

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING AWARD

STATE EMPLOYMENT
RELATIONS BOARD
2004 AUG 20 P 4:34

THE FRATERNAL ORDER OF POLICE
CAPITAL JOHN C. POST LODGE No. 44

CASE NOS. 04-MED-03-0211
04-MED-03-0212

Union)
and)
THE CITY OF DAYTON)
Employer)

FACT FINDER: JAMES M. KLEIN
AWARD ISSUED: AUGUST 19, 2004

I. HEARING:

DATES: July 7, 8, 2004
LOCATION: Sinclair CC-Dayton, Ohio
ATTENDANCE:

For the Employee Organization:

- Sorrell Logothetis, Esq.
- Susan D. Jansen, Esq.
- Randy Beane, President, Lodge 44
- David Maynes, Past President, Lodge 44
- Deric McDonald, 1st. VP, Lodge 44
- Michael August, 2d VP, Lodge 44
- R. Chris Weber, Member
- Mark A. Ponichtera, Member
- C. William Keller, Member
- Carlene Maynes, Member
- Dyan Briggs, Member
- Stephen C. Grimer, Legal Assistant, Lodge 44

For the Employer:

Jonathon Downes, Esq. Labor Counsel
Brent McKenzie, Esq. Employee Relations Mgr.
James Dineen, City Manager
Cheryl Garrett, Finance Director
Candy H. Carr, Acting Accounting & Treas. Mgr.
Ken Thomas, Safety Administrator
Wanda Smith, Asst. Chief of Police
Bill Saluke, Employee Services Manager
Kelly Gray, Special Projects Administrator
Diane Shannon, City Economist
Bart Schidecker, Management Analyst

Fact Finder: James M. Klein (appointed May 12, 2004).

II. BACKGROUND:

1. The Employer is the City of Dayton [hereinafter "the Employer"].
2. The Union is the Fraternal Order of Police, Capital John C. Post Lodge No. 44 [hereinafter "the Lodge"]. The Lodge represents two (2) distinct bargaining units. One bargaining unit is defined in the collective bargaining agreement ["CBA"] as "all Sworn Police Officers who are below the rank of Sergeant." This is the Police Officers' bargaining unit that includes approximately 361 Police Officers. There also is a bargaining unit of Supervisors defined in the CBA as "sworn Police Officers in the classified service above the rank of Police Officer." This is the Supervisors' unit and includes the ranks

of Sergeant and Lieutenant. There are approximately 70 sergeants and 18 lieutenants in this unit.

3. The current CBA's for both the Officers' and Supervisors' unit were reached through the process of joint, multi-unit bargaining in 2001, and the parties have engaged in joint multi-unit negotiations during the negotiations presently in issue.

4. The Lodge and the City are parties to two separate CBA's: one for the Supervisors' unit and one for the Police Officers' unit, both effective May 18, 2001 through May 17, 2004. The contract terms extend by operation of law until seven days after mailing of the Fact Finding Report. OAC 4117-9-021(E).

5. The parties also engaged in negotiation sessions six times and in mediation sessions two times prior to the fact finding hearing. At the fact finding hearing the parties agreed not to engage in mediation. Prior to the fact finding hearing the representatives of the parties signed off on a number of unresolved issues and the tentative agreements are attached to this fact finding report. In addition, during the fact finding hearing the parties agreed to sign off on or withdraw the following issues:

1. Article 5, Lodge Business, Section 1. Lodge President and Section 2. Grievance Representatives (withdrawn by City).

2. Article 7, Sick Leave, Section 4. Fraction of a Day (withdrawn by Lodge).

3. Article 7, Sick Leave, Section 5. Doctor's Certification (withdrawn by City).

4. Article 7. Sick Leave, Section 7. Conversion to Vacation or Personal Allowance Claim (withdrawn by City)

5. Article 7, Sick Leave, Section 10. False Claim (settled and parties agreed to modify the language in the current CBA).

6. Article 10, Special Leave/Duty Status, Section 4. Disability (withdrawn by Lodge).

7. Article 11, Discipline and Due Process, Section 1. Investigation by Management (withdrawn by City).

8. Article 11, Discipline and Due Process, Section 3. Employee Rights (settled).

9. Article 11, Discipline and Due Process, Section 4. Disciplinary Action/Progression (withdrawn by Lodge).

10. Article 11, Discipline and Due Process, Section 7. Disciplinary Time Limits (withdrawn by City).

11. Article 11, Discipline and Due Process, Section 13. Appeal of Discipline (withdrawn by City).

12. Article 12, Grievance Procedure, Section 6. Arbitration (withdrawn by Lodge).

13. Article 13, Promotional Procedure, Section 1. Promotional Criteria (withdrawn by City and Lodge).

14. Article 13, Promotional Procedure, Section 2. Examination and Scoring Procedures (withdrawn by City and Lodge).

15. Article 16, Wages, Section 3, Longevity (withdrawn by City).

16. Article 17, Overtime, Section 1. Overtime Pay (settled)

17. Article 17, Overtime, Section 3. Compensatory Time (withdrawn by City).

18. Article 19, Holidays, Section 2. Pay for Holidays (settled).

19. Article 20, Vacation, Section 7. Vacation Year (withdrawn by Lodge).

6. The following issues were submitted to the fact finder:

1. Article 1. Authority/Duration, Section 6. Duration.
2. Article 8. Injury Leave, Sections 1, 2, 4, 5, 6, and 7.
3. Article 16. Wages, Section 1. Wage Rates
4. Article 16. Wages, Section 5. Uniform Allowances
5. Article 16. Wages, Section 6. FTO Assignment Pay
6. Article 17. Overtime, Section 5. Court Time
7. Article 17. Overtime, Call-in-Pay
8. Article 18. Health Insurance.

It is these issues that were presented to the fact finder at the hearing and that are now before me for consideration and recommendation. In arriving at an appropriate recommendation for each of these issues, the following factors were taken into consideration as prescribed by O.R.C. Section 4117.14 (c) (4) (e) and O.A.C. 4117-9-05(K):

Past collective bargained agreements, if any, between the parties;

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;

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;

The lawful authority of the public employer;

The stipulations of the parties;

Such other factors, not confined to those listed in this section, 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 proceedings in the public service or in private employment.

At hearing both sides were provided an opportunity to proffer argument, testimony and/or other evidence, with both availing themselves to those opportunities to the extent available to each. In any event, that preferred by the parties, as well as the above quoted guidelines, were taken into consideration in arriving at the following recommendations—recommendations preferred as possible resolutions of the issues remaining in dispute.

After a thorough review of the record, including the testimony of the witnesses called by the parties, the documentary evidence submitted at the two-day fact finding hearing, the pre-hearing position statement of the Lodge (the Employer submitted a list of all of its proposals as its pre-hearing statement) and the post-hearing briefs submitted by parties including a reply brief from the Lodge, the fact finder has arrived at the following analysis and recommendations.

III. ANALYSIS AND RECOMMENDATIONS

A. Article 1, Authority/Duration, Section 6.Duration

1. Positions of the Parties

(a) The Employer

The Employer proposes the agreement becomes effective as of the date the parties reach agreement continuing through November 30, 2005.

(b) The Lodge

The Lodge proposes continuing the history of three year agreements such that the proposed agreement will have an effective date of May 18, 2004 through May 17, 2007. The current agreement is effective as of May 18, 2001 through May 17, 2004.

Recommendation

The language set forth under the current CBA between the parties should be carried over—i.e. the CBA should have an effective date of May 18, 2004 through May 17, 2007.

RATIONALE: For the past 18 years, since 1986, the parties have agreed to contracts of three years' duration. Since 1982, the effective dates have been May for the Officers and since 1992 the effective dates have been May for the Supervisors. Historically, the parties have agreed to language allowing either party to reopen a particular provision of the contract should circumstances arise; for example, this has been true in the areas of health insurance and wages. This is the case in the current proposals as well.

B. Article 8, Injury Leave, Section 1. Service Connected Injury, Section 2, Workers' Compensation, Section 4, False Claim, Section 5. Location, Section 6. Pension, Section 7. Restricted Duty. Section 21, Medical Insurance

1. Positions of the Parties

(a) The Employer: The Employer offers five proposed changes to Article 8—Injury Leave.

Section 1. With regard to Section 1, the Employer proposes to give the City Manager discretion to grant leave up to 90 days within a rolling 12-month period from date of injury (assuming the injury resulted from a service-connected occupational illness or an injury incurred in the course of and arising from employment with the City). It also proposes to eliminate the Injury Review Board, a four-person panel consisting of two representatives each from the City and the Lodge. The final proposal relating to Section 1 provides that after 90 calendar days, the employee should be on unpaid leave or other paid accrued leave, thus leaving no discretion to the City Manager to continue the leave.

Section 2. Workers' Compensation. The City proposes to change the current language in this section that provides that at the end of the injury leave, if the employee still is not able to return to work, the employee may seek accumulated sick leave. If, after exhausting sick leave, the employee still is unable to return to work, normal wage/salary payments will terminate, and the employee's

recourse is with the Industrial Commission pursuant to the State Workers' Compensation laws.

Section 4. False Claim. This proposal would allow the Employer to withhold injury leave benefits from an employee who is self employed while on injury leave. The proposal also adds language that prohibits employees from engaging in any activity that is inconsistent with leave requests.

Section 5. Location. This proposal requires employees receiving paid or unpaid injury leave to recuperate only within Montgomery County.

Section 6. Pension. This proposal would eliminate eligibility for injury leave as of the date that the employee submits an application for a disability pension, and requires the employee to immediately notify Management upon making an application for a disability pension.

(b) The Lodge: The Lodge opposes all of the Employer's proposed changes to Article 8 and wants to maintain the status quo.

Recommendation

The language set forth under the current CBA between the parties should be carried over.

RATIONALE: The fact finder is sympathetic to the concerns of the Employer with the increased costs incurred as a result of Article 8. While the issue of injury has been discussed by the parties in prior negotiations, the injury leave provisions have been in existence for 22 years and the parties have yet to make this Article a priority in their negotiations. In the negotiations immediately preceding this fact finding, the injury leave proposal was one of many on the table, and according to the Lodge the parties did not have the opportunity to engage in lengthy discussions regarding it. Any overhaul to this series of provisions in Article 8 should be the subject of serious bargaining by the parties. Thus, the fact finder finds that it is premature at this time to recommend any of the proposed changes to the article. It may be useful for the parties to consider creating a joint committee with representatives from the City and the Lodge to explore possible modifications of the injury leave policies and practices.

C. Article 16 Wages, Section 1. Wage Rates

1. Positions of the Parties

(a) The Employer

The Employer proposes a 0% increase until the expiration of the CBA, which, under the City proposal, would be November 30, 2005; the City further proposes that step increases for all bargaining unit

employees be frozen in their current step and remain in the step they occupy as of May 17, 2004 for the duration of the contract.

In support of its position, the Employer states that there have been "structural changes in, and a reduction or elimination of the revenue sources for the City." It argues that due to these reductions and eliminations, coupled with past and future hefty increases in health insurance costs, the City will continue to experience fundamental, structural changes in its expected revenue. The fact finder reviewed a myriad of documents and the testimony of witnesses offered by the Employer.

(b) The Lodge

The Lodge proposes a 3.0% increase effective May 18, 2004, a 3.5% increase effective May 18, 2005, and a reopener provision for wages 60 days prior to May 18, 2006.

In support of its position, the Lodge contends that the Employer has an "established practice or pattern of distorting the future economic picture for the purposes of negotiations." It further states that the Employer "has not been terribly accurate in predicting future revenues, expenditures, and cash reserves."

Recommendation

The fact finder recommends a two percent (2.0%) increase effective May 18, 2004, a two percent (2.0%) increase effective May 18, 2005, and a reopener provision for wages 60 days prior to May 18, 2006. Further, the fact finder does not recommend any freeze in step increases. The recommended reopener language is as follows:

At least sixty (60) days prior to May 18, 2006, either the parties agree to reopen the contract for the purpose of negotiating wage rates contained in Article 16, Section 1 of this Agreement. The reopening of the Agreement shall invoke the dispute settlement procedure set forth in O.R.C. Section 4117.14. The results of the negotiation process or any settlement reached between the parties or any determination ordered by a Conciliator will become effective May 18, 2006.

Rationale:

The fact finder is aware of the difficulty in predicting accurately future costs and revenue streams. There is no basis to support a finding that that the Employer has intentionally exaggerated its projections; however, after reviewing the history of the negotiations, fact findings, and conciliations leading up to prior CBA's between the parties, it appears that in some instances the actual revenues far exceeded the dire projections and financial picture offered by the Employer. For example, in the latter part of 2003, in proceedings involving the City and the Building Trades Council, the City projected a shortfall in revenue stream for 2004, and the fact finder adopted this projection in his findings. This led to an agreement by the parties of a 0% wage increase for 2004.

Subsequently, in the first quarter of 2004 the City's revenues grew by over five percent when compared to the first quarter of 2003, and its expenditures declined by over six percent over the same period in 2003. Recent evidence of the City's financial condition also is evidenced by an upgrade in the Moody bond rating and the reasons proffered by Moody to support the upgrade. In addition, the record reflects a relatively low debt burden for the City when compared with the other large Ohio cities.

Notwithstanding this, however, it is likely the City will be faced with significant financial challenges over the next 12 months. It appears that the General Fund for the City now is at the level it was in 1998, and expenditures and personnel costs are more than 20% greater than in 1996-2001. Based on revenue projections, the City projects a budget deficit in excess of \$10.2 million in the coming fiscal year, and it maintains that cuts in expenses for the City remain necessary. However, these challenges do not justify either a zero (0) per cent wage increase or a freeze on step increases for the bargaining unit members, especially in light of the Police Department's reduction in force to 425 officers--the lowest number in some four decades--and the high crime rate in the City. For the above reasons, the fact finder recommends a two percent (2.0%) wage increase and no step freeze effective May 18, 2004 and a two percent

(2%) wage increase and no step freeze effective May 18, 2005. The wage reopener will be effective 60 days prior to May 18, 2006.

D. Article 16 Wages, Section 5, Uniform Allowance

The Lodge proposes an increase in the current clothing allowance for the maintenance of police uniforms and equipment to \$1020.00 per year. The City proposes to continue the current allowance of \$780.00.

Recommendation

The fact finder recommends no increase in the uniform allowance, effective May 18, 2004, an increase to \$820.00, effective May 18, 2005, and to \$860.00, effective May 18, 2006. The allowance should be paid in 26 equal increments each year.

Rationale:

This increase represents a modest additional cost for the Employer, especially in light of the fact that there has been no increase in the allowance since the year 2000.

E. Article 16, Section 1.A. Prior City Service (Officers' Unit)

The Employer proposed an amended version of Section 1.A. The Lodge did not offer a counterproposal and proposes carrying over the current contract language.

Recommendation

The fact finder recommends carrying over current contract language.

Rationale:

The Employer's proposal would amend Section 1.A. to include other applicants who have prior law enforcement experience and are certified under the OPOTC. Neither the Employer or the Lodge at the hearing or in any pre-hearing or post-hearing briefs referred to this issue. Consequently, the fact finder recommends carrying over the current contract language.

F. Article 16, Section 2. Night Differential

The Employer offered an amended version of Section 2. The Lodge did not offer a counterproposal and proposes carrying over the current contract language.

Recommendation

The fact finder recommends adoption of the Employer's proposal.

Rationale:

The effect of the Employer's proposal is to increase the night differential pay to fifty(50)cents per hour for the duration of the next contract. Absent any specific counterproposal from the Lodge, the fact finder recommends adoption of the Employer's proposed language.

G. Article 16, Wage, Section 6. FTO Assignment Pay

The Lodge proposes converting the proposed current Six Hundred Dollar (\$600.00) assignment pay rate for certified field training officers (FTO's) to four (4%) percent of the officer's step pay at the time of training. The Lodge's proposed increase applies both to certified primary and secondary (backup) FTO's. The Employer proposes no change to the current rate in 2004, 2005, and 2006 both for primary and secondary FTO's.

Recommendation

The fact finder recommends no increase in the FTO Assignment Pay for primary FTO's, effective May 18, 2004, an increase to \$700.00, effective May 18, 2005, and an increase to \$750.00, effective May 18, 2006. The fact finder recommends that the secondary FTO's (certified and acting in a backup capacity) be increased to \$250.00 in contract years 2004, 2005, and 2006.

Rationale:

Again, this recommendation represents a modest increase that is consistent with increases in prior collective bargaining agreements between the parties, and it reflects the City's financial projections for the near term.

H. Article 17, Overtime, Section 5. Court Time

1. Positions of the Parties

(a) The Lodge:

The Lodge proposes to continue the current contract language providing for overtime payment whenever it is necessary for an off-duty employee to appear in court on matters pertaining to or arising from police business, to appear before the prosecutor for a pretrial conference, or when testifying on behalf of another employee in a case arising from police business. The current contract language provides that employees who are scheduled for court on a regularly scheduled day-off or on a pre-approved vacation day receive four (4) hours pay for any court appearance scheduled for the first day-off and four (4) hours pay for any court appearance scheduled for the second or subsequent day-off.

(b) The Employer:

The Employer proposes to eliminate the four (4) hours of pay for any court appearance scheduled for the second or subsequent day-off in the event the employee is not given 24 hours notice of the cancellation of any court appearance scheduled on a regularly scheduled day-off or pre-approved vacation. The Employer also proposes eliminate the four (4) hours pay for a court appearance scheduled for the second or any subsequent day-off.

Recommendation

The language set forth under the current CBA between the parties should be carried over.

RATIONALE:

Despite the fact that there may be cost savings realized by the Employer if its proposal were adopted, there is insufficient justification for changing the current contract language that has existed in the CBA's in some form since 1986.

I. Article 17. Overtime, Section 6.Call-In Pay

1. Positions of the Parties

(a) The Lodge:

The Lodge proposes to continue the current contract language providing that call-in pay is defined as payment for work assigned by the Director of Police or his/her designated representative, or for court time performed by an employee at a time disconnected from his/her normal and pre-scheduled hours of work. The Lodge proposes a clause to be added to Section 6 which would continue the long-time past practice of the Employer to allow call-in pay for an employee who is called in to appear in court, when the beginning of the call-in time is not disconnected from the employee's normal and pre-scheduled hours of work.

(b) The Employer:

The Employer proposes to eliminate call-in-pay for court time altogether, and to add a provision that call-in pay is not applicable on any workday within two (2) hours before or after the employee's work shift.

Recommendation

The provision allowing call-in pay for court time remains in the CBA and no new language providing that call-in pay is not applicable on any work day within two (2) hours before or after the employee's work shift should be added to the contract. Further the fact finder recommends the following language for the first paragraph of Article 17, Section 6:

Call-in pay is defined as payment for work assigned by the Director of Police or his/her designated representative, or for court time as defined in Section 5 of this Article, and performed by an employee at a time *the beginning of which is disconnected from his/her normal and pre-scheduled hours of work.*

(Italicized phrase is the new recommended language).

The second paragraph of current Article 17, Section 6 is carried over.

RATIONALE: For over 20 years the past practice of the parties has been consistent with the recommended change to Article 17, Section 6 of the contract. In a recent arbitration dated June 28, 2004, Arbitrator Thomson found this 22 year past practice to be "flawed,"

as a result of the "City's failure to check on the officers [sic] 'time in' and 'time out' of court." Arbitrator Thomson concluded by finding that the definition of "disconnected from...clearly references 'time away' from the regular work shift." A more rigorous and concerted monitoring of employee court appearances by the Employer can rectify any abuse of the process by employees. At this time invoking a policy of more effective monitoring represents a better approach than dismantling a long-term practice of allowing call-in pay for court time.

J. Article 18, Health Insurance

1. Positions of the Parties

Both parties submitted proposals to change the current contract language of Article 18. Below is a summary of the some of these proposals and the positions of the parties:

(1) The Employer proposes to eliminate the requirement that the parties agree to any changes in benefit levels during the term of the CBA and the requirement that changes in carriers be approved by the Lodge. The Lodge proposes to retain the current contract language regarding the requirements of agreement and approval.

(2) The Employer proposes to change the employee premium contribution to ten percent (10%) of the current monthly premium for the employee's selected health care coverage. The Lodge proposes to increase the monthly premium to \$20.00 and \$40.00 per month for

single and family coverage respectively, effective June 1, 2004 and June 1, 2005.

(3) The Employer proposes to eliminate re-opener provisions regarding premium contribution levels. The Lodge proposes that at least 60 days prior to May 18, 2006, the parties agree to reopen the CBA for the purpose of negotiating employee contributions.

(4) The Employer proposes to eliminate the requirement of mutual agreement between the parties for changes in the level of dental and vision benefits, and to eliminate the requirement for Lodge approval to changes in both dental insurance vision insurance carriers. The Lodge proposes to retain the requirements of agreement and approval, and to require the City to pay the full cost of premiums both for the AFSCME Care Plan for Dental Level II Plus and the current Vision Care Plan coverage.

(5) The Employer proposes to make various changes to the provision for an incentive to waive health care coverage; for employees who are not dependents on another City plan the Employer proposes a flat \$1216.54 incentive payment and the elimination of the 50% provision; to eliminate the incentive for full-time employees who are dependents under their spouse's City plan; to offer the incentive plan for 2004-05, but to condition continuing the plan on continued cost savings to the City. The Lodge proposes to retain the 50% language, the incentive for full-time employees who are dependents under their

spouse's City plan, and to offer the incentives for the duration of the CBA.

Recommendation

The fact finder recommends the following language for Article 18:

(1) Section 1.A. Health Care Coverage

Employees covered herein may choose to participate in optional plan coverage provided by the City of Dayton during the term of this Agreement. Management and the Lodge acknowledge that there will be a change in benefits effective June 1, 2004.

Thereafter, the level of benefits shall not be changed during the term of this Agreement unless mutually agreed to between Management and the Lodge. Any change in carriers during the term of this Agreement shall be subject to approval by the Lodge.

(2) Section 1.B. Employee Contributions

The employees shall pay a total contribution amount of \$20 per month for single coverage or \$40.00 per month for family coverage provided for in this Section effective June 1, 2004 and June 1, 2005. The contributions will be administered under IRS pre-tax status.

At least sixty (60) days prior to May 18, 2006, the parties agree to re-open the contract for the purpose of negotiating the employee contributions contained in Article 18, Section 1.B. of this Agreement. The re-opening of the Agreement for the negotiation of employee contributions shall invoke the dispute settlement procedures set forth in O.R.C. Section 4117.14. The results of the negotiation process or any settlement reached between the parties or any determinations ordered by the Conciliator will become effective June 1, 2006.

3) Section 1.C. Dental Care Coverage

The City shall provide the AFSCME Care Plan for Dental Level II Plus to employees covered herein during the term of this contract.

The level of Dental Benefits shall not be changed during the term of this Agreement unless agreed to between Management and the Lodge. Any changes in carriers during the term of this Agreement shall be subject to approval by the Lodge.

The City of Dayton shall contribute the total cost of the plan per month per employee to the AFSCME Care Plan for Dental Level II Plus for all employees in the bargaining unit. The payment will be due by the 20th of the month.

(4) Section 1.D. Vision Care Coverage

The City shall provide the current Vision Care Plan to the employees covered herein during the term of this contract.

The level of vision benefits shall not be changed during the term of this Agreement unless mutually agreed to between Management and the Lodge. Any changes in carriers during the term of this Agreement shall be subject to approval by the Lodge.

The City of Dayton shall contribute the total cost of the plan per month per employee under the AFSCME Care Plan for Vision Care Benefits, for all employees in the bargaining unit. This payment shall be due by the 20th of each month.

(5) Section 1.E. Incentive to Waive Health Care Coverage

Full time employees who waive health insurance for a twelve (12) month period during open enrollment will be paid an incentive as explained below. The incentive will be pro-rated if coverage is waived for less than an entire plan year because an employee terminates employment, waives coverage mid-plan year or re-enrolls for City coverage if there is a loss of coverage due to divorce, termination of spouse's job or spouse's death.

A full time employee who waives coverage for an entire twelve (12) months and who is not a dependent on another City of Dayton health insurance plan will be paid an incentive of \$1216.54. The incentive will be paid out in each paycheck over a 12 month period starting with the first pay in June.

This incentive plan is being offered for the 2004-05 plan year. The incentive plan will be offered in 2005-06 plan year, provided that the incentive continues to represent a cost savings to the City.

(6) Section 2. Lodge Participation in Health Care Committee Meetings
The President of the Lodge (or his/her designee and up to two members (as selected by the President of the Lodge) will be present and participate in all City of Dayton Health Care Committee meetings to review and recommend health care insurance in the upcoming years of 2005, 2006 and 2007. The Health Care Committee will meet as often as necessary to facilitate in a timely fashion all information and cost as needed in an effort to maximize the value to employees and cost effectiveness of Health and Dental Plan redesign.

(7) Section 2.A. Plan Year Effective Dates

The medical, dental and vision coverage contained in Article 18, Section 1 shall be in effect for three successive plan years from June 1, 2004 through May 21, 2007.

(8) Section 6.B. Professional Liability Insurance

Management shall provide employees covered herein with the following:

B. Accidental Death and Dismemberment Insurance in the amount of \$20,000;

RATIONALE:

The Employer justifiably cites a need to control the escalating cost for health insurance. It states that premiums have increased 80% over the past five years, with relatively few significant changes to plan design. Dealing with this enormous problem is in the best interests of both parties. From the record, however, it is not clear that the major restructuring of the health insurance provisions proposed by the Employer is justified at this time. This is especially true in light of the long history of the current health insurance structure that has been the subject of numerous negotiations, fact findings, and conciliations. The Lodge's proposal to double the employee premium contributions to \$20/\$40 per month (single/family) should go a long way to addressing the cost issues raised by the Employer. If it turns out that this is not the case, then the Employer can exercise its right to re-open negotiations under the recommended re-opener provision in Article 18, Section 1.B that would kick in on May 15, 2006. The \$20/\$40 contribution rate is consistent with the current contracts of the two union groups (The IAFF and AFSCME locals) that comprise the largest portion of the Employer's unionized employees; the \$20/\$40 contribution rate for these two groups will be in effect through May 31, 2005. Further, the recommended \$20/\$40 contribution rate would place Dayton approximately in the middle of the "Big 8" Ohio cities in terms of premium contribution of

employees. The record also reflects a finding that bargaining unit members are paying higher out-of-pocket costs than employees of other comparable cities for prescription drugs, doctor's office visits, urgent care visits, and emergency room visits.

K. Proposed Article 18 (a).

The Employer proposes to add a new Article 18(a) that applies to bargaining unit employees hired after May 17, 2004. Under this proposal, the City will offer these new employees a choice of single member health insurance coverage, but will not pay for family member coverage. Employees can elect family coverage and pay the excess of the premium over the single-family amount. New employees must pay 10% of the current monthly premium rates for single member coverage. The Lodge opposes any difference in benefits or premiums for employees hired after May 17, 2004.

Recommendation

The fact finder does not recommend the adoption of proposed Article 18 (a) proposed by the Employer.

RATIONALE:

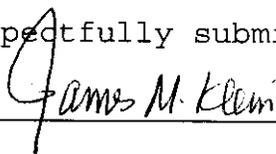
The Employer argues that this proposal, which provides for disparate treatment of new hires, is necessary to deal with the significant escalation of projected health care costs. As stated in the fact finder's rationale regarding Article 18, supra, the increased premium

contribution rates for single and family coverage and the increased co-pays may adequately address these legitimate concerns of the increased costs of health insurance. Thus, it may not be necessary to set up a different coverage plan and more expensive premium contribution rates for new hires. The proposed Article 18 (a) may have an adverse effect on the ability of the Employer to hire high quality officers in its efforts to deal with a severely reduced and understaffed police force. This two tier health insurance program also may affect morale within the police department. If it turns out that the increased contribution rate (\$20/\$40) and the higher co-pays do not adequately address the concerns regarding the escalating costs of health insurance, then the parties can take advantage of the reopener and consider other measures (e.g. deductibles, higher premiums, different coverage for current and newly-hired officers, etc.) in the subsequent contract.

IV. PRIOR AGREEMENTS

Prior to the fact finding hearing the parties signed off on seventeen (17) Tentative Agreements. Pursuant to request of the parties, these agreements are attached to this Report.

Respectfully submitted,



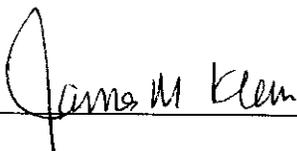
August 19, 2004

James M. Klein
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Fact Finding Report has been sent to the Employer's counsel, Brent McKenzie, City of Dayton-Human Resources Dept., 101 West Third Street, Dayton, OH 45402 and to the Lodge's counsel Susan D. Jansen and Sorrell Logothetis, Logothetis, Pence, and Doll, 111 W. First Street, Suite 1100, Dayton, OH 45402-1156.

Issued at Toledo, Ohio this 19th day of August, 2004.



James M. Klein, Fact Finder

TENTATIVE AGREEMENT

AGREEMENT

This Agreement is entered into by and between the City of Dayton, Ohio (*hereinafter referred to as Management and/or the City of Dayton*) and the Fraternal Order of Police, Captain John C. Post Lodge No. 44 (*hereinafter referred to as the Lodge*). Management and the Lodge agree that they will take whatever actions are necessary to implement this Agreement in accordance with their obligations as set forth in Chapter 4117 of the Ohio Revised Code.

PURPOSE

This Agreement fulfills the mutual obligations of the City of Dayton and the Fraternal Order of Police, ~~Captain John C. Post Lodge No. 44~~ **Lodge**, pursuant to Chapter 4117 of the Ohio Revised Code.

FOR THE LODGE:

Gandy W. Beane

PRESIDENT

4-27-04

Date

FOR THE CITY:

Jonathan J. Downes

[Signature]

4-27-04

Date

FOP Lodge No. 44 and the City of Dayton
Officers' and Supervisors' Bargaining Units
April 27, 2004

TENTATIVE AGREEMENT

ARTICLE 1

AUTHORITY / DURATION

Section 2. **Severability**

The parties agree that should any provision of this Agreement be found to be invalid, that they will schedule a meeting at a mutually agreed upon place and time to negotiate alternative language on the same subject matter.

FOR THE LODGE:

Gandy W. Beane
PRESIDENT
4-27-04
Date

FOR THE CITY:

Jonathan J. Kovacs
MT 3
4-27-04
Date

TENTATIVE AGREEMENT

ARTICLE 1

AUTHORITY / DURATION

Section 3. No Conflict

The City's Personnel Policies and Procedures, Police Department Rules and Regulations and general or specific written orders issued by the Director of Police shall not be interpreted so as to conflict with the terms of this Agreement.

FOR THE LODGE:

Kandyu Beane
PRESIDENT
4-27-04
Date

FOR THE CITY:

Jonathan J. Downes
MT
4-27-04
Date

TENTATIVE AGREEMENT

ARTICLE 1

AUTHORITY / DURATION

Section 4. Modification

Written amendments or modifications of this Agreement shall *only* be only by written agreement signed by the authorized City designee and the Lodge.

FOR THE LODGE:

Garry W. Beane
PRESIDENT
4-27-04

Date

FOR THE CITY:

Jonathan J. Kowals
MT 3
4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 2

RECOGNITION

Section 1. Bargaining Rights

The City of Dayton recognizes the Fraternal Order of Police, ~~Captain John C. Post, Lodge No. 44~~ **Lodge**, as the exclusive bargaining agent for all sworn Police Officers who are below the rank of Sergeant.

Should the Police Department create any new classification, the parties shall meet to determine whether such new classification should be included in the unit. In the event the parties are unable to reach an agreement, the dispute shall be submitted to the Grievance Arbitration Provisions set forth in this Agreement.

FOR THE LODGE:

Kandy W Beane

PRESIDENT JT

4-27-04

Date

FOR THE CITY:

Jonathan J. Turner

Not 3

4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 2

RECOGNITION

Section 1. Bargaining Rights

The City of Dayton recognizes the Fraternal Order of Police, ~~Captain John C. Post, Lodge No. 44~~ **Lodge**, as the exclusive bargaining agent for all sworn Police Officers who are above the rank of Police Officer.

Should the Police Department create any new classification, the parties shall meet to determine whether such new classification should be included in the unit. In the event the parties are unable to reach an agreement, the dispute shall be submitted to the Grievance Arbitration Provisions set forth in this Agreement.

FOR THE LODGE:

Gandy Beane
PRESIDENT
4-27-04

Date

FOR THE CITY:

Thomas J. Downe
MT 3
4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 2

RECOGNITION

TA
4-27-04

Section 3. Authorization for Dues Check-Off & Fair Share

In accordance with the requirements of Section 4117.09 (B)(2) of the Ohio Revised Code, upon presentation of a written deduction authorization by the employee, Management shall deduct from the pay due such employee, and turn over to the proper officers of the Lodge, regular monthly Lodge dues, initiation fees, and assessments payable by him or her to the Lodge, during the period provided for in said authorization.

Management shall automatically deduct, without written authorization, from the payroll check for all employees covered by this Agreement who are not members of the Lodge, and who do not in the future become and remain members of the Lodge after thirty (30) calendar days of employment, or as of the effective date of this Agreement, whichever is later, a fair share fee as a contribution toward the negotiation and administration expenses of this Agreement in an amount equal to the regular monthly dues paid by members of the Lodge.

Upon failure of any non-member employee to pay or tender the above mentioned fair share fee, Management shall discharge such employee when so informed by the Lodge.

If an employee covered by this Agreement is a member of and adheres to established and traditional tenets or teachings of a bonafide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization, such employee shall not be required to join or financially support the Lodge as a condition of employment.

An employee desiring to avail himself or herself of the right of non-association with the Lodge, as provided by law, shall submit proper proof of religious conviction to the State Employment Relations Board.

Upon a declaration by the State Employment Relations Board that the employee is exempt from becoming a member of or financially supporting the Lodge, the employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to such fair share to a non-religious charitable fund exempt from taxation under Section 501 (C)(3) of the Internal Revenue Code mutually agreed upon by the employee and the representatives of the Lodge. The employee shall furnish to the Lodge written receipts evidencing such payment.

Upon failure to make such payment or furnish such receipts, the City of Dayton shall discharge such employee when so informed by the Lodge.

The Lodge shall hold the City of Dayton harmless for any payments made by Management during the term of the voluntary assignment and for any wrongful discharge by Management under this Section, provided such discharge action is initiated at the request of the Lodge.

FOR THE LODGE:

Joseph Beane

PRESIDENT

4-27-04

Date

FOR THE CITY:

Jonathan J. Younes

Met

4-27-04

Date

City of Dayton
Officers' Contract
Management Counter Proposal
May 14, 2004

ARTICLE 5

LODGE BUSINESS

Section 4. Delegates

The Lodge will be authorized an aggregate of thirty-three (33) work days of paid leave per calendar year for employees to use at anytime during the year to attend Lodge functions such as conventions, educational meetings or conferences.

Management shall make other reasonable provisions for authorizing vacation leave or personal allowance credits for employees to attend Lodge functions in addition to the above mentioned thirty-three (33) days. Any authorized but unused Lodge delegate leave may be carried over from an even to an odd numbered calendar year.

Subject to approval by Management, based upon the operational requirements of the Police Department, the Lodge may utilize the aforementioned provisions by having the President notify the Director of Police and the Employee Relations Division as soon as practicable upon learning of the need for such leave, but no less than seven (7) calendar days prior to the commencement of said leave.

[Handwritten Signature]
5-17-04

[Handwritten Signature]
PRESIDENT FOP #44
5-14-04

TENTATIVE AGREEMENT

ARTICLE 5

LODGE BUSINESS

Section 8. Ballot Box

Management agrees to permit the Fraternal Order of Police **Lodge** to provide ballot boxes and/or suggestion boxes in strategic locations within the Safety Building.

FOR THE LODGE:

Kandy Beane
PRESIDENT
4-27-04
Date

FOR THE CITY:

Jonathan J. Rowles
Wt 3
4-27-04
Date

TENTATIVE AGREEMENT

ARTICLE 5

LODGE BUSINESS

Section 11. Seniority Defined

A.—Seniority for employees is determined by final Academy Class rank minus:

1. Suspension days not covered by vacation forfeiture (Article 11);
2. Time between resignation from the Police Department and reinstatement except when resignation is in excess of one (1) year in which case all seniority is lost; and,
3. Leave without pay, except for FMLA leave.

B.—The current seniority list will be maintained by the Police Department. The seniority list shall be revised quarterly, and the revised list will be distributed to the employees.

FOR THE LODGE:

Gangjubeane
PRESIDENT
4-27-04

Date

FOR THE CITY:

Jonathan J. Powell
MT 3
4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 5

LODGE BUSINESS

Section 11. Seniority Defined

A.—Seniority for employees is determined by the eligibility list standing on the date of promotion minus:

1. Suspension days not covered by vacation forfeiture (Article 11);
2. Time between resignation from the Police Department and reinstatement except when resignation is in excess of one (1) year in which case all seniority is lost; and,
3. Leave without pay, except for FMLA leave.

B.—The current seniority list will be maintained by the Police Department. The seniority list shall be revised quarterly, and the revised list will be distributed to the employees.

FOR THE LODGE:

Gandy Bear
PRESIDENT
4-27-04

Date

FOR THE CITY:

JONATHAN J. POWERS
MT 3
4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 7

SICK LEAVE

Section 3. Employee's Responsibility

Before the starting time of his/her shift, an employee on sick leave shall inform the counter position **a Dispatch Sergeant or Supervisor at the SS-10 position** of the fact at least one hour (1) before the officer's scheduled work time, except in the case of proven inability to make a phone call and provided further that the call shall be made as soon as possible thereafter. The same procedure outlined for reporting off is to be used when reporting back to duty from sickness.

FOR THE LODGE:

Jamdy L. Beane

PRESIDENT

4-27-04

Date

FOR THE CITY:

Jonathan J. Powell

[Signature]

4-27-04

Date

City of Dayton
Officers' Supervisors' Contract
May 14, 2004

TENTATIVE AGREEMENT

ARTICLE 10

SPECIAL LEAVE/DUTY STATUS

Section 1. Funeral Leave

Paid leave to attend the funeral or memorial service of a member of the immediate family shall be granted by the Director of Police for three (3) days. Proof of death and relationship of the deceased may be requested.

- A. The immediate family is defined as: spouse, parent, current parent-in-law, step-parent, child, step-child, brother, sister, grandparent, current grandparent-in-law, grandchild, half-brother, half-sister, and current brother-in-law or current sister-in-law (spouse's sibling or sibling's spouse). Other relatives living in the same household shall be considered as immediate family. In the event of multiple deaths (i.e. traffic accidents) each death shall count as a separate occurrence.
- B. Upon approval of the Director of Police, funeral leave in excess of three (3) days may be charged to the accrued sick leave or vacation balance or will be charged as leave without pay.

FOR THE CITY:

[Signature]
5-17-04
 Date

FOR THE UNION:

[Signature: Randy Beane]
PRESIDENT FOR #114
5-14-04
 Date

TENTATIVE AGREEMENT
ARTICLE 12
GRIEVANCE PROCEDURE

Section 1. Purpose and Definition

There shall be an earnest, honest effort to settle disputes and controversies promptly. The procedures of this Article shall serve as a means of settlement of all grievances. A grievance is a complaint that Management has violated this Agreement, but does not include any complaint subject to appeal to the Civil Service Board.

In furthering the interest of fair and open resolution of disputes or controversies, if the grievant identifies a supervisor and requests the presence of the supervisor, Management will make a good faith effort to notify the supervisor of the Step 4 hearing. The good faith effort does not require a subpoena or order compelling the attendance of the supervisor.

FOR THE LODGE:

Gandy Beane

PRESIDENT

4-27-04

Date

FOR THE CITY:

Jonathan J. Dume

MT 3

4-27-04

Date

TENTATIVE AGREEMENT

ARTICLE 14

JOB OPPORTUNITIES

Section 1. City Job Announcements

Management will request the Civil Service Board to provide and post in the Safety Building copies of job opportunity announcements in the classified competitive service.

FOR THE LODGE:

James W. Beane
PRESIDENT
4-27-04

Date

FOR THE CITY:

Jonathan J. Downes
MC 3
4-27-04

Date

City of Dayton
Officers'/Supervisors' Contract
Management Counter Proposal
May 14, 2004

ARTICLE 14

JOB OPPORTUNITIES

Section 2. Job Postings/Vacancies

The following procedures shall apply throughout the Police Department for the posting and filling of job vacancies.

A. Whenever a vacancy occurs in a permanent assignment, other than routine beat patrol assignments responding to dispatched calls for service, the Director of Police must give notice of the vacancy and have the vacancy posted on the daily bulletin board in each District and Bureau for ten (10) consecutive days. It must also be read at each roll call for three (3) consecutive days.

B. Applicants must meet the requirements listed when applying for an assignment and must show by a special report how they meet the requirements, or their application will not be considered.

C. All applicants who meet the minimum requirements listed for the vacancy shall be interviewed prior to the vacancy being filled.

D. Any employee successfully applying for and obtaining any position under the procedures set forth in this article shall not be permitted to apply for any other vacancy for a period of one (1) year from the date of selection of the employee to fill the vacancy.

[Handwritten Signature]
5-17-04

[Handwritten Signature]
PRESIDENT
5-14-04