

WARREN CITY PROFESSIONAL)
FIREFIGHTERS, IAFF, LOCAL 204)
)
 (UNION))
)
1008)
)
 - and -)
)
THE CITY OF WARREN, OHIO)
)
 (CITY))

2002 DEC -9 A 10: 17

Case No. 02-MED-10-

FACT - FINDER'S REPORT AND RECOMMENDATIONS

December 7, 2002

Proceedings before Jared D. Simmer, Fact-Finder. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was selected by the parties on November 29, 2002.

I. APPEARANCES

FOR THE UNION:

Jeff Younkins, President, Gary McBride, Marc Titus, Vice President, Nick Radich, Jr., Shawn M. Peura, Bill Gadd.

FOR THE CITY:

Gary Cicero, Director of Human Resources, Brian M Massucci, Personnel Supervisor.

II. BACKGROUND

This proceeding involves bargaining between professional firefighters represented by the IAAF Local 204 (Union) and the City of Warren, Ohio (City). The unit, consisting of approximately seventy-five (75) full-time employees, includes assistant chiefs, captains, lieutenants and firefighters. The current three-year collective bargaining expires on December 31, 2002.

Prior to hearing, the parties met a number of times and negotiated to impasse. Both chose to file pre-hearing position statements that were duly received and considered by the Fact-Finder.

On December 4, the Fact-Finder and the parties met and, at the request of the parties, the Fact-Finder engaged in mediation in an attempt to help the parties narrow the differences on the remaining issues. In mediation, the parties were able to settle certain open issues, however, additional open issues remained and as a result a hearing was held on December 6, 2002. After due consideration of the testimony and evidence presented by the parties, the following Fact-Finder's Report and Recommendation issues.

III. OPEN ISSUES

During the course of good-faith negotiations, the parties agreed to keep unchanged the following contract articles; 1, 2, 3, 5, 6, 7, 8, 9, 15, 18, 19, 20, 22, 23, 25, 27, 28, and 29. Further, during mediation they were able to mutually agree to changes in articles 27 and 30 (see attached).

Accordingly, the provisions of the new contract that were agreed to by the parties, both in earlier negotiations and mediation, are hereby formally recognized and adopted by the Fact-Finder. As a result, this Report will only deal with the remaining open issues.

IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors that the State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.
2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

This Report sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although it is recognized that acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

The representatives of the parties conducted themselves in a professional manner during both the mediation and the hearing. The Fact-Finder would like to commend them for a job well done.

V. REPORT AND RECOMMENDATIONS

Although neither party raised a current "ability-to-pay" issue, the City expressed concern that if a renewal of an existing income tax levy failed to pass in 2004, the subsequent loss of revenue could threaten the solvency of the City's budget and lead to layoffs in this unit and possibly others. The Fact-Finder took this factor into account in presenting his findings and recommendations.

Article 4 - Union Representation

The Union proposed increasing the number of allowable days off to attend national or state union conferences from 8 to 10 days in the even-numbered years these conferences are held. The City contended that not only was an increase in allowable days off unnecessary, but depending on the number of full-time firefighters in the unit at the time, granting increased time off could impact the City's ability to staff. In addition, the City produced a chart that shows that the paid time the Union currently enjoys under this contract provision far exceeds other City bargaining units.

FINDING AND RECOMMENDATION: Because of wage and benefits improvements to be recommended, infra, and the fact that the City currently has to pay for the current eight days off, the Fact-Finder recommends no change in the current language.

Article 10 -- Seniority

Break in service -- the Union proposed increasing the length of time a bargaining unit member could be on layoff and not face a break in continuous service from three years to five years; in support, they pointed out that the City's contract with the police allows for five years. The City points out, however, that because the current language already provides for one year more than Civil Service requires, there is no compelling need for a change.

FINDING AND RECOMMENDATION: Because of wage and benefits improvements to be recommended, infra, and the fact that the Union's own comparables evidenced a 3 year standard in other city fire-fighting units, the Fact-Finder recommends no change in the current language. However, since an increase may offer some mutual advantages to both parties, they may wish to revisit this issue in more detail at a later date.

Promotional requirements -- the Union proposed two changes in the promotion language: to move to a time-in-grade calculation of seniority rather than departmental, and, to set forth in the contract the respective weight to be given to the scores from the written exam and the assessment. The City responded that in its view, not only does the current seniority system work and should remain a management rights issue, i.e., the Chief should retain the

discretion to decide where to assign fire-fighters, but testing decisions should remain at the discretion of the Civil Service Commission.

