

In the Matter of Fact-Finding Between City of Norton and AFSCME Local 265 and Ohio Council #8, Case No. 05-MED-09-1045, Service/Maintenance Unit, February 28, 2006.

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between :
CITY OF NORTON, :
Employer :
and :
AFSCME Local 265 :
and Ohio Council #8, AFL-CIO :
Union :

Case No: 05-MED-09-1045
Service/Maintenance Unit

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STATE EMPLOYMENT RELATIONS BOARD

1046

FACT FINDING AND RECOMMENDATIONS

Michael D. McDowell, Esq., Fact-Finder

APPEARANCES

For the City of Norton:

Mr. Nicholas Codrea
Law Firm of Robert J. Tscholl, Esq.
220 Market Avenue, South
Suite 1120
Canton, OH 44702

For AFSCME Local 265 and Ohio Council #8, AFL-CIO

Mr. Louis J. Maholic
Staff Representative
AFSCME, Ohio Council 8
1145 Massillon Road
Akron, OH 44306

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SUBMISSION

The undersigned was selected as Fact-Finder in this dispute by the parties pursuant to written notice to the Fact Finder dated December 21, 2005. A collective bargaining agreement is in full force and effect between the City of Norton ("City") and AFSCME Local 265 and Ohio Council #8, AFL-CIO, Service/Maintenance Unit ("Union"), and is hereinafter referred to as the "CBA." The three year CBA became effective January 1, 2003, and the term of the CBA was to end on December 31, 2005. The CBA has been continued by agreement of the parties pending resolution of contested items. The bargaining unit consists of approximately sixteen (16) full time employees.

The parties commenced negotiations for a successor CBA in October, 2005. The parties met on multiple occasions and were able to voluntarily agree on several articles and provisions, but were at impasse on certain other issues.

The parties participated in a mediation conference on January 5, 2006, at which Tentative Agreement was reached on all disputed items, subject to ratification by the parties. The Union subsequently rejected the Tentative Agreement.

The parties then agreed to a Fact-Finding Hearing on February 3, 2006, which was held in Norton, Ohio. The parties agreed to extend the time periods to and including the issuance of the Fact Finding Recommendation as provided under the Ohio Administrative Code Rule 4117.260.

In addition to the representatives of the parties and the Fact-Finder, the following individuals were present at the Fact Finding Hearing:

For the City:

Mr. Claude Collins
Administrative Officer and Witness
City of Norton
4060 Columbia Woods Drive
Norton, OH 44203

Mr. Ted Weinsheimer
Superintendent of Pubic Service

For the Union:

Mr. Eddie Lawson
President, AFSCME Local 265

Mr. Tony Bisesi
Steward, AFSCME Local 265

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Ms. Amber Johnson
Chapter Chair, AFSCME Local 265 and Witness

Ms. Sharon Smith
Immediate Past Chapter Chair, AFSCME Local 265 and Witness

Mr. Daniel Ellinger
Chapter Chair, AFSCME Local 265

The Fact-Finder heard testimony and admitted evidence submitted by the parties on the Wages, Longevity and Major Medical/Hospitalization issues. The parties agreed to a three year labor agreement ending December 31, 2008. They have reached agreement on the Grievance and Arbitration Procedure and Clothing Allowance provisions, and have withdrawn all other issues.

In presenting rendering these Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

WAGE ISSUES IN CONTENTION

Article 33 – Wages; and Article 34 – Longevity

City's position: Based on the Tentative Agreement, the City's position is that, for all classifications, wage increases should be recommended as follows: a 1% General Wage Increase in the first year of the CBA effective January 1, 2006; a 2% General Wage Increase in the second year of the CBA effective January 1, 2007; and a 2% General Wage Increase in the third year of the CBA.

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The City's position on Longevity pay is that Longevity pay should increase by 6% effective January 1, 2007.

Union's Position: The Union seeks, for all classifications: a 5% General Wage Increase in the first year of the CBA effective January 1, 2006 (which would be retroactive to January 1, 2006); a 5% General Wage Increase in the second year of the CBA effective January 1, 2007; and a 5% increase in the third year of the CBA effective January 1, 2008. The Union also seeks a Longevity pay increase based on total wage percent increase of the contract (15%) beginning in December, 2007.

