

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT
STATE OF OHIO RELATIONS BOARD

2001 AUG 29 A 10:43

IN THE MATTER OF FACT FINDING BETWEEN:

AFSCME OHIO COUNCIL 8, LOCALS)	Case No. 01-MED-05-0507
190, 223, 240, 250, 1543 AND 3119)	
)	
Employee Organization)	
)	
and)	
)	
THE CITY OF CINCINNATI, OHIO)	<u>FACT FINDING REPORT</u>
)	
Ohio Public Employer)	Mitchell B. Goldberg,
)	Fact Finder

This matter was heard on August 16, 2001 in Cincinnati, Ohio.

Appearances:

For the Union:

Robert Turner, Regional Director

For the Employer:

Leslie Elizabeth Ghiz, Esq., Chief Labor Negotiator.

1. INTRODUCTION AND BACKGROUND

The undersigned, Mitchell B. Goldberg, was appointed by the State Employment Relations Board (SERB) on July 5, 2001 to serve as the Fact Finder for the purpose of issuing a report with recommendations on each of the issues unresolved between the parties in their negotiations for a collective bargaining agreement to succeed the Collective Bargaining Agreement (CBA) which expired on August 4, 2001. The bargaining unit consists of six separate local unions, 190, 223, 240, 250, 1543, and 3119. It is a deemed certified unit which existed at the time the Ohio Public Sector Collective Bargaining Law was enacted. As of August 16, 2001, there were approximately 2,493 members of the bargaining unit. The parties, prior to the hearing, submitted pre-hearing statements pursuant to Section 4117-9-05 of the Rules of SERB. They engaged in contract negotiations on 23 days between June 6, 2001 and August 3, 2001. They used the practices and techniques of interest based bargaining, as in the past, and they were assisted by mediators from SERB and from the Federal Mediation and Conciliation Service (FMCS). The parties, however, decided to abandon their interest based bargaining techniques when they were unable to reach an agreement on the financial issues.

The parties reached a tentative agreement on 12 of 26 issues which were submitted during negotiations. Five of the remaining issues were withdrawn. They agreed to a "housekeeping" issue which was designed to update and correct provisions of the contract without making any substantial changes in the intent of the language. These housekeeping issues will be implemented when the final draft of the agreement is prepared. Eight issues remained unresolved. The Union subsequently withdrew four of the eight unresolved issues which it brought to the table.

Each of the parties decided to re-open some of the issues which were tentatively agreed upon during negotiations. The City's issues which are included for submission to fact finding include sick leave, union release time, and the subject of non-bargaining unit employees performing unit work. The Union reopened the issues of temporary transfers and tuition reimbursement. In addition to the reopened issues, the remaining issues are unresolved: Americans with Disabilities Act; return to work after illness or injury; wages; health care; the AFSCME Care Plan; the legality clause; and, contract duration.

Seven of the tentative agreements were reconfirmed by the parties and remain resolved. Those issues include Article 15 - Observance of Holidays; Article 16 - Corrective Action; Article 17 - Grievances; Article 19 - Shift Differential; Article 20 - Filling of Vacancies/Promotions; Article 24 - Injury on the Job; and, Article 25 - Other Leaves. These agreements shall be incorporated into this Fact Finding Report. Consideration in this report was given to all of the criteria listed in Rule 4117-9-05(J) of SERB.

II. UNRESOLVED ISSUES - FINANCIAL

The parties submitted considerable economic evidence and arguments supporting their positions relative to their proposals for wages and benefits to be paid by the City for the services performed by the bargaining unit members during the term of the next collective bargaining agreement. The City is concerned about the state of its current and projected revenues. The general fund consists of five major revenue sources, the income tax, the local government fund, the property tax, the estate tax and investment income. Approximately 61% of the budget revenue is derived from the income tax. In 2000, the income tax revenue was approximately \$8,000,000.00 less than projected and receipts continue to be below projections for 2001. The local government revenues

will remain constant, but will not increase in the future because the State has decided to allocate more of the local government fund to assist school districts. The budget for property tax receipts will also remain level because of lower property tax rates and lower property tax values within the city. The revenues received from estate taxes has historically fluctuated over the years and only accounts for five percent of the budget. The state government is considering the elimination or reduction of the estate tax as was done by the federal government. The state government, however, is not considering any replacement revenue for the cities in the event the estate tax is ultimately eliminated or reduced. The revenue from investment income is also expected to be minimal because of the existing low interest rates. Because there is virtually no growth in the general fund, the carry-over reserve in the budget will be exhausted by the end of 2002. The stagnant revenue projections requires that expenditures be scrutinized because the City is required to maintain a balanced budget. The City Council has directed that expenses be limited to only 75% of the inflation rate. Most of the City's expenses are reflected in salaries, wages and benefits to personnel. The City's proposals on wage increases and health care benefits reflect its commitment to maintain services at the current level, to avoid the layoff of employees, and to bring its projected expenses in line with its projected revenues over the next two or three years.

Approximately 45% of the bargaining unit wages are paid from the general fund. The remaining wages are paid from the water fund and sewer fund. These funds are solvent and will benefit from rate increases of approximately 3% in 2002, but the water and sewer funds cannot be used to pay for wages other than for employees in these departments.

The Union believes that the City's financial projections are overly pessimistic and somewhat inaccurate. The City has a history of being overly conservative by underestimating its income and

overestimating its expenses when it makes budget projections. It has consistently received income in the range of \$4,000,000.00 to \$25,000,000.00 more than forecasted in the years from 1997 through 2000, and expenses have been approximately \$16,000,000.00 less in each year than forecasted from 1998 through 2000. Accordingly, the City's projections for the next two or three years should account for its historically conservative approach. Moreover, City income tax revenues for 2001 show an increase over 2000 as of June 30. Other actions of the City also contradict its representations that it expects to suffer a large operating deficit over the next two years. It has transferred considerable funds from the general operating fund to its capital improvement funds, and it has agreed to contracts with the police and fire unions which provide for economic benefits for percentages larger than it is proposing in these negotiations. Police and fire units account for over one-half of the general fund budget.

Finally, the Union believes that the City's budget inaccurately overstates the figures for wages and fringe benefits because they have over counted the number of employees and/or employment positions. The Union believes that this error amounts to approximately \$5,800,000.00 in expenses which do not exist. Accordingly, the Union believes that its financial proposals are reasonable and that the City has the ability to make these expenditures within its balanced budget framework over the next two years.

ARTICLE 48 - LENGTH OF CONTRACT

The last contract was for a three year period from August, 1998 through August, 2001. The Union is proposing a two year agreement instead of a three year agreement because of the uncertainties contained in the financial projections of the City with respect to its expected revenues and expenses. The Union further believes that a two year contract will strategically place it in a more

advantageous bargaining position considering the contract termination between the City and the other unions.

The City proposes a three year contract in order that it may fix its expenditures and otherwise provide stability for its expenditures during a time when its revenues are not expected to increase substantially from income taxes, and when other revenues will remain fixed or are expected to decline dramatically.

Recommendation

I recommend that the parties enter into a three year contract beginning August 5, 2001 and ending at midnight on August 4, 2004. This is substantially the same term as the expired contract. Considering the economic uncertainties of the City's future revenue stream, it is in the best interests of the parties and the public to stabilize this large category of expenditures over a three year period instead of a two year period. Moreover, the longer contract will save the City money relative to the costs for negotiations.

ARTICLE 44 - GENERAL WAGE INCREASES

The Union proposes increases of 3.5% per year for all employees for two years. The City proposes a 3% across the board increase in each year of a three year contract if the union accepts the City's position on health care premiums and sick leave. Otherwise, the City proposes a three year contract of 2.5% for each year.

The Union requests that it receive the same percentage increases received by the police and fire unions. Those contracts contain 3% per year increases in the general wages, but they include extra pay for certification and training held by most of the employees in those units. When this extra pay is added to the general increases, the police and fire employees actually received a 4% increase

in the first year of their agreements, or 7% over two years. This is the same percentage increase proposed by the Union. Moreover, these types of increases are comparable to the increases received by other cities in Ohio such as Columbus and Youngstown. Moreover, the same financial circumstances of the City were present during the negotiations with the police and fire unions. Notwithstanding these circumstances, the City agreed to pay these employees wage increases amounting to 7% over two years. The Union believes that they are entitled to the same increases.

Recommendation

Considering all of the economic evidence presented and the following recommendations with respect to other economic issues between the parties, I recommend that the employees in the bargaining unit receive a wage increase of 3 % per year across the board for each year of the three year contract.