FINDING AND RECOMMENDATION: Because of wage and benefits improvements to be recommended, infra, the fact that the current means by which seniority is calculated does not suggest a compelling reason to change, and a recognition that there is no good reason at the present time why the Civil Service Commission should not continue to retain discretion to determine promotional standards, the Fact-Finder recommends no change in the current language.

Article 11 - Standards of Work

The Union proposes that whenever a bargaining unit member is called in to work on a holiday, he/she should receive a higher pay than a member already scheduled to work on the holiday. The City, on the other hand, responds that because of the requirements of the FLSA, the City already pays the extra premium that the Union is requesting. The Union also proposed changes in how and to whom driver's pay is paid.

FINDING AND RECOMMENDATION: Because the Union agreed to withdraw its proposed changes holiday pay and driver's pay in exchange for a clarifying letter of understanding from the City, the Fact-Finder recommends no changes in the current language, rather that the parties reach a mutual agreement on the wording of this letter.

The City also proposed eliminating the roll call pay which Union members currently receive by pointing out that this unit is the only one in Ohio which receives this pay.

The Union responded by explaining that while that may be true, its base pay rates substantially lag behind comparable units in other cities.

FINDING AND RECOMMENDATION: Because the wage disparities between this unit and fire-fighting units in comparable cities will persist under this contract, even with the wage increases recommended below, the Fact-Finder recommends no change in this current pay premium language. Having said that, however, this pay premium is unusual to say the least, and the parties may wish to revisit this issue in the context of a discussion of other economic issues in a later contract.

Article 12 – Pay Rates

In its pre-hearing brief, the Union proposed across-the-board increases of 9% per year for each year of the three years of the new contract. At the hearing, the Union modified its proposal to 5%-4%-3½%. The City, on the other hand, proposed a wage schedule that provided increases of 1%-1% during negotiations, but amended those numbers upward in mediation as well as added a third year. At the hearing both parties provided comparables to support their respective positions.

FINDING AND RECOMMENDATION: The Fact-Finder recommends increases of 4¼%-4%-3½% over the three year duration of the contract. The Fact-Finder believes that increases of this magnitude are warranted for the following reasons:

1. In its comparables, the Union was able to establish that its rates lagged about 15% behind similar fire-

fighting units, with the disparities most pronounced at the top and bottom of the wage scales.

2. The recommended raises approximate the 3½ to 4½% raises accepted by the City in its most recent three year police contract.
3. The police contract evidenced both an ability and willingness on the part of the City to find pay increases of this magnitude acceptable.
4. The potential uncertainty surrounding renewal of the income tax levy in 2004 suggests the need for wage moderation in the third year of the contract.
5. While the Fact-Finder is not recommending adoption of the great majority of the Union's proposed contract enhancements, he is suggesting an improvements in the Union's healthcare benefit, infra.

Article 13 – Allowances

The Union proposes that the two formulas currently used to calculate severance pay, a pre-1988 and a post-1988, be unified; i.e., the post-1998 formula be eliminated and all employee severances subsequently handled under the pre-1988 formula. The City, on the other hand, strongly resisted this approach, and in support of its position, pointed out the dire consequences were the Union's proposal to be adopted, i.e., adoption would cost the City over \$435,000, or \$8300/employee by 2013. In addition, it points out that all other City units receive the current allowance.

FINDING AND RECOMMENDATION: In light of the above-average wage increases already recommended, and the benefits improvements recommended, infra, the Fact-Finder recommends no change in the current contract language, i.e., it is recommended that the two-tiered approach be maintained.

The Union also asks for pension pick-up, i.e., that the City assume the unit members' share of payments into the Police and Firemen's Disability and Pension Fund. The City feels that this would be both too generous and unnecessary, and, while the City now pays the pension pick-up for the police, it did so only after that unit agreed to forfeit the 1% hazard-duty pay it had enjoyed in previous contracts.

FINDING AND RECOMMENDATION: In light of the above-average wage increases already recommended, and the benefits improvements recommended, infra, the Fact-Finder recommends no change in the current contract language. The costs associated with pension pick-up are not insignificant and neither is this unit being asked to make any sacrifices under this contract nor give up any economic benefits presently enjoyed. However, for internal equity reasons, it is suggested that perhaps this issue should be revisited in the next negotiation in an attempt to standardize treatment of City bargaining unit employees, although the Union would have to recognize that something of approximately equivalent value might have to be exchanged.

Article 14 - Holidays

The Union proposes increasing the number of personal days off from two to three per year. The City, counters however, that the current level is not only comparable to other fire-fighting units, but already exceeds what other the City's other bargaining unit employees currently receive.

FINDING AND RECOMMENDATION: Finding the City's counter-argument persuasive, and given the above-average wage increases benefit's improvements to be recommended, infra, the Fact-Finder recommends no change in the current contract language.

