

STATE EMPLOYMENT  
RELATIONS BOARD  
Nov 20 10 40 AM '97

**IN THE MATTER OF CONCILIATION  
BETWEEN**

**CITY OF WARREN** )  
 )  
 ) **CASE NO. 97-MED-01-0088**  
 )  
**AND** )  
 ) **OPINION AND AWARD**  
 )  
**OHIO PATROLMEN'S BENEVOLENT** )  
**ASSOCIATION** )

**JAMES M. MANCINI, CONCILIATOR**

**APPEARANCES:**

**FOR THE UNION**

**Michael W. Piotrowski, Esq.**  
**S. Randall Weltman, Esq.**  
**Emanuel Nites**  
**Michael Stabile**  
**Rob Massucci**  
**Jeffrey Hoolihan**

**FOR THE CITY**

**Daniel P. Thomas, Esq.**  
**Gary C. Cicero**  
**Brian Massucci**

## SUBMISSION

This matter concerns conciliation proceedings between the City of Warren (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 James M. Mancini as 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 October 24, 1997 in Warren, Ohio. The conciliator attempted mediation of the outstanding issues during the course of the hearing. The issues remaining for this conciliator's consideration are set forth in this report.

The applicable bargaining unit involved herein consists of all full-time patrolmen working for the City's police department. There are approximately fifty members in the bargaining unit. This conciliator in resolving this dispute between the parties by selection between each of the party's 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. EMPLOYEE RIGHTS**

The Union proposes an Employee Rights Provision which includes a prohibition of mandatory polygraph testing of members of the bargaining unit. In addition, the Union's proposal contains a section that requires the City to inform officers once civilian complaints are brought against them. The City's final offer includes a provision which would allow for the use of a polygraph examination in the course of an Internal Affairs investigation. The City's proposal did not contain any provision relating to civilian complaints.

The Union contends that the polygraph language contained in its Section 7 is standard language found in numerous contracts involving police units. The language would merely give police officers here the same rights enjoyed by private employees under the Federal Polygraph Protection Act. Moreover, clarification of the issue is necessary given the Police Chief's unwarranted use of the polygraph in a recent case where he unilaterally determined that five individuals, only one of whom had been accused of wrongdoing, would be given mandatory polygraph tests. The Union points out that the polygraph prohibition had actually been negotiated as a trade for random drug testing during the last contract negotiations. However, the Police Chief, who had been the negotiator for this bargaining unit, changed his position on the meaning of the Chemical and Mechanical Testing Section and determined that polygraphs could be used at his discretion.

With respect to Section 8, the Union maintains that it merely provides protection from unwarranted civilian complaints. It merely requires the City to inform officers when civilian complaints are brought against them. The Union notes that its final Section 8 proposal is actually less favorable than that recommended by the fact-finder herein.

The City opposes any ban on mandatory polygraphs. The Police Chief has used polygraphs only in a reasonable and prudent fashion. It would hinder Internal Affairs investigations if the Police Chief did not have the right to administer polygraph examinations. The City notes that its proposal provides that a polygraph examination can be given in the course of an Internal Affairs investigation "only after probable cause has been established." The City submits that its final proposal is reasonable and should be adopted.

With respect to civilian complaints, the City objected to language found in the proposal submitted by the Union which stated that any complaint not filed by a civilian within thirty days cannot be used as a basis for discipline. Otherwise, the city did not have any objections to the Union's final proposal regarding civilian complaints.

ANALYSIS - This conciliator has determined that the Union's Employee Rights proposal is reasonable and should be adopted. First, the polygraph language contained in Section 7 is standard language found in numerous collective bargaining agreements covering police department units. This fact served as a basis for the fact-finder's recommendation which included the language in Section 7 which prohibits

mandatory polygraph testing of members of the bargaining unit. This language also gives police officers here the same rights enjoyed by private employees under the Federal Polygraph Protection Act.

Moreover, the evidence established that during the last contract negotiations, a bargain was struck whereby management agreed to discontinue mandatory polygraph testing in exchange for an agreement from the bargaining unit to establish a random drug screening policy which is found in the Chemical and Mechanical Testing Article of the Agreement. Thus the language which prohibits mandatory polygraph testing is justified on the basis that it would ensure that the previously negotiated bargain between the parties over this matter be recognized and carried out by all concerned. The City failed to establish that there was any need to provide the Police Chief with wide discretion to conduct a polygraph examination during the course of an Internal Affairs investigation.

With respect to Section 8, it appears from the record that the parties are in basic agreement. The Union pursuant to mediation discussions modified its final offer regarding this section which deleted that part of its proposal which had been objected to by the City. In particular, the Union's final offer does not contain any language regarding a thirty day limitation on disciplining an officer over a civilian complaint. Otherwise, it appears that the City would have no objection to language proposed by the Union which states in effect that all complaints by civilians which may involve a disciplinary matter shall be in writing and signed by the complainant. As such, this

conciliator finds that the language offered by the Union regarding Section 8 should be adopted. It should also be noted that for clarification purposes, the entire Employee Rights Provision is set forth in the conciliator's award with the bolded sections being those at issue herein.