ARTICLE 22 - HEALTH INSURANCE

This is the major issue of contention between the parties and consumed the largest portion of the hearing time. The City presented considerable unrefuted evidence that its health insurance costs will increase dramatically over the next three years. Consultants project that there will be a 15% increase in 2001, a 12% increase in 2002, and an 11% increase in 2003. These types of increases have not been experienced by the City and are contrasted with the City's experience over the last five years. The City has been able to effectively manage its health insurance costs since 1995 by introducing managed care. It replaced the traditional Blue Cross/Blue Shield plan with Community Preferred Health Plan. Choice Care, the most expensive health plan option was removed and the Community Choice/PPO was implemented as an additional plan which is more cost effective. The HMP health plan was converted from a fully insured plan to a self insured plan which lowered

costs. Most of the employees are now in the most cost effective plans. Only 2% of the employees remain in the Blue Cross plan which will be eliminated on January 1, 2002. These changes reduced costs by 8% in 1996, maintained costs in 1997, and only reflected increases of 1% in 1998, 3% in 1999, and 7% in 2000. Nevertheless, the projected costs for the next three years reflect increases that are beyond the control of the parties and demonstrate that costs will increase to \$25,200,000.00 in 2001, \$28,200,000.00 in 2002, and \$31,300,000.00 in 2003. The budgets for each of those years leave a shortfall of \$4,300,000.00 in 2001, \$6,900,000.00 in 2002 and \$9,200,000.00 in 2003. The City believes that it has no reasonable alternative other than to receive contributions from its employees to make up the shortfall. It is requiring its non-represented employees to contribute toward health insurance premiums pursuant to a memorandum issued by the City Manager which will become effective January 1, 2002. The City is requesting that the bargaining unit members agree to a percentage obligation for health insurance premiums. It proposes a 5% contribution in year one, a 10% contribution in year two, and a 15% contribution in year three. At present rates, this would provide \$8.50 - single coverage/\$22.00 per month family coverage in year one, \$17.00 per month single coverage and \$44.00 per month for family coverage in year two, and \$26.00 per month single coverage and \$66.00 per month for family coverage in year three. These contributions will increase when the total premiums increase over the three year period.

The Union recognizes that premium rates will increase dramatically over the next three years, but it believes that the City's request amounts to an unreasonable concession on the Union's part. The Union is willing to require a fixed dollar amount to be contributed by employees, the same amounts which were recently negotiated between the City and the Fire Fighters of \$5.00 per month for single employees and \$10.00 per month under a family plan. Presently, the FOP is not required

to make premium contributions, nor are non- represented employees.

The Union believes it should not unfairly assume this burden. The police and fire employees are paid entirely out of the general fund which is the fund that is most heavily affected by the decreases in revenue. Most of the employees of the AFSCME unit are paid from the other funds that are not experiencing revenue decreases. Nevertheless, the City is requesting a greater contribution from AFSCME employees toward health insurance premiums.

Moreover, in terms of usage and claims, the cost for health insurance for AFSCME members only increased 14.66% over the last year which was less than costs incurred by management employees and fire employees. Notwithstanding the lower usage by AFSCME members, the City is requiring the Union to absorb more of the expenses.

The cost savings and efficiencies relative to health insurance has resulted from the efforts of both the City and the Union over the last five years and it must be recognized that AFSCME members accepted less benefits and coverage by agreeing to the proposed changes. The City has been able to save considerable money by obtaining the cooperation from the Union in this area.

Other major cities in Ohio, such as Akron, Toledo and Youngstown, provide health insurance with no cost to employees. Cleveland, Columbus, and Dayton require contributions per month ranging from \$10.00 per month single coverage/\$20.00 per month family for Dayton to \$25.00 per month single/\$50.00 per month family for Cleveland. No other city in Ohio requires a percentage contribution. Moreover, the City's costs are considerably less than the average premiums paid by other cities in Ohio for similar coverage.

The Union further believes that the City's proposal for a percentage payment will unfairly harm many of its members who earn \$30,000.00 per year or less. The increased monetary

contribution from AFSCME members requested by the City substantially eliminates the proposed wage increases, and the net result will prevent the employees from maintaining the cost of living over the contract term.

Recommendation

I recommend that in year one of the contract the employees shall contribute 5% of the total premium costs which amounts shall not exceed \$9.50 per month for single coverage and \$25.00 per month for family coverage. In year two of the contract employees shall contribute 7% of the total premium costs not to exceed \$15.00 per month for single coverage and \$40.00 per month for family coverage. In year three, employees are required to pay a 10% of the premium cost, but not more than \$20.00 per month for single coverage and \$50.00 per month for family coverage. The requirement for employee contributions shall not become effective until such time that the unrepresented employees are required to contribute toward health insurance premium costs. For employees earning gross wages of \$22,000.00 per year or less, contributions shall be limited to \$10.00 single coverage/\$20.00 family coverage for year one, \$12.00 single coverage/\$24.00 family coverage for year two and \$15.00 single coverage/\$30.00 family per month for year three.

ARTICLE 42 - OHIO AFSCME CARE PLAN

The Union proposes to maintain the current level benefits for the AFSCME Care Plan. Members of the bargaining unit currently receive the dental II benefit, vision care, prescription drug coverage, life insurance and the hearing benefit under the plan. The City joined the AFSCME Care Plan in 1979 and has a representative on the governing board of the plan. Under the provisions of the plan, once a rate is agreed upon and placed in the collective bargaining agreement, the rate is fixed until the agreement expires. This is a beneficial feature which is usually not found in other insurance

plans offering similar coverage. Moreover, the plan has only raised its rates on basic coverage five times since its inception in 1973, and it has often increased benefits with its rate increases. The rates have been increased with respect to the prescription drug card benefits, but city employees are not covered by the prescription drug card. The last rate increase became effective on January 1, 2001. The City representative on the board of trustees voted for the increase at that time.

The Union argues that the City did not raise the issue of the increase during the negotiations and it did not oppose the rate increase until last two days of bargaining. Furthermore, the City did not put forth a specific proposal with respect to this issue.

The City presently pays \$50.25 per employee per month for the provision of vision care (first level), life insurance (first level), prescription drug (supplemental to the City's health benefits), hearing aid, and dental II coverage. The City has continually increased the coverage since it became a member of the plan. The Union requested and received increases in the plan amounts during the last two contract negotiations. The increased cost for the plan is the result of increased prescription drug costs and the fact that the plan must now include birth control coverage in its benefit package. Since medical and prescription drug coverages will continue to increase, the Union will continually seek additional funds from the City to cover the increases.

The AFSCME Care Plan works like a cafeteria plan. The Union can adjust coverages based upon the City's contributions. Prescription drugs are already covered in the City's medical plan. AFSCME members, however, can recover 90% of their co-payments from the AFSCME Care Plan so that they pay very little for prescription drugs. Since co-payments are minimal, there may be an increase in usage for prescription drugs which could in turn increase the medical insurance premiums. Employees may provide supplemental contributions to obtain more coverage under the plan. None

of the other bargaining units have this type of coverage and none of the major cities in Ohio except Toledo contribute to the AFSCME Care Plan, and Toledo only pays \$14.75 per employee per month. The City currently pays \$50.25 per employee per month or \$1,538,856.00 per year (based upon 2,552 AFSCME employees). The Union's requested increase will add \$5.50 per employee per month to the City's expenditures or \$168,432.00 per year. This approximates a one-half percent salary increase. The City, therefore, opposes the increase for financial reasons.

The Union believes that the City has inflated its costs because the actual number of employees are less than 2,552. For 2001, the number of employees in the plan were 2,404. The police and fire units do not have the supplemental prescription drug benefit, but they do receive other similar supplemental benefits. Under the police agreement, the City pays \$54.00 per month for dental and vision benefits, and the City pays \$50.00 a month just for dental benefits under the fire contract. The requested increase for AFSCME Care Plan contributions compares favorably with these expenditures.

Other major cities do not belong to the AFSCME Care Plan, but they do provide supplemental benefits such as dental, vision, life insurance, and prescription drugs. Cleveland has just agreed to join the AFSCME Care Plan and the Dayton fire fighters and police purchased vision and dental benefits from the AFSCME Care Plan.

Recommendation

It is recommended that the City's contribution to the Ohio AFSCME Care Plan be increased to \$55.75 per month per full time employee in the bargaining unit. It is recognized that the increased payments amount to as much as a half percent per year pay increase to the employees, but consideration is given to the increased costs which the employees are required to absorb in order to maintain their health care and medical insurance.

ARTICLE 13 - ASSIGNMENT OF WORK, TEMPORARY TRANSFERS

The issues between the parties under this Article are the Union's concern over the distinction between a temporary transfer and a full-time vacancy, and the City's concern of paying an employee a higher rate of pay for eight hours an employee is temporarily transferred into another higher paying position. The parties accommodated their concerns by arriving at a temporary agreement during negotiations. The Agreement, however, was retracted after the parties reached an impasse over other economic issues.

Recommendation

It is recommended that the tentative agreement which was reached between the parties be accepted. The TA is attached hereto and made a part of this recommendation.

ARTICLE 23 - SICK LEAVE

The City proposes to restrict the sick leave usage by AFSCME employees in order to save costs. It believes that the usage has been excessive. The City would like to reduce the number of sick days accumulated each year from 13 per employee to 10, and to abolish the sick use incentive ("SUI") days which can amount to two per year per employee. The City believes that reducing the sick leave accumulation by three days will produce a savings of \$1,200,000.00 per year and eliminating the SUI days will produce a savings of \$300,000 per year. The SUI days have not produced a drop in the use of sick leave time by AFSCME employees which was the rationale for its implementation.

The Union believes that the City has not used available contract language which was agreed upon by the Union to discipline employees who have allegedly abused sick leave. It believes that sick leave usage could be reduced if such discipline was implemented. The Union further believes that it

is not reasonable to compare the usage by AFSCME employees with sick leave usage by the police and fire employees. Many AFSCME employees work in severe weather conditions and are otherwise exposed to conditions which produce illnesses. Furthermore, the police and fire employees have compensatory time which is unavailable to AFSCME employees. Firefighters work fewer days and are granted days off in order to comply with FMLA.

