

STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

STATE EMPLOYMENT  
RELATIONS BOARD

In The Matter of Fact Finding Between

2009 NOV 20 P 4: 32

Communications Workers of	}	
America, Local 4340	}	Case No.(s): 06-MED-12-1448
Employee Organization	}	
	}	
AND	}	
	}	
The City of North Cleveland	}	Fact Finding Report
Ohio Public Employer	}	Michael King, Fact Finder
	}	

This matter was heard on September 17, 2009 in the City of Cleveland, Ohio.

APPEARANCES:

For The Union:

Charles DeGross, Esq.  
1400 E. Schaaf Road  
Brooklyn Heights, Ohio 44131

Art Frindt, Business Agent, Local 4340  
Clarence Moore, EMS Captain, Chief Steward  
Michael Threat, EMS Captain, Steward

For The Employer:

Jon M. Dileno, Esq.  
Zashin & Rich Co., L.P.A.  
55 Public Square, 4<sup>th</sup> Floor  
Cleveland, Ohio 44113

Edward J. Eckart, Jr., Commissioner, Cleveland Division of EMS  
Nicole Carlton, Deputy Commissioner  
Sharon Dumas, Finance Director  
Ami Patek, Assistant Law Director

## **I. Introduction And Background**

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on July 31, 2008. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a Collective Bargaining Agreement (CBA) to succeed the CBA that expired March 31, 2007.

The bargaining unit consists of approximately thirteen (13) supervisors, or captains in the City's Division of Emergency Medical Services. Captains are the line supervisors within the city's EMS unit. They oversee emergency medical technicians in the field, and the EMS dispatch operation. Cleveland's EMS operation differs from many Ohio jurisdictions in that it isn't a part of the fire department or fire rescue operation. Instead, it functions alongside of police and fire departments as a separate unit within the public safety division. By creating this structure, Cleveland may have -- whether directly or indirectly -- made certain policy decisions that affect pay and status of members of this bargaining unit compared with other public safety forces. This bargaining unit has a limited bargaining experience with the City of Cleveland. The prior contract was the Union's first with the City.

The City of Cleveland has approximately 6,000 unionized employees, represented by one of approximately thirty-four (34) unions. The City states that it relies heavily on pattern bargaining as the only way it can effectively deal with that number of unions.

Negotiations on a new contract began in March 2007, and have been unsuccessful after more than two (2) years. Negotiations began during what were regarded as normal economic times for northern Ohio. The negotiations continued into a period some regarded as an especially uncertain and difficult economic climate. As such, during the course of the negotiations, the City of Cleveland modified and substantially reduced some of its offerings to the Union.

Prior to the hearing the parties submitted pre-hearing statements pursuant to SERB Rules. There is some dispute as to whether either party received the other party's pre-hearing statement. The parties noted these concerns, but elected to go forward anyway. In doing so, each party reserved its right to object or to raise such other procedural concerns as may arise relative to the issue of whether pre-hearing statements were properly served.

The Parties identified five (5) issues at impasse. These were: [1] Overall compensation; [2] Commander's relief pay; [3] Shift Assignments; [4] Uniform Allowance; and [5] Sick leave and absence abuse.

## **II. Fact-Finder's Report**

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 1] Past collectively bargained agreements, if any, between the parties;
- 2] Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3] The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4] The lawful authority of the public employer;
- 5] Any 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.

In preparing this report I have attempted to make recommendations that are based on the facts as contained in the testimony and exhibits offered by the parties.

The fact-finding hearing in this matter occurred on September 17, 2009, and the record was closed immediately thereafter.

### III. **Unresolved Issues**

Issue # 1 Overall Compensation

#### **Management Position:**

Initially, Cleveland offered a wage increase of two (2) percent a year over a three-year term. It has since withdrawn the original proposal stating that it faces a precarious financial condition and has an inability to pay. It now proposes only a single two (2) percent wage increase retroactive to April 1, 2009.

Management acknowledges that it technically has the cash flow to accommodate the wage request for this relatively small bargaining unit. However, such a settlement would be bad precedent, and would be injurious to the relationship with other bargaining units. Moreover, the city has and continues to operate under difficult financial circumstances. It is attempting to maintain an acceptable level of services while avoiding layoffs.

