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ALAN M. WOLK
IMPARTIAL FACT-FINDER
STATE EMPLOYMENT RELATIONS BOARD

2006 OCT -5 A 11: 28

IN THE MATTER BETWEEN:

CITY OF OLMSTED FALLS, OHIO)

)	Consolidated SERB Cases:
)	
Employer) NO. 05-MED-09-0992
)	Sergeants
)	NO. 05-MED-10-1135
)	Full-Time Patrolmen
)	NO. 05-MED-10-1136 ✓
)	Full-Time Dispatchers
)	NO. 05-MED-10-1137
)	Part-Time Patrolmen
)	NO. 05-MED-10-1138
)	Part-Time Dispatchers

and)

THE OHIO PATROLMEN'S)
BENEVOLENT ASSOCIATION)

Union)

Appearances:

FOR THE EMPLOYER:

Frederick Englehart, Esq., Patrick J. Hoban, Esq. of Duvin, Cahn & Hutton

FOR THE UNION:

Mark J. Volcheck, Esq.

History of the Proceedings

Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14(C), and by letter issued by SERB, the undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral fact-finder to hear and decide issues presented pursuant to Ohio law.

Except to the extent that parties mutually agree otherwise, or wish to pursue mediation first, in compliance with Ohio Administrative Regulations, particularly 4117-9-05, position statements and other required documentation were timely submitted to the opposing parties and to the Fact-Finder prior to the hearing.

Hearings commenced at 9:30 a.m. at Olmsted Falls City Hall on Tuesday, August 22, 2006, and again on Monday, September 11, 2006. A court reporter was not present.

Submission

I. PARTIES

The Union is the OHIO PATROLMEN'S BENEVOLENT ASSOCIATION.

The Union's principal representative: MARK VOLCHEK, ESQ. 10147 Royalton Road, Suite J, P.O. BOX 338003, North Royalton, Ohio 44133. PHONE: 440-237-7900; FAX: 440-237-6446

The Employer is the City of Olmsted Falls, Ohio, which is located in Cuyahoga County, Ohio approximately 4.1 square miles, with approximately 8400 residents. The City's administrative offices are located at 26100 Bagley Road, Olmsted Falls, Ohio 44138 c/o Mayor ROBERT G. BLOOMQUIST. Phone: 440-235-5550.

The City of Olmsted Falls is located in southwestern Cuyahoga abutting the City of Berea and Olmsted Township in Cuyahoga County and Columbia Hills Corners in Lorain County.

The Employer's principal representative: FREDERICK ENGLEHART, ESQ. and PATRICK HOBAN, ESQ. of Duvin, Cahn & Hutton 1301 E. 9th Street, Cleveland, Ohio 44114. Phone: 216-696-7600; FAX: 216-696-2038.

II. Description of the Bargaining Unit

The bargaining unit consists of approximately

3 Sergeants [open] [first time contract]

7 Full-Time Patrolmen

6 Full-Time Dispatchers

2 Part-Time Dispatchers

The Union became exclusive representative of the full and part-time Patrolmen and Dispatcher bargaining units in 1988 and 2000 respectively, and the Sergeants bargaining unit in 2005. The employees are responsible safety functions in Olmsted Falls, Ohio.

III. Current Collective Bargaining Agreement

The current Collective Bargaining Agreements for the full-and part-time Patrolmen and Dispatcher bargaining units expired 12/31/05. The Sergeants' bargaining unit is negotiating an initial Collective Bargaining Agreement.

V. Current negotiation history

Negotiations for the parties' contract commenced December 7, 2005 and the parties met at least a total of three (3) times prior to the hearing.

Stipulations

The parties extended the time to conduct this fact-finding hearing

The parties waived statutory restrictions on the *conciliator* to award matters of compensation retroactively. The parties agreed that the Recommendations herein may be effective retroactively beginning January 1, 2006 through December 31, 2008 and applies to all bargaining units referred to herein.

In making Recommendations full consideration to the statutory criteria served as the guideline.

Criteria

The FACT-FINDER, in making Recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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, and 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) Any stipulations of the parties; and
- (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 agree upon dispute settlement procedures in the public service, or in private employment.

Proceedings

The City presented three witnesses, including, the finance director, the mayor and the police chief. The Union presented three members of the bargaining units. All witnesses were sworn, testimony was received, exhibits were admitted including, but not limited to the bargaining history. the past collective bargaining agreement and arguments were heard.

Preliminary FINDING: regarding the City's ability to pay

This is a very small city located in the southwest corner of Cuyahoga County with a population previously noted, with some 38 employees. It is separately located within Olmsted Township.

City of Olmsted Falls financial condition

Accrual accounting

The ability of the City to pay for wage and health premium increases or other benefits is disputed because of two accounting approaches. The State of Ohio mandates the application of Generally Accepted Accounting Practices (GAAP) [See: Ohio Administrative Code 117-2-03] *for financial reporting* to the state. This is a comprehensive *accrual method of accounting upon which the Union relies* with all assets and resources and all debt and liabilities considered, whether or not readily available or due.

As of 12/31/04, the last state audit, the City's reported net assets were \$9,149,508. \$5,539,196 was unrestricted and could be used to meet ongoing obligations to citizens and creditors [UX-1, Table 1, Page 5]. The state audit rated the City "solid" and "strong" financially on the as of 12/31/04 [UX-1; page 8 and page 10,], and noted its continuing "practice of conservatively estimating low" its' anticipated revenues [UX-1, page 8] and commented further that its' "systems of budgeting and internal controls are well-regarded."

However, there was no evidence of a legal prohibition on local governments that choose to *budget* for its own needs *on the basis of cash or cash and encumbrances*. [Most Ohio cities *budget on the cash basis*, including the City of Olmsted Falls].

Cash basis accounting

The finance director provided significant and comprehensive evidence that the City is wholly unable to afford the Union's demands at this time, i. e. the *cash basis method of accounting upon which the City relies*, reflecting insufficient cash liquidity to contract for higher wages and/or health care premiums over the 2006-2007-2008 three-year term. It is noted that 63% of the general budget is currently required for wages and benefits [Tab 5]. Evidence was not presented by either party spelling out the costs of each Union demand.

In addition to a general economic downturn that began nation-wide in 2001, a substantial part of the particular downward trend in Olmsted Falls arose from significant litigation costs initially authorized in 1999. The goal was to protect local citizens from an anticipated negative impact on residential peace and quiet due to a proposed path of a Cleveland Hopkins airport runway extension. Over a period from 1999 thru 2005, the City disbursed over \$1.4 million to a law firm for legal fees and expenses. No additional litigation costs were disbursed in 2006 nor is any anticipated in the future as a likely drain on the budget.

There was no evidence that the City anticipates any other specific liabilities likely to have a significant negative impact on the state audit as of 12/31/05 or 12/31/06 [unless the replacement levy fails]. Nor was there any indication that the City lacks adequate borrowing capacity [which rests primarily on favorable state audit ratings].

The City's unaudited cash basis statement as of 12/31/05 [Tab 21] reflects certificates of deposit held by the City were valued at \$1,225,374, and other investments with StarOhio amounting to \$3,148,677.88, but which the City contends not to be available for wages and benefits.

While the Union argues that this frees up sufficient funds for wages and benefits in the future, counsel for the City describes its' condition as a *fiscal crisis* pointing to a current downward trend in annual revenues equal to or less than annual outgo.

In the City of Olmsted Falls, anti-tax Activists have been effective

The City relies on 86% of its real estate tax on residential real estate all of which is subject to and reduced by the rollback of Ohio's House Bill 920. Unlike many if not most other cities in Ohio, Olmsted Falls has no charter provision by which real estate taxes automatically rise with inflation without a specific popular vote being required. The Olmsted Falls voters have recently rejected such a proposal, thereby continuing to limit the capacity to make responsible budget adjustments over time.

Thus, it is up to the voters for *any* additional real estate tax authority or to increase its 1½% income tax and/or to reduce its 50% credit for income taxes paid to other cities. Anti-tax forces won the 2005 political battle in which a 4.5mil property tax increase was rejected.

Despite generally talented, excellent and competent administrative and financial management as well as obviously skilled, qualified, dedicated and hard working employees, the City's voters have been either unwilling or unable to fund minimum and necessary governmental resources to provide needs. It can be concluded that most voters enjoy the benefits of a low density residential community; however citizens that refuse or fail to responsibly fund necessary services ultimately suffer from inadequate services.

