

COPY

OHIO STATUTORY DISPUTE RESOLUTION PROCEDURE
STATE EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR
CONCILIATION DECISIONS AND AWARDS

STATE EMPLOYMENT
RELATIONS BOARD
2002 APR 24 A. 10: 09

Interest Arbitration Between:

THE CITY OF WARREN, OHIO

-and-

THE OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

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2000-MED-10-1200

Decision Issued:
April 20, 2002

Jonathan Dworkin, Conciliator

REPRESENTING THE CITY OF WARREN:

Michael Anderton
Gary C. Cicero
Brian M. Massucci

Attorney for the City
Human Resources Director
Personnel Supervisor

REPRESENTING THE OPBA

S. Randall Weltman
Manny Nites
Michael Stabile
Joseph G. Kistler

Attorney for the Union
Local President
Local Vice President
Local Secretary

THE BARGAINING IMPASSE

The last Labor Agreement between the City of Warren, Ohio and the Ohio Patrolmen's Benevolent Association ("OPBA") was for a term of one year. Its most prominent feature was a general freeze on wages and economic benefits due to mutual recognition that the City lacked the resources to fund increases. That Agreement ex-

pired December 31, 2000. At the time, a City income-tax increase was scheduled for the May 2001 ballot, so the parties agreed to defer negotiations until after the election. The levy passed; bargaining proceeded through the summer of 2001. By August, the OPBA declared impasse on eighteen proposals, most of which were economic. Consequently, and in accordance with Ohio law, the State Employment Relations Board ("SERB") directed the parties to submit to factfinding before Bernadette Marczely.

September 20, 2001, Factfinder Marczely issued her report and recommendations, which the City rejected within statutory time limits. As Police Officers, the members of this Bargaining Unit were prohibited from striking to achieve their demands. Instead, OHIO REVISED CODE §4117(D) required them to present their dispute to conciliation (binding, issue-by-issue interest arbitration). October 23, 2001, SERB appointed the undersigned to conciliate the dispute. Hearings convened January 11 and February 27, 2002. The parties presented a total of thirteen unresolved issues:

Article 11, Section 7 Shift Preference (OPBA Proposal). Under current language, the Warren Police Chief has broad discretion to determine which Officers will be detailed to COPS (Community Oriented Police Services), Trumbull County Metropolitan Housing Authority (TMHA) and court-security positions. Although the provision now in force allows qualified Officers to apply, it empowers the Chief to select from the list of applicants, unburdened by any rights of seniority. The OPBA's initial final offer¹ was to modify the language to grant "pure" (non-discretionary) selection by bidder seniority for all COPS positions and at least two court-security assignments. The Factfinder recommended this proposal.

The City's offer was to keep current language in general, but with a modification allowing TMHA and municipal court judges to select and/or reject candidates for their assignments.

Article 11, Section 7 Temporary Vacancies (OPBA Proposal). Current language sets no restriction on how the Department can fill absences of Court-Security Officers, and this contractual silence leaves it to the discretion of the Chief. He has the option to call in employees on overtime or reassign working ESD (Emergency Services Department) Officers. The OPBA proposed new language requiring such vacancies to be filled by overtime assignments from the off-duty roster. The Factfinder recommended the OPBA position. The City rejected it, proposing that current language be carried forward into the new Agreement.

Article 11, Section 7 Court Holidays. The Bargaining Unit initially requested a new contractual provision granting work privileges to municipal court-security personnel on days when the Warren Court closed: "When occasion arises that the Warren

¹ Between the January 11 and February 27 hearings, the Conciliator allowed both parties to amend their final offers. This was consistent with OHIO ADM. CODE §4117-9-06(E)(4): "If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party may, with the permission of the conciliator, submit a revised final offer to the conciliator."

Municipal Court is closed, due to a recognized holiday, the court security officers shall be given the option of working the holiday or taking the holiday off. The time-off shall be deducted from the officer's holiday bank time. However, if one or both security officer(s) wish to work the holiday, the officer(s) shall be assigned court duties, such as the serving of arrest warrants or court issued capiases. The officer(s) could be utilized for ESD calls for service similar to that afforded the TMHA officer(s), and/or ESD over-time opportunities."