### **A W A R D**

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

#### **Employee Rights**

*Section 1. An employee has the right to the presence and all advice of an OPBA representative at all non-command disciplinary interrogations.*

*Section 2. An employee who is to be questioned as a suspect in any investigation of any criminal charge against him shall be advised of his Miranda rights before any interrogation.*

*Section 3. Before an employee may be charged with any violation of the Rules and Regulations for a refusal to answer questions or participate in an investigation, he shall be advised that such refusal to answer questions or participate in such investigation will be basis of such a charge.*

*Section 4. Questioning or interviewing of an employee in the course of an internal investigation will be conducted at hours reasonably related to the employee's shift, unless operational standards require otherwise. Interrogation sessions shall be for reasonable periods of time and time shall be provided for rest periods and attendance to physical necessities. No procedures may be taped unless both parties are*

*informed of such audio tape recording. If the Employer requires that an interrogation be recorded, the employee being interrogated may simultaneously record his own tape of the interrogation.*

*Section 5. An employee will be informed of the nature of any investigation prior to any questioning. If the employee being questioned is a witness and not under investigation at that time, he shall be so advised of this fact. Even when not the subject of an investigation an employee shall be entitled to Union Representation.*

*Section 6. An employee may request an opportunity to review his personnel file, add memoranda to the file clarifying any documents contained in the personnel file and may have a representative of the OPBA present. A request for one copy of the items included in the personnel file shall be honored at no cost, if the employee had not been supplied with at least one copy. Additional copies shall be provided at the same cost as the public pays for such copies of public records. All items in an employee's personnel file with regard to complaints and investigations will be clearly marked with respect to the final disposition.*

**Section 7. In the course of an internal affairs investigation, a polygraph examination may be administered only with the consent of the employee under investigation. If, in the course of an internal investigation, an employee has been given a polygraph examination, such examination shall not be used in any subsequent court action.**

**Section 8. All complaints by civilians which may involve suspension or discharge of an employee shall be in writing and signed by the complainant. The Employer will furnish a copy of the complaint to employee whom the complaint has been filed against when such employee is notified on the investigation.**

*Section 9. In the event the City is engaged in an internal, non-criminal investigation of any officer covered by this contract and upon which no charge has been filed, said officer shall, as soon as practical, be notified in writing that he is being investigated and as to the nature of the investigation.*

*Section 10. At the time that any bargaining unit member is notified to report for an internal investigation and upon the bargaining unit member's request, he shall be provided an opportunity within a reasonable time frame to contact an OPBA employee representative or OPBA non-employee representative for the purpose of representation. An employee has the right to the presence and advice of an OPBA representative at all disciplinary interrogations. The City shall issue no news releases, photographs, or other documents which identified said officer. All records subject to Ohio Public Records Law will be released.*



## **2. DISCIPLINE PROCEDURE**

The Union proposes language under Section M of this article whereby if the original discipline issued to an OPBA member exceeds a five day suspension and that discipline is decreased in any fashion, then all Union witnesses who are members of the bargaining unit shall be paid for hours spent at the hearings. If the original discipline was less than a five day suspension, then witnesses shall not be compensated unless the result is "no discipline." The City proposes no change in the current language under Section M which provides that if as the result of disciplinary proceedings a member of the OPBA has been vindicated, then all members of the Union who participated in such hearings on non-duty hours shall be paid for time spent at the hearings.

The Union contends that language is needed which would define the term "vindication" as used in the current provision. The question of what constitutes "vindication" has become an issue as a result of a recent arbitration wherein a police officer's wrongful termination was reduced to a three day suspension. The City refused to pay the Union witnesses who attended the hearing because they believed that the decrease in punishment did not constitute a "vindication" under current language. The Union claims that the language which it is proposing herein is fair to both parties. In a vast majority of the cases involving discipline of less than a five day suspension, the City will only be required to pay witnesses if the result is no discipline. At the same time, the Union will be able to present more complete cases involving substantial

discipline or termination where Union witnesses would be paid by the City if discipline is decreased in any fashion.

The City argues that it should not have to pay for the Union's defense unless the accused is vindicated. In the instance cited by the Union, the individual police officer who had been terminated had not been completely vindicated by the arbitrator's ruling which reduced the discipline to a three day suspension. As a result, it was only appropriate that the City did not have to pay Union witnesses for attending the hearing. The City objects in particular to the Union's proposed language that in such cases, it would be obligated to pay witnesses if the discipline is decreased "in any fashion." Such language is unreasonable and should not be included in the parties' Agreement.

ANALYSIS - This conciliator has determined that there was a basis established by the Union for its proposed change in Section M of the Discipline Article. Due to a recent dispute over payment of Union witnesses involving their attendance at a wrongful discharge hearing, it is apparent that a definition of the term "vindicated" as used in Section M is needed. The parties were in disagreement as to what constitutes "vindication" in a case such as that which was cited by the Union. It is reasonable to provide as the Union proposes that in any case which initially involves discipline exceeding a five day suspension and if the discipline is decreased in any fashion, all Union witnesses should be paid for hours spent at the hearing.

