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IN THE MATTER OF FACT-FINDING

BETWEEN

THE YOUNGSTOWN POLICE ASSOCIATION

AND

THE CITY OF YOUNGSTOWN

BEFORE: Robert G. Stein

SERB CASE NO. 03-MED-09-0876

PRINCIPAL ADVOCATE FOR THE UNION:

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and

PRINCIPAL ADVOCATE FOR THE CITY:

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INTRODUCTION

The bargaining unit is comprised of approximately 115 full-time employees holding the classification of Patrol Officer. Negotiations for a new contract began in October of 2003, the parties met approximately 4 times, and they reached impasse in December of 2003. The Agreement expiration date is November 30, 2003. The Fact-finder held several mediation sessions in order to narrow down the number of issues. With the help of the Fact-finder, the parties worked hard at reducing the numerous unresolved issues and were able to reach tentative agreement on several of them. However, many issues or parts of issues remained unresolved once mediation ended, and the issues were forwarded to fact-finding on April 7, 2004. A subsequent fact-finding session was held with the Advocates on April 21, 2004. Following the session held on April 21st, the Advocates for both parties continued to negotiate over the issue of injury on duty and resolved all but one part of this complicated issue.

The Advocates and the parties worked tirelessly, and represented their respective parties well. They clearly articulated the position of their clients on each issue in dispute and provided considerable supportive data. In order to expedite the issuance of this report, the Fact-finder shall

not restate the actual text of each party's proposals on each issue, but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 WAGES

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The Employer argues it has an inability to pay what the Union is demanding, and not nearly what it has been able to provide in past negotiations. In the recent rounds of negotiations, the Union and the Employer have agreed upon wage settlements that were at a minimum competitive, and in several cases above average. Increases were agreed upon that were designed to improve the bargaining unit's relative wage position with other comparable cities. In the last contract the bargaining unit and the City negotiated wage increases of 30 cents, plus 4% each year of the contract. During the last several years, SERB data reveal that average wage settlements range from the mid to high 3% range. According to the City, the bargaining unit's wage increases have averaged closer to 5% over a similar time period.

City Finance Director, Dave Bozanich ("Bozanich"), provided credible testimony that in 2004 and the foreseeable future the City must work its way out of a financial deficit that has been several years in the making. According to Bozanich, the city has been in deficit spending for

2 years in a row and the City is in Fiscal Watch. This difficult financial situation has severely impacted the City's ability to operate. In August of 2002, the City laid off 22.2 % of its non-safety forces and 13.2% of its safety forces (Mx 2). Fortunately, an increase of ½% in the city income tax allowed the City to recall most of its laid-off employees, yet many positions were eliminated by attrition and were never replaced. The overall number of jobs in the City is at the 1980 level. The number of city employees has declined by 50%, from 1650 in 1981 to 825 in 2004.

Management Exhibit 3, 5, and 6 demonstrate that the City's revenues have been in decline and have likely been exacerbated by a weak national, state, and continued poor local economy. Compounding the financial situation in 2004 is the requirement the City meet 27 payrolls, rather than the customary 26. An extra payroll for the City is around \$900,000. Management Exhibit 13 also underscores the decline in local revenue from employers who have moved out or closed during the last 3 years. Revenue has declined from a high of almost 1.7 million in 2000 to \$86, 784 in 2003. Bozanich is predicting the City budget will reach a break-even point by December 31, 2004, during which time it will no longer be deficit spending. However, predicting the economic health of the City is difficult and the City points to the cost of retirement, which is predicted to cost ½ of 1% of the budget in 2004.

However, all the financial news is not negative. Youngstown is known to be a tough city that has previously weathered other difficult economic times. The Union views the Youngstown economy with hope and optimism, and takes great stock in the Mayor's recent predictions for Youngstown's downtown revitalization. The Union contends the City's financial picture was already improving during a time when City employees were still getting significant raises. It points out the new construction in progress and planned for the City. It contends the City is not in a dire financial condition and that there is money for a reasonable raise. It asserts that bargaining unit members must keep up with inflation.