The Factfinder recommended the OPBA position; the City rejected it, proposing that current language be continued.

Article 11, Section 7 Minimum Number of Patrol Officers on Duty (OPBA Proposal for New Provision). The OPBA proposed adding minimum staffing language to Section 7. If adopted, it will require the Department to staff each shift with no fewer than eight ESD Officers. The City rejected it, arguing in part that this was not a subject of compulsory bargaining. Ohio law, it was contended, gives Management the right to determine the adequacy of its workforce. Despite the City's contention, the Factfinder recommended that the proposal be incorporated into the new Agreement.

Article 15 Hours of Work (City Proposal). The factfinding decision noted that the parties had settled whatever differences had existed on this Article, and it was no longer in dispute. Current language was to be carried forward. However, the City came into conciliation proposing an amendment. It sought language that would restrict the number of Officers who could take compensatory time off on any shift. The OPBA

turned down the proposal, arguing that the current provision, which resulted from bargaining without intervention of mediators, factfinders, or interest arbitrators, should be retained.

Article 16, Section 1 Wages The City and OPBA both contemplate that their new Agreement will be for a term of three years, commencing January 1, 2001. They also concur that wages for members of this Unit should increase annually on each contractual anniversary date. Their only dispute is over the amount of the increments. The OPBA proposed 4½% + 4½% + 4½%. The City countered with an offer of 4% + 4% + 4%.

Article 16, Section 3 Roll Call (Employer Proposal) As it currently exists, Section 3 grants Officers fifteen minutes' roll-call pay at time and one-half for reporting in before the start of scheduled shifts. It guarantees each member of the Unit fifty-five hours' roll-call pay annually, minus time docked. The City's initial proposal was to delete this language, and the OPBA agreed. Accordingly, this was a non-issue in the first conciliation meeting on January 11th. That first meeting was dedicated to mediation, after which the Bargaining Unit asked to amend its final offer to retain the existing language. Pursuant to OHIO ADMINISTRATIVE RULES §41117-9-06 (E0(40)), the Conciliator accepted the amendment. Consequently, the issue that emerged was whether to award the City's position and remove the language, or the OPBA's position and keep Roll Call Pay in the Agreement.

Article 16, Section 8 Hazardous Duty Pay (Employer Proposal) The 2000-2001 Agreement provides an allowance of \$15.39 bi-weekly as hazardous duty pay. The controversy on this item is the same as the previous one. At first the OPBA concurred that the City's request to eliminate the allowance. After extensive mediation without perceptible movement on either side, the Bargaining Unit offered a position amendment to "Retain Current Language." The Conciliator allowed the amendment.

Article 16, Section 13 Pension Pickup (OPBA Proposal for New Language). In almost every factfinding, interest arbitration, and mediation that the Conciliator had participated in since the advent of the OHIO PUBLIC EMPLOYEE COLLECTIVE BARGAINING LAW, it seems there has always been a keystone – a single issue that, if resolved, would carry all the other impasse items to settlement. This appeared to be the pivot point of the dispute at hand. The OPBA introduced it at the bargaining table and was successful in factfinding. That success was probably the main reason the Employer rejected the Factfinder’s recommendations. The OPBA’s final offer was to add the following provision to Article 16:

Effective upon execution of this Agreement, the City shall pay each bargaining unit employee the lump sum of five percent (5%) of that employee’s gross wages for the year 2001 and then ten percent (10%) of that employee’s gross wages for the year 2002 (up to the Agreement’s execution). Effective upon the execution of this Agreement, The City shall pay an amount equal to ten percent (10%) of the employee’s gross wage, each pay period, to the appropriate state pension system (i.e., total of ten percent [10%]of the employee’s mandated total contribution).²

The Employer vigorously resisted this final offer, contending that it would be exorbitantly costly and in excess of benefits provided by any comparable community police departments.