Moreover, it appears to this conciliator that the Union's proposed language strikes a proper balance between the parties competing interests here. As the Union

notes, a vast majority of all discipline cases involve less than a five day suspension. In those cases under the Union's proposal, the City would only be required to pay witnesses if the result is "no discipline." On the other hand, the Union could expect to have their witnesses paid for attending an arbitration hearing involving more serious disciplinary matters. Again, it is reasonable to provide that the City is to compensate Union witnesses if there is any decrease in discipline where the original discipline issued exceeded a five day suspension. It should also be noted that the fact-finder in this matter recommended the language which is now the Union's final proposal. For clarification purposes, the entire Discipline Procedure is set forth with the bolded section being the one at issue.

### **AWARD**

It is the award of this conciliator that the Union's proposal regarding Section M of the Disciplinary Procedure be adopted as follows:

#### **Discipline Procedure**

- A. *The tenure of every employee subject to the terms of this Agreement shall be during good behavior and the efficient service. The City may take disciplinary action against any employee in the bargaining unit only for just cause. The City may take disciplinary action for actions which occur while an employee is working for the City, or in instances where the employee's conduct violates his oath of office. Forms of disciplinary action that may be considered are:*
1. *Verbal warnings.*
  2. *Written reprimand.*
  3. *Suspension without pay (at the option of the employee, and with the approval of the employer, accrued vacation or holiday time may be forfeited equal to length of the suspension. Record of suspension will be maintained).*

4. *Reduction in rank.*
  5. *Discharge.*
- B. *In disciplinary matters, the supervisor filing charges must advise the Officer that departmental charges will be filed.*
- C. *Whenever the City determines that an employee may be disciplined for just cause, a disciplinary hearing will be scheduled to give the employee an opportunity to offer explanation of the alleged misconduct. Prior to the hearing, the employee shall be given written specifications of the charges.*
- D. *The charges being filed must include the following:*
1. *The specific violation.*
  2. *The date and time of the alleged violation.*
  3. *Place where the alleged violation occurred.*
  4. *A complete narrative concerning the alleged violation.*
- E. *Charges being filed against an Officer by a supervisor must be filed in writing with the Police Chief. In the extended absence of the Police Chief, the charges may be presented directly to the Acting Police Chief for investigation and hearing.*
- F. *The Police Chief, after receiving the charges will notify the Officer and his representative of the OPBA in writing of the charges.*
- G. *A disciplinary hearing shall be held within ten (10) calendar days after receipt of charges by the Officer with the Police Chief. The time limits in this paragraph (E) may be extended by mutual agreement between the parties. At said hearing and at every step of the grievance procedure, the Officer shall be guaranteed the following rights:*
1. *The right to representation by the OPBA and/or any attorney.*
  2. *The right to confront his accuser.*
  3. *The right to remain silent.*
  4. *The right to call witnesses in his behalf.*
  5. *The right to appeal as covered in the grievance procedure of the Agreement.*
- H. *The OPBA has the right to have three (3) of its representatives and an attorney present at all disciplinary hearings.*

- I. *After considering all testimony concerning the alleged violation, the Police Chief shall rule on the said violation and notify parties concerned in writing of his decision within ten (10) calendar days of the hearing.*
- J. *The disciplinary hearing shall be a matter of record and all testimony and evidence shall be recorded by a method to be decided upon by mutual agreement of the OPBA and the Police Chief.*
- K. *In the event that the Police Chief, decides against said Officer, the Officer shall have the right to appeal said decision at the second step of the grievance procedure and the matter shall be handled in accordance with that procedure through the arbitration step if deemed necessary.*
- L. *The principles of progressive discipline and of due process provisions of equal protection under the law shall be the foremost goal of any and all disciplinary considerations and administrations of justice. Circumstances surrounding the need for discipline shall be determined at what level progressive discipline shall begin.*
- M. If the original discipline issued to an OPBA member exceeds a five (5) day suspension and that discipline is decreased in any fashion, all Union witnesses and representatives who are also members of the bargaining unit shall be paid for hours spent at hearings or arbitrations regarding the matter. If the original discipline was less than a five (5) day suspension, witnesses and representatives shall not be compensated for off-duty hours spent at hearings or arbitrations unless the result is "no discipline".**

### **3. TIME CLOCK POLICY**

The City proposes new language relating to time clock policy. Specifically, the City's proposal includes a provision whereby employees who clock-in late shall have their pay reduced one-tenth of an hour for each six minutes late. Employees would be subject to discipline for late starts of one minute with two late starts being considered as one incident for discipline. The City's final offer also includes a provision whereby overtime is to be applied in intervals of one-tenth of an hour with no pay prior to six minutes of overtime. The City's proposal would also provide for discipline for failure to clock-in or to clock-out.

The Union also proposes a new Time Clock Policy Provision. Under the Union's proposal, employees would be required to clock-in at the beginning of work and to clock-out at the end of work. Employees who clock-in late for work shall have a five minute grace period per day. However, the Union's proposal does not contain any provision for disciplining an employee for a late start. Under the Union's proposal, overtime is to be paid in accordance with provisions set forth in the Agreement.

ANALYSIS - This conciliator has determined that there was insufficient basis established by the City for its time clock policy proposal. Under its final offer, the City in effect has proposed a "no-fault" attendance policy as well as a change in the current overtime payment practice. Under the proposal, employees would be subject to discipline for late starts of one minute with two late starts being considered as one incident for discipline. There simply was no justification established for this new "no-

fault" attendance provision. Indeed, said proposal does not appear to be reasonable based on the evidence presented. It was demonstrated by the Union that there have been problems with the time clocks used in various locations in that they are not synchronized. Considering the problems with the time clocks, it would appear to be unreasonable to include strict language which would subject employees to discipline for two late starts as proposed by the City.

