

**IN THE MATTER OF CONCILIATION
BETWEEN**

CITY OF WARRENSVILLE HEIGHTS)

CASE NO. 96-MED-09-0752

AND)

OPINION AND AWARD

**OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)**

JAMES M. MANCINI, CONCILIATOR

**STATE EMPLOYMENT
RELATIONS BOARD
Jul 3 10 27 AM '97**

APPEARANCES:

FOR THE UNION

S. Randall Weltman, Esq.

FOR THE CITY

**John T. Meredith, Esq.
Raymond J. Grabow, Mayor**

SUBMISSION

This matter concerns conciliation proceedings between the City of Warrensville Heights (hereinafter referred to as the City) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as the Conciliator in this matter.

The conciliation proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations established by SERB. The conciliation hearing was held on April 18, 1997 in Warrensville Heights, Ohio. The Conciliator attempted mediation of the outstanding issues during the course of the hearing. At the conclusion of the hearing, the parties agreed to allow the City additional time to consider modification of its final offers. On June 18, 1997, the City submitted a revised offer on wages. Subsequently, the Union filed its response to the City's revised final offer and the record was declared closed on June 23, 1997.

The applicable bargaining unit involved herein consists of all regular full-time sworn Patrol Officers and Detectives below the rank of Sergeant working for the City of Warrensville Heights. There are eighteen members in the bargaining unit.

This Conciliator in resolving this dispute between the parties by selection between each of the parties' final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Further, this Conciliator has

taken into consideration all reliable evidence presented relevant to the outstanding issues before him. Therefore, this Conciliator after carefully reviewing all of the evidence and arguments presented by the parties, hereby submits his Opinion and Award with respect to each of the outstanding issues submitted.

1. GRIEVANCE PROCEDURE

The Union proposes that binding arbitration be included in the agreement. The City opposes binding arbitration proposing to stay with the current provision of advisory arbitration.

The Union contends that its experience with advisory arbitration in the City has been both costly and time consuming. First, it costs money to submit a grievance to advisory arbitration and then it is even more costly to completely retry the grievance as a breach of contract action in the Court of Common Pleas. Processing one grievance in two different forms certainly does not help to resolve employment disputes. The Union cited one recent case where a settlement occurred almost three years after initial filing of a grievance. The Union also emphasizes that binding arbitration is found in almost all other police contracts in the State of Ohio.

The City contends that the current advisory arbitration provision has not created any problems for the bargaining unit. It notes that only two cases have been appealed to court in almost thirty years. During that time, the advisory decisions issued by the mayor have never been overturned. The City also points out that its fire fighters and service workers do not have binding arbitration.

ANALYSIS - This Conciliator has determined that binding arbitration should be included in the parties' bargaining agreement for several reasons. First, binding arbitration of grievance provisions are found in nearly all other police agreements both in the area as well as in the State of Ohio. As indicated by the Fact-Finder in this matter,

“Binding arbitration of grievances has been universally accepted in Ohio police departments.” In Cuyahoga County, 95% of city police departments have binding arbitration provisions. Binding arbitration is widely recognized by both public employers and their unions as being the fairest as well as the most cost efficient method of resolving labor disputes. The City argued that its position should be upheld because the IAFF and Teamsters agreed to continue the current advisory arbitration system. However, binding arbitration was recently awarded by a conciliator for the police department FOP units which includes sergeants, lieutenants and dispatchers. Therefore for consistency purposes within the police department, binding arbitration should also be applicable to the patrol officers unit. Again, it should be emphasized that nearly all police departments in the State have binding arbitration provisions. There was no basis established for an exception here.

The evidence presented further indicates that advisory arbitration has created problems in the past for the police unit. There was an indication that bargaining unit members are fearful of filing legitimate grievances for fear that the mayor may not like their action. It is apparent that the current advisory system has proven to be costly and time consuming in some instances. In one case for example, settlement of a grievance did not occur until three years after filing. Thus contrary to the City’s claim, the current advisory arbitration procedure has not functioned well for this bargaining unit.

Therefore, this Conciliator finds that the Union’s final offer regarding binding arbitration is to be incorporated in the parties’ bargaining agreement. This would include

the procedure that an arbitrator is to be selected by agreement or through the services of the Federal Mediation and Conciliation Service. The arbitrator's decision should be final and binding with the costs shared equally by the parties.