² The original final offer contained an additional clause: “ This lump sum payment shall be ‘non-pensionable. ’” Suspecting that such a provision might have questionable legal validity, the OPBA requested permission to remove it. After mediation failed, the Conciliator granted the request.

Article 20 Service-Connected Disability (OPBA Proposal for New Language)

In factfinding the OPBA requested a special provision to pay Officers injured in the course of duty and who required hospital care, for transportation time to the hospital. The Factfinder recommended the OPBA position and developed language to effectuate it :

If an officer is injured in the course of regular duty, and is transported or transports him or herself to a hospital during the course of the officer's regular working day, the officer will be eligible for Worker's Compensation applicable benefits [i.e., medical treatment and lost wages] by following established procedures for reporting his/her injury. If, however, an officer is injured at the end of his/her working day, and is transported or transports him or herself to a hospital after the officer's working day has ended, the officer will be eligible under Workers' Compensation for medical treatment for injuries incurred in the course of employment, and for up to and including a maximum of three hours of overtime pay, not reimbursed under Workers' Compensation, to compensate the officer for off-duty time spent in attending to injuries incurred and filing all applicable reports.

The Employer turned this proposal down.

Article 25 Exemplary Attendance Award (Identical Final Offers). The (extended) 2000-2001 Agreement rewards perfect attendance with extra days off. In factfinding, the OPBA sought an amendment changing the days off to monetary bonuses. If adopted, the exemplary attendance language in the Patrol Officers' Contract would have mirrored a similar clause in the Warren Firefighters' Contract. The City wished to continue current language. It called attention to the fact that there is no legitimate comparison between the work schedules of the Police and Fire Divisions. Also, it contended that the cost of the proposal would be unmanageable. The Factfinder recommended against the change -- that existing language be retained.

The Bargaining Unit's final offer in conciliation accepted the Factfinder's decision that Article 25 should be carried forward as is. Technically, therefore, the issue became moot; both final offers were identical. But since the negotiator's never exe-

cuted a TA (tentative agreement) on this item, it is appropriate for the Conciliator to award it.

Article 27 Life Insurance (OPBA Proposal). At present, the City is contractually obligated to provide Unit members with life and accidental death and dismemberment insurance. The face amount of each coverage is \$20,000. The OPBA proposed raising them to \$50,000 each. The City rejected the amendment, citing two reasons for its position: First, since all its employees, both represented and exempt, are given the same coverage, an upward adjustment here would destroy the existing parity and eventually impose prohibitive costs. Second, the City contended that current coverage is adequate and consistent with insurance benefits in Ohio communities comparable to Warren. The Employer's final offer was to continue the existing provision without modification.

Article 35 Time Clock Policy (Employer Proposal). Issues of time-clock usage are and have been negotiated between the parties. The Employer's objective is to amend Article 35, Section IV(B). The provision now says: "The time sheet completed by the Turn Commander shall be the official record for payroll purposes." The City proposed a change that would allow it to use the time clock to track Officers' time during the workday. The OPBA found the change unacceptable; its final offer was to continue the existing language.

THE SECOND HEARING

The Conciliator's first meeting with the parties on January 11 ended with a sense of frustration for everyone concerned. Mediation attempts seemed worthless. As often as not, when the bargaining teams closed the doors to reconsider and modify their positions, they returned to the table firmly committed to their original stands. Occa-

sionally, the OPBA would introduce amended demands that turned out to be even more costly to the City.

Surprisingly, when the parties met with the Conciliator on February 27, both had revised their final offers to a point where settlement seemed imminent. Most notably, the OPBA lowered its wage demand to match the City's – 4% + 4% + 4%. Also, it significantly moderated its pension pick-up demand, lowering the percentages and postponing the effective date from January 1, 2001 to July 1, 2002. The City also retreated from some of its positions.

It should be observed, however, that the negotiators executed no tentative agreements on February 27, and that not all issues were resolved. Therefore, the Conciliator is still required to issue awards on all thirteen impasse items.