The figure of 13 days per year sick leave is comparable with the public employees of other major cities in Ohio. Akron, Cleveland, Dayton, Toledo and Youngstown all have 15 sick leave days per year. Columbus has 12 days, but Columbus employees have a favorable long-term disability plan.

In terms of SUI days, the Union is willing to place restrictions to make it more difficult to earn such benefits. The additional restrictions would save the employer approximately \$250,000 per year.

Recommendation

It is recommended that the tentative agreement executed by the parties on July 30, 2001 be adopted and incorporated into the collective bargaining agreement. A copy of the TA is attached hereto and made a part hereof.

ARTICLE 41 - TUITION REIMBURSEMENT

The City proposes to place some limitation on the employee's use of tuition reimbursement. Because of the rising cost of tuition and the number of employees who utilize this benefit, the costs to the City have been increasing dramatically. From 1997 to 1999 the costs increased from \$98,453 to \$283,553. The costs for the year 2000 were over \$400,000.

The Union believes that it is unreasonable to restrict tuition reimbursement to the tuition and fees charged by the University of Cincinnati. Some courses are not available at the University of Cincinnati, and fees for those courses are more expensive at other institutions. The City

acknowledged that the increased expenditures in this category are for employees other than AFSCME employees.

Recommendation

The tentative agreement executed by the parties on July 30, 2001 shall be incorporated into the collective bargaining agreement. A copy of the TA is attached hereto and made a part hereof.

ARTICLE 19 - SHIFT DIFFERENTIAL

The parties agreed to language changes in Paragraph D and added a new Paragraph E.

Recommendation

The agreement of the parties with respect to the changes in Article 19 shall be incorporated into the collective bargaining agreement. A copy of the agreement is attached hereto and made a part hereof.

ARTICLE 25 - OTHER LEAVES

The parties executed an agreement to amend this Article on June 27, 2001. A copy of the agreement is attached hereto and made a part hereof and shall be incorporated into the collective bargaining agreement.

ARTICLE 37 - NON-BARGAINING UNIT EMPLOYEES

The parties agreed to add language to this Article providing that a non-bargaining unit employee must be either laid off or hired on a full-time basis once they work 1560 hours within a 12 month period.

Recommendation

The amended language agreed upon between the parties is attached hereto and made a part hereof, and shall be incorporated into the collective bargaining agreement.

III. NON-FINANCIAL ISSUES

ARTICLE 4 - NON-DISCRIMINATION

The Union proposes two changes under this Article. The first concerns the right of Union members to engage in political activity. The City has improperly restricted the activities of employees in this regard. Employees should be permitted to distribute campaign literature, serve as an officer of a political party, become a member of a campaign committee, exercise free speech to endorse or oppose a candidate for an elective office, or otherwise make public speeches on behalf of a candidate. These prohibitions are outdated and were enacted at a time when employees were not protected by a union.

The City opposes any change in the language of this Article. The police and fire contracts do not permit employees to participate in political activity. The issue was discussed by an appointed sub-committee who recommended that the Union's proposed language not be added to the contract. The City believes that the charter language is still viable to prevent a system of political patronage and to insulate City employees from political pressure by public figures.

Recommendation

Considering the recommendation of the sub-committee on this issue, it is recommended that the Union's proposal for a language change not be implemented at this time.

The Union proposed that Section D be added to Article 4 to provide for grievance remedies for employer violations of the ADA. The Union believes that employees should have the less expensive and less time consuming remedy of arbitration available to redress ADA grievances in addition to its rights under Federal law.

The City opposes the additional language to Article 4. Because ADA law and regulations are

subject to constant revision, the City does not want to subject itself to grievances over changes in its policies. A task force is presently working on a revised ADA policy for the entire City which is expected to be implemented in the next several months. The sub-committee which reviewed the Union's proposed language could not come to a consensus on this issue.

Recommendation

Since employees already have state and federal remedies available to them, it is recommended that the Union's proposal not be accepted at this time.

ARTICLE 8 - UNION REPRESENTATION

The City proposes a reduction in the amount of Union release time in order to save money. For calendar year 2000, AFSCME members logged a total of 6,041.15 hours. The time spent by these local presidents and vice presidents is in addition to the time spent by the two full-time employees who act as AFSCME representatives. The City estimates that the costs for this release time in man hours amounts to approximately \$100,000 per year. The City wants to limit the amount of time expended for Union representation by placing limits or caps on the amount of time that may be used. Placing a cap at 4,000 hours per year would save approximately \$33,000.

The Union believes that the City's proposal is unreasonable. Much of the time spent by Union officers is for mutually agreed upon committee and task force assignments. These committees and task forces are considered by the parties to be necessary to deal with issues of mutual concern to the parties. The restrictions that are in the firefighters agreement on time paid for Union officers are only for the purposes of conducting Union business, attending conventions, educational seminars, conferences and other forms of Union business. That agreement, however, excludes from the limitation the hours spent by Union officers at grievances and/or other disciplinary hearings, meetings

of City sponsored committees, or other mutually beneficial functions related to labor-management relations. The release time provided in this contract is not excessive and is common relative to the administration of collective bargaining agreements in the public sector.

A sub-committee considered the City's proposals and recommended only minor changes to this article. The parties agreed to except the recommendation of the sub-committee to delete a line regarding the referral of problems to the labor-management committee, and added a line that states that Union officials must complete a Form 25S (leave form) when they take leave for Union representation.

Recommendation

It is recommended that no change be made to Article 8 other than the changes recommended by the sub-committee.

ARTICLE 46 - LEGALITY

During the hearing, the parties agreed to the following language change in Article 46. The first paragraph shall read as follows:

It is the intent of the City and the Union that this Agreement comply, in every respect, with applicable legal statutes, governmental regulations which have the effect of law, and judicial opinions except where this Agreement prevails over current law in accordance with the provisions of ORC Chapter 4117. (The remaining language remains unchanged).

NEW ARTICLE - RETURN TO WORK

The Union proposes additional contract language which contains the language set forth in the Personnel Policies and Procedures Manual on returning to work after an employee has been off work on an injury with pay leave. The Union wants to include in the collective bargaining agreement the agreements reached between the parties on this subject in the Return to Work Committee which was

established under Appendix F of the current agreement. Since the parties agreed on these policies and procedures, the Union wants to include the language in the collective bargaining agreement so that it is subject to the grievance procedure.

The City agreed to the policies and procedures which are contained in the manual on this issue, but it opposes any additional language to be included in the collective bargaining agreement.

Recommendation

The Return to Work Program is a joint effort on the part of management and labor to minimize the impact of an impairment (resulting from injury, illness, or disease) on a worker's capacity to work safely and competitively. It appears that the program is intended to operate separate and apart from the collective bargaining agreement. A committee is established to represent the unique needs and interests of the disabled employees. Included within the committee are two AFSCME representatives. It does not appear that the parties intended to subject the findings and determinations of the committee to the grievance procedure under the collective bargaining agreement. This relatively new program should be permitted to operate within the bounds of its mission outside of the collective bargaining agreement for some period of time in order to determine its effectiveness. The Union's proposal that the Return to Work Program be incorporated into the collective bargaining agreement is not accepted at this time.

ARTICLES 22 AND 44 - NEW LANGUAGE

The Union requests that the health insurance plan descriptions and the wage rates for all bargaining unit classifications be attached to and included within the collective bargaining agreement. The employees should have this information for easy reference as a matter of convenience. The Union believes that it is unusual for this CBA not to list the wage rates for each job classification.

The City opposes this request because it would require an added unnecessary cost to the budget. The wage rates are available to employees from other sources including the internet and they already receive summary plan descriptions relative to their health insurance.

Recommendation

I recommend that the Union's request not be accepted because there was no evidence presented at the hearing that employees are disadvantaged in any material request because of the way this information is presently being disseminated.

The parties have agreed to other language which has been referred to as "housekeeping" issues. It is recommended that all agreements made by the parties on these issues be incorporated into the collective bargaining agreement. Included in this category of agreements, is agreed upon language in the grievance procedure, the filling of vacancies/promotions, collective actions, additional language with respect to on the job injuries, and additional language clarifying when an employee becomes entitled to take the birthday holiday. All of these agreements shall be incorporated into the collective bargaining agreement.

Date August 27, 2001



Mitchell B. Goldberg, Appointed Fact Finder

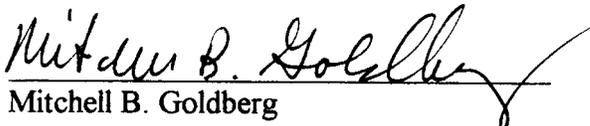
CERTIFICATE OF SERVICE

This Fact Finding Report was served upon the following parties on the 27th day of August, 2001 by ordinary U.S. Mail.