The Union also points out that the strength and gritty character of Youngstown are exemplified by the citizens who voted to increase the income tax by ½% to restore their safety forces to an acceptable level of strength. The Union emphasizes the fact that 40% of the additional levy money is earmarked for safety forces. The Union points to the optimism and leadership displayed by Mayor McKelvey, as reported by the Youngstown Vindicator. In the November 27, 2003 online addition, the Mayor outlines a series of spending projects that will dramatically transform downtown over the next 24 months.

Hopefully, the Mayor's predictions will come to fruition, yet it appears the City's recovery will come in stages as the City attracts one new employer and one building project at a time. For example, the new

Children's Services Building for downtown is not scheduled for completion until 2005. However, it is also clear from the evidence that the City's budget assumes 2% growth. The important thing for the City is to continue to move out of its deficit situation, and to remove itself from the fiscal oversight of the State. To say that the City can afford normal wage increases would be to ignore reality. However, to suggest Youngstown does not have the ability to pull itself out of financial difficulty with a little time would be to underestimate the resolve of its citizens, as well as its management and union leadership. What is called for is some time to allow the City to reach its goal of a balanced budget, but also to recognize the need of the bargaining unit to receive a living wage that keeps pace with inflation. During the last year, the rate of inflation was around 1.7%. This year the dramatic increase of gasoline pricing and the talk of interest rates rising by the end of the year has already started to impact people's spending habits.

Recommendation

The following wage structure is recommended:

1st yearmaintain current wages

2nd year..... 3% across-the-board salary increase, eff: 12/1/04

3rd year.....4% across-the-board salary increase, eff: 12/1/05

ISSUE 2 HEALTH INSURANCE

Union's position

See UPS

Employer's position

See EPS

Discussion

Effective December 1, 2003 management employees began to pay 10% of their health care premium for the first time in the history of the City. In addition, the City has modified the health care plan, which for example has increased doctor co-pays, emergency room co-pays, reduced the number of outpatient mental health visits, and increased the prescription drug co-pays.

It is not unusual for public employers in Ohio and practically everywhere in the country to find ways to continue to provide affordable healthcare for their employees. The issue of healthcare has become, in many instances, the most difficult issue faced by unions and employers in negotiations. It is an emotional and very personal issue. It is also an issue that has become so expensive to maintain that it has forced employers to make dramatic changes in the structure of benefits and costs in order to continue to provide coverage. Currently, the majority of Ohio public employees contribute toward the payment of their health care coverage. However, this shift of costs has not occurred suddenly. This shift in costs

has been occurring for several years and it has been phased in gradually. Employer fully paid plans gradually went from 100% paid to 95%, 90%, 85%, and 80%. There may be a few examples lower than 80%, but they are in the minority. Much of the cost shift has taken place well before the current difficult times for public sector employers and their unions. Public sector employers were often successful in negotiating increases in the employee's share of the premium in exchange for larger wage increases or other enhanced benefits. It should also be remembered that when the 3%, 5% or 10% phase-ins occurred the health care premiums were dramatically lower. Agreeing to pay a monthly premium of 10% of \$300 for family coverage is far different than having to pay 10% of \$700 to \$1000 dollars. However, it is also a matter of conditioning and adjustment. The employees who have paid 10% over many years have had time and experience to adjust to the seemingly annual increases in premiums and have had time to adjust their family budgets accordingly. A gradually conditioned and anticipated increase in premium is far different than suddenly thrusting upon employees significant monthly costs, particularly without any offsetting economic gains in other parts of the Collective Bargaining Agreement. However, the reality is there are fewer and fewer public or private sector employers that provide full coverage, particularly for family coverage.

However, the implementation of significant employee premiums that are put into place at the same time co-pays and deductibles are increased may have a paradoxical effect. If an employee suddenly goes from paying nothing to paying a significant amount each week for his/her health care, this may encourage greater use in order to justify the personal cost, particularly if it is not offset by some other discernible economic gains. Some sharing of premium costs is supported, but like with most other public sector employees, it should be phased in and not suddenly imposed. The amount of employee paid premium is not in and of itself unreasonable. However, the Employer's ability to offset the additional costs and its desired timetable for implementation is contrary to the way health care premium payments have commonly been phased in for other public sector entities over many years.