Article 16 - Sick Leave

As an attempt at pay protection for its members, the Union proposed that bargaining unit members who have excess accrued sick leave be able to transfer accrued hours to bargaining unit members who lack a sufficient number of banked hours themselves. The City responded that this issue did not constitute a mandatory item of bargaining, and even if it did, there is no compelling reason to change the existing contract.

FINDING AND RECOMMENDATION: Because the Union agreed to withdraw its proposed changes in sick leave in exchange for a clarifying letter of understanding from the City, the Fact-Finder recommends no changes in the current language, rather that the parties reach a mutual agreement on the wording of this letter.

Article 21 – Equipment Safety

The Union proposes a minimum staffing level of 17 fire-fighters per shift, excluding the fire inspector. It points out that this would simply memorialize current department policy in the contract. The City counters that since this is perhaps not a mandatory subject of bargaining, perhaps the issue doesn't have to be dealt with in negotiations. But more importantly, it categorizes this matter not only as a management rights issue, but also that were this language in the contract and there be a need for another layoff to say 58 FTE's, there would be the absurd result that in order to maintain minimum staffing of 17, no fire-fighter would be able to be scheduled for any time off.

FINDING AND RECOMMENDATION: While the Fact-Finder could see some justification for the need for minimum staffing levels both for safety and for service reasons, it does not necessarily follow that minimum staffing levels should be written into the contract at the present time. Being sensitive to the City's concern over the uncertainty of the 2004 income tax levy and its putative effect on staffing, the Fact-Finder recommends that language pertaining to minimum staffing levels not be placed in the current contract, although the parties are certainly free to continue mutually exploring this issue.

Article 24 – Termination of Agreement

The Union proposes that the new contract run for 2 years and 11 months and expire on November 30, 2005 rather than December 31, 2005. In light of the concern over the income tax levy, the City, on the other hand,

initially suggested a two year agreement, with expiration on December 31, 2004.

FINDING AND RECOMMENDATION: Since the City agreed to a three year agreement in mediation, the only remaining issue is the expiration date of the third year. While the Union presented some sound logic for an earlier expiration date, the Fact-Finder is reluctant to recommend that the third year of the agreement expire after only 11 months, particularly with the pay and benefits' implications that would present. Absent a compelling reason otherwise, the Fact-Finder recommends a continuation of the current three year contract with the third year expiring on December 31. However, if past problems were to continue, i.e., the parties continue to be unable to reach agreement in time to meet state conciliation deadlines, a change in the termination date may indeed be warranted.

Article 26 - Health Care Benefits

Both in mediation and at the hearing, the City suggested a variety of proposals that would have Union members paying some monthly contribution towards the cost of individual and family coverage. The City buttressed its position by pointing out that the coverage of the current healthcare plan is unmatched and its annual costs are skyrocketing (e.g., 25% last year alone). The Union countered by emphasizing that no other City employee group, union or non-union, currently contributes anything towards monthly premiums and that with its wages lagging

behind comparable units in other cities, it would not be fair to request that it be the first.

FINDING AND RECOMMENDATION: The Fact-Finder recommends that the new contract not require Union contributions toward monthly healthcare premiums. The reasoning behind this recommendation are as follows:

1. The need for fire-fighters contributions would be more convincing if the City's management team had set the pattern by going first.
2. The Union was correct to point out that while lamenting the alleged 25% increase in healthcare costs last year, the City in turn spent over \$2,000,000 in monies rebated back by Blue Cross/Blue Shield on capital improvements, paving and construction, as opposed to using these funds to buttress its reserves (which in turn would have helped relieve the cost pressures on the reserves).
3. Prior to negotiations, the City had never approached the Union with concerns about escalating costs, utilization patterns, etc. Therefore, by asking the fire-fighters to be the first employee group to contribute, it does so without the courtesy of any prior meet and confer discussions.
4. While the Fact-Finder takes arbitral notice of the impact of escalating healthcare costs on municipal budgets, the City's testimony and exhibits did not

paint a compelling picture that their self-insured healthcare reserve is currently is in any way currently "in trouble".

5. While it is not unreasonable for all City employees to begin sharing some of the costs of rapidly escalating premiums for a plan which is unusually generous, it is believed that this current contract is neither the time nor the place to begin.

The Union also asked that it be provided with vision care coverage since it was currently the only group in the City which did not enjoy this benefit. The City responded that extending this benefit to the Union would only serve to contribute to what were already rapidly escalating health care costs.