This conciliator also finds that the City failed to establish any basis for the change from current practice regarding overtime policy. It was demonstrated by the Union that officers at the police department have always been paid overtime in one hour increments. Under the City's proposal, this would be changed to a six minute increment provision. There simply was no justification established by the City for such a substantial change in the overtime policy.

This conciliator does find that the Union's proposal with respect to time clock policy is the more reasonable of the two submitted. In that regard, the Union's proposal provides that employees who clock-in late for work shall have a five minute grace period per day. In case there are difficulties with the time clocks, the proposal further provides that employees who are unable to clock-in shall have such inability verified by their Turn Commander. With respect to clocking out, the proposal merely states that employees shall clock-out at the end of the workday. Obviously if employees fail to comply with the time clock policy, they could be subjected to discipline under the Just Cause concept found in the parties' Agreement. In any case, it must be held that the proposed language

submitted by the Union with respect to time clock policy is more than reasonable. It should also be noted that unlike the City's proposal, the Union's final offer does not make any attempt to change the current overtime policies whereby officers are paid in one hour increments. Again, the language set forth in the Union's proposal regarding time clock policy appears to be reasonable in all respects. Finally, it should be pointed out that the fact-finder recommended herein the identical language which is now being proposed by the Union concerning time clock policy.

### **A W A R D**

It is the award of this conciliator that the Time Clock Policy Provision proposed by the Union be adopted as follows:

#### **Time Clock Policy**

##### **I. Employee Punch Card**

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

##### **II. Clocking In**

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



### **III. Clocking Out**

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

### **IV. Recording For Payment**

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

#### **4. WAGES**

The Union proposes an 8% wage increase effective January 1, 1998 and a 7% wage increase on January 1, 1999. The City's final offer is 8% on January 1, 1998 and an additional 4% wage increase on January 1, 1999.

The Union contends that bargaining unit members deserve a significant pay increase. It cites comparable wages paid to patrolmen in other cities with similar population. The fourteen cities used in the comparison have been cited by the City itself as being comparable jurisdictions. The wage comparison shows that police officers employed by the City of Warren are compensated a full 13% below police officers in these other similar jurisdictions. The wages which the Union has proposed herein would begin the process of narrowing the gap and bringing the Warren police officers up to the average compensation paid to officers in comparable jurisdictions.

The Union disputes the City's claim that a citywide pattern of 4% pay increases for employees has been established. The Union points out that the alleged pattern of 4% increases has been violated by the City in numerous instances. First, the City has granted rank officers an additional 2.5% increase over the alleged pattern during the course of their three year contract. Moreover, the use of increases in the rank differential to increase compensation for sergeants, lieutenants and captains has been in effect since at least 1994. As a result, sergeants will receive an extra 3.5%, lieutenants an additional 7.5%, and captains an additional 11% pay increase beyond the so-called pattern pay increases during

the 1994-1999 period. Moreover, the Police Chief will receive 5.5%, 5%, and 5% pay increases over the next three years. As reflected in the contract between the City and the Warren Management Association which covers department heads and other supervisors, pay increases will be provided to his unit of 4%, 4%, and 5% in the calendar years 1997 through 1999. Thus internal comparisons both within the police department as well as with other city employees established that pay increases exceeding the alleged pattern settlement have been granted by the City.

The City contends that its final wage offer of 8% and 4% over the next two years is consistent with the increases in wages provided to other employees. The City presented evidence of a citywide pattern of pay increases of 4% per year for 1997, 1998 and 1999. These increases have been provided to the AFSCME, Fire Fighters and non-bargaining unit personnel. Moreover, the bargaining history for the police unit shows that dating back to 1985, they have always been provided with pay increases based upon the citywide pattern which had been established.

The City acknowledges that it has provided additional increases for rank officers beyond the citywide pattern of pay increases granted to employees. However since 1985, rank differentials have been increasing beyond the pattern wage settlements in order to bring the pay of rank officers into line with those found in other jurisdictions. Likewise, it was appropriate to provide the Police Chief with an additional increase beyond the pattern settlements in order to continue the 15% differential in pay which has always been granted

to the Chief over the next highest ranking officer. Finally, the City submits that its offer for the police unit is the more reasonable of the wage proposals presented. Unlike the Union's proposal, it is more in line with the statewide average increase provided to police units for the current year.

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 Warren police more into line with the wages paid to police officers in similar jurisdictions. In that there was no issue presented as to the City's ability to fund the additional cost of the Union's wage proposal, it must be found that the City can finance the cost from current revenue sources. Moreover, the Union's final wage offer of 8% on January 1, 1998 with an additional 7% effective January 1, 1999 is equivalent to that recommended by the fact-finder herein.

