal that applies to the six BPOs, such constitutes an unconstitutional hardship on all the officers. It cites *Buckley v. Cincinnati* (1980), 63 Ohio St. 2d 42; *Fraternal Order of Police v. Hunter* (1975), 49 Ohio App. 2d 185 (holding that a rule promulgated by the civil service commission of a municipality, which makes any officer or employee not residing within the city limits after a specific date subject to dismissal, is invalid when applied to those employed before the enactment date). Forcing officers to relocate would also cause hardship and expense they could not afford, given the low compensation of the position (top wage of \$10.82/hr.)

than their fellow Police Officers in the City and should have no less rights than firefighters or EMS workers.

The City has the right to establish prospective residency requirements, but residency is a mandatory subject of bargaining. For the reasons stated above and upon evidence submitted at conciliation, the Union requests that its final offer stated herein be accepted. The Union requests that the summary of the tentative agreements submitted by the parties be incorporated and made a part of the conciliation award as final offers.

City's Position

The City argues that the vast majority of employees, both represented and non-represented, are required by City Charter to be East Cleveland residents. The City seeks only to apply its charter provisions to the BPOs, as it does a majority of its employees. Five of the City's eight separate collective bargaining agreements require City residency. Of the 160 employees covered by collective bargaining agreements, 41 are bound by residency and only 119 are not. Of the remaining 158 non-Union employees, the vast majority must be City residents. Two of the union contracts that require City residency, the Corrections and Dispatchers contracts, were negotiated by the OPBA, the Union in this case.

The City contends that residency requirements for police officers are beneficial to the community as whole, and are constitutionally permissible. The City has an interest in promoting employee loyalty, identity and community interest. The residency requirement helps accomplish these important goals. It encourages employees to maintain a sensitive and courteous attitude toward their fellow City citizens and enable employees to participate in many neighborhood and

community affairs, promoting goodwill between employees and citizens.

The City argues that residency also economically benefits all parties, because tax dollars generated from payroll remain in the community and City employees patronize local businesses. Living and working in the same community familiarizes the employees with the neighborhoods, the businesses and the citizens of the City. This helps both the police department and City residents to solve problems and resolve conflicts as they arise.

A Municipality or Civil Service Commission has the right, through the City Charter, to regulate and enforce provisions affecting the municipal government, including the right to enforce residency requirements upon municipal employees. This issue has been found not to violate the constitutional rights of any citizen or cause extreme hardship and shall thereby be upheld by the courts. *State, ex rel. Brown v. Summit County Board of Elections* (1989), 46 Ohio St. 3d 166, 545 N.E. 2d 1256. Residency affects the terms and conditions of employment and this is a mandatory subject of bargaining under Ohio Revised Code 4117.08.

However, it is entirely legitimate for a city to adopt the position that residency be a condition of employment. A place of residence is not a “God-given, constitutional right, determinable and enforceable by the employee against his employer.” *Fraternal Order of Police v. Hunter* (1975) 49 Ohio App. 2d 185, 219, 360 N.E. 2d 708, 727, citing *Fire Fighters Local 1645 v. Salt Lake City* (1969), 22 Utah 2d 115, 449 P.2d 239. Likewise, the right to hold a position as a police officer is not a guaranteed right and may be forfeited by failure to comply with a condition of employment. *McCarthy v. Philadelphia Civil Service Commission* (1976), 424 U.S. 645.

Arguing that the BPO contract should contain an exemption from the residency

requirement simply because a few other safety forces' contracts do ignores several important facts. First, the majority of bargained for employees must be City residents, including the quasi-safety forces employees covered by the Corrections and Dispatchers contracts represented by the same Union. Second, the individuality of each collective bargaining experience and the particular trade-offs that produced the agreement. Third, simply importing that provision from another agreement allows the Union to cherry pick another contract.

For all the foregoing reasons, the City submits that the Conciliator adopt the position advanced by the City in this matter.

ANALYSIS

Based on the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code and the evidence and arguments of the parties, the Conciliator selects the position of the Union to exempt bargaining unit members from the residency requirement.

