STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:	)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	**Case No. 01-MED-01-0073**
-and-	)	**Jonathan I. Klein, Conciliator**
CITY OF WILLOUGHBY, OHIO	)	

FINAL OFFER SETTLEMENT AWARD

APPEARANCES

For Union:

Jeff Perry - Business Agent
Pete Spudich - Dispatcher
Michelle Butchock - Dispatcher
Cathy Verhatz - Clerk

For the City:

Tom Grabarczyk - Labor Consultant
Rikard Cooper - Asst. Police Chief
Keneth Schmitt - Communications Supr.
William Tackett - Asst. Fire Chief

Date of Issuance: December 17, 2001

I. BACKGROUND

This matter came on for hearing on November 30, 2001, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board ("SERB") on October 10, 2001, pursuant to Ohio Revised Code Section 4117.14(D)(1). The hearing between the City of Willoughby (hereinafter "City"), and the Ohio Patrolmen's Benevolent Association (hereinafter "Union") representing the dispatchers and clerks employed by the City's Division of Police was conducted at the City of Willoughby Police Department.

A fact-finding hearing took place on July 9 and August 7, 2001, concerning numerous disputed issues between the parties. The fact-finder's recommendations were not mutually accepted by the Union and the City, and as of the commencement of the conciliation hearing the parties remained at impasse on thirteen issues pertaining to the following articles contained in the collective bargaining agreement:

1. Article 20 - Residency
2. Article 22 - Wages
3. Article 24 - Holidays
4. Article 25 - Vacations
5. Article 26 - Overtime
6. Article 28 - Insurance
7. Article 29 - Sick Leave
8. Article 30 - Leave of Absence
9. Article 31 - Injury Leave
10. Article 32 - Funeral Leave
11. Article 34 - Uniform Maintenance Allowance
12. Article 35 - Tuition Reimbursement/Training
13. Article 43 - Duration

The parties tentatively agreed to resolve specified issues as noted herein, and the conciliator incorporates all outstanding and unmodified tentative agreements entered into by the parties prior to or during the conciliation hearing into this Final Offer Settlement Award. The bargaining unit presently consists of nine dispatchers and four clerks.

II. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, from between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

> (1) Past collectively bargained agreements, if any, between the parties;
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> (2) 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;
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> (3) 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;
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> (4) The lawful authority of the public employer;
>
> (5) The stipulations of the parties;
>
> (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into 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.

III. FINDINGS OF FACT AND OPINION

Issue No. 1: Article 20 - Residency

Article 20 of the collective bargaining agreement currently provides in its totality, as follows: "Members of the Bargaining Unit shall reside within thirty (30) minutes' travel time of the City limits." The City has proposed that Article 20 should be amended to provide as follows: "Members of the Bargaining Unit shall reside within the designated area set out in Appendix A of this Agreement." At the hearing, the Union agreed to the contract language proposed by the City. Accordingly, Article 20 of the new collective bargaining agreement shall be as set forth in the City's final settlement offer attached hereto as Exhibit "A."

Issue No. 2: Article 22 - Wages

The City's initial proposal regarding the wage issue included a one time cash payment and percentage wage increases to the bargaining unit employees. In contrast, the Union's initial proposal provided for an eight percent wage rate increase effective January 1, 2002, and a four percent wage rate increase effective January 1, 2003. At the conciliation hearing, the parties mutually agreed to modify their respective wage rate proposals as detailed below.

The City is one of the older, larger, and more urbanized municipalities in Lake County. The Union points out that the City is located in close proximity to many of the wealthier "outer ring" cities in Cuyahoga County. The Union also notes that the average wage rate increase granted to eastern suburban police officers was four percent in 2001, and the average wage rate increase afforded dispatchers was even higher. The wage rate increases offered by the City are below average according to the Union. The City of Willowick and its police union recently negotiated a wage package which greatly exceeds the City's proposal, and the dispatchers employed by the City of Euclid receive a much higher wage rate than the City's dispatchers.

The City's refusal to offer a package equal to that which was offered to the ranking police officers inevitably resulted in the Union declaring an impasse in the negotiations involving this bargaining unit. The City forced the Union to retreat to positions on issues which it may otherwise have been willing to abandon had the City offered a wage proposal equal to the package that was offered the ranking police officers. Nonetheless, the Union points out that it agreed to a mediated settlement with the City during fact-finding regarding the issue of health insurance. Such a settlement has contributed to the reduction in value of the total economic package to the bargaining unit employees.

According to the Union, the City is financially sound and its revenues have increased over the past years. The City has attracted additional business during each year of the expired contract, and it is well positioned to continue its steady economic growth. The Union asserts that there is no reason why the City cannot offer this bargaining unit an economic package that is at

least equal to the economic package granted to the police officers and supervisors. The Union argues that the City has always insisted upon parity among its bargaining units in the past. The parties' bargaining history, the comparables, the City's ability to pay, the fact-finder's recommendations and other unenumerated factors such as parity support the Union's position on the outstanding issues.