This conciliator finds that the wage increases proposed by the Union are reasonable considering that the wages for this bargaining unit are significantly lower than the wages paid to similarly situated employees in comparable jurisdictions. The evidence shows that Warren police wages are approximately 13% below the average wage paid to officers in these other comparable cities. The top police wages in the fourteen cities used in the comparison ranged from \$31,806 in the City of Lima to \$43,938 in Mentor with the average top wage being \$37,310. Currently, the Warren police top wage of \$32,157 falls

about 13% below the average top wage for police in the other comparable jurisdictions. Significantly, Warren has the second lowest police officer wage rate in the fourteen jurisdictions cited. It should be noted that the other jurisdictions cited apparently have been used in the past as a basis for wage negotiations and each of the cities has a similar population to that of the City of Warren. In any case, it must be found that the Union's proposal for pay increases here is supported by the external wage comparables presented which clearly demonstrate that the wages for police officers in the City of Warren fall well below the average level of pay for police in comparable jurisdictions.

Under SERB's rules and regulations, this conciliator is obligated to give consideration to the fact-finder's recommendation in this case. As indicated, the Union's final wage proposal is essentially the same as that recommended by the fact-finder. The fact-finder recommended wage increases of 5% for each year over the term of the three year agreement. Because this conciliator is restricted by statute from awarding any wage increase for the current calendar year 1997, the Union proposed an 8% wage increase for 1998 and a 7% wage increase for 1999 which in effect was equivalent to the three year 15% increase recommended by the fact-finder. It is significant to note that like this conciliator herein, the fact-finder found that the evidence indicated that the wages provided to the police officers in the City of Warren are "substantially below that of comparable communities." This conciliator would also agree with the fact-finder's determination that the Union's proposal would not only begin to equalize the pay inequities which exist but

also would provide the City with the ability to attract and retain qualified competent police officers.

This conciliator finds no merit to the City's argument that wage pattern settlements reached with other bargaining units should be followed here. It is apparent that any internal comparison must include the wage increases which had been granted to other police units. The evidence shows that with respect to the ranking police officers unit, the City has chosen not to follow the wage pattern which it claims has been established on a citywide basis. It was demonstrated that additional increases beyond the pattern of 4% have been granted to ranking officers within the police department. The City acknowledged that ranking police officers will receive an additional 2.5% pay increase above the alleged pattern over the next three years due to increases in their rank differentials. As a result, sergeants, lieutenants and captains will all receive pay increases in excess of the 4% proposed by the City in this case. Moreover, it should be noted that even the Police Chief will receive pay increases over the next three years which exceed 4%. Thus the evidence shows that the City has violated the concept of pattern wage increases for other units in the police department. As such, it cannot be held as claimed by the City that a wage pattern exists which precludes the granting of additional increases beyond 4% for the patrolmen's unit. As indicated previously, additional wage increases beyond those provided to some other city employees is justified here in order to bring the wages of Warren police more into line with the wages of similarly situated police in comparable jurisdictions.

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 proposals submitted for his consideration. The evidence supports the finding that the Union's wage proposal is warranted in order to bring the Warren police officers' wages up to the average level of pay for police in comparable jurisdictions. Therefore, it is the award of this conciliator that there be an 8% wage increase for the police unit in 1998 and a 7% wage increase for 1999.

### **AWARD**

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

#### **PAY PROVISION**

- a. Effective January 1, 1998, all employees shall receive a wage increase of eight percent (8%);**
- b. Effective January 1, 1999, all employees shall receive a wage increase of seven percent (7%).**

## **5. LONGEVITY**

The Union seeks an increase in longevity to \$6.50 per month effective January 1, 1998 and \$7.00 per month on January 1, 1999. The City proposes increases to \$5.50 per month in 1998 and to \$6.00 per month in 1999.

The Union contends that the increases which it proposes for longevity would bring this unit's longevity provision into line with that found in the management bargaining unit contract. The contract between the City and the Warren Management Association which covers various superintendents and supervisors does provide for longevity payments for eligible employees in the amount of \$6.50 per month for each full year of service effective January 1, 1998 and \$7.00 per month in January, 1999. The Union also points out that the fire fighters received increases in longevity for the next two years. It was also noted that there would be little additional cost to the City for the Union's proposal in that currently approximately 78% of the unit is not eligible for longevity payment which begins after five full years of service.

The City claims that its proposal is reasonable and that it provides for a 22% increase in longevity payment in 1998 with an additional 9% increase in 1999. The increase offered would be the same as that which has been provided to the fire fighters for those two years. Moreover, bargaining history shows that the police unit has always been provided with the same longevity provision as that found in the fire fighters' agreement. Thus, it would be appropriate to provide increases to \$5.50 per month in 1998 and \$6.00 per month in 1999 in that those increases were granted to the fire fighters.



ANALYSIS - This conciliator finds that the City's final offer concerning longevity should be adopted. The City has presented a proposal for a reasonable increase in longevity payment for the bargaining unit. Specifically, the City offered a 22% increase in 1998 and a 9% increase in 1999. As a result, the monthly longevity rates would be increased to \$5.50 in 1998 and to \$6.00 in 1999. This would mean for example, that a ten year officer would see his longevity increase from the current \$540 per year to \$660 per year.

Internal comparisons support the City's position. The increase provided for the patrolmen's bargaining unit for longevity would be the same as that given to the fire fighters for the next two years. Moreover with the increase, the longevity pay for the patrolmen's unit will be higher than that which the City provides to the ranking officers' unit, AFSCME, and non-bargaining unit employees. All of those groups will continue to receive longevity at the rate of \$4.50 per month for each year of service. While it is true that the evidence reflects that certain management personnel and also the Police Chief will be entitled to greater longevity pay provisions over the next two years, this conciliator finds that the internal comparisons with the other bargaining units cited by the City must be given greater weight. That is, the comparison should be made first with other safety units within the City including the ranking officers as well as fire fighters' units. As indicated, those internal comparisons show that the City's proposed increase for longevity is reasonable and should be adopted by the parties.

