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STATE EMPLOYMENT  
RELATIONS BOARD  
2005 FEB 22 A 9 46

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding :  
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 Between the : SERB Case Number: 04-MED-07-0710  
 :  
**CITY OF CINCINNATI, OHIO,** :  
 :  
 Employer : Date of Hearing: January 19, 2005  
 :  
 and the :  
 :  
**CINCINNATI ORGANIZED AND** : **Howard D. Silver**  
**DEDICATED EMPLOYEES,** : **Fact Finder**  
 :  
 Union :

REPORT AND RECOMMENDATION OF FACT FINDER

APPEARANCES

For: The City of Cincinnati, Ohio

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For: The Cincinnati Organized and Dedicated Employees

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This matter came on for fact-finding hearing on January 19, 2005, at 10:00 a.m., in room C of the Greater Cincinnati Waterworks Building, 4747 Spring Grove Avenue, Cincinnati, Ohio. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded at 3:15 p.m., January 19, 2005.

This fact-finding proceeds under authority of Ohio Revised Code section 4117.14(C) and regulations promulgated pursuant thereto by the State Employment Relations Board expressed in Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations within the bargaining process as required by law leading to this fact-finding procedure. This matter is properly before the fact finder for review and recommendations.

#### BACKGROUND

The parties to this fact-finding procedure, the city of Cincinnati, Ohio and the Cincinnati Organized and Dedicated Employees, have been bargaining an initial collective bargaining agreement since April 20, 2004. The parties met and bargained on thirteen separate occasions, concluding on November 4, 2004.

The city of Cincinnati, Ohio, the employer, is a municipal corporation operating under a city charter and under home rule provisions expressed in the Ohio Constitution. The city of Cincinnati is a public employer and therefore responsible for financing and administering the obligations agreed in the parties'

initial collective bargaining agreement and accountable for the effect of adjustments resulting from the initial collective bargaining agreement between these parties on the normal standard of public service.

Cincinnati Organized and Dedicated Employees (CODE) was certified by the State Employment Relations Board, on November 6, 2003, as the exclusive representative of a bargaining unit comprised of employees in city payroll division 0, comprised of positions commonly referred to as middle management, excluding all employees in the city manager's office, the human resources department, the budget and evaluation office, the internal audit division, confidential assistants to department heads, personnel liaisons, and all supervisors, confidential employees, fiduciary employees, and management level employees as defined by Ohio Revised Code Chapter 4117. The bargaining unit is comprised of approximately 850 employees engaged in various administrative, professional, and field functions throughout various departments of the city. The positions within the bargaining unit were included by agreement of the parties.

Through bargaining the parties have reached agreement as to contract language on a number of Articles and have signed tentative agreements expressing the language agreed in the following areas:

- Preamble and Purpose
- Article 1 - Definitions
- Article 2 - Recognition and Representation
- Article 3 - CODE Security and Rights
- Article 4 - CODE Representation
- Article 5 - Reservation of Rights
- Article 6 - CODE/City Joint Labor-Management Committees
- Article 7 - Discipline

- Article 8 - Grievance Procedure
- Article 9 - No Strike-No Lockout
- Article 11 - Vacation
- Article 12 - Holidays
- Article 13 - Sick Leave Incentive
- Article 14 - Other Leaves of Absence
- Article 16 - Drug Testing
- Article 20 - Impasse Resolution (withdrawn)
- Article 21 - Savings
- Article 22 - Layoffs and Recall
- Article 24- Quality Improvement Process (withdrawn)
- Article 25 - Sick Time Donation Program
- Article 26 - Entire Agreement
- Article 28 - Items Included by Reference
- Article - Promotions

The fact finder includes in his recommendations to the parties that all language tentatively agreed by the parties be incorporated into the parties' initial collective bargaining agreement.

Those Articles which remain unresolved by the parties are:

- Article 10 - Personal Business Day
- Article 17 - Wages and Compensation
- Article 18 - Health Insurance
- Article 19 - General Provisions
- Article 23 - Tuition Reimbursement
- Article 27 - Duration of Contract
- Article 15 - Hours of Work and Overtime

Some of the Articles which remain unresolved contain multiple issues.

The fact finder addresses the remaining unresolved issues in the order in which they were addressed at the fact-finding hearing.

## DISCUSSION AND RECOMMENDATIONS

### Article 17 - Wages and Compensation

The city of Cincinnati, Ohio presented the testimony of William E. Moller, Finance Director of the city of Cincinnati since 2001. Mr. Moller served as the assistant finance director for the city from 1999 through 2001, and prior to that, from 1994 to 1999, served as the city's budget director, having served as assistant budget director from 1991 through 1994.

Mr. Moller explained that the city operates through a general fund that pays for general services, and also through restricted funds limited to specific uses. Mr. Moller noted that sixty percent of the general revenue fund is dependent upon city income tax revenue, a revenue source that has remained flat over the past six to seven years. Mr. Moller noted that property taxes in the city of Cincinnati have been rolled back and frozen at a 2001 level, with provisions in effect to offset increases in property valuation through a proportionate reduction in millage.

Finance Director Moller noted that the city of Cincinnati receives state shared revenue in the form of a local governance fund in the amount of thirty million dollars per year. Mr. Moller noted that this amount has been frozen for 2005 and testified that the state of Ohio is looking to lower this amount in the future.

Mr. Moller identified the city of Cincinnati's General Fund Budget Status Summary, revised January 18, 2005, which projects constrained revenue growth, finds previous forecasts about city revenue growth overly optimistic, and notes that among 280 cities surveyed in the fall of 2004, seventy-four percent of the midwestern cities surveyed reported deteriorating financial conditions. The summary finds that cities which rely heavily on income taxes are more likely to report worsening financial conditions. The budget perspective within the General Fund Budget Status Summary notes that the Federal Reserve Bank of Cleveland (Fourth District) found that U.S. employment has not achieved pre-recession levels and Ohio has fared worse than most states in the bank's district. The budget summary reports that the Greater Cincinnati Chamber of Commerce, in its economic outlook, expects modest local job growth of 1% in 2004, and 1.5% in 2005.

The budget summary dated January 18, 2005 presented by Mr. Moller states that the city's financial condition requires that resources be directed to basic core services, identified by Mr. Moller as increased police officers, increases in fire protection, funding of health clinics, and funding a recycling program but moving from recycling services once per week to every other week. Other basic core services mentioned include keeping all park facilities open, funding the Mount Washington Recreation Center, funding green space at 72% of the 2004 level, fully funding weed and litter programs in 2005, maintaining regular hours at the Permit and Development Center, and meeting a commitment of five

million dollars over twenty years to the Cincinnati Public Schools for facility improvements. Existing agreements providing for school nurses, crossing guards, and school resource officers are also to be honored. Also mentioned is continuing funding for the rehabilitation of two hundred lane miles of streets throughout the city during the biennium.

The city budget summary dated January 18, 2005 presents budget policies as determined by the Cincinnati City Council which include an increase of seventy-five police officers; protecting basic services from service cuts, defined as safety, fire, garbage collection, road repair and pavement, maintenance of green spaces, health care centers, and recycling. Another budget policy is to balance the budget by cutting waste, improving efficiency, cutting services not normally provided by cities and, if necessary, reducing middle and upper management positions. It is stated at page eight of the budget summary that the finance, law, and human resources departments are to receive budget reductions of 9.2%, 8.7%, and 10.6%, respectively. It is noted that the Office of the City Manager budget is to decrease by 21.5%. It is noted that nineteen general fund positions, totalling 18.5 FTE, were eliminated in these departments.

Mr. Moller pointed out that, as stated at page nine of the budget summary, economic sustainability is threatened by a structural imbalance when annual expenditures exceed annual revenues. Such a circumstance requires the use of a prior year's accumulated unspent balance (carryover).

Finance Director Moller explained that minimum reserves include a working capital reserve and an annual carryover for the general fund. In 1984 the Cincinnati City Council created a separate fund for working capital reserve to be used for emergency and catastrophic needs. Mr. Moller explained that an annual carryover occurs when resources have exceeded expenditures. Mr. Moller noted that the Government Finance Officers Association recommends a standard minimum reserve of 5% to 15% of revenue or one to two months' expenditures, in the case of the city of Cincinnati a range of sixteen million to fifty-four million dollars.

Mr. Moller pointed out that bond rating agencies emphasize budget stabilization reserves and noted that the city of Cincinnati's working capital reserve has never been tapped. Mr. Moller noted that according to A.G. Edwards, the city of Cincinnati's bond financial advisor, using the working capital reserve "will cause credit market analysts to take notice."

Mr. Moller believes that a minimum reserve of 10% of annual revenue is a prudent and conservative standard. Mr. Moller noted that at the end of 2003, the city of Cincinnati's minimum reserve amounted to 12% of revenues, while for 2005, the minimum reserve is expected to be 7.5% of revenues, or twenty-four million dollars.

Mr. Moller noted that the city of Cincinnati's bond rating is AA1-AA+, one step below the highest rating, AAA.

Mr. Moller described page ten of the General Fund Budget Summary of the city of Cincinnati as presenting a multi-year forecast as of June, 2004. The forecast assumes an average revenue growth of 3% from 2005 to 2008, with average expenditure growth of 3.2% during the same period. This projection includes an accumulated deficit of seventy-one million dollars by 2008 and a failure to meet minimum reserve criteria.