FINDING AND RECOMMENDATION: Even though there is a recognition that healthcare costs are rising dramatically, from the standpoint of equity this Fact-Finder would not support the continued exclusion of this unit from the type of vision benefits extended to all other City employees, both union and non-union. However, in light of the healthy wage increases already suggested, it is recommended that a vision care plan comparable to that enjoyed by the other employees be extended to this unit, but not until the beginning of the third year of the contract.

Proposed Article 31 – Layoff and Recall

The City proposed that a new article be added to the contract that explains and clarifies the procedure for layoffs; it provided a draft of how the language should read. The Union, on the other hand, countered that since Civil Service rules already deal with this matter, contract language on the same is not necessary.

FINDING AND RECOMMENDATION: Because of the contentious nature of this issue, and the inability of the parties in mediation to even agree on whether or not there was a problem, and if so, the appropriate remedy, the Fact-Finder recommends that the issue be shelved and dealt with in a later contract if necessary.

Proposed Article 32 – Residency

The Union proposes that members be exempted from the City's residency requirement. The City believes, however, that the issue is moot since the City's ordinance, which currently requires residency, would prevail over anything written in the contract.

FINDING AND RECOMMENDATION: Without getting into the legalities of mandatory versus permissive subjects of bargaining, both parties made strong arguments in support of their respective positions. However, it's recommended that resolution of this issue be deferred to a later time because, from the Fact-Finder's perspective, a change in a policy of this import that could conceivably impact all other City employees, requires a more in-depth exploration

and discussion between the parties than has occurred to date.

Issued: December 7, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Jared D. Simmer', written over a horizontal line.

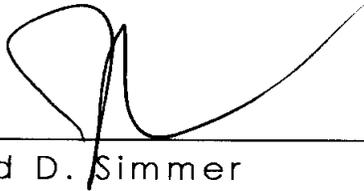
Jared D. Simmer

Fact-Finder

Attach.

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the City of Warren, Ohio (via Mr. Cicero) and Warren City Professional Firefighters, IAFF Local 204 (via Mr. Younkings) by United States Post Office overnight mail service, and upon the Ohio State Employment Relations Board (via Mr. Dale Zimmer) by first class mail, this 7th day of December, 2002.



Jared D. Simmer
Fact-Finder

ARTICLE XXX – DRUG AND ALCOHOL POLICY

I. PURPOSE

Employees are the company's most valuable resource, and for that reason their safety and health is of paramount concern. The City of Warren maintains a strong commitment to its employees to provide a safe workplace and to establish programs promoting high standards of safety and health. Consistent with the spirit and intent of this commitment, the City expects employees to report for work in proper condition to perform their duties. The intent of this policy is to prevent you from using or possessing drugs and alcohol in the working environment or from showing up with them in your system. Use of these substances poses a serious threat to the health and safety of all employees.

Accordingly, the City of Warren's policy prohibits the unlawful manufacture, distribution, dispensing, possession, use or working while under the influence of an illegal drug, as well as the use of any substance that adversely affects safety, productivity or job performance. The policy prohibits the use of alcohol while on duty or on City premises.

II. EMPLOYEE RESPONSIBILITIES

Under this policy, employees are responsible for the following actions:

- A. Avoiding the use of, and any involvement with, illegal drugs;
- B. Avoiding use of alcohol while on City premises and controlling off-the-job use of alcohol and other substances so as to ensure that such use does not adversely affect safety, productivity or job performance;
- C. Using medication or prescription drugs only in accordance with prescriptions and physician's directives and providing notice to supervisors of such use in accordance with Section III.C. of this policy;
- D. Abiding by the terms of this policy;
- E. If convicted of violating a criminal drug statute based on actions involving illegal drugs that occur in the workplace, notifying City management within five (5) calendar days of the conviction.

III. PROHIBITIONS

A. Illegal Drugs

The manufacture, use, sale, trafficking, purchase, transfer, distribution, dispensing or possession of any illegal drug by any employee while on duty, or on or about the City's premises, is prohibited and shall result in discipline, up to and including termination of the individual's employment (and may subject the individual to criminal prosecution).

B. Alcohol

The unauthorized use of alcohol by an employee while on the City's premises shall be subject to disciplinary action, up to and including termination of employment.

Off-duty use of alcohol must not affect safety, productivity or performance while on the job.

C. Medications

In certain situations, an employee's use of medication can pose a risk to the safety of the employee or to others. If an employee's use of any medication could adversely affect the safety of the employee, co-workers or members of the public; the employee's job performance; or safe or efficient City operation, then the employee must provide his/her supervisor with a physician's notice that specifies any on-duty-related limitations resulting from use of the medication. Failure to provide such notice of work limitation will subject the employee to disciplinary action, up to and including termination of employment.

