

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO
MEDICAL BOARD
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2015 10 30 AM 1:00

In the Matter of Fact Finding Between:

CITY OF SIDNEY, OHIO

and

S.E.R.B. Case No. 99-MED-08-0660

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
OHIO COUNCIL 8, LOCAL 2429**

Appearances:

For the City: Daniel G. Rosenthal, Esq.
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Cincinnati, Ohio

For the Union: William Sams
Staff Representative
AFSCME Ohio Council 8
Dayton, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

BACKGROUND:

This matter, particularly well presented by the parties' respective advocates, came on for hearing in Sydney, Ohio on January 28, 2000. The parties commenced negotiations for a successor Contract on August 19, 1999. It was followed by seven (7) additional negotiating sessions, the last of which was conducted on December 2, 1999. Thereafter, on December 10, 1999, and December 14, 1999, the parties, with the assistance of a S.E.R.B.-appointed mediator, attempted to mediate the provisions of the successor Contract which were not resolved by then. At the commencement of the instant proceedings, an effort was made to mediate the parties impasse. It was not successful. The parties are at impasse on essentially ten (10) issues, namely, compensatory time off issues addressed at Article V, Section 4; Article IV, Sections 4 and 5; Article XIX, Section 2; and Article XXIV, Section 9; wage issues for the third year of the Contract and the retroactivity, or not, of the wage increase to the expiration of the most recently expired Contract, namely, to January 1, 2000, the most recently expired Contract having expired on December 31, 1999, both issues addressed at Article XIII; pool pass issues addressed in Article XXIX, Section 10; Union business issues addressed in Article V, Sections 2 and 3; overtime assignment issues addressed at Article XIV, Section 1; issues involving the impact of a loss of a Commercial Driver's License (CDL), addressed in Article XXIV, Section 12; discipline issues addressed in Article XXVII; the length of the probationary period addressed in Article XXV; a definition of the normal work day issue addressed in Article XIV, Section 1; and sick leave issues addressed in Article XXI.

What follows hereinafter is a summary of the evidence; the parties' contentions and arguments; the Fact Finder's recommendations; and the rationale for the Fact Finder's recommendations. In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth below, whenever such factors were put forward by the parties or otherwise emerged from the record evidence, to wit: the factor of past collectively bargained agreements; comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

References to the current Contract, more accurately are a reference to the most-recently-expired January 1, 1997 - December 31, 1999 Contract, too cumbersome a description to be repeated throughout the Report.

**ISSUES #1 & #2: ARTICLE XIV, OVERTIME COMPENSATION, SECTIONS 4 & 5;
 ARTICLE V, SECTION 4;
 ARTICLE XIX, SECTION 2;
 ARTICLE XXIV, SECTION 9 - AND -
 ARTICLE XIII - WAGES:**

EVIDENCE & POSITIONS OF THE PARTIES:

These issues are considered together since the parties themselves have linked them. The record reflects that the City proposes removing compensatory time from the agreement. The Union opposes this. The City asserts that Congress intended compensatory time "to ameliorate" the impact on public employers of the "financial costs of coming into compliance with the FLSA (Fair Labor Standards Act)." *Moreau v. Klevenhagen*, 508 U.S. 22, 26 (1993). Instead, experience has proved the opposite: Keeping compensatory time (which permits employees to elect 1 ½ hours off work for each overtime hour worked) creates a very real hardship for the City and its citizens.