The 2005 through 2008 forecast made in June, 2004 shows an actual carryover (non-GAAP) balance from 2003 of 16.5 million dollars. The estimate of the 2004 carryover is 2.8 million dollars. 2005 is forecast with a deficit of 10.5 million dollars; 2006 is forecast with a deficit of 29.45 million dollars; 2007 projects a deficit of 50.56 million dollars; and 2008, under the assumptions applied to this forecast, projects a deficit of 71 million dollars.

The assumptions underlying the June, 2004 forecast are that income tax revenues increase by 3.4% from 2004 to 2005; that the Cincinnati City Council's policy of rolling back the property tax millage rate is continued thereby maintaining property tax revenues at the 2001 level; existing labor contracts notwithstanding, future personnel costs will increase by 3%; merit increases are not funded for non-represented staff; continuing funding levels for non-local travel and training (already reduced by 50% in 2003); a 10% annual increase in employee health care costs; and continued general fund transfers to the Cincinnati On The Move Fund in the amount of \$145,000. Mr. Moller expressed the opinion that the city of Cincinnati would be fortunate to have income tax revenues increase

annually from 2004 to 2005 by 1.7%, to say nothing of the 3.4% increases assumed in the June, 2004 forecast.

Mr. Moller noted that a subsequent multi-year forecast was made in November, 2004 which accompanied a recommendation that 16.2 million dollars in expenditure reductions occur in 2005 and 5.2 million dollars in expenditure reductions occur in 2006 to eliminate the city's structural imbalance (expenses greater than revenues). The November, 2004 forecast assumes average revenue growth of 2.8% from 2005 to 2008, and average growth of expenditures of 2.2% for the same period, but also assumes a failure to meet minimum reserve criteria.

The chart provided for the November, 2004 (recommended budget) found at page twelve of the budget summary shows an actual non-GAAP carryover from 2003 of 16.5 million dollars, and estimates a non-GAAP carryover balance from 2004 of four million dollars. In the forecasts for 2005, 2006, 2007, and 2008, a two million dollar carryover is presented.

The assumptions underlying the November 2004 forecast are income tax revenues increasing by 2.2% from 2004 to 2005; the rollback of property tax millage to 2001 levels continuing; future personnel costs increasing by 2%; all city staff moving to the 80/20 health care plan; not funding merit increases for non-represented staff; elimination of human services policy funding in the amount of 4.8 million dollars; and no general fund transfers to capital or other purposes.

At page fourteen of the budget summary is a multi-year forecast performed in December, 2004 (approved budget). This December, 2004 forecast calls for 13.8 million dollars in expenditure reductions in 2005 and an additional 5.2 million dollars in expenditure reductions in 2006. This forecast projects revenue average growth of 2.81% from 2005 through 2008, and a 2.83% expenditure average growth during the same period. This forecast assumes that minimum reserve criteria are not met.

The chart appearing with the forecast conducted in December, 2004 (approved budget) reports a non-GAAP carryover balance of 16.5 million dollars from 2003, and estimates a non-GAAP carryover balance from 2004 of 5 million dollars. Non-GAAP carryover balances forecast for 2005, 2006, 2007, and 2008, are 2.7 million dollars, 2.7 million dollars, 2 million dollars, and 2 million dollars, respectively.

The December, 2004 forecast assumptions include income tax revenues increasing by 2.2% from 2004 to 2005; the property tax millage rate continuing to be maintained at the 2001 level; notwithstanding existing labor contracts, future personnel costs increasing by 2% except for management which would get no increase in 2005; all city staff would move to the 80/20 health care plan, with budgeted employer costs to increase by 11.4% over 2004 funding; merit increases not funded for non-represented staff; no general fund transfers to capital or other purposes; additional reductions of 5.2 million dollars in 2006; and additional

reductions of \$636,000 in 2007 so as to maintain a two million dollar carryover balance.

Finance Director Moller noted in his testimony that as a matter of law the city of Cincinnati is required to balance its budget annually. Mr. Moller noted that the budget forecast is directed to the city manager who directs it on to the mayor who may recommend changes to the budget to the final authority on budgeting for the city, the Cincinnati City Council.

Mr. Moller emphasized that an annual two million dollar carryover is not 10% of annual city revenues. Mr. Moller noted that a two million dollar carryover does not meet the minimum reserve criteria of 10% of annual revenues. Mr. Moller finds even a two million dollar carryover "thin." Mr. Moller noted that even in reducing costs, the city has still used up its historical carryover and noted that revenue for the city has not been good during the last few years. In this regard Mr. Moller referred to a chart at page seventeen of the budget summary which shows that actual revenues have been less than estimated for three of the past five years.

As to the major revenue components of the general fund in 2005, city income taxes provide 62% of the general fund; property taxes provide 9%; state shared revenues provide 15%; investments 2%; and other revenues 12%. The state shared revenues are received through a local government fund which is in real danger of being diminished or phased out due to lack of availability of funds. The budget summary reports that from 1999 through 2005, the average

annual growth for city income taxes was 1.24%; property taxes increased by .02% (rolled back every year); state shared revenues were negative .32%; investments were negative 7.96% (mainly due to interest rates being low); and other revenues increased by 5.17%. On average, the annual growth of revenues under the above figures amounts to 0.90%.

Mr. Moller noted that employee health care has increased by 11.2 million dollars or 94% over the past six years. Pension costs have increased by 2.3 million dollars or 41%. Mr. Moller noted that the annual payments to the Cincinnati Public Schools began in 2000, and the Department of Justice/Collaborative Agreement budgeted 2.5 million dollars per year beginning in 2003.

Mr. Moller noted that the 2005 approved budget resulted in departmental budgets being decreased by 2.4%, and the total budget, in comparison to 2004, decreased by 1.1%. The cuts made to meet decreasing resources are described at page twenty-two of the budget summary and include a decrease in human services policy funding, a decrease in staffing agencies, a decrease in police and fire including the elimination of cadet programs, a decrease in outside agency contracts, and a decrease in public services. Total major decreases presented amount to 8.5 million dollars.

Major increases in the 2005 budget include 2.4 million dollars for employee health care, 2.2 million dollars in public safety, and .4 million dollars in state unemployment compensation costs, for total major increases of 5 million dollars.

Mr. Moller noted that the city funds 6,324.8 full-time equivalent (FTE) positions, a decrease of 163.1 FTE from 2004, and the city expects a net decrease of 17 FTE in 2006. Since 2000, general fund positions have decreased by 464.0 FTE.

Mr. Moller noted that restricted funds cannot be transferred to the general fund and testified that it is a good idea to have a minimum reserve of ten percent of working capital as a fund balance among restricted funds.

As to the two percent increase assumed for personnel costs for 2005, Mr. Moller noted that this two percent was assumed to include more than just wages.

Under questioning by the Union's representative, Mr. Moller agreed that the budget numbers changed based on changes to assumptions and the receipt of actual data. Finance Director Moller noted that the 2005-2006 budget was approved by the Cincinnati City Council in December, 2004. The actual budget for 2003 and the estimated approved budget for 2004 appear with a five million dollar non-GAAP carryover balance.

Finance Director Moller stated that based on data received as of November, 2004, it appears that the income tax revenue for the city of Cincinnati for 2004 will have increased by 1.1%. Mr. Moller expects a carryover of about five million dollars.

Mr. Moller noted that the city of Cincinnati's general revenue fund amounts to about 350 million dollars per year. All funds of the city of Cincinnati amount to about one billion dollars. Mr. Moller agreed that in 2005 raises were granted to all employees

within collective bargaining units in the amount of two percent, except Cincinnati Organized and Dedicated Employees (CODE).

Finance Director Moller confirmed that the city of Cincinnati receives eighteen million dollars each year under railroad leases but Mr. Moller noted that legal restrictions on debt reduction do not permit railroad lease funds to be included in the general fund. Mr. Moller agreed that this money could be used to fund capital improvement projects.

Mr. Moller stated that the city of Cincinnati is a self-insured employer, and a third-party administrator is employed to oversee the operation of the city's self-insured health care plan. Mr. Moller noted that the city of Cincinnati, as a self-insurer, pays claims under its health care program.

Director of Finance Moller stated that wage reserves for 2005 were encumbered for existing contracts amounting to a two percent increase, with zero raises for management. Wage increases were also reserved for police officers, but no wage reserves were encumbered for division 0 employees, the division in which CODE members are employed.

The Union presented the testimony of Diana Frey, the President of CODE. Ms. Frey explained that in December, 2000, she was elected President of the Middle Management Association (MMA), an association of employees within city payroll divisions 0, 5, 8, 7, and 9. Shortly after being elected President of MMA, the Cincinnati City Council voted to eliminate all overtime among middle managers, with a few exceptions. In September, 2003, the Employer terminated

benefits previously received by middle managers in division 0, including tuition reimbursement, longevity, overtime, and merit raises. President Frey testified that the loss of these benefits moved MMA members to consider collective bargaining. Ms. Frey testified that among divisions 0, 5, 7, and 8, eighty percent of the employees were in favor of collective bargaining.

President Frey noted that there are about eleven hundred division 0 employees, of whom 850 are eligible for inclusion in the CODE bargaining unit.

President Frey described CODE bargaining unit members as the "labor part of management," employees who frequently work side by side with workers represented by the AFSCME bargaining unit. President Frey stated that CODE bargaining unit members do not make executive decisions, do not hire and fire, and noted that CODE's bargaining unit has met eligibility criteria for exclusive representation as determined by the State Employment Relations Board.