IV. EMPLOYEE ASSISTANCE

It is the City's policy to help any employee who has a substance-abuse problem, especially in situations where the individual seeks assistance. We will attempt to accommodate an employee who seeks and undergoes treatment and will attempt to protect the privacy of the individual.

If you seek assistance for a problem with drugs or alcohol, contact Terry Nicopolis at 841-2633 or Lillian Lepola at 841-2547 about available counseling, rehabilitation and employee assistance.

You also can call toll free the National Institute on Drug Abuse Hotline at 1-800-662-HELP.

Please do not hesitate to contact Terry Nicopolis or Lillian Lepola if you have any questions about employee assistance for a drug or alcohol problem. Some forms of assistance may include the following:

- Identify treatment resources;
- Provide access to resource file on providers of assistance;
- Provide problem assessment;
- Provide confidential counseling;
- Provide referral to counseling and/or treatment;
- Provide crisis intervention;
- Provide family support services;
- Conduct follow-ups during and after treatment;
- Conduct evaluation of job performance before and after program contact;
- Review insurance coverage (including out-patient as well as in-patient treatment); and
- Institute a mechanism to review employee complaints.

While we want to help if you have a substance-abuse problem, the City also wants employees to know that the City is serious about maintaining a drug-free workplace, and you must abide by the City's policy or face discipline, up to and including termination from employment.

V. SUPERVISORY RESPONSIBILITY AND TRAINING

Supervisors are responsible for the following actions:

- A. Maintaining a work environment free from employee abuses of, or influences of, drugs or alcohol;
- B. Distributing this policy to, or otherwise notifying, all employees on the City's policies and expectations concerning a drug-free workplace;
- C. Supporting and disseminating information relating to our ongoing drug-free awareness program;
- D. Pursuant to the requirements of the Federal Drug-Free Workplace Act, notifying the Director of Public Service and Safety which an employee has been convicted of violating a criminal drug statute on City premises as soon as practical, but no later than five (5) calendar days after receiving notice under paragraph II.E. above. The Director of Public Service and Safety has the responsibility to further notify the appropriate contracting agency in writing of the violation within ten (10) calendar days after receiving notice from the employee under paragraph II.E. above.
- E. If any employee's conduct violates this policy, taking prompt and appropriate personnel action in accordance with this policy and federal law, and where an employee has been convicted of violating a criminal drug statute, taking such action within thirty 30 calendar days of receiving notice under paragraph II.E. above.

To assist supervisors in fulfilling these responsibilities, the City will attempt to conduct management/supervisory training including but not limited to:

- Drug-abuse education;
- Signs and symptoms of drug use, and how to detect it;
- City policy on drug use;
- Employee assistance resources;
- How to deal with an employee suspected of drug use; and
- How and when to take appropriate disciplinary action.

VI. DRUG AND ALCOHOL TESTING

A. The following provisions are being established to ensure and maintain that the City of Warren is a drug-free workplace:

1. Provide for the supervisor trained in the detection of alcohol and drug use, to order a drug screen and/or alcohol breathalyzer test(s) immediately when there is reasonable suspicion that an employee has been using drugs or alcohol.
2. Drug or alcohol testing may be administered to any employee to determine their fitness for duty when there is reasonable suspicion to believe the employee may be unfit for duty.
3. A refusal to submit to a drug or alcohol test or engage in conduct that clearly obstructs the testing process shall be treated as a positive test.

B. Drug or Alcohol Testing Resulting From Reasonable Suspicion.

I. Drug Screening:

1. Department Heads or their designee shall order a drug screen immediately when there is reasonable suspicion that an employee has been using any drug or narcotic and that this use may present a risk to their safety or that of fellow employees or the public. **REASONABLE SUSPICION shall include any on-the-job injury requiring medical treatment, or a vehicular accident involving substantial damage exceeding \$500.**
2. The urinalysis procedure for obtaining the urine specimens will be done in accordance with an accredited procedure established by Trumbull Mahoning Medical Group.

The urine specimen will be acquired in accordance with established procedures, and an accredited laboratory will conduct analysis of the urine specimen to determine the levels of any controlled substance.

II. Alcohol Breathalyzer Test:

1. Department Heads or their designee shall order the employee to report to the Warren Police Department for an alcohol test after the appropriate arrangements have been made, if there is reasonable suspicion that an employee is under the influence of alcohol. If unable to perform the breathalyzer, the Warren Police Department shall make other arrangements to have the test conducted.

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C. Action to be taken:

I. Reasonable Suspicion

1. Employees whose breath alcohol test measures .1 or greater and/or test positive for one or more controlled substances shall be subject to disciplinary action up to and including discharge.