#### **Union Position:**

The Union proposes that compensation be adjusted so as to provide for bargaining unit members to receive a differential of sixteen (16) percent above the highest paid paramedics. It estimates that bargaining unit members currently receive only about four (4) percent more than the sergeants they supervise. Thus, under the Union's proposal, some bargaining unit members could receive raises of as much as twelve (12) percent.

The Union doesn't offer expert testimony regarding the City's ability to pay the desired wage increase. It argues that as a policy matter, the city has the ability to shift from other programs the relatively small amount needed to compensate bargaining unit members.

EMS, the Union notes, constitutes "a strong third arm" to the city's public safety operations. EMS captains are on the front lines of saving lives in Cleveland. The captains' work has intrinsic value. That value is comparable to the value of work done by police and fire-fighting personnel.

### **Finding And Recommendation**

An examination of some other City contracts reveals that Cleveland does indeed observe a rank differential that approximates sixteen (16) percent. For example, in its contract with the Fraternal Order of Police, the wage scale minimum effective April 1, 2006 is as follows:

Sergeant	\$58,442.05
Lieutenant	\$67,872.78
Capitan	\$78,812.42
Commander	\$91,502.41

Cleveland's contract with firefighters provides a wage scale effective April 1, 2009, including the following job categories and pay levels:

Journeyman	\$53,890.36
Lieutenant	\$62,512.82
Captain	\$72,514.87
Batt. Chief	\$84,117.25

In contrast, EMS captains earn base wages under the most recent contract (2005 – 2007) as follows:

Start	\$48,200.00
After 1 year	\$48,693.22
After 2 years	\$49,293.00
After 3 years	\$49,974.59
After 4 years	\$51,127.86

The pay of EMS captains must be viewed against the base wages of the persons whom the captains supervise. Those subordinate employees are emergency medical dispatchers, emergency medical technicians, and paramedics levels one, two and three. As of April 1, 2009, EMS subordinates receive the following base wages:

#### **Emergency Medical Technician**

After 4 years	\$40,309.52
After 5 years	\$45,067.65

#### **Paramedic I**

After 4 years	\$42,011.78
After 5 years	\$46,769.89

Paramedic II

After 4 years \$42,437.34  
After 5 years \$47,195.45

Paramedic III

After 4 years \$43,995.93  
After 5 years \$48,714.07

Emergency Medical Dispatcher

After 4 years \$37,619.63  
After 5 years \$41,313.91

From these numbers it is clear that within the EMS sector, the differentials approaching sixteen (16) percent aren't maintained. Indeed, some higher paid subordinates may earn as much or more than a newly installed captain.

That said, the rationale for differentials approximating sixteen (16) percent isn't clear. The differentials aren't of recent vintage. According to the City, these differentials pre-date Ohio's collective bargaining law. There isn't any evidence of recent large wage adjustments in any City departments designed to create or maintain such differentials.

The question remains, then, whether a differential instituted many years ago, is an appropriate guide for a wage increase at this time. Even, if it is otherwise appropriate, does Cleveland have the ability to pay the desired wage adjustment.

In examining these issues we look first to the City's financial statements. Cleveland estimates that it faces a budget shortfall in the range of \$60 million for 2010. The projected shortfall reflects overall difficult economic issues facing the Upper Midwest, and the additional woes caused by the economic downturn that has affected the entire nation. City revenues have been driven more by income tax than by property taxes, according to Finance Director Sharon Dumas. However, unemployment in the area is at the highest level since the early 1990s. Also, National City Corporation was the largest for-profit taxpayer in the region. It was acquired by PNC Corporation, and the City no longer has that headquarters. The city has been hit hard by the foreclosure crisis, and Cuyahoga County has informed the City of a decline in property valuation of approximately twelve (12) percent.

From 2006 through 2009, performance and projections of general fund revenues compared with general fund expenditures (in millions of dollars) was as follows:

Revenues	490407	516918	524676	512096
Expenditures	487233	511567	523046	541502

The 2009 budget assumptions include the following:

- Non Union Salaries for 2009 at current levels
- Union Salaries for 2009 per contract

To stem a projected \$60 million deficit in 2003, Cleveland reduced its workforce by approximately 700 full-time general fund employees. That included approximately 250 police officers and approximately 70 fire fighters. Cleveland continues to maintain a workforce of more than 500 fewer full-time positions than it had in 2003. In addition it has decreased its fleet of cars and motorized machinery by approximately 1,500 units.