The Union's modified wage proposal seeks a four percent annual wage rate increase effective April 1, 2001, April 1, 2002 and April 1, 2003. The Union points out that its proposal represents a net difference from the City's last offer of only one-half of one percent in the second and third years of the contract. The Union also notes that the package offered to the dispatchers is less than the actual package agreed to by the City and the ranking police officers. Additionally, the City has agreed to grant a $1,500.00 firearms allowance to approximately one-half of the police unit. According to the Union, the firearms allowance equates to a two percent wage rate increase for half the police unit. It requests that this bargaining unit receive the same treatment as afforded the ranking police officers. The Union also points out that dispatchers employed by several jurisdictions receive higher wage rates than the City's dispatchers. The Union argues that the position of clerk/dispatcher is very difficult, and the recent installation of the CAD system by the City has increased the level of complexity for the position.

In support of its position, the Union relies upon state-wide annual wage settlement data compiled by SERB (Union Exhibit 2), and comparisons of the benefits received by dispatchers employed by other cities located in both Cuyahoga County and Lake County. (Union Exhibits 3 -

5). The Union also presented evidence at the hearing regarding the wage rates and benefits afforded patrol officers employed by surrounding cities. (Union Exhibits 6 - 7). According to the Union, a four percent annual wage rate increase will only prevent the dispatchers from "falling behind" dispatchers employed by comparable jurisdictions. The Union also noted at the conciliation hearing that the City's police officers received a firearms proficiency allowance in addition to annual wage rate increases of four percent, 3.5 percent and 3.5 percent over the term of their new collective bargaining agreement.

At the conciliation hearing, the City modified its wage rate proposal by eliminating the lump sum payment and offering retroactivity to April 1, 2001. The City's final offer affords the dispatchers annual wage rate increases of four percent, 3.5 percent and 3.5 percent over the three-year term of the contract. Article 22 of the collective bargaining agreement as proposed by the City is as follows:

> 22.1 The following rates of pay shall become effective retroactive to April 1, 2001 for all employees employed upon the execution of this contract.

	A	B	C	D
Clerks	12.18	13.54	14.92	16.92
Lead Clerk	13.72	14.85	16.00	17.14
Dispatchers	14.85	16.00	17.14	18.58

22.2 The following rates of pay shall become effective March 31, 2002.

	A	B	C	D
Clerks	12.61	14.01	15.44	16.86
Lead Clerk	14.20	15.37	16.56	17.74
Dispatcher	15.37	16.56	17.74	19.23

22.3 The following rates of pay shall become effective March 30, 2003.

	A	B	C	D
Clerks	13.05	14.50	15.98	17.54
Lead Clerks	14.69	15.91	17.14	18.36
Dispatcher	15.91	17.14	18.36	19.90

The City's position regarding wages is based upon a comparison of the salaries afforded dispatchers employed by comparable surrounding communities, as well as jurisdictions located statewide. The City points out that its dispatchers have traditionally enjoyed some of the highest base wage rates for dispatchers employed in Ohio. (City Exhibits 1 - 3). The City's wage proposal is consistent with the proposals offered and granted to other internal bargaining units. The City acknowledges that the total wage package offered to the dispatchers differs from that which was offered to the police officers and firefighters. However, it emphasizes that clerks and dispatchers are not required to be annually certified regarding their firearms qualifications or maintain a paramedic certification as a condition of their continued employment. There is no

basis to grant the dispatchers a wage rate increase greater than the pattern wage increase. For each of the aforementioned reasons, the City contends that its wage rate proposal should be accepted by the conciliator.

Last Best Offer

The conciliator has analyzed the respective proposals and concludes that the City's position represents the last best offer for the following reasons. The conciliator notes that just as the case in Conciliator Ruben's award for the City's patrol officers, there was considerable difficulty in selecting the comparable jurisdictions based upon the record as presented by both parties. The conciliator finds that the following jurisdictions cited by the parties shall be referenced for purposes of discussing and analyzing the wage issue: Willoughby Hills, Willowick and Eastlake.

The statistical evidence presented at the conciliation hearing regarding wage rates for dispatchers employed by other jurisdictions indicates that the City's dispatchers are more highly compensated than those dispatchers employed by all of the aforementioned jurisdictions located in Lake County. Total compensation received in 2001 by the City's dispatchers compared with the referenced jurisdictions, including uniform allowance, shift differential, longevity and other compensation based upon the top wage rates, is as follows:

Willoughby	**$37,619.00**
Willoughby Hills	$34,456.20
Willowick	$33,260.00
Eastlake	$31,799.04[1]

The evidence presented at the conciliation hearing also reveals that the top wage rate received by dispatchers employed by the City ranks third out of forty-one reporting jurisdictions in the state with populations between 15,000 and 30,000 residents as of June 19, 2001 reported data. (City Exhibit 2). Thus, it is clear that the City's dispatchers are more highly compensated than most other dispatchers employed by surrounding, comparable jurisdictions and throughout the State of Ohio.

At the hearing, there was some evidence presented regarding the percentage wage rate increases recently granted to dispatchers employed by surrounding jurisdictions. The record does reveal that dispatchers employed by the City of Eastlake received the following percentage wage rate increases: 2001 - 4 percent; 2002 - 3.5 percent; and 2003 - 3.5 percent. (City Exhibit 4). The record also indicates that dispatchers employed by the City of Willowick received the following percentage wage rate increases: 2001 - 4 percent; 2002 - 3.75 percent; and 2003 - 3.75 percent. (City Exhibit 4). The percentage wage increase in Willoughby Hills for 2001 was 3.75% and the increases in 2002 and 2003 were 4% each year.