<u>Drug Testing Standards</u>		
<u>DRUG</u>	<u>SCREENING LIMIT:</u>	<u>CONFIRMATION LIMIT:</u>
AMPHETAMINES	1000 NG/ML	
Amphetamine		500 NG/ML
Methamphetamine		500 NG/ML
CANNABINOIDS	50 NG/ML	
Carboxy-THC		15 NG/ML
COCAINE	300 NG/ML	
Benzoyllecgonine		150 NG/ML
OPIATES	300 NG/ML	
Codeine		300 NG/ML
Morphine		300 NG/ML
PHENCYCLIDINE (PCP)	25 NG/ML	25 NG/ML

PLEASE NOTE: ANY DRUG LISTED AS POSITIVE CONFIRMED BY GC/MS.

II. Voluntary Assistance:

1. Employees who, prior to any reasonable suspicion, voluntarily seek assistance for a problem with drugs or alcohol will be referred to a substance abuse professional (SAP) for evaluation. The employee must abide by the rules of the Employee Assistance Program and recommendations of the SAP.

D. Related Program Costs:

1. Drug screening will be paid by the City.
2. The existing City's health benefits will apply to the cost of employee substance abuse rehabilitation program.

VII. DEFINITIONS

- A. **“City Premises,” “City Property,” “Work Environment,” “Workplace,”** shall include property, facilities, land, offices, building, structures, trailers, equipment, automobiles, trucks, vehicles and parking areas, whether owned, leased, government furnished or otherwise under control of or used by the City. Also included in this definition are other work locations, including the job site of a customer, supplier or subcontractors or associate contractor.
- B. **“Alcohol”** includes alcoholic beverages and any other intoxicating liquid that contains alcohol.
- C. **“Controlled Substances”** include, but are not limited to, amphetamines, marijuana, cocaine, opiates and phencyclidine. This list may be amended from time to time.
- D. **“Illegal Drugs”** includes any drug of which the sale, use or possession of is unlawful, including controlled substances.
- E. **“Legal drug,” “Prescription Drug” and “Medication”** include drugs prescribed by a person’s physician and used as prescribed and over-the-counter drugs that have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.
- F. **“On Duty,”** for the purposes of this policy, means an employee’s regular work hours and all other times an employee spends performing City business, on or off City premises, including but not limited to, tasks specified in his/her job description, other assigned tasks, business travel and break periods.
- G. **“Under the Influence”** means, for the purposes of this policy, that the employee is affected by a drug, whether legal or illegal, alcohol or other substance, or the combination of a drug and alcohol, so as to impair or potentially impair the employee’s ability to perform his/her job. The symptoms of influence are not confined to those consistent with misbehavior and not limited to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by testing or observation based on reasonable suspicion.
- H. **“Reasonable Suspicion”** - An apparent state of facts, circumstances, or information, which exists from an inquiry by a supervisor trained in the detection of alcohol and drug use, which would induce a reasonably intelligent and prudent person to believe the employee was under the influence of using drugs and/or alcohol.
- I. **“Criminal Drug Statute”** means a criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substance.

- J. **“Positive”** - Refers to screening for a controlled substance, a test which indicates the presence of a controlled substance.
- K. **“Individual Substance Abuse Rehabilitation Program”** - Through a qualified organization, a rehabilitation program is established for an individual which sets forth a specific required treatment program for substance abuse.
- L. **“Refusal To Submit (TO AN ALCOHOL OR CONTROLLED SUBSTANCES TEST)”** - means that an employee 1) fails to provide adequate breath for testing without a valid medical explanation after an employee has received notice of the requirement for breath testing in accordance with the provisions of this policy, 2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after an employee has received notice of the requirement for urine testing in accordance with the provisions of this policy, or 3) engages in conduct that clearly obstructs the testing process.
- M. **“Drug Screening Tests (Forensic Urine Drug Screen)”** - A urinalysis test administered under approved conditions and procedures to detect any of the following: Marijuana, Cocaine, Opiates, Amphetamines, Phencyclidine (PCP).

NOTICE TO APPLICANTS

**IT IS THE CITY'S POLICY TO ESTABLISH
AND MAINTAIN A DRUG-FREE WORKPLACE.**

This policy prohibits the unlawful manufacture, distribution, dispensing, possession, use or work under the influence of an illegal drug, as well as the use of any substance that adversely affects safety, productivity or job performance. The policy also prohibits the use of alcohol while on duty or on City premises.

Under this policy, if you are hired, you will be responsible for the following:

Avoiding the use of, and any involvement with, illegal drugs.

Avoiding the unauthorized use of alcohol while on City premises, and controlling your off-the-job use of alcohol and other substances so as to ensure that such use does not adversely affect safety, productivity or job performance.

Using medication or prescription drugs only as prescribed, and providing notice to supervisors of such use in accordance with the City's drug-free workplace policy.

Abiding by the terms of the City's policy.

Notifying City management within five (5) calendar days of a conviction for violating a criminal drug statute based on actions involving illegal drugs that occur in the workplace.

Management is strongly committed to participation in this policy, and you could face disciplinary action (up to and including termination) if you are hired and do not abide by this policy.

TRUMBULL MAHONING MEDICAL GROUP
PROTOCOL FOR URINE DRUG SCREENS

1. A company representative notifies TMMG laboratory personnel (the collectors) of the collection time, date and employee name.
2. Employee must bring proper identification: driver's license, company ID, or employer representative. NO ID NO DRUG SCREEN!
3. Either employer furnishes the proper chain of custody form or TMMG shall receive such from proper lab completing the screen.
4. The employee will be instructed to remove all objects from pockets and place them in a secured lockbox. They will also be required to remove any outside garments.
5. The employee will open the sealed container(s) and hand them to the collector.
6. The collector will place dye in the toilet while the employee washes his/her hands with water only.
7. The employee will be instructed to take all bottles into restroom and to urinate directly into the bottle with the temperature strip attached. He/she will also be instructed not to flush the toilet and to bring out all bottles when finished.
8. After, as the employee washes his/her hands with soap and water, the collector reads, shows and documents the temperature on the chain of custody form.
9. The collector then checks the toilet and flushes.
10. While the employee gathers his/her belongings from the lockbox, the sample is split.
11. The employee is asked to fill in the bottle seals and witness the collector sealing the bottles.
12. The employee and collector fill in the chain of custody form and seal the bottles and appropriate copies for shipping.
13. The employee retains his/her copy and the collector remits copies to the employer and MRO.

SPECIAL SITUATIONS

1. The donor does not have an ID and there is no employer representative available to positively identify him/her? The collection cannot and will not be performed.
2. The donor refuses to provide his/her social security number? An alternate form of identification is required (i.e. employee number). If number is not provided, record on the form "Donor refuses to provide ID number" in remarks section. Proceed with collection.
3. The donor cannot give sample when required, also called "shy bladder". The donor may have up to 24 ounces of fluids and after a period of two hours, may again attempt to provide a sample.
4. The temperature of the specimen is not within the required range. Mark in the appropriate box that the temp is out and write in the correct temperature.
5. All medications currently being taken by the donor shall be listed by the donor on the back of his/her copy of the chain of custody form.

The parties hereto have executed this Agreement by their duly authorized representative this _____ day of _____, 2000.

IAFF, LOCAL 204

CITY OF WARREN, OHIO

By: _____
Jeffrey Younkins
President

By: _____
R. W. Thomas, Jr., Director,
Public Service and Safety

Marc Titus
Vice President

Gary C. Cicero
Chief Spokesman

William Gadd
Secretary/Treasurer

Brian M. Massucci
Personnel Supervisor

or disease

ARTICLE XVII - SERVICE CONNECTED DISABILITY

OK

Section 1: **PAYMENT OF WORKERS' COMPENSATION WAGE BENEFIT:** In the event of an injury while in the active discharge of duty, the employee shall be paid Workers' Compensation Wage Benefits from the City instead of Temporary Benefits from the Bureau of Workers' Compensation, only if the employee obtains medical treatment from the City's Health Partnership Managed Care Organization, as follows:

- A. For the lost time in which medical certification has been submitted stating the need for the employee to be off work and the period of time the employee shall remain off work. An "Agreement to Reimburse" must accompany medical certification.
- B. For the lost time up to fifty-two (52) weeks, the total wages the employee will receive shall be their gross pay less their normal federal, state and city income taxes. This pay shall be non-taxable. If the Internal Revenue Service in the future deems these wages to be taxable, the City shall pay the employee his/her gross pay.
- C. For the lost time exceeding fifty-two (52) weeks the employee shall have the option to use his sick leave or vacation or be placed on unpaid Workers' Compensation leave of absence.
- D. During the lost time due to injury for which the employee is receiving pay from the City, the employee shall not suffer any loss of shift differential, uniform allowance, uniform maintenance allowance, longevity, holidays, personal days, vacation, sick leave or health insurance. During this lost time due to injury, the employee shall lose four (4) reduction hours for every fifty-six (56) hours of Workers' Compensation Wage Benefits. For this period of time, the City will also continue to make the deductions (excluding taxes) from the employee's pay, which were made prior to the injury.
- E. Any employee who receives Workers' Compensation Wage Benefits during the calendar year, may request in writing with the Human Resources Department and Finance Department the period of payment of Workers' Compensation Wage Benefits be changed to sick leave for the same calendar year if the request is received by December 1 of that year. If this request is made, the City will correct all the records necessary to reflect the payment of sick leave.