The City is asking the employees to pay 10% of the premium. This additional cost to each employee with family coverage would be approximately \$77.67 per month or \$932.04 per year. This is a significant burden for an employee to suddenly bear. The City also made the argument that aggregate premium costs may subside with a greater number of employees entering the plan as new contracts are negotiated; however, the Employer admits there is no guarantee this will occur.

Recommendation

The Employer's health care plan currently in place for management employees, which includes new deductibles and co-pays for

medical treatment and prescription drugs, shall become effective for the bargaining unit on June 1, 2004. However, the premium shall remain fully paid by the Employer for six months, a period during which wages remain frozen at their current levels.

Beginning December 1, 2004, and during the life of the Collective Bargaining Agreement, the employee's share of the premium shall be adjusted by the same percentage as the general wage increase. On December 1, 2004, when employees are provided a 3% wage increase, the employee's share of the health insurance premium shall be 3%. On December 1, 2005, when wages are again adjusted by 4%, the employee premium shall be increased to 7%, and shall remain at 7% for the life of the Collective Bargaining Agreement. Life insurance shall remain the same as current language.

ISSUE 3 VACATION

Union's positions

See UPS

Employer's position

See EPS.

Discussion

Given the competitive level of the vacation benefits and the fact that over 50% of the bargaining unit has 5 or less years of service, the current comparatively competitive vacation structure, including current carryover language, is recommended.

Recommendation

Current language

ISSUE 4 ACCUMULATED TIME

Union's position

SEE UPS.

Employer's position

See EPS.

Discussion

This issue is one that does not lend itself to resolution through the application of the statutory criteria. There are few if any comparable cities to Youngstown from which to gain guidance. The parties are better served by this report to submit this issue to their labor/management meeting forum for discussion and resolution.

Recommendation

The issue of accumulated time shall be referred to the next labor/management meeting for discussion and resolution. This issue is of sufficient importance that it is further recommended that if the parties are unable to reach an agreement, the services of a neutral be employed to assist the parties in fashioning a workable resolution.

ISSUE 5 LONGEVITY

Union's position

See UPS.

Employer's position

See EPS.

Discussion

Longevity has historically increased by the same amount as wages. The history of collective bargaining and the analysis contained under wages (particularly the financial health of the City and the welfare of the public) are the strongest criteria available to this Fact-finder in fashioning a reasonable resolution.

Recommendation

Longevity shall be increased at the same time and in the same amount as the general wage increase.

ISSUE 6 HAZARDOUS DUTY PAY

Union's position

See UPS

Employer's position

See EPS

Discussion

The City has maintained equity among bargaining units in a variety of areas. Arguably, the hazards faced by law enforcement officers are no less than that which any City employee faces. The death of a police officer during the period of the last agreement was a painful reminder of the potential danger of police work. That is not to say that other city jobs are not dangerous. Certainly working in wastewater treatment has its own

set of hazards. However, there is no reason to believe the level of danger exceeds the unpredictable nature of the danger law enforcement officers may encounter on the streets of the City. The amount of increase sought by the Union is not supported by the financial condition of the City. However, it is important to maintain the internal benefit equity among those city employees who currently have this benefit. The current benefit is below that which is paid to waste water treatment workers. In order to maintain internal parity, the benefit needs to match the level reached by employees in wastewater treatment.

Recommendation

The amount of hazardous duty pay shall be adjusted to \$677.69 retroactive to December 1, 2003. Each December 1st, the amount of this benefit shall be adjusted by the percentage increase in wages.

ISSUE 7 SHIFT DIFFERENTIAL

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The current shift differential appears to remain relatively competitive with other like jurisdictions (e.g. Warren, Austintown). In consideration of

the analysis of the City's recovering financial condition, (See under Wages Issue) no increase can be recommended at this time.