Failure to provide reasonable incentives can result in the loss of trained and experienced employees. They may find it economically advantageous to accept employment elsewhere. Swayed by anti-tax sentiment, the voters seem to be "penny wise and pound foolish."

In November, 2006 voters will again be asked to replace an existing 0.5 mil levy and for an increase of 1.4 mils for basic "salaries and salary related expenses of permanent fire personnel." If passed they would take effect in 2007. The City's position is that, short of going into state trusteeship, failure of these levies will require cuts in costs and/or layoffs and reduced services for the public.

Market Conditions and Comparables

The "comparables" presented by the Union, reflect that Olmsted Falls police forces are paid and average of \$52,044 annually or approximately 88.95% of the state-wide market average for a ten-year employee. [See "Comparables" discussed below].

Furthermore the typical or average increase in wages and benefits statewide in 2005 is 3%. Neighboring communities do not have quite comparable populations. These include North Olmsted (population 34,113) and Berca (population 18,970). A little more distant are Westlake (population 31719), and Middleburg Heights (Population 15,542). No wage/benefits information was supplied for abutting Lorain County locations of Columbia Station, North Ridgeville and Eaton.

Comparable cities, on a population basis, include Highland Heights (population 8,082), Independence (population 7109), and Pepper Pike (population 6,040). Each of these cities spends approximately \$60,000-\$63,000 annually for their officers. Olmsted Falls' average pay is approximately 86% of these community averages.

However, in addition to population size as well as geographical locations within the surrounding area, comparability also requires a comparable in real estate tax base, comparable income tax

revenue and other revenue resources as well as relevant financial obligations. These elements are helpful to establish the City's ability or inability to finance and administer the Union proposals, and the effect of the adjustments on the normal standard of public service. Without such information, I find the "comparables" one indication, but insufficiently persuasive in this case as presented regarding all needed elements.

[During the hearings, the possibility of holding off on this fact-finding decision until after the November election was suggested. However, neither party indicated any willingness in this approach. As will be noted below, part of the City's last offer is that wages and health care issues for 2007 and 2008 should be the subject of reopeners. Nevertheless, these FINDINGS and RECOMMENDATIONS should be helpful to both parties]

Issues

(Numbered according to the Contract articles and applied herein to all bargaining units in the absence of a specific distinction)

All FINDINGS are retroactive to 1/1/06 and continue through 12/31/08.

ARTICLE 5, CITY'S RIGHTS SECTION 3 (FULL-TIME DISPATCH)

Union [Item 12 revised] - Replace second sentence of Section 3 par. 1 with:

Should an employee leave the City will be granted a reasonable amount of time to fill the vacancy; said vacancy *shall not exceed three (3) months*. The City will make its best efforts to staff dispatch with a second dispatcher when only one dispatcher is on staff.

Reason: Delay places undue pressure and burden on remaining staff

City position:

The City believes such a restriction is unnecessary.

FINDING:

[The parties were specifically requested to seek compromise on this issue]. A one (1) year period to fill a vacancy in the dispatcher staff is unreasonable since the dispatcher/clerk staff contractually must be no fewer than six (6) full timers. The Union's request to reduce the time is reasonable.

RECOMMENDATION:

The Union position is *approved* subject to noted qualifications:

Should an employee leave, the City will be granted a reasonable amount of time to fill the vacancy however said vacancy *shall not exceed four (4) additional months*. The City will make its best efforts to staff dispatch with a second dispatcher when only one dispatcher is on staff.

ARTICLE 6 EMPLOYEE AND OPBA RIGHTS
SECTION 7 [Complaints]

City position:

The City proposes an amendment to add to the last sentence of the current agreement to add:

pursuant to the provisions of ARTICLE 6, Section 7

This amends the provision that details a process for handling complaints against employees and for notice to employees when an investigation is started. The City's request would limit the complaint process to only those complaints referred to in Section 7 thereby excluding any other investigations.

Union position - opposes:

Confirming the existing interpretation in the Contract is unnecessary and limiting.

FINDING:

The proposed language properly narrows the possibility of an unintended broader interpretation and reduces misapplication.

RECOMMENDATION

The City position is approved.

ARTICLE 18 BASE SALARY RATE

This City proposal:

January 1-December 31, 2006

Full-time employees --

\$800 lump sum payment in lieu of a general percentage increase to base pay;

Part-time employees -

\$400 lump sum payment in lieu of a general percentage increase to employees who worked more than 600 hours in 2005;

\$200 lump sum payment in lieu of a general percentage increase to employees who worked fewer than 600 hours in 2005.

The parties will reopen the Contract for the sole purposes of:
(1) Negotiating possible wage increases for January 1, 2007, and January 1, 2008, and (2) Negotiating Employee premium contributions for the health insurance plan years that begin on November 1, 2006 and November 1, 2007. All other provisions of the Contract will remain in full force during and after these reopener negotiations.

City position: The City lacks the ability to pay as reflected on its cash basis financial statements

The Union proposal [ITEM 1]
January 1 to December 31, 2006 2% general wage increase retroactive to January 1, 2006
January 1, 2007 to December 31, 2007 4% general wage increase
January 1, 2008 to December 31, 2008 4 % general wage increase

The Union position asserts that, based on the average of neighboring jurisdictions and the State of Ohio audit as of 12/31/04, the City's financial position is "solid" and it can afford to meet the Union's reasonable position in which it reduces its first year demand.

FINDING:

Although an across the board increase of two (2 %) percent for 2006 is reasonable it is not affordable at this time. The City offer of a flat amount of cash immediately without being added to the base wages is an arbitrary 1.6% of the average of earnings for 2006. , A reopener for 2007 and 2008 on wages and health care excludes a base wages increase for 2006.

However, paying lump-sum rather than a percentage merely provides a temporary convenience to the City allowing momentary certainty for 2006 regarding immediate cash outlays. As funds become available or accessible this initial savings should treated as an increase in the 2006 base wage.

The bottom line is that because of Olmsted Falls' inability to pay, it cannot commit to pay what the Union requests *at this time*. Reconsideration of 2006, and increases for 2007 and 2008 must be deferred awaiting the impact of currently uncertain cost of health care premiums, uncertainty regarding voting results on the forthcoming ballot as well as a detailed justification for withholding all funds invested in certificates of deposit i.e. i if funds are earmarked, what are they allocated for?

RECOMMENDATION

The City's current offer is recommended. The City shall pay each member of the bargaining unit the flat amounts as offered to apply to 2006 wages. However, should the voters approve the ballot issues, there should be reopeners for additions to the base wage for 2006, and reopeners to increase wages for 2007 and 2008, the goal for which should each be 3% and 3%. Should the voters disapprove, financial information for the subsequent two years is to be furnished in advance of reopener good faith negotiations including, but not limited to the availability or lack of availability of *invested funds*. Upon impasse this matter may be returned to fact-finding process.

ARTICLE 18 BASE SALARY RATE [New SECTION]

Union proposal [Item 2] - add new section:

Any employee that is appointed full-time from a part-time position shall be credited with part-time service at the rate of 2080 hours equating to one (1) year for purpose of determining starting base salary rate.

Union position: This is a matter of fairness as a number of part-time employees have been raised to full time and their experience justifies increased starting pay.

City Position: The City rejects this provision as too costly.

FINDING:

I am not persuaded that evidence establishes that this request is too costly; merely that it is argued that any added cost is unjustified.

RECOMMENDATION

The Union proposal is recommended.

**ARTICLE 19 OVERTIME AND CALL IN
SECTION 1 – {Overtime and Call-In -All full-time}**

Union proposal [Item 3] - add new sentence at end of Section 1:

Regular off-days shall be scheduled consecutively. [The] Employer shall not change scheduled shifts to avoid paying overtime.

City position:

Scheduling five (5) consecutive shifts with two days off has been the practice for seven or eight years so why solidify it in the Contract?

FINDING:

There is insufficient empirical evidence to support this request. Scheduling five (5) consecutive shifts with two days off has been the practice for seven or eight years. There is no expectation to change this practice. Changing schedule to avoid overtime is a management prerogative.

RECOMMENDATION

The City position is approved.

**ARTICLE 24 OTHER BENEFITS
SECTION 1 Health Insurance**

City position:

As costs and coverage are presently unknown, for the period of January 1 to December 31, 2006, maintain status quo as defined by 2003-2005 Agreements.

For the period of January 1 to December 31, 2007 and January 1 to December 31, 2008, the City proposed the following amendment:

The parties will reopen the Contract for the sole purposes of negotiating possible wage increases for January 1, 2007, and January 1, 2008, and for negotiating Employee premium contributions for the health insurance plan years that begin on November 1, 2006 and November 1, 2007. All other provisions of the Contract will remain in full force during and after these reopener negotiations.

Union position [Item 4]:

- a. Amend the first paragraph of Section 1 by adding the following sentence:

The coverage and benefits including employer contributions to employee out-of-pocket policy requirements, in effect on January 1, 2006, shall not be diminished over the term or the collective bargaining agreement. Employee costs and expenses under such policy as of said date shall not increase.

- b. Amend the final three paragraphs of Section 1 to provide for a monthly employee contribution of ten percent (10%) of the monthly health insurance premium with a maximum monthly employee contribution of ninety-five dollars (\$95.00) per month for 2006 through 2008.

FINDING:

[Commentary: Although health care benefits were historically a cost-free benefit to many public and private employees, health costs have soared so that almost all corporate employees and most government employees now contribute some portion of their premiums. Some 90% of government employees and 70% of corporate employees now contribute a portion of their health care premiums. It is unclear whether health care cost increases are partly or entirely justified or whether the increases are simply the result of limited medical services and/or controlled drug supplies or increased demand, nevertheless the predictability of such costs is severely unstable.

[Drug companies and insurance companies historically charge without true market scrutiny despite some government regulation. Both assert they are merely engaged in business for profit for their shareholders.

[It is a matter of general knowledge that some counties serve as a health insurance purchasing agency. Alternatively, some abutting communities join together for the same purpose, as some do in creating joint fire districts or other mutual aid systems. Someday the State of Ohio may provide a health insurance buying consortium as it currently operates for the purchase of major equipment and vehicles].

In this case at hand, no evidence anticipates any reduction in coverage or benefits. The primary and mutual concern of the parties is total expected increase in cost and the portion of that cost that employees should pay. There was no evidence supporting the position that coverage or benefits might be diminished. However, future health care costs during the Contract cannot be determined at this time. It is clear that additional information is still necessary for evaluation of costs and coverage.

Although the unions in this fact-finding proceeding voted against the majority of the insurance advisory committee recommendation, the restrictive limits requested by the Union are premature. The bottom line is that because of Olmsted Falls' financial inability, it cannot commit to pay what the Union requests *at this time*.

RECOMMENDATION

Accordingly, the Union proposal to limit employee contributions is rejected at this time as is the Union proposal to amend the final three paragraphs of Section 1 to limit the monthly employee contribution percentage and dollar amount.

However, the Union language is *approved in part*, as proposed, i. e. amend the first paragraph of Section 1:

The coverage and benefits shall not be diminished over the term or the collective bargaining agreement.

Management's request that renegotiation of the other Union proposals on health care is adopted after sufficient detailed information is available,

ARTICLE 24 OTHER BENEFITS SECTION 4 – UNIFORM ALLOWANCE [ALL FULL-TIME AND PART-TIME WHERE SPECIFIED]

Union position [ITEMS 5 and 6]:

a (Full-Time Sergeants and Patrolmen)

Increase clothing allowance *from eight hundred and seventy five dollars (\$875.00) per year to nine hundred (\$900.) per year.*

b (Full-Time Dispatcher)

Increase the clothing allowance *from six hundred fifty dollars (\$650.00) per year to seven hundred (\$700.00) per year.*

c (All full-time)

Amend subsection E to include health club dues as a legitimate expenditure [from] the clothing allowance for full-time Sergeant, Patrolmen and Dispatcher bargaining units.

d (Full-time Sergeants and Patrolmen)

Amend subsection F by adding the following final sentence:

The City will also furnish the first issue of any required uniform change at no cost to the employee.

e (Full-time Sergeants and Patrolmen)

Amend subsection H (concerning bulletproof vests) by adding the following final sentence:

The City shall replace the vest every five years or in accordance with manufacturers' specifications. All uniformed first responders shall wear their vest while on duty.

City Position:

The City provides an initial issue of all duty gear, outer wear, sidearm, body armor and current allowances are sufficient to replacements arising from normal wear and tear.

FINDING:

The sufficiency of the initial issue of clothing and equipment to officers at no cost to the employee is not at issue and, according to the evidence; the present allowance is generally sufficient for normal wear and tear replacements.

Vests need not be replaced by a specific date under a contractual provision but contractually requiring replacement *in accordance with manufacturer's specifications* is both reasonable and responsible.

The evidence is that adding special patches for each of the officer's uniform can cost up to \$80 if required

In my view, health club dues are a matter of personal choice. The City may be wise to consider investing in better health club type facilities.

The evidence supports the Union that "All uniformed first responders shall wear their vest while on duty."

RECOMMENDATION

The Union requests, listed as Section 4 a, b, and c, are rejected.

Regarding item d (full-time Sergeants and Patrolmen)

Amend subsection F by adding the following final sentence:

The City will also furnish the first issue of *any required uniform change* at no cost to the employee.

The Union request to modify Section 4, e is rejected, EXCEPT that an addition is recommended that

"All uniformed first responders shall wear their vest while on duty."

ARTICLE 24 OTHER BENEFITS

SECTION 7 Court Appearances

City position

The City proposes an amendment to provide that when an employee must appear in court as part of his or her official duties, that employee's shift will be rescheduled so as to encompass the court appearance. The primary reason is to save money as well as for scheduling flexibility.

Union

The Union considers this proposal unfair.

FINDING:

This usually involves a subpoena to appear at one Wednesday afternoon Berea Municipal Court date per month. The City's proposal would affect those employees who are *on duty* and/or those who happen to be *off duty* at that time. Sometimes as many as six (6) officers are subpoenaed for the same time frame. Court appearances typically only take from ½ hour to one

hour plus travel, but the officer must be available and wait his or her turn for whatever time the court or the prosecutor finds necessary or appropriate.

RECOMMENDATION

Management's proposal is rejected. Costs alone are not a sufficient reason. An integral part of an officer's duty is to testify in support of his or her action when such action is presented to court.

ARTICLE 24 OTHER BENEFITS

SECTION 13 Compensatory Time (Full-time Patrol and Full time Dispatch)

Union [Item 7]: WITHDRAWN

ARTICLE 24 OTHER BENEFITS

SECTION 15 Officer-in-Charge [Full-time Patrol]

City Position – Replace the last sentence of Section 15 with:

To qualify for Officer-in Charge pay, an employee must have successfully completed the Police Supervisory Training Program offered by the State of Ohio. The premium pay for Officer-in-Charge will be an additional \$3.00 per hour for every hour worked as Officer-in-Charge. There is no requirement that every shift must have and Officer-in-Charge.

This is to reduce overall costs and to pay only for actually hours worked

Union [ITEM 8] - [effectively] change the last sentence of the City proposal:

The OIC shall be a uniformed first-responder.

FINDING: Any officer including the police chief can be a first responder. Uniform as used here means full uniform including body armor and weapon. An officer-in-charge [OIC] in full uniform is necessary for safety reasons to protect the officer, other employees and the public.

RECOMMENDATION:

Replace the last sentence of Section 15 with:

To qualify for Officer-in Charge pay, an employee must have successfully completed the Police Supervisory Training Program offered by the State of Ohio. The premium pay for Officer-in-Charge will be an additional \$3.00 per hour for every hour worked as Officer-in-Charge.

The OIC shall be a uniformed first-responder.

ARTICLE 25, SECTION 3 [Part-time Patrolmen and for Part-time Dispatch]

Union [ITEM 9] – change life insurance coverage for part-time employees from \$12,500 to \$25,000 i.e. amends the final sentence of Section 3 to read as follows:

Part-time employees working more than 20 hours per week on a consistent basis are entitled to \$25,000 of life insurance coverage

City: Too costly city-wide

FINDING:

This request is not unreasonable and is common in other cities. However the total cost to the City, if this coverage is provided to police, fire, and/or other employees has not been presented. This request lacks evidence identifying the increased cost of premiums.

RECOMMENDATION:

The Union request is rejected at this time.

ARTICLE 25, SECTION 9 [Part-time Patrol]

Union [Item 10] - add:

The OIC shall be a uniformed first-responder.

City opposes asserting that with the new Police Chief, who is a first responder and usually in uniform, this requirement is unnecessary.

FINDING: Any officer including the police chief can be a first responder. Uniform as used here means full uniform including body armor and weapon. An officer-in-charge [OIC] in full uniform is necessary for safety reasons to protect the officer, other employees and the public.

RECOMMENDATION:

Add: The OIC shall be a uniformed first-responder

ARTICLE 25 BENEFIT-TIME AND PART-TIME EMPLOYEES

City position:

The City proposes an amendment to the first sentence in lieu of “more than fifty percent (50%) of all benefit overtime available at the time work schedules are prepared,” so as to limit benefit overtime to 64 hours per year and to provide greater budgeting certainty, to read:

The City agrees to offer all benefit overtime worked of bargaining unit employees, to other bargaining unit employees; however, bargaining unit employee may not receive/work more than sixty-four (64) hours of benefit time in any calendar year.

[NOTE: Sergeants would have the same contract provision]

The reason provided is that too much costly benefit overtime has a negative impact on the City budget and a specific hourly limitation would enable better planning by the Police chief than a percentage.

Union opposes:

FINDING:

Benefit overtime arises from time off for personal [or sick] days or vacation from one officer to another within the same bargaining unit. Currently, if an officer has worked 40 hours of overtime, 50% has to be available to others to work overtime.

Although the City's recommendations seem reasonable, the choice of 64 hours and 48 hours was not sufficiently supported by any particular evidence and appears somewhat arbitrary.

RECOMMENDATION

Management's position is rejected at this time

ARTICLE 25 BENEFIT-TIME AND PART-TIME EMPLOYEES

SECTION 1 (PART-TIME PATROL)

Union [ITEM 11] - amend the final sentence of ARTICLE 25, Section 5 [or Art. 24, Sec. 7?], to read:

Part-time employees shall receive a minimum of four (4) hours pay for time spent in appearance before a court of law necessitated by their activities on behalf of the City, along with reasonable out-of-pocket expenses incurred.

City opposes any requirement to pay a half a day's wages for showing up. The two (2) minimum is enough.

FINDING:

The evidence was that officers are usually finished within ½ hour to 1 hour.

RECOMMENDATION

The Union proposal is rejected.

New ARTICLE __ - Drug and Alcohol Testing

City proposes an amendment to implement a Drug and Alcohol Testing Policy

City position:

If approved by all bargaining units, all applicants for employment by the City shall submit to pre-hire alcohol and drug testing, and all employees shall submit to post-accident testing; and (c) to random testing, all in accordance with State of Ohio Bureau of Worker's Compensation Standards.

The City notes that, if adopted, the City will save a significant portion of its Worker's Compensation premiums.

The Union position:

The Union does not object generally but had not received the City's proposal at the time of the hearing.

FINDING:

Although I have some concern regarding random testing, an unbiased drug and alcohol testing requirement is reasonable in addition to providing protection for the community and fellow employees. There should be concurrent education so that employees are reminded that traces of drug and/or alcohol use remain in breath, blood and/or urine for extended time periods and cannot easily be masked.

The adoption of a Drug and Alcohol Testing Policy is approved in principal as a condition of employment; however, what is to be tested and when and how tests are to be administered is subject to good faith negotiation as is an Employee Assistance Program [EAP]. Testing in conformity with the Ohio BWC standards [Tab 20] is a satisfactory standard, which will also save the City some workers' compensation premium costs.

RECOMMENDATION

A Drug and Alcohol Testing Policy shall be adopted upon completion of good faith negotiations between the parties to be a condition of undertaking and maintaining employment.

New ARTICLE __ – Labor Management Committee (LMC)

The City proposes the establishment of a labor management committee:

The Union may appoint two (2) persons from the bargaining unit to serve on a Labor Management Committee. The labor management committee will meet quarterly, or as agree, to discuss workplace issues.

City Position: This is desirable to engage in discussions about mutual concerns and reduce grievances.

Union: The primary concern is that it will be fair and balanced and permit issues to be raised for good faith discussions among representatives of management and/or labor.

FINDING:

It should be clarified regarding who is proposed to be represented on this committee. The assumption is that it will be fair and balanced and permit issues to be raised for good faith discussions among representatives of management and/or labor, and that each Union's representative will be provided substantial opportunity of expression and consideration.

RECOMMENDATION: The request is approved and the parties will include an article formalizing a labor-management committee and develop an operational structure.

ARTICLE 28 – DURATION

Subject to reopeners regarding wages and regarding health care for 2007 and for 2008, THE PARTIES AGREED TO THE FOLLOWING RECOMMENDATION:

Union [ITEM 13] and the City:

This agreement represents the entire agreement on all matters subject to bargaining between the City and OPBA. It shall be effective on January 1, 2006 and shall remain in effect for a period of three (3) years thereafter, up to and including December 31, 2008.

If either party wishes to negotiate changes to take effect after December 31, 2008, written notice of the desire to negotiate shall be provided to the other party so as to be received by not later than the close of business on November 1, 2008. If such notice is not given in a timely fashion, the Agreement shall be renewed for an additional year.



ALAN M. WOLK, Fact-Finder

Made effective in Cuyahoga County, Ohio,
this 2nd day of OCTOBER, 2006.

Career Highlights

Alan M. Wolk, B.B.A., J.D, an "av-rated" lawyer and a labor arbitrator, served as the elected *President of the Cuyahoga County Bar Association*.* He was also elected and reelected by the lawyers of Cleveland (District 12) as a member of the *Council of Delegates of the Ohio State Bar Association* over an eighteen (18) year period.

Public service includes 16½ years as *Director of Law for the City of University Heights* [focused on municipal law, zoning and planning], thirteen (13) years as an *Assistant Attorney General of Ohio* [assigned solely to ODOT for eminent domain jury trials and appeals acquiring land to build Interstates 480, 271 and 90], and an occasional *Acting Judge of the Shaker Heights Municipal Court*,

His private law practice has included significant experience in drafting and negotiating business and real estate contracts and shopping center leases. (His only appearances before the Ohio Supreme Court successfully achieved reversals of previously adverse lower court decisions).

Admitted to the bar of Ohio following graduation from the College of Law from *The Ohio State University* [J.D.] in 1955 at the age of 23, he received his undergraduate degree in Business Administration in 1953 from Fenn College now Cleveland State University. In 1962 he completed postgraduate studies at the College of Law at *Case Western Reserve University* [abf], and was the first lawyer in Ohio qualified at the Ohio State Bar Association College.

Since 1974, disputing parties have *privately* selected him directly, and as selected from AAA, FMCS, and Ohio's SERB panels, to serve as *neutral arbitrator and/or mediator* in over 500 public and private sector labor disputes heard in Ohio as well as Indianapolis, Chicago, Louisville, Pittsburgh and Erie, and number of court disputes. He is on the panel of Arbitration and Mediation Services [AMS].

He is an emeritus member of the *Board of Governors of the Labor and Employment Section of the Ohio State Bar Association* (1985-1999), a member of the *Labor Advisory Committee of AAA (Cleveland)* for several terms, and a member of the Society of Federal Labor & Employment Relations Professionals [SFLERP]. He was *Treasurer and Secretary of the Public Sector Labor Relations Association* (2001-2005) and is Secretary of the Cleveland Chapter of L.E.R.A. He became a member of the American Bar Association in 1956.

Honors:

An elected "*Fellow*" of the *Cleveland Academy of Trial Attorneys*; especially recognized commitment to the legal profession by the Cuyahoga County Bar; Designated Life Member the Judicial Conference of the Eighth Judicial District of Ohio; nominated on three occasions as one of ten outstanding young men in Cleveland by the Cleveland Jr. Chamber of Commerce; featured as "A Man of Action" (*Cleveland Press*); selected for inclusion in *Who's Who in the Midwest* (20th Ed.) He is a *Past Master* of his Masonic Lodge, and a former board member of his religious congregation.

He has been married to since 1957. He and his wife, Phyllis, have three adult sons and two grandsons and two granddaughters.

* [He was previously elected Vice-President, Secretary and Treasurer of the Cuyahoga County Bar Association. While Secretary, he was *Executive Director* (seven years). He had previously been *Editor* of its monthly publication (five years)].