Discussion: The City accounts for its financial transactions on a fund accounting basis. A fund is an accounting entity with a self-balancing set of accounts established to record the financial position and results of operation of a specific City activity. Wages for the nine Service/Maintenance Unit employees are paid out of the Service Fund and the remainder of the Service/Maintenance Unit employees are paid from the General Fund.

At the hearing, the Union introduced the City Statement of Cash Position as of December 31, 2005. It pointed out the following as significant improvements in the City Statement of Cash Position to support its argument that the wage rate increase the Union requested was appropriate:

- Fund No. 001 – General Fund. The ending balance of the General Fund that was carried over to 2006 had increased to \$424,452.69 from the beginning balance of \$244,699.94 on December 31, 2004;
- Fund No. 002 - The Service Fund had carryover to 2006 of \$166,573.16 from \$92,660.17 during the same period;
- Fund No. 199 - The Rainy Day Fund had a carryover to 2006 of \$153,045.39 up from the prior year's carryover balance of \$46,000.00;
- Fund No. 600 - The Self Insured Fund had a carry over to 2006 of \$240,810.03 up from the prior year's carryover balance of \$116,190.93. This is the fund that is used to pay the costs of the medical and hospitalization coverage for the employees;

The Union notes that one person from the Service unit retired during the term of the last CBA and has not been replaced.

The City asserts that its finances were in terrible shape and that this is the first negotiation in which it has raised the defense of the inability to pay in bargaining for a CBA and this is the first time the City has asked anyone to take lower than average wage increases.

This is supported by the admitted assertion that the City recently was required to take out loans to the point that the City is carrying in excess of \$4M in debt through a bond issue.

In January, 2005, the City Income Tax was increased from 1.5% to 2.0%. Part of the reason for the income tax increase was to avert layoffs of City employees.

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It is anticipated that the collection of the City Income Tax has been made more efficient by the retention of a third party, CCA, for that purpose. Before CCA was retained in July, 2005, the former Finance Director handled the tax collection on the honor system and the collections came in quarterly. Now those monies come in monthly and collections should be improved. These revenues, less expenses for collection, are placed in the General Fund.

The City presented data with respect to the City Income Tax based on 2003 data (the latest available) of the local communities. The City, with a population of 11,648 has a lower per capita (\$144.67) per 1% of tax collected than ten of the twelve surrounding communities. The Union pointed out that this was 2003 data and that the City Income Tax rate has increased since then, and collections have improved.

The City points out that there is no income tax credit coming back to the City for those who are employed outside of the City and this had a negative impact on the amount of City Income Tax collections for the City.

The City asserts, with respect to the Rainy Day Fund, that it is earmarked for emergencies and should not be considered as available to pay collective bargaining obligations. This fund was established in or about 2003, in relation to the City issuance of \$4M in bonds. In June 2003, it obtained a Bond rating from Fitch Ratings for the \$4M Bond issue. Fitch Ratings is a leading global rating agency which provides the world's credit markets with independent, timely and prospective credit opinions. Establishing a Rainy Day Fund is one of the recommendations from Fitch Ratings. Had the City not established a Rainy Day Fund, Fitch Ratings and other bond rating services would have given the City a lower bond rating and the City would have incurred additional costs for the bonds due to the increased interest it would have been obliged to pay on the bonds with a lower rating. The Bond rating for the City is A. The highest rating is AA.

The City states that the amounts quoted by the Union from the various funds are snapshots since the amount in the funds fluctuate when payments are made from the funds. Addressing the Union's assertions on the General Fund, the City generally described it as a conduit through which a substantial amount of money is distributed to other City funds. It is variable: it goes up and down based on when, where and how monies from the General Fund are disbursed. The City has had many expenses that have been paid out of the General Fund since the December 31, 2005, City Statement of Cash Position including two payrolls estimated at \$117,000, one holiday pay totaling \$20,000 and additional expenses.