Section 2: **REPORTING PROCEDURE:** In the event of an injury while in the active discharge of duty, the employee shall be required to complete the following:

By 12-4-02
See 12/4/02

- A. An "INJURY REPORT" within seven (7) calendar days of the time of injury.
- B. If time is lost, a "WORKERS' COMPENSATION CLAIM FORM", within fourteen (14) calendar days of the date and time of the inception of the lost time. When filing a claim, it shall be stated that the employee has received their wages for the lost time period for a maximum of fifty-two (52) weeks.

To be entitled to any Workers' Compensation Wage Benefits from the City as in Section 2, the employee must have the forms completed and submitted to the Department Head within the outlined time limits. If extenuating circumstances arise because of an incapacitating injury, the injured employee's Department Head shall make every effort to have the forms submitted timely and if unable to do so the time limits may be extended. If the injured employee fails to submit the forms timely, the amount of time he lost due to injury shall be charged as sick leave. The employee shall then be entitled to any benefits the Bureau of Workers' Compensation may allow.

Section 3: **BUREAU DETERMINATION PROCEDURE:** Any employee who is paid as specified in Section 2, shall abide by the following procedure:

- A. If the Bureau of Workers' Compensation allows the claim, the wages paid for such claim shall be approved.
- B. If the Bureau of Workers' Compensation disallows the claim, the wages paid for the lost time period shall be recovered from the,
 - 1). Reduction of Sick Leave
 - 2). Reduction of Vacation Balance
 - 3). Payroll Deduction
- C. After B above has been followed and the Bureau of Workers' Compensation later allows the claim, through appeal, that was initially disallowed, the employee shall be entitled to receive Workers' Compensation Wage Benefits from the City for such lost time period. All processes will then be handled retroactively as if the employee had a claim that was initially allowed.

Section 4: **CITY'S SHARE OF PENSION:** The city shall pay the employer's share of pension payments for the time lost while the employee is receiving pay from the City to assure that such time is credited as service time.

Section 5: **LIGHT DUTY:** The City shall make every possible attempt to find alternate work assignments for employees on injury leave who may be able to perform lighter duties. This duty shall be on the employee's regular shift within the Fire Department.

Section 6: **PHYSICAL EXAMINATIONS:** The City at its discretion, may require an employee who is receiving service connected injury benefits, to submit to a physical examination conducted by a facility approved to make a functional capacity evaluation.

The examination will be arranged and paid for by the City of Warren and notification by the City shall not be less than three (3) working days before the scheduled examination.

The employee shall sign a release of medical information form allowing the facility to release the results of the physical examination to the City and the Union.

The purpose of the examination is to determine if the employee should remain on injury leave or return to work in either his/her regular job or light duty work. If it is determined by the facility verified by the prescribing physician that an employee is capable of returning to his/her regular or special assigned duties and the employee fails to report to work as scheduled, the employee will no longer be eligible to receive pay benefits under the service connected injury leave contractual provisions.

The employee who has not returned to work and is not eligible to receive continued service connected injury benefits may elect to try to receive temporary total benefits from the State of Ohio. However, the City may elect to appeal such action using the documentation received from the facility.

If it is determined that an employee can return to work, the employee will be scheduled by the City to return to work four (4) work days from the posting date of the certified written notice. Failure to report to work as scheduled will result in the loss of service connected injury benefits as set forth in the labor contract.

AGREEMENT TO REIMBURSE

The purpose of this agreement is to insure that any Workers' Compensation Wage Benefits paid by the City in advance of a claim determination by the Ohio Bureau of Workers' Compensation are automatically repayable to the City if the claim is disallowed by the Bureau.

I, _____, hereby agree to reimburse the City of Warren for any amounts which I may receive per the provisions of the Workers' Compensation Wage Benefits as set forth in the Labor Contract and which commenced on _____ and to which I would not be entitled in the event that the Ohio Bureau of Workers' Compensation disallows the claim.

Under such circumstances, repayment of the monies received will be made in the following manner:

- 1). Reduction of sick leave credit hours.
- 2). Reduction of vacation credit hours.

If sufficient sick leave and vacation credit hours do not exist to fully recover the paid Workers' Compensation Wage Benefits, I hereby authorize the City of Warren to deduct a reasonable amount not to exceed fifty dollars (\$50.00) per pay from my earnings until the required amount is fully reimbursed.

Employee's Signature

Social Security Number

Accepted for the City of Warren by:

Title:

Date:

