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2002 APR -1 P 3: 26

In the Matter of Conciliation :
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Between : SERB Case Numbers: 01-MED-05-0560
 : 01-MED-05-0561
CITY OF UPPER SANDUSKY, OHIO : 01-MED-05-0562
 :
Employer : Date of Hearing: March 1, 2002
 :
and :
 :
INTERNATIONAL UNION OF POLICE : Howard D. Silver
ASSOCIATIONS, AFL-CIO : Conciliator
 :
Union :

DECISION AND AWARD OF CONCILIATOR

APPEARANCES

For: City of Upper Sandusky, Ohio

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This matter came on for a conciliation hearing at 10:00 a.m., on March 1, 2002, in the city of Upper Sandusky, Ohio's municipal building, 7th Street, Upper Sandusky, Ohio. The conciliation hearing concluded at 12:40 p.m. on March 1, 2002. Both parties presented their best, final offers about language proposed for the parties' successor collective bargaining agreement not agreed by the parties; both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions.

This conciliation proceeds under authority of Ohio Revised Code section 4117.14 and Ohio Administrative Code rule 4117-9-06. All procedural requisites necessary to the presentation of language proposed but not agreed by the parties for the successor agreement to the conciliator have been satisfied by the parties in accordance with law. This matter is properly before the conciliator for review and disposition pursuant to Ohio Revised Code section 4117.14 and Ohio Administrative Code rule 4117-9-06.

BACKGROUND

The city of Upper Sandusky, Ohio, the employer, and the International Union of Police Associations, AFL-CIO, Local 32, the union, have engaged in bargaining since July, 2001. The union is recognized as the exclusive representative of a bargaining unit comprised of all regular and full-time police officers of the rank of sergeant and above; all regular full-time police officers below the rank of sergeant; and all regular full-time firefighters. A

collective bargaining agreement covering these bargaining unit positions was in effect from January 1, 1998 through December 31, 2000. The predecessor collective bargaining agreement was bargained by a different exclusive representative.

The employer and the union in this case agreed to a number of articles intended for the parties' successor agreement. By December 20, 2001, thirteen proposals remained unagreed and the unresolved articles were presented to a fact-finder on December 20, 2001 within a fact-finding process overseen by the State Employment Relations Board pursuant to Ohio Revised Code Chapter 4117. and Ohio Administrative Code rule 4117-9-06. The fact-finder issued his fact-finding report on January 2, 2002. Additional articles were agreed by the parties after fact-finding; nine issues remained unagreed between the parties. These nine issues were presented to the conciliator on March 1, 2002.

DISCUSSION AND LANGUAGE DETERMINED BY THE CONCILIATOR

Article 7 - Overtime

Section 7.6(C)

The union proposes a change to Article 7, section 7.6(C), which would change from three to four the number of hours to be paid per day for work assigned by the employer and performed by an employee at a time disconnected from the employee's regularly scheduled duty. This work is to be compensated at a premium

overtime rate of one and one-half times the regular hourly rate of pay.

The increase from three hours to four hours of minimum pay for call-in work is urged by the union because disrupting an employee's off-duty time, in particular days off, should be generously compensated. The union reminds the conciliator that being called to work when not scheduled requires finding child care or care for someone who is not able to care for himself, and is disruptive to family life. The union points out that the impact on employees' family vacations can be traumatic. The union points out that the fact-finder recommended an increase for call-in/court time pay from three hours to four hours as proposed by the union.

The employer opposes the increase proposed by the union in section 7.6(C) of Article 7. The employer notes that while the fact-finder recommended this increase, he did not state a basis for doing so other than "consideration of the totality of the revision of economic benefits in the Agreement." The employer notes that it has been an existing practice of the city to compensate officers who are called to work during off-time for a minimum of three hours and urges that this existing practice be continued. The employer claims that minimum call-in pay of three hours is more generous than is the case in most similarly-sized cities in Ohio and emphasizes the importance of the city managing its money prudently. The employer believes that the three hour minimum for call-in work adequately compensates officers for the inconvenience of being called into work during scheduled time off. The employer also notes

that the collective bargaining agreements between the Wyandot County Sheriff's Office and an exclusive representative of two bargaining units employed by the Wyandot's Sheriff's Office, comprised of full-time deputized law enforcement employees, including deputy sheriffs, corrections officers, and communications technicians, and a separate unit of all non-deputized law enforcement employees, provide for two hours of minimum pay for call-in duty.

The fact-finder's reason for recommending the increase, as stated in the fact-finder's report, was based on appropriateness and consideration of the totality of the revision of economic benefits in the agreement. The conciliator understands the fact-finder's reasoning to encompass other revisions of economic benefits suggested by the fact-finder, including wages wherein he sided with the employer; medical benefits wherein he sided with the union on co-payments and increased employer contributions for dental/optical coverage; and sided with the union on increased sick leave pay outs.

It is difficult for the conciliator to estimate what the thirty-three and one-third percent (33-1/3%) increase in minimum call-in pay will mean in actual dollars. Much of the call-in pay results from attendance of a bargaining unit member, while scheduled off duty, at a court proceeding. The employer does not control the scheduling of cases before courts of common pleas or municipal courts which require the attendance of a bargaining unit member. The employer cannot possess the foreknowledge necessary to

schedule bargaining unit members so that court time and off-duty do not coincide.

The conciliator keeps in mind that the increase proposed by the union under this article is for a minimum payment, and any hours actually worked beyond the minimum are compensated at the premium rate. Thus, any bargaining unit member called in while off-duty who is required to work four hours is paid for each of those hours worked at the premium rate.

The conciliator understands the extreme inconvenience caused by recalling a bargaining unit member to duty while scheduled off-duty, and finds the premium rate paid for such duty aimed at compensating employees for unexpected and inconvenient call backs. Raising the minimum pay from three hours to four hours would certainly increase the compensation for this inconvenience among bargaining unit members who are required to report for duty while off-duty and work less than four hours. The conciliator, however, other than the fact-finder's reference to the overall economic considerations in his report, finds little to support a finding of insufficiency in the three-hour minimum now in effect between the parties, a minimum which offers call-in pay fifty percent higher than that which is provided by the Wyandot County Sheriff to his deputy sheriffs, corrections officers, and other uniformed and non-uniformed personnel.

The conciliator finds the three hours of minimum pay for call-in duty to be adequate based on the evidence presented and therefore recommends no change to Article 7, section 7.6(C).

Article 7 of the parties' predecessor collective bargaining agreement shall be brought forward to the parties' successor agreement unchanged.

Article 7

Section 7.1.

The workday for police employees shall consist of 12 hour shifts. Police employees shall work seven (7) 12 hour shifts every 14 days, for a total of 84 hours. Hours worked in excess of 84 hours during that 14 day period shall be paid at the rate of 1-1/2 times the employee's regular rate of pay.

The workday for fire department employees shall consist of 24 hour shifts. Fire department employees shall work seven (7) 24 hour shifts every 21 days, for a total of 168 hours. Hours worked in excess of 168 hours during that 21 day period shall be paid at the rate of 1-1/2 times the employee's regular rate of pay.

Police will work one (1) twelve (12) hour shift at a time, the schedule to consist of two (2) days on followed by two (2) days off. The schedule shall be fourteen (14) shifts worked in a twenty-eight (28) day period. Fire department employees will work one (1) twenty-four (24) hour shift followed by two (2) days off for a total of seven (7) shifts in a twenty-one (21) day period. Any change or impending change increasing the above designated tours of duty must be forwarded to the OLC and bargaining unit representatives ten (10) days before such change is to go into effect, and is subject to immediate bargaining.

Section 7.2.

Police will work one (1) twelve hour shift at a time, the schedule to consist of two (2) days on followed by two days off. Fire department employees will work one (1) twenty-four hour shift at a time, followed by two (2) days off. However, the employer retains the right to compel employees to work additional shifts if deemed necessary by the Chief or his designee.

Any proposed change increasing the above designated tours of duty must be forwarded to the OLC and bargaining unit representatives ten (10) days before such change is to go into effect, and is subject to immediate bargaining.

If applicable, the educational bonus shall be included, on a pro rata basis, with other forms of compensation required by the Fair Labor Standards Act to be included in the calculation of the "regular" rate of pay.

Section 7.3.

In lieu of overtime pay, an employee may request to accumulate compensatory time at the rate of one and one half, (1-1/2) hours for each overtime hour worked. Any compensatory time in excess of one hundred (100) hours shall be paid at an overtime rate of pay. Usage of compensatory will be subject to the approval of the Chief of Police based upon the operational needs of the department.

Section 7.4.

With the approval of the Chief of Police, or his designated representative, employees may exchange days off or work assignments. Such exchanges shall not affect the active pay status of either employee. This applies to police employees only.

Section 7.5.

Work Schedules shall be posted as soon as practicable in advance of schedule shifts. This shall apply to police employees only.

Section 7.6.

- A. Overtime shall be voluntary and not required except in situations which are deemed necessary by the Chief of Police or his designee.

- B. Any employee working in excess of his regularly scheduled shift, will be compensated at an hourly premium overtime rate equal to one and one-half (1-1/2) his regular straight time hourly rate of pay for all such excess hours and fractions thereof.
- C. Call-in pay is defined as payment for work assigned by the City and performed by an employee at a time disconnected from his normal pre-scheduled time for work. Work done in this manner shall be compensated at a premium overtime rate of one and one-half (1-1/2) times their regular hourly rate of pay with a minimum of three (3) hours paid per day.
- D. Court Time: Whenever it is necessary for an off-duty employee to appear in court, or for a pre-trial conference, for the prosecution of a criminal or civil case (which must have resulted from the employee's work related activity), such employee shall be compensated in accordance with the Call-In Pay provisions of this article. Any witness fees received as a result of court appearances in connection with the City employment shall be turned over to the City within three (3) days of the receipt of such fees. Any travel pay received when an employee uses City-supplied transportation will be turned over to the City.

Section 7.7.

The parties recognize that the City currently employs part-time or auxiliary personnel to perform bargaining unit work and that the City has retained its inherent management right to use such personnel in the future. It is not the intention of the City to use such personnel to displace full-time employees or to avoid hiring full time employees for full time work. Therefore, the City agrees that it will not use part time or auxiliary personnel to displace employees from full time work or to avoid hiring full time employees to perform full time work. Further, the City agrees that it shall not alter the regular work schedule of any full time employee without the employee's permission to accommodate the desires of any part time or auxiliary employee.

Article 8 - Wages

Section 8.1

The union proposes a four and one-half percent (4-1/2%) across the board increase effective January 1, 2001; January 1, 2002; and January 1, 2003. The union also proposes a seventy dollar (\$70.00) one time lump sum payment for overtime retroactive to January 1, 2001.

The union contends that when the wages of the bargaining unit members are compared to bargaining unit members in other cities of similar populations in northwest Ohio, the safety forces paid by the city of Upper Sandusky, Ohio are found to be paid 13.7% under the regional average. The union points out that this calculation includes a nine percent (9%) pension pickup by the employer. The union also points out that the work year for the employees in the bargaining unit is 2184 hours (2906 hours for firefighters). The union notes that this means employees work 104 hours over the standard 2080 hours per year at straight time, allowing the employer to avoid overtime on 104 hours. The union points out that police officers work twelve-hour days and this accounts for the increased number of hours per year. The union notes that wage increases, on average, as reported by SERB, were 1999-4.25%; 2000-3.95%; and 2001-3.9%.

The employer proposes a four percent (4%) across the board wage increase effective January 1, 2001; January 1, 2002; and January 1, 2003. The employer, at the conciliation hearing, agreed

to a one time seventy dollar (\$70.00) lump sum payment for overtime retroactive to January 1, 2001.

The employer notes that the fact-finder endorsed the four percent (4%) increase for the three years of the successor agreement and notes that during the first year of the predecessor collective bargaining agreement, in effect from 1998 through December 30, 2000, a "bump up" in wages occurred to bring bargaining unit members more in line with other similarly situated cities. The employer notes that it began the negotiations for the parties' successor agreement at a three percent (3%) wage increase, has agreed to the lump sum overtime payment, and believes the four percent (4%) offer by the employer is a generous one. The employer notes that the nine percent (9%) pension pickup is not a common benefit and notes that the wage increase proposed by the employer, over three years, would increase bargaining unit members' salaries by twelve percent (12%). The employer notes that exempt city employees received a four percent (4%) increase effective December, 2001.

The employer notes that its budget is limited and must be used prudently. The employer noted expending 12 million dollars from its capital budget over the past year and noted that its operating budget for the entire city is between five and seven million dollars.

The conciliator adopts the employer's wage proposal. The four percent (4%) wage increase retroactive to January 1, 2001 and to January 1, 2002; with a four percent (4%) increase effective

January 1, 2003, appears to the conciliator to be fair and more in keeping with a sluggish economy where projections cannot be relied on with much confidence. The conciliator finds the employer's proposed wage increase to be more in keeping with the uncertainty of the near future in terms of what revenues will be available to the city to meet these guaranteed wage increases and with other economic issues addressed by the conciliator in this report.

Section 8.3

The union also proposes new language for Article 8 within section 8.3 of the parties' successor agreement which would reduce the number of years from seven to five for police officers and from ten to five for firefighters to reach top pay. The union notes that under the parties' predecessor agreement, police officers were required to serve seven years and advance six steps to get to top pay, and firefighters were required to serve ten years to cover six steps and reach top pay. The union contends that the average number of steps to reach top pay is four and five, requiring, on average, 5.1 years. The union recommends that the number of steps remain at six, but that five years be needed to reach the last step and top pay.

The union contends that police officers and firefighters are eligible for retirement after twenty-five years of service and it should not take a police officer nearly a third of his career to reach full pay, and it should not take firefighters more than a third of their careers to reach top pay. The union believes a

reasonable point in time to achieve full pay status is when an employee is eligible for promotion. Such eligibility indicates that the employee has reached full productivity and is prepared to assume the role of a supervisor. The union notes there is also an issue of parity between the two safety forces (police and fire) and parity is a universal issue among safety forces.

The employer proposes that the language in the parties' predecessor agreement within section 8.3 remain unchanged. The employer notes that the six-step schedule, as presented within the parties' predecessor agreement, was a position accepted by the conciliator of the predecessor agreement, and the employer argues that collapsing the steps as proposed by the union does not acknowledge more senior employees and does not encourage the retention of employees.

The conciliator does not adopt the union's proposal on section 8.3 due to the significant increased costs which would be incurred by reducing the amount of time necessary to reach top pay. The conciliator herein, as stated above, is unable to predict the economic future of the city of Upper Sandusky with any confidence and therefore assumes a conservative, incremental approach to increasing costs of wages and benefits which, if not met, reduce the number of bargaining unit positions.

The conciliator adopts the employer's position on section 8.3 and orders the language within the parties' predecessor agreement within this section to be brought forward to the parties' successor agreement, unchanged, with the exception of the four percent (4%)

wage increases effective January 1, 2001; January 1, 2002; and January 1, 2003.

Article 8 - Wages

Section 8.1 Patrolmen (2184) hours per year

Effective January 1, 2001 the annual base rate of pay for a police officer shall be as follows:

<u>Step</u>	<u>Annual</u>	<u>Hourly</u>
Step 1 - Probationary	<u>\$23,347.00</u>	<u>\$10.69</u>
Step 2 - 1st Anniversary	<u>\$24,308.00</u>	<u>\$11.13</u>
Step 3 - 2nd Anniversary	<u>\$25,640.00</u>	<u>\$11.74</u>
Step 4 - 3rd Anniversary	<u>\$27,584.00</u>	<u>\$12.63</u>
Step 5 - 5th Anniversary	<u>\$28,654.00</u>	<u>\$13.12</u>
Step 6 - 7th Anniversary	<u>\$29,790.00</u>	<u>\$13.64</u>

Effective January 1, 2002. Four percent (4%) increase for the yearly/hourly rate of pay for each step listed above in 2001.

Effective January 2, 2003. Four percent (4%) increase for the yearly/hourly rates of pay for each step in 2002.

A one time lump sum payment of \$70.00 for uncalculated overtime retroactive to January 1, 2001 shall be paid to each police officer of the rank of sergeant and above and to each police officer below the rank of sergeant.

Section 8.2 Police Lieutenants (2184 hours per year)

Lieutenants shall be paid one hundred and eight percent (108%) of the police officer's yearly/hourly rate of pay, based on the years of service each year of the agreement.

Section 8.3 Firefighters/Fire Captains (2906 hours per year)

Effective January 1, 2001, the annual/hourly base rate for Firefighters/Fire Captains shall be as follows:

<u>Step</u>	<u>Annual</u>	<u>Hourly</u>
Probationary	<u>\$23,277.00</u>	<u>\$8.01</u>
1st Anniversary	<u>\$25,660.00</u>	<u>\$8.83</u>
3rd Anniversary	<u>\$27,229.00</u>	<u>\$9.37</u>
5th Anniversary	<u>\$28,857.00</u>	<u>\$9.93</u>
7th Anniversary	<u>\$30,542.00</u>	<u>\$10.51</u>
10th Anniversary	<u>\$31,501.00</u>	<u>\$10.84</u>

Effective January 1, 2002. Firefighters/Fire Captains shall receive a four percent (4%) increase for the yearly/hourly rate of pay for each step listed above in 2001.

Effective January 1, 2003. Firefighters/Fire Captains shall receive a four percent (4%) increase for the yearly/hourly rate of pay for each step in 2002.

Section 8.4. Pension Fund.

The City shall continue to pick up nine percent (9%) of the Employee's contribution toward the State Pension Fund. The City will make the contribution directly to the pension fund on the Employee's behalf in accordance with the applicable tax or rules applicable to the fund. Employees within three (3) years of eligibility for retirement shall have the right to "opt out" of the City paying 9% of the employee's share of the retirement contribution. In such case the employee's regular hourly rate of pay shall increase by 8.5%.

Section 8.5. Bi-Weekly Payments.

The parties agree that these regular rates of pay will be paid to employees bi-weekly, plus premium and premium overtime pay, if any.

Article 12 - Medical Benefits

Section 12.1

Within Article 12, section 12.1 of the parties' predecessor agreement, the employer is obligated to provide hospitalization coverage including medical, hospitalization, x-ray, and laboratory coverage, with single coverage requiring a \$25 co-payment by a bargaining unit member, a \$40 co-payment for two-party coverage (no dependents); and a \$60 co-payment for two-party coverage with additional dependents. These are monthly copayments and are fixed.

The union proposes increasing the bargaining unit's co-payments for medical benefits under Article 12 by increasing single

coverage to a \$27.50 co-payment; two-party coverage to a \$44 co-payment; and three or more party coverage to a \$66 co-payment. The union desires that the fixed rate of copayment as presented within the parties' predecessor agreement remain rather than a percentage copayment. The union opposes the percentage copayment recommended by the employer as it provides no copayment cap for the protection of bargaining unit members.

The employer proposes that bargaining unit members pay ten percent (10%) of the total cost of the premium regardless of the type of coverage and notes that the employer's proposal would require a very slight increase in copayments. The employer notes that the city of Upper Sandusky has shifted its employees to a contribution of ten percent (10%) instead of a fixed sum and notes that the Wyandot County Sheriff's Department is also on a percentage-based system requiring a contribution from bargaining unit members of twenty percent (20%).

While emphasizing its commitment to providing quality insurance at the best price to bargaining unit members, the employer also stresses the increasing costs of providing this coverage. The employer claims that because of these escalating costs the employer can no longer afford the luxury of capped costs on bargaining unit member copayments. The employer notes that providing family insurance to just one employee can cost the employer more than \$7,000 per year and the percentage copayment system urged by the employer is intended to control, at least to some extent, these increasing costs.

The fact-finder adopted the proposal from the union, recommending no change to the basis of determining a contribution rate for medical insurance premiums.

The conciliator notes that at the present time the fixed increased copayment proposed by the union is very close to the ten percent (10%) figure proposed by the employer. In 2002, the cost of single coverage is \$315.20 per month; for two-party coverage, \$504.44 per month; and for family coverage, \$756.65 per month. The increases proposed by the union would fall below ten percent of these monthly premium costs by \$4.02, \$6.44, and \$9.67, respectively. The conciliator believes these increases are affordable by the employer and finds the continuity of the capped fixed rate for bargaining unit members as expressed within the predecessor agreement and as urged by the union and the fact-finder to be persuasive on this issue.

Accordingly, the conciliator adopts the union's proposal on medical benefits as expressed within section 12.1 of Article 12.

Section 12.4 - Dental/Optical Insurance

The parties' predecessor agreement, within Article 12, section 12.4, dental/optical insurance, obligated the employer to establish a fund from which to contribute a maximum of \$550 per year per non-probationary employee, for the use by the employee and his or her family members covered by the employer's medical insurance plan, for reimbursement of dental and/or optical expenses not otherwise covered by insurance. No employee contribution is required for this

benefit; it is a benefit solely funded by the city exclusive of other medical benefits.

The union proposes that the maximum contributions called for in section 12.4 of the parties' successor agreement be \$550 per year for a single person; \$600 for two (2) parties; and \$650 for three (3) parties or more, so long as these parties are non-probationary employees. The union notes that the fact-finder recommended the union's position on this issue and notes that costs, particularly dental costs, have risen dramatically.

The employer proposes an increase of \$50 per year to the maximum benefit to be paid under section 12.4 and that the resulting \$600 per year maximum be applied across the board to everyone, regardless of coverage status. The employer notes that it increased this benefit \$600 citywide, but notes that it has never been the practice or the intention of the employer to differentiate this benefit by family status. The employer notes that employees may use this money to seek reimbursement for costs associated with a family member's dental or optical care, but this benefit is one that runs to the employee by virtue of the employment relationship.

The conciliator notes that hospitalization coverage is also a benefit that runs to an employee by virtue of the employment relationship, but is differentiated by family status. The conciliator adopts the union's proposal, as did the fact-finder. The conciliator finds the differentiation based on single, two party, or three or more party coverage to be in keeping with the differentiation in hospitalization coverage and finds the medical

benefits as proposed by the union in section 12.4 to be affordable by the employer.

Article 12 - Medical Benefits

Section 12.1 Hospitalization

The City shall continue to provide such medical, hospitalization, x-ray, and laboratory coverage as are presently in existence.

During the period of the contract, the employee's coverage shall be as follows:

- A. single person, \$27.50 per month;
- B. two (2) party, with no additional dependents, \$44.00 per month;
- C. two (2) party, with additional dependents, \$66.00 per month.

Section 12.2.

The City's obligation to make insurance contributions on behalf of an employee shall cease immediately upon the Employee's termination from employment, layoff for thirty (30) consecutive days, or commencement of any leave of absence without pay.

Section 12.3.

Eligible employees may elect to contribute premiums as provided in Section 1 of this Article and, upon election, shall authorize the City, in writing, to deduct from such Employees' wages the necessary contributions. In the event that any employee shall not elect to contribute as provided herein, or shall refuse to authorize the City to deduct necessary contributions, the city shall be authorized to remove such Employee's name from the affected insurance program and thereafter the City shall not be obligated to make contributions on behalf of such Employee.

Nothing herein shall prevent any Employee at any time from voluntarily declining to participate in any insurance program. In the event of such voluntary decision not to participate, the City shall be relieved of any obligation to make contributions on behalf of such Employee.

Section 12.4. Dental/Optical Insurance

The City shall establish a fund to which it will contribute a maximum \$550 per year for a single person; \$600 for two (2) party; and \$650 for three (3) party or more per non-probationary employee, for the use by the employee (and his or her family members covered by the City's medical insurance plan) for the reimbursement of any dental and/or optical expenses not otherwise covered by insurance. Payment may also be requested in the form of a joint check, payable to both the employee and the provider, in instances where the employee has not advanced payment for the completed services. This benefit is available to non-probationary employees, except that this benefit is available to probationary policemen and firefighters after six (6) months consecutive employment with the City. Unused portions of the employee's annual fund are forfeited.

Section 12.5. Life Insurance

The City will provide and pay for life insurance for the Employee in the fact amount of \$20,000.00 with double indemnity provisions for accidental death or dismemberment as part of the City's general liability policy, or otherwise at the City's option.

Section 12.6.

The City shall have the right to change insurance carriers and/or programs provided the same or comparable benefit levels are maintained.

Article 15 - Sick Leave

Section 15.5

Section 15.5 of the parties' predecessor agreement provides that upon retirement of an employee who has not less than ten years of continuous employment with the city, the employee or his beneficiary is entitled to receive a cash payment equal to thirty percent (30%) of the accumulated unused sick leave, up to a maximum payment of 600 hours. This payment is based on the employee's rate

of pay at the time the employee applied for retirement under the applicable state retirement program.

The union proposes to increase the maximum payment of 600 hours to 630 hours, effective January 1, 2002; and to 660 hours effective January 1, 2003. The union claims that by increasing the buyout at retirement, an incentive is provided to reduce sick leave usage.

The employer points out that exempt (non-bargaining unit) employees of the city of Upper Sandusky, Ohio with ten or more years of service who retire are permitted to cash out unused sick leave at thirty percent (30%) of up to 480 hours. The employer claims that as a result of negotiations and conciliation, the police and fire predecessor agreement raised this maximum payout to 600 hours. The employer argues that sick leave is a benefit to employees to enable them to take time off from work when the employee or family member is ill or in need of medical services. Unused sick leave is not intended to serve, argues the employer, as a financial windfall for employees who are fortunate enough not to be required to use it. The employer points out that the fact-finder's recommendation of this issue provided no basis for the increase proposed. The employer contends there is no rational basis for increasing this benefit.

The conciliator adopts the employer's proposal on this article. The conciliator notes that thirty percent (30%) of 600 hours is 180 hours. While the union is correct that increasing this benefit would promote the lack of usage of sick leave, the

conciliator finds no reason to increase the maximum now in effect and thereby saddle the employer with the extra cost of these extra hours. Sick leave is a benefit which should be used under appropriate circumstances and should not fail to be used because of a desire to accrue a retirement benefit. The conciliator finds the language of the parties' predecessor agreement to be adequate and adopts the employer's proposal on this issue.

The union also proposes new language for section 15.5 which would change how employees who die as a result of duty-related injuries are to be treated. The union proposes that an employee who dies from a duty-related injury have paid to his estate one hundred percent (100%) of accrued, unused sick leave. The union claims that if an employee loses his or her life while working for the city of Upper Sandusky, Ohio, the city would want to assist the employee's family in any way possible. The union claims that the probability of a death while working in Upper Sandusky is small, as would be the impact upon the city's budget with this proposed language.

The employer opposes the new language as to a one hundred percent (100%) sick leave pay out upon death due to duty-related injuries because sick leave is a benefit provided to employees to enable them to take time off for illness or medical related appointments for themselves or family members. Treating unused sick leave, argues the employer, as a benefit associated with death in the line of duty is outside the scope of the sick leave policy. The employer claims that if the union wanted additional benefits for death in the line of duty, the union should have negotiated those

benefits separately from the sick leave policy. The employer points out that this sentiment is also expressed by the fact-finder in his report.

The union's arguments are persuasive in terms of the desire to assist a family who has just lost a family member due to injuries suffered while on duty. The conciliator agrees that at such a time the desire to help the family of the deceased is strong and the unused, accrued sick leave would provide an immediate and effective way to funnel financial assistance to the family.

The risks attendant to the proposal by the union for a one hundred percent (100%) pay out for accumulated unused sick leave in the event of a job-related death, however, fall squarely on the employer in terms of how much accumulated sick leave is to be compensated. The conciliator has already ordered a cap on sick leave accumulation pay out at retirement at thirty percent (30%) of up to 600 hours. The sick leave pay out proposed by the union would have no cap and could present the employer with a very large bill that was not foreseen and for which funds were not allocated. While the conciliator understands the intention of the proposal in terms of helping families who have suffered a terrible loss, the undersigned is reluctant to order this compensation and thereby leave the city of Upper Sandusky, Ohio in a position of having to plan for the unknowable. On the record herein, the conciliator prefers to leave this issue to future negotiations between the parties and to term life-insurance (Article 12, section 12.5), rather than convert a sick leave benefit to a death benefit and

place this potentially significant increase in costs upon the employer. Accordingly, the conciliator adopts the employer's proposal on this issue.

Article 15 - Sick Leave

Section 15.1. Accumulation and Use.

An employee shall accumulate sick leave at the rate of 0.0575 hours of sick leave per regular hour worked exclusive of any overtime or call-in hours (i.e., 4.83 hours per 84 regular hours worked by the police officers and 9.66 hours per 168 regular hours worked by firefighters). Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one (1) hour for every hour or part thereof of absence from previously scheduled work.

Section 15.2. Granting of Sick Leave.

An employee may use sick leave:

- A. In case of his/her bona fide illness, injury, or exposure to a contagious disease.
- B. For medical, dental or optical examination or treatment.
- C. Bona fide illness or injury of a member of the immediate family which requires the Employee's personal care and attendance. The City shall be governed by the following guidelines in approving sick leave usage.
 1. An employee may use sick leave to take a member of his/her family to or from the hospital and/or doctor, or to make arrangements for the care of the ill or injured.
 2. An employee may use sick leave on the day surgery is to be performed on a member of the immediate family if such occurs on a working day.

3. An employee may be granted sick leave on the date of their child's birth and on the day the child is brought home from the hospital, if either occurs on a working day.
4. Sick leave may be used by an employee for convalescence of a member of the immediate family, provided it can be shown that the presence of the employee is required.

D. For exceptional circumstances, as approved by the City at its sole discretion.

Section 15.3.

An employee who uses sick leave shall report to his/her supervisor as soon as possible prior to the beginning of the employee's shift. If an employee knows that he will be on extended sick leave, he shall inform his supervisor. In the event an employee needs a physician's care while on sick leave, he shall provide the City with a doctor's statement for any continuous absence that is in excess of three (3) working days, the City may require the certification of a physician. In any case, the City may refuse to pay an employee for such leave when the City can show that the absence was not in accordance with this Article.

Section 15.4.

After an employee has exhausted his sick leave with pay, such employee may be granted a leave of absence without pay for a period up to ninety (90) days because of personal illness or injury. Said period may be extended to one hundred eighty (180) days at the discretion of the Safety Committee.

Section 15.5.

Upon retirement of an employee who has not less than ten (10) years of continuous employment with the City, such employee or beneficiary shall be entitled to receive a cash payment equal to 30% of the accumulated unused sick leave, up to a maximum payment of six hundred (600) hours. This payment shall be based on the employee's rate of pay at the time the employee applies for retirement under the applicable State retirement program.

Section 15.6. Bereavement Leave

An employee who needs to take time off due to the death of an immediate family member should notify his or her supervisor immediately.

An employee may use one day of bereavement leave without loss to sick time, vacation time, or compensatory time to attend the funeral of an aunt, uncle, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, or mother-in-law. An employee may use up to three days of bereavement leave without loss to sick time, vacation time, or compensatory time to attend the funeral of an immediate family member. If the death is that of a spouse, the employee may use up to five calendar days of bereavement leave without loss to sick time, vacation time, or compensatory time. Bereavement leave will be paid at the employee's regular rate of pay.

Other than spouse, "immediate family" is defined as the employee's parent, stepparent, child, stepchild, sibling by blood or parent's marriage, grandparent, or legal guardian of an employee.

Section 15.7. Family and Medical Leave

The policy conforming with the Federal Family and Medical Leave Act is contained in Appendix "B".

Article 26 - Duration

The parties reached agreement as to language for this article and the language, as agreed by the parties, is ordered by the conciliator.

Article 26

This Collective Bargaining Agreement is effective January 1, 2001, and shall remain in full force and effect until December 31, 2003, and shall thereafter be continued in full force and effect from year to year and shall be renewed for successive years, unless written notice of termination or a desire to modify, alter, or amend this Agreement is given in writing, via certified mail, by either party, at least ninety (90) days, but no less than one hundred twenty (120) days, before the expiration date.

Article - New

The final issue separating the parties is language proposed by the union entitled "Permanent Shifts." The language proposed by the union reads as follows:

Shift bidding, for the purpose of establishing permanent shifts, shall occur in December and June of each year except for the initial bid which shall occur immediately upon resolution of this Agreement. Employees shall be given work on the shift that they bid on in January and July of each year. Such bids shall be by seniority with the most senior employees selecting first.

In the event a vacancy occurs, or because of operational needs which require an employee to be reassigned to another shift, it shall be done voluntarily with the most senior employee being granted the position. If the position is not filled by this method, it shall be done by reverse seniority, with the least senior employee being assigned to the vacancy.

The union points out that there are now two work shifts, with employees working twelve hour shifts. The shifts are 6:00 a.m. to 6:00 p.m., and 6:00 p.m. to 6:00 a.m.

The fact-finder did not recommend this proposal from the union and explains his decision by pointing to a consideration of the totality of negotiations, inclusive of the fact-finder's recommendations.

The union points out that shift bidding does not occur within the bargaining unit at present and without shift bidding the assignment of schedules can be misused through punitive shift changes. The union points out that having the opportunity to bid on a shift gives employees some value for their years of service and can provide a measure of stability in their family lives. The union claims that the implementation and administration of this bidding

procedure is simple and widely used in both the private and public sectors. The union claims that adoption of its proposed language on permanent shifts and bidding on these shifts can serve to end shift changes effected for punishment.

The employer is opposed to the language proposed by the union on permanent shifts, arguing that an article already tentatively agreed by the parties, Article 6, Management Rights, is the same language as presented within the parties' predecessor collective bargaining agreement in Article 4. With the exception of the renumbering of Article 4 in the predecessor agreement to Article 6 in the parties' successor agreement, the language in these articles is identical.

The Management Rights article in the parties' successor agreement, as tentatively agreed by the parties prior to this conciliation, provides that except as otherwise agreed in the successor agreement, the employer retains all of its rights and responsibilities as set forth in Ohio Revised Code Chapter 4117., including determining matters of inherent managerial policy, direct supervision of employees, maintaining and improving the efficiency and effectiveness of governmental operations, determining overall methods, processes, means, or personnel by which governmental operations are to be conducted, determine the adequacy of the workforce, and effectively manage the workforce. What is renumbered section 6.2 in the parties' successor agreement provides that nothing in the agreement or any past practice or course of conduct by the employer is to be construed to restrict the rights and

responsibilities expressed within this article. This language also states that the employer and the union acknowledge that inclusion of this article in the parties' collective bargaining agreement shall not be deemed to require the employer to bargain collectively at any time regarding the provisions of this article.

The employer contends that scheduling workers is within the management rights article to be included in the parties' successor agreement.

The employer's claim of broad managerial discretion on scheduling as intended by Article 6 within the parties' successor agreement is accurate, but this article begins with the words: "Except as otherwise agreed herein..." Including a provision on permanent shifts and shift bidding as proposed by the union within the parties' successor agreement would not conflict with Article 6, it would carve out an exception to the broad powers conferred by this article.

The conciliator believes he has the authority to order the language proposed by the union and is sympathetic to the fairness and stability of a selection process based on length of service. The conciliator recognizes, however, that while seniority may ensure fairness in terms of the competing interests of bargaining unit members about which shift is to be worked, such a system does not address the particular operational needs of the shifts. If, for example, the more senior bargaining unit members were to bid on the same shifts, the employer would be required to employ only less experienced employees on other shifts which may not meet the

operational necessities of the city. The conciliator notes that the fact-finder did not approve this proposed language although the reason underlying the rejection is stated in only general terms. The conciliator finds nothing illogical or unreasonable about the intention of the language proposed by the union in terms of seniority-based permanent shifts in the context of serving the needs of bargaining unit members, but the conciliator remains sufficiently concerned about managerial prerogatives necessary to operating safety forces to decline to order the language proposed by the union as to permanent shifts and their bidding based on seniority. This language would work a major change on how work is to be done and the conciliator believes such a change is better achieved through bargaining than through the stroke of a conciliator's pen.

In making this conciliation award the conciliator has proceeded in accordance with Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-06, resolving disputes between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers, taking into consideration past collectively bargained agreements between the parties; a comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other private and public employees doing comparable work, giving consideration to factors

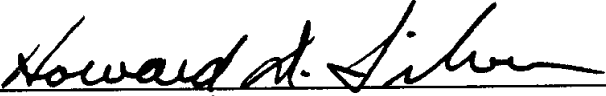
peculiar to the area and classifications involved; the interests and welfare of the public; the ability of the public to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, through mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The conciliator's handwritten notes of the conciliation hearing conducted on March 1, 2002 shall comprise the written record of the conciliation hearing, with this record supplemented by exhibits of the parties and the parties' predecessor collective bargaining agreement.

AWARD

The language as set out by the conciliator in this Decision and Award of Conciliator shall be included in the parties' successor collective bargaining agreement, along with all other articles tentatively agreed by the parties for inclusion in the parties' successor collective bargaining agreement.

So ordered.


Howard D. Silver
Conciliator

April 1, 2002
Columbus, Ohio

CERTIFICATE OF FILING AND SERVICE

I hereby certify that duplicate originals of the foregoing Decision and Award of Conciliator In the Matter of Conciliation between International Union of Police Associations, AFL-CIO and the City of Upper Sandusky, Ohio, were filed, via hand-delivery, with the State Employment Relations Board, and mailed, postage prepaid, certified mail, return receipt requested, and by regular U.S. Mail, this 1st day of April, 2002, to:

Kristine L. Hayes
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and

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Representative of the International Union of Police
Associations, AFL-CIO.


Howard D. Silver
Conciliator

April 1, 2002
Columbus, Ohio