President Frey recalled that a vote was taken on whether to organize division 0 unrepresented employees and about 700 people voted, with a 90% majority voting in favor of CODE representation through a single bargaining unit.

President Frey explained that the main objective of CODE in negotiating its first collective bargaining agreement is to attain parity with coworkers and other city bargaining units. President Frey explained that CODE intends to secure for its members those benefits which were taken from them in 2003, including longevity

pay, tuition reimbursement, cost of living adjustments, and merit increases. President Frey noted that overtime was eliminated for middle management employees in 2002 and since that time CODE members have been paid for forty hours of work per week and have not been paid for hours worked in excess of forty hours per week. Ms. Frey recalled that during one particularly busy period she had worked 112 hours in a week and had been paid for forty hours.

Under questioning by the Employer's representative, President Frey agreed that no unfair labor practice charge had been filed with the State Employment Relations Board by CODE. President Frey confirmed that there were some exceptions to the overtime ban but pointed out that even the exceptions were paid on a straight time basis, not at time and one-half. President Frey pointed out that about 650 CODE members had lost longevity as a benefit prior to the establishment of CODE. President Frey confirmed that all division 0 employees are classified overtime exempt under the Fair Labor Standards Act (FLSA).

As to the Employer's ability to fund the increased wages proposed by the Union, the Union points out that since 2002 the city has claimed that budget deficits loom and drastic action is needed. The Union points out that in the midst of these dire warnings about impending economic shortfalls, the city's general fund had a fifteen million dollar carryover in 2003, and a 2002 carryover between ten and fifteen million dollars. The Union claims that while the city announces each year that it will be over budget by the end of that year, each year the city finds itself millions

of dollars "in the black." The Union points out that for 2004, a carryover of about five million dollars is estimated.

The Union contends that the Employer has the money to fund a fair and equitable agreement with CODE, an agreement on par with the benefits received by other city unions. The Union points out that the city in its budget plan proposed to give all employees in collective bargaining units a two percent raise in 2005, and only CODE has been excepted from any wage increase. The Union points out that other unions received the two percent raise although they have retained the benefits lost to CODE members. The Union contends that the Employer has the funds necessary to treat CODE members fairly, equitably, and in parity with other city bargaining units.

The Union proposes that the base rate for each CODE employee for the year 2005 be increased by ten percent so as to enable CODE bargaining unit members to catch up from losses suffered through the elimination of overtime since 2002. The Union also proposes a seven percent merit increase for those CODE bargaining unit members who have not reached the top of their salary range and who receive satisfactory performance evaluations. The Union notes that among the approximately 850 employees in CODE's bargaining unit, 46% are at their top step, which means that 46% of the CODE bargaining unit would not be eligible for a merit raise. The Union estimates that because only 54% of the collective bargaining unit represented by CODE would be eligible for merit raises, each one percent merit raise for the bargaining unit would cost \$134,589.

The Employer points out that the city approved a fact-finder's recommendation for a two percent wage increase for the 2300-member AFSCME bargaining unit. A two percent wage increase was recommended by the fact-finder in each year of a three-year contract. The Employer contends that in light of revised revenue forecasts, the Employer is not in a position at this time to offer a wage increase to CODE members.

The Employer points out that CODE members have historically received wage increases in amounts less than that received by police and fire units. The Employer claims that public safety forces have historically received larger wage increases than non-public safety employees. The Employer points to language in the fact-finder report leading to the current AFSCME contract which found that employees in the AFSCME unit could not reasonably expect to match the pay of uniformed security forces.

The Employer opposes any merit increases during the term of the initial collective bargaining agreement between the parties. Prior to 2003, non-union employees were entitled to a merit increase of three percent on their anniversary date until the top step of the pay range was reached. This merit increase was dependent upon a "meets expectations" rating on the annual performance review. In 2003, the city manager eliminated all merit increases for non-represented employees. The Employer points out that this freeze on merit increases continues in effect not only for CODE members but for several hundred middle and upper management employees who are not represented by CODE.

While the Employer hopes to restore merit increases in the future, the Employer contends this is not the time to restore this costly benefit. The fact finder is reminded that if he recommends merit increases for CODE members, CODE will be the only management employees to receive such increases. The Employer notes that CODE members are part of a larger division 0 payroll and it is expected that division 0 employees will regularly transfer from CODE to non-CODE positions and vice versa. The Employer contends that any increase in wages or benefits should be in line with this management group as a whole.

The Union proposes that a shift differential be included in the parties' initial collective bargaining agreement, a premium for work required to be performed on the second or third shift. The Union notes that a shift differential provision is included in the AFSCME collective bargaining agreement and is included in the police non-supervisors' contract. The Union proposes a second shift differential of \$.52 per hour, and a third shift differential of \$.60 per hour.

As to shift differential, the Employer proposes that an additional \$.35 per hour be paid for second shift work, and a differential of \$.50 per hour be paid for third shift work.

The Union also proposes that longevity be reinstated for CODE bargaining unit members, a premium paid based on the number of years of service provided. CODE notes that this benefit had been extended to employees now in CODE before the benefit was eliminated, and points out that every other bargaining unit that

works for the city receives longevity pay. The Union notes that the Employer advised CODE during negotiations that 528 members of the bargaining unit lost longevity pay when longevity was eliminated.

The Union proposes fixing the contribution from collective bargaining unit members to the city's retirement system. The amount currently paid by CODE members to the pension system is seven percent. The Union notes that for police, the city pays 19% of the employee's salary to the fund, and the employee pays 10%. For the fire department, the city pays fourteen percent of the employee's salary to the fund and the employee pays 10%. For city employees who were in PERS in prior employment and remained in PERS when they came to work for the city, the city pays 13.55% to the fund and the employee pays 8.5%. For non-union city workers participating in the city retirement system, the city pays 11% to the fund and the employee pays 7%. CODE believes the pension contribution from its bargaining unit members should be fixed so that the Employer cannot unilaterally impose an additional financial burden on bargaining unit members. The Union states that if the Employer contends that an increase in contributions is necessary for the pension system, CODE urges that the city be directed to pay a 15% contribution which would bring CODE bargaining unit members in line with percentages paid for other unions, particularly police and fire.

Finance Director Moller explained in his testimony that the city of Cincinnati operates its own retirement system for city employees and the retirement system is administered by an eleven member board of trustees. Finance Director Moller pointed out that

a separate board of trustees sets policy for the retirement system. Finance Director Moller noted that the Cincinnati City Council approves employee and employer contributions to the system, with benefits defined by the plan.

Finance Director Miller noted that the city operates, as a self-insurer, a pension component and a health care component. Both are fully funded using actuarial data to determine costs. Mr. Moller noted that the Board overseeing the retirement system is now wrestling with questions concerning pensions. Mr. Moller noted that among the 850 CODE bargaining unit members, 385 are within five years of retirement.

Under questioning by the Union's representative, Finance Director Moller confirmed that at present CODE employees pay seven percent to the retirement system and the city makes an eleven percent contribution. Mr. Moller noted that a proposal has been made to increase the combined contribution from 18% to 19.5%, an increase of 1.5%, but the current proposal does not specify who is to pay the increase. Mr. Moller noted that the City Council will decide that issue. Mr. Moller noted that the Board of Trustees of the City Retirement System will decide whether to place the proposal before City Council.

Under questioning by the Employer's representative, Mr. Moller noted that if a contribution rate is locked in for employees at seven percent, and an increase in contribution is required, the city would have to pick up the entire increase.

The fact finder does not recommend the language proposed by the Union for inclusion as Article 17.7, intended to lock in an employee's contribution to the city retirement system at seven percent, and to lock in the city's contribution to the city's retirement system at fifteen percent. The fact finder is not unmindful of the concerns expressed by the Union on behalf of its members concerning the effect of increased contributions to the retirement system. The fact finder is reluctant, however, to recommend particular figures for contribution to the retirement system at 22% when the current contribution is 18%. Even if the combined contribution is to increase, there is nothing but speculation available at this time as to how that increase will be apportioned. The fact finder is reluctant to recommend a particular amount for contribution from either party when the amounts of such contributions are of primary importance to the viability of the system. The fact finder prefers to avoid making pronouncements about what contributions should be made, allow the requirements of the system to present themselves, and defer to the authorities responsible for maintaining the system, the two Boards of Trustees which oversee the city's retirement system, and the Cincinnati City Council. The fact finder fears that to recommend in this area on the evidence before him would require a hit or miss attempt to reach a delicate balance, an attempt that is just as likely to cause greater problems for all concerned than the problems it intends to alleviate.

The Union's proposed section 17.3, Working Out of Classification, unopposed by the Employer, is recommended by the fact finder.

The Union proposes that language allowing for deferred compensation, a benefit currently received by members of CODE and other city workers, be included in the collective bargaining agreement to ensure that the benefit cannot be taken away and to avoid further financial erosion to bargaining unit members.

The Employer expressed its agreement with CODE's remaining proposals under Article 17, Deferred Compensation, Article 17.8; Lump-Sum Terminal Benefits, Article 17.9; and Mileage, Article 17.10.

In considering wage and compensation increases proposed by the Union, Ohio Administrative Code section 4117-9-05(K)(3) requires that the fact finder consider the interest 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 evidence presented shows that the city of Cincinnati, Ohio has fared better in Ohio's economic climate over the past four years than other large Ohio municipalities. Cincinnati is one of the few large Ohio cities to maintain revenue increases over the past four years and to start each year with a substantial carryover balance.

It is also clear from the evidence presented, however, that the city of Cincinnati now operates among economic trends that project flattened revenues and increasing expenses. The steady decline of annual carryover balances suffered by the city of Cincinnati since 2002, and the diminishment of the percentage of revenue represented by the carryover balances since 2002, describe a structural imbalance as described by Finance Director Moller in his testimony. Revenues for the city's general revenue fund have not, and are not, keeping pace with increased expenditures.

The fact finder observes that the city of Cincinnati has over the past two years eliminated hundreds of FTE positions for the purpose of reducing operating expenses. The fact finder understands the city is constrained, as a matter of law, as to what funds may be expended through the general fund, and as to what funds must be expended from restricted funds for particular purposes.

The Union points to the benefits lost by its members over the past three years, and the elimination of these benefits is not disputed by the Employer. Also undisputed is the substantial economic loss suffered by CODE members as a result of the elimination of these benefits and the elimination of overtime.

The Union urges the fact finder to recommend a package of wages and benefits for CODE members that will enable CODE members to catch up under their initial collective bargaining agreement with other city bargaining units and thereby ameliorate the losses suffered by CODE members through the elimination of overtime, longevity, merit increases, and other benefits. The Union claims

that the substantial increases proposed by the Union for merit increases and cost of living adjustments (COLA) do nothing more than bring the CODE bargaining unit to a level similar to that of other city bargaining units.

The fact finder does not view his role in this process as analogous to that of an arbitrator who, having found a violation of a contract by an employer, fashions a remedy to heal the breach.

The Union has substantiated the loss of benefits by those employees who subsequently have become members of CODE, but there has been no argument or evidence to the effect that the elimination of those benefits was illegal or improper or an abuse of discretion. The Employer took action at that time based on provisions of federal and state laws, and the fact finder finds no violation of law, rule, or regulation which would demand that CODE members be made whole for losses which occurred prior to the certification of their bargaining unit. The fact finder is not indifferent to the economic pain caused by the loss of benefits among (at that time) non-organized employees, but the fact finder is not persuaded that the process herein is intended to indemnify those losses. The fact finder acknowledges the benefits CODE bargaining unit members used to enjoy prior to the organization of their bargaining unit, but finds no basis to recommend increased compensation because of the loss of those benefits.

The fact finder is impressed, however, by the argument presented by the Union that maintains that now that CODE is organized, there is little reason to treat CODE differently than

other bargaining units comprised of city employees doing similar or analogous work. The bargaining unit closest to the CODE bargaining unit in this regard is the AFSCME bargaining unit, a unit which will be paid a two percent increase annually over the three years of its current collective bargaining agreement.

The fact finder recommends that the Employer has sufficient funds to pay to CODE bargaining unit members a two percent annual wage increase for each year of the parties' initial collective bargaining agreement. The fact finder recommends that the two percent increase be paid through an across the board cost of living adjustment expressed in Article 17, section 17.2.

Information was provided by the parties after January 19, 2005, the date of the fact-finding hearing. The Union submitted information reflecting that while the 2004/2005 carryover was estimated to be four million dollars, the actual carryover was three million dollars more, \$7,090,000. The Union notes that this increase in carryover was a result of better than anticipated growth of the city earnings tax.

Submitted by the Employer was a letter from city of Cincinnati Mayor Charlie Luken which refers to the letter from CODE to the fact finder suggesting the city will have at least three million dollars more in carryover than anticipated. Mayor Luken asks in his letter that the fact finder note that as a result of Governor Taft's budget, the city anticipates six million dollars less in 2006 and beyond. Mayor Luken notes that legislation has been introduced in the Ohio Legislature that prohibits the use of

red light and speed cameras, a prohibition that would cost the city two million dollars in 2005, and four million dollars in 2006 and beyond.

The Employer also points out that additional budget reductions from 2.7 million dollars to 5.2 million dollars will be necessary to balance the 2006 budget and the Employer emphasizes that state law makers have proposed significant reductions in the state's local government fund which, if implemented, would produce a loss of millions of dollars by the city of Cincinnati. The Employer refers to Governor Taft's proposed budget which includes a 20% reduction in the local government fund that would produce a six million dollar loss from that fund by the city of Cincinnati. The Employer notes that such a reduction would more than offset the additional three million dollar carryover. The Employer believes these reasons make it imperative that it exercise fiscal restraint in the near future.

The Employer also points out that the twelve-month figure for 2004 health care costs was \$38,774,226, a 1.4 million dollar increase over the what had been forecast at the time of the fact-finding hearing.

The fact finder finds the information received from both parties to be pertinent to an understanding of how the city can be expected to fare financially, in the short term and two to three years from now. The fact finder understands that fiscal restraint is necessary to the operation of the city at the present level of funding of positions, in the face of economic challenges which

originate in the state capital, in economic conditions in the area, and from the expected increases in health care and other costs.

Due to the financial condition of the city of Cincinnati at this time, and the economic estimates and forecasts of what the city will face over the next three years, the fact finder recommends only a 2.0% merit increase and does not recommend the reinstatement of longevity payments. Longevity payments are paid to retain more experienced employees. The Employer, in recent years, has expressed sentiments which do not indicate that retention of more experienced middle managers is a high priority. The fact finder feels constrained in his recommendations in these areas by the revenues available to the city of Cincinnati and the increasing expenditures required for the operation of the city. This recommendation is also affected by the slightly higher pay rate enjoyed by CODE members at the top of their pay ranges in comparison to AFSCME positions. Merit increases favor less senior employees who have yet to reach their top step; longevity payments favor more senior employees, offering nothing to those with less than eight years of city service. The fact finder is convinced that the resources available to the city are insufficient to reinstate both longevity and merit increases at the levels proposed by the Union.

The fact finder recommends that a shift differential be paid but recommends the more conservative Employer proposal at \$.35 per hour for the second shift and \$.50 per hour for the third shift,

amounts more in line with the shift differentials expressed in the AFSCME contract.

The fact finder recommends for inclusion in the parties' initial collective bargaining agreement the language tentatively agreed by the parties for section 17.8, Deferred Compensation; section 17.9, Lump-Sum Terminal Leave Benefits; and section 17.10, Mileage.

#### ARTICLE 17, WAGES AND COMPENSATION - RECOMMENDED LANGUAGE

##### Section 17.1. Base Pay and Step-ups.

(A) Appendix A sets forth base pay ranges effective at the beginning of the contract. Appendix B specifies job classifications in the bargaining unit and corresponding pay ranges.

(B) A salary step-up of 2% shall become effective on the first day of the anniversary pay period of the employee's date of hire, date of promotion, or most recent step-up, starting in 2005.

##### Section 17.2. Cost of Living Adjustment (COLA) Increases

Effective the first pay period of every year of the contract, all employees in the bargaining unit shall receive a wage increase of 2%.

##### Section 17.3. Working Out of Classification

Employees who are temporarily transferred, assigned special duties or temporarily assigned the duties of a higher classification, will be paid five percent (5%) above the employee's current rate for each hour worked in the higher class upon completing at least one (1) full workday in the higher class. Working out of class assignments are not to be used in lieu of seeking approval for filling a vacant position, nor shall it be used for the sole purpose of paying an employee at a higher class in circumvention of the requirements set forth by the Civil Service Commission.

#### Section 17.5. Shift Differential

- A. Employees assigned to a shift ending between 6:00 p.m. and midnight shall receive a shift differential of thirty-five (.35) cents per hour in addition to their regular rate of pay.
- B. Employees assigned to a shift ending after Midnight and before 10:00 a.m. shall receive a shift differential of fifty (.50) cents per hour in addition to their regular rate of pay.
- C. Employees on rotating shifts: Shift differential shall be paid to the employee who works the shift regardless of whether scheduled or relieving another employee, except it shall not be paid when sick or on vacation.
- D. Shift differential shall be included in the regular rate used to compute overtime compensation and holiday pay. Shift differential shall be paid starting with the first day of such assignment.
- E. A shift worker is paid the shift differential, if any, attached to his/her assigned shift for all continuous hours worked if he/she is not filling in for another employee on the shift before or after his/her assigned shift.

#### Section 17.8. Deferred Compensation

Employees who receive a regular bi-weekly paycheck are eligible to participate in either the International City Management Association (ICMA) Retirement Corporation's Deferred Compensation Plan or the State of Ohio Deferred Compensation Plan.

#### Section 17.9. Lump-Sum Terminal Leave Benefits

Follow Chapter 8 in City's HRPP.

#### Section 17.10. Mileage

Follow Federal Guidelines.

## Article 18 - Health Insurance

The Employer presented the testimony of Chuck Haas, Risk Manager for the city of Cincinnati. Ms. Haas explained that the city of Cincinnati operates its own a health insurance plan that is self-funded. About 5400 city employees are enrolled in the plan with a total of 15,200 insured (includes dependents).

Mr. Haas noted that health costs are increasing and there is a growing trend to get people more involved in taking better care of themselves, to be more responsible about their health.