DECISIONAL GUIDELINES

Ohio Revised Code §4117.14(G)(7) and SERB Rule 4117-09-05(I) require fact-finders and conciliators to apply the following decisional standards::

- a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

©) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The Conciliator examined these criteria to the extent they were addressed by the Advocates. Some had little material value to the case while others were more significant.

DECISIONS

Some of the decisions that follow incorporate the tacit, but unofficial agreements the bargaining teams carved out between the two conciliation hearings. Others derive from the Conciliator's comparison of the competing positions under the relevant criteria. ***At the joint request of the parties, made to conserve time and expenses, the decisions and awards will not recite the Conciliator's supporting rationale.***

Article 11, Section 7 - Shift Preference, Temporary Vacancies, Court Holidays, Minimum Number of Patrol Officers on Duty: The Conciliator will award current language, without amendment on all Article 11, Section 7 impasse items.

Article 15 - Hours of Work: The award will direct that current language be carried forward without change. This was the City's initial proposal, and one that the OPBA had agreed to, but for which no tentative agreement was executed.

Article 16, Section 1 - Wages : OHIO REVISED CODE, § 4117.14 (G)(11) prohibits Conciliators from issuing economic awards retroactively to a fiscal year preceding the date SERB appointed them. However, the Section also allows negotiators, by mutual agreement, to cancel the restriction. When these parties extended their last Agreement, they also agreed to wage retroactivity. The award will grant the City's initial proposal. Wage raises for the Unit will be 4 percent retroactive to January 1, 2001; 4 percent retroactive to January 1, 2002; 4 percent commencing on January 1, 2003.

Article 16, Section 3 - Roll Call: The City's first proposal to remove Roll Call Pay from the Agreement will be rejected. Current language will be awarded.

Article 16, Section 8 - Hazardous Duty Pay The City's modified proposal to remove this wage allowance from the Agreement was agreed to by the OPBA with the proviso that it not take effect until the new Agreement is executed. The Conciliator

agrees with the OPBA position; the award will delete hazardous duty effective on the date the new Agreement is executed and without requiring Unit members to pay back the allowance retroactive to any earlier date.

Article 16, Section 13 - Pension Pick-up The OPBA's amended proposal for new language is that the City shall assume and pay 5 percent of each employee's pension contribution as of July 1, 2002, increasing to 6 percent on July 1, 2003. This amended proposal will be awarded.

Article 20 - Service-Connected Disability: The OPBA's initial proposal will be rejected. The City's counter offer to retain current language will be awarded.

Article 25- Exemplary Attendance Award: As noted earlier, the parties came to conciliation with identical final offers to retain current language. Their mutual positions will be awarded.

Article 27 - Life Insurance: The City's argument on this impasse item was convincing. Its final offer to retain life insurance at current levels will be awarded.

Article 35 Time Clock Policy: The City's initial proposal to modify this provision is rejected. The OPBA's final offer to retain current language will be awarded.

AWARDS

The following language comprises the binding conciliation awards pursuant to OHIO REVISED CODE §4117.14(I):

The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.

However, the parties are reminded that §4117.14(G)(11) says that they “may, at any time, amend or modify a conciliator’s award or order by mutual agreement.”

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ARTICLE 11 - SENIORITY

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Section 7: **SHIFT PREFERENCE**: The Police Chief has the sole authority to determine the schedule necessary within the Police Department, except that the normal shifts shall be 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. (this provision specifically excludes those officers working COPS, TMHA, Narcotics and Court Security). The open schedule shall be posted in the roll call room thirty (30) days prior to implementation. The posted schedule shall be filled-in to reflect the chosen slots as bid. Slots must include five (5) consecutive work days and two (2) consecutive days off and shall not be rotating. Bargaining unit members assigned within the emergency services division who have more than one (1) year of service shall have the right to bid. The selection of slots will be made and completed by December 17 and June 16 of each year starting with the most senior patrol officer. No officer shall bid before any more senior officer, except that any officer who fails to bid within sixteen (16) hours