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1. The figure for Eastlake represents the top base rate only, and was derived from the SERB benchmark report, City Exhibit 2, to which was applied the percentage increase noted in City Exhibit 4.

Based upon the record presented, the conciliator determines that the City's wage proposal provides for a percentage wage rate increase over the term of the contract which is comparable to the percentage wage rate increases received by comparably situated dispatchers employed by Eastlake, Willowick and Willoughby Hills. Furthermore, the conciliator notes that dispatchers employed by the City will maintain their ranking well ahead of both Eastlake and Willowick regarding total annual wages. The Union has presented no persuasive evidence which would support a finding that the City's proposed wage rate increases are unreasonable under all the facts and circumstances.

In conclusion, the conciliator recognizes that the total compensation package proposed to the dispatchers by the City differs from the total packages which were offered to the City's firefighters and police officers. However, the conciliator notes that dispatchers perform related, but different duties than police officers and firefighters, and are not required to be firearms qualified or paramedic certified. While the percentage increase received by the units of police officers and firefighters are some evidence of the criterion, "such other factors," noted in Ohio Rev. Code, §4117(G)(7)(f), they do not perform comparable work to the clerks and dispatchers. For each of the aforementioned reasons, the conciliator concludes that the City's proposal represents the last best offer.

Issue No. 3: Article 24 - Holidays

The Union proposed to add Martin Luther King Day as one of the holidays under Article 24, Section 24.1 of the collective bargaining agreement. At the conciliation hearing, the parties tentatively agreed to increase the number of holidays afforded each bargaining unit employee on a yearly basis from twelve to thirteen. Section 24.1 of the new collective bargaining agreement shall be modified to credit employees with thirteen (13) holidays. The parties also agreed to add two new sections, 24.4 and 24.5, to Article 24 in the successor agreement. These new sections are set forth in the tentative agreements, attached hereto as Exhibit B. Sections 24.2 and 24.3 of the new collective bargaining agreement shall remain unchanged.

Issue No. 4: Article 25 - Vacations

The City proposed to incorporate language into Article 25 of the collective bargaining agreement which would establish a method to determine the amount of vacation time which an employee accrued during the previous calendar year. At the conciliation hearing, the parties tentatively agreed to modified language in Article 25, Sections 25.2, 25.3, 25.5 and 25.8 of the collective bargaining agreement to reflect the agreed upon method for the calculation of vacation entitlement. The parties also tentatively agreed to alter the language contained in Section 25.9(E) to provide as follows: "The remaining floating days may only be scheduled when a full-time Operator is working." Article 25, Sections 25.1, 25.4, 25.6 and 25.7 of the new collective

bargaining agreement shall remain unchanged. The tentative agreement is attached hereto as Exhibit C.

Issue No. 5: Article 26 - Overtime

At the conciliation hearing, the parties tentatively agreed upon new contract language for Section 26.5 of the collective bargaining agreement, attached hereto as Exhibit D. The balance of Article 26 shall remain unchanged.

Issue No. 6: Article 28 - Insurance

The Union agreed to the City's proposal on Article 28, in particular sections 28.1 and 28.2 with the addition of the Union's proposed language regarding the use of the phrase, "substantially equal." Article 28 of the new collective bargaining agreement shall be as set forth in the City's final settlement offer as modified by the Union's proposed language, and the same is attached hereto as Exhibit E.

Issue No. 7: Article 29 - Sick Leave

At the conciliation hearing, the parties agreed to modify the language currently contained in Article 29, Section 29.11 of the collective bargaining agreement. Section 29.11 of the new collective bargaining agreement shall reflect the agreed upon modification by the parties.

The City has proposed that Section 29.7 should contain the following language in the new collective bargaining agreement:

> 29.7 An employee found unfit for duty or unable to return to service after an extended medical leave as authorized by the Employer, may be removed from employment in a non-disciplinary manner.
>
> Initiation of the process of removal may begin when the Employer reasonably believes that an ongoing condition renders an employee unfit for duty.
>
> Such initial determination may be based on the employee's physician's medical statement or, at the Employer's expense, an employee may be required to submit to a medical examination to determine fitness for duty.

The City has proposed the aforementioned contract provision on a city-wide basis, and claims such language has been adopted by all other bargaining units in the City. The City desires the "fitness for duty" language because there is currently no process for removing employees who are unfit for duty.

The Union is opposed to any new contract language regarding fitness for duty. According to the Union, Article 30 of the collective bargaining agreement contains language which adequately addresses this matter. The Union points out that the fact-finder recommended that the City's proposal should not be adopted.

Last Best Offer

Based upon the evidence of record, the conciliator determines that the Union's position represents the last best offer, and the City's proposed contract language for Section 29.7 shall not be included in the new collective bargaining agreement. At the hearing, the City presented insufficient evidence which would demonstrate a need for the inclusion of its proposed "fitness for duty" language. The conciliator notes that the fact-finder also concluded that the City's proposal should not be adopted.

Issue No. 8: Article 30 - Leave of Absence

Section 30.3 of the collective bargaining agreement entitled "Length of Leave," currently provides as follows: "A leave of absence may be granted for a maximum duration of six (6) months, (includes paid and unpaid time combined), or for such time an employee has accumulated unused sick leave still to their credit." The City has proposed that Section 30.3 of the new collective bargaining agreement should provide as follows: "A leave of absence may be granted for a maximum duration of six (6) months, (includes paid and unpaid time combined), or for such time an employee is utilizing accumulated unused sick leave still to their credit."

The City has also proposed altering the last sentence contained in Section 30.6 to provide as follows: "An employee while on an unpaid leave is on an inactive pay status and will not accrue sick or vacation leave benefit accruals during the period of such leave. The City further proposes to add the following underlined language to Section 30.8(A) of the new collective bargaining agreement: "If an employee is unable to return to active work status within six (6) months, or at such time an employee has exhausted all accrued unused sick leave still to their

credit the employee is entitled to utilize, the employee may be terminated." Additionally, the City proposes to add the following underlined language to Section 30.10 of the new collective bargaining agreement: "The employee must demonstrate that the probable length of disability will not exceed six (6) months or for such time as employee has accrued unused sick leave still to their credit that the employee is entitled to utilize for this absence."

The City argues that the aforementioned language which it has proposed is unique to this bargaining unit and relates to its "fitness for duty" proposal and the issue of active pay status. The proposed provisions are considered to be "clean up" language by the City in regards to the application of active pay status.

The Union desires to maintain the current language contained in Article 30 of the collective bargaining agreement, and it rejects the City's proposal to change such language. According to the Union, the current contract language has created no difficulties for the parties in the past. The Union points out that the fact-finder concluded that the current contract provisions should be maintained.

Last Best Offer

Upon consideration of the parties' respective positions, the conciliator concludes that the Union's proposal to maintain the current language contained in Article 30 of the collective bargaining agreement represents the last best offer. The City has presented no compelling reason for the adoption of its requested modifications. The conciliator notes that as it relates to the City's proposed Section 30.6 contract language this issue is adequately addressed in the new

language contained in Article 25 of the collective bargaining agreement. For each of these reasons, Article 30 of the new collective bargaining agreement shall remain unchanged.

Issue No. 9: Article 31 - Injury Leave

Article 31.1 of the collective bargaining agreement currently provides as follows:

> When an employee is injured in the line of duty, while actually working for the Employer, necessitating his absence from work for more than seven (7) calendar days, he shall be eligible for a paid leave not to exceed 90 calendar days providing he files for Workers' Compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this article.

The City proposes that Article 31, Section 31.1 of the collective bargaining agreement should be modified to provide as follows:

> In cases uncontested by the Employer, when employee is injured in the line of duty, while actually working for the Employer, necessitating his absence from work for more than seven (7) calendar days, he shall be eligible for a paid leave not to exceed ninety (90) calendar days. The employee may be required to file for Workers' Compensation and sign a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this Article.

The City also proposes that Section 31.5 should be modified to provide as follows:

> If, during the three (3) calendar years following the original date of injury, the disability reoccurs, and is so certified by a licensed physician which is not contested by the Employer, the injured employee shall be compensated, pursuant to Sections 31.1 and 31.2 hereinabove, for such period or periods of time that remain unused from previous disability pay periods associated with the same injury, for absences greater than seven (7) days.

The City argues that its proposal is the last best offer for the following reasons. First, it points out that its proposal is made on a city-wide basis and reflects the current application of the article's language by the City. The City points out that it self-funds initial injury leave costs, and injury leave would not be granted in contested cases under its proposal unless approved by the Bureau of Workers' Compensation. Under the City's proposal for Section 31.5, re-implementation of the remaining unused injury leave would be granted in "uncontested" cases "for absences greater than seven (7) days" where the disability reoccurs within three calendar years. According to the City, the Bureau of Workers' Compensation utilizes the same method regarding the issuance of loss of time payments.

The Union opposes the City's proposal which requires that bargaining unit members utilize seven days of sick leave prior to becoming eligible for the contractually mandated injury leave pay. The Union argues that there is no basis to charge an employee with the use of sick leave if he or she is injured in the line of duty and qualifies for injury leave pay. The Union points out that the fact-finder ruled against the City's proposal.

Last Best Offer

Based upon the record, the conciliator concludes for the following reasons that the City's proposal represents the last best offer. The contract clearly provides that an employee is entitled to a paid leave of up to ninety days when he or she is injured in the line of duty. However, as stated by Conciliator Ruben in the final offer settlement award concerning the City's patrol officers unit, dated November 28, 2001, " . . . there is no reason to require the City to accept

without question every claim that an employee's injury arose while on duty." (Ruben Award at 43). Documentation submitted by the City at the conciliation hearing indicates that only ten out of sixty claims for workers' compensation benefits filed by City employees since January 2000 were initially rejected by the City. (City Exhibit 10). This conciliator concurs with the finding by Conciliator Ruben in the aforementioned award that the City ". . . does not lightly contest claims of occupational injury, and there is no reason to believe that the City will do so in the future with respect to applications made by members of this Bargaining Unit." (Ruben Award at 44).

The Union has presented insufficient evidence which would indicate that the bargaining unit members would suffer any undue hardship as a result of the contract language proposed by the City. As such, the conciliator concludes that the language contained in the new collective bargaining agreement for the dispatchers and clerks should be consistent with the language contained in the patrol officers collective bargaining agreement in respect to the application of injury leave. Accordingly, the terms of the new collective bargaining agreement shall include the language proposed by the City in Article 31, Sections 31.1 and 31.5. Article 31, Sections 31.2, 31.3, 31.4 and 31.6 shall remain unchanged.

Issue No. 10: Article 32 - Funeral Leave

Article 32.1 of the collective bargaining agreement currently provides as follows:

> An employee shall be granted time off with pay for the purposes of attending the funeral upon the death of a member of the employee's immediate family. The employee shall be entitled to a maximum of three (3) work days for each death in his immediate family. For purposes of this Article, "Immediate family" shall be defined as to only include the employee's spouse, children, step-children, parents, sisters, brother,

> parents-in-law, aunts, uncles, grandparents, and grandchildren, along with any other relatives residing with the employee at time of death.

The City has proposed to modify the funeral leave provision to grant a maximum of three days off up to and including the day of interment for "the" death of an immediate family member. The City's proposed Article 32.1 is as follows:

> An employee shall be granted time off with pay for the purposes of attending the funeral upon the death of a member of the employee's immediate family. The employee shall be entitled up to a maximum of three (3) work days for the death in his immediate family, up to and including the day of interment. For purposes of this Article, "immediate family" shall be defined as to only include the employee's spouse, children, step-children, parents, sisters, brothers, parents-in-law, aunts, uncles, grandparents, and grandchildren, along with any other relatives residing with the employee at time of death.

The City asserts that its proposed contract language, offered on a city-wide basis, clarifies the time that an employee is entitled to utilize for purposes of funeral leave. Under the City's proposed language, a bargaining unit employee who lost multiple family members on the same day would not be entitled to compounding of funeral days, i.e. the death of two family members results in funeral leave of only three, not six days. The City notes that some employees have utilized less than three days of funeral leave in connection with the death of an immediate family member. The City also points out that additional time off is available through the use of sick and vacation time.

The Union opposes the City's proposal to alter the current contract language regarding funeral leave. According to the Union, there have been no incidents in the past several years which would warrant a change to the current contract provision. The potential time off granted

in the current contract is appropriate to allow for grieving and the performance of necessary tasks connected to the death of an immediate family member. The Union points out that the fact-finder rejected the City's proposal.

Last Best Offer

The conciliator has carefully considered the parties's respective last best offers, and concludes that the City's proposal must be rejected. The City has presented no evidence which would warrant a modification of the language currently contained in Article 32, Section 32.1 of the collective bargaining agreement. Additionally, the conciliator notes that the City's proposed language is problematic in that it has the potential, however remote, of limiting funeral leave entitlement in those instances of multiple deaths of immediate family members. Furthermore, the City's proposal, in the conciliator's opinion, unreasonably limits the three-day funeral leave entitlement depending on religious belief and/or burial practices as a result of the proposed language, "up to and including the day of interment." For each of the aforementioned reasons, the Union's position is selected as the last best offer, and Article 32 of the new collective bargaining agreement shall remain unchanged.

Issue No. 11: Article 34 - Uniforms

Article 34.1 of the collective bargaining agreement currently provides as follows: "Uniforms will continue to be provided by the Employer under the Quarter-Master System

during the life of this agreement. Effective 2000, each employee shall be entitled up to four hundred fifty dollars ($450.00) worth of purchases per year as authorized by the Employer.

The Union proposes that Article 34.1 of the new collective bargaining agreement should be modified to provide as follows:

> Uniforms will continue to be provided by the employer under the Quarter-Master System during the life of this Agreement. Effective 2002, each employee shall be entitled up to five hundred fifty dollars ($550.00) worth of purchases per year as authorized by the Employer. Effective 2003, each employee shall be entitled up to six hundred dollars ($600.00) worth of purchases per year as authorized by the Employer.

The Union contends that the increased uniform allowance is necessary due to the rising costs of uniform maintenance. The Union argues that dispatchers currently receive a lower uniform allowance than other employees, and deserve to be awarded an above average uniform allowance consistent with the above average allowance provided to the police officers. The Union points out that the fact-finder agreed with its position. The City countered that an increased uniform allowance cannot be applied towards the 2001 calendar year because that year is virtually over.

Last Best Offer

After reviewing the presentations by each party, the conciliator selects the Union's proposal as the last best offer. The conciliator finds that the modest increase in uniform allowance proposed by the Union is not unreasonable under the facts and circumstances. The City has presented no evidence that the Union's proposal is unwarranted or that it is financially

unable to provide for the requested increase in the uniform allowance during 2002 and 2003. Accordingly, Section 34.1 of the new collective bargaining agreement shall be as set forth in the Union's final settlement offer.

Issue No. 12: Article 35 - Tuition / Training

At the conciliation hearing, the parties agreed that the City would withdraw its proposal regarding the addition of a new section in Article 35 of the collective bargaining agreement. Article 35 shall remain unchanged in the new collective bargaining agreement.

Issue No. 13: Article 43 - Duration

The Union proposes the addition of Section 43.3 to the new collective bargaining agreement:

> The parties agree that the March 31, 2003 expiration date shall not prohibit the OPBA and the Bargaining Unit from receiving any retroactive wage or economic increase to April 1st 2001 from a conciliator pursuant to Section 4117.14(G)(11), Ohio Revised Code.

The Union contends that the aforementioned language is necessary as a result of an April 1 contract starting date, rather than a starting date of January 1. The Union points out that the contractual starting date of April 1 exposes the bargaining unit members to the potential of receiving no wage rate increases during the first year of a contract. The Union asserts that most parties provide that the terms of a new contract shall be retroactive, however, it does not want to

worry about a problem in the future regarding the retroactivity of wage rate increases if conciliation is necessary.

The City is opposed to the Union's proposal which incorporates a waiver of Ohio Rev. Code Section 4117.14(G)(11). The City argues that the Union's proposal is a permissible subject of bargaining and the conciliator is without authority to grant the proposal absent an agreement to do so by the City. The City acknowledges that a waiver is contained in its contract with the police officers. However, in the City's opinion that waiver was regrettably incorporated into the contract in the 1980's upon acceptance of a fact-finder's recommendations. In the instant case, the City asserts that the issue is only a permissive subject of bargaining. The City points out that it needs time to react to and fund a conciliator's award. For each of the aforementioned reasons, the City is opposed to the Union's proposed contract language.

Last Best Offer

The conciliator has reviewed the parties respective arguments and the evidence, and determines that the City's position represents the last best offer. The conciliator finds that the Union has presented insufficient evidence which would warrant the inclusion of its proposed language in the new collective bargaining agreement. The conciliator notes that the parties in the instant case agreed at hearing to submit retroactive wage rate increases, and may do so once again during negotiations following the expiration of the new collective bargaining agreement. At the conciliation hearing, the Union presented the conciliator with no case authority which would support holding that the issue of contract language providing a conciliator with the power

to grant retroactive wage or economic provisions is a mandatory subject of collective bargaining. For each of the aforementioned reasons, the conciliator rejects the language proposed by the Union, and Article 43 of the new collective bargaining agreement shall remain unchanged.

JONATHAN I. KLEIN, CONCILIATOR

Dated: December 17, 2001.

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TMX
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ARTICLE 20. RESIDENCY

20.1 Members of the Bargaining Unit shall reside within **the designated area set out in Appendix A of this Agreement** ~~thirty (30) minutes' travel time of the City limits.~~

Exhibit "A"

TA 11/30/01

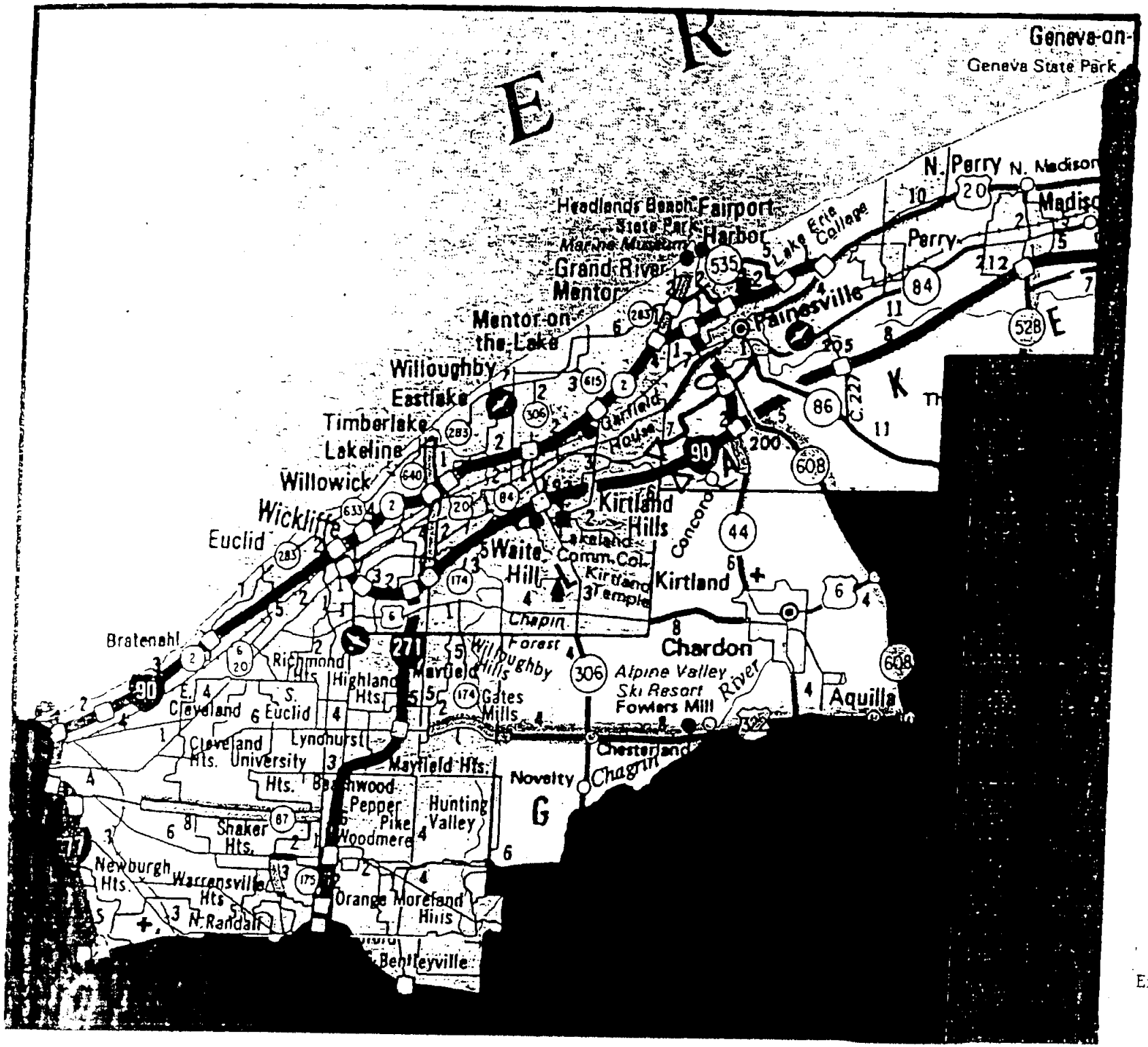

Exhibit "A"

TA 11/30 TMK

Description of Exhibit "A" Residency Map

- Eastern most Lake County Line ~~North~~ South from Lake Erie until Lake County line intersects with State Route 608.
- State Route 608 south to State Route 322
- State Route 322 west to the Chagrin River
- Chagrin River southwest to State Route 87
- State Route 87 west to Cuyahoga County Line
- Cuyahoga County Line south to State Route 422
- State Route 422 west to Interstate 480
- Interstate 480 west to Interstate 77
- Interstate 77 north to Lake Erie

From 12 Holidays to TWS

24.1 Thirteen (13)

JS

#4

ARTICLE 24. HOLIDAYS

24.2 To receive holiday pay, an otherwise eligible employee must be at work or on an authorized absence, in the active pay status, on the work days immediately preceding and immediately following the day on which the holiday is observed. Active pay status is defined as time an employee is authorized to be off in a paid status including vacation, holidays, funeral, compensatory time, sick leave, or an injury leave being paid by the City.

Exhibit "B"

TA 11/30/01

#5

ARTICLE 24. HOLIDAYS

24.5 Beginning in calendar year 2002, an employee who works on Independence Day, Thanksgiving Day, or Christmas Day shall be entitled to be compensated at time and one-half up to eight (8) hours. The shift assigned to work on such designated holidays shall be determined by the majority of scheduled hours worked on the day of the holiday. There will be no additional pyramiding of time or rates for additional time worked on the designated holidays.

#6

ARTICLE 25. VACATIONS

25.1 All full-time employees shall earn paid vacation pursuant to the following schedule which shall be taken in the calendar year following the year in which the vacation is earned. Employees who fail to satisfactorily complete their probationary period are not eligible for any vacation time.

25.2 All vacation time shall be credited on January 1st of each year and shall be for the time of employment **in the activity pay status** ending on the immediately preceding January 1st.

25.3 Employees who have worked less than one (1) year for the City shall receive one (1) day for each full month worked ~~**in the active pay status**~~, prior to January 1st of the vacation year, not to exceed ten (10) days.

25.4 Full-time employees employed on a regular full-time basis by the State of Ohio or a political subdivision thereof, may, at the time of hire, credit such previous service credit for the purpose of accruing vacation leave, up to a maximum of five (5) years. Previous service credit shall only be credited for the purpose of future vacation accrual.

Such prior service credit will be granted after one (1) full year of employment with the City of Willoughby as a full-time employee.

If part-time employment with the City of Willoughby leads directly to full-time status, one year of credit shall be given for 2080 regular hours worked after one year of full-time employment.

25.5 All full-time employees shall be entitled to ~~**accrue up to**~~ a ten (10) day vacation period in and after completion of one full calendar year of service ~~**in the active pay status**~~ with the City; ~~**up to**~~ fifteen (15) days vacation in and after the vacation year in which such employee completes five (5) years of service with the City; ~~**up to**~~ twenty (20) days vacation in and after the vacation year in which such employee completes ten (10) years of service with the City, ~~**up to**~~ twenty-five (25) days vacation in and after the vacation year in which such employee completes fifteen (15) years of service with the City; and ~~**up to**~~ thirty (30) days vacation in and after the vacation year in which such employee completes twenty (20) years of service with the City. ~~**For purposes of determining the amount of vacation accrued in the prior year, an employee will have accrued one twelfth (1/12) for each full month in the active pay status of the respective level of entitlement.**~~ *

25.6 If, because of the needs of the City, an employee who has previously-scheduled time is unable to take such vacation time, the employee shall receive pay for such time at

* The amount of vacation an employee is entitled to at the ~~beginning~~ beginning of each year shall be reduced by one-twelfth (1/12) for every 174 hours in the previous year in an unpaid status.

Exhibit "C"

the end of the year in which it was to be taken. There will be no carry-over of vacation time from one year to another.

25.7 If an employee is voluntarily terminated or voluntarily terminates his employment after supplying the Employer with one (1) week's advance notice of termination, he shall receive payment for any earned but unused vacation time credited to him at the time of his termination. In the case of the death of an employee, his earned but unused vacation time will be paid to his estate. If an employee is laid off, he shall receive payment for his earned but unused vacation time at the same time final compensation for time worked is made.

25.8 All employees shall submit their desired vacation periods to their Supervisor prior to **January 1st** of each year, when a written vacation schedule will be posted. Employees submitting vacation requests after **January 15th** shall be granted vacation on a first-come, first-serve basis, subject to operational needs and previously-scheduled vacations.

25.9 Vacations shall be scheduled as follows:

A. Selection of vacations and holidays will be done on a seniority basis on each shift for Operators and collectively for Clerks.

B. Vacation must utilize five (5) days in a work week, up to two (2) weeks. (Weeks do not have to be scheduled consecutively)

C. After each employee in their respective classification has had an opportunity to schedule vacation, the list will be rotated until each employee has had the opportunity to schedule their vacation.

D. By the end of the third (3rd) pass of vacation scheduling, all vacation and holidays will have been scheduled except that eight (8) days total (vacation and/or holidays) may be saved to be scheduled as floaters used in one (1) day increments or more throughout the year.

Such scheduling of floaters shall be subject to the approval of the Employer and done in a manner that meets the efficient operation of the City. No overtime will be created by the scheduling of floater days.

E. The remaining floating days may only be scheduled when ~~the second~~ a full-time Operator is working.

F. Any changes that are requested in vacation or paid holidays after the selection process is completed must be in writing and subject to the approval of the Employer.

11/30

#7

ARTICLE 26. OVERTIME

26.1 No Change

26.2 No Change

26.3 No Change

26.4 No Change

26.5 Employees shall be entitled to accrue compensatory time off in lieu of overtime payments up to a maximum cap of **eighty (80)** hours with an unlimited "cash out" option in **April** and **October** of each **year beginning 2002.**

The employee must submit a request to the Finance Director by the last business day in March and September, requesting a "cash out" of his unlimited compensatory time. Payment to the employee shall be made no later than April 15th and October 15th respectfully, or on the next business day following such dates if they fall on a weekend.

Compensatory time may be utilized when no overtime is needed according to the manning levels of the Division of Police, **and does not create pyramiding of time off,** and a request form is properly completed, submitted, and approved by the Chief or his designee.

Exhibit "D"

#8

ARTICLE 28. INSURANCE

28.1 The City will make available to full-time employees and elected officials, a program for hospitalization and medical protection, dental/**orthodontic** insurance, paid prescriptions, vision, and hearing insurance coverages. Such program shall be solely determined by the City, **except that the level of coverage shall be maintained at a substantially equal as in effect January 1, 2001, with a five dollar ($5.00) ten dollar ($10.00) prescription plan benefit upon execution of this Agreement.** **Specified plan modifications shall be implemented pursuant to Section 28.2 set out below.** Premiums for the within coverages shall be paid by the City when the applications of such employees are accepted for coverage, subject to reimbursement **set out in Section 28.3 and 28.4.**

28.2 Effective December 1, 2002, the following plan modifications may be made by the City: Employees will be responsible to pay a ten dollar ($10.00) per visit co-pay to doctors within the network . A twenty dollar ($20.00) per visit co-pay to doctors outside the network if such out of network service is permissible in plan offered.

Employees shall be responsible to pay a fifty dollar ($50.00) fee for non-life threatening emergency room visits.

80% of the reasonable and customary cost of services will be paid by the insurance carrier for services outside the network if such out of network service is permissible in the plan offered. The employee shall be responsible for the remaining charges.

A prescription plan shall be offered at a level of eight dollars ($8.00) generic, fifteen dollars ($15.00) designated brand name. A mail order plan may be made available with a two (2) co-pay ninety (90) day supply benefit.

28.3 Employees will be required to reimburse the City, through payroll deduction, the amount applicable to the program in which they participate, that being either $10.50 per pay period if the employee holds single coverage, or $21.00 per pay period for family coverage.

28.4 The reimbursement above referenced in Section 28.2 and 28.3 will also apply to those employees who elect to participate in the federally-qualified Health Maintenance Organization (HMO), if offered by the City.

28.5 Payments shall be made through payroll deductions prior to the date due by the carrier. Failure to pay such additional premiums, if any, shall result in the loss of insurance benefits to the employee.

Exhibit "E"

28.6 In the event an employee is eligible to be covered under the same policy of another employee of the City, each employee will be offered either a single plan or offered one family plan for both employees. Cost shall be governed based on selection of a single plan for each employee and to the employee named as the policy holder for a family plan.

28.7 The Employer will provide life insurance coverage in the amount equal to one year base pay of the employee.

CERTIFICATE OF SERVICE

An original of the foregoing Final Offer Settlement Award was served upon Tom Grabarczyk, Labor Relations Management, Inc., 6800 W. Central Avenue, Suite L-2, Toledo, Ohio 43617, and upon Jeff Perry, Ohio Patrolmen's Benevolent Association, 10 Beech Street, Berea, Ohio 44017, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 17th day of December 2001.

JONATHAN I. KLEIN, CONCILIATOR