

**Washington State Patrol  
And  
Washington State Patrol Troopers Association  
Fact Finding  
Arbitrator: Gary L. Axon  
Date Issued: 01/10/1992**

**Arbitrator: Axon; Gary L.  
Case #: 09244-F-91-00164  
Employer: Washington State Patrol  
Union: Washington State Patrol Troopers Association  
Date Issued: 01/10/1992**

<b>IN THE MATTER OF FACTFINDING</b>	)	
	)	
<b>BETWEEN</b>	)	<b>FINDINGS OF FACT</b>
<b>WASHINGTON STATE PATROL</b>	)	
<b>TROOPERS ASSOCIATION,</b>	)	<b>AND RECOMMENDATIONS</b>
	)	<b>OF</b>
<b>Association,</b>	)	
	)	<b>GARY L. AXON</b>
<b>and</b>	)	
	)	<b>FACTFINDER</b>
<b>WASHINGTON STATE PATROL,</b>	)	
<b>STATE OF WASHINGTON,</b>	)	
	)	
<b>Patrol.</b>	)	

**HEARING SITE: Westwater Inn  
Olympia, Washington**

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## **BACKGROUND**

**The Patrol is responsible for general law and traffic enforcement in the state of Washington. The primary law enforcement mission of the Patrol is traffic enforcement throughout Washington State. The Patrol is divided into three bureaus. The Field Operations Bureau is the largest bureau which is divided into eight geographic divisions. Within each division are approximately fifty detachments. Troopers and sergeants are assigned to the various detachments. The other two bureaus are the Investigative Services Bureau and a Support Services Bureau.**

**In 1988, the Washington Legislature modified the PECBA to grant collective bargaining rights to members of the Patrol. The Patrol was placed under the control of the Public Employment Relations Commission (PERC) instead of the Department of Personnel which regulates collective bargaining for other state employees. Under the law the Association and Patrol are not allowed to bargain over "wage and wage-related" issues. If the parties are unable to reach agreement, non-binding factfinding is authorized to assist in the resolution of the dispute.**

**The Association was certified by PERC as the exclusive bargaining representative for troopers and sergeants employed by the Patrol. The Association represents approximately 900 people employed by the Patrol. Members are assigned to the detachments throughout the state of Washington.**

**After the passage of the law authorizing collective bargaining for members of the Patrol, the parties commenced negotiations. As the result of negotiations, the parties entered into their first Collective Bargaining Agreement. The initial contract covered a three year period from 1989 through 1991.**

**The parties entered into negotiations for a successor agreement to the 1989-91 contract. Bargaining and mediation resulted in agreement on all but two issues. Impasse was declared and the case was advanced to factfinding.**

**The two issues submitted to the Factfinder for a**

recommendation are as follows:

<b>ISSUE</b>	<b>PAGE</b>
<b>1. Discipline and Discharge</b>	<b>4</b>
<b>2. Residency</b>	<b>20</b>

**ISSUE 1: Discipline and Discharge**

**Background**

**Article 15, Section A mandates that disciplinary actions, including discharge, "shall be for cause only." Written reprimands and disciplinary transfers may be appealed through the grievance procedure. Discipline other than written reprimand and disciplinary transfer are excluded from the grievance procedure.**

**Article 16, Section E states:**

**E. Suspension, Demotion, and Discharge. The established statutory disciplinary process Trial Board and/or Superior Court or Trial Board and/or Disciplinary Appeals Board shall be the sole remedies for an employee who is suspended, demoted or discharged.**

**The statutory appeal process is set forth in RCW 43.43.070. Pursuant to this procedure a Trial Board is appointed consisting of two Washington patrol officers of the rank of captain or above and one member of equal rank to the grievant. The procedure at hearing is outlined at RCW 43.43.070. An administrative law judge presides over the hearing but has no vote. A transcript is made of the hearing.**

**After the hearing, the Trial Board makes its findings for submission to the Chief. If the Trial Board concludes the charges are not sustained, the findings are binding on the Chief. In the event the charges are sustained, the Chief may determine the proper disciplinary action.**