of being notified of his/her opportunity to bid shall lose his seniority position but will be entitled to bid when he/she appears at the roll call room. Any officer who has not bid by December 17 or June 16 shall be permanently placed on the schedule by the Police Chief. Officers may bid in person, by phone or by proxy through an OPBA steward. Trumbull Metropolitan Housing Authority (TMHA), COPS and Court Security assignments are not part of the emergency division, however, prior to December 1 and June 1 of each year, emergency services officers and TMHA, COPS and Court Security officers with three (3) or more years of service who wish to be part of the TMHA, COPS and Court Security detail shall request this assignment in writing to the Police Chief. Prior to the selection of schedules, the Police Chief shall assign the required number of officers to the TMHA, COPS and Court Security detail from the list of officers who have requested the assignment. All patrol officers with three (3) or more years of service who wish to be part of TMHA, COPS and Court Security positions shall indicate their desire for such positions to the Police Chief. The Chief shall then make appointments to such positions using seniority as the determining factor so long as all job related qualifications are met. If there is not a sufficient number of officers requesting TMHA, COPS and Court Security assignments, the Police Chief shall fill the remaining TMHA, COPS and Court Security detail from available officers with three (3) years or less seniority. If there is still not a sufficient number of officers, the least senior officers with more than three (3) years of service shall be assigned to the TMHA, COPS and Court Security detail. The selection of schedules shall then be completed. Court Security assignments are subject to the Municipal Court Judge's approval. TMHA assignments are subject to approval of the Housing Authority.

In regard to detective, juvenile, narcotics, the Police Chief retains right to assign. However, upon completion of six (6) months after assignment, the assigned patrolman shall have the right to opt-out of the assignment.

The Police Chief has the right to establish and assign patrol officers to temporary [thirty (30) calendar days or less] special emergency schedules required to meet emergency situations that may arise without regard to seniority. No officer shall be placed on a

second thirty (30) day emergency assignment until all available (i.e. not on workers' compensation, vacation, sick leave, etc.) patrol officers have been assigned at least once. When the Police Chief determines an emergency exists where schedules need changed, there shall be at least a telephone conference between the Chief or his designee, the Director of Human Resources and an OPBA Representative prior to rescheduling any officer(s) to establish the circumstances of what is the emergency.

In the event an officer is removed from a special assignment who had not previously bid on one of the existing slots, he/she will be permitted to choose which schedule he/she wishes to work until the next bidding period. Officers within the emergency services division that mutually agree to switch their shift and days off, must request permission, in writing, to the Police Chief for approval. Changes must not be for less than a thirty (30) day period.

ARTICLE 15 - HOURS OF WORK

Section 1: **WORK DAY**: The regular hours of work each day shall be consecutive to include interruptions for lunch periods of thirty (30) minutes per shift and subject to call. Reference to consecutive hours of work in the balance of this Article shall be construed generally to include lunch periods. Each shift shall have a regular starting time and quitting time.

Eight (8) consecutive hours of work, plus fifteen (15) minutes of roll call time, within a twenty-four (24) hour period shall constitute a regular work day.

Section 2: **WORK WEEK**: The regular work week shall consist of five (5) work days as prescribed in Section 1 of this Article.

Section 3: **PAY PERIOD**: The pay period shall consist of fourteen (14) consecutive days beginning with Sunday midnight shift which begins 11:00 p.m. Saturday.

Section 4: All paid hours shall be considered hours worked for the calculation of overtime.

Section 5: **BENEFIT TIME USAGE**: Notwithstanding any other provision of the contract, all benefit time may be used in one (1) hour increments. This includes, but is not limited to, sick leave, vacation and personal days.

- A. Time-off requests that have been previously approved by the Police Chief shall not be denied at a later date, unless the Director has approved the denial. Once an officer has been given approval of a time-off request, the officer may not work that day without prior approval of the Police Chief.
- B. Compensatory time-off (time coming) requests shall not be denied when submitted at least ninety-six (96) hours in advance of the date requested.