Recommendation

Current language

ISSUE 8 COMPARABILITY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

All other bargaining units in the City will follow the YPA in negotiating new collective bargaining agreements in the coming months. As the lead bargaining unit, it is understandable that the YPA would seek some type of protection to insure its contract benefits are equal to those yet to be negotiated for all other city employees. However, the evidence and testimony clearly demonstrate that the City has historically attempted to maintain equity among all of its bargaining units. Given this history, there was no persuasive evidence or testimony presented to support the establishment of a "me too" clause.

Recommendation

Current language

ISSUE 9 OVERTIME

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Employer proposes to eliminate holiday, vacation, accumulated time, injured on duty, and leaves of absence from the term "pay status." There was insufficient evidence and testimony to support a change from the long-standing bargaining history of the parties to consider the above items in the calculation of "pay status."

Recommendation

Current language

ISSUE 10 NEW LANGUAGE REGARDING ARTICLE 11, SECTION 19

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

With specific exclusions for vacation and use of accumulated time, the Employer is seeking to pro-rate payments for hazardous duty pay,

uniform allowance, college education bonus, and fitness after a period of thirty- (30) days. I concur with the Union's position in this matter. Contrary to the long bargaining history of the parties, the Employer's proposal penalizes employees with long term illnesses, or who are injured on the job and must be off for more than 30 days. Not only does this appear unreasonable on its face, it is not supported by comparable data from other like jurisdictions.

Recommendation

Current language

ISSUE 11 NEW WORK POLICIES - RESIDENCY

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The Union argued that its membership is seeking the ability to move out of the City limits after a period of time. It is willing to require residency for new employees, but seeks to exempt current employees from having to live within the City limits. The Union argues that given the ability to travel on the well-developed freeway system in and around Youngstown,

living outside of the City would not be a great disadvantage in terms of response time. The Union also points out that its membership would like to be able to have more choice regarding public schooling for its children. The Employer asserts that for many years, city employees have been required to live within the City limits for a variety of reasons, not the least of which is economic stability for the City. It asserts that such a change, particularly during this critical time of economic recovery, would serve to undermine the City's attempt to develop its economic infrastructure.

This is a very volatile issue for both city unions and city officials. It is both a personal and a policy issue that has enormous social-economic implications. The City is at an important crossroad in its history; it must restore its economic viability and is attempting to enhance its image with a critical public. I must concur with the Employer that at this time, a shift in policy of this magnitude would be contrary to the City's efforts to rebuild and reinvent itself for the future.

Recommendation

Current language

ISSUE 12 ARTICLE 18A WORK POLICIES

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union is proposing that a bargaining unit employee shall receive two (2) hours of Accumulated Time for every five (5) shifts worked in the Radio room. Furthermore, the Union is proposing that bargaining unit employees working the Radio room shall not be required to wear uniforms and shall be permitted to wear a casual shirt and pants.

Applying the statutory criteria to disputes, there is no reasonable way a fact-finder in this situation can judge the propriety of dress for employees working in the Radio room. Proper dress is a matter of Department policy and must be worked out between the parties in a labor/management context. Moreover, the term "casual dress" conjures up a wide range of attire, some of which may be wholly inappropriate. It is also not clear as to the percentage of people who work the Radio room on a volunteer or involuntary basis. While it may be a tedious and stressful job to some, others may view it more positively. It also may serve as a placement for injured police officers who wish to work their way back to street duty. Therefore, there is no persuasive evidence to support the establishment of an incentive.

Recommendation

Current language

ISSUE 13 Officer-Delivery of Subpoenas

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties have had over a twenty-year practice of having officers on both the day and afternoon shift deliver court subpoenas to the public. There has also been in existence a long history of police offices delivering copies of the Gazette (senior citizen newsletter). According to the Employer, both duties are considered a public service. However, according to the Union, it has not been without its problems. Prior to the start of bargaining, city and union officials met with administrative officials of the court to discuss logistical problems associated with this long-standing practice. Unfortunately, these discussions were prematurely ended as a result of the absence of a key administrative official.

These issues, like others previously addressed, are esoteric in nature and do not lend themselves to resolution through application of the statutory guidelines that limit the fact-finder's authority. The parties need

to meet and either negotiate or work out any problems associated with these long-standing ancillary duties.

Recommendation

It is recommended that the parties reconvene a meeting with the administrator of the courts to continue a dialogue that preceded negotiations. It is also recommended that the issue of delivering the Gazette be referred to a labor/management forum in order to discuss any problems that have occurred in carrying out this supplementary duty.

ISSUE 14 ARTICLE 12, SECTION 23 ASSIGNMENT OF OFFICERS

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union provided convincing evidence and testimony that some of its officers are being assigned to civilian positions that are in classifications covered by the AFSCME collective bargaining agreement. These jobs are popularly referred to as clerical index and desk positions. In support of its position, the Union pointed out prohibition of such assignments contained on page 42 of the Collective Bargaining Agreement between the City and AFSCME. It states in unequivocal terms that *"...Police Officers and other non-bargaining unit personnel be prohibited from performing work done by bargaining unit personnel..."*

In spite of the fact Officers have performed this work in the past, there is no question that this work is to be performed by police clerks, and according to the AFSCME agreement, is not to be performed by Police Officers. This prohibition alone, not to mention the inappropriate nature of requiring Police Officers to cross jurisdictional lines and perform the bargaining unit work that rightfully belongs to other bargaining unit employees, is sufficient to support the Union's position.

Recommendation

New language under Section 23:

Officers shall not be assigned to work desk or index positions (civilian clerk positions) that are performed by AFSCME bargaining unit members.

ISSUE 15 ARTICLE 15, SECTION 2 SENIORITY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union wishes to expand the number of positions assigned by seniority in the areas of: B, and C-turn, traffic division, juvenile division,

crime lab, and records room. It argues that ten (10) positions on A, B, and C-turn are already bid by seniority and its proposal is simply expanding this concept. The Union also rejects the Employer's arguments that specialty areas (e.g. juvenile) require one to have the appropriate qualifications and personal characteristics.

The Employer articulated its concerns regarding flexibility to reassign employees who may not be getting along or who may be better utilized in other areas. The Employer contends that several of the above cited areas require special qualifications and training. For example, it contends that not all bargaining unit employees can work with juveniles in spite of their experience and qualifications.

There is insufficient comparable data to support a change at this point in time.

Recommendation

Current language

ISSUE 16 WORK POLICIES (ADDITIONAL PROVISIONS)

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union submitted a proposal based upon consideration by the Chief of Police to require more one-man cars in the City. The Employer argues this proposal comes too late and was not submitted until after the parties declared impasse. Based upon the chronology of events from mediation to fact-finding, the Employer is correct. The issue, while subject to other forums, including the filing of an Unfair Labor Practice if implemented, is not properly before this fact-finder.

Recommendation

Current language

ISSUE 17 LASIK SURGERY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The City's current financial condition (See Wage Issue above) requires the parties to focus on the continued provision of current benefits and wages. It does not permit the introduction of completely new benefits. Furthermore, there is insufficient comparable data to support this change. However, if a demonstrable argument can be made that the

inclusion of this benefit would improve an Officer's performance in areas such as weapons proficiency, it may be worth considering in the future.

Recommendation

Current language

ISSUE 18 DURATION

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties appear to be in agreement as to the duration of the Collective Bargaining Agreement. They have had a history of 3-year agreements.

Recommendation

The agreement shall be for three (3) years running from December 1, 2003 to November 30, 2006.

ISSUE 19 EMPLOYEE PARKING

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union argues that the double-parking spots that have been set-aside for members of the bargaining unit are no longer viable due to the difficulty of getting employees to move their cars. The Union also points out that City cutbacks of personnel eliminated the parking lot attendant, who provided needed assistance in moving cars. The Employer argues that parking is a dynamic issue that is constantly in a state of flux. It contends that more employees will be moving downtown (e.g. Job and Family Services), which will again impact available parking space. The City also points out its ownership of parking lots is very limited.