Mr. Haas referred to a chart which shows increases in health insurance premiums versus overall inflation from 1998 to 2003. This chart shows overall inflation for this period, the increases nationally in health insurance costs, and the increase in Cincinnati's health insurance premiums. Mr. Haas noted that an 18% increase occurred from 1988 to 1989, costs were contained through managed health care, but health care costs are now running well above the inflation rate, both nationally and locally. Mr. Haas noted that since 2001, the increases in health insurance costs encountered by the city of Cincinnati have been above the national average. Mr. Haas stated that the increase in costs for health insurance in 2004, as compared to 2003, is expected to be 17%.

Mr. Haas referred to a chart which shows the total costs for city health care coverage and the portions of those costs paid by the city and by employees. In 2004 it is estimated that a total of \$38,463,652 in city health care costs will have been paid, through

contributions of \$2,094,180 by employees and \$36,369,472 by the city. The 2005 contributions, for a total cost of \$44,631,944, according to this chart, are to be paid by \$2,402,845 from employees and \$42,229,099 by the city. Mr. Haas noted that for 2004, the city paid 94.6% of the costs of the health care plan, with employees contributing 5.4%.

Mr. Haas referred to a chart setting out city health care cost trends from 1995 through 2005, showing that in 2000 health care costs were 22.0 million dollars, a 7% increase over the previous year, but by 2005, the amount projected to be required is 44.6 million dollars, a 100% increase since 2000. Mr. Haas described the health care plan as presenting a structural imbalance in that there is not enough revenue coming to the plan to cover rising expenditures.

Mr. Haas noted that in 1999, city medical costs were 7.7% of the city's payroll, while in 2005, the city medical costs are projected to account for 14.1% of the city's payroll.

Mr. Haas referred to a chart which shows that the utilization of health care services by city of Cincinnati employees is higher than the national utilization average. Mr. Haas explained that, at present, employees are paying about 14% of health care costs and the Employer is seeking a greater contribution from them. Mr. Haas stated that the target is an employee contribution of 25% to 30%, and noted that PPG employees contribute 30% to their health plan, while Federated Department Store employees contribute 50% to their's. Mr. Haas explained that the health plan proposed by the

city, a so-called 80/20 plan, rewards healthy lifestyles, promotes better decisions about using health care services, and gives employees greater control over the expenditure of their health care dollars. Mr. Haas stated that the 80/20 plan calls for a monthly payroll deduction of five percent, which is \$12.56 for a single plan, and \$34.98 for a family plan. This would reduce the previous monthly payroll deductions of \$25.00 and \$45.00, respectively. The 80/20 plan calls for a \$300.00 deductible for a single plan and a \$600.00 deductible for a family plan. Use of non-network service providers raises the deductible for a single plan to \$600.00 and the deductible for a family plan to \$1,200.00.

The 80/20 plan proposed by the Employer calls for coinsurance of 20% up to \$1,200.00 for a single plan, and 20% up to \$2,400.00 for a family plan. Non-network coinsurance for a single plan is 50% to \$2,400.00, and for non-network services under a family plan it is 50% to \$4,800.00. Under the 80/20 plan, out-of-pocket expenses for a single plan are \$1,500.00 (\$3,000.00 for non-network services), and \$3,000.00 for a family plan (\$6,000.00 for non-network services).

Mr. Haas noted that employee contributions to a health plan are withheld on a pretax basis. The premium share paid by employees into the 80/20 plan is 5%; the out-of-pocket expense amounts to 20%, average of hospital, professional, and prescription drug benefits, for a total employee cost of 25%. The Employer claims that this creates a fair cost-sharing platform for years to come and allows the city to focus resources on improving the quality of

care and the health care delivery system. The Employer believes the 80/20 plan engages employees in their health care system through paying deductibles and coinsurance, and through these payments employees will become more aware of the real costs of their health care.

Mr. Haas testified that those city employees who require less than \$1,000.00 in annual claim expenses are better off under the 5% deductible and copays of the 80/20 plan. Mr. Haas pointed to a chart which reports that 73.8% of the 9,512 patients served had claims of less than \$1,000.00. 93% of the patients served under the plan had claims of less than \$5,000.00. Mr. Haas agreed that those patients with claims of between \$1,000.00 to \$5,000.00 in a year, as a group, will pay more under the 80/20 plan.

Mr. Haas testified that, at present, for an individual with two office visits at \$70.00 per visit, one urgent care visit at \$125.00, and two brand prescriptions at \$80.00 each, the difference between the current health care plan for CODE collective bargaining unit members and the 80/20 plan proposed by the Employer is \$144.00. Under a family plan with six office visits at \$70.00, one urgent care visit at \$125.00, one emergency visit at \$550.00, one outpatient test at \$1,200.00, three generic prescriptions at \$25.00 each, and three brand prescriptions at \$80.00 each, the difference between the current plan and the 80/20 proposed by the Employer amounts to \$222.32.

In the case of a family plan with eight office visits amounting to \$70.00 each, one inpatient surgery costing \$50,000, twenty physical therapy visits at \$75.00 each, five generic prescriptions at \$25.00 each, and four brand prescriptions at \$80.00 each, the difference between the current plan and the 80/20 plan is \$724.82. Mr. Haas noted that this increase is due to the catastrophic increase in cost arising from the surgery.

Mr. Haas stated that costs, without COBRA costs, required by the city's health care plan through September 2004, were \$22,794,265. 38.4 million dollars in health care costs were projected for 2004, based on six months of data, a 21% increase. After eleven months of data were received for 2004, it appears that the cost of the health plan, for administration, COBRA costs, and all claims will be 37.3 million dollars, a 17% increase over 2003. Mr. Haas stated that the Employer's contributions to the city health plan increased by 8% from 2000 to 2001, by 21% in 2002, by 12% in 2003, and by 30% in 2004, and remains 1.3 million dollars short. Mr. Haas pointed out that a 9% to 10% increase has been built in for 2005, but a 15% to 16% increase may be required. Mr. Haas stated that the city health plan needs to start breaking even. Mr. Haas stated that the trends experienced by the city health plan cannot continue if the fund is to be sustained. Mr. Haas stated that the plan is losing ground.

As to the insurance plan proposed by the Union, Mr. Haas pointed out that under that plan employees would pay less as a percentage of the funds needed to sustain the health care plan.

Mr. Haas noted that 50% of the city's employees are now enrolled in the 80/20 plan as of January 1, 2005, police participation is pending, and fire employees will be included in 2005. It is the city of Cincinnati's intention that all city of Cincinnati employees participate in the same 80/20 plan.

Mr. Haas stated that a reserve balance which is maintained to address undisclosed claims, by the end of 2003, was underfunded as determined by an actuary employed by the city. 35% of the prior year's claims is recommended for a reserve balance, but now there is only 10 million dollars in the reserve balance, 27% of last year's claims, less than the desired 35%.

Mr. Haas noted that under the 80/20 plan employees may take advantage of health care savings accounts which allow employees to put money in an account and use these pre-taxed monies to pay co-pay costs. Mr. Haas noted that 2300 workers represented by AFSCME employed by the city of Cincinnati now participate in the 80/20 plan.

Under questioning by the Union representative, Mr. Haas agreed that the health care plan appearing as Article 18, Insurance, at tab 36 of CODE's prehearing fact-finding submittal, is the current plan in which CODE bargaining unit members participate. Mr. Haas agreed that the 80/20 plan would increase the burden of health care costs on employees, and agreed that the 80/20 plan shifts a greater percentage of costs to employees. Mr. Haas stated that sicker employees will pay more under the 80/20 plan. Mr. Haas stated that

he expects the costs of the plan shifted to the group to amount to 65% of \$700,000, or \$455,000.

Mr. Haas stated that the final numbers for health care costs for 2004 are expected at the end of January, 2005.

The Union urges that the existing health care benefits and employee costs for members of CODE's collective bargaining unit be continued unchanged in the parties' initial collective bargaining agreement. The Union points out that under the current plan members of the CODE bargaining unit pay less for the blue priority (HMO) plan, and members of the CODE bargaining unit pay more for the blue access (PPO) plan.

The Union compares the effect of the plan proposed by the Employer to the plan currently in effect for CODE members. The comparison assumes a family of four, presumes twenty-three office visits, but does not include prescriptions, outpatient visits, urgent care visits, or emergency room visits. Under the 2004 PPO plan, the total out-of-pocket expense amounts to \$1,000.00; under the 2004 HMO plan, the total out-of-pocket expense amounts to \$470.00; under the 80/20 plan, in 2005, the total out-of-pocket expense is \$1,195.76. The Union points out that costs per month for the 80/20 plan total \$776,000, and notes that if an employee is sick or needs to see a doctor, costs will be higher for that employee under the 80/20 plan. The Union claims that the 80/20 plan punishes those who need this benefit the most, those who are sick and those families with children who usually need more doctor visits. The Union notes that this is simply another pay deduction

from CODE bargaining unit members, like the loss of tuition reimbursement, longevity, merit increases, etc. The Union urges that the current health plan be retained as set out in Union Exhibit 36.

The Union points out that as of May 23, 2004, the city had projected medical expenses for 2004 in the amount of \$38,232,148, a 15% increase. On November 19, 2004, the city had determined that the projected health care costs of 38.5 million dollars for 2004 were slightly exaggerated. By the end of September, 2004, the total amount paid by the city in health care costs for these nine months was \$22,794,265. With three months left in 2004, the city was \$15,437,883 under expected costs, and \$10,241,081 under the amount spent in 2003. In other words, after 75% of 2004 had elapsed, the city had only spent 60% of what it had budgeted to spend in 2004 for health care costs.