ARTICLE 16 - PAY PROVISIONS

Section 1: **WAGES**: The following hourly rates shall be for the position of Police Officer in the Warren Police Department:

	<u>1-1-01</u>	<u>1-1-02</u>	<u>1-1-03</u>
Police Officer (3 years of service or more)	\$18.58	\$19.32	\$20.09

The following hourly rates shall be paid to Police Officers with less than three (3) years of service:

	<u>1-1-01</u>	<u>1-1-02</u>	<u>1-1-03</u>
(2-3 years of service)	\$16.72	\$17.39	\$18.09
(1-2 years of service)	\$14.87	\$15.46	\$16.08
(0-1 years of service)	\$13.01	\$13.53	\$14.07

Section 8: **HAZARDOUS DUTY PAY:** *The parties are directed to delete this Section from their 2001 Agreement, provided that the benefit shall not end until the date the Agreement is executed.*

Section 13: **PENSION PICK-UP:** Effective July 1, 2002, the City shall assume and pay five percent (5%) of the employee's total mandated contribution to the Police and Fire Pension and Disability Fund. Effective July 1, 2003, the City shall assume and pay six percent (6%) of the employee's total mandated contribution to the Police and Fire Pension and Disability Fund.

ARTICLE 20 - SERVICE-CONNECTED DISABILITY

Article 20 of the current Agreement is attached hereto as Conciliation Exhibit A and incorporated herein by reference. The full text of the Article shall be carried forward into the 2001-2003 Agreement without change.

ARTICLE 25 - EXEMPLARY ATTENDANCE AWARD DAY

In recognition of an officer's exemplary record of perfect attendance, officers of the Police Department who do not use any sick leave during the calendar year shall be awarded two (2) bonus days for such perfect attendance. Such officers who maintain perfect attendance for the succeeding year shall be awarded three (3) bonus days. Such bonus days shall be credited to said officer on January 1 of the following year. Such exemplary officers who maintain perfect attendance for a third consecutive calendar year and consecutively thereafter shall be awarded four (4) bonus days for each calendar year, thereof.

All bonus days must be used within twelve (12) months of the time they are credited to the officer.

If after the first year of perfect attendance or thereafter, sick leave is used, the officer must begin the cycle from the first again.

Perfect attendance will be considered January 2, through December 31 of any calendar year.

In the event of a death of a family member of the immediate family (i.e. spouse, parent, child, brother, sister, grandparent, grandchild, mother-in-law, or father-in-law) sick leave days may be used with no penalty against the officer's record of perfect attendance, herein.

ARTICLE 27 - LIFE INSURANCE

Life insurance benefits for police officers covered by this Labor Contract will be as follows:

Life
Insurance
\$20,000

Accidental Death and
Dismemberment Insurance
\$20,000

ARTICLE 35 - TIME CLOCK POLICY

- I. Employee Punch Card
 - A. Each employee shall be issued two (2) employee punch cards by the Department's payroll clerk, at no cost to the employee. Employees shall be issued new cards as needed.

- II. Clocking In
 - A. Employees shall clock-in at the beginning of work.
 - B. Employees who clock-in late for work shall have a five (5) minute grace period per day.
 - C. Employees who are unable to clock-in shall have such inability verified by their Turn Commander.

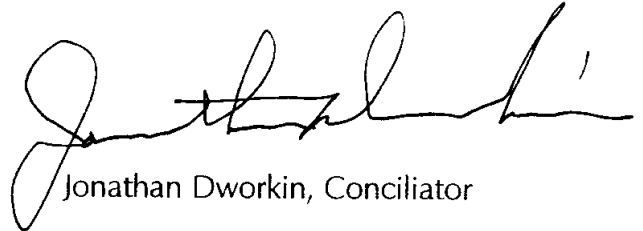
- III. Clocking Out
 - A. Employees shall clock-out at the end of work.
 - B. All overtime requests shall be approved by the employee's respective Division Commander.
 - C. Overtime shall be paid in accordance with provisions as set forth in the prevailing contract.