The parties agree that parking is a difficult issue. However, what can be done about it is simply not clear given the data presented. This is an issue that will be best resolved over time, as building in Youngstown progresses. While recognizing the issue of parking is a constant "thorn in the side" of employees, the Fact-finder does not have the sufficient evidence to fashion any workable solution at this time. It is a matter that may be a regular Labor/Management agenda item for the foreseeable future. If the right people are in the room, it appears that a focused effort on the issue of parking could produce some improvements without the outlay of a great amount of money.

Recommendation

Current language

ISSUE 20 INJURY ON DUTY LEAVE

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

At the urging of the Fact-finder, the parties continued to negotiate over this issue well past the fact-finding hearing date. They were able to reach agreement on all of the language of the issue with the exception of one area. The disagreement centers upon Provision M:

"M. Time spent on a light duty assignment or on a transitional work assignment shall constitute time off under these IOD provisions."

The Ohio Highway Patrol employs some 1800 troopers. In the Collective Bargaining Agreement that governs this bargaining unit, employees are eligible for injury on duty pay, or Occupational Injury Leave (OIL). Time spent on light duty does not count against OIL for this bargaining unit. It appears unreasonable to reduce IOD leave by hours spent in service to the City, albeit light duty service. If IOD leave is reduced by the number of hours spent working light duty or performing transitional work, it appears such a provision would act as a disincentive

to end the IOD leave earlier. If an employee risks losing IOD because he attempts to work, he may not take the risk. The confidence gained by being able to perform light duty or by participating in transitional work and its effect upon shortening leaves must be considered.

If the object is to have employees return to work as soon as possible after sustaining an on the job injury, it is important to address both the physical and psychological aspects of healing. To the extent that light duty and transitional work encourage an earlier return to work, it behooves the Employer to begin transitional or light duty work with as few obstacles as possible.

Recommendation

The parties tentatively agreed upon language on all sections of the IOD provision is recommended. Section M shall be modified as it appears in Appendix 1.

TENTATIVE AGREEMENTS

During negotiations, mediation, and fact-finding the parties reached tentative agreement on several issues and on "clean-up" language that corrected grammar and typographical errors. These tentative agreements are part of the recommendations contained in this report.

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The Fact-finder respectfully submits the above recommendations to the parties this 21st day of May in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

