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STATE EMPLOYMENT  
RELATIONS BOARD  
2004 SEP 13 A 10:44

**PURSUANT TO O.R.C. 4117.14(C)**  
**UNDER THE AUSPICES OF THE**  
**STATE EMPLOYMENT RELATIONS BOARD**

<b>IN THE MATTER BETWEEN</b>	)	
	)	
<b>CITY OF BRUNSWICK</b>	)	
	)	<b>FACTFINDER'S REPORT</b>
<b>and</b>	)	
	)	<b>SERB CASE NO.</b>
<b>TEAMSTERS LOCAL UNION</b>	)	<b>03-MED-11-1328</b>
<b>NO. 244</b>	)	

**This Factfinding arises pursuant to Ohio Revised Code Section 4117.14(C). The parties, City of Brunswick (“the City”) and Teamsters Local Union No. 244 (“the Union”), selected Susan Grody Ruben to serve as sole, impartial Factfinder, whose Recommendations are issued below.**

**Hearing was held August 12, 2004 in Brunswick, Ohio. The parties were afforded full opportunity for the presentation of positions and evidence. Pre-hearing submissions were received from both**

**parties. The parties requested the Factfinder to fax her Report on September 8, 2004.**

**APPEARANCES:**

**for the City:**

**James A. Budzik, Esq., Johnson Angelo & Colaluca L.L.C., 1001 Lakeside Avenue, Cleveland, OH, 44114.**

**for the Union:**

**Jarrell B. Williams, President and Business Manager, Teamsters Local Union No. 244, 2800 Euclid Avenue, Cleveland, OH, 44115.**

**FACTFINDER'S RECOMMENDATIONS**

**Introduction**

**The City of Brunswick, located midway between Cleveland and Akron in Medina County, has a population of approximately 36,000. Average household income is \$68,120. ([www.brunswick.oh.us](http://www.brunswick.oh.us); FirstEnergy Corp. Economic Development Department Community Profile.)**

## **Statutory Criteria**

**In reaching Recommendations on the nineteen open issues, the Factfinder has reviewed the parties' pre-hearing submissions and the evidence and positions presented at the Factfinding Hearing. The Factfinder has analyzed this information in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):**

- a) Past collectively bargained agreements ... between the parties;**
- b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;**
- c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;**
- d) The lawful authority of the public employer;**
- e) The stipulations of the parties; and**
- f) Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the**

**determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

### **Bargaining Unit**

**The bargaining unit consists of all regular full-time employees of the Division of Streets employed by the City, excluding management employees, supervisors, and confidential employees. There are approximately 17 employees in the unit working as equipment operators, mechanics, maintenance workers, laborers, masons, and carpenters.**

### **Issues**

**At the end of the Factfinding Hearing, 18 open issues remained:**

- 1) Wages**
- 2) Direct Deposit**
- 3) Management Rights**
- 4) Work Schedule**
- 5) Overtime**
- 6) Winter Shift**

- 7) **Compensatory Time**
- 8) **Uniforms**
- 9) **Emergency Call-ins**
- 10) **Residency Requirements**
- 11) **Vacations**
- 12) **Holidays**
- 13) **Group Insurance**
- 14) **Sick Leave**
- 15) **Seniority**
- 16) **Longevity Pay**
- 17) **Commercial Driver's License**
- 18) **Memorandum of Understanding**

**1. Wages – Article V**

**City's Proposal Regarding Wages**

**The City proposes the following wage increases:**

**2004 – 2%**

**2005 – 2.5%**

**2006 – 3%**

**The City's wage proposal is made against the background of flat income tax revenues and rising expenses. Cost-of-living increases have been below 3%. Non-bargaining unit City employees received a 3% wage increase in 2004.**

**Union's Proposal Regarding Wages**

**The Union proposes the following wage increases:**

**2004 – 4.5%**

**2005 – 4.5%**

**2006 – 4.5%**

**The Union presented its proposal against a background of a financially healthy municipality that can pay more than it is offering. The City has not alleged it has an “inability to fund” pursuant to R.C. § 4117.14.**

**Factfinder's Recommendation Regarding Wages**

**Despite a January 22, 2004 article in the Gazette that characterizes the City's “economic standing” as “good,” based on comments attributed to the City Manager, the City Finance Director made a cogent presentation that showed the City to be subject to various increasing liabilities. For example, the City's workers'**

**compensation premium increased 98.8% from 2003 to 2004 – from \$106,921.36 to \$212,586.77 – an additional payment of \$105,665.41.**

**The City also has experienced a significant increase in liability insurance premiums over the past few years. The premium was \$124,804.00 in 2002, \$150,376.24 in 2003, and is estimated to be \$315,000.00 in 2004. In addition to the increases in liability insurance premiums, the City's deductibles under its liability insurance policy has risen from \$250.00 per occurrence to \$2,500.00 per occurrence. Thus, a damaged plow truck would have cost the City \$250.00 in 2003, but now costs the City \$2,500.00.**

**A 1% increase in wages for this bargaining unit costs \$6,840.00, not including benefits. Given the City's demonstrated increasing expenses, coupled with flat income revenues similar to many other local municipalities, the Factfinder finds the Union's wage proposal to be too high. Not surprisingly, however, the Factfinder finds the City's wage proposal to be too low. The Factfinder recommends the following wage increases:**

<b>2004</b>	<b><u>3%</u> (retroactive to January 1, 2004)</b>
<b>2005</b>	<b><u>3.5%</u> (effective January 1, 2005)</b>
<b>2006</b>	<b><u>3.75%</u> (effective January 1, 2006)</b>

**2. Direct Deposit – Article V**

**City’s Proposal Regarding Direct Deposit**

**The City proposes adding the following language to Article V:**

**It shall be mandatory for all full-time employees to have their bi-weekly pay checks direct deposited.**

**The mandatory direct deposit program would permit employees to individually choose financial institutions for paycheck deposits; employees could choose to split their paychecks among one, two, or three financial institutions of their own choosing. The City made this proposal because direct deposit saves the City money in payroll processing costs. Special payments, such as longevity payments, would still be made by hand-cut checks. Currently, the City has a voluntary direct deposit program.**

### **Union's Response to City's Proposal Regarding Direct Deposit**

**The Union rejects the City's proposal regarding mandatory direct deposit. The proposal never arose before, and was not part of the City's final offer; accordingly it should not be addressed in factfinding. Moreover, mandatory direct deposit is an infringement of employee rights.**

### **Factfinder's Recommendation Regarding Direct Deposit**

**The City's proposal is reasonable, given that employees can designate to have their paychecks deposited in up to three financial institutions of their own choosing. Direct deposit saves the City money in payroll processing costs. Some members of this bargaining unit are opt-in participants to the City's current voluntary direct deposit program.**

**Based on cost-saving to the City, and the individual freedom retained in the proposal for employees to choose their own financial institutions, the Factfinder recommends the City's proposal regarding mandatory direct deposit be adopted.**

**3. Management Rights – Article IX**

**City’s Proposal Regarding Management Rights**

**The City proposes an additional management right, the right “to evaluate employees,” be added to Article IX. It is an inherent right of the City to evaluate employees at its discretion; the added language merely would memorialize it. The additional language would make it simpler to respond to a potential unfair labor practice regarding management’s “unilateral” move to evaluate employees.**

**Union’s Response to City’s Proposal Regarding Management Rights**

**The Union rejects the City’s proposal to add language to Article IX. Such new language is unnecessary and undesirable.**

**Factfinder’s Recommendation Regarding Management Rights**

**Evaluating employees is an inherent right of management. See O.R.C. § 4417.08(C)(2). Thus, while the additional language is unnecessary to maintain this management right, adding the language merely maintains status quo.**

**Accordingly, in the absence of a specific reason to keep the additional language out of the collective bargaining agreement, the**

**Factfinder recommends the City's proposal to add the language, "to evaluate employees," as an additional "inherent management" right listed in Article IX, be adopted.**

**4. Work Schedule – Article X**

**City's Proposal Regarding Work Schedule**

**The City proposes the following modifications to the first paragraph of Article X:**

**A normal work week consists of forty (40) hours with employees working eight (8) hours per day, in consecutive days, Monday–Friday, except as may be modified by the Employer based on operational needs. A normal workday shall begin no earlier than 6:30am, and end no later than 5:00pm. The regular work week shall begin at 00:00 hours Sunday and end at 23:59:59 hours on Saturday.**

**In essence, the City seeks to eliminate the current contractual 7:30am–4:00pm workday. The City seeks flexibility in the workday because set workdays unduly limit and restrict management. More flexibility is needed in the Division of Streets to improve public services to residents and to ensure coverage in vital areas.**

### **Union's Proposal Regarding Work Schedule**

**The Union proposes the current 7:30am–4:00pm workday be changed to a 7:00am–3:30pm workday. Such a schedule would enable bargaining unit employees to finish their work before afternoon rush hour.**

### **Factfinder's Recommendation Regarding Work Schedule**

**The City seeks substantial flexibility in scheduling bargaining unit employees. While this is understandable from the City's point of view, it is potentially quite disruptive for employees. A certain amount of predictability in work schedules is a reasonable expectation on the part of employees performing these types of jobs.**

**The Union points out that with the current set workday schedule, members of this bargaining unit historically have been extremely reliable in responding to emergencies and lesser needs of the City; the City did not disagree.**

**The Union contends the City is seeking workday flexibility in order to eliminate daily overtime; the City disputes that characterization, maintaining it seeks more flexibility only to better**

**serve residents. The City contends a set 7:00am start time is not desirable because during the winter, it would be dark at the beginning of the shift.**

**The Factfinder concludes each party has pointed out significant flaws in the other party's proposal to change the work schedule. Accordingly, the Factfinder recommends the current 7:30a-4:00pm regular workday be maintained, as expressed by the current first sentence of Article X:**

**A normal work week consists of five days, Monday through Friday, from 7:30am to 4:00pm, except as may be provided by additional shifts scheduled during winter operations.**

**The Factfinder also recommends against adoption of the new language proposed by the City regarding the beginning and ending times of the workweek; i.e., 00:00 Sunday to 23:59:59 Saturday. While this language merely expresses status quo, its addition to the collective bargaining agreement suggests a change has been made. This could result in unnecessary confusion and hostility on the part of the bargaining unit.**

**5. Overtime – Article X**

**Currently, the collective bargaining agreement provides in pertinent part:**

**All employees will receive time-and-one-half for all hours worked on Saturday and Sunday.**

**Union’s Proposal Regarding Overtime**

**The Union proposes double-time be paid for hours worked on Sundays. This overtime proposal is made to accommodate bargaining unit employees who are required to give up their personal time on Sundays.**

**City’s Response to Union’s Proposal Regarding Overtime**

**The City seeks status quo. The double-time proposal is an unnecessary addition to the general economic package.**

**Factfinder’s Recommendation Regarding Overtime**

**Any proposal involving economics must be analyzed by the Factfinder in terms of weighing the cost to the City against the Union’s justification for the proposal. Here, there is no evidence that Sunday work is common; accordingly, the cost to the City is not as great as it might be. The Union’s justification, that Sunday double-time is fair compensation for forgoing personal time, would be more compelling if the Sunday hours were preceded by Saturday hours and a full**

**workweek. Accordingly, the Factfinder recommends the following underlined language be added to the current last sentence of the Overtime section of Article X:**

**All employees will receive time-and-one-half for all hours worked on Saturday and Sunday, unless the Sunday hours are immediately preceded by Saturday hours worked and at least 40 hours worked Monday-Friday, in which case the Sunday hours will be paid at a double-time rate.<sup>1</sup>**

**6. Winter Shift - Article X**

**The City proposes a change in the dates/times of winter shift.**

**The Union proposes to add a winter shift differential. Currently, the collective bargaining agreement provides in pertinent part:**

**Winter shift operations shall commence between November 15 and December 15 and shall end on a Friday between February 15 and March 31. This shift shall start at 3:30 am and end at 12:00 noon. All employees will be offered this shift, on a seniority basis, every four (4) weeks. The City will provide twenty-four (24) hour notice to the employees prior to the implementation of the 3:30 am shift at the start of each winter season.**

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<sup>1</sup> The Factfinder is aware that under the City's current Sunday-Saturday workweek, determining appropriate Sunday pay under this recommendation requires analysis of a two-week period; presumably, this can be done without significant hardship to the City.

**(Underlining in current collective bargaining agreement.)**

**A. Winter Shift Dates/Times**

**1. City's Proposal Regarding Winter Shift Dates/Times**

**The City proposes:**

**The City may institute a winter shift for employees of the Division of Streets. Winter shift will begin no earlier than October 1 and will end no later than March 31. The City will attempt to provide twenty-four (24) hour notice to employees prior to the change of a start time. All employees will be offered any winter shift determined by the Employer, on a seniority basis, every four (4) weeks.**

**The City seeks the ability to begin winter shift sooner in the year (October 1) than provided in the current collective bargaining agreement (November 15) due to early snows in recent years. The City also seeks the ability to more flexibly schedule the start and end hours of winter hours. The Division of Streets needs this calendar and hour flexibility to more effectively schedule employees in order to serve residents.**

**2. Union's Response to City's Proposal Regarding Winter**

### **Shift Dates/Times**

**The Union seeks status quo. Members of the bargaining unit historically have responded quickly when snowplowing and salting are needed.**

### **Factfinder's Recommendation Regarding Winter Shift Dates/Times**

**The Factfinder recommends adoption of the City's proposal, as the calendar change more accurately reflects local snowfall patterns. The shift-time flexibility also is reasonable, given the somewhat unpredictable nature of snowfall. If an employee finds the shift-time flexibility too disruptive, he or she can choose not to accept a winter shift assignment under the language proposed by the City.**

### **B. Winter Shift Differential**

#### **1. Union's Proposal Regarding Winter Shift Differential**

**The Union proposes a fifty cents/hour winter shift differential for those who work a winter shift operation. The premium is justified because it is a hardship to start work in the middle of the night. A winter shift premium is common in surrounding municipalities.**

**2. City's Response to Union's Proposal Regarding Winter Shift Differential**

**The City rejects the Union's proposal for a winter shift differential. The proposal is expensive and unwarranted.**

**Factfinder's Recommendation Regarding Winter Shift Differential**

**Getting up in the middle of the night to snowplow City streets strikes the Factfinder as a hardship shift. A fifty-cent/hour differential would cost the City an additional \$4 per employee per shift. Even if all 17 bargaining unit employees worked a winter shift operation, which is likely not the case, the shift would cost the City an additional \$68.**

**The record does not indicate generally how often, and with how many employees, winter shift operates. Presumably, it is sporadic during the season.**

**The Union is correct that a number of northeast Ohio municipalities provide various shift differentials.<sup>2</sup>**

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<sup>2</sup> E.g., Euclid, in its previous contract with Teamsters Local 244, had a 35 cents/hour premium for hours between 6pm and 6am, year-round;(Factfinder Jonathan Dworkin recommended the premium be increased to 65 cents/hour for the current contract). Medina, in its current contract with Teamsters Local 436, has a 35 cents/hour premium for 2<sup>nd</sup> and 3<sup>rd</sup> shifts, year-round.

**Given that the Union's proposal is neither unwarranted nor expensive, the Factfinder recommends the Union's proposal be accepted.**

**7. Compensatory Time – Article XI**

**Union's Proposal Regarding Compensatory Time**

**Currently, the collective bargaining agreement permits employees to accrue compensatory time up to 180 hours. When the cap is reached, "all overtime worked shall be paid at the applicable rate." The Union proposes to increase the cap to 240 hours. The Union contends it is difficult to get management to approve compensatory time off; there appears to be an unwritten rule that only 3 employees in the Division of Streets can be scheduled off on any given day.**

**The Union also seeks to add the following language to the collective bargaining agreement:**

**All compensatory time shall be earned, used, and paid pursuant to the Fair Labor Standards Act.**

**The Union wants there to be less managerial discretion to deny compensatory time off.**

**City's Response to Union's Proposal Regarding Compensatory Time**

**The City rejects the Union's proposal, and seeks status quo. A 180-hour cap is sufficient. Other City employees have a cap of only 160 hours. The Fair Labor Standards Act ("FLSA") language is unnecessary; in any event, the FLSA does not give employees an absolute right to take compensatory time off.**

**Factfinder's Recommendation Regarding Compensatory Time**

**Although the FLSA would permit these parties to negotiate a cap of up to 240 hours, it does mandate that number. See 29 U.S.C. §§ 207(o)(2)(A)(I); 207(o)(2)(B); and 207(o)(3)(A). As other employees employed by the City have a smaller cap of 160 hours, the Factfinder recommends status quo, i.e., a 180-hour cap.**

**Regarding the Union's proposal to add specific language stating compensatory time "shall be earned, used, and paid pursuant to the" FLSA, the Factfinder recommends against this. The Union seeks this language in order to limit managerial discretion to deny compensatory**

**time off requests. Grafting the entire FLSA to the collective bargaining agreement to achieve this, however, is like using a sledgehammer to tap a 10-point nail. The FLSA addresses a myriad of subjects irrelevant to these parties. The one section addressing the subject of the Union's frustration regarding granting of compensatory time off is 29 U.S.C. § 207(o)(5)(A) and (B), which provides:**

**An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency – ...who has accrued compensatory time off ... and who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.**

**Accordingly, the Factfinder recommends the following language, modeled after the FLSA section set out above, replace the first sentence of Article XI(1):**

**Employees who request to schedule compensatory time off shall be permitted by the Division Head to take such time off if the time off would not unduly disrupt the operations of the Division of Streets.**

**Such language adds an “would not unduly disrupt the operations” standard, which hopefully will address the Union’s concern.**

**The Factfinder points out she has not suggested inclusion of the “within a reasonable period after making the request” language. This is because she finds that language odd and impractical; i.e., an employee who seeks to take compensatory time off requests certain days off; the employee is not seeking to take time off on a date chosen by management that is “within a reasonable period after making the request.”**

**8. Uniforms – Article XIII**

**The current collective bargaining agreement provides:**

**[1] City of Brunswick will provide daily change of uniforms for each employee.**

**[2] The City will provide winter and spring/fall uniform jacket.**

**[3] City of Brunswick will provide foul weather gear it has traditionally provided in the past (i.e., gloves, boots, raingear). Such gear shall be supplied as soon as practical after request.**

**[4] Plain white “T” shirts may be worn in summer months. All uniform items issued by the City, damaged through normal wear and tear, must be returned to the City prior to re-issue.**

**A. Shoe/Boot Purchase**

**1. City's Proposal Regarding Shoe/Boot Purchase**

**The City proposes to add the following language:**

**All bargaining unit employees shall receive an annual One Hundred Fifty Dollar (\$150.00) shoe/boot allowance. A shoe/boot vendor will be brought to the work site for employees to select their pre-approved shoes/boots. This will be the only shoes/boots that may be purchased. The City will pay directly to the vendor up to \$150.00. Any amount over the \$150.00 will be paid by the employee.**

**Although the current collective bargaining agreement does not contain a provision regarding a shoe/boot allowance, the City has been granting a shoe/boot stipend. The \$150 contractual proposal is more than the stipend the City has been granting. (The record does not indicate the amount of the stipend.)**

**The City seeks to have the employees purchase their boots from a vendor chosen by the City that will come on-site because (1) the City can get a group discount from the vendor; (2) the City would not have to process 17 separate receipts; (3) purchasing from a City-chosen vendor eliminates the possibility of employees returning their boots for cash (which occurred in a neighboring municipality); (4) the City can**

**pre-approve which boots are suitable for work; and (5) if there is a problem with an employee's boot, the City has recourse with the vendor.**

**2. Union's Proposal Regarding Shoe/Boot Purchase**

**The Union rejects the City's proposal and proposes the following language be added instead:**

**The City shall provide an annual boot allowance of two hundred (\$200.00) dollars to be paid on January 2 of each year.**

**Employees prefer to go to the vendor of their choice to purchase the boot of their choice. Some boots currently worn by employees cost in excess of \$150. Employees can turn in their receipts in order to receive reimbursement.**

**Factfinder's Recommendation Regarding Shoe/Boot Purchase**

**It is challenging to work an 8-hour day performing all sorts of physical tasks in all sorts of weather. It is quite unpleasant to do this if your feet hurt. As presented by the Union at the Factfinding Hearing, different employees have different needs when it comes to their boots. Through the test of time, one employee has discovered that for his feet to remain comfortable during the weekday, he needs Goretex boots.**

**Another employee finds steel-toed boots uncomfortable. To account for these important personal preferences, and to use wisely the City's financial resources, the Factfinder recommends an allowance of up to \$150.00 to reimburse employees for shoes/boots of their choice purchased from vendors of their choice. Parks employees receive a \$125.00 cash allowance for shoes/boots; in light of that, the City's \$150.00 proposal to the Streets employees is fair. Accordingly, the Factfinder recommends the following language be added to Article XIII:**

**All bargaining unit employees shall receive an annual shoe/boot allowance of up to One Hundred Fifty Dollars (\$150.00). To receive the allowance, the employee must give the original receipt to the City. Reimbursement will be for the amount of the shoe/boot plus applicable tax, up to a total of \$150.00. If the shoe/boot chosen by the employee sold for less than \$150.00 (including tax), the employee shall receive reimbursement in the amount of the purchase price plus tax. If the shoe/boot chosen by the employee sold for more than \$150.00 (including tax), the employee will receive \$150.00 from the City.**

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**B. Summer Uniforms**

**The parties agreed at the Factfinding Hearing to replace the 1st sentence of the 4<sup>th</sup> paragraph of Article XIII with the following language:**

**Beginning April 2005, and each following April, the City will provide 5 t-shirts to each bargaining unit employee. The City will select the color of the t-shirts, which will be any color but white. Employees will wear these t-shirts during the summer months.**

**Also addressed at the Factfinding Hearing was whether bargaining unit employees could wear shorts as part of the summer months uniform. The current collective bargaining agreement does not address this issue. The Factfinder recommends this issue not be addressed in the new collective bargaining agreement. Rather, it appears an informal approach to this issue will be worked out.**

**9. Emergency Call-ins – Article XIV**

**The collective bargaining agreement currently provides:**

**All employees properly reporting for work shall be guaranteed a minimum of four (4) hours work, at time-and-one-half, at such assignment set forth by the Service Director or Supervisor. This shall pertain to emergency CALL IN only. All employees are expected to report for**

**emergency CALL IN. Any employee not reporting for emergency CALL IN, and found to be working another job, shall be cause for immediate disciplinary action.**

**City's Proposal Regarding Emergency Call-ins**

**The City proposes to modify the first sentence to provide as follows:**

**All employees properly reporting for work shall be guaranteed a minimum of four (4) hours for snow and/or ice removal, and a minimum of two (2) hours for all other emergency call-ins, at time-and-one-half, at such assignment as set forth by the Service Director or Supervisor.**

**The City seeks to increase the 3-hour minimum for snow and ice removal emergency call-ins, and to decrease the 3-hour minimum for emergency call-ins other than snow and ice removal. This would result in some cost containment, yet be fair and reasonable to employees.**

**Union's Proposal Regarding Emergency Call-ins**

**The Union rejects the City's proposal, and seeks status quo on 4-hour minimum for all emergency call-ins.**

**The Union proposes to add the following language to Article XIV to enact minimum staffing in emergency call-in situations:**

**When the City announces an emergency call-in, a minimum of 2 employees shall be called to work the emergency.**

**The Union seeks a safe working environment during emergency situations. The City rejects minimum staffing, as some emergencies can be safely handled by 1 employee.**

**The Union proposes to delete the last sentence of Article XIV in the current collective bargaining agreement. Discipline for working another job is unreasonable and unwarranted.**

**Factfinder's Recommendation Regarding Emergency Call-ins**

**The Factfinder recommends status quo on Article XIV, but for the deletion of one word as discussed below.**

**Having different minimum hours for different types of emergency call-ins ignores the fact that emergency call-ins of any kind are disruptive to employees' personal lives. A 4-hour minimum for any type of emergency call-in is both reasonable and fair.**

**It does not appear necessary to have 2-person minimum staffing for all emergency call-ins. The City can use its discretion in determining which emergencies warrant calling in more than 1 employee.**

**The Factfinder considers it reasonable for the City to expect full-time employees of the Division to consider their City jobs their primary job. Bargaining unit employees are not prohibited from moonlighting; but they are required to make themselves for emergency call-ins. It is reasonable for the City to issue discipline if an employee is unavailable for an emergency call-in due to working another job. The Factfinder recommends, however, that the last sentence of Article XIV be modified to delete the word “immediate.” The Factfinder, when she serves as an arbitrator, has noticed that “immediate” disciplinary action is often not as reasonable and fair as disciplinary action that is issued after management has had an opportunity to fully analyze a situation. Accordingly, the last sentence of Article XIV, with the deletion of “immediate” and a bit of rewording would read:**

**An employee not reporting for emergency call-in, and found to be working another job, shall be subject to disciplinary action.**

**10. Residency Requirements – Article XV**

**Article XV reads in its entirety:**

**All employees must reside within a fifteen (15) mile radius of the City of Brunswick.**

### **Union's Proposal Regarding Residency Requirements**

**The Union proposes deleting any residency requirement for bargaining unit employees. Employees should have the opportunity to reside beyond a 15-mile radius of the City. Many managerial City employees live outside a 15-mile radius of the City.**

### **City's Response to Union's Proposal Regarding Residency Requirements**

**The City rejects the Union's proposal, and seeks status quo. The City Manager is required by the City Charter to live in Brunswick. There is no residency rule in the City Charter regarding other managerial employees. The City believes the current residency requirement should be maintained for Division of Streets employees in order to be able to promptly serve residents in emergency situations.**

### **Factfinder's Recommendation Regarding Residency Requirements**

**While the Factfinder understands the bargaining unit's frustration with the residency requirement, the Factfinder also understands how the residency requirement is justifiable in this bargaining unit. The Factfinder notes that even if a conciliator were to delete the residency requirement, the City could enact it in the City Charter, pursuant to**

**O.R.C. § 4117.10(A). The Factfinder recommends status quo.**

**11. Vacations – Article XVI**

**City's Proposal Regarding Vacations**

**Currently, vacation accrual is based on individual employees' anniversary dates. The City proposes to modify Paragraphs 6, 7, and 8 of Article XVI to reflect a conversion to vacation accrual based on calendar year. The City proposes the following language be added to Article XVI:**

**Effective January 1, 2005, employees shall be converted to a calendar year vacation schedule. The City shall take all necessary steps in converting vacation leave from an anniversary year to a calendar year without loss of benefits.**

**Anniversary year vacation accounting is a difficult task. Converting to a calendar-year system for all employees will substantially streamline this task. The conversion will not decrease any employee's accrued vacation benefits.**

**Union's Response to City's Proposal Regarding Vacations**

**The Union rejects the City's proposal to convert vacation accrual to a calendar-year basis from an individual anniversary basis. The**

**Union seeks status quo. The current system is in compliance with state law; there is no reason for change.**

**Factfinder's Recommendation Regarding Vacations**

**The Factfinder understands the accounting difficulties borne by the City in an individual anniversary vacation accrual system. On the condition, as expressed by the City, that the one-time conversion will cause no loss of any vacation benefits to any employee, the Factfinder recommends the adoption of the City's proposal.**

**12. Holidays – Article XVII**

**City's Proposal Regarding Holidays**

**The current collective bargaining agreement names 13 holidays that will be observed, and the dates on which those holidays will be observed for the life of the contract. The City proposes to name 11 holidays in the contract, and allow the Union to name 2 additional holidays. The Union also proposes not to specify the observed dates of the 13 holidays in the collective bargaining agreement. Moreover, the City proposes to prohibit 4-day weekends, with the exceptions of Thanksgiving weekend and Christmas weekend. These proposals**

**coalesce in the following language proposed by the City:**

**The following holidays will be observed:**

<b>New Year's Day</b>	<b>Labor Day</b>
<b>Martin Luther King, Jr. Day</b>	<b>Columbus Day</b>
<b>Presidents' Day</b>	<b>Thanksgiving Day</b>
<b>Good Friday</b>	<b>Day after Thanksgiving</b>
<b>Memorial Day</b>	<b>Christmas Day</b>
<b>Independence Day</b>	

**The Union is to decide two (2) additional holidays to schedule. There shall be no four (4) day weekends scheduled with holidays except for Thanksgiving weekend and/or Christmas.**

**The City's proposal is a realignment of existing holidays. Employees would retain the current total number of holidays without any reduction.**

#### **Union's Response to City's Proposal Regarding Holidays**

**The Union rejects the City's proposal, and seeks status quo. The Union submitted a list of holidays and dates for the years 2004, 2005, and 2006. Historically, the City has reviewed the list with the Union. This has not occurred. Moreover, the City needs to re-designate 2 holidays in 2004 that were canceled due to local flooding necessitating emergency work. The Union specifically rejects the City's proposed limitation on scheduling 4-day weekends. Historically,**

**if emergencies occurred during a 4-day weekend, employees cooperated and came to work.**

**Factfinder's Recommendation Regarding Holidays**

**First, if it has not already done so, the Factfinder recommends the City immediately re-designate the 2 flood days. The delay in doing so has created unnecessary bad blood.**

**Second, the Factfinder recommends the City review with the Union the Union's suggested list of holidays and observed dates for the new contract. Not doing so has contributed to the bad blood.**

**Once these 13 holidays and observed dates have been set, the Factfinder recommends listing the 13 holidays and observed dates in the new contract.**

**Third, the Factfinder understands the City's desire to limit 4-day weekends in conjunction with holidays, specifically Memorial Day and Independence Day. While employees' desires for 4-day weekends also is certainly understandable, the balancing of these opposing desires must be done with a strong emphasis on servicing the taxpaying residents. Accordingly, the Factfinder recommends the City's proposed limitation on 4-day weekends be adopted.**

**13. Group Insurance – Article XXI**

**City’s Proposal Regarding Group Insurance**

**Currently, Article XXI(A) provides in pertinent part:**

**The City agrees to pay the full premium of each eligible employee and his dependents for Hospital, Surgical and Major Medical Insurance....**

**The City proposes to modify Article XXI(A) as follows:**

**Eligible employees shall select one of the four group health insurance plans as set forth in Appendix A. Any plan selection which contains a premium payment by the employee will be made through payroll deduction or, at the employee’s option, an end of the year payment.**

**Of the 4 plans set out in “Appendix A,” 2 of them do not require any premium payment by the employee.**

**The City also proposes to collect premiums at the highest rate retroactively to May 1, 2004. Effective October 1, 2004, employees may convert to another plan. The next opportunity to switch plans would be the open enrollment period in 2005.**

**The City bases its health insurance proposal on SERB data showing an increasing number of workforces make contributions toward health insurance premiums. Moreover, the City’s health**

**insurance costs have been increasing, to the point where it is reasonable to expect employees to contribute if they choose a high-cost health insurance plan.**

**Union's Response to City's Proposal Regarding Group Insurance**

**The Union rejects the City's proposal, and largely seeks status quo.<sup>3</sup> The City has not experienced financial difficulties to the extent it cannot maintain the group insurance plans provided in the current contract. Moreover, the City did not provide the Union with any financial documentation that would warrant bargaining unit employees making contributions to health care premiums.**

**Factfinder's Recommendation Regarding Group Insurance**

**SERB's 2003 "Annual Report on the Cost of Health Insurance in Ohio's Public Sector" provides in pertinent part:**

**Premium Sharing**

- When employees pay a portion of the premium cost for medical coverage, their monthly contributions average \$36.75 and \$103.14 for single and family coverage, respectively. These rates amount to 11.2 percent of the cost of a single plan and 12.6 percent of the monthly**

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<sup>3</sup> The Union proposes that prescription drugs cost employees \$1 for generics, and \$2 for name brands.

**family premium.**

- **Seventy percent of responding employers require their employees to pay a portion of the cost of a family medical plan. Employers with premium sharing for single coverage total 61 percent.**

- **Seventy-three percent of public employees whose employers responded contribute to the cost of their medical insurance.**

**An August 3, 2004 article in USA Today, “Fewer Getting Health**

**Insurance Through Their Jobs,” states:**

**The percentage of people who get health insurance through employers fell sharply from 2001 to 2003, resulting in 9 million fewer people with employer coverage....**

**...**

**Job losses caused by the sluggish economy were the main reason for the drop in people covered by employer health plans. But insurance premiums that increased 28% during the period also contributed to the decline, as some employers stopped offering coverage, while at some firms workers decided not to enroll because their share of the cost rose....**

**The City estimates an overall 14% increase (\$170,000) in health insurance costs from 2003 to 2004.**

**As set out in Appendix A, the 4 insurance plans offered by the City cost as follows, with the proposed employee contributions set out as well:**

**Medical Mutual Option "A" Monthly Premium**

**Single Coverage: \$348.36; Ee contributes \$10.62**

**Family Coverage: \$940.58; Ee contributes \$28.62**

**Medical Mutual Option "B" Monthly Premium**

**Single Coverage: \$338.69; Ee contributes \$6.46**

**Family Coverage: \$914.46; Ee contributes \$16.62**

**Medical Mutual Option "C" Monthly Premium**

**Single Coverage: \$325.41; Ee contributes -0-**

**Family Coverage: \$878.62; Ee contributes -0-**

**Kaiser Permanente Monthly Premium**

**Single Coverage: \$269.23; Ee contributes -0-**

**Family Coverage: \$775.39; Ee contributes -0-**

**Calculating proposed employee contributions as a percentage of premium costs:**

**Medical Mutual Option "A"**

**Single Coverage: Ee contributes 3%**

**Family Coverage: Ee contributes 3%**

**Medical Mutual Option "B"**

**Single Coverage: Ee contributes 2%**

**Family Coverage: Ee contributes 2%**

**The Factfinder understands the Union's strong desire for status quo. Employer-paid health insurance surely is a very desirable benefit.**

**Once employees start contributing to premium costs, the gloomy prediction is that employees will continue to contribute to premium costs, and at higher levels each year.**

**Record evidence from other municipalities shows employee contributions at substantially higher levels than proposed by the City:**

- Conciliator Winters, in the matter of the City of Rittman and the OPBA, approved employee contributions of up to \$110/month.**
  
- The 2004-2006 collective bargaining agreement between City of Strongsville and Teamsters Local No. 52 provides for a \$20 monthly contribution from employees for participation in a Kaiser HMO.**
  
- The 2002-2005 collective bargaining agreement between City of Broadview Heights and CWA Local 4340 requires participating employees to contribute 5% of health insurance premiums, up to a maximum of \$40 for single coverage, and \$75 for family coverage.**
  
- The 2004-2006 collective bargaining agreement between City of Ashland and AFSCME Ohio Council 8 and City of Ashland Employees Local 2313 requires participating employees to pay 20% of premiums.**

**In light of these comparables, the City's proposal appears modest. In light of the data, the Factfinder recommends adoption of the City's**

**proposal regarding the level and cost at which participating employees shall contribute to health insurance premium costs.**

**The Factfinder also recommends the parties adopt a provision that caps employee contributions for the life of the contract at 3% of the premium costs. Further, the Factfinder recommends the parties adopt a provision that ensures there will be, for the life of the contract, a medical insurance option that will be 100% City-paid.**

**Finally, the Factfinder does not recommend the parties adopt that portion of the City's proposal that provides for retroactivity to May 1, 2004 for employee premium contributions. The Factfinder recommends the City bear that cost.**

**14. Sick Leave – Article XXIII**

**Union's Proposal Regarding Sick Leave**

**Currently, Article XXIII provides that 16 hours of sick leave may be used as personal leave. The Union proposes 2 8-hour days of personal leave that is not deducted from accumulated sick leave.**

**Currently, Article XXIII requires that after 8 days of sickness in a year, a doctor's note must be provided. The Union proposes to replace**

**the 8-day requirement with a 15-day requirement.**

**Currently, Article XXIII provides under certain circumstances, one-half day's pay for each day of accumulated sick leave not used. The Union proposes that employees receive a full day's pay for each day of unused sick leave under the certain circumstances set out in Article XXIII.**

**Currently, the City has a non-contractual policy of providing one-quarter day's pay upon an employee's retirement for each day of unused sick leave. The Union proposes a contractual provision of a full day's pay upon retirement for each day of unused sick leave.**

**The Union seeks these modifications to achieve parity with the City's contracts with its safety forces.**

**City's Response to Union's Proposal Regarding Sick Leave**

**The City rejects the Union's proposal, and seeks status quo. The Union's proposal is excessive, and greater than the sick leave benefits received by other City employees, both bargaining unit and non-bargaining unit. The current benefits are reasonable.**

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### **Factfinder's Recommendation Regarding Sick Leave**

**The Union's proposal regarding sick leave appears excessive to the Factfinder. There is no compelling record evidence upon which to recommend the Union's proposal. Status quo appears to be reasonable; as such, the Factfinder recommends it.**

### **15. Seniority – Article XXV**

#### **City's Proposal Regarding Seniority**

**Article XXV(3) currently provides:**

**All new employees shall be considered probationary employees for a period of six (6) months from the beginning of employment, during which time they shall have no seniority. Probationary employees will be eligible for insurance as of the beginning of the fourth (4<sup>th</sup>) month from the date at which they start. A new employee may be summarily dismissed during such probationary period at the sole discretion of the City. If such employee is retained beyond the probationary period, he shall immediately thereafter be classified as a regular employee and his seniority shall commence as of the date of his appointment unless previous Agreements are agreed to by both the Union and the City.**

**The City proposes to increase the probationary period for new hires from 6 months to 1 year because 6 months is not enough time to**

**adequately review a new hire. State law allows probationary periods of 1 year for new hires. This proposal helps the Union by giving the “marginal” new hire a longer time frame to be considered for a permanent position. The City’s proposal would not create an undue hardship upon the new hires or the Union.**

**Union’s Proposal Regarding Seniority**

**The Union rejects the City’s proposal, and seeks status quo. Six months is a sufficient period of time to review a new hire.**

**Factfinder’s Recommendation Regarding Seniority**

**The Factfinder agrees with the Union that 6 months is a sufficient period of time to review a new hire. While a longer probationary could benefit a “marginal” new hire, it creates an undue hardship upon well-performing new hires because it extends the period of time during which he or she can be “summarily dismissed ...at the sole discretion of the City.” Accordingly, the Factfinder recommends status quo.**

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**16. Longevity Pay – Article XXXIII**

**City’s Proposal Regarding Longevity Pay**

**The City proposes to increase longevity pay by 2%, 2.5%, and 3%, consistent with the City’s wage proposal. The City further proposes that longevity payments shall be made in a lump sum once a year, rather than the current system where the payment is divided into 2 installments; the conversion year would be 2005.**

**The Union’s proposal is excessive and costly.**

**Union’s Proposal Regarding Longevity Pay**

**The Union proposes parity with the police and fire contracts. A 10-year employee in one bargaining unit should get the same longevity pay as a 10-year employee in another bargaining unit.**

**Factfinder’s Recommendation Regarding Longevity Pay**

**The Factfinder notes the City’s clerical employees also receive lower amounts of longevity pay than the safety employees. While all jobs are important to the City, there are logical distinctions made in many municipalities between safety force contracts and other contracts. Instead of linking the Streets employees’ longevity pay to the safety force employees’ longevity pay, the Factfinder recommends**

**the Streets employees' longevity pay be linked to their wage increases. The Factfinder also recommends longevity pay be paid in 1 lump sum annually, with the conversion year being 2005.**

**17. Commercial Driver's License – (new)**

**Union's Proposal Regarding Commercial Driver's License**

**The Union proposes:**

**All bargaining unit employees who are CDL holders and have not tested positive for drugs or alcohol during their tenure with the employer shall receive an annual payment of five hundred dollars (\$500.00) to be paid on December 1 of each year of the contract.**

**All license renewal fees for the CDL shall be paid by the City.**

**The Union seeks to reward employees for maintaining their CDL, and for operating vehicles in a safe and drug-free manner.**

**City's Proposal Regarding Commercial Driver's License**

**The City rejects the Union's proposal, and proposes instead:**

**All current employees of the Division of Streets will be required to maintain and hold during their employment with the City, a minimum of a Commercial Driver's License ("CDL"). The City will reimburse the employees of the Division of**

**Street's the difference in the cost of the CDL renewal fee and the renewal of a regular driver's license. Proof of renewal of the CDL must be submitted to the City in order to obtain reimbursement. A copy of each employee's current driver's license must be submitted to the Service Director and to Administrative Services.**

**The City proposal adequately and fairly reimburses employees for the possession of a CDL. These employees, like all other Service Department employees across the State, are required to have and maintain a CDL as a condition of employment. The City expressly rejects the Union's proposal to pay each employee a \$500.00 stipend for maintaining a CDL and not testing positive for drugs and/or alcohol.**

**Factfinder's Recommendation Regarding Commercial Driver's License**

**The Factfinder finds the idea of a \$500 bonus for not testing positive for drugs and/or alcohol to be totally unwarranted. Not testing positive is a reasonable work requirement. An employee should not have to be bribed to come to work straight and sober. An employee who is incapable of coming to work straight and sober without being bribed should be in rehabilitation, rather than reporting to work.**

**The Factfinder finds the City's proposal reasonable and logical, and therefore recommends it.**

**18. Memorandum of Understanding – (new)**

**City's Proposal Regarding Memorandum of Understanding**

**The City proposes to enter into a Memorandum of Understanding with the Union to discuss the following terms:**

- 1. City Drug-Testing Plan**
- 2. City Attendance Policy**
- 3. Line of Duty Injury Leave**
- 4. Tuition Reimbursement**

**Inasmuch as the current collective bargaining agreement does not address these subjects, the Union should welcome the ability to negotiate these policies.**

**Union's Response to City's Proposal Regarding Memorandum of Understanding**

**There does not appear to be any reference to this proposal in the Union's Pre-hearing Statement or at the Factfinding Hearing.**

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**Factfinder's Recommendation Regarding Memorandum of Understanding**

**The City represents that the other bargaining units have agreed to the MOU. If that is the case, the Factfinder recommends adoption of the MOU so that the Streets bargaining unit can also participate in the discussions.**

**DATED: September 8, 2004**

  
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**Susan Grody Ruben, Esq.**  
**Factfinder**

CITY OF BRUNSWICK - MEDICAL INSURANCE OPTIONS

MEDICAL MUTUAL OF OHIO

	<u>Single</u>	<u>Family</u>	<u>Single</u>	<u>Family</u>
<b>OPTION A</b>				
Medical - \$10 office co-pay	240.21	648.59		
Drug (5/10)	75.49	203.83		
Mail Order 3 mths for 2 co-pays				
Dental	29.05	78.41		
Vision	3.61	9.75		
<b>TOTAL PREMIUM PER MONTH</b>	<u>348.36</u>	<u>940.58</u>		
			Employee Pays	
			10.62/pay	28.62/pay

**OPTION B**

Medical - \$10 office co-pay	240.21	648.59		
Drug (10/15)	65.82	177.71		
Mail Order 3 mths for 2 co-pays				
Dental	29.05	78.41		
Vision	3.61	9.75		
<b>TOTAL PREMIUM PER MONTH</b>	<u>338.69</u>	<u>914.46</u>		
			Employee Pays	
			6.46/pay	16.62/pay

**OPTION C**

Medical	240.21	648.59		
Drug (15/25)	52.54	141.87		
Mail Order 3 mths for 2 co-pays				
Dental	29.05	78.41		
Vision	3.61	9.75		
<b>TOTAL PREMIUM PER MONTH</b>	<u>325.41</u>	<u>878.62</u>		
			Employee Pays	
			-0-	-0-

**KAISER PERMANENTE**

Medical - \$10 office co-pay				
Drug \$10 Mail Order 2 mths for \$10				
<b>TOTAL PREMIUM PER MONTH</b>	<u>269.23</u>	<u>775.39</u>		
			Employee Pays	
			-0-	-0-

Appendix A