Although the City has the lawful authority under the Ohio Constitution to promulgate and enforce a residency requirement, Ohio Revised Code Section 4117.08 makes a residency requirement a mandatory subject of bargaining. The City has waived the residency requirement in past collective bargaining agreements for its safety forces, namely, the Civil Service Police Officers, Ranking Police Officers, and the Firefighters. The City's attempts to retract this provision from the safety forces agreements was unanimously rejected by three conciliators. In addition, the City recently exempted EMS employees from a residency requirement.

One of the factors set forth in Section 4117(G)(7) is a comparison of this issue with regard to other employees doing comparable work, "giving consideration to the factors peculiar

to the area and classification involved.” Therefore, an internal comparison of the City’s safety forces with regard to the residency issue is appropriate. The reasons that the three conciliators cited for retaining an exemption to the residency requirement are applicable here and compel a decision to adopt an exemption for the BPOs.

The job description and requirements for BPOs state that BPOs must hold a valid and current Ohio Peace Officer’s Certification, including certification in firearms proficiency. Although their duties are primarily traffic enforcement, they may be required to perform some of the duties of a (Classified) police officer in crime prevention and repression. They patrol assigned areas, serve outstanding warrants and are dispatched on calls when the civil service Police Officers are otherwise engaged. Consequently, the BPOs face the same safety concerns on the job and off-duty as other safety forces in the City.

The Union voices a concern for the safety of the Police Officers and their families living if they are required to live in the City. The City of East Cleveland is geographically small, 3.5 square miles (one square mile being parks), with approximately 33, 000 residents. The Officers and their families would be visible targets for retaliation by criminals and citizens. Police interaction with the public is rarely a positive event. The unrebutted anecdotal evidence presented by the Union of assaults on Police Officers living in the City substantiates these fears. A Police Officer’s car was stolen; an Officer was shot at while at home; a Detective’s home experienced an attempted break-in and he was threatened by drug dealers. The attitudinal benefits, for BPOs and citizens, that the City claims would be derived by the BPOs living in the City is purely speculative and not supported by the evidence.

Similarly, the arguments regarding the economic benefits of employee residency are too

speculative and have been rejected by all three conciliators³. Likewise, in the instance case, the City was unable to offer any evidence to quantify the monetary benefits to the City and local business. Indeed, as the conciliators noted, there is an economic cost to attracting and retaining qualified candidates willing to accept residency as a condition of employment. Most of the surrounding communities do not have a residency requirement and have more lucrative compensation packages. Other concerns, such as available and suitable housing and difficulties with the school system, will act to severely limit the applicant pool and possibly jeopardize the safety of the citizens of East Cleveland.

The statistics on resident versus non-resident employees of the City are not unequivocal. The City claims that a vast majority of City employees, union and non-union, are residents of the City. The Union claims that the statistics show that 48% of City employees are non-residents. The one fact is clear and unequivocal. That is that the safety forces of Civil Service Police Officers, Ranking Police Officers, Firefighters and EMS employees are exempt from a residency requirement. Only the Dispatchers and Corrections Officers are not. However, these employees do not have the same safety concerns as the former, because they do not interact directly with the criminals and citizens who are on the street. As such, residency was not a concern these units voiced during negotiations. However, the BPOs are faced with the same problems and concerns of the remaining safety forces and have voiced those concerns. They should be treated in the same manner. This is consistent with Section 4117.14(G)(7) and is selected by this Conciliator.

³Anna DuVal Smith, East Cleveland Fire Fighters and City of East Cleveland, Case No. 00-MED-10-1069, September 4, 2001; Nels E. Nelson, Fraternal Order of Police, Lodge No. 39 (Sergeants) and City of East Cleveland, November 14, 2001; David M. Pincus, Ohio Patrolmen's Benevolent Association (Civil Service Officers Below Rank of Sergeant) and City of East Cleveland, Case No. 00-MED-1-11707, March 123, 2002.

AWARD

1. The Conciliator selects the Union's final offer to be incorporated into the parties' collective bargaining agreement.

Article 32, Section 32.5 - Miscellaneous

No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.

2. The Conciliator incorporates the tentative agreements of the parties, attached as Exhibit A, into the Award.

Virginia Wallace-Curry
Conciliator

October 9, 2002
Cuyahoga County, Ohio

STATUS

PROPOSALS OF THE CITY OF EAST CLEVELAND

AND

THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

FOR

POLICE OFFICERS: (BPO UNIT)

September 11, 2002

I. TENTATIVE AGREEMENTS

1. **Article 1: Preamble**

Adopt language from Corrections contract.

2. **Article 2: Purpose and Intent**

Adopt language from Corrections contract.

3. **Article 3: Recognition**

Amend Corrections Contract, Article III, Section 1 as follows:

The Employer agrees that it has and will continue to recognize the OPBA as the exclusive representative for negotiating wages and salaries, hours of work, and all other terms and conditions of employment *for all police officers working for the City of East Cleveland in the capacity of a BPO so recognized by SERB in Case No. 99-REP-09-0195*, hereinafter referred to as employees or "the bargaining unit," *and excluding Civil Service Police Officers*. The Employer and the OPBA agree to continue to negotiate with each other in good faith on all matters concerning the employment of said employees.

Add: *The duties of a BPO shall be primarily traffic enforcement. Traffic enforcement shall be defined as the enforcement of motor vehicle traffic laws.*

4. **Article 4: Dues Deduction**

Adopt language from Corrections contract.

5. **Article 5: Agency Shop**

Adopt language from Corrections contract.

6. **Article 6: Management Rights**

Adopt language from Patrol contract.

7. **Article 7: Employee Rights**

§§ 7.1 through 7.6: Adopt language from Corrections contract.

§ 7.7 from Corrections contract: *Housekeeping*: End sentence after word, "considered," and insert "If" before word, "during."

§7.8 from Corrections contract: Second sentence, add "and/or a CVSA" after "polygraph examination";

§7.9 Add "or by the Chief of Police," after word "civilians" in first sentence.

§7.10 Adopt Section 7.10 from Patrol contract.

8. **Article 8: No Strike**

Adopt language from Corrections contract.

9. **Article 9: Discipline**

Adopt language from Corrections contract.

Housekeeping: § 9.4 -- Fifth word in sentence should be "emergency," not "emergence."

10. **Article 10: Association Representation**

Adopt language from Corrections contract but incorporate the following change:

§10.2 Change "Two members," to "One (1) member."

11. **Article 11: Probationary Period**

Adopt language from Patrol contract.

12. **Article 12: Seniority**

Adopt language from Corrections contract.

AND

Add to end of first sentence: "in the capacity of a BPO as defined in Article 3, Section One."

Housekeeping: § 2 -- Sixth word in sentence should be "*terminated*," not "*determined*."

13. **Article 13: Grievance Procedure**

Adopt language from Corrections contract.

Housekeeping: §13.2(a) -- Remove underscore below word, "*of*."

14. **Article 14: Arbitration**

Adopt language from Article XIV, Corrections contract.

15. **Article 15: Non Discrimination**

Adopt language from Article XV, Corrections contract.

16. **Article 16: Construction of Agreement**

Adopt language from Article XVI, Corrections contract.

17. **Article 17: Obligation to Negotiate**

Adopt language from Article XVII, Corrections contract.

18. **Article 18: Conformity with Law**

Adopt language from Article XVIII, Corrections contract.

Housekeeping: §18.2 -- Last sentence, insert, "*shall*" before "*promptly*."

19. **Article 19: Duty Hours**

§§20.1 through 20.2 shall be incorporated from Patrol contract.

20. **Article 20: Overtime Pay**

From Patrol Contract (*renumber as appropriate*)

§21.1 Adopt Patrol contract language, but

(1) Change "eighty-six (86)," to eighty (80), and

(2) delete reference to "convenience day," and "festive days."

§21.2 Delete.

§21.3 Adopt Patrol contract language.

§21.4 Adopt Patrol contract language.

§21.5 Adopt Patrol contract language, but delete reference to "S.W.A.T. pay," and "educational differential."