The actual amount spent by the city in 2004 on health care costs was not available by the time of the fact-finding hearing, but the Union points out that if the city budgeted \$38,232,148 for 2004 for medical costs, and if health care costs were expended at the same pace until the end of 2004, the city would have a huge carryover to fund a fair, equitable agreement with CODE, in parity with other contracts. The Union believes there is no justification for imposing higher health care costs on CODE members at this time. The Union states that if the city could afford the current plan for years, they should be required to retain the current plan.

The Union urges the fact finder to recommend a continuation of the health care plan presently received by CODE members.

The fact-finder recommends that the initial collective bargaining agreement between the parties include the 80/20 plan proposed by the city. The fact finder is cognizant of the increased costs which will result to bargaining unit members as a result of this change. The fact finder is also cognizant of the fact that increases in medical costs for health coverage are real, substantial, and a threat to the economic well-being of every municipal employer and employee.

One of the compelling arguments for the health plan proposed by the Employer is that it is intended that all city of Cincinnati employees participate in the plan. 2300 AFSCME employees are in the plan; all non-organized city of Cincinnati employees are covered by the plan; and there is evidence to the effect that police and fire employees will be covered as well by the end of 2005. The inclusion of CODE members under the 80/20 plan proposed by the Employer would make available to CODE members the same coverage at the same cost as provided to all other city employees.

The fact finder understands that the Union opposes increased health care costs for its members in light of past benefits that have been taken from them. The fact finder also understands, however, that the increasing cost of providing medical coverage cannot be borne solely by an employer, that these increases for health care coverage for employees and their families must be a shared obligation. The fact finder also finds that increasing

awareness and sensitivity to the expenditure of health care dollars is becoming a necessary component of any sustainable health care program.

For the above cited reasons, the fact finder recommends the health care plan proposed by the Employer for Article 18.

#### ARTICLE 18, HEALTH INSURANCE - RECOMMENDED LANGUAGE

##### Section 18.1. Health and Hospitalization, Prescription Drug, Disability, Dental and Vision Coverage.

The city shall continue to make available to employees and their dependents substantially similar group health and hospitalization insurance, prescription drug, long term disability, dental and vision coverage and benefits as existed immediately prior to the effective date of this Agreement, except that, effective the first full pay period following the execution of this Agreement, the health and hospitalization plan in effect for all bargaining unit employees will be the city's "80/20" plan, as described in Appendix "A." Employees enrolled in the 80/20 health plan will pay 5% of the monthly premium.

##### Section 28.1. Terms and Conditions

Employees wishing to change from a single to a family contract must notify the health plan within thirty (30) days of their change in family status. Failure to notify within the thirty (30) day time period will result in the employee having to wait until the next enrollment period to change the coverage from single to family. A family contract in the name of one spouse may be transferred to the name of the other spouse at any time.

An employee in a non-pay status shall have health care plan insurance premiums paid by the City for a maximum of three (3) months while he/she is in such status. If the employee drops the coverage during such a period, he or she may renew membership with full coverage as of their first day back in City service provided the employee completes a new application form.

APPENDIX A

	<u>SINGLE</u>	<u>FAMILY</u>
PREMIUM SHARE (monthly)	5%(1)	5%(2)
DEDUCTIBLE	\$300(3)	\$600(4)
COINSURANCE	20% TO \$1,200(5) 20% to \$2,400(6)	
OUT OF POCKET	\$1,500(7)	\$3,000(8)
RX (generic/brand/non-formulary)	\$10/20/30	\$10/20/30

- 
- (1) In 2005 the 5% premium share for a single plan will be \$12.56.
  - (2) In 2005 the 5% premium share for a family plan will be \$34.98.
  - (3) \$600 Non-network
  - (4) \$1,200 Non-network
  - (5) 50% to \$2,400 Non-network
  - (6) 50% to \$4,800 Non-network
  - (7) \$3,000 Non-network
  - (8) \$6,000 Non-network

Article 10 - Personal Day

The Union has proposed the addition of a personal business day each contract year which shall not carry over to the following year. If the request for the use of the personal day is made more than forty-eight hours in advance, no documentation or reason is necessary. If the request is made less than forty-eight hours in advance, the personal business day may be taken only at the discretion of the appointing authority.

The Union contends that the one personal business day would have no cash value and would not be paid if an employee were to leave city service. The personal day would not be permitted to be taken on the day before or after a holiday and the leave would be subject to the usual operational needs of the city.

While the Union concedes this is a new benefit to CODE members, it is emphasized that it would require little in the way of out-of-pocket expense to the Employer and is in line with a birthday leave day each year guaranteed to AFSCME bargaining unit members.

The Employer opposes adding a personal business day to the leave of CODE bargaining unit members, based on the economic conditions facing the city.

The fact finder recommends the addition of the personal business day proposed by the Union. The cost of this additional benefit is minimal and there is no carryover value. The fact finder is aware that the AFSCME contract provides for a birthday holiday. The fact finder is persuaded that the addition of a personal business day for each member of the bargaining unit will have little impact operationally or financially on the city. While the fact finder feels constrained to be conservative in recommending new benefits, within the totality of what is recommended in this report, the fact finder recommends the addition of a personal business day to the CODE bargaining unit.

## ARTICLE 10, PERSONAL BUSINESS DAY - RECOMMENDED LANGUAGE

Each bargaining unit employee shall receive one (1) eight (8) hour Personal Business Day per year to conduct personal business that cannot be conducted outside of the regular workday. Days shall not accumulate. If notice is given at least forty-eight (48) hours in advance, no reason needs to be stated, and no documentation will be required. If notice of less than forty-eight (48) hours is given, the leave may be approved at the discretion of the Appointing Authority or designee. The day shall have no cash-out value. The Personal Business Day cannot be used the day before or the day after a holiday. The use of this Personal Business Day is subject to the usual operational need requirement.

### Article 19 - General Provisions

The Union proposes that within Article 19, section 19.1, Residency Requirement, it be stated that members of CODE shall live in the state of Ohio. The AFSCME bargaining unit contract and the city of Cincinnati firefighters' contract require members of those bargaining units to reside in Hamilton County, Ohio.

The fact finder finds the Hamilton County residency requirement expressed in other contracts is better as it maintains residency requirement continuity.

The Union proposes that Article 19, section 19.2, contain express language prohibiting the Employer from solely eliminating CODE positions in times of downsizing and budget cuts/restrictions. The language proposed by the Union for section 19.2 includes an agreed understanding that CODE will have a represented interest in reviewing across the board, alternative cuts from other employment areas within city service. The Union argues in support of this

proposed language that it is needed to ensure that CODE positions are not targeted for elimination as they have been in the past. The Union argues that although across the board cuts in personnel may occur, targeting CODE positions is unfair, unjust, and spiteful.

The Employer strenuously objects to the language proposed by the Union for inclusion in Article 19, section 19.2, claiming that the elimination of positions and the determination of which positions to eliminate are decisions inherent to management and not proper subjects of bargaining between the Employer and the Union. The Employer emphasizes that it is the Employer who determines what services are to be provided and at what level of funding. The Employer points out that the Cincinnati City Council in recent years has emphasized its focus on funding core services and to eliminate management positions if necessary. The Employer contends that regardless of how individuals or organizations may feel about these decisions, they are decisions for the City Council to make.

The fact finder does not recommend the language proposed by the Union for section 19.2 of Article 19, finding it to be an intrusion into management policy-making. The fact finder believes the working relationship between Management and the Union is better served by separating managerial decisions, about what positions shall be utilized by the city in meeting city services, from Union decisions, about how employees within those positions will operate within the employment relationship. The fact finder fears that the language proposed by the Union for section 19.2 within Article 19

will cause confusion between the parties as to the limits of their respective powers.

The fact finder does not recommend the inclusion of section 19.2 of Article 19 as proposed by the Union.

CODE President Diana Frey testified in this proceeding that in 1999 city employees were required to elect either a 2.22% contribution to the city of Cincinnati retirement fund, a percentage that was to be applied to both straight time and overtime; or a 2.5% contribution that was to be applied only to straight time. In 2002, when overtime availability was cut off from employees who would later become CODE members, the employees who had elected between the two retirement contributions in 1999, when overtime was available to these employees, were not permitted to make a second election after the Employer had eliminated overtime for these employees.

The Union points out that especially among those CODE bargaining unit members with only a few years remaining until retirement, the irrevocable choice of 2.22%, combined with the elimination of overtime, will produce a reduced pension.

The Union points out that the Employer's promotional material directed to city employees concerning the pension election includes notice that if an employee's status under the Fair Labor Standards Act (FLSA) changes from non-exempt to exempt, the employee will have sixty days to reconsider and make a change to the employee's retirement election. The Union points out that the Employer has contended that members of the CODE bargaining unit were always

exempt and that overtime was paid to them as a gift, not because these employees were non-exempt. The Union points out that the Employer has refused CODE bargaining unit members the opportunity to change their contribution percentage because the Employer contends that these employees have not changed from non-exempt to exempt. The Union points out, however, that the Employer's policy on changing retirement election percentages shows that such changes are not considered detrimental by the Employer to the retirement system. The Union contends that allowing CODE bargaining unit members to make an intelligent choice as to their retirement contribution based on their current financial situation is also not detrimental to the system. The Union contends that fairness dictates that the affected employees receive another chance to make a retirement system contribution election. In this regard the Union urges the adoption of language proposed for Article 19, section 19.10.