- IV. Recording for Payment
 - A. Employees shall be paid pursuant to the prevailing contract.
 - B. The time sheet completed by the Turn Commander shall be the official record for payroll purposes.

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CONCILIATION OPBA & CITY OF WARREN

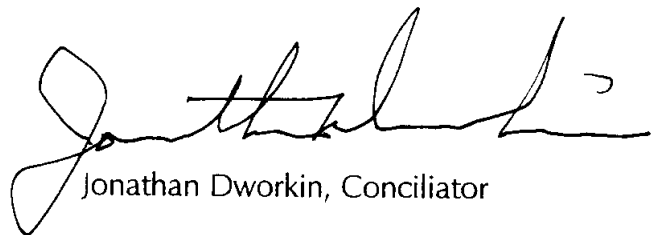
The foregoing Awards were issued at Lorain County, Ohio April 20, 2002.



Jonathan Dworkin, Conciliator

SERVICE

True, individually signed copies of these Decisions and Awards were sent by U.S. Priority Mail to Michael Anderton, Attorney for the City of Warren, 1100 Huntington Building, 925 Euclid Avenue, Cleveland, Ohio 44115 and to S. Randall Weltman, Attorney for Ohio Patrolmen's Benevolent Association (Warren, Ohio Local), Suite 900 The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115, this 20th day of April, 2002. A copy was also sent in the same manner at the same time to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215.



Jonathan Dworkin, Conciliator

ARTICLE 20 – SERVICE-CONNECTED DISABILITY

Section 1: PAYMENT OF WORKERS' COMPENSATION WAGE BENEFIT: In the event of an injury while in the active discharge of duty, the employee shall be paid Workers' Compensation Wage Benefits from the City instead of Temporary Total Benefits from the Bureau of Workers' Compensation, only if the employee obtains medical treatment from the City's Health Partnership Managed Care Organization, as follows:

- A. For the lost time in which medical certification has been submitted stating the need for the employee to be off work and the period of time the employee shall remain off work. The medical certificate must be filed within fourteen (14) calendar days. An "Agreement to Reimburse" must accompany medical certification.
- B. For the lost time up to fifty-two (52) weeks, the total wages the employee will receive shall be their gross pay less their normal federal, state and city income taxes. This pay shall be non-taxable. If the Internal Revenue Service in the future deems these wages to be taxable, the City shall pay the employee his/her gross pay.
- C. For the lost time exceeding fifty-two (52) weeks, the employee shall have the option to use his sick leave, vacation or other compensatory time or be placed on unpaid Workers' Compensation leave of absence.
- D. During the lost time due to injury for which the employee is receiving pay from the City, the employee shall not suffer any loss of guaranteed roll call, longevity, hazardous duty pay, uniform allowance, uniform maintenance allowance, education allowance, sick leave, holidays, personal days, vacation, health benefits or life insurance.
- E. Any employee receiving Workers' Compensation Wage Benefits shall be handled as a day turn employee, except that they are entitled to pay for court appearance at straight time for a one (1) hour minimum in addition to their regular Workers' Compensation Wage Benefits.

Section 2: REPORTING PROCEDURE: In the event of an injury while in the active discharge of duty, the employee shall be required to complete the following:

- A. An "INJURY REPORT" within fourteen (14) calendar days of the time of injury.

- B. If time is lost, a "**WORKERS' COMPENSATION CLAIM FORM**", within fourteen (14) calendar days of the date and time of the inception of the lost time. When filing a claim, it shall be stated that the employee has received their wages for the lost time period for a maximum of fifty-two (52) weeks.

To be entitled to any Workers' Compensation Wage Benefits from the City as in Section 2, the employee must have the forms completed and submitted to the Department Head within the outlined time limits. If extenuating circumstances arise because of an incapacitating injury, the injured employee's Department Head shall have the forms submitted timely and if unable to do so the time limits shall be extended. If the injured employee fails to submit the forms timely, the amount of time he lost due to injury shall be charged as sick leave. The employee shall then be entitled to any benefits the Bureau of Workers' Compensation may allow.

Section 3: **BUREAU DETERMINATION PROCEDURE**: Any employee who is paid as specified in Section 2., shall abide by the following procedure:

- A. If the Bureau of Worker" Compensation allows the claim, the wages paid for such claim shall be approved.
- B. If the Bureau of Workers' Compensation disallows the claim, the wages paid for the lost time period shall be recovered from the employee in such order as follows:
1. Reduction of Sick Leave Balance, Vacation Balance, or any other compensable time at the election of the employee
 2. Payroll Deduction
- C. After B. above has been followed and the Bureau of Workers' Compensation later allows the claim, through appeal, that was initially disallowed, the employee shall be entitled to receive Workers' Compensation Wage Benefits from the City for such lost time period. All processes will then be handled retroactively as if the employee had a claim that was initially allowed.

Section 4: **CITY'S SHARE OF PENSION**: The City shall pay the employer's share of pension payments for the time lost while the employee is receiving pay from the City to assure that such time is credited as service time.

Section 5: **LIGHT DUTY:** The City shall make every possible attempt to find alternate work assignments for employees on injury leave who may be able to perform lighter duties, limited to work normally defined as a police function. Whenever possible, the light duty assignment shall be on the officer's regular shift. To be eligible for light duty an employee must be progressing towards regular duty.

Section 6: **PHYSICAL EXAMINATIONS:** The City at its discretion, may require an employee who is receiving service connected injury benefits, to submit to a physical examination conducted by a facility within a one hundred (100) mile radius of Warren City Hall; approved to make a functional capacity evaluation.

This examination will be arranged and paid for by the City of Warren and notification by the City shall not be less than three (3) working days before the scheduled examination.

The employee shall sign a release of medical information as provided by the Ohio Revised Code Section 4123.651 (B).

The purpose of the examination is to determine if the employee should remain on injury leave or return to work in either his/her regular job or light duty work.

If it is determined by the facility and verified by the prescribing physician that an employee is capable of returning to his/her regular or special assigned duties and the employee fails to report to work as scheduled, the employee will no longer be eligible to receive pay benefits under the service connected injury leave contractual provisions.

In the event there exists two opposing medical opinions (i.e. employee's physician and the physician representing the City of Warren), as to the capability of employee returning to his/her regular or special assigned duties, the two opposing physicians shall agree upon a neutral, third party physician, who will conduct an examination and render his/her decision. The determination of this third party physician shall be the determining factor as to when and if the employee should remain on injury leave or return to work in either his/her regular job or light duty assignment.

The employee who has not returned to work and is not eligible to receive continued service connected injury benefits may elect to try to receive temporary total benefits from the State of Ohio. However, the City may elect to appeal such action using the documentation received from the facility.

If it is determined that an employee can return to work, the employee will be scheduled by the City to return to work four (4) work days from the posting date of the certified written notice. Failure to report to work as scheduled will result in the loss of service connected injury benefits as set forth in this agreement.

AGREEMENT TO REIMBURSE

The purpose of this agreement is to insure that any Workers' Compensation Wage Benefits paid by the City in advance of a claim determination by the Ohio Bureau of Workers' Compensation are automatically repayable to the City if the claim is disallowed by the Bureau.

I, _____, hereby agree to reimburse the City of Warren for any amounts which I may receive per the provisions of the Workers' Compensation Wage Benefits as set forth in the Labor contract and which commenced on _____ and to which I would not be entitled in the event that the Ohio Bureau of Workers' Compensation disallows the claim.

Under such circumstances, repayment of the monies received will be made in the following manner:

1. Reduction of sick leave credit hours.
2. Reduction of vacation credit hours.

If sufficient sick leave and vacation or other compensatory credit hours do not exist to fully recover the paid Workers' Compensation Wage Benefits, I hereby authorize the City of Warren to deduct a reasonable amount not to exceed fifty dollars (\$50.00) per pay from my earnings until the required amount is fully reimbursed.

Employee's Signature

Social Security No.

Date

Accepted for the City of Warren by: _____

Title: _____

Date: _____