Robert G. Stein, Fact-finder

Appendix 1

13. Injured on Duty{PRIVATE }

- A. Injured on duty leave (IOD) shall be granted to any employee certified by the City as injured in the course and scope of City employment. Certification will not be unreasonably withheld by the City. An employee claiming to be injured on duty shall notify his immediate supervisor by the end of the employee's shift of an alleged work place injury which occurred during that shift in order for the City to consider certification of the alleged injury. The employee may report an injury without actually filing for IOD/Workers' Compensation for up to the time limits allowed by the Bureau of Workers' Compensation. Once an employee files for IOD/Workers' Compensation, IOD will not commence until all City required documentation is received by the City. Until such time, the employee will be continued on payroll with sick leave, vacation or A/T for any time off duty. Such time will be reimbursed upon City's grant of IOD pay. If such return of documents exceed seven (7) calendar days, time will not be reimbursed unless a physician's cooperation or lack thereof makes such impracticable. The employer shall have the responsibility to present necessary documentation to the employee at the time the injury is reported and the employee shall have the responsibility to ensure timely completion of this documentation.
- B. Continued participation in the IOD program is dependent on the employee suffering an on-the-job injury certified by the City (or subsequently allowed by the Bureau) and the employee participating in an injury-related rehabilitation or return-to-work program. If, however, an employee is files for temporary total or permanent total disability or is working elsewhere during the time the employee claims to be disabled from his/her City job, or is found to be performing tasks that are in conflict with the reported injury, all City benefits will immediately stop (including, but not limited to, the accumulation of sick, vacation or any other leave, eligibility for holiday pay and the Employer's contribution to the employee's pension fund).
- C. If, after a Bureau of Workers' Compensation determination or the administrative appeals process, whichever stage finalizes the process, it is found by the Bureau, the Industrial Commission or a court that the claim is not related to the employee's City job, the employee must reimburse the City for all IOD used by any means available: accumulated sick leave, vacation or regular biweekly pay deductions. The amount so used must be repaid within a twelve (12)-month period.
- D. If the City does not certify a claim, the employee will be permitted to use his/her sick leave, vacation leave or A/T time which shall be reimbursed if, after the Bureau determination or the administrative appeal process, whichever stage finalizes the process, it is found by the Bureau, Industrial Commission or a court that the claim was incurred in the scope of City employment.
- E. Any employee granted IOD who is referred to a Bureau Vocational Rehabilitation Program will be required to apply for, attend and fully cooperate with said program. Failure to fully cooperate with the Bureau Vocational Rehabilitation Program may result in loss of IOD benefits.
- F. The City may request that an employee receiving IOD benefits undergo a medical review at the City expense. The employee will be sent to a physician of the City's choosing. This medical review will be used to grant or deny a request for continued IOD. If the physician determines that the employee is unable to work in any status, and that this inability to work is a result of the work-related injury, IOD shall be continued.
- G. If after the City physician's review, the physician determines that the employee is able to return to work (either on a full-time or light duty status), the employee shall return to work or apply to Workers Compensation for TT. In no event will the City continue to pay IOD or any other benefit after a doctor's determination that the employee is fit for work and the employee does not return to work.
- H. Wages and all benefits for those off-duty on IOD will be continued for up to 365 non-consecutive days in a three-year period from the date of injury if all requirements above are met. After that period, an employee unable to return to work can file for Workers' Compensation TT, but will not continue to be eligible for City benefits, including sick or vacation accrual. Hospitalization benefits for an employee who has exhausted IOD but is unable to return to work will be continued for another six months if the employee continues to provide the City with doctors' reports stating that he is unable to return to work at least one time per month. After exhaustion of this six-month period, the City shall treat such as a "reduction in hours" Cobra-qualifying event and make necessary modifications to the employee under COBRA.

I. The City reserves the right to recoup benefit payments to any employee who is guilty of submitting a false claim or abuse of the privilege covered in this Article, or working for another employer while on injury leave, and to take disciplinary action. Examples of what might constitute "abuse" as used in this Section, including an employee's refusal to perform the duties associated with his/her transitional work duty assignment, failure to comply with the terms outlined in this Agreement, etc.

J. If the employee is able to work in a light duty or transitional work assignment, the City may provide work within the Department, if available. An employee working in a transitional assignment will be compensated at their regular rate of pay. Upon an employee's resumption of his or her normal work duties, the affected employee's transitional work assignment shall be terminated. A light duty or transitional work assignment shall not exceed sixty (60) days, unless mutually agreed to by both the Union and the City or extended by the Transitional Work Committee. The transitional work committee shall be comprised of a Youngstown Police Association representative, a department representative and a Law Department representative.

K. An employee cannot refuse to accept a light-duty or transitional work assignment. Only an employee's physician may provide evidence supporting an employee's inability to accept a light-duty or transitional work assignment. Upon receipt of such an opinion, the City reserves the right to send an employee for an independent medical examination at the City's expense. If the independent medical examiner determines the employee is able to participate in a light duty or transitional work assignment, the City's Transitional Work Committee will make a determination as to the employee's ability to work light duty.

L. Both the City and the Union recognize that an employee may be assigned to a light duty assignment in any City department, subject to any demonstrated physician restriction.

M. Time spent on a light-duty assignment or on a transitional work assignment shall not constitute time off under these IOD provisions.

N. The department or division head, in conjunction with the selected transitional work team, shall identify whether a transitional work assignment is available. However, it is not the intent of this Section to require a department or division to provide transitional work above that identified nor is a department or division required to provide transitional work where no such appropriate tasks have been identified and recognized.