Encumbrances on the funds were described at the hearing as follows:

- A total of 8% of all income tax collections is earmarked to cover debt;
- 18% of city income tax goes into the Service Fund;
- Three of the largest tax payers to the City are in the Joint Economic District or JED; as this relates to the City not having a water or sewer plant and payments are

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made for that service. A total of 40% of the income tax collected is assigned to the JED payments;

- Since 1997 there has been a dispute between the City and the City of Barberton relating to JED payments with the total in dispute being \$252,000.00. The timing and amount of settlement of this dispute, if any, is uncertain.

There is also an accrued liability that the City must carry on its books for unfunded liability for contractual compensated absences for accumulated compensated time (sick time, vacation, etc.) accrued by individuals employed by the City per OPBA, AFSCME and IAFF CBAs in the amount of \$220,384.63. The Government Accounting Standards Board ("GASB") requires the encumbrance. Fitch Ratings also advised that the unfunded liability must be carried on the City's books as an accrued liability ready to respond to demands for the funds. These would be payable on retirement. Comp time is a demand request and must be paid within a reasonable time. No one can be sure when these payments will be demanded. Police and fire retirements in the State of Ohio are difficult to predict because of the new Deferred Retirement Option Plan ("D.R.O.P.") program, and the City is not entitled to know when someone is in the D.R.O.P.

Further, all Cities in Ohio are faced with a unique problem within the next two years. The State of Ohio has already threatened to withdraw Local Government Funds that provides \$700,000 to the City. The Taft Administration has withdrawn this threat but has warned that it may do so in two years.

In the last negotiations with the Service employees, the City was presented with perceived inequities in several classifications which were addressed, resulting in the 2002 to 2005 increases averaging 14.37% because of reclassification of employees and other increases.

Having addressed these inequities, the City sought to create a philosophy where all employees of the City get the same wage increases on a percentage basis across the board. The last CBAs with the AFSCME, IAFF and OPBA were demonstrations of that philosophy, as significant wage increases were agreed upon, based on a City financial structure that was inaccurately optimistic.

Lastly, the City asserts that the Tentative Agreement reached at mediation which was rejected by the Union is part of the bargaining history and should be considered.

Recommendations of the Fact-Finder: A review of wage increases for comparable cities in Ohio shows that the increase offered by the City is lower than most. Further, there is no dispute as to the City's past poor fiscal health and that fact should be considered. With the employment of a new Finance Director, it appears that positive steps are being taken to address the City's financial health; these should lead to the City's continued fiscal improvement over time. These steps include the establishment of the Rainy Day Fund, and the increase in the income tax rate, together with more aggressive and timely tax collection measures.

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The General Wage Increases recommended take into account the statutory requirements including the recognition that the City has identified its major fiscal problems, is taking appropriate steps to address them and that its financial picture is improving.

Therefore in consideration of these and other relevant factors, Article 33 should be changed to reflect that for all classifications the Union should be granted a 2% General Wage Increase retroactive to January 1, 2006, a 2.5% General Wage Increase for all classifications effective January 1, 2007, and a 3% General Wage Increase effective January 1, 2008. Article 34 should be changed to reflect a 7.5% increase in Longevity effective January 1, 2007.

If the recommendation is accepted, the parties will insert the appropriate amounts reflecting the General Wage Increases and Longevity increases in the CBA at Article 33 and Article 34.

HEALTH CARE ISSUES IN CONTENTION

Article 37 – Major Medical/Hospitalization

The City's Position: The City's position, consistent with its offer contained in the Tentative Agreement, is that new contract language should be added regarding who is to be the primary health care provider for City employees' spouses who work for, or are retired from, another employer which provides health care benefits. Employers of the spouses of City employees, or employers from which City employees' spouses have retired, which provide health care to that spouse or retiree should be the primary health care insurer of the spouse of the City employee. Further, the City also proposed that the employees begin to pay \$10 per pay for single person coverage and \$20 per pay for family coverage starting July 1, 2007, and offers to establish an IRS Section 125 Plan to allow pretax payment of certain health care costs.

The Union's Position: The Union opposes changes to health care provisions with regard to spousal coverage and employee contribution. It does not oppose the Proposal for an IRS Section 125 Plan.

Discussion: The City maintains "Fund 600 - Self Insured Fund" from which claims are paid related to medical and hospitalization costs and benefits. It retains a large carryover in that fund because the City of Norton is self insured for medical and hospitalization costs. It is subject to peaks and valleys based on the extent and nature of the costs and claims presented. A major health care claim in any one year would have a significant impact on the fund. If a person covered by the City for health care incurs more costs than the stop loss limit, which will be explained below, money to pay those costs has to be available.

As mentioned above, one of the ways the City manages its risk in this area is with stop loss insurance, for which it solicits bids each year. This stop loss insurance covers extraordinary claims covered by the City in excess of \$20,000.00 per person. The City

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pays a single and a family rate every month for this insurance based on the number of incumbents for the specific category. In the event that a covered person has a serious health condition, individual stop loss insurance is negotiated between the City and the insurer for stop loss insurance for that particular person.

The City seeks to further manage its risk with its proposal concerning spousal coverage. According to this proposal, if a spouse of an employee is covered by a medical plan at a different employer as an employee or as part of another employer's retirement plan, he or she would be covered by that plan, which would be primary, with the City secondary. The children would remain covered by the City plan. This is under the theory that the City should not subsidize the medical payments of other employers, especially when the City is self insured. The City did not give an estimate of the savings to the City for this provision, the number of workers involved or the costs to the workers, as these would be difficult to obtain due to privacy issues, among others. However, the City asserts that it is clear that the risk to the City in this area is reduced with each person for which it is not the primary insurer.

The City states that its proposed spousal contribution plan is a less onerous provision than those included in CBAs in other Ohio cities. The City of Canton has a CBA with the CPFFA Employees which includes a provision that "If a spouse has medical health care coverage offered through their employer, they are required to take that coverage on themselves and on any children if the spouse's birthday comes first in the calendar year, in order to be covered under the City of Canton health care coverage as the secondary plan." The City of Kent has a similar clause in its CBA with the IAFF. The City emphasizes that its offer is better for the employees than those in Canton and Kent as it will cover the employee's children without restriction. It would also provide some protection to the City by reducing the numbers of persons that it would cover for health care costs and bear the risk as the primary insurer, as that risk should be covered by the spouse's employer.

The City also proposes employee contributions to health care beginning in the middle of the agreement of \$20 per pay family and \$10 per pay single. The City represents this to be about 4% of the premium costs for health care.

The City introduced evidence that, on average, COBRA medical premiums went up annually 10.58% for family coverage and 10.83% for single coverage in the last 6 years. It also noted that other Summit County cities of Monroe Falls, Twinsburg, Hudson, Barberton (with the exception of the AFSCME), and Fairlawn as well as the contiguous City of Wadsworth in Medina County all require employees to contribute to health care in amounts equal to or exceeding the contribution the City requests in this case. Of the cities mentioned, only in the City of Wadsworth do the employee contributions not exceed those that the City requests.

The City also cites the Kaiser Family Foundation and Health Research and Educational Trust 2005 Annual Survey on Employer Health Benefits. This Survey was represented to contain information from both public and private employers. It showed that the average

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monthly worker contribution rising steadily from \$8 to \$51 for single coverage and \$52 to \$226 for family coverage from 1988 to 2005. Also the percentage of premium paid by covered workers increased from 11% to 16% for single coverage and decreased from 29% to 26% for family coverage. The average annual cost of employment based health insurance for family coverage in 2003 showed, for Ohio, a 21% employee contribution.

In addition, the City cites the 2004 13th Annual Report on the Cost of Health Insurance in Ohio's Public Sector. In Table 5, Employee Premium Contributions required by Employer, it shows that the average percent of contribution for health care premiums for Ohio was 11.8% for single coverage and 12.5% for family coverage. For the Akron/Canton region it is 10.4% for single coverage and 10.2% for family coverage.

The Union refers to the City Statement of Cash Position as of December 31, 2005 pointing out that "Fund No. 600 - The Self Insured Fund" from which the City pays the costs of medical and hospitalization coverage, had a carry over to 2006 of \$240,810.03 up from the prior year's carryover balance of \$116,190.93. The Union asserts that this also shows that the City is not in need of contributions to medical care by the employees as the City has allocated appropriate monies to cover future claims.

The Union points out that Mr. Robert Lamm, the City's Representative for all insurance business addressed the City Council in a Committee of the Whole meeting on December 5, 2005. In that meeting Mr. Lamm gave a history of the insurance. In January 2003, the coverage had changed to another insurance provider and design changes were made to that plan at that time. Since that time the costs for the City had improved dramatically:

- In 2001 the costs were \$934 per employee; in 2002 the costs rose to \$1067 per employee; in 2003 with the change to a new carrier, a new network and a transplant rider the costs went down to \$880.66 per employee; in 2004 they continued to go down to \$762.25; and in 2005 as of October they went down to \$718.19 per employee per month.
- The risk to the city is down \$35,000 per year; claims improved and are about ½ of the medical trend increase of 15%.
- There was a composite increase of 6.8% but the actual dollar amount was \$235.65 increased to \$251.84, an increase of \$16.20 per employee per month which comes out to \$10,497 per year.
- There was a liability risk decrease of 3.9% which was \$640,052 to \$616,087 which was a benefit of \$23,965.
- There was an inordinate amount spent for prescription drugs.
- The City Finance Director said that the City would allocate \$968.29 per employee per month on worst case basis for 2006. As of October, 2005, the City allocated \$958 per month in 2005 for health care costs, but actual cost per employee because of decreased claims was down to \$718.99 per month in 2005. The claims are factored for the city at 128% which inflates the actual costs.

The City maintains that the statistics are misleading, as the \$1067 average cost per employee in 2002 was a year in which an employee needed a transplant. The fact that

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costs per employee decreased over several years is only indicative of better health of the employees. It could easily go higher with significant illness by one or more employees. The City is self insured for health care. The City also doesn't know what its liability will be and can not assess its potential liability because it is restricted by privacy considerations from questioning employees about the potential state of their health. It is therefore not possible to forecast the amount of savings, if any. There will be peaks and valleys in health care expenditures. The City points out, however, that the costs for prescription drugs has increased and the City has been advised to institute a program to educate the employees on the benefits of generic drugs.

Recommendations of the Fact Finder: The City's spousal coverage proposal is directed to the risk management of health care costs, on the proposition that the City should not be required to subsidize the health care costs of another employer, that of the spouse of the City employees who works for, or is retired from, another employer which provides health care benefits. It goes without saying that the fewer persons for which the City is primarily liable for health care costs, the less risk it will have for health care costs. Under the City proposal, the City employee's spouse would still be covered by the City's medical plan, but the City would provide secondary as opposed to primary coverage. The health care coverage of the spouse's employer would be looked to first to pay health care expenses. The City would provide coverage to the City employee's spouse to the extent that the other employer does not provide coverage, or that the coverage amount with the other employer has been reached and the City provides coverage beyond that coverage amount. The proposal does not preclude health care coverage by the City of the dependents of the City employee whose spouse is covered by another employer's health care plan.

The City's spousal coverage proposal appears to be a prudent, reasonable approach to health care cost risk management, but it carries the very real possibility that certain employees would have to bear the additional costs of single coverage of the City employee's spouse with the other employer in order to have health care coverage at all, much less to have secondary coverage by the City. The health care data presented by the City as to degree of contributions to health care premiums by employees of other employers makes it very likely that the employer of the City employee's spouse would have a health care program which requires its employees, including the City employee's spouse, to make contributions to its health care costs. The City's proposal does not provide that it will pay these costs. The reduction of the risk that would occur due to the City's spousal coverage proposal benefits both the City and its employees; however, significant additional costs would be borne by the few employees whose spouses may work for another employer with health care benefits. For these reasons, the spousal coverage proposal of the City is not recommended.

With regard to the City's proposal for employee contributions to health care costs, the question here is whether the City will continue to bear all the costs of employee health care. A significant number of employees in this country, as well as a significant number of employees of public employers in the State of Ohio, make monthly contributions toward health care premiums. The City is self insured for health care costs. It pays its

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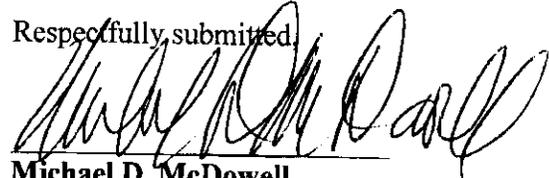
employees health care costs directly from "Fund No. 600 - The Self Insured Fund" and primarily manages its risk of serious injury or health conditions with stop loss insurance. Over the last few years and except for prescription drugs, its health care costs have been trending down. However, a few serious injuries or illnesses would have a substantial impact on that trend as was shown by the impact of a transplant for an employee in 2002. The theory of the funding of "Fund No. 600 - The Self Insured Fund" takes this possibility into account with monies prudently allocated to this fund at a rate higher than projected costs. This is done with the realization that when there is a demand for payment of medical costs, the payment must be made. The fact that "Fund No. 600 - The Self Insured Fund" may appear to be well funded now does not make the health care changes requested by the City imprudent.

For the above reasons, it is recommended that Article 37, Major Medical/Hospitalization be amended to provide that, effective July 1, 2007, employees will contribute \$10 per pay for single coverage, \$20 per pay for family coverage and the employer will establish an IRS Section 125 Plan.

If the recommendation is accepted, the parties will insert the recommended contract language for Article 37 of the CBA set forth in Exhibit One to this Finding of Fact and Recommendations. The parties will also prepare the appropriate Appendix B referred to in the recommended language for Article 37, Section 1 to reflect this recommendation.

This concludes the Report and the Recommendations of the Fact Finder.

Respectfully submitted,

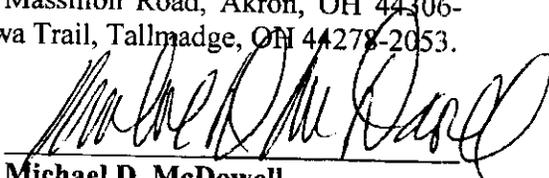


Michael D. McDowell
Fact Finder

Pittsburgh, PA
February 28, 2006

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed this 28th day of February, 2006, by U.S. Mail, Overnight Express Mail to Mr. Louis J. Maholic, Staff Representative, Ohio Council 8, AFSCME, 1145 Massillon Road, Akron, OH 44306-4161; and Mr. Nicholas Codrea, Jr., M.A., 642 Kiowa Trail, Tallmadge, OH 44278-2053.



Michael D. McDowell
Fact-Finder

EXHIBIT ONE

ARTICLE 37 - MAJOR MEDICAL/HOSPITALIZATION (Service/Maintenance)

Section 1. The Employer will provide on behalf of each employee insurance coverage commensurate with the terms of Appendix B as attached to this Agreement.

Section 2. Effective July 1, 2007 Bargaining Unit Members shall contribute twenty (\$20.00) dollars per pay for family coverage and ten (\$10.00) dollars per pay for single coverage.

Section 3. The Employer will establish an Internal Revenue Service Section 125 Plan so that employee participation as expressed in Sections 2, 3, and 4 above shall be on a pre-tax basis.

Section 4. The Employer will provide and pay the full premium on behalf of each employee, for optical vision care, equal to that coverage which each employee is presently receiving.

Section 5. The Employer will provide and pay effective 30 days after the contract is executed, for full-time employees, the full premium for a life insurance policy in the amount of Twenty-five Thousand Dollars (\$25,000.00).

Section 6. The City has the right to implement a generic and/or mail order drug program to effectuate the cost savings for the City. Current mail order provisions provide for up to a 90 day supply with a payment of two deductibles.

Section 7. The Employer agrees to provide a benefit for the Bargaining Unit member only for corrective eye surgery (i.e. laser surgery). This benefit is a one-time cost per employee up to \$2,000.00