§21.6 Adopt Patrol contract language.

§21.7 Adopt Patrol contract language.

21. **Article 21: Holidays**

Adopt language from Patrol contract, but delete all references to "Convenience Day," "festive days," and "bonus days."

22. **Article 22: Vacations**

Adopt language from Article XXII, Corrections contract, but amend as follows:

§2: Beginning after one (1) year of service:
two (2) weeks vacation.

Beginning after four (4) years of service:
three (3) weeks vacation

Amend last sentence of §2 to reflect the above vacation accrual.

23. **Article 23: Sick Leave**

§24.1 Adopt §1 from Corrections Contract, and *Add* "death to a member of the employee's immediate family except as stated in Article 27 (Funeral Leave)" as a reason to use sick leave.

§24.2 Adopt §2 from Corrections contract.

§24.3 Adopt §3 from Corrections contract.

§24.4 Adopt §4 from Corrections contract.

§24.5 Adopt §5 from Corrections contract.

§24.6 Adopt §6 from Corrections contract.

§24.7 Adopt §7 from Corrections contract.

Housekeeping: First sentence, 3d line, substitute "*paid*" for "*made.*"

§24.8 Adopt §8 from Corrections contract.

§24.9 Adopt §24.8 from Patrol contract.

§24.10 Adopt §10 from Corrections contract.

§24.11 Adopt §11 from Corrections contract.

§24.12 Adopt §12 from Corrections contract, *but delete the word "bonus" wherever it occurs.*

Effective upon ratification of the contract, bargaining unit employees will be eligible for the Police and Fire Pension Fund.

24. **Article 24: Line of Duty Injury Leave**

Adopt Sections 23.1 through 23.7 from the Patrol Contract.

25. **Article 25: Jury Duty Leave**

Adopt language from Article XXVI, Corrections contract.

26. **Article 26: Funeral Leave**

Adopt Article XXVII from the Patrol Contract with the following changes:

- (1) The City will allow up to three (3) scheduled work days off with pay in the case of the death of the employee's spouse , son, or daughter
- (2) City will allow up to two (2) scheduled work days off with pay in the case of the death any other relative mentioned in Article 27 of the Patrol contract.
- (3) *Add:* An employee may request additional bereavement time off due to a death and such request will not be unreasonably denied. In the event such a request is granted, the employee may elect to be paid for any portion or all of the time from his/her sick leave bank, and/or to use banked compensatory time he/she may have.

27. **Article 27: Compensation**

Provide for 4% wage increase each anniversary of the contract

<u>Jan 1, 2001</u>	<u>Jan 1, 2002</u>	<u>Jan 1, 2003</u>
\$10.40	\$10.82	\$11.25

Upon execution of the contract, all wage increases will be paid retroactively to January 1, 2001.

28. **Article 28: Longevity**

Adopt Article XXIX, §1 from the Corrections contract, *amended* as follows:

0 – 4 years \$0
5 – 9 years \$525

Delete remainder of table.

29. **Article 29: Personal Days**

Adopt Article XXX from the Corrections Contract

30. **Article 30: Educational Assistance**

Bargaining unit members will be eligible to participate in the City's Educational Reimbursement Program, if any.

31. **Article 31: Clothing Maintenance**

§32.1 Adopt §32 .1 from Patrol contract.

§32.2 Adopt §32 .2 from Patrol contract.

§32.4 **DELETE**

32. **Article 32: Miscellaneous**

§33.1 Adopt §33.1 from Patrol contract.

§33.2 Adopt §33.2 from Patrol contract.

§33.3 Adopt §33.3 from Patrol contract.

§33.4 Adopt §33.4 from Patrol contract.

33. **Article 33: (Shooting Time) Department Training & Training Officers**

Adopt Section 34.1 from Article 34 Patrol contract, but change two (2) hours to one (1) hour

Delete Section 34.2

34. **Article 34: Layoffs**

§34.1 Adopt §35.1 from Patrol contract.

§34.2 Adopt §35.2 from Patrol contract.

§34.3 Adopt §35.3 from Patrol contract.

§34.4 Adopt §35.4 from Patrol contract.

§34.5 *Delete*

35. **Article 35: Health Care and Dental Benefits**

Adopt Sections 36.1 through 36.2 from Patrol contract.

36. **Article 36: Drug Testing**

Adopt language from the Patrol Contract.

37. **Article 37: Outside Employment**

Adopt language from Article 38, Patrol contract,

38. **Article 38: Duration**

The term of the contract is January 1, 2001 through December 31, 2003.

II. OPEN ISSUES

Article 32: Miscellaneous

§33.5 OPEN: Residency Issue

OPBA
Mark Volchek
Todd J. Casselle
Dan A. P.

City.
F. English 9/18/02
Ronda G Lewis

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The City contends that residency requirements for police officers are beneficial to the community as whole, and are constitutionally permissible. The City has an interest in promoting employee loyalty, identity and community interest. The residency requirement helps accomplish these important goals. It encourages employees to maintain a sensitive and courteous attitude toward their fellow City citizens and enable employees to participate in many neighborhood and

community affairs, promoting goodwill between employees and citizens.

The City argues that residency also economically benefits all parties, because tax dollars generated from payroll remain in the community and City employees patronize local businesses. Living and working in the same community familiarizes the employees with the neighborhoods, the businesses and the citizens of the City. This helps both the police department and City residents to solve problems and resolve conflicts as they arise.

A Municipality or Civil Service Commission has the right, through the City Charter, to regulate and enforce provisions affecting the municipal government, including the right to enforce residency requirements upon municipal employees. This issue has been found not to violate the constitutional rights of any citizen or cause extreme hardship and shall thereby be upheld by the courts. *State, ex rel. Brown v. Summit County Board of Elections* (1989), 46 Ohio St. 3d 166, 545 N.E. 2d 1256. Residency affects the terms and conditions of employment and this is a mandatory subject of bargaining under Ohio Revised Code 4117.08.

However, it is entirely legitimate for a city to adopt the position that residency be a condition of employment. A place of residence is not a “God-given, constitutional right, determinable and enforceable by the employee against his employer.” *Fraternal Order of Police v. Hunter* (1975) 49 Ohio App. 2d 185, 219, 360 N.E. 2d 708, 727, citing *Fire Fighters Local 1645 v. Salt Lake City* (1969), 22 Utah 2d 115, 449 P.2d 239. Likewise, the right to hold a position as a police officer is not a guaranteed right and may be forfeited by failure to comply with a condition of employment. *McCarthy v. Philadelphia Civil Service Commission* (1976), 424 U.S. 645.

Arguing that the BPO contract should contain an exemption from the residency

requirement simply because a few other safety forces' contracts do ignores several important facts. First, the majority of bargained for employees must be City residents, including the quasi-safety forces employees covered by the Corrections and Dispatchers contracts represented by the same Union. Second, the individuality of each collective bargaining experience and the particular trade-offs that produced the agreement. Third, simply importing that provision from another agreement allows the Union to cherry pick another contract.

For all the foregoing reasons, the City submits that the Conciliator adopt the position advanced by the City in this matter.

ANALYSIS

Based on the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code and the evidence and arguments of the parties, the Conciliator selects the position of the Union to exempt bargaining unit members from the residency requirement.

Although the City has the lawful authority under the Ohio Constitution to promulgate and enforce a residency requirement, Ohio Revised Code Section 4117.08 makes a residency requirement a mandatory subject of bargaining. The City has waived the residency requirement in past collective bargaining agreements for its safety forces, namely, the Civil Service Police Officers, Ranking Police Officers, and the Firefighters. The City's attempts to retract this provision from the safety forces agreements was unanimously rejected by three conciliators. In addition, the City recently exempted EMS employees from a residency requirement.

One of the factors set forth in Section 4117(G)(7) is a comparison of this issue with regard to other employees doing comparable work, "giving consideration to the factors peculiar

to the area and classification involved.” Therefore, an internal comparison of the City’s safety forces with regard to the residency issue is appropriate. The reasons that the three conciliators cited for retaining an exemption to the residency requirement are applicable here and compel a decision to adopt an exemption for the BPOs.

The job description and requirements for BPOs state that BPOs must hold a valid and current Ohio Peace Officer’s Certification, including certification in firearms proficiency. Although their duties are primarily traffic enforcement, they may be required to perform some of the duties of a (Classified) police officer in crime prevention and repression. They patrol assigned areas, serve outstanding warrants and are dispatched on calls when the civil service Police Officers are otherwise engaged. Consequently, the BPOs face the same safety concerns on the job and off-duty as other safety forces in the City.

The Union voices a concern for the safety of the Police Officers and their families living if they are required to live in the City. The City of East Cleveland is geographically small, 3.5 square miles (one square mile being parks), with approximately 33, 000 residents. The Officers and their families would be visible targets for retaliation by criminals and citizens. Police interaction with the public is rarely a positive event. The unrebutted anecdotal evidence presented by the Union of assaults on Police Officers living in the City substantiates these fears. A Police Officer’s car was stolen; an Officer was shot at while at home; a Detective’s home experienced an attempted break-in and he was threatened by drug dealers. The attitudinal benefits, for BPOs and citizens, that the City claims would be derived by the BPOs living in the City is purely speculative and not supported by the evidence.

Similarly, the arguments regarding the economic benefits of employee residency are too

speculative and have been rejected by all three conciliators³. Likewise, in the instance case, the City was unable to offer any evidence to quantify the monetary benefits to the City and local business. Indeed, as the conciliators noted, there is an economic cost to attracting and retaining qualified candidates willing to accept residency as a condition of employment. Most of the surrounding communities do not have a residency requirement and have more lucrative compensation packages. Other concerns, such as available and suitable housing and difficulties with the school system, will act to severely limit the applicant pool and possibly jeopardize the safety of the citizens of East Cleveland.

The statistics on resident versus non-resident employees of the City are not unequivocal. The City claims that a vast majority of City employees, union and non-union, are residents of the City. The Union claims that the statistics show that 48% of City employees are non-residents. The one fact is clear and unequivocal. That is that the safety forces of Civil Service Police Officers, Ranking Police Officers, Firefighters and EMS employees are exempt from a residency requirement. Only the Dispatchers and Corrections Officers are not. However, these employees do not have the same safety concerns as the former, because they do not interact directly with the criminals and citizens who are on the street. As such, residency was not a concern these units voiced during negotiations. However, the BPOs are faced with the same problems and concerns of the remaining safety forces and have voiced those concerns. They should be treated in the same manner. This is consistent with Section 4117.14(G)(7) and is selected by this Conciliator.

³Anna DuVal Smith, East Cleveland Fire Fighters and City of East Cleveland, Case No. 00-MED-10-1069, September 4, 2001; Nels E. Nelson, Fraternal Order of Police, Lodge No. 39 (Sergeants) and City of East Cleveland, November 14, 2001; David M. Pincus, Ohio Patrolmen's Benevolent Association (Civil Service Officers Below Rank of Sergeant) and City of East Cleveland, Case No. 00-MED-1-11707, March 123, 2002.

AWARD

1. The Conciliator selects the Union's final offer to be incorporated into the parties' collective bargaining agreement.

Article 32, Section 32.5 - Miscellaneous

No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.

2. The Conciliator incorporates the tentative agreements of the parties, attached as Exhibit A, into the Award.

Virginia Wallace-Curry
Conciliator

October 9, 2002
Cuyahoga County, Ohio

STATUS

PROPOSALS OF THE CITY OF EAST CLEVELAND

AND

THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

FOR

POLICE OFFICERS: (BPO UNIT)

September 11, 2002

I. TENTATIVE AGREEMENTS

1. **Article 1: Preamble**

Adopt language from Corrections contract.

2. **Article 2: Purpose and Intent**

Adopt language from Corrections contract.

3. **Article 3: Recognition**

Amend Corrections Contract, Article III, Section 1 as follows:

The Employer agrees that it has and will continue to recognize the OPBA as the exclusive representative for negotiating wages and salaries, hours of work, and all other terms and conditions of employment *for all police officers working for the City of East Cleveland in the capacity of a BPO so recognized by SERB in Case No. 99-REP-09-0195*, hereinafter referred to as employees or "the bargaining unit," *and excluding Civil Service Police Officers*. The Employer and the OPBA agree to continue to negotiate with each other in good faith on all matters concerning the employment of said employees.

Add: *The duties of a BPO shall be primarily traffic enforcement. Traffic enforcement shall be defined as the enforcement of motor vehicle traffic laws.*

4. **Article 4: Dues Deduction**

Adopt language from Corrections contract.

5. **Article 5: Agency Shop**

Adopt language from Corrections contract.

6. **Article 6: Management Rights**

Adopt language from Patrol contract.

7. **Article 7: Employee Rights**

§§ 7.1 through 7.6: Adopt language from Corrections contract.

§ 7.7 from Corrections contract: *Housekeeping*: End sentence after word, "considered," and insert "If" before word, "during."

§7.8 from Corrections contract: Second sentence, add "and/or a CVSA" after "polygraph examination";

§7.9 Add "or by the Chief of Police," after word "civilians" in first sentence.

§7.10 Adopt Section 7.10 from Patrol contract.

8. **Article 8: No Strike**

Adopt language from Corrections contract.

9. **Article 9: Discipline**

Adopt language from Corrections contract.

Housekeeping: § 9.4 -- Fifth word in sentence should be "emergency," not "emergence."

10. **Article 10: Association Representation**

Adopt language from Corrections contract but incorporate the following change:

§10.2 Change "Two members," to "One (1) member."

11. **Article 11: Probationary Period**

Adopt language from Patrol contract.

12. **Article 12: Seniority**

Adopt language from Corrections contract.

AND

Add to end of first sentence: "in the capacity of a BPO as defined in Article 3, Section One."

Housekeeping: § 2 -- Sixth word in sentence should be "*terminated*," not "*determined*."

13. **Article 13: Grievance Procedure**

Adopt language from Corrections contract.

Housekeeping: §13.2(a) -- Remove underscore below word, "*of*."

14. **Article 14: Arbitration**

Adopt language from Article XIV, Corrections contract.

15. **Article 15: Non Discrimination**

Adopt language from Article XV, Corrections contract.

16. **Article 16: Construction of Agreement**

Adopt language from Article XVI, Corrections contract.

17. **Article 17: Obligation to Negotiate**

Adopt language from Article XVII, Corrections contract.

18. **Article 18: Conformity with Law**

Adopt language from Article XVIII, Corrections contract.

Housekeeping: §18.2 -- Last sentence, insert, "*shall*" before "*promptly*."

19. **Article 19: Duty Hours**

§§20.1 through 20.2 shall be incorporated from Patrol contract.

20. **Article 20: Overtime Pay**

From Patrol Contract (*renumber as appropriate*)

§21.1 Adopt Patrol contract language, but

(1) Change "eighty-six (86)," to eighty (80), and

(2) delete reference to "convenience day," and "festive days."

§21.2 Delete.

§21.3 Adopt Patrol contract language.

§21.4 Adopt Patrol contract language.

§21.5 Adopt Patrol contract language, but delete reference to "S.W.A.T. pay," and "educational differential."

§21.6 Adopt Patrol contract language.

§21.7 Adopt Patrol contract language.

21. **Article 21: Holidays**

Adopt language from Patrol contract, but delete all references to "Convenience Day," "festive days," and "bonus days."

22. **Article 22: Vacations**

Adopt language from Article XXII, Corrections contract, but amend as follows:

§2: Beginning after one (1) year of service:
two (2) weeks vacation.

Beginning after four (4) years of service:
three (3) weeks vacation

Amend last sentence of §2 to reflect the above vacation accrual.

23. **Article 23: Sick Leave**

- §24.1 Adopt §1 from Corrections Contract, and *Add* "death to a member of the employee's immediate family except as stated in Article 27 (Funeral Leave)" as a reason to use sick leave.
- §24.2 Adopt §2 from Corrections contract.
- §24.3 Adopt §3 from Corrections contract.
- §24.4 Adopt §4 from Corrections contract.
- §24.5 Adopt §5 from Corrections contract.
- §24.6 Adopt §6 from Corrections contract.
- §24.7 Adopt §7 from Corrections contract.
- Housekeeping: First sentence, 3d line, substitute "paid" for "made."*
- §24.8 Adopt §8 from Corrections contract.
- §24.9 Adopt §24.8 from Patrol contract.
- §24.10 Adopt §10 from Corrections contract.
- §24.11 Adopt §11 from Corrections contract.
- §24.12 Adopt §12 from Corrections contract, *but delete the word "bonus" wherever it occurs.*

Effective upon ratification of the contract, bargaining unit employees will be eligible for the Police and Fire Pension Fund.

24. **Article 24: Line of Duty Injury Leave**

Adopt Sections 23.1 through 23.7 from the Patrol Contract.

25. **Article 25: Jury Duty Leave**

Adopt language from Article XXVI, Corrections contract.

26. **Article 26: Funeral Leave**

Adopt Article XXVII from the Patrol Contract with the following changes:

- (1) The City will allow up to three (3) scheduled work days off with pay in the case of the death of the employee's spouse , son, or daughter
- (2) City will allow up to two (2) scheduled work days off with pay in the case of the death any other relative mentioned in Article 27 of the Patrol contract.
- (3) *Add:* An employee may request additional bereavement time off due to a death and such request will not be unreasonably denied. In the event such a request is granted, the employee may elect to be paid for any portion or all of the time from his/her sick leave bank, and/or to use banked compensatory time he/she may have.

27. **Article 27: Compensation**

Provide for 4% wage increase each anniversary of the contract

<u>Jan 1, 2001</u>	<u>Jan 1, 2002</u>	<u>Jan 1, 2003</u>
\$10.40	\$10.82	\$11.25

Upon execution of the contract, all wage increases will be paid retroactively to January 1, 2001.

28. **Article 28: Longevity**

Adopt Article XXIX, §1 from the Corrections contract, *amended* as follows:

0 - 4 years \$0
5 - 9 years \$525

Delete remainder of table.

29. **Article 29: Personal Days**

Adopt Article XXX from the Corrections Contract

30. **Article 30: Educational Assistance**

Bargaining unit members will be eligible to participate in the City's Educational Reimbursement Program, if any.

31. **Article 31: Clothing Maintenance**

§32.1 Adopt §32 .1 from Patrol contract.

§32.2 Adopt §32 .2 from Patrol contract.

§32.4 **DELETE**

32. **Article 32: Miscellaneous**

§33.1 Adopt §33.1 from Patrol contract.

§33.2 Adopt §33.2 from Patrol contract.

§33.3 Adopt §33.3 from Patrol contract.

§33.4 Adopt §33.4 from Patrol contract.

33. **Article 33: (Shooting Time) Department Training & Training Officers**

Adopt Section 34.1 from Article 34 Patrol contract, but change two (2) hours to one (1) hour

Delete Section 34.2

34. **Article 34: Layoffs**

§34.1 Adopt §35.1 from Patrol contract.

§34.2 Adopt §35.2 from Patrol contract.

§34.3 Adopt §35.3 from Patrol contract.

§34.4 Adopt §35.4 from Patrol contract.

§34.5 *Delete*

35. **Article 35: Health Care and Dental Benefits**

Adopt Sections 36.1 through 36.2 from Patrol contract.

36. **Article 36: Drug Testing**

Adopt language from the Patrol Contract.

37. **Article 37: Outside Employment**

Adopt language from Article 38, Patrol contract,

38. **Article 38: Duration**

The term of the contract is January 1, 2001 through December 31, 2003.

II. OPEN ISSUES

Article 32: Miscellaneous

§33.5 OPEN: Residency Issue

OPBA
Mark Volcheck
Todd J. Casselle
Dan A. P.

City.
F. F. Whit 9/18/02
Ronda G. Curtis