**RCW 43.43.100 provides for writ of review to the superior court of Thurston County to have the reasonableness and lawfulness of the Chief's order of discipline reviewed. Against this statutory procedure the parties agreed to establish a Disciplinary Appeals Board as an alternative to the judicial review established by statute. The member must make an election of remedies between appealing the case to the Disciplinary Appeals Board or the Thurston County Superior Court.**

**If the employee elects to appeal to the Disciplinary Appeals Board, the contract procedures are set forth in Article 15,**

**Section C. The Disciplinary Appeals Board is composed of three members from the bargaining unit and three members from management. Each time the Disciplinary Appeals Board meets to consider an appeal, a chair is selected by the flip of a coin. The sole evidence before the Disciplinary Appeals Board is the record of the Trial Board hearing. No additional testimony may be taken. The Disciplinary Appeals Board hears argument of counsel based on the previously established record.**

**Section C describes the function of the Disciplinary Appeals Board as follows:**

**\* \* \***

**The Appeal Board's only function is to review the Chief's order. The Board will review the Chief's order considering (1) its fairness given the circumstances as demonstrated by the record before the Trial Board, (2) the Washington State Patrol's mission statement and function as a law enforcement agency, and (3) the Patrol's prior disciplinary actions for similar conduct.**

**The Disciplinary Appeals Board has the authority to "uphold, reduce, increase or reverse the penalty." If the Chief's decision is reversed, the Patrol must reimburse the member for the cost of the transcript of the Trial Board proceeding.**

**During the term of the 1989-91 contract, the Disciplinary Appeals Board was convened to hear the appeals of four members. In one case the member resigned prior to the hearing. Eight charges were at issue against the three troopers who had appealed to the Disciplinary Appeals Board. The Disciplinary Appeals Board sustained the Chief's decision on four of the charges and reduced the penalty on the four other charges. The most serious discipline considered by the Disciplinary Appeals Board was a five-day suspension.**

**The Association proposed to delete the Disciplinary Appeals Board from the contract and replace the current system with binding arbitration before a neutral arbitrator. The Patrol would continue current contract language.**

#### **A. The Association**

**The Association proposed to modify Article 15, Section A by deleting the second sentence which prohibits grievances over reassignment or transfer of employees from a specialty position. The Association would delete the entire Section C which addresses the subject of the Disciplinary Appeals Board. Turning to Article**

**16, the Association would delete the current language found in Section E and substitute new language to state:**

**E. Appeals. An employee who believes that he/she has been disciplined without just cause shall have one of two routes of appeal: (1) the established statutory disciplinary process Trial Board and/or Superior Court; or (2) the grievance procedure established herein. An employee electing to appeal discipline shall be required to specify, in writing, which appeal route is chosen, and to waive all rights to the other appeal mechanism.**

**The Association asserted this is the single most important issue before the Factfinder. From the viewpoint of the Association, the Trial Board system is "wholly unsatisfactory to the members of the Association." According to the Association, the Trial Board system is widely regarded as "manipulable" and about the furthest thing from a neutral disciplinary forum as could be imagined. Nor does the ability to appeal to the court offer a reasonable alternative to the Trial Board system. Because of the standard of review in court, the Association has been unable to discover one case where a trooper has successfully appealed discipline through the court system.**

**It is the perception of Association members that the disciplinary system is unfair. According to the Association, it was the members' dissatisfaction with the disciplinary system that served as the primary motivating factor behind the Association's certification as the exclusive bargaining representative for troopers. During the negotiations for the first contract, the Association aggressively pushed for arbitration by a neutral arbitrator. The Patrol resisted such neutral third party review of disciplinary decisions. In attempting to find a possible compromise, the Association proposed a disciplinary appeals system similar to that in Michigan. The Patrol rejected the Michigan system and countered that it would consider the Michigan system if the Disciplinary Appeals Board were viewed as an appellate body over all disciplinary cases.**

**In order to close the contract the Association reluctantly accepted the Disciplinary Appeals Board as the method for review of disciplinary action.**

**The Association maintains that the Disciplinary Appeals Board has proved unsatisfactory for several reasons. First, the Disciplinary Appeals Board considers only the record of the proceeding before the Trial Board. There is no de novo review of**