In another effort to align revenues more nearly with expenditures, Cleveland continues to slow or defer some routine repairs of city facilities. As evidence of these deferments, Cleveland submitted more than forty (40) pages of open work orders in the city. These orders were various kinds of projects including replacement of broken tiles, lock replacements and door repairs, key duplication, carpet installation, pothole repair, bulb and ballast replacement, HVAC and engine repair. This list of more than a thousand open work orders remains open because of a lack of resources and personnel.

Cleveland calculates that the Union's wage proposal would have an annual additional cost to the city of \$98,858. The Union didn't offer a specific calculation of proposed wages.

I find that the City of Cleveland does face troublesome and uncertain economic problems, and that it has an inability to pay the wage increase suggested by the bargaining unit.

I recommend the City's proposal of a two (2) percent wage increase retroactive to April 1, 2009.

Issue #2      Commander's Relief Pay

**Union Position:**

The Union proposes the following contract language:

When a captain performs the duties of the shift commander, the City shall compensate the employee with an additional 5% of the top pay band contained in the collective bargaining agreement for the entire work shift.

According to the Union, EMS captains routinely fill-in as temporary shift commanders. At such times they should be compensated at a higher rate.

**Management Position:**

Management flatly denies that EMS captains are ever called upon to perform duties of commanders. Commanders have "ongoing and long-term duties" that include budget planning and special event preparation. In the absence of a shift commander, captains are asked only to assume some scheduling duties.

**Finding And Recommendation**

I find that on occasion bargain unit members are called upon to assume as least some portion of the duties that would regularly be performed by a commander. I find that captains do not take on all of the commander's duties.

I recommend that on those occasions when a captain is called upon to temporarily handle some of the duties of a shift commander, the captain shall be paid an additional three (3) percent above his normal pay for the entire shift, provided the temporary assignment lasts at least four (4) hours. There should be no additional compensation if the temporary assignment last fewer than four (4) hours. This temporary assignment premium should be based on the captain's normal pay. Not all occasions of absence by shift commander will result in premium pay for the captain on that shift.

Issue # 3      Shift Assignments

**Union Position**

The Union proposes to convert employees back to twelve-hour (12) shifts. It suggests that the contract's Article XIV (Shift Assignments) be changed, striking the first three paragraphs of that section from the last contract, and replacing it with the following language:

*Two shifts shall be established for personnel assigned to the field and to RED Center Employees. They shall be as follows: 6 a.m. to 6 p.m.; 6 p.m. to 6 a.m. Personnel working light duty assignments may also work 8 a.m. to 5 p.m., unless otherwise agreed.*

*Shifts shall be permanent and shall be bid on a bi-annual basis, based on classification seniority.*

*The City shall maintain an equal overtime distribution policy that controls how overtime is to be distributed for daily overtime, pre-planned overtime and special events.*

*The City may assign employees to four (4) ten-hour shifts with thirty (30) days advance notice. Employees transferred from twelve (12) hours to ten (10) hour schedules will receive an additional five (5%) percent of their base salary while assigned to a ten (10) hour shift. The City may also assign employees to five (5) eight-hour shifts, but only with the approval of the union. Employees assigned to eight (8) hour shifts shall likewise receive an additional five (5%) of their base salary while assigned to eight (8) hour shifts.*

The Union insists that continuation of the twelve-hour (12) shifts is the most operationally efficient. Because their subordinates don't all have twelve-hour (12) shifts, shorter shifts for captains would make it more difficult to keep up with people and events that may carryover from one paramedic's shift to the next.

In addition, the twelve-hour (12) shifts provide a better quality of life for captains, creating a greater reservoir of uninterrupted time outside of work. The Union insists that its proposal to continue the twelve-hour (12) shifts isn't about overtime money. It is instead, about operational efficiency and quality of life. The Union acknowledges, however, that the twelve-hour (12) shifts do mean additional annual compensation of approximately \$2,000 to \$3,000.

### **Management Position**

Management desires to maintain the current contract language regarding eight-hour (8) and twelve-hour (12) shifts. (It would technically adjust the contract to show March 31, 2010, as the contract expiration date.) Also, it would include contract language giving the Commissioner additional scheduling flexibility:

*Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to four (4) employees to an alternate shift and/or key.”*

According to the City, the twelve-hour (12) shift is operationally inefficient. It doesn't allow the City to staff consistent with peak 911 calls. Using the eight-hour (8) shifts, the City says it can increase staff and run more ambulances during peak 911-calling times, and fewer ambulances during slower periods. Also, the City would save on overtime costs.

### **Finding And Recommendation:**

The issue of twelve-hour (12) has been a contentious one within the EMS division. The matter went to conciliation on behalf of paramedics (Cleveland Association of Rescue Employees) in 2007. At the time that bargaining unit and the City each made many of the same arguments made in the course of this inquiry. However, in that case the paramedics strongly argued that the proposed shift changes amounted to economic concessions that other city employees weren't being asked to make. The conciliator found that the City's proposal would have amounted to a wage cut of approximately five (5) percent because of the loss of built-in overtime. The conciliator in that case ordered a kind of hybrid schedule with some permanent twelve-hour shifts, and the option for other shifts of eight (8) or ten (10) hours.

I find that as part of an overall plan to survive precarious finances, the City needs greater flexibility to schedule EMS captains to more appropriate shifts. For that reason I recommend approval of the proposed contract language offered by the City.

**Union Position**

The Union seeks to modify the contract to increase the uniform allowance. Under the most recent contract each employee received an annual maintenance allowance of \$100 and an annual uniform allowance of \$350. The Union proposes the following contract language:

*Retroactive to March 1, 2007, all regular full-time employees shall receive an annual maintenance allowance of \$400 payable on March 1, and an annual uniform allowance of \$450 payable on June 1, of each year. Additionally, any member promoted to the position of captain shall be provided a class A uniform and a one-time clothing allowance of \$150.*

**Management Position**

Management opposes any increase in the uniform allowance as unnecessary. It notes that the City's paramedics received a \$100 increase in uniform allowance during this round of negotiations. However, the city states that the paramedics and EMS captains have very different uniform issues. "Paramedics respond to medical emergencies and provide on-site medical treatment," the City explains. "As a result, paramedics routinely have their uniforms soiled with blood, bodily fluids, dirt and the like. This routine soiling of uniforms requires cleaning and replacement of uniforms."

In contrast, according to the City, EMS captains are rarely involved in hands-on patient care, and aren't routinely exposed to uniform soiling.

**Finding And Recommendation:**

I find that EMS captains have direct contact with sick and injured persons on rare occasions. Thus, an increase in the uniform maintenance portion of the allowance isn't justified based on what paramedics received.

I find that a Class A uniform is not required, but is voluntarily used on ceremonial occasions. Therefore, under the financial situation noted above, I am unable to recommend that bargaining unit members be compensated for Class A uniforms.

I find that the cost of regular uniform components is higher than at the time of the last contract, and that an increase in the allowance is appropriate.

I recommend an increase in the annual uniform allowance to \$400. This increase would be prospective only. There should be no retroactive payment of this allowance. I recommend no changes in the annual maintenance allowance, and I recommend that no special allowance be made for Class A uniforms.

Issue # 5      Sick Leave and Absence Abuse Policy

**Management Position**

Management seeks new contract language regarding its attendance policy. The prior policy had different tracks for tardiness and for absence without leave. The newly proposed policy would bring those two together, along with sick leave and time and attendance guidelines under the same standards. The City is attempting to implement this identical policy across all of its employees.

The language for the newly proposed policy is included as Appendix A, appended to this opinion.

**Union Position**

The Union objects to the proposed changes. It notes that it is a small bargaining unit, and there isn't an absentee problem relative to its members. It acknowledges that the union representing its subordinates (paramedics) agreed to this identical policy. However, it notes that the paramedics bargained, and it isn't known to this union what the paramedics received in exchange.

**Finding And Recommendation:**

I find that the suggested policy is of a nature that under other circumstances might be implemented unilaterally as a management right. Questions about violation of this policy would be grievable.

I find no compelling reason not to include the suggested attendance policy in the contract. The Union does not offer such a reason. What the Union does offer is the suggestion that the proposed attendance policy will have no meaningful impact on its members.

Therefore, I recommend adoption of the attendance policy as proposed by Management, and attached hereto as Appendix A.

  
\_\_\_\_\_  
Michael King  
Appointed Fact Finder

Date: November 17, 2009  
Westlake, Ohio

APPENDIX A

ATTENDANCE POLICY

This policy is effective ~~September 1, 2009~~ <sup>November 1, 2009</sup>. If an employee is in the Sick/Absence Abuse Program as of ~~September 1, 2009~~ <sup>November 1, 2009</sup>, that employee shall be considered to be on the same step of the new policy (i.e. if the employee is on Step 2 of the old policy, the employee will be on Step 2 of the new policy).

- I. Employees are expected to report to work at the regularly scheduled arrival time and remain at work until the scheduled departure time. Employees are expected to observe unpaid lunch and break times as scheduled.

An employee who fails to adhere to attendance requirements is subject to progressive discipline as detailed in the schedule described in this policy. For the purpose of this Attendance Policy, the two (2) year rule applies. If an employee's previous discipline was within a two (2) year time period, the employee will progress to the next step of the Discipline Schedule. Violations that are more than two (2) years at the time of discipline will no longer be used against them. However progressive discipline will be maintained from discipline issued within the previous two years.

---

Whenever an employee is granted an approved leave of absence, the time between the effective date of the approved leave of absence and his/her return to duty shall not be considered to be part of the two (2) year time period mentioned above. Upon return to duty following such leave of absence, such employee shall be required to complete the unexpired portion of his/her two (2) year time period in order for the discipline to no longer be used against them.

- II. For purposes of this policy, standards that apply to "attendance" include and are contained in the following categories:
- A. Absence Without Leave (A.W.O.L)
  - B. Sick/Absence Abuse Control
  - C. Time and Attendance/Kronos Guidelines
  - D. Tardiness Control

**A. ABSENCE WITHOUT LEAVE (A.W.O.L.)**

1. City employees are responsible for reporting to work at their regularly scheduled times. If an employee is unable to report to work due to illness or for any other emergency, the employee must notify the City of Cleveland no later than one (1) hour preceding the scheduled starting time for the first (1st) day of the absence.
2. Employees who do not report to work and do not call in within one (1) hour after the start of work will be considered A.W.O.L. An employee will also be considered A.W.O.L., if without the approval of his or her supervisor, he or she departs from his or her worksite before the end of his or her shift or workday or for scheduled breaks.
3. Time records should reflect the proper notations of A.W.O.L. on the days of each occurrence. Once the employee contacts the designated authority, his or her status may change from A.W.O.L. to either Excused Absence or Unexcused Absence, from that point forward. The reason for absence will be noted A.W.O.L. and the employee will not receive pay for this period.

**A.W.O.L. Resignation**

1. ~~Employees who are A.W.O.L. for five (5) consecutive scheduled work days may be termed A.W.O.L. resigned. The employee must be notified of such a determination in person or by certified mail to his or her last known address. The affected employee must contact his or her supervisor or Appointing Authority within the period designated in the notification, to explain the failure to report to work.~~
2. If the employee fails to supply a satisfactory explanation, as determined by the Appointing Authority, within the period identified in the notification letter, he or she shall be deemed A.W.O.L. resigned, and the Appointing Authority should then notify the Civil Service Commission of the resignation, as well as provide the Commission with copies of all relevant documentation pertaining to the resignation.
3. Notice of the entry of an employee's A.W.O.L. resignation must be sent to the employee at his or her last known

address, along with the indication that the employee may appeal to the Civil Service Commission or file a grievance at Step 3 of the Grievance Procedure, within ten (10) working days of the notice issued to the employee.

4. Deeming an employee A.W.O.L. resigned does not preclude simultaneous or subsequent disciplinary action.

#### B. SICK/ABSENCE ABUSE CONTROL

Through sick leave, the City accommodates employees who, due to personal or family illness, cannot report to work. Sick leave is not to be used as additional vacation or personal leave. Employees found abusing sick leave privileges will be subject to disciplinary action.

#### Sick/Absence Procedures

1. To control absence abuse, it is necessary that all Appointing Authorities compile accurate attendance records.
2. All absences are to be reported by the employee prior to the start of the employee's work shift, or as soon thereafter as possible, but in no case more than one (1) hour after the start of work.
3. ~~For employees who are engaged in twenty-four (24) hour operations, the employee will be required to report an absence no later than the employee's scheduled starting time.~~
4. If an employee does not notify his or her supervisor or the designated sick call-in line of an absence, he or she will be considered A.W.O.L.
5. The supervisor must inform his or her employees where, when and whom to call when reporting their absence.
6. The date of absence and the reasons therefore must be accurately recorded. Call-in procedures should include such details as:
  - a) Reason for absence
  - b) Time of notification
  - c) Name of person reporting an absence
  - d) Expected date/time of return