The Employer opposes the Union's proposed language for section 19.10 of Article 19, Retirement Election. The Employer claims this is a complex issue which currently pends before a federal court as part of a larger lawsuit filed by CODE's attorney on behalf of certain CODE members. The Employer believes this subject is more appropriately addressed by the Court and therefore the Union's proposal as to Article 19, section 19.10 should not be recommended by the fact finder.

The fact finder declines to recommend the language proposed by the Union for Article 19, section 19.10, preferring to allow this

issue to be addressed by the pending federal litigation, and because the fact finder is not confident that he has before him the information necessary to reach an informed conclusion about the effect on the city's retirement system if CODE bargaining unit members are permitted to change their contribution percentage to the retirement system. If the CODE bargaining unit members in 1999 were overtime exempt under FLSA, there is no basis to hold the Employer accountable on this issue based on any kind of violation or improper action. If the employees at issue were non-exempt under FLSA, the fact finder presumes this will be one of the issues addressed by the Court. The fact finder is not in a position at this time to make an informed determination about the issue based on the evidence presented and therefore declines to do so.

The fact finder does not recommend the language proposed by the Union for inclusion as section 19.10 of Article 19.

#### ARTICLE 19, GENERAL PROVISIONS - RECOMMENDED LANGUAGE

##### Section 19.1. Residency Requirement

Members of CODE shall live in Hamilton County, Ohio.

##### Section 19.3. Seniority.

Seniority shall be an employee's length of continuous service with the city or continuous length of service in a job classification where only classification seniority is applicable.

- A) An employee shall have no seniority for probationary period, but upon successful completion of the probationary period seniority will be retroactive to the original date of hire.

- B) Seniority shall be broken when an employee:
  - a. Resigns - unless reinstated within one (1) year;
  - b. Is discharged for just cause;
  - c. Is laid off and not recalled within time limits as determined by the Civil Service Commission.
- C) For purpose of vacations within divisions, seniority shall be applied as provided by written policies and regulations of the divisions, as approved by the department head.
- D) The city shall provide CODE with seven (7) copies of a seniority list of all employees within the bargaining unit within thirty (30) calendar days after the signing of this Agreement. The seniority list shall contain the name, job classification, department, and date of classification entry of all employees in the bargaining unit. Thereafter, the city shall provide CODE with seven (7) copies of an accurate updated seniority list on January 30th and July 30th of each succeeding year.
- E) The city shall provide CODE with a bi-weekly list of all new hires in the bargaining unit along with the employee's name, address, classification and department.
- F) Seniority for benefits such as vacation, sick leave, longevity pay, and health care benefits are covered in those specific articles of the contract.

#### Section 19.5. Ratification and Amendment.

This Agreement shall become effective when ratified by the City Council and CODE and signed by authorized representatives thereof and may be amended or modified during its term only with mutual written consent of authorized representatives of both parties.

#### Section 19.6. Uniforms.

Employees who are required by the Appointing Authority to wear a prescribed uniform in the performance of their duty as city employees shall have such uniforms and replacements furnished by the city in accordance with rules established by the Appointing Authority.

#### Section 19.7. Health and Safety.

It is the responsibility of every department to provide the safest working conditions, tools, equipment and work methods for employees. Management and Labor must see that all safety rules and good working methods are used by all employees. It is the duty of all employees to use the safety rules and safe methods recommended for their safety. Violations of safety rules are to be considered the same as a violation of any other department rule.

Section 19.8. Agreement Copies.

The city and CODE will jointly select a printer to print copies of the final signed version of this Agreement. The city will pay for the copies for use by city administrative personnel, and for distribution to bargaining unit employees.

Section 19.9. Vacancies and Transfers.

- A. The Civil Service process shall continue to be used for filling of positions. The Appointing Authority will give fair consideration for same classification transfers across departments requested by CODE employees. An unfilled position becomes a vacancy for the purposes of seniority bidding only when the appointing authority or designee determines to post the position. Seniority bidding for a vacant position is permitted only within a classification and a division. The city will make a good faith effort to adjust the schedule of an employee who applies for a promotion in another department of the city, in order to permit the employee to interview for that position.
- B. Vacancies in positions above a lower rank or grade of any category in the classified service shall be filled insofar as practical by promotion of eligible and qualified employees. All employees who fill these vacancies shall have gone through the initial screening process for that rank or grade. All classifications in Appendix B shall not be filled by unqualified persons.

ARTICLE 23 - CONTINUING EDUCATION TRAINING

The Union points out that every other city bargaining unit except CODE's receives tuition reimbursement. The Union points out that while the Employer has a current policy on tuition reimbursement within its Personnel Policies and Procedures Manual, payment of tuition reimbursement was ended for members of the CODE bargaining unit in 2003. The Union points out that during bargaining, the Employer advised CODE that tuition reimbursement on a yearly basis for CODE bargaining unit members would be less than \$60,000. The Union's position is that members of the CODE

bargaining unit should have tuition reimbursement like every other city bargaining unit.

The Employer proposes that the language found within the city of Cincinnati's Human Resources Policies and Procedures Manual regarding tuition reimbursement be included within the parties' initial collective bargaining agreement. The Employer contends that the language within this policy is largely consistent with the rights of other management level employees and with the city's other bargaining groups with respect to tuition reimbursement. The Employer notes that the language it proposes does make receipt of the benefit contingent upon funds being available from the agency's budget.

The tuition reimbursement programs expressed within the city of Cincinnati police collective bargaining agreement, the AFSCME collective bargaining agreement, the Article proposed by the Union in this fact-finding, and the city of Cincinnati Policies and Procedures Manual differ from one another in varying degrees. The police collective bargaining agreement is very different from the other three tuition reimbursement programs considered; the proposal from the Union bears some similarities but takes a different approach to tuition reimbursement than that found in the AFSCME collective bargaining agreement and in the city's Policies and Procedures Manual.

Two reimbursement programs which are not significantly dissimilar are the tuition reimbursement program found in Article 41 of the AFSCME collective bargaining agreement in effect from

August 5, 2001 through August 4, 2004, and the city of Cincinnati Policies and Procedures Manual. Both the AFSCME contract and the city's Policies and Procedures Manual describe reimbursement for eligible employees based on the grade earned in an approved course and limit reimbursement to up to six credit hours per academic session.

The Union's proposed tuition reimbursement program caps benefits at \$2,800 per calendar year for undergraduate studies, up to \$3,400 per calendar year for graduate studies, and up to \$1,500 for continuing education voluntarily undertaken by an employee on a subject directly related to the employee's job duties. The Union's proposal also calls for reimbursement of all fees associated with recertification, with professional licenses and dues, with the GED examination fee up to \$20.00, and fees for continuing education required for a license or certification which the employee is required to maintain as a condition of employment.

The Union has referred to its past offer made to the Employer during bargaining that a monetary cap of \$60,000 for the bargaining unit as a whole be included in the tuition reimbursement Article within the parties' initial collective bargaining agreement.

Both the city's Policies and Procedures Manual and the AFSCME collective bargaining agreement include language which reads: "Funds from the Agency's budget must be available."

The AFSCME contract also has provisions within its tuition reimbursement Article which require paybacks in the event an employee has received reimbursement and has not remained an

employee of the city for a minimum of two years after receipt of the last reimbursement. In the case of an employee who has received a rate of reimbursement above the cap expressed in the Article as based on the tuition rate per credit hour at a state-supported, four-year university or college in Ohio, the employee is required to remain employed by the city for a minimum of five years after receiving the last reimbursement or the employee must pay back to the city, at a pro rata amount, tuition reimbursement payments made within the past five years.

The fact finder recommends that the tuition reimbursement Article within the parties' initial collective bargaining agreement be patterned after the language found in Article 41 of the AFSCME contract. Inclusion of this language would provide for tuition reimbursement to CODE bargaining unit members in a manner similar to how this benefit is provided to AFSCME bargaining unit members and will remain in line with the tuition program proposed by the Employer as expressed within the city's Policies and Procedures Manual. The fact finder finds certain sections within AFSCME's contract in Article 41 to be inapplicable to the circumstances of CODE bargaining unit members and therefore recommends most of the language contained within the AFSCME tuition reimbursement Article, Article 41, including payback provisions, but excludes other language which appears to be particularly suited to the AFSCME bargaining unit.

## ARTICLE 23, CONTINUING EDUCATION TRAINING - RECOMMENDED LANGUAGE

### Article 23 - Tuition Reimbursement

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

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

7. The rate of reimbursement shall be capped based on the tuition rate per credit hour at a state-supported four (4) year university or college in Ohio (such as the University of Cincinnati) as designated by the Human Resources Director.
8. Employees will be required to remain employed with the city for a minimum of two (2) years after receipt of the last reimbursement payment. If an employee leaves city employment prior to the expiration of that two (2) year period, he or she will be required to refund the city a pro rata amount. Exceptional cases will be reviewed by the Director of Human Resources upon a case-by-case basis.
9. Notwithstanding Paragraphs 7 and 8 of this Article, employees who wish to receive a rate of reimbursement above the cap based on the tuition rate per credit hour at a state-supported four (4) year university or college in Ohio (such as the University of Cincinnati), will be required to remain employed with the city for a minimum of five (5) years after receipt of the last reimbursement payment. If an employee leaves city employment prior to the expiration of that five (5) year period, he or she will be required to refund the city at a pro rata amount. Exceptional cases will be reviewed by the Director of Human Resources upon a case-by-case basis.
10. An employee currently enrolled in a program which has been approved by the Director of Human Resources shall be reimbursed based upon the full rate of tuition at that university or college for the remainder of the degree program or course of study, and the employee will not be held to the two (2) year employment restriction contained in #8 above, or the five (5) year employment restriction contained in #9 above.

#### Article 17 - Length of Contract

The Union recommends that the fact finder propose a one year contract because this is an initial collective bargaining agreement between the parties. The Union points out that no member of the CODE bargaining unit has ever voted to approve any of the provisions of the contract that may result from this fact-finding

process, and a one year contract will increase the probability of approval because issues resolved by this process, if viewed unfavorably by members of the CODE bargaining unit, will remain in place for a shorter period of time. The Union points out that circumstances may change so as to mitigate additional financial suffering by members of the CODE bargaining unit in subsequent years.

The Employer proposes a three-year contract, claiming that this is consistent with Ohio's collective bargaining statute, with practices among most public employers and organized employees in the state of Ohio, and with the city's AFSCME and building trades contracts. The Employer concedes it has had a history of negotiating two-year agreements with police and fire bargaining units for several years but points out it is currently trying to revert to a three-year cycle with police and will most likely do so with fire as well. The Employer believes a three-year agreement is more conducive to labor stability and reduces the costs and lost productivity inherent in the bargaining process.

The Employer proposes a wage reopener in the third year of the contract in an attempt to obtain labor stability while recognizing the possibility that the city's economic condition could improve during the contract term.

The fact finder does not recommend a one year contract because to do so would require the parties to reenter bargaining for a successor agreement only months after the effective date of the parties' initial collective bargaining agreement. The fact finder

believes that a longer contract term will allow the parties to focus on the application and administration of the contract, and will allow the parties some reasonable time to determine what language in the contract works and what language requires revision. The wage reopener proposed by the Employer in the third year of the contract is favored by the fact finder as a way for the parties to reassess wage levels in anticipation of a successor agreement.

The fact finder recommends a three-year contract term for the parties' initial collective bargaining agreement and also recommends a wage reopener to occur twenty-four months after the ratification of the parties' initial contract.

#### ARTICLE 27 - LENGTH OF CONTRACT - RECOMMENDED LANGUAGE

This Agreement shall be effective when executed by authorized representatives of both parties and shall remain in full force and effect until midnight at the end of the pay period which occurs closest to 36 months after the effective date, except that, 24 months from the effective date, this Agreement shall be reopened for the sole purpose of negotiating the Article concerning wages.

This Agreement shall automatically be renewed from year to year unless either party shall give notice to the other in writing at least sixty (60) days prior to its expiration that it desires to terminate or modify this Agreement. In the event such notice is given, negotiations shall begin no later than forty-five (45) days prior to the expiration date.

#### Article 15 - Appendix

The appendix to Article 15, designated Appendix A, is to present those positions which may be assigned overtime under the express provisions of Article 15, Hours of Work and Overtime. Prior

to the fact-finding hearing on January 19, 2005, the parties had agreed to fourteen classifications which could, under appropriate circumstances, be assigned overtime work and paid on an overtime basis.

Following the fact-finding hearing, the parties agreed to an additional four classifications, for a total of eighteen classifications. The remaining classifications recommended by the Union for overtime assignments under Article 15 are Senior Engineers, Wastewater Collection Supervisor, Supervising Surveyor, and Surveyor.

In support of including Senior Engineers, the Union points out that it has narrowed the overtime eligibility parameters for this classification to just those who report to emergency call out situations. The Union notes that this position is required to be available on job sites during non-standard work hours and non-observed private industry holidays. It is noted that this position may also be called out for emergency road closures and to coordinate traffic control for multiple special events city-wide.

As to the Wastewater Collection Supervisor, the Union notes that this position works directly with AFSCME employees during extreme rain, flood, and high water situations, events which may occur after normal business hours. This position is involved with the city's new Water in Basement program which calls for an investigation of water in basement complaints within twenty-four hours, a program wherein response time and after-hours availability are critical to the operation of the program.

As to Supervising Surveyor and Surveyor, it is noted that these positions are responsible for laying out city capital improvements and public works. Ninety percent of the work is field-related, working side by side with AFSCME employees on a daily basis. These positions may be required to work hours matching contractor hours, including nights, weekends, and holidays. These positions may be required to work in areas after normal work hours and on weekends due to safety concerns.

The Union contends that Senior Engineers, Wastewater Collection Supervisor, Supervising Surveyor, and Surveyor should be included in the overtime eligibility listing presented by Appendix A of Article 15.

In opposition to including Senior Engineer, Supervising Surveyor, Surveyor, and Wastewater Collection Supervisor in Appendix A to Article 15, the Employer points out that the Senior Engineer classification requires registration as a professional engineer with the state of Ohio. A Senior Engineer is a professional employee and therefore exempt under the Fair Labor Standards Act, independent of any supervisory status. The Employer claims that while, on occasion, such employees may work side by side with field employees, a Senior Engineer performs at a higher level and has a current maximum salary, \$71,312, reflecting this higher level of work. The Employer notes that the salary for Senior Engineer is significantly higher than other positions included in Appendix A of Article 15. The Employer points out that positions listed in Appendix A have maximum salaries of between \$42,000 and

\$59,000. The Employer claims that while a Senior Engineer may be called to work during non-standard work hours, this is typical of many professional and managerial positions which are not overtime eligible.

As to Wastewater Collection Supervisor, the Employer notes that this position provides highly responsible and complex staff assistance to the Wastewater Collection Superintendent and/or Supervising Engineer, and has a maximum annual salary of \$66,127, significantly higher than other positions listed in Appendix A. The Employer concedes such a position is called out during non-standard hours but claims the higher base salary adequately compensates for this additional work.

As to the position of Surveyor, it is noted that an incumbent of this position must possess a professional surveyor registration from the state of Ohio that requires a four-year college degree. The maximum annual salary for this position is \$61,797. The Employer claims that based on the higher salary and the professional qualifications, this position should not be included in Appendix A.

As to Supervising Surveyor, the Employer notes that the maximum annual salary for this position is \$71,312. The Employer notes that Supervising Surveyor possesses all the professional qualifications of a Surveyor but exercises a greater level of responsibility and earns a higher salary. The Employer claims that this position should not be eligible for overtime for the same reasons as expressed for the Surveyor position.

The Employer notes that all of the positions in question, including those already included in Appendix A, are currently classified as FLSA-exempt. It is noted that the city is engaged in litigation with a group of CODE employees who claim that they have been improperly classified as overtime exempt. During negotiations with CODE, the city agreed to pay overtime to a limited number of employees based on equity considerations and operational efficiency. The Employer does not believe it appropriate for the fact finder to recommend payment of overtime to FLSA-exempt employees over the Employer's objection. The Employer believes this issue is better resolved in the Court rather than in a fact-finding proceeding.

The fact finder does not recommend that additional classifications be added to Appendix A of Article 15. Part of the fact finder's reticence concerning recommending classifications to Appendix A is grounded in the FLSA overtime exempt status of the classification titles appearing on Appendix A of Article 15. The fact finder is reluctant to recommend that the Employer be obligated to pay overtime eligibility to others as well when such an obligation is specifically absent as a matter of federal and state law. The Employer has agreed to the inclusion of eighteen classification titles in Appendix A for operational efficiency purposes; the fact finder is persuaded that the remaining four classification titles proposed for inclusion by the Union contain professional responsibilities and are paid at a substantially higher level than those classification titles appearing within

Article 15, Appendix A. The fact finder recommends the eighteen classification titles appearing on Article 15 - Appendix A, and declines to recommend the more professional, higher paid classifications proposed by the Union, those classifications being Senior Engineer, Wastewater Collection Supervisor, Supervising Surveyor, and Surveyor.

ARTICLE 15, APPENDIX A - RECOMMENDED LANGUAGE

Assistant Supervisor of Water Customer Service  
Assistant Supervisor of WW Construction Inspection  
Emergency Services Dispatch Supervisor  
Parks Operations Supervisor Parks/Recreation Maintenance Crew  
Leader  
Parks/Recreation Programming Coordinator  
Police Criminalist  
Public Works Service Area Coordinator  
Senior Engineering Technician  
Senior Plant Operator  
Senior Police Criminalist  
Sewer Maintenance Crew Leader  
Supervising Field Service Representative  
Urban Forestry Specialist  
Water Works Maintenance Field Supervisor  
Assistant Supervisor of Inspections  
Assistant Supervisor of Fleet Services  
Assistant Supervisor of Park/Recreation Maintenance &  
Construction  
Engineering Technical Supervisor

In addition to the recommended language proposed by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles agreed by the parties.

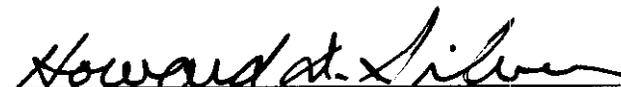
In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117, and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.

  
Howard D. Silver  
Fact Finder

February 22, 2005  
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommendation of Fact Finder in the Matter of Fact-Finding Between the City of Cincinnati and Cincinnati Organized and Dedicated Employees, was filed with the State Employment Relations Board, via hand-delivery this 22nd day of February, 2005:



Howard D. Silver  
Fact Finder

February 22, 2005  
Columbus, Ohio