**the evidence presented to the Trial Board. This means the Trial Board has the authority to determine what facts can be reviewed by the Disciplinary Appeals Board since the record is created before the Trial Board rather than the Disciplinary Appeals Board.**

**Second, in the first case which the Disciplinary Appeals Board heard it made a minor modification in the discipline imposed by the Chief. After that decision some members of the Disciplinary Appeals Board received a letter from the Chief, described by the Association, as "threatening in nature." The letter asked the members of the Disciplinary Appeals Board to justify their decisions and made it clear that the Chief was dissatisfied with the results of the Disciplinary Appeals Board.**

**Third, the system where the Disciplinary Appeals Board is only entitled to review the record developed before the Trial Board has proved to be extremely troublesome. The Trial Board has refused to consider evidence which would plainly be admissible in arbitration. By controlling the record which the Disciplinary Appeals Board will receive, the Trial Board can effectively control the decision the Disciplinary Appeals Board makes.**

**In sum, the results before the Disciplinary Appeals Board have been disappointing to the Association.**

**The Association next points to the practices in the comparable jurisdictions. Under RCW 41.56, the jurisdictions which are considered to be comparable must be located on the "west coast." The three west coast states which the Association argued are relevant are Washington, Oregon and California. In Oregon, all discipline in the Oregon State Police is appealable to an arbitrator. This system has been in place since the first contract was negotiated in 1985 between the Oregon State Police Officers Association and the State of Oregon.**

**The California system is analogous to a civil service board for the appeal of discipline. Under the California system, discipline is appealed to the state personnel board, where the initial decision is rendered by an administrative law judge. The civil service board is an entity outside of the law enforcement agency which makes the final decision on discipline.**

**The Association also pointed to the practices in other law enforcement agencies in the state of Washington. (Assn. Ex. C). With the exception of the Patrol, disciplinary appeals in law enforcement agencies are always heard by a party who is neutral and independent of the law enforcement agency. The Association's survey of counties with population greater than 150,000 and cities with population greater than 50,000 is uniform that discipline appeals are ultimately resolved by a neutral arbitrator or civil service board.**

**Dan Davis, President of the Association testified on**

behalf of the proposal. Davis explained that the members want due process in disciplinary matters. According to Davis, the members still view the current system as unfair and arbitrary because of the control the Chief exercises over the existing process. The Association wants a system that is free from the Chief's overt and implied control over the outcome of disciplinary appeals. Davis testified this situation can be remedied by arbitration of disciplinary matters by a neutral third party.

The Association submits the current system does not work because it is driven by a Trial Board that is dominated by management representatives. The evidence submitted at the Trial Board is controlled by a management dominated group which slants the results. Therefore, the Association concludes that it is critical to the integrity of the system to have arbitration by a neutral who understands the law of discipline and discharge.

## **B. The Patrol**

The Patrol proposed to continue the current system of addressing disciplinary issues. In addition, the Patrol argues the organization should follow the statutory system that has been in place for several years. Adoption of the Association proposal would divest the Chief from his statutory authority to decide disciplinary matters which are properly those of management. From the perspective of the Patrol, the Chief's role would be reduced to recommending discipline, rather than making the decision as to discipline.

The Patrol next argues decisions with respect to discipline should not be delegated to a person unfamiliar with the mission of the Washington State Patrol. A neutral arbitrator would know nothing about the day-to-day operations of the Patrol. According to the Patrol, it is necessary for the decision makers to have a background in the Washington State Patrol in order to make appropriate decisions on discipline. Discipline is the method of ensuring the work of the Patrol is accomplished which is properly the prerogative of management.

It is also the claim of the Patrol the current system is working satisfactorily. Complaints are fully and fairly investigated before charges are filed against a member. The Trial Board is chaired by an administrative law judge who is not assigned to the Patrol. Employees who contest disciplinary action are represented by counsel before the Trial Board where they are given full opportunity to present their cases. Appeals to the Disciplinary Appeals Board reveal that discipline is changed. (WSP Ex. 1). The Chief is bound by the decision of the Disciplinary Appeals Board. Thus, the Factfinder should recommend continuation

of a system that is functioning in a satisfactory manner.

In conclusion, the Patrol submits the differences between the parties on this issue are fundamental and philosophical. The Patrol does not want arbitration by a neutral third party because it believes the final decision on discipline should rest with the Chief of the Washington State Patrol. The Chief is the person charged with seeing that the mission of the Washington State Patrol is accomplished and decisions on discipline should not be placed in the hands of an outsider.

### **C. DISCUSSION AND FINDINGS**

The Factfinder finds the evidence and argument support a recommendation the parties' Collective Bargaining Agreement include binding arbitration before a neutral arbitrator for discipline and discharge grievances. The reasoning of the Factfinder is set forth in the discussion which follows.

The parties have agreed in Article 16, Section F to a grievance procedure. The parties have also agreed in Article 15, Section A that discipline "shall be for cause only." The issue which divides the parties is whether or not a disciplinary grievance will end in arbitration before a neutral arbitrator or at the Disciplinary Appeals Board and/or Chief's level. The Patrol believes the final decision on employee grievances should be made by the Chief as the person charged by statute with running the organization. It is the Association's position that arbitration of contract disputes is properly one to be placed before a neutral arbitrator. According to the Association, resort to the Disciplinary Appeals Board or courts has proven to be a burdensome and ineffective means to resolve contract grievances.

In Article 16, Section A, the parties have specified the purpose of the grievance procedure is "to establish effective procedures for the fair, expeditious, and orderly resolution of grievances at the lowest possible level." (Emphasis added). The failure of the parties to include binding arbitration of disciplinary grievances before a neutral third party works against the contractually stated purposes of the grievance procedure. Arbitration before a neutral arbitrator would be entirely consistent with the stated goal of Article 16, Section A calling for the fair, expeditious, and orderly resolution of grievances. With arbitration as the final step in the grievance procedure, the effective use of the initial steps of the grievance procedure will be promoted to resolve grievances at the lowest possible level. The integrity of the grievance procedure will be enhanced in the eyes of the membership because the decisions regarding discipline will be reviewed by a neutral third party.

The parties have defined a grievance in Article 16, Section C to mean:

**C. Definition.** A grievance is a dispute or difference of opinion raised by an employee, or by a group of employees (with respect to a single common issue) or by the Association, involving the meaning, interpretation, or application of the express provisions of this Agreement.

By this contract definition the parties have limited grievances to alleged violations of expressed provisions of the Collective Bargaining Agreement. Thus, an arbitrator's authority is specifically limited to the interpretation and application of particular clauses of the parties' Collective Bargaining Agreement.

The power of the Patrol to make management decisions is left unimpaired unless specifically circumscribed by this Collective Bargaining Agreement. Under the recommended language an arbitrator will not be placed in the position of reviewing decisions of the Patrol on matters outside the express terms of the Collective Bargaining Agreement. Article 2, Management Responsibilities, contains a detailed and exhaustive review of the exclusive rights retained by management to operate the organization. In this manner the Patrol is protected against an arbitrator infringing on management's rights to manage the Patrol without union interference. Arbitration of discipline grievances does not mean the power to discipline and to determine the level of discipline has been delegated to a third party.

The basic purpose of a grievance procedure is to provide a forum where disputes arising in the workplace can be addressed and resolved quickly and efficiently. Without a working grievance procedure complaints of employees will fester unanswered. Employees will become embittered with a subsequent adverse impact on morale and productivity. The absence of binding arbitration by a professional arbitrator discourages employees from voicing their concerns because of the perception management is free to do whatever it wants regardless of the contract requirements. A grievance procedure concluding in binding arbitration will create a therapeutic device for the parties to encourage settlement and examine the interpretation and application of the Collective Bargaining Agreement as it applies to disciplinary issues. Binding arbitration will also encourage professional conduct in handling of grievances at the lower levels of the grievance procedure because both parties will be aware that in the event they fail to resolve their differences, the dispute will be subject to review by a

neutral third party.

In order for mature and stable relations to exist between the parties, both labor and management must understand and accept the grievance procedure as a viable and effective means to address problems arising out of the contract. An integral part of any modern grievance procedure is binding arbitration. Binding arbitration as the final step of the grievance procedure is an established and proven method of fair and just determination of contract grievances.

The Patrol's position that grievances should be resolved by the Chief, courts or the Disciplinary Appeals Board is unpersuasive. The courts are charged with the primary responsibility to deal with questions of statutory law, not allegations that a private labor contract has been violated. The Disciplinary Appeals Board lacks the expertise in labor-management relations to resolve complex issues of contract law. This point was illustrated when one of the management members of the Disciplinary Appeals Board could not give a rudimentary explanation of the contract meaning of just cause.

Moreover, Patrol's claim that it is in a better position to resolve grievances than a neutral arbitrator misses the point. Binding arbitration does not remove the ability of the Patrol to determine discipline and settle disputes. It is the experience of most parties to a collective bargaining agreement with arbitration, that the vast majority of grievances are resolved by the parties without the assistance of a neutral arbitrator. However, for those few disputes which the parties cannot resolve, arbitration by a person who has no interest in the outcome of the grievance is required. This point is particularly important in a governmental agency where political forces are direct and strong.

The contract between the Association and the Patrol is a mutual one. If one party to the agreement has the power to interpret the meaning of the words used to frame the agreement, it may interpret the agreement in light of its own needs. Whether this is actually done or not, the employees will perceive such power as a fact. The direct result of a system where one of the parties to the contract has the power to decide what it means is to destroy any faith that a viable grievance procedure exists. The absence of confidence in the grievance procedure will result in a lack of the ability of the parties to mutually resolve disputes within the contractually agreed contract procedure. In the judgment of this Factfinder, labor relations in this organization will best be served by a grievance procedure which concludes in binding arbitration by a neutral person outside of the patrol who is unaffected by the politics of the organization.

A binding arbitration provision does not represent the

**abandonment of any necessary authority of the Patrol. Absence of arbitration does not eliminate third party adjudication of the Collective Bargaining Agreement. Without binding arbitration the courts are the final arbiter of collective bargaining disputes, just as they are for other contracts held by the Patrol. Evidence presented by the Association established that the current system simply does not provide a meaningful review of disciplinary actions.**

**Public policy favors the resolution of labor contract disputes by arbitration. The Washington Courts, the Washington Employment Relations Board and the National Labor Relations Board have adopted a policy of deferring to arbitration as the favored means to settle labor disputes arising out of a labor contract. The U. S. Supreme Court has also placed its stamp of approval on a policy of resolving labor disputes by means of arbitration. United Steelworkers of America v. Enterprise Wheel and Car Corporation; 363 US 593 (1960).**

**Regarding the factor of comparability, the Association's uncontradicted evidence established binding arbitration by a neutral person is the norm in law enforcement contracts. Binding arbitration in Oregon police contracts is a well established and accepted means of resolving disputes arising under labor agreements. Since 1985, the Oregon State Police contract provides that all discipline is appealed to a neutral arbitrator. The California Highway Patrol has in place a system where the discipline is appealed to the state personnel board, an independent agency unconnected with the California Highway Patrol. An administrative law judge hears the case and issues a decision.**

**Turning to the discipline and appeals system in place for other law enforcement officers in the state of Washington, the practice is uniform that disciplinary appeals are heard by a person who is neutral and independent of the law enforcement. agency. (Assn. Ex. C). The Association Exhibit established that in 18 major law enforcement agencies in Washington disciplinary appeals are ultimately resolved by a neutral arbitrator, board or panel. The Patrol should not continue a system that is obsolete and unique to the practices in place for other law enforcement officers in Washington, California and Oregon.**

**Accordingly, the Factfinder is persuaded that the time has come for the parties to include binding arbitration for disciplinary grievances in their Collective Bargaining Agreement.**

## **RECOMMENDATION**

**The Factfinder recommends the following changes to be included in the successor contract.**

**1. Article 15 should be amended to read:**

**A. Discipline. Disciplinary actions, including discharge, shall be for cause only. Employees may not be given unsatisfactory performance evaluations except for cause. Written reprimands and disciplinary transfers may be appealed through the Grievance Procedure.**

**C. Disciplinary Appeals Board**

**(Delete Entire Section)**

**2. Article 16, Section E as currently written should be deleted and new language added to state:**

**E. Appeals. An employee who believes that he/she has been disciplined without just cause shall have one of two routes of appeal: (1) the established statutory disciplinary process Trial Board and/or Superior Court; or (2) the grievance procedure established herein. An employee electing to appeal discipline shall be required to specify, in writing, which appeal route is chosen, and to waive all rights to the other appeal mechanism.**

## **ISSUE 2: Residency**

### **Background**

**Present contract language establishes residency rules for members of the bargaining unit. Depending on the assignment, different residency requirements may apply to individual troopers. The primary residency standard is contained in Section F(1)(a), which provides that employees assigned to the Field Operations Bureau must live within 10 miles of their assigned patrol area. Depending on their assignment, other members are required to reside within 35 miles of the workplace or within 60 minutes travel time of their duty station.**

**The Patrol proposed several changes to the existing contract requirements with respect to residency. The Association would continue the existing contract language.**

**A. The Patrol**

The Patrol proposed new language which would read as follows:

**b. When assigned to field force and hold the rank of sergeant, reside within fifteen (15) miles of the detachment office to which they are assigned.**

**c. If assigned to District 2 (excluding those troopers and sergeants assigned to North Band and Enumclaw) reside within ten (10) miles of the King County boundary. Overtime for court, callout, etc. for troopers and sergeants residing more than ten (10) miles from their area of assignment shall commence and terminate when they reach the ten (10) mile boundary of their assigned area.**

**f. If assigned to Safety Education, reside within their assigned area and within twenty-five (25) miles of the office designated as their primary base of operations. Exception: Safety Education troopers assigned to King County shall reside within ten (10) miles of their assigned area and comply with the requirements of Section E, Subsection 1.c. of this Article.**

The Patrol takes the position that it wants its employees to be part of the communities in which they serve both as citizens and officers. According to the Patrol, community policing means that officers should be involved in local service clubs, social activities, athletic teams, etc. When the trooper lives outside of the community, it reduces his or her ability to do community policing. This is particularly true with respect to sergeants who have supervisory duties in a particular area. The Patrol believes the community can be best served by having a supervisor residing in the area in which he or she supervises. Further, the Patrol maintains that when the sergeant lives outside of the assigned service area the sergeant's ability to supervise is impaired. If a sergeant lives outside of the community for which he has responsibility the sergeant is not readily accessible for part of that community. Thus, the Factfinder should recommend adoption of

**the Patrol's proposal with respect to residency requirements.**

**The Patrol called several commanders who testified with respect to a situation at Colfax. The sergeant in Colfax had a permanent residence in Spokane but lived on a temporary basis during the week in Colfax. Management witnesses testified that this conveyed the impression to the Patrol members assigned to Colfax that the sergeant does not want to be there and is only looking to move on to a different assignment. The Patrol is also concerned that in an emergency situation the sergeant would be too far away to respond within a necessary time frame. The problem is particularly acute in the rural areas where the number of sergeants available is limited. The Factfinder should recommend adoption of the Patrol's proposal as a reasonable response to its concerns for a police presence in the community both as a supervisor and as a citizen.**

## **B. The Association**

**The Association counters that residency requirements are disfavored in Washington for law enforcement officers. RCW 41.08.175 forbids residency requirements for city police officers. By virtue of this statute, residency requirements for city police officers are unknown. The Association also knows of no county which has residency requirements for its law enforcement officers.**

**Moreover, the Association argues that the residency requirements in the current Collective Bargaining Agreement are far beyond those which are in place in the comparable jurisdictions. The Oregon State Police contract requires employees to live within 45 minutes driving time of their duty stations. The California Highway Patrol requires employees to maintain California residence and to live in "such proximity to their command or headquarters office as will assure their ability to respond to an emergency within a reasonable length of time or to allow equitable assignment of departmental responsibility." The evidence establishes that stringent residency requirements for law enforcement officers are not the norm in the comparable jurisdictions.**

**A practical reason also exists for rejecting the Patrol's proposal with respect to residency. According to the Association, whenever residency requirements are tightened, the ability of troopers to transfer from job to job is correspondingly limited. The lack of flexibility can lead to troopers being required to purchase homes in places where the real estate market will simply not allow troopers to sell the home at a fair price upon transfer or promotion. In addition, the cost of housing in a particular community may exceed the trooper's ability to purchase a house within the area to which he or she is assigned. Sergeants should**

not have to pay a financial penalty as the result of unduly restrictive residency requirements. Sergeant Annette Sandburg testified with regards to community policing that it has nothing to do with residency. Community policing means the law enforcement officer becomes aware of community organizations which can be utilized to provide services and fulfill needs of the citizens. Sandburg also testified that in her case she turned down promotional opportunities because the residency requirements would have limited her choice to "sleazy areas" or to those which were totally out of her price range. Adding additional restrictions to those already in place would further narrow her possibilities for transfer and advancement in the organization.

The Association argues that the adoption of the Patrol's proposal will create a disincentive for its members to seek an advancement or transfer within the organization. Nor has the Patrol presented evidence of an operational need to have tighter residency requirements. The Colfax example does not prove the Patrol's case because other avenues were available to solve the problem at Colfax. Further, the Patrol's proposal would apply to every detachment throughout the state of Washington. The Patrol admits the problem it sees is primarily one existing in the rural areas of Washington. Since the Patrol has failed to meet its burden of proof, the Association submits the Factfinder should recommend continuation of present contract language.

### **C. DISCUSSION AND FINDINGS**

The Factfinder finds that with the exception of Section c, the Patrol failed to present a persuasive case for further tightening of the residency requirements. The starting point for analysis of this issue is recognition of the fact that present residency requirements are far stricter than in any of the comparable jurisdictions. Neither the California Highway Patrol or the Oregon State Police have residency requirements anywhere near as restrictive as those now in place for Washington troopers.

RCW 41.08.075 argues against recommending the Patrol's proposal. By statute residency requirements are unlawful for city police officers. Further, there is no evidence county law enforcement officers in Washington are subject to residency restrictions. The Factfinder must conclude residency requirements are not an established working condition for law enforcement officers in the state of Washington.

The Factfinder concurs with the Association that the Patrol failed to demonstrate an operational need for additional limitations on where employees must live to continue their employment with the Patrol. Part of the problem on this issue

concerns the rural versus urban situation where availability of housing for sergeants becomes a critical issue. The Patrol's proposal makes no distinction between members stationed in rural and urban areas. All sergeants would be subject to the increased restrictions on where they could live without reference to the availability of satisfactory housing.

The Patrol's reliance on the supervisory situation in Colfax to justify its proposal is found unpersuasive. First, the Colfax situation was the only specific example cited where problems allegedly existed with the absence of a supervisory presence. Second, the Association evidence established the concern of the troopers at Colfax was not the lack of a sergeant who lived in Colfax but the frequent turnover of sergeants in the detachment. Third, the sergeants in Colfax did maintain a residence in Colfax.

In sum, the record evidence revealed no operational needs for a stricter residency requirement, comparability is totally against the Patrol's proposal, and the current residency limitations strike a fair balance between personal needs of employees and the Patrol's requirement for a supervisory presence at the detachment. Thus, the Factfinder concludes the current contract language should be continued with one exception.

At the hearing the Association declared it was willing to accept the Patrol's proposed language set forth in Section c. The Factfinder will recommend Section c of the Patrol's proposed language for inclusion in the new contract.

### **RECOMMENDATION**

The Factfinder recommends that current contract language be continued unchanged with the addition of new language to state:

c. If assigned to District 2 (excluding those troopers and sergeants assigned to North Band and Enumclaw) reside within ten (10) miles of the King County boundary. Overtime for court, callout, etc. for troopers and sergeants residing more than ten (10) miles from their area of assignment shall commence and terminate when they reach the ten (10) mile boundary of their assigned area.

Respectfully submitted,

Gary L. Axon  
Factfinder

**Dated: January 10, 1992**