**A W A R D**

It is the award of this conciliator that the Longevity Pay Provision proposed by the City be adopted as follows:

**Longevity**

- a. **Effective January 1, 1998, longevity shall be increased to five dollars and fifty cents (\$5.50) per month for each year of service.**
- b. **Effective January 1, 1999, longevity shall be increased to six dollars (\$6.00) per month for each year of service.**

## **6. SHIFT DIFFERENTIAL**

The Union proposes to increase the afternoon shift differential to \$.45 per hour and the midnight shift differential to \$.50 per hour effective January 1, 1998. The City proposes that the current Shift Differential Provision remain the same which is \$.35 per hour for the afternoon shift and \$.40 per hour for the midnight shift.

The Union contends that an increase in shift differential is warranted because this benefit has not changed for the past eight years. It points out that the fact-finder recommended a similar increase in shift differential as that proposed here. In addition, the Union submits that there is justification for granting a greater shift differential to police officers than other city employees due to the fact that police officers' interactions with civilians on the midnight and afternoon shifts are more dangerous than interactions with civilians by other employees.

The City cites bargaining history which indicates that its offer to retain the current provision is reasonable. Bargaining history shows that since 1985, all bargaining units including police, fire, and AFSCME have all been provided with the same afternoon shift differential of \$.35 per hour and midnight shift differential of \$.40 per hour. Also non-bargaining unit employees receive the same shift differentials. The City argues that if an increase in shift differentials were granted to the police patrolmen's unit here, then they would have to increase the shift differentials for all other employees.

ANALYSIS - This conciliator finds that the Union's final offer is the more reasonable of the two presented with respect to shift differentials. The evidence

established that there has not been an increase in shift differential for this bargaining unit since 1985. While all employees have been treated the same with respect to shift differentials in the past, this conciliator finds that there is merit to the Union's argument that a greater shift differential is warranted for the patrolmen's unit considering the fact that their interactions with civilians on the afternoon and midnight shifts pose more of a danger than it does for other city employees. Considering the nature of the duties performed by patrolmen, it is reasonable to provide for a modest increase in shift differentials for those who work on the afternoon and midnight shifts.

As indicated previously, this conciliator is obligated under SERB's rules and regulations to give weight to the fact-finder's recommendation in this case. In that regard, the fact-finder in recommending increases in shift differentials similar to those which the Union now proposes stated that the increases were justified "in the interest in attracting experienced officers to these shifts and in consideration of the disparities existing between Warren patrol officers and those of surrounding communities..." This arbitrator agrees with that assessment and finds that the modest ten cents per hour increases proposed in the shift differentials by the Union are justified for a variety of reasons and therefore should be adopted by the parties.

### **AWARD**

It is the award of this conciliator that the Shift Differential provision proposed by the Union should be adopted as follows:

**Shift Differential**

**Effective January 1, 1998, afternoon shift differential shall be increase to forty-five cents (\$.45) per hour; midnight shift differential shall be increased to fifty cents (\$.50) per hour.**

## **7. VACANCIES**

The Union proposes language whereby a patrolman who replaces a sergeant or lieutenant is to be paid the hourly rate of the rank filled while they perform the duties of the higher rank. The proposal also provides that if the shift sergeant is acting lieutenant then the senior patrolman is to be designated the acting sergeant. If no sergeant is present, the senior patrolman is to be acting sergeant. The City proposes to retain current language which provides that a patrolman who temporarily replaces a sergeant or lieutenant shall be paid the hourly rate of the rank filled for such periods as they perform all of the duties of the higher rank.

The Union adopts the recommendation of the fact-finder as its final offer with respect to the temporary vacancy language. The proposed language is almost identical to the current provision with the exception of what the Union claims to be a loophole used by the Police Chief which says that to be paid for filling in the vacancy, patrolmen had to perform all of the duties of the sergeant or lieutenant. In that it is necessary for the sergeant to be a Notary Public, patrolmen are not said to have performed all of the duties of the sergeant unless they too were a Notary. Otherwise, the language reflects current policies governing patrol officers who fill-in for senior ranking officers.

The City claims that the current provision has not created any problems in the department. It objects to the Union's proposal because it contains language which eliminates management's discretion with respect to determining when a sergeant is needed. The Union's proposal states in part that if no sergeant is present, the senior

patrolman will be the acting sergeant. The City finds that there simply was no justification established for the change in the current Temporary Vacancy Provision.

ANALYSIS - This conciliator finds that the Union's final offer with respect to temporary vacancies is reasonable and should be adopted. The evidence showed that the proposed language merely reflects current policy followed by the department. The proposal would in effect require the City to compensate patrolmen for assuming duties that are beyond the scope of the normal patrolman's duties when they temporarily fill-in for a sergeant or lieutenant. This kind of provision is found in other police contracts and provides a fair way of compensating officers for their increase in duties in temporarily filling in for sergeants and lieutenants.

It was also established by the Union that there has been difficulty with the current provision which states that patrolmen had to perform "all" of the duties of the sergeant or lieutenant in order to be compensated at the higher rate. Apparently because some of the patrolmen are not Notaries, they cannot perform all of the duties of the sergeant. It is appropriate therefore to clarify this provision for the parties so that there will be no further disagreements regarding proper compensation for patrolmen who temporarily fill-in for sergeants and lieutenants.

Finally, it should be noted that the fact-finder in this matter recommended the identical language proposed by the Union herein. In his ruling, the fact-finder noted that "the practice of compensating patrol officers for the increased responsibilities of command is accepted in other municipalities." Once again, this conciliator would have

to agree with that assessment because similar provisions are found in other police contracts throughout the state. As a result, it must be found that it is appropriate to provide in this instance a provision whereby patrolmen performing sergeant or lieutenant duties are to be compensated based on the hourly rate of the rank temporarily filled.

### **A W A R D**

It is the award of this conciliator that the Union's final proposal with respect to vacancies be adopted as follows:

#### **Vacancies - Temporary**

**A Patrolman who replaces a Sergeant or Lieutenant, shall be paid the hourly rate of the rank filled for such periods as he/she performs the duties of the higher rank. If the shift Sergeant is Acting Lieutenant then the Senior Patrolman shall be designated the Acting Sergeant. If no Sergeant is present the Senior Patrolman will be the Acting Sergeant.**

#### **Vacancies - Permanent**

Whenever it is determined that there is a permanent vacancy in the classification of Sergeant, through promotion, retirement, death or the creation of a new position, said vacancy shall be filled as soon as possible in accordance with Civil Service laws or regulations.



## **8. HOLIDAYS**

The Union proposes two changes in the Holiday Provision. First, the Union proposes language whereby all employees shall work holidays if the holiday falls on a normal workday. Under Section 4, the Union proposes that an eligible officer who is normally scheduled to work on the holiday but is off shall receive eight hours pay and have eight hours deducted from his holiday or "other benefit time account at the employee's discretion." The City has proposed adding one holiday, the 15th day of May for the police contract. The parties were in agreement that this additional holiday should be added to the provision.

The Union contends that its proposed language changes merely reflect past practices followed by the department. The past practice had been to allow officers to cash-out holiday time accounts in December of each year. However, the Police Chief recently unilaterally eliminated this past practice which the Union contends violated the parties' Agreement. The proposed language allows officers who are normally scheduled to work on a holiday but are off the option of having eight hours deducted from their holiday or other benefit account at the employee's discretion. The Union's other proposal also reinstates past practice which had allowed officers if scheduled to work on the day which a holiday falls to work their normal shift. As shown by the testimony offered by detectives on the bargaining committee, the holidays are important for conducting felony and drug sweeps.

The City contends that its proposal brings the police unit here up to the same number of holidays provided to other comparable municipal police officers. The City proposed adding one additional holiday for the police unit which would equalize holidays for this unit with the AFSCME and ranking officers units. The City strongly objects to the Union's proposal which would allow officers to work a holiday as they see fit. The decision as to who should work a holiday should be left to management's discretion. Contrary to the Union's claim, detectives and others should only work holidays when the City deems it necessary.

ANALYSIS - This conciliator finds that the Union's proposal is reasonable in that it memorializes past practices followed in the department. This conciliator gives weight to the fact-finder's recommendation who after hearing the evidence regarding the holiday issue recommended the language which the Union is now proposing as being appropriate in that it memorializes the past practice followed by the parties of allowing officers to take time off on holidays and then to use vacation or comp time for the eight hours rather than having it deducted from their holiday time account.

Likewise, it is reasonable to memorialize another past practice which allows officers if scheduled to work on the day in which a holiday falls to work their normal shift. Testimony revealed that there has been a long standing practice followed in the department of allowing all officers, including detectives, to work holidays if the holiday fell on their normal workday. Recently, the Police Chief apparently attempted to unilaterally discontinue the practice by determining that certain officers were not

essential and therefore would be required to take the holiday off. However, it was shown that holidays are important for all officers including detectives so that they can carry-out the important function of conducting drug sweeps and making appropriate arrests.

Considering that there was justification shown for the existence of the past practice in question, this conciliator finds that the Union's proposed contract language which memorializes that practice should be incorporated into the parties' bargaining Agreement.

Therefore in all respects, this conciliator finds that the Union's final offer with respect to changes in the Holiday Provision is reasonable and should be adopted by the parties. For clarity purposes, this conciliator has once again included the entire Holiday Provision with the appropriate changes set forth in boldface type.