A W A R D

It is the award of this Conciliator that the Union's grievance procedure proposal concerning binding arbitration be adopted and included in the parties' bargaining agreement as follows:

GRIEVANCE PROCEDURE

Step 3: If the grievant and the OPBA are not satisfied with the written decision at the conclusion of Step 2, a demand for Arbitration may be filed with the Safety Director within five (5) days from the date that the Step 2 decision was issued. An Arbitrator shall then be selected by agreement of the parties or, in absence of such agreement, by the Federal Mediation and Conciliation Service according to its rules. The Arbitrator shall then hold a hearing and issue a decision pursuant to FMCS rules. The Arbitrator's decision shall be limited to interpretation of the contract, and the Arbitrator shall not add to or modify any provision of the contract. The Arbitrator's decision shall be final and binding. The costs of arbitration shall be shared equally by the employer and the OPBA.

2. PREMIUM PAY

The Union proposes a new section under Article 15 which would require overtime compensation whenever employees have to “double back” during shift transfers. The City opposes this new provision. The City also proposes a change in Section 1(c) of Article 15 which would eliminate minimum pay for appearances in Bedford Municipal Court. The parties agreed to a new Section 4 which would provide that overtime pay shall be paid in the pay period following the period in which it was earned.

The Union contends that there is justification for employees to receive overtime compensation whenever they have to double back during shift transfers. According to the Union, such payment is warranted in order to compensate the employees involved for the inconvenience and physical damage they incur whenever they have to return to work without an adequate break. The Union notes that the Fact-Finder recommended premium pay for double backs during shift transfers.

The City contends that there is justification for eliminating the current provision which guarantees employees 3.5 hours of pay and overtime compensation whenever they are called to appear in the Bedford Municipal Court. The City points out that in most instances, officers spend less than 3 hours in such court appearances. As a result, it would be reasonable to provide as the City proposes that employees called in to appear in Bedford Municipal Court be paid for time actually worked.

ANALYSIS - This Conciliator has determined that there are two distinct issues presented by the parties' final offers under Article 15 and as such are to be treated separately in rendering this award. First, this Conciliator has determined that there was insufficient basis established by the Union for its proposed new section which would require overtime compensation whenever employees have to double back during shift transfers. There was no evidence of comparability submitted in support of such a provision. There was no indication that such double back pay provisions are found in other agreements in neighboring jurisdictions. Undoubtedly, whenever an officer is subject to doubling back during a shift transfer, he/she may experience disruptions to their family life and to their sleep patterns. However, this occupational fact of life for police officers does not necessarily warrant payment of overtime compensation for such double backs during shift transfers. Again without any evidence of comparability to support such a request, this Conciliator finds no basis to award the Union's proposal.

This Conciliator also does not find any merit in the City's proposal to modify Section 1(c) to eliminate minimum pay for appearances in Bedford Municipal Court. The current provision which provides for a minimum of 3.5 hours of compensation whenever an employee is called in to appear in Bedford Municipal Court appears to be reasonable. It is evident that said provision is intended to fairly compensate employees for their time and inconvenience in attending court on behalf of the City. There simply was no justification established by the City for taking away this reasonable benefit. As a result, the current Section 1(c) is to be retained.

A W A R D

It is the award of this Conciliator that the current Premium Pay Provision, Article 15 be retained without any modification as proposed by the parties. Specifically, the Union's request for a new section under this article requiring overtime compensation for doubling back during shift transfers is hereby denied. Likewise, the Employer's request to modify Section 1(c) in order to eliminate minimum pay for Bedford Municipal Court time is also hereby denied.

PREMIUM PAY

All sections to remain the same. Current language retained.
No new sections.

3. SICK LEAVE

The Union proposes to enhance the sick leave cash out benefit by changing the sick leave cash out benefit from the current 40 days to 45 days. The Union also seeks to modify the sick leave cash out benefit to extend to any employee who retires or separates from employment. The City opposes these changes and seeks to maintain current language as modified by negotiations to date.

The Union argues that the sick leave cash out benefit should be extended to employees who separate from employment. It cites the City's fire fighters' contract which does not restrict this benefit to retirees only. Moreover, the cash out benefit should be increased to 45 days the same as that found in the City's fire fighters' agreement. There are a number of reasons which justify an enhancement of this benefit including parity. The Union also points out that the Fact-Finder recommended the changes which it now seeks.

The City argues that the current sick leave cash out cap of 40 days is reasonable. It contends that the increase in the cap for sick leave pay out would represent a significant cost factor. The City maintains that it does not have the ability to fund such an increase in the sick leave cash out benefit sought by the Union. Moreover, there was no justification shown for extending the sick leave cash out benefit to employees who retire or separate from employment.

ANALYSIS - This Conciliator has determined that there was insufficient basis established by the Union in support of the modifications which it proposed for the Sick Leave Pay Out Provision. This Conciliator would agree with the City that the current Sick

Leave Pay Out Provision is not completely unreasonable. It is recognized that the Fact-Finder recommended the change which the Union now seeks. However upon closer review of the issue, it is apparent that the Fact-Finder recommended a change which went beyond that which the Union proposed during fact-finding. Specifically, the Union proposed at fact-finding to extend the cash out provision "to employees with ten or more years of service who retires or otherwise separates from employment." However, the Union now proposes and the Fact-Finder recommended a language change which would allow sick leave pay outs for all separations from employment, not just retirements. Such a change would go well beyond that which the Union itself initially sought in this matter. This Conciliator is aware of many contracts which limit the sick leave cash out benefit only to those with at least ten years of service which is what the Union initially proposed at fact-finding. It would appear to be inappropriate to now award the Union a change in language which exceeds that which it initially sought during fact-finding.

Moreover, the only comparable cited by the Union in support of its position is the fire fighters' agreement. That agreement does provide that the sick leave cash out benefit is to be provided to anyone who either terminates or retires from City employment. However, it appears from the record presented that the other police units which includes the sergeants, lieutenants and dispatchers currently have the same sick leave cash out benefit provision as that provided to the bargaining unit herein. There was no indication from the conciliation report issued regarding the other police units that there has been any change in the current sick leave cash out benefit. It also appears that the FOP police units

have maintained the limit placed on sick leave accumulation as well as the cap of 40 days for the cash out of sick leave upon retirement. Thus internal comparisons with the other units in the police department support the City's position that current language be retained for the Sick Leave Cash Out Benefit Provision.

AWARD

It is the award of this Conciliator that the current Sick Leave Cash Out Benefit Provision be retained without any modification as proposed by the Union.

SICK LEAVE - Current language, no change.

4. COMPENSATION

The Union proposes a 5% wage increase retroactive to January 1, 1997; another 4% increase on August 18, 1997; and an additional 4% wage increase on August 18, 1998.

The Employer's final offer, as amended, for compensation is as follows: effective January 1, 1997 an increase of 1.25%; effective May 1, 1997 an increase of 1.25%; September 1, 1997 an increase of 1.50%; March 1, 1998 an increase of 1.75%; September 1, 1998 an increase of 2 %; and effective March 1, 1999 an increase of 2.25%.

The Union contends that bargaining unit members deserve a series of significant pay raises. It cites comparable wages paid to other patrolmen in area jurisdictions. Such evidence regarding southeast Cuyahoga County jurisdictions shows that the Warrensville Heights' top wage of \$38,492 is below the average top wage of \$40,587. Of the ten cities used in the comparison, only Garfield Heights and Seven Hills pays a lower wage to their patrolmen than Warrensville Heights. Even when total compensation is considered which would include longevity payments, Warrensville Heights police receive about 6% less compensation than the average in the area. With respect to contiguous jurisdictions, Warrensville Heights' top wage falls about 7% below the average. In order to remedy this pay inequity, the Union submits that wage increases above the norm are warranted for this bargaining unit.

The Union also points to an internal comparison with the fire fighters. It notes that the City has been able to compensate its fire fighters at a greater base rate and with other forms of compensation than it grants its patrolmen. The top wage rate for fire

fighters of \$39,600 exceeds that of patrolmen. Fire fighters also receive greater clothing and maintenance allowances than patrolmen.

The Union disputes the City's claim that it does not have the ability to fund the wage proposal which it has submitted. The Union points out that the City's own financial data fails to demonstrate that the City lacks the resources to fund the additional cost for the Union's wage proposal. For example, municipal income tax revenue increased substantially during 1996 over the previous year. There is every indication that revenues in general shall continue to increase for the City in 1997. It is the position of the Union that any past problems which the City may have experienced due to loss of jobs in the community are no longer causing problems for the City.

The Union also maintained that the police in Warrensville Heights have a more difficult job in handling crime than police in nearby jurisdictions. The 1995 uniform crime report shows that the crime index is greater for Warrensville Heights than that of nearby cities. According to the Union, such evidence supports the need for a substantial wage increase in order to bring wages more into line with those paid in other jurisdictions.

Finally, the Union submits that its final wage offer is in accord with Fact-Finder Graham's recommendation in this matter. The Fact-Finder recommended a 4% wage increase in each year of the agreement. The Union's proposal is in line with that recommendation in that retroactivity would be only to January 1, 1997. The bargaining unit here did not receive any other wage increase in 1996. The Union also notes that the

Fact-Finder rejected the City's claim that it did not have the ability to pay for the wage increases which he recommended.

The City contends that it does not have the ability to pay for the Union's wage proposal. It maintains that such substantial wage increases would adversely affect the public welfare and level of services provided to its citizens. The City further points out that its position in salary rankings, while not high, is commensurate with its economic ranking in the area. For example, Warrensville Heights' economic ranking is comparable to that of Garfield Heights and Maple Heights. The salaries for patrolmen in these communities are also comparable. In other communities such as Shaker Heights and Beachwood where residents' incomes rank higher, patrolmen's wages are higher. Thus according to the City, the wages which it pays to its patrolmen is in line with other comparable communities with similar economic rankings.

The City produced financial data which it claims supports its contention that it does not have the ability to fund the additional cost for the Union's final wage offer. The City points out that due to a loss of jobs in the community, income tax revenues declined from 1992-1994. The City was forced to spend down its balance and borrow to meet certain capital requirements. The City has incurred approximately 1.5 million dollars in short term indebtedness. Although income tax revenues have recently rebounded to an estimated 7.6 million dollars in 1997, the City points out that it is only now returning to the fiscal condition which it experienced in 1992. Because no trend in revenue increases has

yet to be established, the City takes the position that its back-ended wage package is needed in order to give it time to stabilize its budget.

The City also maintains that its generous longevity provisions tend to narrow the gap between its salaries and those of most other communities. When longevity is included in any total compensation comparison, the Warrensville Heights police compare favorably. The longevity provision in Warrensville Heights is one of the highest in the area.

The City submits that its final amended wage offer which amounts to a 10% increase in compensation over the term of the contract is the more reasonable of the two offers submitted. First, it is more in line with recent wage increases provided to police both in the area and throughout the state. It is also identical to the recent settlement which the City reached with its fire fighters. On the other hand, the Union's proposed 13% wage increase over three years, compounded by increases in the rank differentials for Sergeants and Lieutenants, would significantly exceed median compensation increases awarded in the state. The Fact-Finder's recommendation regarding wages was erroneous because it failed to take into consideration the City's inability to fund such a significant pay increase for its patrolmen.

ANALYSIS - This Conciliator has determined after carefully reviewing the evidence and arguments presented by the parties that the Union's final wage offer should be adopted. The evidence shows that the Union's final wage offer is justified in order to bring the wages of Warrensville Heights police more into line with the wages of similarly situated employees in neighboring jurisdictions. This Conciliator has also determined that

the Employer has the ability to finance the additional cost of the Union's wage proposal. Moreover, the Union's final wage offer is similar to that recommended by the Fact-Finder herein and would provide for a 5% retroactive pay increase to January 1, 1997. There would be additional wage increases of 4% on August 18, 1997 and again on August 18, 1998.

This Conciliator finds that the wage increases proposed by the Union are reasonable considering that the wage rates for this bargaining unit are significantly lower than the wages paid to similarly situated employees in neighboring cities. The evidence shows that Warrensville Heights police wages fall in the lower end of the pay ranges for police in the area. Of the ten jurisdictions in southeast Cuyahoga County, only Garfield Heights and Seven Hills police receive a lower top wage than Warrensville Heights. The wage comparables included top pay rates for police in Independence, Beachwood, Solon, Bedford Heights, Shaker Heights, Maple Heights, Bedford, Garfield Heights, and Seven Hills. These are all comparable jurisdictions. The police top wages in these cities range from \$35,809 to \$43,207 with the average being \$40,587. At the present time, Warrensville Heights' top wage of \$38,492 falls about 5% below the average wage for police in the region. Thus a 5% retroactive pay increase for Warrensville Heights police is supported by the wage comparables presented.

It should be noted that even when longevity is factored into the total compensation comparison, Warrensville Heights police fall well below the average pay in the area. Total compensation for police in southeast Cuyahoga County jurisdictions with

longevity factored in, averages \$42,340. In comparison, Warrensville Heights police only receive total compensation of \$39,839 which is approximately 6% below the average paid to police in the region. Thus contrary to the City's contention, longevity pay does not narrow the gap between wages in Warrensville Heights and those found in other neighboring communities.

A review of general wage increases provided to police by southeast Cuyahoga County jurisdictions further supports the conclusion that the Union's wage offer is justified. Such evidence shows that for 1995, Warrensville Heights police received the smallest wage increase in the region. For 1995, the general wage increase for Warrensville Heights was only 3.25% as compared to an average increase for police in other neighboring jurisdictions of approximately 4%. This served to further exasperate the relatively low wages paid to Warrensville Heights police. Although the Union's final wage offer which amounts to a 4% wage increase per year over the life of the agreement is slightly above the general wage increases provided to public employees statewide, such a wage increase is justified in order to bring the Warrensville Heights police wages more into line with the average wages paid to police in the region. There simply was no justification established by the City for the current disparity of wages between Warrensville Heights police and others in the area.

This Conciliator further finds that the City has the ability to fund the Union's final wage offer. Following the conclusion of the hearing and pursuant to this Conciliator's request, the City submitted a cost breakdown for the two proposed wage increases on a

yearly basis. Although the Union objected to the introduction of such evidence, this Conciliator has determined that it is relevant to a determination of the wage issue. It is apparent that in order to make a finding as to whether the City could afford to finance the wage proposal offered by the Union, it is necessary first to determine what the additional cost would be for that proposal over and above the City's own final wage offer. In that regard, the evidence submitted shows that the additional cost of the Union's wage offer for 1997 would be approximately \$31,631. In 1998, the additional cost of the Union's proposal over that submitted by the City would be approximately \$31,997. For the year 1999, the additional cost would amount to \$22,979. It should be noted that the only relevant cost data involved in this dispute concerns the payroll costs for the patrol officer bargaining unit.

The evidence presented in this case clearly shows that the City has the ability to finance the additional yearly costs of the Union's wage proposal. The evidence shows that the City is no longer facing financial difficulties like those which it had during the period from 1992 through 1994. For example during the past two years, the year end unencumbered General Fund balance has leveled off. At year end 1996, the City had an unencumbered balance in its General Fund of approximately \$556,000. Significantly, City income tax revenue has increased during the past two years. In 1996, income tax revenues increased to \$7,500,000 which represented approximately an \$600,000 increase over the amount received in 1995. Overall local tax revenue is expected to also increase in 1997 to approximately 8.7 million dollars. Considering the unencumbered balance at the beginning

of the current year as well as the anticipated continued increase in City revenues, it must be held that the City has the ability to fund the additional cost of the Union's final wage offer. Certainly out of anticipated revenue of approximately 8.7 million dollars, the City can afford to pay the additional cost for the Union's proposal of \$31,631 in 1997. Likewise, there is every indication based upon anticipated City revenues it can afford the additional costs of the Union's proposals for 1998 and 1999.

This Conciliator further finds that the City has the ability to pay for the Union's wage proposal without adversely affecting the public welfare and the level of services provided to its citizens. This Conciliator recognizes that the City incurred short term debt in order to meet capital needs during the lean years of 1992 through 1994. Of course, these debts must be paid off over time from available General Fund resources. The City is also in need of additional funding for capital expenditures in 1997 which includes the purchase of computer equipment. However, the evidence demonstrates that the City can well afford to finance the Union's wage offer in this case and pay off past debts from available revenue resources. Once again, the evidence clearly shows that the income tax revenues increased in 1996 and are expected to do so in 1997. Moreover, the loss of industry and jobs in the City which previously occurred appears to be over. The City currently relies on smaller businesses to provide revenues. The City did not dispute the Union's claim that the business community is attracted to Warrensville Heights due in part to its lower income tax rate. Finally, it must be reemphasized that the cost differences between the two final wage offers presented in this case are simply not that significant. Surely, the City cannot

reasonably argue that paying an additional \$31,631 during 1997 can have any significant impact on the public welfare or level of services provided to Warrensville Heights citizens. The evidence simply does not support such an argument.

This Conciliator is obligated under SERB's rules and regulations to give consideration to the Fact-Finder's recommendation in this case. As indicated, the Union's wage proposal is essentially the same as that recommended by the Fact-Finder. Contrary to the City's contention, it does not appear that the Fact-Finder in any way rendered an erroneous decision regarding the wage issue. This Conciliator agrees with the basic conclusion reached by the Fact-Finder which was the 4% wage increases in each year of the agreement are justified in order to provide "a start to remedy the poor pay of police relative to others in the region." It should also be noted that like the Conciliator herein, the Fact-Finder rejected the City's argument that it did not have the ability to pay for the Union's wage proposal.

This Conciliator further finds no merit to the City's contention that its final wage offer should be adopted based upon the recent settlement with the fire fighters. It is true that the City's amended final wage offer of 10% over three years is identical to that which the fire fighters recently accepted. However, the evidence clearly shows that the fire fighters' base rate exceeds the current patrolmen's base wage by almost 3 percent. In 1996, the top wage for fire fighters was \$39,600 as compared to the top patrolmen's wage of \$38,292. Moreover, any internal comparison must include the wage increases which have been granted to other police units. Based upon a recent conciliation award, the police

sergeants and lieutenants, and even the dispatchers received greater wage increases than that provided to the fire fighters.

In conclusion, this Conciliator has applied the criteria set forth in SERB's rules and regulations to the evidence presented and has concluded that the Union's final wage offer is the more reasonable of the two final offers submitted for his consideration. In that regard, it is the award of this Conciliator that there be a 5% wage increase retroactive to January 1, 1997, with additional 4% increases on August 18, 1997 and August 18, 1998.

AWARD

It is the award of this Conciliator that the Union's final wage offer be included in the parties' bargaining agreement as follows:

COMPENSATION

Section 1. The pay scales attached hereto as "Appendix A" shall be increased by the following amounts:

- a. effective January 1, 1997 - 5%
- b. effective August 18, 1997 - 4%
- c. effective August 18, 1998 - 4%

5. UNIFORM ALLOWANCE

The Union proposes an increase in uniform and maintenance allowances to \$500 per year. The current provision provides for allowances of \$475 per year. The Union also proposes language which would require the City to replace body armor whenever the manufacturer's suggested life has been exceeded. The City proposes prior contract language, modified to reflect changes agreed upon during negotiations.

The Union seeks to close the gap with respect to the greater clothing allowance benefit provided to the City's fire fighters. The fire fighters currently receive \$500 per year in clothing allowance and \$600 per year as a clothing maintenance allowance compared with the patrolmen's \$475 per year allowance in each category. The Union also contends that it is reasonable to require the City to replace body armor whenever the manufacturer's suggested life has been exceeded. Every officer should be entitled to have confidence in his body armor protection.

The City takes the position that the current uniform and maintenance allowances of \$475 are sufficient for patrolmen. There is justification for providing fire fighters with greater uniform and maintenance allowances than that which is granted to patrolmen. With respect to body armor, the City believes that it is not unreasonable to expect patrolmen to use the protective vests beyond the replacement date specified by the manufacturer. Moreover, this is a cost item for the City.

ANALYSIS - This Conciliator finds that the Union's uniform and maintenance allowance proposal is reasonable and should be adopted. The evidence establishes that

fire fighters receive a much greater clothing allowance benefit than that enjoyed by the patrolmen. The fire fighters receive \$500 per year in clothing allowance and \$600 per year for a clothing maintenance allowance as compared to the current \$475 per year allowances granted to the patrolmen. The City failed to clearly show why such a great disparity in uniform allowances exists. The Union's proposal is a modest one in that the uniform and maintenance allowances would be increased by only \$25 per year. Considering that there are only eighteen officers in the bargaining unit, there would be minimal cost affect on the City due to the increase in uniform and maintenance allowances requested by the Union.

This Conciliator also finds it reasonable to grant the Union's proposal which would require the City to replace body armor whenever the manufacturer's suggested life has been exceeded. The evidence showed that during the past year, some officers have been wearing protective vests after they have exceeded their manufacturer's suggested life. For vests, there was an indication that the manufacturer's suggested life is five years. This Conciliator must agree with the Fact-Finder's conclusion that it is unreasonable to expect officers to wear body armor beyond the date certified by the manufacturer. Every officer should be entitled to have confidence in the body armor which he wears during the performance of his duties. As such, the Union's final offer which would require the City to replace body armor whenever the manufacturer's suggested life has been exceeded is to be incorporated into the parties' bargaining agreement.

AWARD

It is the award of this Conciliator that the Union's uniform allowance proposal be adopted as follows:

UNIFORM ALLOWANCE

Section 1. Uniform and maintenance allowances shall be as follows:

| <u>Uniform Allowance</u> | <u>Maintenance Allowance</u> | <u>Total</u> |
|------------------------------|----------------------------------|--------------|
| \$500.00 | \$500.00 | \$1,000.00 |

The City reserves the right to require Officers to present receipts to establish that the allowance were spent for their stated purposes.

Section 5. Body armor issued to any Officer, shall be subject to inspection and replacement at the option of the City, at anytime. Any Officer deeming his/her body armor worn, damaged, and/or in any other manner not functional may, at anytime consistent with department procedure, request the Chief of Police, Executive Officer, and Shift Officer to inspect such garment with the view to immediate replacement, the decision of the Chief of Police and Safety Director being dispositive of the issue, unless the manufacturer's suggested life has been exceeded, in which case the body armor shall be replaced.

6. INSURANCE

The Union seeks an increase to \$25,000 for the life insurance benefit. It also proposes to provide for the same prescription drug, dental and eye care benefits as are provided to the police dispatchers, the Police Chief, and Police Department Executive Officer as of January 1, 1997. The City proposes a provision for premium contribution whereby increases in insurance premium above the January 1, 1996 levels would be paid by the employee. Otherwise, the City opposes any increase in the insurance benefits proposed by the Union.

The Union contends that the current life insurance benefit of \$14,000 is very low in relation to the officers' wages. This benefit is important to bargaining unit members who risk their lives every day. The Union cites the Fact-Finders' report which recommended an increase to \$25,000 in the life insurance benefit.

The Union further proposes the same insurance benefits afforded to the City's police dispatchers as well as the Police Chief and Police Department Executive Officer. The Union points out that they enjoy dental insurance at a lower cost and are provided a prescription drug card among other benefits. There is no reason for such a disparity in insurance benefits to exist between patrolmen and the others within the police department.

The City contends that its proposal to have employees contribute towards premiums is supported by comparability data. It cites a SERB report which indicates that most public employees in the state now share the cost of insurance premiums. The City

points out that under its premium contribution proposal, the employees would only have to contribute if there are increases in premiums above the January 1, 1996 levels.

The City also proposes to revise language under Section 1 which would allow it to restructure the insurance program so as to provide equivalent benefits on a more cost effective basis. The City contends that locking in a fee for services plan runs counter to the trend towards achieving cost containment through alternative insurance programs. The City also notes that its current insurance plan for patrolmen is comparable to insurance provided other bargaining unit employees in the City. For that reason it opposes the changes recommended by the Union.

ANALYSIS - This Conciliator finds that the Union's final offer concerning insurance should be adopted. The evidence shows that the bargaining unit herein is not provided with the same insurance benefits as afforded to the City's police dispatchers unit. That unit receives dental insurance at a lower cost and is provided with a prescription drug card as well as eye care benefits. As noted by the Fact-Finder, dental insurance is widespread in Ohio with approximately 84% of respondent employers providing such coverage according to the most recent SERB report. There was no showing made by the City as to why the patrolmen's unit should not have the same insurance benefits as are provided to the police dispatchers. As such, the Union's final offer in that regard is granted.

Likewise, the Union's request for an increase in life insurance to \$25,000 from the current \$14,000 is also reasonable. Again as noted by the Fact-Finder, recent SERB

data indicates that the statewide average for life insurance coverage is approximately \$25,000. Considering the hazardous nature of police work, an increase in the life insurance benefit to \$25,000 is warranted.

This Conciliator further finds that there was insufficient basis established by the City to support its final offer regarding insurance. There was absolutely no evidence presented which would indicate that the City has a need at the present time to incorporate certain cost containment features into its insurance provision. The proposal to institute a provision for premium contribution was not supported by SERB's health insurance report. Indeed as the Union pointed out, SERB's report indicates a finding that there has been virtually no change in the cost of health insurance during the past year for public employers. For the northeast region, health care premiums actually declined by 1.3%. Again, there was no indication that Warrensville Heights' health care costs have either increased or decreased during the past year. In the absence of such evidence, this Conciliator must find that there was no justification shown for requiring employees to contribute to the cost of their health insurance.

It should also be noted that evidence of comparability did not support the City's insurance proposal. While it is true that most public employees in the state now share the cost of insurance premiums, a closer review of SERB's insurance report indicates that in the northeast region only 30% of employees contribute towards premiums. Moreover, the unrefuted evidence produced by the Union was that no other employee group within the City of Warrensville Heights contributes towards their health

care cost. Finally, it should be noted that the Fact-Finder in this matter rejected the City's arguments for premium payments from employees.

AWARD

It is the award of this Conciliator that the Union's proposal be adopted as follows:

INSURANCE

Section 3. The City will provide for and pay the premium, for all full-time employees covered under this Agreement, for a convertible life insurance policy in the face value of \$25,000, with a "Double Indemnity" provision. The employee shall be permitted (at such employee's additional and sole expense) to add, consistent with insurance carrier conditions, a spouse for insurance policy coverage.

Section 4. The City shall provide the same prescription drug, dental and eye care benefits at the same cost as the benefits provided to the Police Dispatchers, the Police Chief and the Police Department Executive Officer, as of January 1, 1997.

7. LAYOFF

The Union proposes language which would prohibit the City from assigning bargaining unit work to either civilian or part-time employees. The City opposes any change in current language.

The Union states that it is concerned that retired police officers may be hired back by the City to perform civilian or part-time positions including dispatching. The bargaining unit members at times are required to work dispatch. The Union takes the position that such action on the part of the City in hiring retired police officers could erode the bargaining unit.

The City claims that they do not have any retired police officers performing police work. According to the City, civilians and part-timers perform only administrative tasks in the police department.

ANALYSIS - This Conciliator finds that there was insufficient basis established by the Union for its proposal which prohibit the City from assigning bargaining unit work to either civilian employees or part-time employees. The evidence showed that currently the City only allows administrative work in the department to be performed by non-bargaining unit employees. The Union indicated that it did not object to the civilians and part-timers performing administrative tasks. There was no evidence that the City is currently assigning bargaining unit work to either civilian employees or part-time employees. As such, this Conciliator like the Fact-Finder in this matter finds that there has been no showing made for a change in current language.

AWARD

It is the award of this Conciliator that the Union's request for new language under the Layoff Provision is hereby denied. The current Layoffs Provision shall remain the same without modification.

LAYOFF - Current language, no change.

8. DURATION

Both parties proposed a contract expiration date of August 17, 1999. The Union also proposes adding a provision whereby a conciliator would be permitted to grant a retroactive wage or economic increase to August 18, 1999.

The Union contends that because the expiration date is not at years end, it is unable to obtain retroactivity in the event that the parties are forced to resolve their impasse through conciliation. In order to remedy this problem, the Union proposes contract language which would allow for retroactivity to the date of the new contract expiration date.

The City opposes any change in current language. The City points out that its Collective Bargaining Agreements have always had August expiration dates and that there is no need to provide for a retroactive provision as suggested by the Union.

ANALYSIS - This Conciliator does not find that there was any basis established for the Union's proposal to add language whereby a Conciliator could grant a retroactive wage or economic increase to August 18, 1999. There was no showing made that any bargaining difficulties which the parties may have experienced in the past have created any undue problems. In fact in the instant case, the parties agreed to provide for retroactive wage increases to January 1 of the current year. The Union simply adjusted its wage offer to account for the time period back to August, 1996. Moreover as noted by the City, its agreements have always had an August expiration date. The Fact-Finder also agreed to maintain current Duration language.

A W A R D

It is the award of this Conciliator that the Duration Provision be retained without any new language as proposed by the Union.

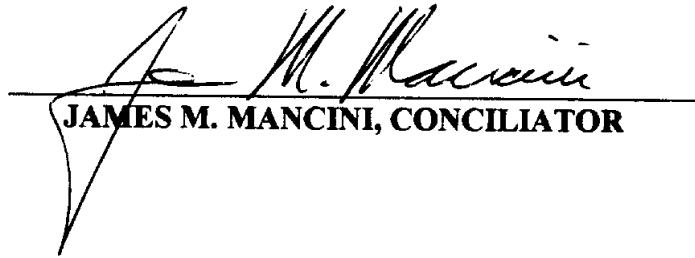
DURATION OF AGREEMENT

Section 1. This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein, shall remain in full force and effect until 12:01 a.m., August 17, 1999. If either party desires to make any changes in the Agreement for a period subsequent to its expiration, notice of such a desire shall be given prior to applicable statutory deadlines. If no notice seeking modification is given, then the Agreement shall remain in effect for another year.

CONCLUSION

In conclusion, this Conciliator hereby submits his Awards on the outstanding issues presented.

June 30, 1997


A horizontal line is drawn across the signature. Below the line, the name and title are printed in a bold, sans-serif font.

JAMES M. MANCINI, CONCILIATOR