Currently, employees have their choice of receiving pay at time and one-half compensation for overtime or taking paid time off at the same rate. In many cases, the latter approach, compensatory time, leaves the City with two unsatisfactory alternatives. First, the City can decide not to schedule another employee to fill in for the employee using compensatory time, which may leave the City short-staffed. Second, the City can schedule another employee to cover those hours, for which it must usually pay overtime rates. The Department of Labor takes the position that the City cannot deny an employee a compensatory day off to avoid paying a replacement overtime. Letter Ruling dated 8/19/94, Fair Labor Standards Handbook, p. 212. This means that compensatory time can result in a never-ending succession of compensatory time obligations, as the employee

using compensatory time is covered for by an employee who earns compensatory time, who in turn must be covered for by an employee who earns compensatory time, etc. Bargaining unit compensatory time usage in 1999 ranged up to 4½ weeks for one employee, on top of already generous vacation, holiday, personal day and sick leave time off (for a bargaining unit employee of average seniority, 3 weeks vacation, 4 personal days, 9 regular and 1 floating holidays, and up to 18 sick leave days per year, for a total of up to 9.4 paid weeks off per year not including compensatory time).

In an effort to end the problems created by compensatory time, the City has, by ordinance, eliminated compensatory time for all its non-represented employees. Similarly, in its most recent union negotiations, the City eliminated compensatory time for the firefighters (with one limited exception available at the City's sole discretion, and never invoked). Eliminating compensatory time for all employees is a top priority of the City.

Removal of compensatory time would not be unfair to the employees. They will still remove time and one half pay for all overtime, which is calculated considering many hours paid but not worked (vacation, holidays, etc.), that would not count toward overtime under federal law.

The City proposes a 3.15% increase effective upon signing and 3.1% effective with the first pay date after December 31, 2000. (These are consistent with other City raises, negotiated and otherwise.) The Union also proposes 3.15% and 3.1% the first and second years of the contract. The parties' difference is in the 3rd year of the contract. The City proposes 3% if compensatory time is eliminated and 2% if it is not (emphasizing the

importance of eliminating compensatory time to the City). The City correctly notes that the Union proposed 2.75%, keeping compensatory time, but has increased this to 3%.

The City proposes that the first year's increase be effective upon signing. Otherwise, there is no incentive for prompt resolution, clearly a desirable goal. The City has proposed making the increase effective even before 12/31/99, if an earlier agreement were reached. The Union's attacks on the City's bargaining position, to try to get retroactivity, are groundless.

The City introduced an exhibit showing that among the 57 Public Works Department employees in the bargaining unit, the beginning comp time balance for 1999 was 242.64 hours of comp time; 1651.05 hours were earned in 1999; and 388.43 hours constituted the ending balance.

The record reflects that Article XIV, Section 4's provision that "no employee can accumulate more than 120 hours of compensatory time" is administered as a rolling 120 hours; i.e. at any one time an employee cannot accumulate 120 hours of comp time. Thus, employees earn it; use it; and thereby keep under the maximum of 120 hours.

Union data reflects that among some eight (8) comparable municipalities, seven (7) allow for comp time. One allows for a maximum accumulation of 100 hours; another allows for a maximum of 48 hours; and one allows for a maximum of 40 hours. The remaining four allow for a maximum of 80 hours. It is the Fact Finder's experience that most comp time provision maximums constitute an absolute cap on the number of hours which may be earned within a calendar or fiscal year, in juxtaposition to the rolling accumulation maximum in effect here.

The Union takes the position that the City's own data concerning use shows that comp time is a popular benefit. To reduce this past collectively bargained benefit, the City ought to offer some *quid pro quo*, but has not done so, asserts the Union. The Union also seeks to delete Section 5 of Article XIV, making delineation of compensatory time at the Water Treatment Plant and Wastewater Treatment Plan discretionary for the supervisor. It would otherwise retain the current Contract's compensatory time provisions.

In the Union's view, there simply is no compelling reason to do away with compensatory time. It is the Union's contention that by requiring members to accept a lower wage in the third year is tantamount to compelling the bargaining unit to repurchase an asset it already owns. Further, argues the Union, by offering a lower wage for retention of the current contract benefit, the City has indicated that compensatory time is a concept the City can live with.

The Union additionally asserts that any wage increase should be effective December 31, 1999, rather than upon ratification or signing. The Union argues that it is the City's rigidity and give-back demands that have caused the present impasse.