### **A W A R D**

It is the award of this conciliator that the Union's proposed changes with respect to the Holiday Provision be included in the parties' Agreement as follows:

#### **Holidays**

*Section 1: HOLIDAY TIME: Each Officer shall be given eighty-eight (88) hours of holiday time on January 1 of each year for the holidays listed in Section 2. Any hours remaining in holiday time at the end of the year shall be paid for on the first pay following December 25 of each year.*

*Section 2: PAY FOR HOLIDAYS WORKED: Hours worked by Officers in the Police Department under this Contract on any of the holidays specified below shall be paid at the rate of time-and-one-half (1.5) for each hour worked.*

*The first day of January  
The third Monday of January  
The third Monday of February  
The 15<sup>th</sup> day of May  
The last Monday in May  
The 4<sup>th</sup> of July*

*The first Monday of September  
The second Monday of October  
November 11<sup>th</sup>  
The fourth Thursday in November  
The 25<sup>th</sup> day of December*

**All employees shall work holidays if the holiday falls on a normal work day.**

*Section 3: ELECTION DAY: Each Officer shall receive four (4) hours of additional pay at their straight time rate on the first Tuesday after the first in November.*

**Section 4: PAY FOR HOLIDAYS NOT WORKED: An eligible Officer who is normally scheduled to work on the holiday but is off shall receive eight (8) hours pay and have eight (8) hours deducted from his holiday or other benefit time account at the employee's discretion.**

- A. If an Officer is scheduled to work on any such holiday but fails to report and perform his scheduled or assigned work, he shall become ineligible for pay for the unworked holiday, unless he has failed to so work because of sickness or because of death in the immediate family or similar good cause. When requested to do so, the Officer must furnish satisfactory proof of absence.*
- B. An eligible Officer, as used in this Section is one who works as scheduled or assigned both on his last scheduled work day prior to and his first scheduled work day following the day on which the holiday is observed, unless he has failed to so work for the reasons specified in the paragraph above.*

*Section 5: PERSONAL DAYS:*

- A. Bargaining unit employees hired January 1 thru June 30 will be permitted to take two (2) scheduled work days off during the calendar year. Bargaining unit employees hired July 1 thru December 31, will be permitted to take one (1) scheduled work day off during the calendar year. Thereafter, they shall receive benefit per the provisions set forth in Section 3(B).*

B. *In addition to the above-listed holidays, effective January 1, 1993, each employee in the bargaining unit will be permitted to take three (3) scheduled work days off during each calendar year without any loss of pay for the eight (8) hours; however, no holiday premium will be paid. Personal days may be taken in one (1) hour increments. These personal days may be selected by the employee with proper approval of supervision.*

## **9. CHEMICAL AND MECHANICAL TESTING**

The Union has proposed that random drug screening be removed from the contract. The City proposes to retain current language.

The Union points out that it had previously agreed to establish a random drug screening policy in consideration for management agreeing to discontinue the use of mandatory polygraph testing. In that the City is insisting on mandatory polygraph testing, the Union must now propose the removal of the random drug screening provision which had been part of the previously bargained for agreement regarding these matters.

The City maintains that the drug testing program is working as expected. There was absolutely no justification established for making any changes. The City previously established a need for random drug tests within police department.

ANALYSIS - This conciliator finds that there was absolutely no basis established by the Union for its proposal to remove the random drug screening provision from the contract. There was no showing made that the random drug screening program has not worked as expected. Moreover as previously discussed under the Employee Rights Article, mandatory polygraph testing is to be prohibited. As a result in order to carry-out the previously negotiated exchange of random drug testing for the elimination of mandatory polygraph test, it would be appropriate to retain the current random drug screen provision set forth in the parties' Agreement. Therefore, this conciliator accepts the position of the City with respect to random drug screening.

**A W A R D**

It is the award of this conciliator that the Union's request for the removal of random drug screening from the contract is hereby denied. The current Random Drug Screening Provision shall remain the same without modification.

**Chemical and Mechanical Testing - Current language, no change.**

## **10. TAKE HOME CARS**

The Union proposes a new provision which would allow each officer who has a cruiser to take his vehicle home in accordance with City policy and contingent on the needs of the City. The City opposes any new provision in the Agreement pertaining to take home cars. The Union contends that its new contract provision merely memorializes the practice of allowing officers to take home police cruisers when off-duty. This practice not only benefits the police officers involved but also serves as a deterrent to crime by reinforcing police presence in the community.

The City takes the position that the use of police cruisers should be left to the discretion of the Police Chief. The Union should not be given the authority to dictate when and how a city owned vehicle is to be used. The City strongly opposes memorializing any practice which may exist concerning officers taking home cars.

ANALYSIS - This conciliator finds that there was insufficient basis established by the Union to justify its proposal regarding take home cars. There was no evidence produced to support the Union's claim that there was a need to memorialize any current practice which may exist with respect to allowing officers to take home police cruisers when off-duty. The City showed that it would be reasonable to continue to permit the Police Chief to have the discretion to decide how and when a city owned vehicle is to be used. Moreover, there was no indication as to whether such take home car provisions are found in other comparable collective bargaining agreements. There



simply was no basis established for including a new provision in the parties' Agreement relating to officers taking home their police cruisers.

**A W A R D**

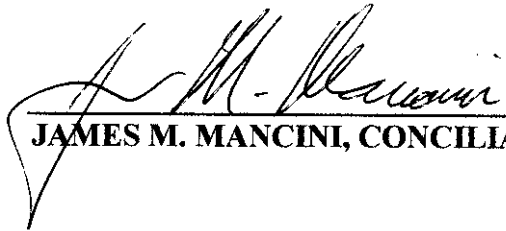
It is the award of this conciliator that the Union's request for a new take home car provision is hereby denied.

**Take Home Cars - No new provision.**

**CONCLUSION**

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

**November 17, 1997**

  
**JAMES M. MANCINI, CONCILIATOR**