#### Sick/Absence Abuse Program

1. The basis for review for disciplinary action shall be more than thirty (30) hours of usage within a rolling calendar quarter, or when an employee exhibits a pattern of usage within any time period. For purposes of this attendance policy, "rolling calendar quarter" shall be defined as any consecutive three (3) month period, calculated from the first day of the month.
2. A basis for review for disciplinary action may include absences occurring before or after vacation and/or personal leave; absences occurring repetitively before or after weekends or holidays; absences occurring repetitively immediately before or after paydays; absences occurring repetitively when difficult jobs or assignments are scheduled; absenteeism causing individual work performance to suffer; absences occurring repetitively during certain times of the month or year. A basis for review for disciplinary action may include consistently using most, or all, earned sick leave each year, i.e. employees utilize more time than what has been earned(excused and/or unexcused absences).
3. In no case shall an employee's accumulated sick leave balance be the sole determinant of a pattern of abuse; however, it may be a component.

---

4. Disciplinary action should not be imposed where circumstances show an absence of abuse, i.e., serious or chronic illness or injury, hospitalization, approved FMLA, approved leave of absence or work related injury even if the affected employee has exceeded the aforementioned thirty/forty (30/40) hour limit.
5. Non-traditional shifts (i.e. 12 hour shifts) will be reviewed for disciplinary action with the usage of forty (40) hours or more within a calendar quarter, as defined above.
6. All non-FMLA and non-hazardous duty injury absences are to be considered regardless of whether the employee's absence is documented or undocumented, or an employee requests paid or unpaid sick leave.

7. If an employee has used more than thirty/forty (30/40) hours of sick leave within a rolling calendar quarter, the employee will be notified in writing and may be subjected to progressive discipline.
8. Medical excuses and physician's certifications shall be documented on a Medical Information Form (MIF).
9. The validity of all medical excuses and physician's certifications may be subject to review by a City Physician and/or management. Any such medical examination by the City Physician shall be done on City time. Falsification of a medical excuse can result in discharge.

#### C. TIME AND ATTENDANCE/KRONOS GUIDELINES

The City of Cleveland acknowledges the value of a comprehensive City-wide standard, accurate timekeeping system through which employee attendance records can be maintained. The City of Cleveland expects every employee to follow uniform guidelines as they use the Kronos timekeeping system. Employees of the City of Cleveland may be subject to disciplinary action for time and attendance abuse.

#### Procedures

1. The Kronos System is the means through which employee attendance records are maintained. Employees are expected to utilize this system so that timekeeping is uniform and reliable.
2. The City will dock employees on the basis of one-tenth (1/10), or six (6) minutes per hour.
3. Kronos cards are the property of the City of Cleveland and are issued to each employee to facilitate accurate timekeeping. Swipe cards are the responsibility of the employee. Employees must notify the supervisor immediately if a swipe card is lost or damaged. A lost or damaged card must be replaced unless otherwise directed by the Department/Division. The replacement card must be obtained from the Department/Division designee within two (2) days of the first missed swipe. The first (1st) damaged card will be replaced at the City of Cleveland's expense. A \$10.00 fee will be charged for a lost,

damaged, or an additional replacement of the City of Cleveland Kronos swipe card.

4. All affected employees will be issued a Kronos card that is to be used to swipe in and out of the assigned Kronos Time clock. "Swipe" refers to any means an employee reports their attendance through Kronos.

5. The Kronos card is to be used consistent with the following guidelines:

a) Daily swipes are required as follows:

- 1) Start of work day
- 2) Lunch period (determined by divisional operating policy)
- 3) End of work day

b) Under no circumstances may an employee swipe another employee in or out. Any and all employees involved in this type of violation may be subject to progressive discipline.

c) In/out rounding rules. A City wide standard policy has been established regarding the "rounding" of time within the Kronos system. The examples listed below assume an 8:00 a.m. start time and a 5:00 p.m. end time, with a one (1) hour unpaid lunch.

---

1) Early in swipes -- A 12-minute window will precede the employee's scheduled start time. Any swipe within that window, i.e., 7:48 a.m. to 8:00 a.m. will round to the scheduled start time, i.e. 8:00 a.m.

2) Late in swipes -- All swipes one (1) minute or more after the scheduled start will be docked in increments of six (6) minutes to the next tenth of an hour, i.e., 8:01a.m. to 8:06a.m. will be docked one tenth of an hour, 8:07a.m., docked two tenths of an hour, etc.

