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March 7, 2007

Edward E. Turner
Administrator, Bureau of Mediation
65 East State Street
12th Floor
Columbus, Ohio
43215-4213

2007 MAR - 8 A 11: 46
STATE EMPLOYMENT
RELATIONS BOARD

Re: Fraternal Order of Police/Ohio Labor Council, Inc.
and City of Warren
06-MED-10-1163

Dear Mr. Turner

Enclosed please find my Report in the above matter. A copy has been sent to each party today by express mail. If you have any questions, please feel free to call.

Thank you for your cooperation.

Sincerely,



GREGORY J. LAVELLE

GJL/bij
enc : Report
SERB-Report

**IN THE MATTER OF FACT-FINDING
BEFORE GREGORY J. LAVELLE, FACT-FINDER**

**FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL**

**CASE NO. 06-MED-10-1163
(Sergeants, Lieutenants and Captains)**

AND

**RECOMMENDATION OF THE
FACT-FINDER**

CITY OF WARREN

FOR THE EMPLOYEE ORGANIZATION:

Chuck Choate	Staff Representative
Janice Gilmore	Committee Person
Tim Roberts	Committee Person
Catherine Giovannone	Committee Person
John Burzynski	Committee Person
Gary Riggins	Committee Person
Dan Mason	Committee Person

FOR THE PUBLIC EMPLOYER

Gary C. Cicero	Chief Spokesperson
Brian M. Massucci	Personnel Supervisor
David Griffing	City Auditor
Tom Gaffney	Tax Administrator

STATE EMPLOYMENT
RELATIONS BOARD
2007 MAR -8 A 11:46

March 8, 2007

DESCRIPTION OF THE UNIT

The bargaining unit consists of twenty-four (24) police officers in the ranks of Captain, Lieutenant and Sergeant as follows:

Captains	(3)
Lieutenants	(6)
Sergeants	(15)

BARGAINING HISTORY

This Fact-Finding Report relates to a collective bargaining agreement between the City of Warren (hereinafter, the City) and the Fraternal Order of Police/Ohio Labor Council (hereinafter, the F.O.P.) which will cover Rank Police Officers; Captains, Lieutenants and Sergeants. The prior collective bargaining agreement had a duration from January 1, 2004 through December 31, 2006. The collective bargaining relationship of the parties was also governed by a Letter of Understanding regarding the scheduling of ten (10) hour shifts for Emergency Service Division Sergeants. In addition to the collective bargaining agreement and Letter of Understanding, a practice had developed under which the City offered certain health insurance benefits through Anthem.

The parties held collective bargaining sessions on October 19, November 8, November 14 and December 6, 2006. Tentative agreements were reached on several contract provisions: Article 1, Purpose of Agreement, Article 12, Termination of Agreement, Article 14, Hours of Work (Sections 1 through 5), Article 30, Employee Rights, Article 35, Detrimental Force/Critical Incident. In addition, agreement was reached on a Memorandum of Understanding regarding Gun Purchase and Compensatory Time.

During negotiations, neither party made a proposal regarding health insurance. When impasse was reached in December of 2006, the City indicated that the practice regarding providing certain health insurance benefits through Anthem might not continue after January 1, 2007. The F.O.P. then made a proposal regarding health insurance, proposing that the Anthem HMP benefits not be changed during the term of the collective bargaining agreement. The benefits were changed by the City and an unfair labor practice was filed by the F.O.P. with the State Employment Relations Board. The charge, as of the time of the writing of this report, is still under investigation.

INTRODUCTION

Preliminary Matters:

The Fact-Finder received notice of his appointment on November 27, 2006. The parties thereafter mutually extended the period for negotiations and the issuance of the Fact-Finding Report. The Fact-Finding Hearing was ultimately scheduled for February 5, 2007 with a telephone Pre-Hearing Conference scheduled for February 2, 2007. A copy of the current Collective Bargaining Agreement and the Position Statements of each party were timely received by the Fact-Finder as required under the Ohio Administrative Code. The parties were requested by the Fact-Finder to provide copies of tentatively agreed items, including sections from the prior collective bargaining agreement which the parties agreed would remain unchanged. Newly negotiated agreed items were provided by the parties and contract provisions which the parties agreed were to remain unchanged were confirmed.

The City, in its Position Statement, indicated that there were nine (9) issues which remained unresolved by the parties:

Article 14, Hours of Work

Article 15, Pay Provisions, Section 1, Wages

Article 15, Pay Provisions, Section 5, Longevity

Article 15, Pay Provisions, Section 6, Shift Differential

Article 17, Sick Leave, Section 6, Sick Leave Conversion

Article 22, Holidays, Section 1

Article 24, Exemplary Attendance Award Pay

Article 32, Chemical and Mechanical Testing

Article 34, Pension Benefits

The City urged that F.O.P. proposals with respect to Article 25 Health Insurance Benefits and Article 34, Promotions be rejected, indicating that the parties had a ground rule in negotiations that no new proposal be considered after the negotiation session of November 14, 2006. A copy of any written ground rule was requested and it was indicated that there were no written ground rules.

The F.O.P., in its Position Statement, generally agreed with the description of the unresolved issues set forth in the City Position Statement, except that the F.O.P. maintained that its proposal regarding Health insurance and Promotions should be considered by the Fact-Finder.