Dale A. Zimmer, Administrator, Bureau of Mediation
State Employment Relations Board
65 E. State Street, 12th Floor
Columbus, Ohio 43215-4213

Leslie Ghiz, Esq.
City of Cincinnati Law Department
Centennial Two Plaza - Suite 200
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Robert Turner, Regional Director
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1213 Tennessee Ave.
Cincinnati, Ohio 45229



Mitchell B. Goldberg

City of Cincinnati
AFSCME negotiations
Tentative Agreement #1
June 27, 2001

Article 25 - Other Leaves

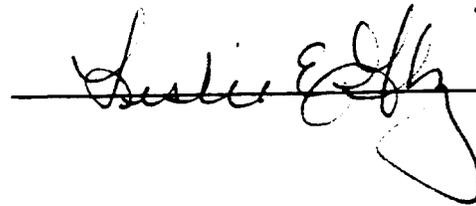
The parties hereby agree to amend Article 25 by changing the current subsection I to subsection J and include the following as subsection I:

- I. Notwithstanding the provisions of the Family and Medical Leave Act (FMLA), the employer shall not require an employee who has fully depleted his/her SWP or SWP-M balance to substitute any vacation or compensatory leave earned under this Agreement for unpaid leave taken under FMLA without consent of the employee.

FOR THE UNION

FOR THE EMPLOYER





6/22/01
Date

ARTICLE 17 GRIEVANCES

A grievance is an allegation by an employee or the Union that the terms of the Agreement between the Union and the City have been violated or misrepresented. Disciplinary actions which result in written reprimands, suspensions of three (3) days or less, loss of part or all of vacation, are subject to appeal through the grievance procedure. When any such grievance arises, the following procedure shall be followed:

STEP 1. An employee who has a grievance shall, within ten (10) working days of the date which the employee becomes aware of the incident precipitating the grievance, initiate orally the problem solving technique, (discussions and conciliation), to the immediate Division 0 supervisor or to the next highest level of supervision. ~~The immediate Division 0 supervisor or next highest level of supervision~~ That supervisor, employee, and [L]ocal [U]nion [S]teward shall meet within ten (10) working days of notification. The purpose of the meeting is an attempt to resolve the grievance. The Employee or Local Union Steward shall provide an official Grievance Form at the beginning of this meeting setting forth the details of the grievance (i.e., the facts upon which it is based, the article(s) violated, and the relief requested) and signed and dated by the employee and his/her Steward. ~~If the grievance is resolved,~~ [T]he supervisor hearing the grievance shall render an answer in writing stating the reasons for granting or denying the grievance to the employee, the [L]ocal [U]nion [S]teward, and the [L]ocal [U]nion ~~president~~ Official within ten (10) working days after the Step 1 meeting.

STEP 2. If the employee's grievance is not satisfactorily settled at Step 1, the Union may, within ten (10) working days after receipt of the Step 1 answer, appeal the grievance to the grievant's Division Head. ~~The appeal should be submitted on an official Grievance Form (setting forth the details of the grievance (i.e., the facts upon which it is based, the article(s) violated, and the relief or remedy requested) and be dated and signed by the employee and his/her Steward.~~ The Division Head shall meet with the employee, employee's steward and Local Union Official within ten (10) working days after receipt of the written grievance in an attempt to adjust the grievance, and shall render an answer in writing stating the reasons for granting or denying the grievance to the employee, the employee's Steward, and the Local Union Official within ten (10) working days after the Step 2 meeting.

STEP 3. If the grievance is not satisfactorily settled at Step 2, the Union may, within ten (10) working days after the receipt of the Step 2 answer, appeal the grievance to the Department Head. The Department Head or his/her designated representative shall meet with a Local Union Official and Ohio Council 8 Staff Representative within ten (10) working days after receipt of the written appeal in an attempt to adjust the grievance, and shall render an answer in writing stating the reasons for granting or denying the grievance to the employee, the employee's

Steward, the Staff Representative and the Local Union Official within ten (10) working days after the Step 3 meeting. At the request of the Union, the aggrieved employee and the employee's Steward shall be released to attend the Step 3 meeting.

STEP 4. If the grievance is not satisfactorily settled at Step 3, the Union may, within ten (10) working days after receipt of the Step 3 answer submit the grievance to the ~~City Manager or Chief Executive Officer~~ Human Resources Director or Designee for grievance mediation. ~~The procedures for grievance mediation are delineated in Appendix (H).~~

APPENDIX H GRIEVANCE MEDIATION PROCEDURES

In recognition of the desirability of resolving disputes by mutual agreement, AFSCME Ohio Council 8, and AFSCME locals 190, 223, 240, 250, 1543 and 3119, and the City of Cincinnati, hereinafter referred to as the "parties", mutually agree to the following policies and procedures for the mediation of grievances pending arbitration, ~~pursuant to the provisions of Article 17 of the collective bargaining agreement between the parties.~~

1. Grievance mediation is available to the parties after Step 3 of the grievance process.
2. All grievances will be referred to mediation unless the parties mutually agree not to mediate a particular grievance.
3. The parties shall mutually agree to a mediator to serve in the capacity of grievance mediator. The mediator must be an experienced mediator and/or arbitrator with mediatory skills. The mediator may not serve as an arbitrator for the same issue for which he or she is a mediator.
4. The mediator will be asked to provide a schedule of available dates. Cases will be scheduled in a manner which assures that the mediator will be able to handle multiple cases on each date, unless otherwise mutually agreed.
5. The grievant shall have the right to be present at the mediation conference. The ~~City Department~~ and the Union may each have no more than three (3) ~~additional~~ representatives as participants in the mediation effort. The Human Resources Department shall have at least 1 representative as a participant in the mediation effort. Persons representing the parties shall must be vested with full authority to resolve the issues being considered.
6. The mediator may employ all of the techniques commonly associated with mediation, including private caucuses with the parties. The taking of oaths and the examination of witnesses shall not be permitted, and no verbatim record of the

proceeding shall be taken. The purpose of the mediation effort is to reach a mutually agreeable resolution of the dispute. There will be no procedural constraints regarding the review of facts and arguments. There shall be no formal evidence rules. Written materials presented to the mediator will be returned to the party presenting them at the conclusion of the mediation conference.

7. Mediation efforts will be informal in nature and shall not include written opinions or recommendations from the mediator unless mutually agreed to by the parties and the mediator. In the event that a grievance which has been mediated is appealed to arbitration, there shall be no reference in the arbitration proceeding to the fact that a mediation conference was or was not held.

8. At the mediation conference the mediator shall first seek to assist the parties in reaching a mutually satisfactory settlement of the grievance which is within the parameters of the collective bargaining agreement. If a settlement is reached, a settlement agreement will be entered into writing at the mediation conference. The mediator shall not have the authority to compel the resolution of a grievance.

9. If a grievance remains unresolved at the end of the mediation conference the mediator may, if requested by either party, render a verbal opinion as to how the grievance is likely to be decided if it is presented at arbitration. This opinion is nonbinding and inadmissible in any subsequent arbitration proceeding.

10. If a settlement is not reached, the Union may appeal the grievance to arbitration. All applicable time limits for appealing a grievance to arbitration contained in the collective bargaining agreement shall commence on the day of the mediation conference.

11. The dates, times and places of mediation conferences will be determined by mutual agreement of the parties. Each party shall designate a representative responsible for scheduling mediation conferences.

12. The parties agree to schedule a minimum of one day a month, if necessary, for mediation efforts during the time period of this agreement.

13. The fees and expenses to be charged by the mediator shall be negotiated between him or her and the parties. Fees and expenses for grievance mediation shall be paid equally by the City and the Union.

14. The parties agree to schedule a day of orientation and training to be attended by those individuals who will be participating in the mediation proceedings on behalf of the parties.

15. The parties agree to mutually examine and review the grievance mediation process and procedures adopted herein twelve (12) months from the date of execution of the collective bargaining agreement. The purpose of said examination and review is to

revise, alter, correct or otherwise improve the grievance mediation process and procedures if such is deemed necessary.

STEP 5. If the grievance is not satisfactorily settled at Step 4, the Union may, within thirty (30) calendar days from the date of the grievance mediation conference, or from the date when the parties mutually agree to waive the mediation conference, submit the ~~matter~~ grievance to the Human Resources Director or Designee for ~~to~~ arbitration.

It is agreed to establish a panel of five (5) permanent arbitrators to hear all arbitration cases between the parties. Within 30 ~~calender~~ calendar days after the signing of the Agreement, the City and Union will meet to select the arbitrators and to establish the method of selection from among the five arbitrators on the panel.

The parties agree further to utilize the American Arbitration Association for the administration of all arbitrations including the notification to arbitrators on the panel. The City and Union will use the rules as established by the American Arbitration Association. In the event the parties cannot fill vacancies on the panel, either initially or during the term of the Agreement, the rules of the American Arbitration Association will prevail for the purpose of filling such vacancy.

Once each year the parties will review the list of arbitrators. Either party may remove an arbitrator during this annual review. The replacement will be by mutual agreement or based on the rules mentioned above. The annual review will take place at the anniversary date of the Agreement.

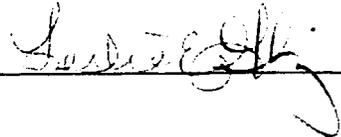
In the absence of a permanent panel, American Arbitration Association Rules will prevail for the selection and administration process.

- A. The fees and expenses of the arbitrator shall be borne equally by the City and the union. Furthermore the aggrieved employee, his Steward, and the Local Union President, and any necessary witnesses shall not lose any regular straight-time pay for time off the job while attending an arbitration proceeding.
- B. In the event a grievance goes to arbitration, the arbitrator shall have jurisdiction only over disputes arising out of grievances as to the interpretation and/or application of the provisions of this Agreement (including disciplinary actions to the extent permitted herein), and/or compliance with the provisions of this Agreement, and in reaching his decision the arbitrator shall have no authority to add to or subtract from or modify in any way any of the provisions of this Agreement. The arbitrator shall issue a decision within thirty (30)

calendar days after submission of the case to him (unless otherwise agreed to by the parties).

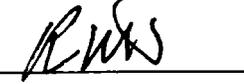
- C. All decisions of arbitrators consistent with Paragraph B of this Article and all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive and binding on the City, the Union and the employees. A grievance may be withdrawn by the Union at any time during ~~Steps 1, 2, or 3~~ of the Grievance Procedure, and the withdrawal of any grievance shall not be prejudicial to the positions taken by the parties as they relate to that grievance or any other grievances.
- D. The time limits set forth in the Grievance Procedure may be extended by mutual agreement of the City and the Union. Any grievance not timely presented or timely processed by the Union shall be considered settled on the basis of the City's last answer. If the City fails to answer a grievance in a timely manner, the Union may move the grievance to the next step of the Grievance Procedure.
- E. A policy grievance which affects a number of employees may initially be presented by the Union at Step 2 of the Grievance Procedure.
- F. If a grievance on a pay step denial is granted, a gross pay adjustment will be made to the date the pay step should have gone into effect.
- G. A failure of probation is not subject to the Grievance Procedure.
- H. The Union may amend a Grievance at Step 3. All amendments must be in writing setting forth the details of the amendment (i.e. the facts upon which it is based, the additional article(s) violated, and the relief requested.)

For the City:



Date 7/17/01

For the Union:



Date 7/17/01

**ARTICLE 20
FILLING OF VACANCIES
PROMOTIONS**

~~Following expiration of currently existing employing unit eligibility lists,~~ Vacancies in positions above the lowest rank or grade of any category in the classified service shall be filled insofar as practicable by the promotion of present employees on a City-wide basis. Eligibility and qualifications shall be defined by the Civil Service Commission.

NON-TESTED POSITIONS

- A. For the specific classifications listed below, the following method of ~~promotion,~~ **shall be used to create an eligibility list** within the respective employing unit. ~~shall be used after any current eligible list expire.~~ **Promotions off the existing eligibility list may include a practical and/or oral examination prepared according to Federal Uniform Guidelines.**
1. The employee must meet the Civil Service Commission qualifications for the classification.
 2. The employee's last service rating must be ~~80~~ **meets expectations** or higher.
 3. The employee's rank on the eligible list will be according to layoff seniority date.
 4. Appointments will be made in descending order from the top of the eligible list.
 5. If two or more employees have the same layoff seniority date, the tie will be broken first by the service rating grade; secondly by time stamps and lastly by lottery.
- B. The classifications that are to be filled by the procedure outlined above are:

Airport Maintenance Worker
 Asphalt Plant Equipment Worker
 Asphalt Raker
 Automotive Street Cleaning Equipment Operator
 Cement Gun Nozzle Operator
 Cement Gun Utility Worker
 Custodian
 Maintenance Machinist Helper

Mechanical Utility Worker
Plant Maintenance Trainee
Sanitation Specialist
Sanitation Truck Driver
Stockhandler
Storm Sewer Maintenance Specialist
Traffic Aids Worker
Tire Repair Worker
Wastewater Collection Pipelayer
Water Meter Repairer
Welder Helper
Water Works Maintenance Worker

- C. The classification list included above may be expanded or contracted by the Labor Management Committee based on the appropriateness of Civil Service testing.

TESTED POSITIONS

~~(C)~~ A. When a promotional examination involves a classification within the established bargaining unit, the employee with the highest final grade shall be appointed. The City will continue to move in the spirit of filling vacant positions through the promotional examination process which may include written and/or practical and/or oral examinations prepared according to Federal Uniform Guidelines. When a vacancy occurs in a classification and the vacancy is to be filled and there is no eligibility list or related list for the classification, the City shall within 90 days request the Civil Service Commission to schedule an examination for such classification.

~~(D)~~ B. An employee failing his probationary period on promotion shall be restored to his previous classification in the department from which he was promoted. If there is no vacancy in the department, he shall be restored to his previous classification in the City service. His salary step is that which he would have been on had he remained in the lower classification.

~~(E) C.~~—An employee who is promoted as a result of an open competitive examination and who fails to qualify on his probation period will be returned to a position in his former classification with the consent of the Civil Service Commission, if a vacancy exists in his former classification. If a period of time occurs between his failure and his receiving a new appointment he shall receive all credits due him as if he had continuous employment. Placement can also be considered in a related classification.

~~(F)~~ D. An employee who has resigned in good standing, may be recommended for reinstatement if a vacancy exists in the same or similar classification within one (1) year of the date of his resignation. Reinstatement will not be approved if:

1. A layoff recall list exists in the classification;
2. The department has seasonal employees in the classification;
3. A promotional exam list exist for the position;
4. A complete certification has been made from a list and the eligibles notified.

~~(G)~~ E. Vacancies in job assignments such as lead worker where examination is not required will be filled from among employees in the appropriate classifications. The vacancy shall be first offered to employees according to job classification seniority and ability to perform the work of the vacancy. **If no employee is interested in the vacant assignment, the least senior employee with the ability to perform the work in the classification shall be assigned if not on probation.**

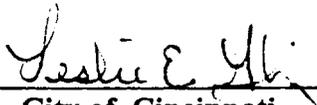
~~(H)~~ F. Time worked on a temporary promotion basis may not be used to meet the qualifications for a higher level position.

LATERAL TRANSFERS

To fill any opening in the bargaining unit, agencies shall first consider filling such openings using existing City employees within the appropriate classification before requesting an eligible list. All such openings will be posted city-wide as lateral transfer opportunities.

At a minimum, the three qualified applicants with highest classification seniority will be interviewed. All employees that interview for the position will be notified by letter of the final outcome.

Tentative Agreement



City of Cincinnati

7-17-01



AFSCME

**ARTICLE 37
NON-BARGAINING UNIT EMPLOYEES**

The City recognizes that Appendix A (Bargaining Unit Classifications) represents positions assigned exclusively to this bargaining unit. The City will agree that full-time equivalent (FTE) positions that are in the bargaining unit may not be underfilled by a Municipal Facility Worker (MFW) unless otherwise provided in this section. Situations where seasonal, temporary or emergency work is required to supplement the agency workload, seasonal employees or ~~Municipal Facility Workers~~ MW's may be used to perform said work. ~~Municipal Facility Workers~~ MW's can only be used to perform unskilled duties as identified by Civil Service Rules, or where identified by Memorandum of Understanding with the Union. It is recognized that MFW's have been used to fill-in for skilled entry level clerical duties. It is agreed that, recognizing the need to complete work, MFW's cannot be used to temporarily underfill in an entry level clerical position longer than thirty (30) days; if an examination is required, the time is extended until three (3) weeks after posting of the eligibility list. ~~Municipal Facility Workers~~ MW's may not exceed fifteen hundred sixty (1560) hours, ~~as stipulated by State and Municipal Laws.~~

When an MW reaches the 1560 hour limit within a 12 month period, unless otherwise mutually agreed to by the Agency and AFSCME, such employee must either be laid off or hired by the Agency as a full time employee.

If an MW is laid off within a 12 month period because he reached the 1560 hour limit, he shall not be re-hired as an MW until after the anniversary date of his first hire. If an Agency re-hires an MW who has reached the 1560 hour limit before the expiration of the 12 month period, the MW shall be hired as an unskilled full-time employee within two pay periods of the date of re-hire.

For purposes of this Article, "12 month period" begins on the date of the MW's first hire.

If an Agency is currently using or perceives a need to use MFW's in a manner other than specified in this Article, the Agency must open discussion with ~~the Union~~ AFSCME and present the reasons. If ~~the Union~~ AFSCME and the Agency cannot reach agreement regarding the body of work, the work will be suspended until a mutual agreement is obtained, unless the Division or Department Head declares an emergency and has offered any higher-paying work to bargaining unit members prior to assigning work to MFW's. The parties will continue to meet to reach mutual agreement with recognition that the Union can grieve the matter if mutual agreement is not reached.

The City will notify ~~the Union~~ AFSCME every 120 days of the name, nature of work, location and hours worked by ~~Municipal Facility Workers~~ MW's in all Agencies.

No ~~Temporary, Seasonal or Municipal Facility Worker~~ MW's, will perform work that is normally performed by the bargaining unit where such replacement will

cause loss of a job or loss of scheduled or call-out overtime opportunities, or where overtime is an extension of the bargaining unit employee's normal shift, except as provided in this article.

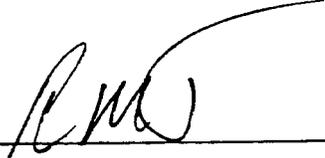
~~The Union~~ **AFSCME** acknowledges that the City may, from time to time, use contract employees to supplement work on a temporary, as needed basis.

The City agrees, work normally performed by employees in the bargaining unit covered classifications shall not be contracted or subcontracted temporarily unless that there are insufficient employees within the Agency to perform the necessary work, or bargaining unit covered employees do not have the skill, ability, technical knowledge, or necessary tools and equipment to perform such work.