RATIONALE:

Suffice it to say that the City has made the case for some relief from the especially generous rolling maximum accumulation of 120 hours of comp time. Conversely, there is no warrant for deleting the reining in of comp time successfully bargained in the past in Article XIV, Section 5, as the Union urges. However, the abolition of comp time is not

warranted. It is simply too valuable a benefit to be summarily surrendered without some meaningful *quid pro quo*, and no such *quid pro quo* is offered by the City.

As for retroactivity, the record shows no dilatory tactics by either party, and to the contrary, a considerable number of bargaining sessions, including a willingness to utilize mediation. Hence, the wage increase recommended will be retroactive to January 1, 2000. Increases in the threes are the most recent norm. Accordingly, the Union's third year proposal of 3% will be recommended. Its 2.75% offer was contingent on maintenance of the current Contract's comp time provisions. However, it is being recommended that those provisions at Article XIV, Section 4, be significantly modified, and hence the rationale for the Union's 2.75% proposal no longer exists. Similarly, since the comp time benefit is being significantly modified and reduced, the City's rationale for proposing only a 2% increase is eroded.

Turning to the Contract's provision at Article XIV, Section 4, the record supports the establishment of a true cap in place of the rolling accumulation maximum, and a reduction to the level of eighty (80) hours of comp time, which level represents the greatest cluster among the comparable municipal jurisdictions, and such shall be recommended. Those modifications represent an incremental approach, which will suits such meaningful change. It is also noted that retrenchment of the comp time benefits already exists in the form of the provisions of Article XIV, Section 5.

RECOMMENDATION:

It is recommended that the provisions of the current Contract at Article XIII - Wages be enhanced by an across-the-board increase of 3.15% effective January 1, 2000; 3.1% effective January 1, 2001; and 3% effective January 1, 2002.

It is further recommended that the current Contract's references to compensatory time in Article V, Section 4; Article XIX, Section 2; and Article XXIV, Section 9, be retained.

It is further recommended that the parties retain the current Contract's language at Article XIV, Sections 4 and 5, except that in lieu of the third sentence of Section 4, said sentence shall read as follows:

"No employee can accumulate more than eighty (80) hours of compensatory time in a calendar year, and compensatory time must be taken within twelve months of being earned."

ISSUE #3: ARTICLE XXIV, SECTION 10 (POOL PASS ISSUES):

EVIDENCE & POSITIONS OF THE PARTIES:

The current Contract at Article XXIV - Other Benefits, Section 10, provides as follows:

- "10. Y.M.C.A. Reimbursement. The City shall provide up to \$150.00 reimbursement per year toward an employee's Sidney or Minster Y.M.C.A. membership or participation fees for health or fitness classes at the Sidney Y.M.C.A., or a family pass to the City swimming pool. Employees who use the benefit must have used the Y.M.C.A.'s facilities at least 26 times in a 12-month period. Employees who do

not use the Y.M.C.A. the minimum number of times shall not receive the benefit on the ensuing year.”

The City asserts that the benefits set forth in Section 10, were provided by the City to encourage employee wellness. The Union proposed that the reimbursement stipend be increased to cover the current cost of \$420.30 for an individual “Y” membership, and that the current Contract’s provisions otherwise remain the same. The City agreed to increase the reimbursement stipend to the amount requested by the Union, but sought to limit the alternative of a pass to the City swimming pool to the employee, not the employee’s entire family. The City also notes that the pool pass benefit was seldom used. The City asserts that confining the City swimming pool pass to the employee only, is consistent with the City’s goal of improving the employee’s health and fitness. The City also notes that city pool membership is not subsidized in the City’s other collectively bargained Contracts.

The Union points out that a City swimming pool family pass costs only approximately \$60.00. The Union argues that there is no reason to delete a benefit which costs the City less money than the City’s own proposed change.

RATIONALE:

This provision owes its existence to the City’s desire to create an incentive for healthier life styles on the part of its employees. The City’s motivation is self-evident: hopefully use of the facilities it subsidizes in Article XXIV, Section 10, will lead to less absenteeism; less use of paid time away-from-the-job benefits, and hence greater productivity; and a better experience factor under the Contract’s health insurance program.

The City's unwillingness to pay for a "family" pool pass, despite its low cost, is consistent with the logic behind the very purpose of the provision: the hopeful enhancement of the employee's health and fitness. Additionally, in greatly enhancing the subsidy stipend for Y.M.C.A. membership, which the Union is understandably willing to accept, the City has provided a substantial *quid pro quo* for the paring back the City pool pass provision of the current Contract. As long as the City maintains a "family" pool pass for their bargaining unit, it remains vulnerable to "me-too" demands from its other bargaining units for a like benefit, even though such a benefit fails to meet, or, more accurately, unnecessarily goes above and beyond the underlying purpose of the subsidy, namely, enhancement of the employee's health and fitness. In my judgment, an amalgam of the foregoing circumstances which constitute the statutory factor of "other factors ... normally taken into consideration," simply outweighs the statutory factor of "past collectively bargained agreements," which concededly supports the Union's position. Accordingly, the City's proposal shall be recommended.

RECOMMENDATION:

It is recommended that the parties retain the language of their provision at Article XXIV, Section 10, with the exception that the amount of \$150.00 set forth therein be deleted and the amount of \$420.30 be substituted in lieu thereof; and that the term "family" in sentence one be deleted.

ISSUE #4: ARTICLE V, UNION BUSINESS, SECTIONS 2 & 3:

EVIDENCE & POSITIONS OF THE PARTIES:

The current Contract permits Union officers or representatives to investigate grievances during work time. The City proposes to eliminate this concept. It would have the parties' Contract read as do the City's Contracts with several of its other bargaining units, namely, the police bargaining unit; the police supervisor's bargaining unit; and the dispatcher's bargaining unit, to wit:

"All Union business will be conducted outside paid working time. The only exception is for straight-time hours necessarily lost by Union representatives in meeting at the specified steps of the Grievance Procedure with representatives of the City at a mutually agreed upon time. This does not include attendance at any arbitration."

The Firefighter's bargaining unit Contract is silent on the issue.

The City characterizes the current Contract's provisions at Sections 2 and 3 as "largely incomprehensible." It contends that current Contract language deprives the citizenry of employee's services in the accomplishment of their job duties and the citizenry's business, when, during working hours, some employees are engaged in Union business only. The City asserts that it is seeking consistency in its collective bargaining agreements.

The Union seeks retention of the current Contract's provisions, and would add at the end of Section 2 the following: "The City shall make reasonable efforts to have supervisory personnel available to meet Union officers." The Union contends that unlike

the Police bargaining units, the Union's unit is polygot (See, Article XIII - Wages, D. Classifications, p. 21) and is widely spread throughout the City which circumstances justify the current Contract's provisions and differentiate this bargaining unit from the Police bargaining units. The Union also points out that the Firefighter's bargaining unit conducts its Labor-Management meetings during working hours. Additionally, the Union introduced evidence of external comparable municipal jurisdictions whose provisions resemble those of the current Contract.

RATIONALE:

In terms of the statutory factors, internal comparables favor the City's proposal; past collectively bargaining agreements favor the Union's position. The Union's position is bolstered however, by the nature, character, and geographical spread of the bargaining unit. These factors, as the Union asserts, serve to differentiate this bargaining unit from the Police units and thereby undermine the weight to be given to the Police internal comparables. The Union's position is also bolstered by the statutory factor of external comparables. Furthermore, and significantly, there's neither contention nor evidence of abuse of the current Contract's provisions. In a similar vein, there is neither contention nor evidence that the City fails to make its supervisors reasonably available to meet with Union representatives. Accordingly, the addition the Union seeks to make to Section 2 will not be recommended.

RECOMMENDATION:

It is recommended that the parties retain the current Contract's provisions at Article V, Sections 2 and 3.

ISSUE #5: ARTICLE XIV, SECTION 1 [NEW]:

EVIDENCE & POSITIONS OF THE PARTES:

The last sentence of Article XIV, Section 1 provides that "Overtime opportunities will first be offered to full time permanent personnel." The City proposes that overtime be offered to personnel at the work site in the Department. This would enable even part-timers to work overtime. The City asserts that the purpose behind its proposal is to make sure that projects are not disrupted if they continue into overtime hours, even if performed by part-time personnel. The Union is opposed to the City's proposal and counters with the following proposal:

"If overtime is expected to last more than one-half hour, the overtime shall first be offered to full-time permanent personnel in that department. Should the overtime be expected to last less than one-half hour, then the overtime shall first be offered to full-time permanent personnel on the job site and then to part-time personnel on the job site."

Part-time employees are not represented by the Union. The Union contends that the City's proposal will enable the City to unilaterally assign bargaining unit work out of the bargaining unit. The Union points to several municipal jurisdictions, many geographically near, reserving and/or granting a preference for overtime opportunities to full-time

permanent bargaining unit employees. The City counters that unlike these external comparables, the City has no history of a concept of proprietary bargaining unit work. The City asserts that supervisors and part-time employees do bargaining unit work and that Union efforts to restrict same were withdrawn. The Union challenges this City argument, asserting that the current Contract's provision to the effect that overtime opportunities first be offered to full-time permanent personnel is itself a proprietary concept.

As for the Union's proposal, the City states that for overtime exceeding ½ hour, the City would be required to replace an individual who had been working on a project all day, with someone unfamiliar with the project and who might have to be called in from a remote location. Such would be inefficient, asserts the City, and makes no sense.

RATIONALE:

While there may not be any concept of proprietary straight time being bargaining unit work, as the Union asserts, the current Contract at Article XIV, Section 1 establishes a concept of proprietary bargaining unit work *vis a vis* overtime opportunities. Accordingly, the City's proposal calls for a substantial change. Significantly, the City offers no *quid pro quo* for the Union to agree to the City's proposal. Nonetheless, in the compromise proposal, the Union moves somewhat toward the City's position and accepts in certain circumstances the assignment of overtime to non-bargaining unit employees. In my judgment, however, the Union's ½ hour standard is not very practical. Hence, the Union's proposal will be recommended with the one-half hour standard increased to one full hour.

RECOMMENDATION:

It is recommended that the language of the current Contract at Article XIV, Section 1, be retained, with the exception that the last sentence thereof be stricken, and that the Union's proposal, with the exception that the references in the Union's proposal to one-half hour be changed to one full hour, be adopted and substituted in lieu of the last sentence of Section 1 in the current Contract.

ISSUE #6: ARTICLE XXIV, SECTION 12:

EVIDENCE & POSITIONS OF THE PARTIES:

Section 12 provides for certain training and license fee reimbursements in connection with Commercial Drivers Licenses or CDL's. The City proposes adding a negotiated work rule to Section 12, providing as follows:

"Employees in positions for which the City requires a CDL whose CDL is revoked for less than 30 days may be suspended without pay; those whose CDL is revoked for 30 days or more will be terminated."

The City asserts that it only makes sense that an employee who cannot perform his job duties because his CDL is revoked be disciplined as proposed by the City. The City asserts that such a negotiated work rule would remove any doubts about the consequence of a CDL revocation. The City states that in negotiations the Union took the position that it would not negotiate someone's discharge. At the hearing herein, the Union took the position that such a negotiated work rule is unnecessary. The Union points out that at the

time of a suspension or revocation of a CDL, there may exist alternatives to discharge. Thus, there may exist a vacancy into which the employee could be demoted, demotion being regarded by the parties as an acceptable form of discipline, and this form of discipline finding considerable acceptance in labor relations. It is noted that heretofore the parties have not negotiated any work rules.

RATIONALE:

In past collectively bargained agreements, the parties have not negotiated any work rules. Accordingly, the loss of a CDL license, temporarily or permanently, would likely trigger disciplinary action, which could be challenged by the disciplined employee and the Union through the grievance-arbitration machinery.

In my judgment, nothing has been brought forth sufficient to warrant departing from past collectively bargaining structures for handling CDL license losses. Accordingly, the City's proposal will not be recommended.

RECOMMENDATION:

The City's proposal to add to Article XXIV, Section 12, a negotiated work rule concerning the consequences of a loss of a CDL license is not recommended.

ISSUE #7: ARTICLE XXVII, DISCIPLINE:

EVIDENCE & POSITIONS OF THE PARTES:

The current Contract's discipline provisions are detailed and complex. As the Union notes, it provides for progressive discipline commencing with a written reprimand, suspension of three days or less, suspension for more than three days, and procedures calling for pre-disciplinary meetings with advance written notice of the proposed disciplinary action, the reasons therefore, and the right to answer the charges.

The City proposes replacing the current Contract's language with the following:

"The Employer may discharge, demote or discipline employees for cause, or for violation of contractual work rules or other reasonable work rules where appropriate progressive discipline will be applied.

When possible, the City will give the employee two hours notice of a Lauderhill pre-disciplinary hearing; however, failure to comply will not affect the validity of discipline."

The City states that its "cause" standard encompasses procedure fairness and progressive discipline where appropriate. The City notes that in its pre-hearing position paper, the Union concedes that "[b]oth sides acknowledge that the current article is confusing and needs rewritten." The Union contends that the present agreement, although unhandy, is preferable to the City's shorthand rendition of a very serious matter. The Union contends that the City's shorthand rendition creates a problem of perception by bargaining

unit; bargaining unit employees have become accustomed to their rights and protection being spelled out in detail.

The parties asked for time to further discuss this issue with the understanding that if they reached agreement in the matter they would let me know before the Report was due. The parties have not reported that they have reached agreement on the issue.

RATIONALE:

Certainly the cause, due process, and procedural rights, safeguards, and protections of Article XXVII of the current Contract are among the most valuable employee rights set forth in the parties' collective bargaining agreement. Accordingly, the articulation of employee rights ought not to be tinkered with in the absence of some evidence demonstrating that the provisions are not working. No such evidence was introduced here. It may be that the City's proposed distillation serves to preserve every right and safeguard of the current Contract, but given the disparity between the verbosity of the current Contract and the terseness of the City's proposal, the Union's concern that bargaining unit employees are likely to perceive a loss of protections and safeguards *vis a vis* the imposition of discipline appears to be well taken. Accordingly, the City's proposal will not be recommended.

RECOMMENDATION:

It is recommended that the parties retain the current Contract's language at Article XXVII.

ISSUE #8: ARTICLE XXV - PROBATIONARY PERIOD:

EVIDENCE & POSITIONS OF THE PARTES:

The City seeks to increase the probationary period from 6 months to 1 year. It notes about all other bargaining units have a one year probationary period. The City notes that many bargaining unit employees operate heavy machinery and many are engaged in seasonal work such as mowing and snow removal, such that six months provides an inadequate time frame to evaluate an employee's performance. The citizenry, argues the City, is entitled to a thorough evaluation of a probationary employee's fitness for employment.

The Union opposes any increase in the probationary period, and introduced external comparable evidence including that six months probationary period is typical. The Union also points to the fact that past collectively bargained agreements have consistently called for a six month probationary period. The Union argues that there simply is no necessity to increase the probationary period.

RATIONAL:

In light of the external comparable evidence and past collectively bargained agreement evidence favoring the Union's position, I'm inclined to find that such simply outweighs the internal comparable factor which concededly favors the City. This is especially so in the face of the lack of any evidence that the current six month probationary

period has lead to any problems. Accordingly, retention of current Contract language shall be recommended.

RECOMMENDATION:

It is recommended that the parties retain the current Contract's provisions at Article XXIV - Probationary Period.

ISSUE #9: ARTICLE XIV - OVERTIME COMPENSATION, SECTION 1:

EVIDENCE & POSITIONS OF THE PARTES:

The City proposes what it characterizes as a clarification of the terms "the normal work day," namely, the City proposes the definition that: "normal work day will mean the scheduled work day, but in no case less than 8 hours." The City notes that some employees, for example, work three 12-hour days and one 4-hour day. There is no intention to provide overtime after 4 hours, asserts the City, and its proposal simply sets forth the current meaning the parties ascribe to the terms "the normal work day." At the hearing herein, the Union contended that the City's proposal represented a "dilution" of the *status quo*. How that was so, however, was not explained. The City countered that during negotiations, the Union did not challenge the City's characterization that it's proposal was simply a "clarification."

RATIONALE:

It may be that the City's proposal is simply a clarification, but the Union characterizing the proposal as a dilution in effect challenges the City's representation that ~~its~~ proposal merely reflects the current meaning the parties ascribe to the term "the normal work day." In this state of the record, the Fact Finder is reluctant to recommend the City's proposal. If the City is correct that the proposal merely represents the parties' current and past practice, then presumably it will continue to administer the Contract in conformance therewith and will have available to it a formidable "past practice" argument should it be challenged through the grievance-arbitration process.

RECOMMENDATION:

It is recommended that the parties retain the language of the current Contract at Article XIV, Section 1, except as otherwise provided herein. The City's proposal to add a definition of "the normal work day" is not recommended.

ISSUE #10: ARTICLE XXI - SICK LEAVE:

EVIDENCE & POSITIONS OF THE PARTIES:

Under the current Contract, bargaining unit employees receive 18 sick leave days. The City proposes to reduce same to 15 days. Fifteen days is the sick leave benefit in the City's police supervisors bargaining unit. However, in the City's other bargaining units, namely, the firefighters, the police patrolmen, and the dispatcher units, the sick leave

benefit is 18 days as here. The City asserts that its proposal in pending negotiations with its other units is 15 days. The City introduced evidence of some twelve (12) comparable municipalities within 35 miles of Sidney whose sick leave benefit is 15 days or less, for an average of 14.75 days. A reduction in the Sick Leave benefit will help with staffing and overtime coverage problems, asserts the City.

The Union opposes a diminution of the sick leave benefit, pointing out that the City offers no quid pro quo for such a take back. The Union additionally contends that internal comparables support the status quo. Additionally, the Union asks rhetorically; why should it be the first among the three other bargaining units to give back three sick leave days.

RATIONAL:

Concededly, the City has the statutory factor of external comparables in support of their proposal. The Union has internal comparables as of now. But the Union also has its "other factors" statutory factor as well. Thus, traditionally, safety forces bargaining units are the trend makers and leader on significant issues, such as the relinquishment of three sick leave days. Then too, the factors of past collectively bargaining agreements favors the Union's proposal calling for the status quo. This factor is bolstered in the face of a lack of evidence of an abuse of sick leaves. Accordingly, on balance the statutory factors favor the Union's proposal.

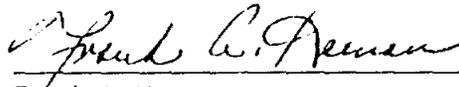
RECOMMENDATION:

It is recommended that the parties retain the language of Article XXI - Sick Leave of the current Contract.

It is further RECOMMENDED that all of the parties' tentative agreements be incorporated into their Contract.

This concludes the Fact Finder's Report and Recommendations.

Dated February 12, 2000



Frank A. Keenan
Fact Finder