Hearing in Chief:

The Fact-Finding Hearing was conducted pursuant to the Ohio Collective Bargaining Law and the Regulations of the State Employment Relations Board on February 5, 2007 in the Community Services Building of the City of Warren. The parties

were given full opportunity to present testimony and documentary evidence in support of their respective positions. Appearing for the parties were the following:

FOR THE EMPLOYEE ORGANIZATION:

Chuck Choate	Staff Representative
Janice Gilmore	Committee Person
Tim Roberts	Committee Person
Catherine Giovannone	Committee Person
John Burzynski	Committee Person
Gary Riggins	Committee Person
Dan Mason	Committee Person

FOR THE PUBLIC EMPLOYER

Gary C. Cicero	Chief Spokesperson
Brian M. Massucci	Personnel Supervisor
David Griffing	City Auditor
Tom Gaffney	Tax Administrator

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05(K) of the State Employment Relations Board:

- (1) Past collective bargaining 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 the 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) The 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

Subsequent to the close of the Hearing in this matter, the parties informed the Fact-Finder that an agreement had been reached for a new Memorandum of Understanding regarding health insurance benefits provided through Anthem. The terms of said Memorandum of Understanding, the text of which is attached hereto as Exhibit A, are to be considered to be incorporated by reference in this Report and are to be considered recommended by the Fact-Finder.

DISCUSSION OF THE ISSUES

INTRODUCTION

The issues herein, other than crucial issues of wages and health insurance will be discussed in order of their appearance in the collective bargaining agreement. The general economic condition of the City of Warren will first be discussed as an introduction to the discussion on wages.

It must be noted that the parties in this case presented numerous “comparables” for consideration by the Fact-Finder. The evidence with respect to the comparables was extremely well organized and skillfully presented by the advocates and the committees of the parties. While a good basis for discussion and advocacy, comparables, however, are of limited value in making a proper recommendation in Fact-Finding.

Different types of comparables are properly utilized for various purposes at different times during the collective bargaining relationship. Comparables can be roughly divided into four (4) groups:

- External/absolute
- External/trend
- Internal/absolute
- Internal/trend

External/absolute comparables are a snap shot of wages and benefits at a given time in other communities with employees in similar classifications. This type of comparable can be of value in initial collective bargaining agreements to correct inequities in the market place. In a mature collective bargaining relationship, however, it must be presumed that the public employer's relative niche in the market place has been established.

External/trend comparables are used to determine whether the public employer has fallen behind the times with respect to the wages and benefits provided. An example of an External/trend comparable would be the changes in wage increases and benefits in collective bargaining agreements in comparable communities. The problem with External/trend comparables is that either side can "cherry pick". In addition, unless the real cost of the entire economic package can be determined, the comparison can not be said to be "apples to apples". A five percent (5%) wage "increase", coupled with a dramatic increase in employee-absorbed health costs may be considerably smaller than a two percent (2%) wage increase where health or other benefits are increased.

Internal/trend comparables are of greatest value. Varying units within an employer should be treated equally with respect to the total economic impact of the wage/benefit package.

Internal/absolute comparables, again are a snap shot of wages and benefits within different sectors of a given employer. Such comparables may demonstrate inequities which should be corrected. In a mature collective bargaining relationship, however, the use of absolute comparables should be avoided, especially where a given item is "cherry picked". Different units may have had different priorities. A unit may have

preferred in past agreements to have the bulk of its economic package placed in wages rather than in retirement benefits. That “inequity” among groups with respect to retirement benefits would not justify a particular group receiving the same wage increase as other groups plus an “equitable” adjustment in retirement.

There is another aspect of Internal/absolute comparables which is highly important. It serves the employer to have consistency with respect to benefits and policies for several reasons. First, employee morale and inter-unit cooperation is well served where particular groups do not feel that they are being discriminated against relative to other units. Second, it is easier to administer and presumably less costly to deal with a single set of policies and benefit packages.

The final type of “comparable” to be considered is the purchasing power comparable of inflation. An increase which does not match the rate of inflation is not an “increase” in the sense of increasing the purchasing power and standard of living of the employee. The projected rate of inflation should be considered and should be measured against the ability of the employer to afford a true increase.

GENERAL ECONOMIC CONDITIONS

The City presented significant evidence regarding the loss of employment and general economic downturn in and around Warren, Ohio with the major downsizing of Delphi, the economic troubles of Forum Health and the concerns over the future of Novelis and the General Electric plant. The FOP countered with evidence regarding new businesses, Lordstown overtime and wage increases at Alcoa. The F.O.P. also produced evidence that there are other steps that Warren could take to encourage employers to locate in the City.

The City of Warren had record tax collections in 2006 due to taxable buyouts and had a significant carryover in its budget. In light of these factors, there does not appear to be an imminent fiscal problem which would prevent the granting of wage increases which approach the rate of inflation for fiscal year 2007 and 2008. While there is some hope that with the change in the majority in Congress that jobs offshored can be recovered and there can be an economic for Northeast Ohio, such a result is by no means certain. There is also uncertainty created by the fact that the temporary .5% income tax for Police and Fire will run out on December 31, 2007. While that tax has passed twice, there is no guarantee that it pass a third time, especially since the measure had repeatedly failed in the past. For this reason, conservative wage increases are recommended, especially in the third year of the Agreement.

ARTICLE 15 – PAY PROVISIONS, Section 1, Wages

Proposals of the Parties

The F.O.P. proposes wage increases of five percent (5%) in each contract year while the City proposes no increase in the first and second years of the agreement with an increase of one and one-half (1.5) percent in the third year. Both parties propose to continue the rank differentials set forth in Section 1A of Article 15.

Discussion of Pay Provisions, Section 1, Wages

For the immediate future, 2007 and 2008, the City of Warren should be able to fund an increase which is of a level approaching the anticipated rate of inflation. The City had record tax collections and a significant budget carryover. That inflation rate for 2007 is 3.3% as shown by the cost-of-living increase in social security benefits. Most

prognosticators suggest that the rate of inflation will increase slightly over the next several years. A three percent (3%) inflation increase for 2008 would be a conservative estimate.

The economic well-being of the City after 2008 is more uncertain. There are significant forces in the automotive industry which may negatively, if not seriously impact the City. In addition, there is no guarantee that the temporary income tax for police and fire will be renewed. For this reason, a guaranteed inflation-meeting increase can not be recommended for 2009. That is not to say, however, that the actual increase will not meet or even exceed the rate of inflation through the operation of the minimum differential provisions of Article 15, Section 1A.

The Fact-Finder, therefore, recommends a wage increase of three percent (3%) effective January 1, 2007, a wage increase of 3%, effective January 1, 2008, a wage increase of 2%, effective January 1, 2009 and a continuation of the minimum differential provisions of Article 15, Section 1A, the language of Article 15, Section 1 and 1A to read as follows:

ARTICLE 15
PAY PROVISIONS

Section 1: **WAGES**: The following minimum hourly pay rates shall be for the positions indicated in the Warren Police Department:

	<u>01-01-07</u>	<u>01-01-08</u>	<u>01-01-09</u>
Sergeant	26.52	27.32	28.14
Lieutenant	30.50	31.42	32.36
Captain	35.07	36.12	37.20

1A: Wage rates shall reflect the following minimum differential between the ranks beginning with senior police officers:

Sergeant	16.5%
Lieutenant	15.0%
Captain	15.0%

ARTICLE 25 – HEALTH CARE BENEFITS, Section 1

Proposals of the Parties

The F.O.P. had sought to have language added to Section 1 of Article 24 to continue the Anthem benefits which had been provided up to January 1, 2007. The City had proposed that there be no change in the language of Article 25, Section 1 which would have impliedly permitted the City to change any benefits which were not specifically set forth in the contract. The parties, however, have resolved this issue through their Memorandum of Understanding have agreed to add language to Article 25, Section 1 as follows:

Should the Police Officers 2007 Contract include language on Anthem HMP/EPO benefits, the same language shall be incorporated into the FOP/OLC Contract.

Based on the stipulations of the parties, the above language is recommended for inclusion in the collective bargaining agreement. The language of Article 25, Section 1 therefore is recommended to read as follows:

ARTICLE 25 - HEALTH CARE BENEFITS

Section 1: The cost of health care benefits shall be paid by the City, except as follows:

1. No coverage shall apply until an employee has completed thirty (30) calendar days of service.

2. No coverage shall apply after thirty (30) consecutive days of unpaid leave of absence (excluding family leave) or retirement.
3. No coverage shall apply immediately after separation or termination.

Benefit levels shall remain as in effect on December 31, 1993 and outlined in the 1993 health care benefits employee handbook except as follows:

1. Prescription coverage shall be limited to Community Mutual Member Pharmacies.
2. The deductible for generic equivalent prescription legend drugs, drugs that have no generic equivalent, or the Prescription Order specifies "Dispense as Written" shall be three dollars (\$3.00). The deductible if the employee chooses a brand name drug when a generic equivalent exists and the Prescription Order does not specify "Dispense As Written" shall be eight dollars (\$8.00).
3. Effective January 1, 1995 dental cap increased to \$2,000.00.

Effective January 1, 2005, Benefits shall be as in the EXHIBIT A SCHEDULES and as follows:

New employees will not be covered for pre-existing conditions. Pre-existing conditions are illnesses, injuries, or conditions for which the employee or dependent has sought medical advice and/or treatment within twelve (12) months prior to their coverage date.

Benefits shall continue to be provided by such method and through such carriers, if any, as the City in its sole discretion shall determine. Any contracts entered into by the City with respect to the existing benefits and the changes made herein shall be consistent with this article.

Should the Police Officers 2007 Contract include language on Anthem HMP/ EPO benefits, the same language shall be incorporated into the FOP/OLC Contract.

ARTICLE 14 – HOURS OF WORK, Section 3

Proposals of the Parties

The F.O.P. proposes that the current practice of scheduling of Emergency Service Division Sergeants (ESDS) to regular schedules of four (4) ten (10) hour days which is

reflected in a Letter of Understanding which has been in effect since 2002 be incorporated as a permanent part of the collective bargaining agreement. The City opposes the proposed change.

Discussion

The proposal of the F.O.P. in this case does not represent a change from current practice. The City, further, has indicated that it has no intention of changing the practice, indicating only that it might, at some time, want to establish different types of schedules. There is conflicting evidence with respect to the cost of the practice as opposed to reverting to a standard schedule of five (5) eight (8) hour shifts. The F.O.P. in its Exhibit 14, asserts that the City saves money in terms of overtime. The City, however, contends in its Position Statement that the proposal of the F.O.P. is far more costly. From the evidence, the Fact-Finder is unable to determine whether the practice is or is not more costly.

The evidence in this case is that the ESDS consider the four (4) ten (10) hour day schedule to be a benefit for a number of reasons, including the creation of better leisure time opportunities and a possible decrease in child care expenses. The City offered no substantial reason to take away this benefit.

The Fact-Finder notes that what has been described as the practice and what is reflected in the language appear to be different. The evidence indicated that all bargaining unit employees, with the exception of the ESDS have a regular work week of five (5) consecutive eight (8) hour days and that the ESDS have a regular work week of four (4) consecutive ten (10) hour days. The proposed language refers to four (4) ten (10) hour workdays in any **24 hour** period. It must be remembered that contract language

may continue in place long after the draftors have gone. The Fact-Finder recommends that the language proposed be clarified and that the language which is applicable to the ESDS be placed in a separate paragraph of Section 2, the recommended language for Article 14 being as set forth below:

ARTICLE 14 - HOURS OF WORK

Section 1: **WORK DAY**: The regular hours of work each day shall be consecutive to include interruptions for lunch periods of thirty (30) minutes per shift and subject to call. Reference to consecutive hours of work in the balance of this Article shall be construed generally to include lunch periods. Each shift shall have a regular starting time and quitting time.

Eight consecutive hours of work, plus 15 minutes of roll call time, within a twenty-four (24) hour period shall constitute a regular work day.

Section 2: **WORK WEEK**: The work period shall consist of eighty (80) hours of scheduled time in any two (2) week pay cycle commencing at 21:00 hours on Sunday.

The regular work week shall consist of five (5) consecutive work days as prescribed in Section 1 of this Article for all employees other than Emergency Service Division Sergeants.

The regular work week for Emergency Service Division Sergeants shall consist of four (4) consecutive ten (10) hour days. All time worked by Emergency Service Division Sergeants in excess of ten (10) hours shall be compensated at the employee's overtime hourly rate. The guaranteed roll call per annum will be forty-four (44) hours under the ten (10) hour workday schedule.

Section 3: All paid hours shall be considered as active status for the calculation of overtime pursuant to this agreement.

Section 4: The City agrees that bargaining unit members are first and foremost supervisory officers. No bargaining unit members shall be required to perform any task or function that is not commensurate with the member's current rank, except in emergency circumstances.

ARTICLE 15 – PAY PROVISIONS, Section 5, Longevity

Proposals of the Parties

The F.O.P. proposes that longevity pay be increased from two dollars and seventy-seven cents (\$ 2.77) per bi-weekly pay period per year of service to three dollars and fifteen cents(\$ 3.15). The City rejects this proposal.

Discussion

The proposal of the F.O.P. is not recommended. There are several reasons for this recommendation. First, there is no other unit within the City which would have this level of longevity pay. This would create possible animosity for other bargaining units and administrative problems for the City in dealing with differing provisions relative to longevity.

Ratification issues can also be created in three (3) separate forums. Although unlikely, it is not unheard of that persons not getting longevity pay would reject the Recommendation of the Fact Finder because their individual increase is not enough compared to other members of the bargaining unit. Ratification by the City may also be affected. Studies and experience show that the **number** of negative items a party may have to accept in a proposed package, the greater the likelihood that the package may be rejected regardless of the total value of the package. The third ratification forum which should be a concern of the parties is the “ratification” by the voters in considering a renewal of the .5% income tax for Police and Fire. Voters may not be offended by a three percent (3%) wage increase which does not match inflation, but may be turned off by an increase one tenth (1/10) that amount which appears to be “bells and whistles” or “frills”. Neither party should want to risk voter backlash.

For many of the same reasons the proposal must be rejected, a “Me Too” provision must be recommended. It is important to bargaining unit members, in considering ratification, to feel that their unit is being treated fairly compared to other units. An increase in the third year of the collective bargaining agreement which falls well below expected inflation becomes an easier sell when there is a promise of equity and a possibility of recouping through the Me Too. A form of a “Me Too” already exists as to wages and should be not objectionable to the City. Therefore, the Fact-Finder recommends the following language for Article 15, Pay Provisions, Section 5, Longevity:

Section 5: **LONGEVITY**: Full time bargaining unit employees will be paid longevity on the basis of the following formula:

Two dollars and seventy-seven cents (\$2.77) per bi-weekly pay period for each full year of service, provided, however, that should any unit within the City receive an increase in longevity pay which results in employees receiving longevity pay higher than that shown above, said higher longevity pay shall be applicable to the bargaining unit employees under this Agreement, effective the date it became effective for said other employees.

ARTICLE 15 – PAY PROVISIONS, Section 6, Shift Differentials

Proposals of the Parties

The F.O.P. proposes that the shift differential for the afternoon shift be increased from forty-five cents (\$.45) to sixty cents (\$.60) and that the shift differential for the midnight shift be increased from fifty cents (\$.50) to sixty-five cents (\$.65). The City proposes that there be no change in the shift differential.

Discussion

The shift differential in the F.O.P. collective bargaining agreement is the same as that in the other collective bargaining units of the City. While in light of the wage levels

in the collective bargaining agreement and the fact that not all F.O.P., bargaining unit employees receive shift differential, the economic impact of this proposal is negligible, this proposal must be rejected for the same reasons cited with respect to the proposal for an increase in longevity pay. For the same reasons, also, a “Me too” provision is recommended.

The Fact-Finder therefore recommends that the following language for Article 15, Pay Provisions, Section 6, Shift Differentials:

Section 6: **SHIFT DIFFERENTIALS**

All bargaining unit employees who work the afternoon or midnight shift shall receive in addition to their regular pay, forty-five cents (\$.45) and fifty cents (\$.50) per hour respectively as additional compensation paid in each pay period, provided, however, that should any unit within the City receive an increase in shift differential which results in employees receiving a shift differential higher than those shown above, said higher shift differential shall be applicable to the bargaining unit employees under this Agreement, effective the date it became effective for said other employees.

The differential payments provided for in this Section shall be added to total wages and shall not increase the hourly rate. Further, the differentials provided for in this Section shall not apply to call out time.

ARTICLE 17 – SICK LEAVE, Section 6

Proposals of the Parties

The F.O.P. proposes that, in addition to the existing Severance Stipend, Employees be permitted to cash out an additional percentage of accumulated Sick Leave. The City proposes that there be no change in the sick leave.

Discussion

It is very difficult to determine on a prospective basis whether the F.O.P. proposal would cost or save the City money. It would be naive to say that no employee ever

spends down his sick time as he approaches retirement in order to receive one hundred cents on a dollar, rather than receiving nothing. Some employees feel that they earned their sick time and that they often worked sick, saving the City overtime. As one approaches retirement, one may feel “under the weather” with the “old aches and pains” on practically a daily basis. It therefore becomes quite easy to make the call for legitimate sick time easier when in a “use it or lose it” mode. If not on a use it or lose it basis, the employee may “go the extra mile”. Even among persons not approaching retirement, there is an encouragement, when marginally ill, to use sick time which would otherwise be lost. Based on the percentages of the persons who decide to go the extra mile because they would get some value for their excess sick time, saving the City overtime today, offset against the possibility of paying out more money years in the future, the City may actually be better off economically under the F.O.P. partial cash out proposal.

Despite the possible positive features of the F.O.P. proposal, that proposal must be rejected. The proposal is not consistent with the other bargaining units. Further, as an additional item to be considered by City Council, it presents an additional risk for rejection of the entire proposal. Finally, it should be noted that accountants dealing with public funds indicate that the potential liability for payouts should be “funded” as if all persons eligible were to take the amounts available to them immediately. “Funding” that liability means that less of the funds of the City would be perceived as available for other wage and benefit items.

The parties, at some later date, may want to revisit this issue to determine whether it may be of mutual benefit. For the time being, however, this proposal must be rejected.

ARTICLE 22 – HOLIDAYS, Section 1

Proposals of the Parties

The F.O.P. proposes to add the day after Thanksgiving as a holiday. The City proposes that there be no change in Holidays.

Discussion

The F.O.P. produced evidence that there are other collective bargaining agreements with other employers which provide twelve (12) holidays and indicated that another unit within Warren has twelve (12) holidays. The City countered that the other unit has eleven and a half (11 ½) holidays and that there are other factors in that contract which make the holiday provisions in that unit less favorable than that in place for the F.O.P.

The Fact-Finder notes that comparables must be “apples to apples”. The contracts provided by the F.O.P. do not include election day and do not include any personal days. One could argue that the F.O.P. unit has fourteen and one half (14 ½) holidays (11 + election day + 3 personal days), compared to the twelve (12).

It must also be noted that a key issue in granting additional benefits is trends in granting benefits. There is no evidence of any unit, internal or external, receiving additional holidays in the recent past.

For the reasons set forth above, for the sake of consistency and for in consideration of issues related to ratification of the recommendation as discussed elsewhere, the FOP proposal must be rejected.

ARTICLE 24 – EXEMPLARY ATTENDANCE AWARD PAY

Proposals of the Parties

The F.O.P. proposes that the employees be paid a cash stipend for perfect attendance instead of being granted bonus days. The F.O.P. also proposes that qualifying for the award be calculated on a four (4) month, rather than yearly basis. The City proposes that there be no change in the Exemplary Attendance Award Day.

Discussion

Clearly, the trend in attendance bonus provisions has been to shorten the qualifying period for the earning of the bonus. Provisions which require a year of perfect attendance for a person to qualify have been replaced by provisions which grant compensation for perfect attendance on a quarterly, monthly or even per-pay-period basis. The reason for the trend is simple. The longer the qualifying period, the less of an incentive is actually provided. If a person is sick on January 1st under a provision requiring perfect attendance for the year, he has absolutely nothing to gain through perfect attendance for the remaining 364 days of the year. If the earning of the bonus is based on a shorter period, a person has an incentive to have perfect attendance for greater portions of the year.

The proposal to reward employees monetarily rather than with time off also makes sense. If the purpose of an Exemplary Attendance Bonus is to promote attendance, why reward perfect attendance by granting the right to be absent? Granting time off for not taking time off flies in the face of logic. While the system helps to avoid “unscheduled” time off, it is not as effective as a cash-out in reducing time off of an employee which must be covered by overtime.

While the overall concept of the F.O.P. proposal has merit, there are potential problems with the language proposed. The F.O.P. proposal contains language relative to the qualifying for the bonus which is different from the language of the prior agreement. One of the changes is good. The F.O.P. proposal corrects an ambiguity in the prior language by generally paralleling the definition of "immediate family" with that contained in the bereavement language of Article 17, Sick Leave, Section 5. Other changes, however, may have a result of creating confusion.

The language for qualifying for the Exemplary Attendance Bonus under the F.O.P. proposal refers to maintaining perfect attendance by utilizing certain types of leave, rather than by failing to utilize sick leave. "Sick leave", in fact, is never mentioned in the proposal.

The language of the proposal is taken from the collective bargaining agreement of another unit. While parallelism is generally a good concept, there are problems which may result where there is a "misfit" of the language. One should not install a particular carburetor in his "Ford" based on the knowledge that it functioned well in a "Chevy". In this case, defining perfect attendance to include only time taken off from certain delineated types of leave may create an ambiguity where the F.O.P. collective bargaining agreement may contain a type of leave not available under the collective bargaining agreement from which the language was lifted.

Adopting language from another agreement may also unintentionally adopt the interpretations of that language. For the same reason that one should not download an email from an unknown source for fear of downloading a virus, one should also not "download" language from another agreement unless one knows all that comes with it.

In this case, there is a difference in language with reference to the treatment of absences due to on-the-job injuries. Contracts are to be interpreted in accordance with the plain ordinary meaning and any time language of a contract provision is changed, a strong presumption is created that the parties intended that the interpretation of that contract provision was to change. There was no discussion at hearing regarding any objection as to the manner in which perfect attendance was calculated or any discussion regarding changing the manner in which qualifying for the bonus was determined. The only discussion related to the time frame for calculation and the form of the bonus. Therefore, the Fact-Finder recommends that the changes in the Exemplary Attendance Award regarding the calculation period and the method of payment be adopted, but that the language of the prior collective bargaining agreement relative to the terms of qualification remain unchanged except for the paralleling of the definition of “immediate family” by incorporating that definition by reference.

It is noted that the Exemplary Attendance Bonus Days earned in 2006 under the prior contract may not have been credited. There was no discussion of the parties which indicated that it was the intent to cancel the Exemplary Attendance Bonus Days already earned. Therefore, the language should be added to reflect the intent of the parties.

The Fact-Finder recommends that the language of Article 24 – Exemplary Attendance Award Pay read as follows:

ARTICLE 24
EXEMPLARY ATTENDANCE BONUS DAYS

Section 1. In recognition of an officer’s exemplary record of perfect attendance, Officers of the Police Department who do not use any sick leave during any of the periods set forth below shall receive the bonuses set forth below:

January 1 through April 30	\$ 200.00
May 1 through August 31	\$ 200.00
September 1 through December 31	\$ 200.00

In the event of a death of a member of the immediate family as defined in Article 17, Section 5, sick leave days may be used with no penalty against the officer's record of perfect attendance herein.

No penalty shall be assessed against a member employee's record of perfect attendance for time lost from an approved service connected disability.

Section 2. This payment shall be made on the last pay in May, September and January respectively.

Section 3. This provision shall be effective January 1, 2007. Bonus days earned in 2006 under the prior collective bargaining agreement shall be credited for use under the provisions of said agreement.

ARTICLE 32 – CHEMICAL AND MECHANICAL TESTING

Proposals of the Parties

The City proposes various changes in the Chemical and Mechanical Testing Provision. The major changes relate to clarifying the right to test for alcohol, to establish standards and procedures for alcohol testing and to further define "reasonable suspicion, to change the definition of "positive" and to incorporate by reference the provisions of the Ohio Bureau of Workers' Compensation Drug Free Workplace Program. The F.O.P. rejects this proposal. There are other semantic and procedural changes which have not been demonstrated to be significant.

Discussion

There are many advantages to the City proposal. First, the City has indicated that if it were on a "premium" basis for workers compensation, it would save forty thousand dollars (\$ 40,000.00) a year by having the proposed policy in place. While

the City does not pay premiums for workers compensation coverage, it must be noted that premiums are set based on expected claims. There is therefore every reason to believe that the actual experience of the City based on the new policy will reflect the same type of savings in workers compensation claims paid. If the policy works to reduce claims, it should also have a beneficial effect in other areas.

The F.O.P. should note that the “change” relative to the addition of alcohol testing is not actually a “change” at all. The previous policy already provided for alcohol testing based on “reasonable suspicion”. (See III, E and IV B) The new policy also provides clarification as to the instances where “reasonable suspicion” would be considered to have arisen.

While the City proposal is generally recommended, it should be noted that a change has been made for clarification. There was a conflict within the proposal with respect to the definition of “reasonable suspicion”. Under III, E, for there to be “reasonable suspicion” with respect to vehicular accidents, the officer must be “at fault”. Later, however, in IV B I a and II a, the “at fault” reference is eliminated. The recommendation therefore deletes the reasonable suspicion sentence in the latter provisions, relying on the earlier definition.

The language of the Chemical and Mechanical Testing provision, should read as follows.

ARTICLE 32 - CHEMICAL AND MECHANICAL TESTING

I. PURPOSE:

A. The City of Warren, Ohio has a legal responsibility and management obligation to ensure a safe work environment, as well as paramount interest in protecting the public by ensuring that its employees have the physical stamina and

emotional stability to perform their assigned duties. A requirement for employment must be an employee who is free from drug dependence, illegal drug use or drug alcohol abuse while on duty.

B. Liability could be found against the City and the employee if we fail to address and ensure that employees can perform their duties without endangering themselves or the public.

C. There is sufficient evidence to conclude that use of illegal drugs, the misuse of any drug, or alcohol abuse, seriously impairs an employee's performance and general physical and mental health. therefore this program has been established to ensure an employee's fitness for duty and employment.

II. POLICY:

The following provisions are being established to ensure and maintain that the City of Warren, Ohio is a drug free work place.

a. Provide for periodic random drug and alcohol screening procedure within the City.

b. Provide for reasonable suspicion alcohol and drug testing.

c. Provide for the Supervisor or his/her designed on duty to order a drug screen and/or alcohol breathalyzer tests immediately when there is reasonable suspicion that an employee has been using unauthorized drugs or alcohol.

d. Chemical or mechanical testing may be administered to any bargaining unit member to determine their fitness for duty, or when there is reasonable suspicion to believe the employee may be unfit for duty.

e. The procedure shall mirror that required by the Ohio Bureau of Workers' Compensation Drug Free Workplace Program.

III. DEFINITIONS:

The following definitions apply to this established program.

A. EMPLOYEE(S) - All employee's covered under the provisions of the Labor Contract.

B. DRUG SCREENING TEST (Forensic Urine Drug Screen - 4) - A urinalysis test administered under approved conditions and procedures to detect any of the following: Amphetamines\Methamphetamines, Barbiturates (Phenobarbital, Secobarbital,Bupalbital), Benzodiazepines (Valium, Serax, Librium), cannabinoids (Marihuana), Cocaine Metabolites (Benzoylcegonine,

Ecgonine), Methadone (Dolophine), Opiates (Morphine, Codeine, Hydrocodone), Phencyclidine (PCP), Propoxyphene (Darvon)

C. **RANDOM** - As prescribed by law, refers to all employees being exposed to the same "lottery" system of selection with no criteria being used for such process.

D. **COMPUTERIZED RANDOM SELECTION** - refers to an uncontrolled system of selection resulting from a computerized program.

E. **REASONABLE SUSPICION** - An apparent state of facts, circumstances or information which exists from an inquiry by the supervisor, or from a credible source which would induce a reasonably intelligent and prudent person to believe the employee was under the influence or using drugs or alcohol. Reasonable suspicion shall include any on the job injury requiring medical treatment, or a vehicular accident involving substantial damage exceeding five hundred dollars (\$ 500.00) when the officer is at fault.

F. **POSITIVE** When (1) a drug screening test indicates the presence of a controlled substance, (2) an alcohol breathalyzer test indicates a blood alcohol level of .8 or greater, (3) an employee refuses to submit to a drug and alcohol test, (4) an employee engages in any conduct which clearly obstructs the testing process or, (5) an employee adulterates a urine sample.

G. **INDIVIDUAL SUBSTANCE ABUSE REHABILITATION PROGRAM** - through a qualified organization, a rehabilitation program is established for an individual which sets forth a specific required treatment program for substance abuse.

H. **ALCOHOL BREATHALYZER TEST** - A breath test used to measure blood alcohol level in accordance with Ohio Revised Code § 4511.19.

IV. **PROCEDURE:**

RANDOM DRUG SCREENING - random drug and alcohol screening will be conducted periodically in accordance with the following procedures:

1) The employees selected for random drug and alcohol screening will be determined through a computerized random selection program which has been made available by the Data Processing Department.

2) Employees selected for random drug and alcohol testing shall be tested on the day of the random selection, or, if not working, their first working day following the random selection.

3) Pre-designated employee representative of the FOP/OLC will be present each time employees are selected for random drug screening through the computerized random selection procedure.

4) Employees who have been selected, will receive proper verbal and written confirmation from their respective Department Head. The written notification letter shall contain specific instructions for obtaining the urine specimen.

5) A urine specimen will be acquired in accordance with established procedures. An accredited laboratory will conduct analysis of the urine specimen to determine the levels of any controlled substance.

6) A certified provider, in accordance with established procedures, will administer the alcohol breathalyzer test.

B DRUG OR ALCOHOL TESTING RESULTING FROM REASONABLE SUSPICION

I. Drug Screening

a. The Chief, or his or her designee, shall order a drug screen immediately when there is a reasonable suspicion that an employee has been using any drug or narcotic and that this use may present a risk to their safety or that of fellow employees or the public.

b. The urinalysis procedure for obtaining the urine specimens will be done in accordance with established procedures.

II. Alcohol Breathalyzer Test

a. The Chief, or his or her designee, shall order an alcohol screen immediately when there is a reasonable suspicion that an employee is under the influence of alcohol and that this use may present a risk to their safety or that of fellow employees or the public.

b. The Chief, or his or her designee shall direct the employee to report to a certified provider for an alcohol test after the appropriate arrangements have been made. The testing procedures shall comply with Ohio Revised Code Section 4511.19 and Ohio Department of Health procedures for alcohol testing.

c. Testing Procedures

Once the appropriate test or specimen is obtained, the employee will be relieved of duty and placed on paid administrative leave pending the results of the written testing procedure.

The employee tested will receive written confirmation of the tests results when the information is made available.

Test results reporting a presence of illegal drugs or alcohol will be submitted on a confidential basis to the Department Head and the Director of Human Resources for appropriate action.

C. ACTION TO BE TAKEN

1) Employees who test positive for the first time to illegal drugs or alcohol will be required to participate in a mandatory personalized rehabilitation program which will be arranged for by the Human Resources Department. Such a program would be developed by an accredited rehabilitation agency upon completion of the appropriate counseling procedures.

2) Employees who fail or refuse to cooperatively participate in the rehabilitation program are subject to immediate disciplinary action.

3) Employees who test positive for the second time to the presence of illegal drugs or alcohol abuse are subject to immediate disciplinary action.

C. MAINTENANCE OF DRUG TESTING RECORDS

1) All drug screening records shall become a permanent part of the employees personnel file and are subject to all rights governing the use of such files.

2) Employees shall be given an opportunity to review all drug screening documents which are contained within their personnel files.

D. RELATED PROGRAM COSTS

a) Drug Screening will be paid by the City.

b) The existing City's health benefits will apply to the cost of employee substance abuse rehabilitation programs.

TO:

REF: NOTICE OF DRUG TESTING SELECTION

Be advised,

Your name has been randomly selected to participate in the drug screening program.

The results of the drug screen will be released to the Department Head, Director of Human Resources and/or their designated representatives on a confidential basis.

Date

Department Head

TO:

FROM:

REF: URINE SPECIMENS FOR DRUG TEST

You are to report to:
(Circle One)

Forum Health
1350 East Market Street,
Warren, Ohio

Forum Health
2600 Elm Road
Cortland, Ohio

Elm Road Immediate Care – Forum Health
2630 Elm Road
Cortland, Ohio

or

Trumbull Mahoning Medical Group
2600 Elm Road
Cortland, Ohio

at _____ on _____

NOTE: The employee is to be supplied a copy of the procedure that will be followed at the collection facility to obtain the urine specimen.

These procedures are in accordance with the established credited forensic requirement for “Employees in the work place” drug testing procedures.

MEDICATION FORM

THIS COMPLETED FORM MUST BE SUBMITTED TO FORUM HEALTH OR TRUMBULL MAHONING MEDICAL GROUP AT THE TIME THAT URINE SPECIMEN IS GIVEN.

I have taken prescribed or over the counter medication during the last three weeks.

_____ _____
YES NO

The prescriptions or medications taken during the last three weeks are as follows:

<u>Prescription</u>	<u>Physician</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

Date _____ Name _____

Phone No. _____
 Work Home

NOTE:

This medication form is a confidential report and must remain a permanent part of the physician/patient confidential record.

ARTICLE 34 – PROMOTIONS, D, Promotions/Demotions or Reduction

Proposals of the Parties

The F.O.P. proposes that demotions or reductions be negotiated prior to such demotions or reductions taking place. The City rejects this proposal.

Discussion

The proposal of the F.O.P. was made in reaction to perceived threats of reductions within the department. The perceived threats, however, never came to fruition.

The language suggested by the F.O.P., even if adopted in the collective bargaining agreement, can not be read to diminish rights of the City under O.R.C. § 4117.08. The proposed language, moreover, could be read to actually **diminish** the rights of the F.O.P., making items which may be otherwise subject to binding arbitration or other remedies arguably being subject only to “negotiation”. The Fact-Finder must reject this proposal.

ARTICLE 36, PENSION BENEFITS

Proposals of the Parties

The F.O.P. proposes that the City immediately “pick up” the entire employee portion of required contributions to the State of Ohio Police and Fire Pension Fund. The City proposes to pay eight percent (8%) of each employee’s gross wage effective January 1, 2007 and to pay ten percent (10%) of each employee’s gross wage effective January 1, 2008.

Discussion

The F.O.P. proposal is the equivalent of the policy in effect for other units at the present time since it proposes that the City pay the entire employee portion of contributions and the entire employee portion **at this time** is ten percent (10%). The

proposal of the F.O.P., however, would require the City to pay the entire portion should the formula change to require an employee to contribute more than ten percent (10%) of his or her gross wage. Such a provision would be different than that in place for other units and would be inimical to the interests of parallelism. In addition, it may be difficult for the City to ratify a provision without being able to determine its cost. The F.O.P. proposal to have the City pay the entire employee contribution must be rejected.

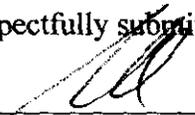
In the interests of parallelism, it makes sense to have all units covered by the same policy with respect to Pension. That does not mean, however, that in light of the current economic condition, the difference between what is contributed on behalf of the members of the F.O.P. unit and that which is contributed on behalf of members of other units should be immediately eliminated. The proposal of the City to phase in the increase is reasonable and in keeping with responsible fiscal policy. It is noted further that the prior collective bargaining agreement provided for a graduated phase in of increased City contributions. It is recommended that Article 13, Pension Benefits read as follows:

ARTICLE 36 – PENSION BENEFITS

PENSION PICKUP: Effective January 1, 2007, the employer shall pay on behalf of each Bargaining Unit Member, a portion of the member's share of the Police and Fire pension contribution to the State of Ohio Police and Fire Pension fund in accordance with the rules of State of Ohio Police and Fire Pension fund. This amount shall be equal to eight percent (8%) of each employee's gross wage.

Effective January 1, 2008, and for the duration of this Agreement, the employer shall pay on behalf of each Bargaining Unit Member, a portion of the member's share of the Police and Fire pension contribution to the State of Ohio Police and Fire Pension fund in accordance with the rules of State of Ohio Police and Fire Pension fund. This amount shall be equal to ten percent (10%) of each employee's gross wage.

Respectfully submitted,



GREGORY J. LAVELLE, ESQ.
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Facsimile (440) 979-9113
Email lavellearb@aim.com

S E R V I C E

A copy of the within Recommendation of the Fact-Finder was sent to the City of Warren c/o Gary C. Cicero, Director, Human Resources at 391 Mahoning Avenue, N.W., Warren, Ohio 44483-4634 and to the Fraternal Order of Police/Ohio Labor Council, Inc., c/o Chuck Choate, Staff Representative, at 2721 Manchester Road, Akron, Ohio 44319-1020 by overnight express mail this 7th day of March, 2007.



GREGORY J. LAVELLE

EXHIBIT A TEXT OF HEALTH CARE MEMORANDUM OF UNDERSTANDING

Chuck Choate
Staff Representative
FOP/OLC, Inc.

Letter of Understanding
Re: Health Care Benefits

Dear Mr. Choate:

This letter will confirm that the level of benefits and option plans > shall not change for the term of the collective bargaining agreement.

Sincerely,

Gary C. Cicero
Chief Spokesperson
Negotiating Committee
City of Warren

Confirmed by:

Chuck Choate
Staff Representative