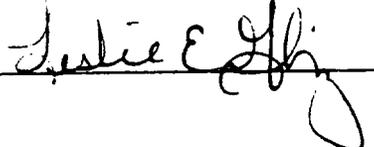
The City agrees any temporary contracting or subcontracting shall not result in layoff, reduction in pay or position of bargaining unit covered employees, the circumventing of any provision of this Agreement or depleting the bargaining unit.

Temporarily contracted work normally performed by employees in the bargaining unit which extends beyond one hundred twenty (120) days shall be reported to ~~the Union~~ **AFSCME** for review of impact on bargaining unit employees. The Agency will meet with ~~the Union~~ **AFSCME** upon request.

For the Union:



For the City:



7-13-01
Date

ARTICLE 16
CORRECTIVE ACTION

- A. The Union recognizes the right of the City to take corrective action with employees for just and proper cause. Corrective action may include consultation, oral and written reprimands, loss of all or part of vacation, suspension, reduction of pay within the pay range, demotion, or dismissal. ~~The Labor Management Committee will develop City Wide guidelines for consistent corrective action and training of management and union officials on these guidelines.~~
- B. In cases of dismissal, the employee is entitled to payment of all wages due to him with the issuance of the next regular paycheck.
- C. Oral or written departmental reprimands may not be issued without a meeting between the employee and the supervisor involved. If a decision is made to issue an oral or written reprimand, the oral or written reprimand shall be issued within thirty (30) days of the date the supervisor becomes aware of the precipitating incident. A copy of the written reprimand shall be sent to the local Union Steward (or to the local Union President if no steward exists). In instances where an oral or written reprimand results from a pre-disciplinary hearing, the thirty (30) day time limit does not apply.
- D. Documentation of oral reprimands, which are maintained in the supervisor's files, and written reprimands shall be removed from the employee's records after one year provided no other corrective measures have been issued within that year. All other corrective actions shall be removed from the employee's records after three years, provided no suspension or other action greater than a written reprimand has been sustained against the employee in that three-year period.
- E. Employees are entitled to, **and must use**, Union representation at any corrective action hearing, investigation, or interrogation. **However, the employee may choose to represent himself, so long as a Union representative is present at such hearing.** Investigations and hearings for bargaining unit employees shall be conducted in accordance with the Supervisor's Disciplinary Manual and Hearing Officer's Manual, which are issued by the City Personnel Department.

- F. No employee shall be disciplined (except for oral and written reprimands and failing to qualify at the end of a probationary period) without a hearing ~~by the head of their department or division~~, unless the employee specifically waives the hearing in writing. Notice of the reasons for the ~~disciplinary actions~~ **charges** shall be given to the Local Union Staff Representative at least five (5) working days prior to the hearing. It is the responsibility of the official hearing the charges to advise the employee of his right to representation before the date of the hearing. **Employees and management are entitled to no more than two (2) representatives at the hearing. Prior to, or at the hearing, the Union may request and the hearing officer shall provide, any information pertaining to the charges.**

In special cases, the employee may be suspended without pay pending a hearing. In such cases the hearing shall be held within five (5) working days of the suspension. If, following the hearing, the employee continues to be suspended without pay, the final determination shall be completed within ten (10) working days. If no determination has been made within ten (10) working days of the suspension, the employee will return to paid status on the eleventh (11th) working day, and final determination shall be completed with the time lines outlined in paragraph (H2) of this article.

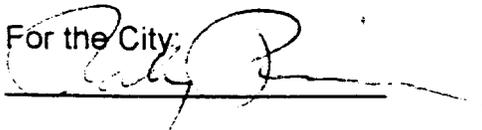
If an employee is suspended with pay, the hearing shall be held in accordance with Paragraph (H) of this article.

- G. An employee may appeal a written reprimand commencing at Step Two (2) of the Grievance Procedure. Consultations and oral reprimands are not appealable through the ~~g~~ **Grievance p** Procedure. All other corrective action may be appealed beginning with Step Four (4) of the grievance process or may be appealed through the Civil Service Commission, but not both. Such grievances must be in proper written form.

H. Time lines and notifications:

1. The charging supervisor must make a request for a pre-disciplinary hearing not later than twenty (20) working days from the date upon which he becomes aware of the precipitating incident(s). The supervisor's request for a pre-disciplinary hearing must be forwarded to the agency and copied to the Union Staff Representative.
 2. The final disposition of the matter (~~exoneration or formal notice of corrective action~~), **which shall include the Final Form 32 with attachments and the hearing summary**, must be delivered to the employee and union within fifty (50) working days from the date of the request for a pre-disciplinary hearing. This notice must be forwarded to the union by certified mail, return receipt requested. It must be postmarked not later than fifty (50) working days after the pre-disciplinary request date. Failure to comply with these timelines will result in the dismissal of the allegations against the employee.
- I. The City and the Union will jointly conduct ~~initial and~~ ongoing training for supervisors and union officials regarding ~~the implementation of this article of the labor agreement. The provisions of this article will become effective sixty (60) days after City Council's approval of the labor agreement.~~
- J. As it pertains to the time lines in the Article, Working Days are defined as Monday through Friday, not counting holidays listed in Article 15, Section A of this agreement. **As it pertains to the final disposition, fifty (50) working days begins one (1) working day after the date of the request for a pre-disciplinary hearing.**

For the City:



For the Union:



Date:

7/5/01

ARTICLE 24
INJURY ON THE JOB

- A. Whenever a permanent employee of the City of Cincinnati becomes injured on duty, he shall report the injury to supervision as soon as possible, but no later than 24 hours after the end of the shift in which the injury occurs. Each department shall develop a centralized reporting system for injuries that occurred on the job but which the employee only became aware of within 24 hours after that shift. On the job injuries reported more than 24 hours after that shift will need to be justified by the employee. The Supervisor shall complete the appropriate injury report by no later than the end of the following workday following the report of injury on the job. The employee shall be entitled to his salary in full for the period of such injury as provided herein, not to exceed one year. The period may be extended not to exceed one additional year by the City Manager, or Chief Executive Officer, if the employee is a bed patient in a hospital. Except in the case of continuous hospitalization, no payments shall be made for injury arising after eighteen (18) months from the date of injury.

The City Manager or one designated by the City Manager shall review each case and extension every three (3) months to determine whether the employee shall be continued on the payroll. As a condition precedent to receiving the benefits provided for in this section the employee shall assign to the City the portion of his cause of action against any third party or parties responsible for his injury in the amount of the payments made by the City pursuant to this section.

- B. A permanent employee injured on the job must be sent to the City physician for examination, **as promptly as possible**, within the first two weeks, unless hospitalized. In the event the injured employee is unable to see the City physician within the two-week period, the employee and the supervisor shall agree to an acceptable date when the employee can be examined. The employee is responsible to promptly provide appropriate medical information from the employee's physician, supporting the IWP claim, to the agency and the Union.

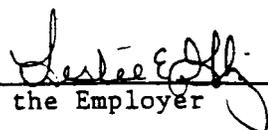
If there is a dispute between the employee's physician and the City's Physician regarding IWP, the agency shall promptly forward the information to Risk Management for review. In the event that there is a disagreement between the City physician and the employee's personal physician, the Union and the City shall agree to the selection of a third physician.

The third physician shall make an examination of the employee and a recommendation as to the issues in dispute. Cost of such examination by the third physician shall be borne equally by the City ~~and~~, the Union ~~and~~ **the employee**. The decision of the third physician shall be final and binding upon both parties.

- C. A Worker's Compensation Claim should be filed by the employee for such injuries. The Agency is ~~encouraged~~ **required** to have the proper forms available and to assist the employee in completing the forms.
- D. Except as provided below, injury with pay benefits shall not be paid for the first forty (40) hours of the disability. The first forty (40) hours of the disability period shall be chargeable to sick with pay, vacation, compensatory time, if available, or sick without pay.
- E. In case of injury resulting in the treatment by an emergency room, outpatient surgery, or in-patient hospitalization due to injury on the job, the first forty (40) hours of the disability period shall be compensated as injury with pay leave and shall not be chargeable to other leave. The City Physician will determine if treatment by an emergency room is a medical emergency supporting the Injury with Pay claim. **The determination of the City Physician may be submitted to a third party physician, the cost of which shall be borne equally by the city and the employee. The decision of the third physician shall be final and binding on both parties.**
- F. An employee on injury with pay leave shall keep the City informed as to his condition and expected date of return to work. The proper form for reporting this is City Form 30-S "City of Cincinnati Physician's Statement." Daily reporting by the employee shall not be required provided the employee contacts the proper supervisor at least once a week. In case of long-term disabilities, the City and the employee shall establish a reasonable reporting procedure. An employee who is hospitalized shall not be required to report during the term of hospitalization.
- G. **Except for cases of continuous hospitalization, individual cases that require medical treatment beyond 18 months may be submitted by AFSCME to the Human Resources Director for consideration for extending the IWP period. The Human Resources Director's recommendation shall be submitted to the City Manager for approval or rejection.**



For the Union

 7-2001

For the Employer



Date

**ARTICLE 15
OBSERVANCE OF HOLIDAYS**

- A. The following Holidays with pay are celebrated by all members of the bargaining unit including 3/4 time employees:
1. New Year's Day (January 1)
 2. Martin Luther King's Birthday (3rd Monday in January)
 3. Presidents' Day (3rd Monday in February)
 4. Memorial Day (Last Monday in May)
 5. Independence Day (July 4)
 6. Labor Day (1st Monday in September)
 7. Veterans Day (November 11)
 8. Thanksgiving Day (4th Thursday in November)
 9. Day After Thanksgiving
 10. Christmas Day (December 25).
- B. Effective January 1, 1996, the Birthday Holiday may be taken at any time during the calendar year with the approval of the immediate supervisor and based on vacation rule. This day must be taken within the calendar year and not to be carried over to the next year. The approval of the use of Birthday Holiday is subject to Article 21, section "J". **For the purpose of the Birthday Holiday, new hires are only entitled to the Birthday holiday if his/her birthday falls during the first pay period of his/her hire date or thereafter. New employees whose birthdays fall prior to his/her first pay period are not eligible for the Birthday Holiday in that calendar year.**
- C. Holidays are celebrated and paid differently according to an employee's work schedule.
- D. Employees working a normal 5-day, Monday-Friday week (standard shift): if any of the above Holidays falls on a Sunday, the following Monday is considered the Holiday. If any of the above Holidays falls on a Saturday, the preceding Friday is considered the Holiday. These employees will receive Holiday pay if they work the observed Holiday (Monday or Friday). If the employee works the actual Holiday (Saturday or Sunday), the regular overtime rule applies.
- E. Employees working normal daytime hours including weekends and employees working rotating shifts on seven day operations (non-Standard shift): These employees will be paid Holiday pay for working the actual Holiday and not the observed Holiday. If the actual Holiday falls on the

employee's normal day off, he must be given another day off or another day's pay. If the department elects to give the employee another day off and actual Holiday falls on the employee's first off day, they must give the day off preceding the actual Holiday; if the actual Holiday falls on the employee's second off day, they must give the day off after the actual Holiday.

F. For the purposes of this section, Holidays shall be understood as extending from 12:01 a.m. to Midnight, the day the majority of hours are scheduled.

G. An employee forfeits Holiday pay when:

1. He is off without pay for the week of the Holiday.
2. He is Absent Without Leave on either the work day before or work day after the Holiday.
3. He is off without full pay on both the work day before and the work day after the Holiday.
4. He is Absent Without Leave on a Holiday on which he is routinely scheduled to work.

H. If an employee is off on either the work day before or the work day after a Holiday and is in a pay status for the day he is off he will be paid for the Holiday.

Date: 7-27-01

For the Union:



For the City:



ARTICLE 8

All sections stay the same except "D".

D. Delete second paragraph, replace with:

"Each Union Official will be required to complete a Form 25^S per daily use of union release time. Leave will be designated as 'other'. A "Union Official" is a President, Vice President, Steward or Alternate Steward."

For the Union:

Robert D. Turner

For the City:

Jessie E. G. G.

7-25-01
Date

**ARTICLE 23
SICK LEAVE**

- A. Sick Leave With Pay: Each permanent employee who works full-time will be credited with two (2) hours of sick leave for each week of service with no limit on the amount of sick leave accumulation. Employees who work at least three-fourths (3/4) time but less than full time will be credited with a prorated amount of sick leave. In case of absence without pay during a bi-weekly pay period, full credit will be given if the employee works more than forty (40) hours. One week's credit (2 hours) will be given if the employee works one (1) to forty (40) hours, inclusive, in the pay period.
- B. Employees with break in service: Any person who reenters City employment within one (1) year shall be credited with any accumulation of sick leave balance remaining at the end of his previous service. With the exception of military leave, no credit is given if the employee was out of service more than one (1) year.
- C. Sick leave can be used, with the approval of the department, in any of the following instances:
1. Sick With Pay (SWP): Sickness or off-duty injury to the employee himself/herself. Sickness or injury caused by outside employment cannot be charged to SWP.
 2. SWP while on vacation: An employee who becomes sick and must be hospitalized while on vacation, shall be allowed to charge the time to his sick leave if it is available.
 2. SWP-Family (SWP-F): It is understood that SWP instances are separate and distinct from SWP-F instances. SWP-F shall be granted for the reasons spelled out below. For purposes of SWP-F, immediate family is defined as husband, wife, parent, stepparent, parent-in-law, child, sister, brother, grandchild, grandparent, legal guardian, or member of the immediate household. All references to immediate family in this article will include this list of family members.
 - a. Official quarantine - for the duration of the quarantine.

- b. Illness of Family member - One (1) working day to care for and make arrangements for a sick or injured member of the immediate family. If additional time is needed it shall be granted by the immediate supervisor provided the employee submits, written verification by the treating physician regarding the nature of the illness and the length of time off to care for a sick member of the immediate family. An employee with four (4) or more instances of SWP-F use, as outlined in Article 23, paragraph (C) (3) (b), during the twelve (12) month period beginning and ending with the employee's annual performance rating date will be required to provide verification of the illness of the involved family member from an appropriate official including: physician, school principal or designee, licensed day care provider, or other licensed health care professional.

- c. Spouse leave for childbirth: A spouse shall receive one (1) working day on the day the child is born and one (1) day on the day the child is brought home. If additional time is needed refer to SWP-F (C.3.b.) or utilize family leave act.

4. Verification for SWP and/or SWP-F Usage

a. Definitions:

- 1. Instances: An instance for purposes of this article is defined as an occasion starting with four (4) or more hours regardless of duration.

 - 2. Physician: For purposes of this article physician shall mean licensed doctoral level health care provider who is providing the treatment.
-
- b. Four (4) or more instances: An employee with four (4) or more instances of SWP use during the 12 month period beginning and ending with the employee's annual performance rating date will be required to provide a physician's verification of illness and inability to work.

 - c. Duration of Instance: If any instance of SWP exceeds three (3) days, the supervisor may ask for a physician's verification.

- d. Usage of greater than 80 hours: At any time during the 12 month period beginning and ending with the employee's annual performance rating date, when an employee's accumulation of SWP and SWP-F usage totals 80 hours regardless of the number of instances, the supervisor may review the usage and choose to request a physician's verification for any subsequent usage during the 12 month period.
 - e. Patterned usage: When an employee shows a pattern of usage of SWP and/or SWP-F as evidenced for example by a frequency or pattern contiguous to weekends, holidays, or vacation, a physician's verification of illness and inability to work will be required after three (3) instances during the 12 month period beginning and ending with the employee's annual performance rating date.
- 5. SWP-Maternity: Sick leave shall be granted to employees who are physically unable to work due to pregnancy, child birth, miscarriage, a related medical procedure, or recovery therefrom.
 - 6. SWP-Injury (SWP-I): is the use of SWP because of injury which occurred on the job according to the provisions of the contract.
 - 7. SWP-Adoption: SWP-A shall be granted for the period during which the primary care giving employee is unable to work immediately after the arrival of the adopted **infant child**. All adoptions must be legally executed and recognized by the State of Ohio.
 - a. Length of Leave for SWP-A - The duration of the leave is to be determined by the treating physician who must provide written verification of the need for and length of the leave. In no case shall the SWP-A leave exceed six weeks.
 - b. Prior notification of Adoption: The employee must notify the supervisor at least two weeks in advance of the arrival of the adopted **infant child**. However, emergency situations will not automatically result in denial.
 - c. Adopted child must be less than two (2) years old: No newly adopted child over two (2) years of age shall be covered by this benefit.

8. SWP-Death: SWP-D shall be granted in the case of death in the immediate family as follows:
 - a. Immediate family: Four (4) working days for the funeral shall be granted in the case of death of a husband, wife, parent, stepparent, parent-in-law, child, sister, brother, grandchild, grandparent, legal guardian, or member of the immediate household.
 - b. Relatives other than immediate family: In the event of the death of any relative, other than immediate family (**first cousins, nieces and nephews of the spouse, sister-in-law, brother-in-law, grandparent-in-law, uncles and aunts of the spouse**), an employee will be entitled to up to two (2) days to attend the funeral. Relatives do not include previous spouses or their relatives. Special cases requiring additional time may be taken up with the Personnel Director. The number of days an employee shall be entitled to take in one (1) calendar year, for other than immediate family, shall not exceed six (6) days.
9. Exemptions: **FMLA, SWP-A, SWP-D, SWP-M, SWP-I, or injury with pay (IWP)** shall not be counted against an employee as an instances for use of sick leave, or in determining the final rating on the employee's annual performance report. SWP-F shall not be counted against an employee in determining the final rating on their performance evaluation, however, it may be used in the comments section.
10. Sick with Pay Retirement (SWP-R): Sick leave conversion on death or retirement:
 - a. Sick leave conversion on death: If he/she has met the required age and length of service minimum, including time purchased for military service, he/she shall receive a lump-sum including time purchased for military service equal to one (1) hour for each one (1) hour of his SWP balance.
 - b. Sick leave conversion on retirement: if he/she has met the required age and length of service minimum, including time purchased for military service, he/she will be paid one (1) hour for every two (2) hours of his/her SWP balance but not more than 600 hours. An employee who retired, was paid SWP-R, then returned to service cannot be paid SWP-R beyond a sum total of 600 hours which will include those hours for which he/she has already been paid.

D. Paid Sick Leave Reciprocity:

1. Sell back of Accumulated SWP time: An employee shall have the option of receiving payment in cash for unused sick leave accumulated during the previous City pay year. The first payment for this benefit will be made in early 1983 for the 1982 pay year and each subsequent period of time thereafter. The payment will be made on or before February 15 of each calendar year. NO prorated payments or conversion will be made for employees leaving City service during the benefit year.
2. Ratio of Pay for SWP Sell Back: An employee can convert up to 60 hours of sick leave for 40 hours of pay (a 1 to 1.5 ratio) provided he/she has a sick leave balance of 200 hours after the last pay period of the pay year and has used no more than 24 hours of sick leave in that pay year. For the purposes of this section, sick with pay death will not be counted towards the 24 hour calculation. The hours of sick leave converted to cash will be deducted from the employee's sick leave balance. Unused or unconverted sick leave will be accumulated.
3. Notification of Option: An employee that is eligible and wishes to convert sick leave to cash must notify the appropriate payroll authority before January 10 of the same year the payment is made.
4. Rate of Pay for Sell Back: The payment will be made at the base rate of pay in effect in the last pay period of the benefit year. The pay rate will exclude special assignment pay, shift differential pay, temporary transfer pay, etc.

E. Personal leaves reciprocity for responsible usage of SWP/SWP-F:

Beginning on January 1, 1999, the following personal leave reciprocity plan will become effective:

1. ~~An~~ **permanent** employee will earn eight (8) hours of personal leave time if they use no more than ~~sixteen (16)~~ **eight (8)** hours of SWP and SWP-F combined between January 1 and June 30 of each year, ~~beginning in 1999~~ **if they have a 50 hour SWP balance on June 30**. Personal Leave time earned for this period may be taken during the second half of the year beginning on July 1 and ending on December 31. Personal Leave time must be scheduled with the approval of the supervisor.

2. An **permanent** employee will also earn eight (8) hours of personal leave time if they use no more than ~~sixteen (16)~~ **eight (8)** hours of SWP and SWP-F combined between July 1 and December 31 of each year, **if they have a balance of 50 hours of SWP on December 31.** Personal leave time earned for this period may be taken during the following first half of the year beginning of January 1 and ending on June 30. Personal leave time must be scheduled with the approval of the supervisor.
3. Personal leave time credited in any half year period must be used in the following half year period, or the time will be forfeited. There will be no accrual of personal leave time.

F. Sick leave benefit accrual rate: An employee's sick leave benefit accrual and accrual rate shall be determined by the provisions of Article 23 exclusively. Time previously spent in the employ of the state or any of its political subdivisions, or other public agencies, is specifically excluded. When calculating sick leave for employees covered by this Agreement the total shall not include sick leave earned and accumulated while in the employ of the state or any of its political subdivisions, or other public agencies. An employee who transfers from another public agency to the City shall not be credited with accumulated sick leave. It is expressly agreed that the contractual provisions contained in this section are intended to modify or replace the application of the statutory provisions set forth in O.R.C. 124.38 and any other statute or administrative regulation related to sick leave.

This Article shall also modify or replace any subsequent legislative enactments or administrative regulations concerning sick leave and in conflict with the provisions of this Article. Employees who have already received sick leave accumulation benefits as a result of outside employment shall not be affected by this change.

G. Dispute of Physician Verification: If the agency questions the treating physician's diagnosis or the length of absence, the employee may be sent to the City Physician for evaluation.

In the event there is a dispute between the treating physician and the City Physician, the affected employee has the right to a third, neutral physician's opinion whose decision will be final and binding on the City and employee. Cost of the third physician will be borne equally by the City, ~~union~~ and the affected employee. The union and City will agree to the selection of a third physician.

- H. Cooperation: Union and Management have agreed to cooperate in programs to eliminate unnecessary absenteeism and sick leave abuse. It is to the benefit of each employee to conserve his/her sick leave benefit. It is also to the benefit of each employee to conserve his/her sick leave as insurance against the effects of a long-term illness on both himself and his family.
- I. Corrective Action for Abuse: It is understood that the City retains its rights to utilize corrective action in cases of abuse which have been documented and investigated.

Date: 7.27.01

For the Union:



For the City:



ARTICLE 19

- A (Unchanged)
- B (Unchanged)
- C (Unchanged)
- D Shift differential shall be included in the regular rate used to compute overtime compensation and holiday pay. Shift differential shall be paid starting with the first day of such assignment.
- E A shift worker is paid the shift differential (if any) attached to his assigned shift for all continuous hours worked if he is not filling in for another employee on the shift before or after his assigned shift.

(Refer to appendix __ for examples)


Robert Turner


Leslie Ghiz

F-25-C1

ARTICLE 13

TEMPORARY TRANSFER

The City and the Union shall develop guidelines for the use of Temporary Transfer by developing specific language to fit its operational units.

- A. All employees shall be required to perform any and all temporary transfer duties of which they are capable regardless of their usual or customary duties. The agency shall notify the Union of any temporary transfer that exceeds 30 days. A copy of such notice will be given to Ohio Council 8 regional office. Temporary Transfer may be used:
1. To fill a vacancy caused by an employee being on sick or other approved leave of absence;
 2. To provide vacation relief scheduling;
 3. To fill an opening temporarily pending permanent filling of such opening;
 4. To meet an emergency situation;
 5. **To temporarily transfer an employee who is temporarily incapacitated because of an off the job injury or illness.**
- B. When an employee is temporarily transferred to substitute in another job classification with a rate of pay lower than his own for reasons (1) through (4), he shall receive his regular rate of pay. When he is temporarily transferred to a lower classification for reason (5), he shall receive the highest rate of pay applicable to his temporary transfer.
- C. **When an employee is ~~temporarily~~ transferred to perform the duties that are in a higher classification than his own, he shall be paid a minimum of four (4) hours at the higher rate of pay. If the employee performs the duties of the higher classification for more than four (4) hours, he shall receive the higher rate of pay for the entire shift. An employee who is temporarily transferred to a position from which he is displaced shall be paid at the rate of pay he would be receiving had he not been displaced for the duration of the temporary transfer.**
- D. When an employee is temporarily transferred to substitute for a position in a classification higher than his regular rate of pay for reason (5) above, he shall receive his regular rate of pay.

- E. All temporary transfers will be paid starting with the first day of such transfer.
- F. Any employee temporarily transferred in accordance with Paragraph C of this Article for more than six (6) months shall receive the higher rate of pay for Paid Sick Leave, Injury With Pay Leave, Vacations and Holidays. The City will not remove an employee from a temporary transfer for the purpose of avoiding payment of this benefit.
- G. Time worked on a temporary transfer basis may not be used to meet the qualifications for a higher-level position.
- H. Unless the Civil Service Commission provides otherwise, all vacancies which are to be filled by the temporary transfer shall be filled according to the following procedure:
1. In the event a civil service exam has not been administered within 180 calendar days from the date the vacancy occurred, the City shall post a notice of the opening in the proper employing unit from which eligibility is determined for seven (7) calendar days.
 2. The notice shall contain the job class title, rate of pay, division, area of the vacancy, shift and job description, and the person with is to receive applications.
 3. Employees who wish to be considered for the posted job must file a written application with the person designated on the notice be the ending of the posting period.
 4. All applications timely filed will be reviewed by the City and the will be awarded, on a temporary basis, in seven (7) calendar days on the basis of seniority, experience, skill, and ability to the work in question.
 5. Once a certified list exists for a classification where a vacancy has been filled by temporary transfer, the City shall fill the vacancy from the existing eligibility list.

Date 7/30/01

Union:

RMT

City:

Leslie E. [Signature]

ARTICLE 41
TUITION REIMBURSEMENT

The City supports and encourages employees to increase skills by continuing education through tuition reimbursement.

A full-time (at least 3/4 time) permanent or provisional employee is eligible for 100% tuition reimbursement for achieving a grade of A in an approved course, 80% tuition reimbursement for achieving a grade of B in an approved course, 60% for achieving a grade of C in an approved course. In courses that are graded on a pass/fail basis, 80% tuition reimbursement will be granted for a passing grade, 0% reimbursement for a failing grade. Reimbursement for up to six credit hours is available per academic session under the following conditions:

1. The employee has completed his probationary period or six months of employment, whichever comes first, before the course begins.
2. The education or training is obtained from an accredited school during non-working hours. An agency may allow courses to be taken during work hours, provided vacation and/or compensatory time is used.
3. The course is job-related to the employee's current position or to his future City development and promotion.
4. Request for reimbursement is filed before course registration using the designated form. The reimbursement is only for tuition expenses. Lab fees, etc. are not reimbursable. Funds from the Agency's budget must be available. If authorized by his or her department, an employee may receive 60% of the reimbursement amount upon course approval by the Director of Human Resources. The balance shall be reimbursed at course completion based on grade achieved.
5. A receipt of tuition payment and a grade report is submitted within 30 days after the academic session ends. A grade of at least "C" or equivalent must be achieved in each course.
6. Personnel Department will monitor for consistency and fairness, and will meet the Union and employees when requested. Final determination regarding course relatedness or accreditability shall be made by Director of Personnel
7. The rate of reimbursement shall be capped based on the tuition rate per credit hour at a