**NOTE:** The Kronos system will record exact swipe times for disciplinary purposes.

3) Early out swipes -- All swipes one (1) minute or greater before the scheduled end time will be rounded back one tenth of an hour, i.e.,

4:59 p.m. to 4:54 p.m., docked one tenth of an hour; 4:53 p.m., docked two tenths of an hour, etc.

- 4) Late out swipes -- A 12 minute window is recognized during 5:00 p.m. to 5:12 p.m. and would round back to the scheduled end time of 5:00 p.m. In the event that an employee swipes out after the designated 12 minute window, the appointing authority must make a determination as to whether overtime pay is appropriate. This determination will be reflected by an entry into the Kronos system. If it is determined that the swipe was inadvertent, that is caused by negligence on the part of the employee, that employee will be advised verbally that future instances of this nature could result in discipline, and that in any event they will not result in overtime pay. For overtime to be valid prior supervisor approval must be received.
- 5) Missed swipes -- Whenever a swipe is missed an employee must notify the supervisor immediately. If the employee notifies the supervisor prior to the beginning of the shift, the employee will be paid from the regularly scheduled starting time. There are "missed-swipe" forms for the supervisor to indicate approval. If the supervisor is notified after the shift has started, the employee will be paid from the time of notification. Lost, misplaced and forgotten swipe cards are subject to this provision. To be disciplined under the Kronos Guidelines, an employee must have missed three (3) swipes in a pay period. All employees' swipe records will be reviewed at the end of each pay period.

#### Program

1. In particular, violation of guidelines relative to late swipe or failure to swipe will be treated as incidents which may be subject to progressive discipline under of the Attendance Policy.

2. An employee may be subject to progressive discipline if there are three (3) or more missed swipes in a pay period.

#### D. TARDINESS CONTROL

The City of Cleveland expects every employee to give the citizens of Cleveland a full and productive day of work. The City of Cleveland defines "tardiness" as any unauthorized absence from work for any increment of time. Employees of the City of Cleveland may be subject to disciplinary action for tardiness. Tardiness is being late for work:

1. at the beginning of the scheduled starting time,
2. returning from lunch or
3. returning from break.

#### Tardiness Control Procedures

1. Employees who are late more than one (1) hour at the beginning of the scheduled starting time will be considered absent without leave and may be subject to progressive discipline under the Attendance Policy.
2. Any employee who is determined to be tardy is not permitted to make-up any missed time.

---

#### Tardiness Control Program

- A. An employee arriving late three (3) times within a pay period may be placed on the discipline schedule for the Attendance Policy.
- B. The employee will be progressed to the next level of discipline for arriving late three (3) times within a pay period.

### III. Disciplinary Schedule

Employees who violate any of the above standards are subject to progressive discipline according to the following schedule:

- Step 1: Written Warning I
- Step 2: Written Warning II
- Step 3: One (1) Day Suspension

Step 4: Three (3) Day Suspension  
Step 5: Five (5) Day Suspension  
Step 6: Ten (10) Day Suspension  
Step 7: Discharge from employment

- A. Progressive steps in discipline will be preceded by a pre-disciplinary conference. The employee will be notified in writing of the date, time of the conference, and right to request the presence of a representative.

An employee has the right to have his or her union representative attend the pre-disciplinary conference.

- B. Copies of an adverse disciplinary action will be sent to the Civil Service Commission, the employee and the union.

- C. The basis for review for disciplinary action may include:

1. Any instance of ANOL as defined by this policy.
  2. More than thirty (30) hours of sick time usage within a rolling calendar quarter excluding FMLA.
  3. Three (3) or more missed swipes in a pay period.
  4. Arriving late three (3) or more times in a pay period.
-

**Michael L. King**  
P. O. Box 221312  
Beachwood, Ohio 44122  
440-617-9213  
[michaelruter@hotmail.com](mailto:michaelruter@hotmail.com)

STATE EMPLOYMENT  
RELATIONS BOARD

2009 NOV 20 P 4: 32

June 23, 2009

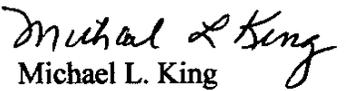
J. Russel Keith, General Counsel & Assistant Executive Director  
Ohio State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

Re: SERB Case No. 06-MED-1448

Dear Mr. Keith:

Enclosed please find an opinion for the above-referenced matter.

Sincerely,

  
Michael L. King

Enclosure: