

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
CONCILIATION PROCEEDINGS

STATE EMPLOYMENT  
RELATIONS BOARD

2002 AUG 23 A 10: 28  
OPINION & AWARD

IN THE MATTER OF:

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City of Westlake  
(Employer)  
-and-  
Ohio Patrolmen's Benevolent Assoc.  
(Union)

SERB Case No. 02-MED-03-0172  
Corrections; Dispatchers; Secretaries; ACO

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AS ISSUED:  
August 21, 2002

APPEARANCES:

*On Behalf of OPBA:*

Jeff Perry	Business Agent
Kathleen McLaughlin	Secretary
Tim Leville	Jailer
Allison C. Maynard	Animal Control Officer
Judy Langel	Dispatcher

*On Behalf of the City of Westlake:*

Robin Leasure, Esq.	Assistant Law Director
Dennis M. Clough	Mayor

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GREGORY JAMES VAN PELT

## **SUBMISSION**

The present dispute was submitted under the State Employment Relations Board's authority pursuant to Ohio Revised Code 4117.14(D)(1). The Parties met in negotiation on three occasions, reaching agreement on a number of issues. Evidence regarding issues remaining at impasse was presented to Factfinder Susan Grody Ruben on June 11, 2002; the Factfinder's report was issued on June 18, 2002. That report having been rejected by one or more of the Parties, the undersigned was selected as Conciliator in the matter pursuant to the provisions of Section 4117.14(D)(1) of the Ohio Revised Code.

An evidentiary hearing of matters at impasse was held on August 8, 2002 at the Westlake City Hall in Westlake, Ohio. In accordance with ORC 4117.14(G)(3) statements of the Parties' final offer positions were submitted to the Conciliator prior to the hearing. An attempt at mediation prior to hearing proved unsuccessful. The Parties were therefore afforded an opportunity to present evidence, testimony and argument in support of their respective positions, and the record was declared closed as of that date.

## **ISSUES RESOLVED THROUGH NEGOTIATION**

The Parties negotiated mutually agreeable terms regarding several issues:

1. Change of contractual references to FOP to reflect OPBA representation;
2. Overtime language;
3. Longevity;
4. Drug testing;
5. Holiday provision for alternate day off;
6. Sick leave;
7. Vacation;
8. Health benefits;
9. Disciplinary procedure.

## ISSUES AT IMPASSE

The Parties identified a number of issues remaining unresolved:

1. **Article XII – Work Week/Scheduled Hours**
  - 12.01 – Work day
  - 12.04 – Lunch
  - 12.05 – Scheduled Hours
2. **Article XV – Wages**
  - 15.01 – (a) Jailers and ACO
  - (b) Secretaries
  - (c) Dispatchers
  - 15.02 – Step limitation
  - 15.03 – Shift Differential
  - 15.04 – Training Pay
3. **Article XVII – Holidays**
  - 17.01 – Additional Holiday
  - 17.02 – Holiday Compensation
4. **Article XIX – Health Benefits**
  - 19.04 – Term Life Insurance
5. **Article XX – Clothing Allowance**
6. **Article XXI – Sick Leave**
  - 21.04 – Sick Leave Incentive
7. **Article XXIII – Court Time**
8. **Article XXVII – Duration**

## STATUTORY CONSIDERATIONS

In deciding the issues presented, the Conciliator considered and was guided by those factors delineated in ORC 4117.14(G)(7). Specifically:

- |                         |  |
|-------------------------|--|
| <b>4117.14(G)(7)(a)</b> | Past collectively bargained agreements, if any, between the Parties;   |
| <b>4117.14(G)(7)(b)</b> | Comparison of the issues submitted to the final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;  |
| <b>4117.14(G)(7)(c)</b> | 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;   |
| <b>4117.14(G)(7)(d)</b> | The lawful authority of the public employer;   |
| <b>4117.14(G)(7)(e)</b> | The stipulations of the Parties;   |
| <b>4117.14(G)(7)(f)</b> | Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment. |

## **BACKGROUND**

The present bargaining unit comprises Dispatchers, Jailers, Police Department Secretaries and the Animal Control Officer – some 18 employees in all. Following expiration of a predecessor agreement on December 31, 2002, elections resulted in a change in exclusive representation from the Fraternal Order of Police to the Ohio Police Benevolent Association, whose certification did not take effect until February 25, 2002. As a result of this change in representation, OPBA members in the bargaining unit effectively operate without a collective bargaining agreement throughout the statutory settlement process.

It is noteworthy that although all employees in the present bargaining unit operate within the administrative organization of the Westlake Police Department, their positions, duties and consequent contractual interests and issues are often substantially disparate. While the Police Department Secretaries, for example, are required to wear uniforms, their duties, hours and conditions of employment more closely parallel those of other City clerical workers than those of uniformed City safety forces. Conversely, Jailers represented by the OPBA have more commonality with patrol officers than with the Secretaries within the bargaining unit. An additional representational problem results from the City's efforts to expand and centralize its dispatching operation.

Westlake City employees are represented by six different bargaining units. At the time of conciliation, all other bargaining units have settled negotiations and reached agreement, all of which expire on February 28th of their respective years. In pursuit of parity and related economies of scale, the City wishes to negotiate uniform benefit packages with its organized employees. As a consequence, the issue of contract duration is significant to the Employer.

The City makes no assertion of inability to pay compensation increases sought by the OPBA. The disparity of duties represented in this bargaining unit makes generalization regarding comparable internal and external compensation difficult. Most bargaining unit members enjoy benefits within the market range for workers in similarly situated communities. No evidence was presented to indicate that Westlake has difficulty recruiting or retaining employees in any of the bargaining unit positions.

In consideration of issues presented, the Arbitrator takes notice that the Consumer Price Index for All Urban Consumers (CPI-U) for the period July, 2001 to July, 2002, was +1.5%, as listed by the Bureau of Labor Statistics; the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the same period was +1.3%.

## ISSUES AND AWARDS

### 1. Article XII – Work Week/Scheduled Hours

#### OPBA Proposal

##### 12.01 – Work day

The Union maintains that at least one bargaining unit member currently works in excess of an eight hour shift. While the OPBA does not object to the practice, it points out that under current contract language, the City's actions are technically grievable. To resolve the situation, the Union proposes language drafted by the Factfinder permitting employees to work ten or twelve hour shifts, on written application and at the discretion of the City. Such shifts are not subject to overtime under Section 6.01.

##### 12.04 – Lunch

##### 12.05 – Scheduled Hours

All other members of the Police Department enjoy a ½ hour paid lunch, based on the necessity to maintain officers “on call” during lunch breaks, according to the Union. It acknowledges that Secretaries and the ACO can be assured uninterrupted lunch breaks. However, in pursuit of what it asserts is internal parity in the Department, the OPBA proposes modification of the lunch and corresponding scheduled hours to reduce the current one hour unpaid lunch for Secretaries and the ACO to ½ hour.

#### City Position

##### 12.01 – Work day

The City urges maintenance of the current contract provision. The Parties experimented with flexible shifts for several years, discontinuing the practice as of the expiration of the predecessor agreement.

##### 12.04 – Lunch

##### 12.05 – Scheduled Hours

The City maintains that Secretaries and the ACO can be assured uninterrupted lunch periods, and therefore do not require the same paid benefit afforded employees who must remain “on call”. Moreover, says the City, because it maintains business hours from 8:00 a.m. until 5:00 p.m. the nine-hour day resulting from one hour unpaid lunch periods for allow coverage without staggered shifts. Accordingly, the Employer urges maintenance of current contract provisions, with which position the City points out the Factfinder agreed.

#### Opinion and Award

##### 12.01 – Work day

Evidence supported the Union's assertion that the City has recently scheduled at least one bargaining unit employee for more than the contractually restricted eight hours. To resolve this potentially grievable situation, the Factfinder appended language to Section

12.01, allowing an exception to the eight hour shift requirement of Section 6.01 on written application by an employee, with agreement by the Parties. The Factfinder's language also permitted unilateral modification of an employee's schedule by the City on two week's notice, which was subject to overtime. After negotiation, the Union modified its proposal, eliminating the City's right to unilateral modify the Agreement. The right to alter an employee's schedule is contemplated by the Management Rights clause at Section 5.01. The remaining provision memorializes actions recently in practice in the Department, with no infringement on the Employer's discretion. Accordingly, the OPBA's position is awarded:

**12.01 For the purpose of this Agreement, a workday shall consist of eight (8) regularly scheduled consecutive hours during a twenty-four hour period of time. A twenty-four (24) hour period of time commences at the beginning of a regularly scheduled shift. Furthermore, the regular work week for full-time members of the bargaining unit shall consist of forty (40) regularly scheduled hours. Upon written request of an employee, the employee can be regularly scheduled by the City for a 10- or 12-hour workday, if the City and the Union agree in writing to this modified schedule. Such an employee-requested schedule of over 8 hours in a workday shall not trigger daily overtime as set out in Article 6.01.**

#### **12.04 – Lunch**

#### **12.05 – Scheduled Hours**

As with other issues at impasse, the diverse duties of bargaining unit members make uniform policies regarding employee lunch breaks difficult. While the Union's proposal makes some step toward uniformity, there remain inherent and irreconcilable differences between members who can be relatively certain of an uninterrupted lunch period, and those who remain on call. Despite the requirement that Secretaries in the Police Department must devote nine hours to securing eight hours of pay, their conditions correspond directly with those of other City clerical positions, into which they are subject to transfer under the City's management right to assign the workforce. Additionally, staggered shifts necessitated by ½ hour lunch breaks for Secretaries would necessitate some reduction in service to Westlake residents. Therefore, the City's proposal to retain current contract language is sustained.

#### **Current Contract Language**

## **2. Article XV – Wages**

### **OPBA Proposal**

The Union proposes stepped wage schedules in each of the unit's classifications, an approach it contends is standard in most safety force bargaining units. Wage schedules are warranted in Westlake, according to the OPBA, as the City has hired new employees at rates above the wages paid incumbent bargaining unit members, a practice it says serves to demoralize senior workers.

**(a) Secretaries**

Secretary I – The Union maintains that the most senior Secretary I in the bargaining unit is paid less than comparably classified workers in other City departments. Consequently, it proposes a four-step wage schedule providing for 9% increases over the course of the contract, together with a \$1,500. lump sum payment on the first pay period of 2003, which the Union maintains is equivalent to a pay increase granted on January 1, 2002.

Secretary II – The OPBA proposes a four-step wage schedule representing a 3.75% increase in each of two proposed contract years at the top step; coupled with a lump sum payment of \$1,150. While it acknowledges that many members of this classification received substantial increases in the last agreement, the OPBA urges acceptance of its proposal in order to maintain the relative standing of members.

**(b) Dispatchers**

The Union asserts that Dispatchers in Westlake are among the lowest paid in Cuyahoga County. In contrast, it maintains that City patrol officers are in the top ten departments in the County. This low rate of compensation has led to high turnover in the position, the OPBA says. Senior dispatchers in the City were hired as recently as March of 1996 and June of 1993; three members of the classification were hired in 2000; three in 2001. To remedy what it contends is the City's inability to attract and retain dispatchers as job responsibilities and stress continue to mount, the Union proposes a five-step wage schedule equaling a 4.5% increase in each of two proposed contract years at the top level; combined with a lump sum payment of \$1,290.

**(c) Jailers**

Like Westlake Dispatchers, City Jailers are paid less than colleagues in similar communities, having fallen from the mid-position on comparable benchmark lists. Accordingly the Union proposes a five-step wage schedule representing at the top step an 8.5% increase over the two year course of the contract. The OPBA also proposes Jailers in the bargaining unit receive a lump sum payment of \$1,230. representing retroactive payment of the increase to January 1, 2002.

**(d) ACO**

Conceding a difficulty in obtaining information regarding compensation of Animal Control Officers, the Union asserts the incumbent in Westlake is not overpaid, and that qualified officers are difficult to recruit. Consequently, it proposes a two-step wage schedule providing for 4% wage increases in each of the two anticipated contract years, coupled with a \$1,000. payment on January 1, 2002.

**15.02- Step limitation**

To assure that no present employee would be reduced in compensation through implementation of its step proposal, and to allow the City some flexibility in higher more

experienced employees, the OPBA proposes language allowing promotion of new hires to the next step on the wage scale.

#### **15.03 – Shift Differential**

The OPBA proposes what it characterizes as, “a modest amount of money” to reimburse employees working irregular shifts. Consequently, the Union urges award of \$.15 per hour differential for bargaining unit members assigned to the afternoon and evening shifts.

#### **15.04 – Training Pay**

The Union argues that great turnover in the Department – with six new hires since 2000 – has burdened incumbent employees required to train the new personnel. Accordingly, the Union seeks a provision for two overtime hours per shift, to be paid bargaining unit members training new employees.

### **City Position**

#### **15.1 – Wages**

The City rejects the OPBA’s argument that a stepped wage schedule is necessary for bargaining unit members. With only one exception, bargaining unit employees are uniformly paid based on years of service within their respective classifications, the Employer says. Compensation based on years of service is provided under the longevity benefits of Article XVI. The Westlake City Council sets wage ranges for City employees, according to the Employer, a system from which it does not desire to deviate. Institution of the Union’s wage schedule was likewise found unnecessary by the Factfinder. The Employer therefore offers what it maintains are fair and equitable wage increases of 3.5% on January 1, 2003 and 3.75% on March 1, 2003.

#### **Secretaries**

Substantial adjustments were made to Secretarial wages three years ago, in order that bargaining unit members be paid equally, regardless of years of service. Therefore no stepped wage schedule should be instituted.

#### **Dispatchers**

The City presents evidence it contends demonstrates that Westlake Dispatchers are compensated in the upper-middle of comparable communities, a conclusion likewise reached by the Factfinder, according to the Employer.

#### **Jailers/ACO**

The Employer contends that the wage schedule proposed by the Union amounts to a 24.5% increase over the two year course of the proposed agreement for the Animal Control Officer, while Jailers would receive 18.9%, 17.1% and 15.1% over the same period. In support of its position that Westlake Jailers are not underpaid, the City offers comparative



data indicating that only one similarly situated community pays corrections officers more than Westlake.

**15.02 – Step limitation**

Arguing that a multi-step wage schedule is not appropriate, the City accordingly urges rejection of the OPBA’s proposal to permit discretionary elevation of new hires by one step.

**15.03 – Shift Differential**

No justification for a shift differential was found when the issue was presented during negotiations with this bargaining unit six years ago, and the proposal was not recommended by the Factfinder at that time. Circumstances have not changed since those negotiations, says the City, leading the Factfinder in the present negotiations to conclude that the Union’s proposal was not compelled by comparable market wages.

**15.4 – Training Pay**

The City points to the Factfinder’s conclusion that training new employees is a regular job function.

**Opinion and Award**

15.01 – (a) Secretaries

(b) Dispatchers

(c) Jailers

(d) ACO

**15.01 – Step limitation**

In its Appendix A, the predecessor agreement provides for a wage scheme affording specific compensation to individual employees, by name - an uncertain and potentially arbitrary system of compensation inherently in tension with a collectively-bargained relationship. The City proposes to eliminate Appendix A by providing unit-wide percentage increases at Article XV. While this approach does away with a compensation plan addressing individual employees, it falls short of instituting a wage system based on position rather than incumbent. Neither does it regulate the wages at which new hires may enter the bargaining unit. Toward that end, the stepped wage schedule proposed by the OPBA would no doubt be more effective.

However, with the current CPI-W at an annual 1.3%, the wage increases incorporated in the Union’s proposal are excessive – exceeding 4% annually in most classifications, based on the OPBA’s own calculations. Additional compensation is provided elsewhere in the agreement, including the longevity benefits of Article XVI. Evidence regarding wage rates afforded other Westlake employees and comparable nearby communities does not indicate a need to radically improve compensation to any of the bargaining unit’s classifications in order to achieve parity. Accordingly, the City’s position must be accepted:

**15.01 – Wages**

**Wage increases for all members of the Bargaining Unit shall be as follows:**

<b>3.5%</b>	<b>Year 1</b>	<b>January 1, 2003</b>
<b>3.75%</b>	<b>Year 2</b>	<b>March 1, 2003</b>

Having accepted the City’s wage proposal, the step limitation language proposed at 15.02 is rendered moot.

**15.03 – Shift Differential**

Little evidence or rationale indicates an immediate need to award shift differential to bargaining unit members. As determined by the Factfinder, such differential pay is not supported by evidence of comparable benefits, or by difficulty in retaining employees on afternoon or evening shift.

**The City’s position to retain the status quo is awarded.**

**15.4 – Training Pay**

In certain classifications, on-the-job training is a regular and necessary function of preparing and orienting employees. And while Jailers and Dispatchers in the bargaining unit might benefit from dedicated training, the Union’s proposal is far too broad to be practicable. What, for example, constitutes training? What period of training is sufficient for each classification? Can the City, under this provision, designate training officers? What period of time is necessary to constitute a shift for benefit purposes? These and other questions regarding the OPBA’s proposal militate against its acceptance at this time, and the City’s position is therefore accepted.

**The City’s position to retain the status quo is awarded.**

**3. Article XVII – Holidays**

**OPBA Proposal**

**17.01 – Additional Holiday**

The Union proposes to add four hours to the existing 40 hours of personal time bargaining unit members receive, rather than accept addition of the Martin Luther King holiday, minus four hours of personal time offered by the City. The Union argues that, unlike designated holidays, personal time can be taken in one-hour increments, providing a more flexible benefit to members.

**17.02 – Holiday Compensation**

Members of the present bargaining unit are not and have never been required to work City recognized holidays, according to the Union. Consequently, the OPBA rejects the Employer’s offer to add New Year’s Day to the compensated holidays and proposes instead language that would provide premium pay on all holidays listed in Section 17.01 worked by bargaining unit employees.

## City Position

### **17.01 – Additional Holiday**

The City proposes to add Martin Luther King Day to the list of holidays listed in Section 17.01. It has accordingly negotiated the addition of the day to that list with five other City bargaining units, in exchange for a reduction of four personal hours offered employees. It proposes the same language to OPBA members, pointing out that the Factfinder likewise recommended its position in order to maintain parity with other City unions.

### **17.02 – Holiday Compensation**

The City argues that the Union's proposal for overtime pay for all holidays worked does not comport with benefits afforded other City employees, and should be rejected.

## Opinion and Award

### **17.01 – Additional Holiday**

Wishing to honor Dr. King, the City seeks to close its administrative operations by adding Martin Luther King Day to the list of paid holidays. In exchange for this additional holiday, the Employer proposes a reduction in OPBA's current 40 hour personal time entitlement to 36 hours. This arrangement would comport with contract provisions negotiated with all other City bargaining units. While perhaps the direct addition of four hours of personal time to the 40 hours already enjoyed by bargaining unit members would constitute a greater benefit to the Union, its proposal would do nothing to facilitate the closing of City Hall for the holiday. Nor was evidence presented that 36 hours of personal time – as enjoyed by all other City employees - gave bargaining unit members insufficient flexibility. Consequently, the City's position is awarded:

**17.01 All full-time members of the bargaining unit shall be entitled to the following seven (7) holidays, with pay, yearly for the length of this Agreement; or in lieu of those days, shall be entitled to an alternate day off: New Year's Day; Martin Luther King Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. To be eligible for holiday pay, an employee shall have worked the regularly scheduled workday immediately preceding and following the holiday, or have been on an approved sick leave, or have been in an active pay status or on an off-duty day. Full-time employees shall be entitled to thirty-six (36) personal hours yearly. Personal hours may be taken in one (1) hour increments.**

### **17.02 – Holiday Compensation**

Members of the OPBA in Westlake currently are not required to work the holidays delineated in 17.01; Police Department personnel normally scheduled to work the holiday have historically assumed duties normally performed by bargaining unit members. Accordingly, the Union's proposal merely memorializes the accepted past practice, and continuation of that practice would result in no additional cost to the City. Acceptance of the City's proposal, however, could result in loss of a valuable benefit presently enjoyed by

Union members – i.e. ability to schedule holidays with family and friends. Therefore, the OPBA’s position is awarded:

**17.02 Any employee whose regularly scheduled shift starts on ~~Christmas Day and/or Thanksgiving Day~~ any holiday listed in 17.01 shall receive compensation at time and one-half (1 ½) his/her regular rate of pay for these hours worked during that shift.**

#### 4. Article XIX – Health Benefits

##### 19.04 – Term Life Insurance

###### OPBA Proposal

The Union proposes that its bargaining unit members receive the \$25,000. term life insurance policy offered under the City’s Police and Fire contracts. OPBA members are part of Westlake’s safety forces, it says. They all wear uniforms. Dispatchers and Secretaries often serve as matrons, and must deal with prisoners, as do Jailers in the regular course of their duties.

###### City Position

The Employer urges rejection of the Union’s proposal for term life insurance. Safety risks to Secretaries, Dispatchers and other bargaining unit members do not reach the level encountered by Police and Fire employees. Additionally, says the City, an employee-paid life insurance plan is available through payroll deduction.

###### Opinion and Award

The Parties reached agreement as to the major elements of health insurance, reaching impasse only with regard to term life insurance. While testimony indicated that, in addition to Jailers, female bargaining unit members are frequently required to act as matrons, no evidence suggested that risks encountered by OPBA members equaled or approached those of Westlake police and fire employees. As determined by the Factfinder, term life insurance needs of bargaining unit members are adequately met through the Employer’s payroll deduction option.

**The City’s position to retain the status quo is awarded.**

#### 5. Article XX – Clothing Allowance

###### OPBA Proposal

##### 20.01 – Uniform Allowance

Citing internal parity and external comparables indicating that bargaining unit members are below standard, the Union proposes an increase from \$400. to \$600. in the annual uniform allowance for bargaining members.

**City Position**

Although OPBA members currently are required to wear uniforms, the practice could be discontinued at the discretion of the Employer. Arguing that no other union received an increase in uniform allowance, the City urges rejection of the Union's proposal and extension of the current contract provision.

**Opinion and Award**

While the City argues that it could eliminate the uniform requirement for bargaining unit members at its discretion, at present OPBA members are unquestionably required to report in uniform. As a result, they incur the expense of replacement and maintenance. Evidence indicates that Westlake patrol officers receive a \$900. annual allowance for what must be a similar, if not identical uniform. Therefore, the OPBA's proposal is accepted:

**20.01 Full-time employees required to wear uniforms shall receive annual uniform allowances as follows:**

**Effective January 1, 2002 - \$600.00**

**6. Article XXI – Sick Leave**

**OPBA Proposal**

**21.04 – Sick Leave Incentive**

Arguing that other City Hall workers currently receive a sick leave incentive providing a \$100. bonus for each quarter in which an employee utilizes fewer than four hours of sick time, the Union proposes inclusion of a similar benefit for OPBA members.

**City Position**

**21.04 – Sick Leave Incentive**

The City maintains that it substituted a sick leave incentive program for a then-existing employee of the month program at the urging of City Hall employees during 2001 contract negotiations with that bargaining unit. The incentive program was a replacement not intended for adoption City-wide, the Employer says. Therefore, it urges that the Conciliator reject the Union's proposal.

**Opinion and Award**

**21.04 – Sick Leave Incentive**

Parity with a bargaining unit with whom some OPBA members work closely and are in some instances interchangeable at management's discretion would seem expedient. Further, for many employers sick leave incentive programs effect administrative benefits and cost savings by reducing absenteeism. No evidence contradicted this inference. Consequently, the OPBA's proposal is awarded:

**21.04 Sick leave shall accumulate and be used in accordance with the current Ordinance of the City of Westlake on sick leave in effect at the time of the execution of this Agreement. Each quarter year that an employee uses four (4) hours of any sick**

time or less they shall be given \$100. Funeral days shall not be counted as sick days under this section of the contract.

## 7. Article XXIII - Court Time

### OPBA Proposal

#### 23.02 - Court Time

The Union argues that Westlake Police Officers receive a minimum of four hours for court appearances. Like police officers, members of the current bargaining unit incur off-duty travel, dress and preparation time for court appearances. Internal parity therefore dictates OPBA members receive equal compensation, says the Union.

### City Position

#### 23.02 - Court Time

The City contends that members of this bargaining unit are required to make court appearances infrequently, if at all. In the past 2 ½ years, says the Employer, no secretary or dispatcher has been called into court; the ACO was called only 6 times; a jailer was called only once. On this basis, the City asks that the Union proposal be rejected.

### Opinion and Award

#### 23.02 - Court Time

Bargaining unit members required to make court appearances, however infrequently, incur the same inconvenience and loss of off-duty, personal time as do Westlake Police Officers. There is accordingly little merit to affording them a lesser court appearance benefit. Moreover, employees not required to appear do not receive the benefit and the City bears no cost as a result. Therefore, the Union's proposal is accepted:

23.02 The compensation for the court appearance time, which will be greater of either the minimum ~~two (2)~~ four (4) hours time or the time actually spent, except as the time may be limited by subsection 3 hereof, shall be computed at one and one-half (1 ½) times the member's current hourly rate.

## 8. Article XXVII - Duration

### City Proposal

Seeking to consolidate the expiration of all its union contracts on the same date, the City proposes a contract obtaining from March 1, 2002 until February 28, 2004. The Employer rejects the Union's request for inclusion of contractual retroactivity language, contending that Westlake City Council is legally precluded from entering contracts extending beyond its term of office.

### OPBA Position

While it agrees to the time frame requested by the City, the Union argues for inclusion of language making economic issues retroactive to March 1, 2004.

### Opinion and Award

By law, conciliators in Ohio are precluded from awarding retroactive compensation and other matters having fiscal implications. Such awards, “may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award”. ORC § 4117.14(G)(11). The intent of this provision is to encourage expeditious settlement in negotiations between parties charged with public safety.

In an attempt to accommodate the City’s desire to unify the termination dates of its collective bargaining agreements, the OPBA agrees to enter a two-year contract commencing on January 1, 2002 and ending on February 28, 2004. However, the Union argues, correctly, that in entering a contract ending two months after the beginning of the fiscal year, the Union would forgo retroactive wages for the bargaining year, should successor contract negotiations, progress to mandatory conciliation. Confronted with the prejudicial impact of § 4117.14(G)(11) in this situation, the OPBA proposes language requiring retroactivity in the successor contract. However, the City’s assertion that it is statutorily precluded from entering a contract requiring retroactivity is also correct. By law, “[t]he legislative authority of a municipal corporation shall not enter into any contract which is not to go into full operation during the term for which all the members of such legislative authority are elected.” ORC § 731.48

However remotely, it is possible that negotiations for a successor agreement could extend beyond the current term of the Westlake City Council, rendering the Agreement with the OPBA voidable.

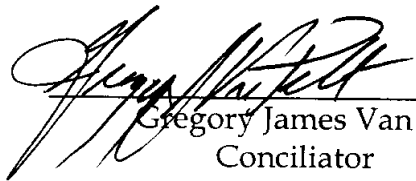
With regard to the issue of retroactivity, § § 4117.14 and 731.48 require the Conciliator to reject the Union’s proposal for mandatory retroactivity. The City’s position must accordingly be accepted:

**This agreement represents the understanding between the Employer and OPBA, and it shall be effective as of March 1, 2002 and remain in effect until February 28, 2004.**

## SUMMARY OF AWARDS

1. Article XII – Work Week/Scheduled Hours
  - 12.01 – Work day - OPBA Position; *extended work day on written request and mutual agreement of Parties*
  - 12.04 – Lunch – City Position; *status quo*
  - 12.05 – Scheduled Hours – City Position; *status quo*
2. Article XV – Wages
  - 15.01 – Wages - City Position; *3.5% on 1-1-02; 3.75% on 3-1-03*
  - 15.02– Step limitation – City Position
  - 15.03– Shift Differential – City Position; *status quo*
  - 15.04 - Training Pay – City Position; *status quo*
3. Article XVII – Holidays
  - 17.01 – Additional Holiday – City Position; *addition of MLK Day; reduction of 4 personal hours*
  - 17.02 – Holiday Compensation – OPBA Position; *1 ½ on all 17.01 holidays worked by bargaining unit members*
4. Article XIX – Health Benefits
  - 19.04 – Term Life Insurance – City Position; *status quo*
5. Article XX – Clothing Allowance – OPBA Position; *increase to \$600. per year*
6. Article XXI – Sick Leave
  - 21.04 – Sick Leave Incentive – OPBA Position; *quarterly incentive program*
7. Article XXIII – Court Time – OPBA Position; *increase to 4 hours*
8. Article XXVII – Duration – City Position; *March 1, 2002 – February 28, 2004*

Respectfully rendered, this 21<sup>st</sup> day of August, 2002  
At Shaker Heights, Cuyahoga County, Ohio

  
\_\_\_\_\_  
Gregory James Van Pelt  
Conciliator  
State Employment Relations Board