

**IN THE MATTER OF FACT FINDING**

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**BETWEEN**

**THE FRATERNAL ORDER OF POLICE, OLC**

**AND**

**THE CITY OF EAST CLEVELAND**

**FMCS CASE # 07-MED-09-0953**

**(Supervisor Unit)**

**ADVOCATE FOR THE UNION:**

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**ADVOCATE FOR THE EMPLOYER:**

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**The report is intended to provide the parties with a complete set of all issues agreed upon by the parties as well as all of the recommendations made by the fact finder. In addition to the determinations stated above, which are in complete language form, the report also reproduces all of the tentative agreement language reached the parties and places it, along with each area of recommended language, in chronological order.**

## INTRODUCTION

There are thirteen (13) issues in dispute before the fact-finder, some of which contain multiple proposed changes. The bargaining unit consists of approximately fourteen (14) employees. It is one of several bargaining units in the City of East Cleveland which are represented by a number of bargaining agents.

A mediation/fact-finding hearing was held on October 20, 2008. The fact-finder, who has recently served as a conciliator with these same parties is somewhat familiar with the City's current financial situation and the wages and benefits provided to the patrol officers' bargaining unit. This prior experience provided the fact-finder with a more in depth appreciation of the background and the issues in dispute during attempted mediation. The fact finder is also familiar with the advocates for both parties. All of the individuals present during the fact-finding process, on both sides of the bargaining table, demonstrated a keen interest in providing quality service to the citizens of East Cleveland while at the same time vigorously representing their various constituencies.

## **CRITERIA**

### OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. *Past collective bargaining agreements*
2. *Comparisons*
3. *The interest and welfare of the public and the ability of the employer to finance the settlement.*
4. *The lawful authority of the employer*
5. *Any stipulations of the parties*
6. *Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.*

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

## **OVERALL RATIONALE FOR DETERMINATIONS**

Ohio's economy remains uncertain as does the financial outlook for many parts of the United States. In the wake of the housing credit crisis and a recessionary economy, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. The state's economy has struggled with the shortfall between revenue and expenses fueled by substantial and likely permanent losses of relatively high paying manufacturing jobs, particularly in northeast Ohio. The City of East Cleveland and the bargaining unit are no strangers to difficult economic times. Although well managed under long standing economic constraints, the economic realities facing the city of East Cleveland and its employees are extremely challenging and the real limitations they create are not lost on the analysis of this fact finder.

The mediation attempt by the fact finder produced settlement of some of the issues, however most remained unresolved. For the sake of clarity and convenience, the tentative agreements reached by the parties are incorporated throughout this report in order of their appearance in the collective bargaining agreement. The report is intended to represent a full accounting of all tentative agreements and recommended language in order to establish a new collective bargaining agreement.

After carefully considering the facts and evidence and applying all the statutory criteria stated above, the following recommendations are made regarding the issues in dispute presented the fact finder.

**Article 1 (TA)**

**ARTICLE 1  
AGREEMENT/PURPOSE**

**Section 1.1.** This Agreement entered into by the City of East Cleveland, hereinafter referred to as the “Employer” or the “City” and The East Cleveland Police Department Fraternal Order of Police Lodge No. 39/Ohio Labor Council Inc., hereinafter referred to as the “Lodge,” the “FOP” or the “Union” has as its purpose the following:

To comply with the requirements of Chapter 4117 of the Ohio Revised Code, and to set forth in its entirety, the full and complete understandings and agreements between the parties governing the wages, hours, terms and conditions of employment for those employees included in the bargaining units as defined herein.

**Section 1.2.** *The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any matter or subject not removed by law or regulation from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of those rights and opportunities are set forth in the Agreement. The provisions of this Agreement constitute the entire Agreement between the parties.*

<b>Issue 1      Article 2      Applicability of External Law and Separability</b>
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**Issue Rationale:**

The fact finder served as a conciliator for the parties in the resolution of the patrol officers’ bargaining unit contract in the spring of 2008. During that process, the parties, with the assistance of the mediator, were able to agree on language that was acceptable. Internal comparables, particularly ones that involve the same bargaining agent and impact safety employees in a like manner are persuasive. The fact finder is recommending the same language the parties agreed upon in mediation for the patrol officers’ bargaining unit

represented by the same bargaining agent. The nature of this language is independent of the make up of the bargaining unit and is often considered “boilerplate” language.

## **Determination:**

**The City’s position is recommended as follows:**

### **ARTICLE 2**

#### **APPLICABILITY OF EXTERNAL LAW AND SEPARABILITY**

**Section 2.1. Application of External Law.** The parties agree that no section of the civil service laws contained in the Ohio Revised Code Sections 9.44, 124.01 through 124.56, nor any local ordinance of the City of East Cleveland or Rules and Regulations of the Civil Service Commission of the City of East Cleveland, *pertaining to wages, hours, terms and other conditions of employment, shall apply to bargaining unit employees where such matter has been specifically or generally addressed by this agreement.*

**Section 2.2.** Notwithstanding the above, Sections 124.388 and 1245.57 ORC shall continue to apply to bargaining unit employees. Additionally, in accordance with Revised Code 4117.1 O(A), laws pertaining to civil rights, affirmative action, unemployment compensation, worker's compensation, the retirement of public employees, residency requirements, and the provisions of 124.34 (A) concerning the disciplining of classified employees convicted of a felony prevail over any conflicting provisions of this collective bargaining agreement.

**Section 2.3.** In accordance with the provisions of Ohio Revised Code section 4117.10 (A), this agreement covers the wages, hours, and terms and conditions of employment to the extent provided herein. It is therefore the intent of the parties that the terms and conditions of this agreement specifically preempt and/or prevail over the statutory rights of bargaining unit members as set forth below:

#### **Contract Article**

#### **Statute/Regulation Preempted (All Statutory) **References include Corresponding Municipal Ordinances and Municipal Civil Service Rules)****

Article 9, Discipline  
Article 10, Grievance Procedure  
Article 12, Seniority

Article 13, Reduction in Force & Recall

Article 15, Probationary Periods & Promotions

Article 18, Sick Leave

Article 21, Vacations

Article 22, Holidays/Personal Days

ORC 124.34

ORC 124.34

ORC 9.44; ORC 123.321-  
124.328;

ORC 124.37

ORC 124.321-124.328;

ORC 124.37; ORC 124.44

ORC 124.27; ORC 124.44;

ORC 124.48

ORC 124.38; ORC 124.39

ORC 9.44; ORC 325.19

ORC 325.19

**Section 2.4. Separability.** If by operation of law, or by a court of competent jurisdiction it is found that any provision shall be of no further force and effect, the remainder of the Agreement shall remain in full force and effect for the Agreement term. The parties agree that should any provision of this Agreement be found to be invalid, they will attempt to negotiate replacement language on the same subject matter within sixty (60) calendar days.

**The position of the Employer is recommended (see Appendix A)**

**Article 3, 4, 5, 6, 7 (TA)**

### **ARTICLE 3** **RECOGNITION**

**Section 3.1.** The Employer hereby recognizes the FOP/Ohio Labor Council, Inc., as the sole and exclusive bargaining agent for all employees listed below:

All regular sworn full-time Police Officers in the rank of Sergeant and above now or hereafter, excluding the Chief of Police.

**Section 3.2.** Said recognition is for the purpose of collective bargaining on any and all matters relating to wages, hours, terms and other conditions of employment for all members of the bargaining unit pursuant to the Ohio Public Employees Collective Bargaining Act.

## **ARTICLE 4**

### **FOP SECURITY**

**Section 4.1.** Effective within thirty (30) days of the date of this Agreement, employees in the bargaining unit shall either become dues paying members of the FOP or, as a condition of continued employment, remit to the FOP a fair share fee in accordance with the provisions of Ohio Revised Code Section 4117.09(c).

**Section 4.2.** Any newly promoted employees in the bargaining unit shall, within sixty (60) days of date of promotion, either elect to become members of the FOP or remit the fair share fee.

**Section 4.3.** As provided in the Ohio Revised Code Section 4117(c), nothing in this Article shall be deemed to require any employee to become a member of the FOP.

**Section 4.4.** The Employer agrees to deduct from the wages and salaries of the bargaining unit members dues required by the FOP/OLC by payroll deduction. All members of the bargaining unit either become dues paying members of the FOP/OLC, or as a condition of continued employment, remit to the FOP/OLC a fair share fee in the amount set by the FOP/OLC per person per month in accordance with the provisions of the O.R.C. 4117.09(c), starting the thirty-first (31) day of employment with the employer or execution date of this Agreement, whichever comes first.

**Section 4.5.** Dues and fair share fees shall be paid over by the Employer once written notice to the Employer and the FOP/OLC at any time during the fifteen (15) day period preceding the termination of this Agreement, and the authorization card shall state clearly on its face the right of the employee to revoke during that period.

**Section 4.6.** The Employer's obligation to make deductions shall terminate automatically upon timely receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

## **ARTICLE 5**

### **FOP REPRESENTATION**

**Section 5.1.** Non-employee representation of the FOP shall be admitted to the Employer's facility for the purpose of processing grievances, attending meetings, or for monitoring the administration of this Agreement, upon approval of the Employer or his designee. The Employer or his designees shall facilitate any necessary contact between the representative and an on duty bargaining unit member employee, provided that arrangement of the contact is not unduly disruptive of the employee's job responsibilities as may be solely determined by the Chief of Police.

**Section 5.2.** Release time shall be granted for members of the Lodge Negotiating and Grievance Committees in compensation for hours spent by each member in negotiations or grievance hearings. The release time shall be granted at a rate of one (1) hours earned and shall

be taken at the discretion of the employee provided the release time does not create overtime, and provided the three day notice is given.

**Section 5.3.** The Lodge may schedule meetings on Police Department property, insofar as those meetings are not disruptive of the duties of the employees or the efficient operation of the Department. Special rand-and-file Lodge meetings may be held at any hour. Insofar as is feasible, all on or off-duty Lodge members shall be afforded the opportunity to attend these meetings.

**Section 5.4.** Reasonable provisions shall be made by Management so that bargaining unit members selected by the Lodge as representatives on their negotiating committee and scheduled for duty may be carried on special assignments for the entire assigned shift for the purpose of negotiating during the term of this Agreement.

Upon advance approval by the Chief of Police of designee, time off may be allowed of up to eight (8) hours per person each week for a maximum of three (3) members of the negotiating committee, designated in advance, during the last sixty (60) days of this Agreement, exclusive of any extensions.

**Section 5.5.** The Lodge shall be authorized an aggregate of ten (10) work days of paid leave per calendar year for delegates to use any time during the year to attend Lodge functions such as, but not limited to, conventions, educational meetings, or conferences. Management shall make other reasonable provisions for authorizing vacation leave or personal allowance credits for employees to attend Lodge functions in addition to the above mentioned ten (10) days.

In addition to the ten (10) delegate days listed in this Article, the Lodge shall be authorized a delegate "time bank". Each year of this Agreement bargaining unit members shall be authorized to donate accrued leave time to said bank via a voucher form provided by Management. The Lodge may utilize such time as necessary for Lodge approved activities. The Lodge may utilize all aforementioned provisions of this Article by having the President or his designee notify the Chief of Police as soon as practicable upon learning of the need for such leave, but not less than two (2) employee from one (1) detail are designated by the Lodge for said leave at any given time.

**Section 5.6.** Sufficient time off, not to exceed three (3) hours per man, per month, shall be granted to any three (3) elected Officers of the Lodge, (being President, Vice President, Secretary, Treasurer, or three (3) Trustees), for the purpose of attending and the conducting of regular meetings of the Lodge, provided a forty-eight (48) hours notice is given to the Chief of Police. Such release from duty is subject to the scheduling requirements in the interest of efficient operation of the Police Department.

**Section 5.7.** The Lodge shall have use of suitable bulletin boards for the posting of Lodge notices or other materials. The boards shall be identified with the name of the Lodge and the Lodge may designate persons responsible therefore.

**ARTICLE 6**  
**NON-DISCRIMINATION**

**Section 6.1.** Neither the City, its agents, agencies, or officials, nor the FOP or its agents or officers shall discriminate against any employee on the basis of age, sex, marital status, race, color religion, national origin, political affiliation, or handicap, for the purpose of evading the spirit of this Agreement.

**Section 6.2.** The City and the FOP agree not to interfere with the desire of any person to become or remain a member of the FOP Lodge No. 39.

**Section 6.3.** All references in this agreement to the male gender shall be construed to be equally applicable to females.

**ARTICLE 7**  
**MANAGEMENT RIGHTS CLAUSE**

**Section 7.1.** Except as specifically limited by explicit provision of this Agreement, the City shall have the exclusive right to manage the operations, control the premises, direct the working forces, and maintain efficiency of operations. Specifically, the City's exclusive management rights include, but are not limited to: the sole right to hire, discipline and discharge for just cause, layoff and promote; to promulgate and enforce reasonable employment rules and regulations; to reorganize, discontinue, or enlarge any department or division; to transfer employees (including the assignment and allocation of work) within department or to other departments; to introduce new and/or improved equipment, methods or facilities, to determine work methods; to determine the size and duties of the work force, the numbers of shifts required, and work schedules; to establish, modify, consolidate, or abolish jobs (or classifications), and to determine staffing patterns, including, but not limited to, assignment of employees, numbers employed, duties to be performed, qualifications required, and areas worked, subject only to the restrictions and regulations governing the exercise of these rights as are expressly provided herein.

In addition, unless otherwise restricted by an express term of this Agreement, all rights are exclusively reserved by the City. Further, the exercise of any enumerated or reserved management right shall not be the subject of negotiation during the term of this Agreement, except as provided by this Agreement, either with respect to the decision or its effects.

## Issue Rationale:

The Employer is attempting to create uniformity between the language of the patrol officers' bargaining unit and the supervisors' unit. However, unlike Article 2, language of this nature is sensitive to the makeup of the membership. It does not lend itself to "boilerplate" treatment. Employees in the supervisors' unit, by virtue of their rank, serve in positions of greater responsibility and trust. An internal investigation of a supervisor arguably affects not only the bargaining unit member, but those he or she supervises. Moreover, the implications of a supervisor being removed from a position are more far reaching than a patrol officer losing his or her position. Therefore, the terms of said internal investigations need to reflect the composition of the bargaining unit and the responsibilities of those holding positions of authority. Other than uniformity with the patrol officers' bargaining unit, the Employer did not provide sufficient evidence to demonstrate that the current language is not serving the needs of the parties.

## Determination:

**The Union's position to maintain current language is recommended.**

It reads as follows:

### ARTICLE 8 RIGHTS OF BARGAINING UNIT MEMBERS

**Section 8.1. Political Activity** - Except when on duty or acting in an official capacity, no bargaining unit member shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

**Section 8.2. Rights of Bargaining Unit Members While Under Investigation** - When a bargaining unit member is under investigation or is subjected to questioning for any reason, the following minimum standards shall apply:

1. Questioning of the bargaining unit member shall be conducted at a reasonable hour, preferably when the bargaining unit member is on duty, unless exigent circumstances otherwise require.

2. Questioning of the bargaining unit member shall take place at the offices of those conducting the investigation or the place when such bargaining unit member reports for duty unless the members consents in writing to being questions elsewhere.
3. The bargaining unit member under investigation shall be informed, at the commencement of any questioning, of the name, rank and command of the officer conducting the questioning.
4. During any single period of questioning of the bargaining unit member, all questions shall be asked by or through a single investigator.
5. The bargaining unit member under investigation shall be informed in writing of the nature of the investigation prior to any questioning.
6. Any questioning of a bargaining unit member in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods of rest and personal necessities of the bargaining unit member.
7. No threat against, harassment of, or promise of reward (except an offer of immunity from prosecution) to any bargaining unit member shall be made in connection with an investigation to induce the answering of any question.
8. All questioning of any bargaining unit member in connection with the investigation shall be recorded in full in writing or by electronic device, and a copy of the transcript shall be made available to the member under investigation.
9. The bargaining unit member under investigation shall be entitled to the presence of a non-employee representative, (or any other one person of the officer's choice), at any questioning of the member, unless the member consents in writing to being questioned outside the presence of the non-employee representative.
10. At the conclusion of the investigation, the person in charge of the investigation shall inform the bargaining unit member under investigation, in writing, of the investigative findings and any recommendations or disciplinary action that the person intends to make.
11. A bargaining unit member who is brought before a disciplinary hearing shall be provided access to all transcripts, records, written statements, written reports and analyses and video tapes pertinent to the case that:
  - a. contain exculpatory information
  - b. are intended to support any disciplinary action, or
  - c. are to be introduced in the disciplinary hearing

**Section 8.3. Opportunity for a Hearing -**

1. If an investigation of a bargaining unit member results in a recommendation of disciplinary action, the Employer shall notify the bargaining unit member that the member is entitled to a hearing on the issues by a hearing office.
2. The Employer shall determine the person to be selected as the hearing office, and the procedures for a disciplinary hearing.
3. A disciplinary hearing officer shall not have power to impose disciplinary action against a bargaining unit member that is more severe than the action recommended by the person in charge of the investigation of the member.

**Section 8.4. Summary Punishment and Emergency Suspension -**

1. This section does not preclude an Employer from provided for summary punishment or emergency suspension for misconduct by a bargaining unit member.
2. An emergency suspension shall not affect or infringe on the health benefits of a bargaining unit member.

**Section 8.5. Notice of Disciplinary Action** - When disciplinary action is to be taken against a bargaining unit member, the member shall be notified of the action and the reasons therefore. Such action shall be taken not more then thirty (30) calendar days following the event upon which the disciplinary action is based.

**Section 8.6.** At the time that any bargaining unit member is notified to report for an internal investigation, and upon the bargaining unit member's request, he shall be provided an opportunity within a reasonable time frame to contact a Lodge Officer or non-employee representative for the purpose of representation.

**Section 8.7.** No polygraph examination shall be given for investigative, or other purposes, unless requested by the bargaining unit member being questioned.

**Section 8.8.** Bargaining unit members shall be informed in writing of the nature of the investigation prior to any questioning and shall be informed to the extent known at the time, whether the investigation is focused on a criminal or departmental charge. If the member requests it, he shall be given brief time prior to any questioning to locate and review any written documents he possesses regarding the event(s) being investigated in order to fully prepare himself to accurately and completely respond to the questioning; and investigating Officer may accompany the member during his search and review of such documents.

**Section 8.9.** A bargaining unit member who is to be questioned as a suspect in an internal investigation that may lead to criminal charges against him shall be advised of his Constitutional Rights in accordance with the law.

**Section 8.10.** Before a bargaining unit member may be charged with insubordination or like offenses for refusing to answer questions or participate in an investigation, he shall be advised that such conduct could be made the basis for a charge, except no member shall be charged with insubordination where such refusal is premised on his exercise of the rights and advice afforded him as outlined in this Article.

**Section 8.11.** Any evidence obtained in the course of internal investigation through the use of questionable procedures, such as administrative pressure, threats, coercion, or promises shall not be admissible in any subsequent criminal action or disciplinary hearing. However, *notification to a bargaining unit member that potential corrective action could result if the bargaining unit member continues to refuse to answer questions or participate in any investigation shall not be construed as administrative pressures, threats, coercion, or promises for the purposes of this Paragraph.*

**Section 8.12.** When a bargaining unit member is to be interviewed regarding the investigation of any other bargaining unit member, such interview shall be conducted in accordance with the procedures established in this Article.

**Section 8.13.** When an anonymous complaint is made against a bargaining unit member on duty and there is no corroborative evidence of any kind, then the complaint shall be classified as unfounded and the accused bargaining unit member shall not be required to submit a written report. Also, when a citizen complaint is filed greater than thirty (30) calendar days after the date of the alleged event complained of, and where the complaint, if true, could not lead to a criminal charge of any type, such complaint shall be classified as unfounded and the accused bargaining unit member shall not be required to submit a written report, but, he shall be notified orally or in writing of such claim.

**Section 8.14.** Any signed complaint received concerning alleged misconduct by a bargaining unit member who was off duty when the alleged incident occurred shall be treated the same as any complaint made by a citizen against a bargaining unit member for misconduct while on duty. If criminal charges are involved, no departmental action will be taken until a determination is made through the court as to his guilt or innocence; except when the charge(s) involved is/are a felony, theft offense, or a sex offense.

**Section 8.15. Retaliation for Exercising Rights** - There shall be no penalty or threat of penalty against a bargaining unit member for the exercise of the member's rights under this section.

**Section 8.16. Other Remedies Not Impaired** -

1. Nothing in this section shall be construed to impair any other legal remedy that a bargaining unit member has with respect to any rights under this section.
2. A bargaining unit member may waive any of the rights guaranteed by the Article.

**Section 8.17. Definitions** - For the purposes of this Article:

1. The term “disciplinary action” means the suspension, demotion, reduction in pay or any other employment benefit, dismissal, transfer, or similar action taken against a bargaining unit member as punishment for misconduct.
2. The term “emergency suspension” means punishment imposed by the Employer when that official determines that the action is in the best interests of the public.
3. The term “summary punishment” means punishment imposed for a minor violation of an Employer’s rules and regulations that does not result in disciplinary action.
4. The term “Employer” means the City of East Cleveland, Ohio.
5. The term “bargaining unit member” means those persons as specified by SERB as members of the bargaining unit.

**Section 8.18. Prohibition of Adverse Material in Member’s Files** -

The Employer shall not insert any adverse material into the file of any bargaining unit member unless the member had an opportunity to review and comment in writing on the adverse material.

**Section 8.19. Disclosure of Personal Assets** - A bargaining unit member shall not be required or requested to disclose any item of the member’s personal property, income, assets, sources of income, debts, personal or domestic expenditures (including those of any member of the member’s household), unless:

1. The information is necessary in investigating a violation of any federal, state, or local law, rule, or regulation with respect to the performance of official duties, or
2. Such disclosure is required by federal, state, or local law.

<b>Issue 3 Article 9 Discipline</b>
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**Issue Rationale:**

The current collective bargaining agreement contains two provisions that in substantial part address the issue of discipline. The Employer is seeking uniformity of language between the supervisors’ bargaining unit and the patrol officers’ bargaining unit. For many of the same reasons identified in Issue 2, the

disciplining and/or removal of a supervisor has a substantially different impact on a political entity and its employees than does the discipline or removal of a line employee. The esoteric nature of this matter requires the parties, and not an outside neutral, to fashion a fair and objective due process regarding discipline. It is also noted that the current agreement contains an Attachment A that also addresses the issue of Discipline/Termination Policy. It would seem logical to combine these two provisions. Finally, the Union points out that some provisions of Article 9 were tentatively agreed upon by the parties.

## **Determination:**

**The Union's position is recommended to maintain current language in Article 9, which incorporates the sections of the Article that the parties changed by tentative agreement prior to fact finding. Additionally, during the fact finding process the parties verbally agreed to take the current language of Attachment A and incorporate it into Article 9. It is included as a new section 9.5.**

**The combined language shall read as follows:**

### **ARTICLE 9** **DISCIPLINE**

**Section 9.1.** The tenure of every employee subject to the terms of this Agreement shall be during good behavior and efficient service. No employee shall be reduced in pay or position (including working suspensions), fined, suspended, discharged, or removed except for grounds stated in Section 2 of this article. The Employer may take disciplinary action against any employee in the bargaining unit only for just cause. Forms of disciplinary action are:

1. Written warning
2. Written reprimand
3. Suspension without pay (at the option of the employee, and the concurrence of the suspension. Record of suspension will be maintained.)
4. Reduction in rank
5. Discharge

**Section 9.2.** Whenever the Employer determines that an employee may be disciplined for just cause that could result in suspension, reduction, or termination, a disciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. Prior to the hearing, the employee shall be given a written specification of the charges. A presentation to the employee of the written specification of charges. Any disciplinary action to be administered must be issued within forty-five (45) calendar days of the receipt of the hearing officer's response.

Disciplinary hearings will be conducted by a neutral hearing officer solely selected by the Employer. The employee may choose to:

1. Appear at the hearing to present oral or written statements in his defense.
2. Appear at the hearing and have an employee or non-employee representative of the FOP present oral or written statements in his defense.
3. Elect in writing to waive the opportunity to have a disciplinary hearing. Failure to elect and pursue one of these three options will be deemed a waiver of the employee's right to a disciplinary hearing.

At the disciplinary hearing, the neutral hearing officer will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee. At the hearing, the employee may present any testimony, witnesses, or documents which he feels may be germane to the charges. The employee shall provide a list of witnesses, and the name and occupation of this representative, if any, to the Employer as far in advance as possible, but no later than eight (8) hours prior to the hearing. It is the employee's responsibility to notify his witnesses that he desires their attendance at the hearing.

The employee will be permitted to confront and cross examine witnesses. A written report will be prepared by the neutral hearing officer concluding whether or not the alleged misconduct occurred. The Employer will decide what discipline, if any, is appropriate. A copy of the neutral hearing administrator's report will be provided to the employee within five calendar days following its preparation.

**Section 9.3.** Disciplinary action may be appealed through the grievance and arbitration procedure. Appealable disciplinary actions must be filed at the appropriate level of the grievance procedure within five (5) calendar days from the receipt of the notice of discipline by the employee. The imposition of any disciplinary action, except termination, shall be stayed pending outcome of the appeal through the grievance and arbitration procedure.

**Section 9.4.** Any employee under indictment or arrested for a felony shall be placed on leave of absence without pay until resolution of the court proceedings. An employee may use accrued vacation, holiday, or personal time during the leave. An employee found guilty of a felony by the trial court may be discharged. An employee found not guilty of the charges shall be paid for all lost time and shall have any vacation, holiday, or personal time restored to his credit. The Employer shall continue to pay the employee's insurance premiums during the leave of absence.

### **Section 9.5**    **Discipline/Termination Policy**

#### **PURPOSE**

Discipline is a tool of last resort taken against officers or employees for actions or inactions that result in undesirable conduct or behavior or unproductive work.

Termination is an action taken to eliminate a job or remove an officer or employee from a job. Implicit in a termination decision is a reasonable assumption that the officer's or employee's job cannot or should not be saved.

All discipline and termination actions will be only for cause.

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## **CAUSE DEFINED**

Cause is defined as any situation when an officer or employee fails (with or without fault) to comply with or satisfy the legitimate performance expectations of the East Cleveland Division of Police, whether the expectations be written, verbal or established through customs, traditions or practices.

Seven principles provide a functional definition of cause. They are:

1. Officers/employees received advance notice (expressed verbally or in writing) of what is required or prohibited and the consequences for failure to comply with such expectations.
2. A rational relationship exists between what is required and the efficient, effective and safe operations of the East Cleveland Division of Police. It is to be assumed that all directives of management are reasonable and rational until proven otherwise by the officer/employee contesting them.
3. Fact-finding efforts were made to determine the officer's/employee's failure before action is taken against the officer/employee.
4. A fair and objective investigation was held to determine the facts, and the officer/employee was given an opportunity to be heard, represented, present evidence or challenge such facts.
5. *Substantial evidence exists to prove the officer/employee is guilty as charged.* (Substantial evidence means evidence that would lead a reasonable person to believe that it is true.)
6. Discipline or removal actions are applied without unlawful discrimination.
7. The level of discipline or decision to terminate is reasonably related to the seriousness of the proven offense as well as the officer's/employee's employment and work history.

In relation to the seventh principle listed above, Five Factors of Equity will be taken into consideration in determining what level of disciplinary action will be taken or whether termination will occur. Each decision will be made on a case-by-case basis.

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## **THE FIVE FACTORS OF EQUITY**

1. The seriousness of the offense as it relates to the nature and extent of damage or the potential damage or the potential damage or future liability to the East Cleveland Division of Police.
2. The deterrent effect (*i.e.*, message) that needs to be conveyed to other employees to prevent similar infractions or to ensure that similar infractions will not occur or be tolerated.
3. The degree of officer/employee culpability (*i.e.*, fault), if any, and the officer's/employee's attitude about acknowledging wrong doing and making a commitment to improve; this includes the officer's/employee's cooperation in the investigation and resolution process.
4. The officer's/employee's previous disciplinary and performance records to include, but not limited to, time between other offenses, the nature of other offenses, work productivity, attendance rates, cost of supervision, types of performance errors and the like.
5. The seniority of the officer/employee.

Should employees believe that the level of action taken against them is excessive for the proven offense, they are encouraged, or may be directed, to respond in writing to each of the five considerations above stating why, in their opinion, a lesser action is justified.

## **INCOMPETENT PERFORMANCE AND MISCONDUCT**

Incompetent performance is defined as performance that fails to satisfy the standards either set by management or required for the job. Consequently, all performance failures are classified as incompetent performance.

Misconduct is defined as any action or inaction (including violations of verbal and/or written directives as well as customs or practices of the East Cleveland Division of Police) by an officer/employee for which a rational person could reasonably expect to be sanctioned. The term misconduct implies that incompetent performance occurred, at least in part, because of the officer's/employee's negligence or intent. The officer/employee either intended to do the wrong thing or did not care enough to do the right thing. Substantial evidence suggests that the officer/employee made a deliberate choice to work against the standards of the East Cleveland Division of Police. The Five Standards of Equity will work against the employee in these cases.

Incompetent performance occurring as a result of an officer's/employee/s lack of knowledge, skills, abilities or fitness to perform is not misconduct. The officer/employee tried to comply but failed to perform to expectations. The Five Standards of Equity will work for the employee in these cases, if possible.

**Caution:** Certain violations of directives such as fighting, theft, falsifying reports, harassment and the like can lead directly to termination without the benefit of a second chance. Management will make every effort to help and officer/employee save a job position when an unreasonable risk of negligent retention is at issue, or when the officer/employee fails to accept the responsibility to bring about an effective and lasting change in an area of deficient conduct, *behavior or performance*.

## **CORRECTIVE COUNSELING**

At times, personal problems may interfere with an officer's/employee's ability to perform normally. When the results are not serious enough for discipline but call for a more formal type of supervision than consulting with the employee, formal counseling is the proper tool to help the employee.

Corrective counseling is not discipline, but is the last tool management has available to correct a problem prior to discipline.

All corrective counseling must be documented on proper forms and will serve as proof that the employee was formally warned to correct the problem or face progressive disciplinary action up to and including termination.

## **ADMINISTRATIVE LEAVE**

Administrative leave occurs any time the officer/employee must be relieved of normal duties until a proper investigation or other administrative proceedings can be held. Usually the situation involves a case of serious misconduct such a drinking, fighting, endangering another, or excessive use of force. It can involve being mentally or physically unfit for duty. In such cases, leaving the employee in position would create a unreasonable liability, safety or credibility issue for the East Cleveland Division of Police.

Any supervisor can place an employee on administrative leave if deemed necessary. Formal documentation must then be forwarded immediately to the Chief of Police. Then, a decision must be made within 24 hours of receiving such notice about whether the employee will continue on administrative leave and the expected length of time, if possible.

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## **ADMINISTRATIVE FURLOUGHS**

The purpose of an administrative furlough with pay (up to 12 weeks) is to help the officer/employee adjust and handle any personal or emotional needs resulting from traumatic events. Administrative furloughs will be considered on an incident-by-incident basis. All records related to the furlough will become part of the officer's/employee's medical records and kept separate from the personnel file.

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## **DEMOTIONS**

Demotions occur as the result of the officer's/employee's inability to perform or the loss of confidence in the employee's credibility, decision-making-ability, or ability to perform. These are not considered to be disciplinary actions, but can occur in conjunction with other forms of discipline.

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## **STEP OF PROGRESSIVE DISCIPLINE**

Progressive discipline theory holds that the level of disciplinary action taken against an officer/employee should be commensurate with the Five Standards of Equity as expressed above. Discipline can progress incrementally from the lowest to the highest level, be reversed if infractions show improvement over previous infractions, and depending on circumstances, steps can be skipped, particularly if the offense creates a serious result or liability for the East Cleveland Division of Police. Each case requires a case-by-case analysis.

The steps comprising the progressive discipline system for the East Cleveland Division of Police consist of the verbal warning, the written reprimand, suspension, demotion and termination. The City may bypass steps at its discretion based upon the seriousness of the offenses and/or appropriateness of the discipline under the circumstances. All steps related to progressive discipline must be documented on prescribed forms.

### **Verbal Warning**

A verbal warning is a documented or undocumented informal notice.

### **Written Reprimand**

A written reprimand is typically the least intrusive step in the progressive discipline system; however, it may be skipped if warranted by the Five Standards of Equity.

### **Suspensions**

Suspensions are serious in nature and occur when an officer/employee fails to respond positively to lesser forms of corrective action, or the nature of the violation is serious enough to justify skipping lower levels of discipline. This means the offense is serious enough that corrective counseling, or a written reprimand would send the wrong message to others or is likely to have little or no affect on the offending officer's/employee's conduct or behavior.

The Chief of Police (in accordance with the Five Standards of Equity) may suspend an employee without pay for any single offense or for multiple offenses arising out of the same incident. The length of the suspension or extensions of such suspensions will be in compliance with any current local, state or federal laws, regulations or agreements that may be in effect at the time of the suspension.

## **DISCIPLINE NOTICE**

Whenever disciplinary action occurs, the officer/employee is informed in writing of the following specific elements:

1. The exact offense violated
2. How the violation affects the East Cleveland Division of Police ability to be an effective, efficient or safe employer.
3. What the officer/employee must do to avoid future disciplinary action.
4. How much time the officer/employee has to demonstrate that the problem has been corrected.
5. What further disciplinary action, possibly including termination, **will** occur if performance does not improve.
6. Additionally, the officer/employee will be notified of any appeal rights that may currently exist and whom to contact to file an appeal.

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## **DISCIPLINE DEACTIVATION**

In the absence of any other specific agreement between the East Cleveland Division of Police and its officers/employees, the following discipline deactivation period is established.

- ▶ Verbal Warnings will be in effect for twelve (12) months.
- ▶ Written Reprimands will be in effect for eighteen (18) months.
- ▶ Suspensions of three days or less will be in effect for twenty-four (24) months.
- ▶ Suspensions for more than three days will be in effect for thirty-six (36) months.

If no further performance problems occur during the active period, the discipline procedure will be formally deactivated at the end of the appropriate time period. The Chief of Police will initiate a memo advising officers/employees of the inactive status of discipline. **Notice: Deactivating a disciplinary record does not invalidate its use when relevant to a termination decision. In termination decisions, the officer's/employee's employment history will be taken into consideration.**

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## **TERMINATION**

All employees are subject to termination for cause. Cause can occur with or without fault on the employee's part. Fault and non-fault terminations include, but are not limited to, situations that involve:

- ▶ Resignations
- ▶ Abandonment of the position

- ▶ Failure to maintain job qualifications or competencies
- ▶ Death
- ▶ Disciplinary reasons

### **Notice of Termination**

If necessary, pending an investigation of performance evaluation, the officer/employee may be placed on paid administrative leave pending the outcome. If the employee should be terminated (with or without fault), the officer/employee will be informed of the following:

- ▶ The reasons for the termination
- ▶ Whether the termination will be classified as a “termination with fault” or a “termination without fault”
- ▶ The effective date of termination
- ▶ Whom to contact regarding status of fringe and retirement benefits if applicable
- ▶ A statement that the content of the officer’s/employee’s record relating the termination will be made available to the employee according to law
- ▶ To whom to appeal

The East Cleveland Division of Police does not intend to illegally discriminate against current employees, potential employees or employee groups on the basis of sex, ethnic background, race, religion, color, age or physical handicap in any disciplinary or termination proceedings.

## **CITY OF EAST CLEVELAND DIVISION OF POLICE**

### **Management’s Expectations of Its Employees**

All employees are expected to give the best work efforts, achieve the standards set for their jobs and to contribute to and improve the quality of services to the community.

Employees are expected to support and affirmatively promote the mission, goals, objectives (written as well as verbal), and other lawful expectations of the department, to affirmatively promote means to actively seek ways to respond to the lawful directives of supervisors and management in a positive manner and to be responsive to the reasonable request of the citizens served.

All decisions concerning an employee’s employment status (for example: selection, retention, compensation, advancement, or training) are to take into consideration the employee’s proven ability to be productive, behave in a socially-acceptable manner, work in a positive and productive manner, and exhibit professional conduct when identified as an employee. Among an employee’s most important work responsibilities is the responsibility to attend work in a regular and predictable manner. Failure to do so is cause for removal with or without fault.

Additionally, employees have the responsibility to know their duties and to perform them efficiently, effectively, safely, correctly, and pleasantly. They are expected to cooperate with management to achieve the legitimate objectives of their positions. To strive to get along with other employees, to treat others with the dignity and respect they deserve as fellow human beings, to maintain a positive work attitude, and to adhere to all organizational directives (verbal and written) as well as customs and practices that are legitimately established.

All employees are expected to adjust to the changes that often occur in their jobs and to advance their knowledge and professional development by keeping abreast of changes in their current jobs as well as new jobs if assigned.

While employees have the right to make their own choices in matters of personal concern, they are expected not to let personal conditions or problems unduly affect their responsibilities to the public, their jobs, their supervisors and their peers.

<b>Issue 4      Article 10      Grievance Procedure</b>
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### **Issue Rationale:**

The Employer proposes to add a new Section 10.10 which limits the ability of either party to introduce new arguments or evidence in arbitration that was not introduced during the earlier steps of the grievance process. Also the proposed provision places limitations on back pay. The Union opposes this new language. Absent from this analysis was the presence of substantial comparable data to support the Employer's proposed changes. Also absent was data to demonstrate that the bargaining unit has had a practice at attempting to introduce new arguments or evidence during arbitration. Moreover, the fact finder, who is also an active arbitrator, is aware of the skeptical view many arbitrators have of new arguments and/or evidence introduced during arbitration and never discussed in the grievance process. Absent unusual circumstances, the party introducing them bears a substantial burden. Finally, language of this restrictive nature, in the experience of this neutral, is not commonly found in public sector contracts in Ohio.

## **Determination:**

The Union's position is recommended to maintain current language which reads as follows:

### **ARTICLE 10 GRIEVANCE PROCEDURE**

**Section 10.1.** Every employee shall have the right to present his grievance in accordance with the Procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and except at Step 1, the employees shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure. It is the intent and purpose of the parties to this agreement that all grievances shall be settled, if possible, at the first step of this Procedure.

**Section 10.2.** For the purposes of this procedure, the terms listed below are defined as follows:

- (a) **Grievance** - A "grievance" shall be defined as a dispute or controversy arising from the misapplication or misrepresentation of the specific express written provisions of this Agreement.
- (b) **Grievant** - The "grievant" shall be defined as any employee, group of employees within the bargaining unit or the FOP.
- (c) **Party in Interest** - A "party in interest" shall be defined as any employee of the Employer named in the grievance who is not the grievant.
- (d) **Days** - A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays or holidays as provided for in this Agreement.

**Section 10.3.** The following procedures shall apply to the administration of all grievances filed under this procedure:

- (a) Except at Step 1, all grievances shall include the name and position of the grievant, the identity of the provisions of this Agreement involved in the grievance; the time and place where the alleged events or conditions giving rise to grievance took place, the identity of the party responsible for causing the said grievance, if known to the grievant; and a general statement of the nature of the grievance and the redress sought by the grievant.
- (b) Except at Step 1, all decisions shall be rendered in writing at each step of the grievance procedure. Each decision shall be transmitted to the grievant and his representative, if any.

- (c) If a grievance affects a group of employees working in different locations, with different principals, or associated with an employer-wide controversy, the grievance may be submitted at Step 3.
- (d) Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Administration and having said matter informally adjusted without the intervention of the FOP, provided that the adjustment is not inconsistent with the terms of this Agreement. In the event that the grievance is adjusted without formal determination, pursuant to this procedure, while such adjustment shall be binding upon the grievant and shall, in all respects, be final, said adjustment shall not create a precedent or ruling binding upon the Employer in the future proceedings.
- (e) The grievant may choose whomever he wishes to represent him at any step of the grievance procedure after Step 1.
- (f) The time limits provided herein will be strictly adhered to and any grievance not filed initially or appealed within the specified time limits will be deemed waived and void. If the Employer fails to reply within the specified time limit, the grievance may be forwarded to the next step under the Procedure. The time limits specified for either party may be extended only by written mutual agreement.
- (g) This procedure shall not be used for the purposes of adding to, subtracting from, or altering in any way, any of the provision of this Agreement.

**Section 10.4.** All grievances shall be administered in accordance with the following steps of the grievance procedure:

- STEP 1:** An employee who believes he may have a grievance shall notify his immediate supervisor of the possible grievance within five (5) days of the occurrence of the facts giving rise to the grievance. The supervisor will schedule an informal meeting with the employee within five (5) days of the notice to attempt informal resolution efforts.
- STEP 2:** If the dispute is resolved informally at Step 1, it shall be reduced to writing by the grievant and presented as a grievance to the Chief within five (5) days of the informal meeting or notification of the supervisors' decision at Step 1 whichever is later, but no later than seven (7) days from the date of the meeting if the supervisor fails to give the employee a definitive answer. The Chief shall supply an answer within five (5) days of the meeting.
- STEP 3:** If the grievant is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Mayor/Safety Director within five (5) days from the date of the rendering

of the decision at Step 2. Copies of the written decisions shall be submitted with the appeal. The Mayor/Safety Director or his designee shall convene a hearing within fifteen (15) days of the receipt of the appeal. The hearing will be held with the grievant, his FOP representative and any other party necessary to provide the information for the rendering of a proper decision. The Mayor/Safety Director or his designee shall issue a written decision to the employee and his FOP representative within fifteen (15) days from the date of hearing. If the Union is not satisfied with the decision at Step 3, it may proceed to arbitration pursuant to the Arbitration Procedure herein contained.

**Section 10.5.** In the event a grievance is unresolved after being processed through all steps of the Grievance Procedure, unless mutually waived, within thirty (30) days after the rendering the decision of Step 3, the Union may submit the grievance to arbitration. Within this thirty (30) day period, the parties will meet to attempt to mutually agree upon an arbitrator. If such agreement is not reached, the parties will promptly request the American Arbitration Association to submit a panel of arbitrators from the National Academy Panel, Northeastern Ohio and will choose one by the alternative strike method. Any party may request a second list of arbitrators. The party requesting a second list of arbitrators shall satisfy the required fee for this service.

**Section 10.6.** The arbitrator shall have no power or authority to add to, subtract from or in any manner, alter the specific terms of this Agreement or to make any award requiring the commission of any act prohibited by law or to make any award that itself is contrary to law or violates any of the terms and conditions of this Agreement.

**Section 10.7.** The hearing or hearings shall be conducted pursuant to the "Rules of Voluntary Arbitration" of the American Arbitration Association.

**Section 10.8.** The fees and expenses of the arbitrator and the cost of the hearing room, if any, will be borne equally by the parties. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any of the attorney fees or expenses incurred by the other party.

**Section 10.9.** An employee requested to appear at the arbitration hearing by either party shall attend without the necessity of notice of subpoena and shall be compensated at his regular hourly rate for all hours during which his attendance is required by either party. Any request made by either party for the attendance of witnesses shall be made in good faith and at no time shall the number of employees in attendance exceed five (5) employees.

## **Article 11 (TA)**

### **ARTICLE 11 LABOR MANAGEMENT AND SAFETY COMMITTEE**

**Section 11.1.** The Labor Management and Safety Committee shall consist of the Mayor, Safety Director of his designee, the Chief of Police or his designee, and two members of the bargaining unit. It is mutually agreed that this committee may meet on a quarterly basis or as mutually agreed, or after a written request from either party for the purpose of:

1. To disseminate general information of interest to the parties.
2. To give the FOP Representatives the opportunity to share the views of their members and/or suggestions on the subjects of interest to their members.
3. To discuss ways to improve efficiency within the Department.
4. To promote harmonious relations between the City and the FOP in the best interest of the community.
5. To discuss safety and health issues of the Department.

**Section 11.2.** Occupational safety and health is a mutual concern of the FOP and the Employer. To FOP will cooperate with the Employer in encouraging employees to comply with applicable safety rules, regulations, and common knowledge safety standards of the law enforcement industry. The Employer agrees to operate and maintain a safe working environment for all bargaining unit members.

**Section 11.3.** The Employer and the FOP shall comply with all applicable Federal and State laws, rules, and regulations with regard to safety.

**Section 11.4.** All bargaining unit members are responsible to report, in writing all unsafe conditions relating to police operations to the Chief of Police. No bargaining unit member shall be subject to any disciplinary action for such reporting.

**Section 11.5.** If the unsafe condition remains uncorrected after five (5) calendar days, it may be subject to the Grievance and Arbitration procedure of this Agreement.

**Section 11.6.** The Employer shall not instruct any bargaining unit member to operate any equipment which anyone in the exercise of ordinary care would reasonably know might cause injury. However, if the Officer in charge at the time concludes that the equipment is not unsafe, the employee shall operate the equipment. Said officer's decision is subject to the Grievance and Arbitration procedure.

**Section 11.7.** The FOP recognizes the right of the Employer to establish and change safety rules. Any new or changed rule(s) will be communicated to the Labor Management and Safety Committee for discussion.

**Section 11.8.** All bargaining unit members of the Labor Management and Safety Committee shall be paid at their regular rate of pay while performing committee duties on a no loss, no gain basis.

<b>Issue 5 Article 12 Communicable Diseases</b>
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### **Issue Rationale:**

The Employer is seeking uniformity of language in a similar fashion that is being sought in Issue 1 above. However, it is seeking to remove this language from the Agreement and to replace it with a comprehensive policy containing, at a minimum, the same language. The undersigned fact finder, when serving as a conciliator involving the patrol officers' bargaining unit dispute, ruled in favor of the Employer in March of 2008. Like Issue 1, the nature of this topic is independent of rank or responsibility. However, the evidence demonstrates that the Employer has yet to implement such a policy, leaving employees with no definitive direction concerning this important matter. The Union is not opposed to converting this language to a policy, but it has conveyed to the fact finder and to the City that it does not want a situation where its bargaining unit employees are not covered by a comprehensive policy.

### **Determination:**

**The City's position is adopted with the following conditions:**

**Current language shall be maintained until a comprehensive policy is officially adopted by the City that contains at a minimum the exact same language that currently exists in Article 12. Before the language is adopted by the City, the Union shall have an opportunity, at least 60 calendar days in advance of its implementation, to review it to determine whether it is in compliance with this recommendation.**

**The current language and recommended condition are as follows:**

## **ARTICLE 12 COMMUNICABLE DISEASES**

**Section 12.1.** Upon written request, bargaining unit members shall be provided with information on all communicable diseases to which he may have routine workplace exposure. Information provided to bargaining unit members shall include the symptoms of diseases, modes of transmission, methods of self-protection, proper workplace procedures, special precautions, and recommendations for immunization where appropriate. The City shall develop, within one hundred eighty (180) days of the execution of this Agreement, a written communicable diseases policy and along with any revisions to said policy disseminate to all bargaining unit members a copy of the policy and all revisions.

**Section 12.2.** The City recognizes that bargaining unit members come in contact with individuals infected with the hepatitis B virus and that the member may be at increased risk for acquiring hepatitis B infection. All bargaining unit members have the right to be vaccinated for hepatitis B. Such vaccinations shall be made available, at no cost to the bargaining unit member, for those members who desire it. The City shall develop, within ninety (90) days of the execution of this Agreement, a written policy and procedure for administering the vaccination program.

**Section 12.3.** If a bargaining unit member sustains a significant exposure to the blood or body fluid of another person being handled or transported, the member may request notification of exposure to a contagious or infectious disease.

The bargaining unit member may submit a written request for notification to the health care facility or coroner who receives the person. The written request must include: the name, *address and telephone number of the member; the name of the member's supervisor and complete name of the employing organization, the date, time, location and manner of exposure.*

The request for notification is valid for ten (10) calendar days, and may be renewed, if necessary, by resubmitting a second complete request. If, at the end of the ten (10) calendar day period of the request, no test has been performed, no diagnosis has been made, or the results of any applicable tests are negative, the facility or coroner must notify the member accordingly.

If a contagious or infectious disease is diagnosed, or confirmed by a positive test result, the facility or coroner must give oral notification to the member within two (2) calendar days of such findings. A written notification must follow the oral notification within three (3) working days. The oral and written notification of positive results or diagnosis must include: the name of the disease, its signs, symptoms and incubation period, the modes of transmission, the medical precautions necessary to prevent transmission to others, appropriate prophylaxis, treatment and counseling for the disease.

If the person has been transferred to another facility, the original receiving facility or coroner must assist the member in securing the requested information from the facility now treating the person.

**Section 12.4.** Any bargaining unit member who believes he may have been exposed to HIV while dealing with another person in the performance of his duties may bring an action in a probate court for an order compelling another person to under HIV testing pursuant to Section 3701.24 of the Ohio Revised Code.

**Section 12.5.** All bargaining unit members must report any suspected job-related exposure to their immediate supervisor. This alleged exposure is then to be recorded on the appropriate report form, developed by the City, and permanently maintained in the bargaining unit member's personnel file according to the procedure as outlined by the City.

**Section 12.6.** If a bargaining unit member has sustained a significant exposure, (puncture wound or splash), to the blood or body fluids of another, a medical workup shall be completed for the member. If, after said workup, it is determined that HIV antibody testing is appropriate for the member by a physician, the following testing guidelines shall be followed:

HIV antibody testing shall be performed at each of the following intervals:

Within seventy-two (72) hours of the incident;

Three (3) months after the incident; and

Six (6) months after the incident.

Testing results shall be strictly confidential. The bargaining unit member shall also be given the option to anonymous testing and may be referred to an Ohio Department of Health Counseling and Testing Site.

**Section 12.7.** In the event that the above tests are performed and the results are positive, the member shall be given the Western Blot Test. The City shall pay all costs for testing of the bargaining unit member. There shall be no releasing of the test results prior to the Western Blot Test to anyone other than the physician and the member.

In the event a positive test occurs in the Western Blot Test, the results shall be kept completely confidential between the physician and the member until such time it is finally determined that the member is actually infected.

**Section 12.8.** In the event of such a final determination, the results shall be kept completely confidential between the physician, the member, and the City.

**Section 12.9.** If, as a result of the above provided physical examination, it is determined that a bargaining unit member is actually afflicted with AIDS, as opposed to just testing positive for AIDS antibodies, the City may:

- a) allow the afflicted member to continue work until he is physically unable to do so;
- or

- b) relieve the afflicted member from duty and put him on injury leave for up to ninety (90) days, and then sick leave, if necessary, pending the approval of his retirement by the Pension System.

**Section 12.10.** The City may grant the member enough additional sick leave to keep the member on full pay status until his retirement is approved.

**Section 12.11.** In any instance where the bargaining unit member is receiving pay pursuant to the above provisions and such pay is not the result of the member utilizing accumulated leave credits, the City will be entitled to an offset against wages paid by other received payments.

**Section 12.12.** All costs associated with any and all AIDS tests administered pursuant to this Article, shall be borne by the City.

**Section 12.13.** The language of this Article shall no longer have any force or effect once the City formally adopts a policy that incorporates the exact language of this provision into said policy, along with other language the City finds appropriate to this subject matter. At least sixty (60) calendar days prior to adoption of said language by the City, the Union shall have an opportunity to review the proposed policy language in order to assure compliance with the conditions contained herein. If the sixty (60) calendar notice requirement is not met the language of this provision shall remain in effect.

## **Article 13 (TA)**

### **ARTICLE 13** **SENIORITY**

**Section 13.1.** For the purpose of this Agreement, seniority shall be defined as total continuous service in the City Police Department. Continuous service shall not be considered broken due to absence caused by military, pregnancy, injury, sick, and other City approved leaves of absence as allowed by this Agreement.

**Section 13.2.** Seniority is established first by rank and second by aggregate time served in rank. Where conflict occurs because of identical service or date of appointment, the member with the highest score on the promotional list from which appointments were made is deemed to be senior. In situations requiring decision or control where the Officers are equal in rank, the senior Officer will make the decision and exercise control unless otherwise directed by a higher supervisory Officer.

**Section 13.3.** For vacation purposes, seniority shall be determined by the bargaining unit member's date of service as listed in Section 13.1.

**Section 13.4.** Where a shift exists and is being run by its assigned supervisor, the assigned supervisor shall be in charge of said shift even if there is a senior officer working on an

overtime basis, unless the senior officer is of higher rank, at which point the senior Officer would assume command of the shift.

**Section 13.5.** The Employer shall post a seniority list once every six (6) months on the FOP bulletin board showing the continuous service of each bargaining unit member. One (1) copy of the seniority list shall be furnished to the FOP president.

<b>Issue 6 Article 14 Layoff and Recall</b>
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### **Issue Rationale:**

The City is proposing to modify current language. The language contained in the new introductory language proposed by the City for Section 14.1 is similar to language negotiated between the parties during the conciliation process (for the patrol officers' bargaining unit) that the undersigned fact finder was chairing several months ago. The Union wishes to maintain current language. With the exception of eliminating Section 14.3 of the current language, the City's arguments are persuasive in that the City in proposing using the same language negotiated by advocates for the parties on behalf of the patrol officers' unit. With the exception of the City's desire to eliminate current Section 14.3, for which it provides no supporting data, the City in proposing a new Section 14.1 is simply attempting to make sure the contract language definitively states that it supersedes the law. The Union's argument to maintain current Section 14.3 is typical of labor contracts because it provides specific conditions and guidance for employees to follow if recalled from layoff.

### **Determination:**

**The following recommendation combines the City's position proposed language with the preservation of current Section 14.3 re-numbered as Section 14.4:**

#### **ARTICLE 14**

#### **LAYOFF AND RECALL**

**Section 14.1.** It is the intent of the parties, through this article to establish an objective procedure by which a reduction in force (Le. layoff or job abolishment)

maybe accompanied should the need arise, and supersede the provisions of ORC 124.321 to 124.328, 124.37, OAC 123: 1-41-01 to 123: 1-41-22 and all local rules and regulations of the City of East Cleveland Civil Service Commission governing work force reductions.

**Section 14.2.** Employees may be laid off as a result of lack of work, lack of funds, or abolishment of position. In the event of a layoff, the Employer shall notify the affected employee thirty (30) calendar days in advance of the effective date of layoff. The Employer agrees to discuss with representatives of the FOP, the impact of the layoff on the bargaining unit member. Any layoff in the bargaining unit shall be in accordance with departmental seniority, i.e. the most recent employee hired is the first employee laid off.

Any employee laid off from the bargaining unit position may, at his option, displace a permanent part-time or intermittent employee in the same classification. Failure to bump or failure to accept a recall to a part-time or intermittent position shall not jeopardize an employee's recall rights to a full-time position.

**Section 14.3.** Employees who are laid off shall be placed on a recall list for a period of three (3) years. If there is a recall, employees who are still on the recall list shall be recalled, in the inverse order of their layoff, provided they are presently qualified to perform the work in the work section to which they are recalled. Any recalled employee requiring additional training to meet the position qualifications in existence at the time of recall must satisfactorily complete the additional training required in this section. Such training shall be at the Employer's expense.

**Section 14.4.** The recalled employee shall have ten (10) calendar days following the date of recall notice to notify the Employer of his intention to return to work and shall have fifteen (15) calendar days following receipt of the recall notice in which to report for duty, unless a different date for return to work has been otherwise agreed upon.,

## **Article 15 (TA)**

### **ARTICLE 15 PERSONNEL FILES**

**Section 15.1.** Bargaining unit members shall have access to their records including training, attendance, and payroll records as well as those records maintained as personnel file records.

**Section 15.2.** Every bargaining unit member shall be allowed to review the contents of his personnel file at all reasonable times upon written request except that any bargaining unit

member involved in a grievance or disciplinary matter shall have access at any reasonable time in order to adequately prepare for such process. Memoranda clarifying and explaining alleged inaccuracies of any document in said file may be added to the file by the bargaining unit member.

**Section 15.3.** All entries of a disciplinary or adverse nature shall be maintained solely in the personnel file which shall be maintained in the office of the Chief of Police. The affected bargaining unit member shall be notified of any such entry and shall be afforded a copy of the entry and an opportunity to attach a dissenting statement. No unfounded complaint shall become part of any bargaining unit member's personnel file.

**Section 15.4.** Records of written warning and reprimands shall cease to have force and effect twelve (12) months from the date of issuance and shall, upon the written request of a bargaining unit member, be removed from the personnel file, provided no intervening discipline has occurred. Any record of discipline of any kind shall cease to have force and effect eighteen (18) months from the date of issuance and shall, upon written request of the employee, be expunged and sealed. However, in any discharge proceeding, the entire contents of the personnel file may be available for use by either the City or the employee.

<b>Issue 7    Article 16    Outside Employment</b>
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### **Issue Rationale:**

The Employer proposes to eliminate this language from the collective bargaining agreement and replace it with a policy. In the spring of 2008, the Employer resisted inclusion of similar language in the patrol officers' bargaining unit during conciliation. The undersigned fact finder, who served as a conciliator in this case, awarded the position of the Employer. However, as of the date of the fact finding hearing in the instant matter, the Union points out that the City has yet to adopt or even develop language in a policy format. The City's arguments for elimination of this provision are persuasive; however, if the City fails to develop policy language that it indicates would mirror the current contract language, the bargaining unit would find itself without adequate protection and guidance regarding the long standing practice of outside employment.

### **Determination:**

**The City's position is adopted with the following conditions:**

**Current language shall be maintained until a comprehensive policy is officially adopted by the City that contains at a minimum the exact same language that currently exists in Article 12. Before the language is**

adopted by the City, the Union shall have at least 60 calendar days advance notice to review it to determine whether it is in compliance with this recommendation.

The current language and recommended conditions are as follows:

**ARTICLE 16**  
**OUTSIDE EMPLOYMENT**

**Section 16.1.** Employees must apply to the Chief of Police and obtain the Chief's written permission prior to engaging in employment outside the Police Department. The granting or denial of such requests shall be governed by the following criteria:

- (a) The outside employment may not be such as it would in any manner adversely affect or interfere with the officer's performance of his duties for the City.
- (b) The outside employment may not create an actual conflict of interest or the appearance of a conflict of interest with the operations of the Police Department.
- (c) The outside employment may not create an appearance of impropriety. In any event, outside employment shall not be considered to create a business relationship between the City and the employee or between the City and the outside employer.
- (d) The outside employment may not be at a place of business where any principal or officer of the business or the business itself has been convicted of or is under investigation for serious criminal conduct.
- (e) When deemed necessary by the Chief of Police, the officer seeking outside employment must provide the City (unless such information is already supplied) with evidence that liability insurance coverage satisfactory to the Employer has been secured which should hold the Employer, City of East Cleveland and their representatives harmless from any actions or inactions arising out of the Officer's outside employment.

Requests must be approved by the Chief of Police prior to the commencement of outside employment. Requests for approval will be acted upon by the employer as soon as is practicable. The City shall have the right to rescind previously granted permission for outside employment upon a change of circumstances and in accordance with the criteria set forth above in this Article. The City shall notify the bargaining unit member of such change.

**Section 16.2.** The language of this Article shall no longer have any force or effect once the City formally adopts a policy that incorporates at a minimum the exact language of this provision into said policy, along with additional language the City finds appropriate to this subject matter. At least 60 calendar days prior to adoption of said language by the

**City, the Union shall have an opportunity to review the proposed policy language in order to assure compliance with the conditions contained herein. If the sixty (60) calendar day notice requirement is not met the language of this provision shall remain in effect.**

**Article 17, 18, 19 (TA)**

**ARTICLE 17  
PROBATIONARY PERIODS**

**Section 17.1.** Every newly promoted employee shall be required to successfully complete a probationary period. The probationary period shall begin on the effective date of the promotion, and shall continue for a period of one (1) calendar year. A probationary employee who has lost work time due to illness or injury shall have his probationary period extended by the length of the illness or injury. A probationary employee may be demoted at any time during his probationary period.

**Section 17.2.** A bargaining unit member who is promoted shall be placed on a promotional probationary period for one (1) year. Should the promoted bargaining unit member fail to satisfactorily complete the promotional probationary period he shall be returned to his original position with no loss of seniority. Said bargaining unit member may challenge the demotion through the Grievance and Arbitration procedure as outlined in this Agreement.

**ARTICLE 18  
DRUG/ALCOHOL TESTING**

**Section 18.1. Policy Statement.** Both the Union and the City recognize illegal drug usage and workplace alcohol abuse/misuse as a threat to the public safety and welfare and to the employees of the Division of Police. Thus, the Division will take the necessary steps, including drug and alcohol testing, to maintain a drug/alcohol free workplace. The goal of this policy is education prevention and rehabilitation rather than termination.

**Section 18.2. Definitions.**

- (a) The term “drug” includes cannabis as well as other controlled substances as defined in the Ohio Revised Code.
- (b) The term “illegal drug usage” includes the use of cannabis or any controlled substance which has not been legally prescribed and/or dispensed, or the abusive use of a legally prescribed drug.

- (c) The term "drug test" means a urinalysis test consisting of an initial screening step and a confirmation step employing the gas chromatography/mass spectrometry (GC/MS) utilizing urine samples collected according to a chain of custody procedures consistent with the United States Department of Transportation ("D.O.T.") regulations.
- (d) The term "Misuse of Alcohol" means the use or possession of ethyl, methyl or isopropyl alcohol in the workplace, or testing positive (as defined in paragraph (e)) for the presence of alcohol in an employee's system while at work.
- (e) The term "Alcohol Test" means a test selected and certified under Federal Standards. An initial positive level of .04 grams per 210L of breath shall be considered positive for purposes of authorizing a confirming alcohol test. If initial screen results are negative, i.e., below the positive level, testing shall be discontinued, all samples destroyed and records of the testing expunged from the members personnel file. Only members with screen test results that are positive on the initial screen shall be subject to confirmation testing for alcohol. With respect to confirmation testing, a positive alcohol level shall be .04 grams per 210L of breath. In confirmatory breath testing results are negative, i.e., below the positive level, all records of the testing shall be expunged from the member's personnel file.
- (f) "Voluntary Participation in a Dependency Program" means in the absence of a positive test result or a request to take a drug/alcohol test, an employee seeks the professional assistance of a treatment program under the Employee Assistance Program and/or covered by the employee's insurance plan.

**Section 18.3. Notice and Education of Employees Regarding Drug/Alcohol Testing.**

There will be an education and information period prior to random testing under this policy for employees, except that prior policies governing the testing of cadets and testing under consent forms shall remain in effect during this period.

All employees will be informed of the Division's drug/alcohol testing policy. Employees will be provided with information concerning the impact of the use of drugs on job performance. In addition, the employer will inform the employees of the manner in which these tests are conducted, the reliability of the tests performed, under what circumstances employees will be subject to testing, what the tests can determine and the consequences of testing positive for illegal drug use and alcohol abuse/misuse. All new employees will be provided with this information when initially hired. No employee shall be randomly tested until this information has been provided.

**Section 18.4. Basis for Ordering an Employee to be Tested for Drug/Alcohol Abuse.**

Employees may be tested for drug/alcohol abuse misuse during working hours under any of the following conditions:

- (a) Where there is reasonable suspicion that the employee to be tested is using or abusing illegal drugs or alcohol while on duty. Such reasonable suspicion must

be based upon objective facts or specific circumstances found to exist which present a reasonable basis to believe that an employee is using alcohol or illegal drugs in violation of this policy. Two examples of where reasonable suspicion shall be deemed to exist are where there has been a serious on-duty injury to an employee, or another person, the cause of which is otherwise unexplained, and where an employee, while driving a city vehicle, becomes involved in a traffic accident which results in physical harm to persons or property. The listing of these examples is not intended to exclude other situations which may give rise to reasonable suspicion of abuse. If reasonable suspicion of drug/alcohol use is suspected, it shall be reported to the Chief. He/she shall determine if drug/alcohol testing is warranted, and if so, shall order that the test be taken.

- (b) For Random Testing. The term "Random Testing" means employees during their normal tour of duty, are subject to Random Drug/Alcohol Testing, effective after the employee education process (as stated above) is completed. The annual number of such random tests shall not exceed twenty-five percent (25%) of the members covered by the contract during a calendar year beginning January 1 (if testing commences later than January 31, the number of tests taken shall not exceed a pro-rated amount of 25% of the members). Such test shall be reasonably spread throughout the year. Member(s) notified of their selection for random/drug alcohol testing shall proceed immediately to the collection site. A member who is on a regularly scheduled day off, vacation, already absent due to illness or injury, on Compensatory Time Off (approved before the member was scheduled for testing) or under subpoena from a Court, shall be excused from testing, but will remain subject to future random testing.
- (c) Upon return to duty after an absence for an unexplained illness or from a thirty (30) day or more disciplinary suspension, or upon reappointment to the Division.
- (d) Prior to a return to duty after participation in a substance abuse rehabilitation program regardless of the duration of the program, and following an employee's return under these circumstances wherein the employee shall be required to undergo three (3) urine tests within the one-year period starting with the date of return to duty.
- (e) During the six (6) month probationary period after leaving the Training Academy.

Prior to obtaining a drug/alcohol test from an employee as set forth in sections (a) through (e) above, the City shall instruct the employee that the results of the drug/alcohol test can result in termination from employment, subject to the conditions set forth below.

**Section 18.5. Urine Samples.** Specimen collection will occur in a medical setting and conform to D.O.T. regulations. The procedures should not demean, embarrass, or cause physical discomfort to the employee.

- A. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence.
- B. The employee will complete a form indicating the use of all drugs currently being taken and identify the prescribing physician.
- C. The employee designated to give a sample must be positively identified prior to any sample being taken.
- D. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure that the results match the employees tested. Samples shall be stored in a secure and refrigerated atmosphere until tested or delivered to the testing lab.
- E. Upon request, an employee shall be entitled to the presence of a union representative before testing is administered unless honoring the request will result in a delay of the testing process.

**Section 18.6. Testing Procedure.** The Laboratory selected by the City to conduct the analysis must be experienced and capable of quality control, documentation, chain of custody, technical expertise, and demonstrated proficiency in urinalysis testing. The testing or processing phase shall consist of a two-step procedure.

- (i) Initial screening step, and
- (ii) Confirmation step.

The urine sample is first tested using a screening procedure. (EMIT or an equivalent test). For a specimen testing positive, a confirmatory test employing the gas chromatography/mass spectrometry (GC/MS) test (or an equivalent test) will be used. An initial positive report will not be considered positive, rather it will be classified as confirmation pending. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than one (1) year. Any sample which has been adulterated or is shown to be a substance other than urine shall be reported as such. All test results shall be evaluated by suitable trained medical or scientific personnel prior to being reported. All unconfirmed positive test records shall be destroyed by the laboratory. Test results shall be treated with the same confidentiality as other employee medical records. Test results used as evidence for disciplinary action shall also be entitled to the same confidentiality. An employee who tests positive for drugs and or alcohol will be given the opportunity to review the tests and, if desired, a reasonable opportunity to rebut the results.

Where urine samples have been taken, the two (2) samples will be preserved for a reasonable period of time and tested employees will have the opportunity to take one of these samples to a reputable physician or laboratory of their choosing for retesting.

**Section 18.7. Disciplinary Action.**

- (a) **Drugs.** Employees who as a result of being drug tested are found to be using illegal drugs shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program supervised by the Medical Director and members of the Employees Assistance Unit.

An employee who agrees to participate and satisfies the obligations of this treatment program will be subject to discipline up to a three (3) day suspension (but is also subject to additional discipline for other rules violations). Any employee testing positive for illegal for a second time shall be subject to termination.

Employees who are found to be abusing drug(s) which have been legally prescribed shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program. Any employee found for a second time to be abusing drugs which have been legally prescribed shall be subject to dismissal.

- (b) **Alcohol.** An employee who tests positive for alcohol shall be subject to dismissal unless the employee agrees to participate in and satisfies the obligations of an approved treatment program supervised by the Medical Director and members of the Employees Assistance Unit.

An employee who agrees to participate and satisfies the obligations of this treatment program will be subject to discipline up to a three (3) day suspension (but is also subject to additional discipline for other rules violations). Any employee testing positive for alcohol for a second time shall be subject to termination.

- (c) Refusal to submit to a drug/alcohol test, or adulteration of, or switching a sample shall also be grounds for dismissal.

**Section 18.8. Right to Appeal.** An employee disciplined as a result of a drug test has the right to challenge such discipline beginning at Step 4 of the grievance procedure.

**Section 18.9. Voluntary Participation in a Dependency Program.** Employees who may be drug/alcohol dependent are encouraged to voluntarily seek professional assistance through an approved treatment program, the Employee Assistance Program and/or a program covered by the employee's health insurance plan. Voluntary assistance should be sought BEFORE the drug abuse affects job performance or endangers fellow employees or members of the public.

Participation in a dependency program is voluntary and strictly confidential. Neither the City administration, the Division of Police nor any unit or entity within shall have access to the

program's files and records. However, the Chief of Police or his designee shall be advised when an employee is hospitalized or is an out patient as part of drug dependency rehabilitation. Also, upon written request of the participating employee, efforts at rehabilitation will be divulged on his/her behalf in cases of disciplinary action.

**Section 18.11.** Illegal drug use or alcohol misuse or participation in any substance abuse dependency or rehabilitation program will not preclude disciplinary action against employees for any law or rule violation even though such law or rule violation may have been connected in part with drug/alcohol abuse, and/or even if the rehabilitation program is voluntarily undertaken.

## **ARTICLE 19** **OVERTIME COMPENSATION**

**Section 19.1.** Overtime shall be defined as any work in excess of eighty (80) hours in any fourteen (14) day work period. For purposes of computing overtime, vacation days, SWAT Team pay, the twelve (12) regular holidays, and compensatory time off plus any of the three (3) festive days shall be counted as hours worked.

**Section 19.2.** Scheduled overtime shall be offered first, on a rotation basis, to the full-time members of the classified service. In the event that no full-time member of that classification agrees to work the scheduled overtime, the opportunity for overtime may be filled by other employees.

**Section 19.3. Call-In Time.** An employee in an off duty status who is ordered to report for work and actually reports for duty shall be paid a minimum of two (2) hours or the actual time worked, whichever time frame is greater.

**Section 19.4. Court Time.** An employee in an off duty status who must appear in Court in reference to his official duties shall be paid a minimum of two (2) hours or the actual time spent, whichever is greater.

**Section 19.5.** All employees when performing overtime work will be entitled to receive pay at the rate of one and one-half times their regular hourly rate figured to include longevity and education differential for all hours actually worked in excess of eighty (80) hours in any fourteen (14) day work period according to the Fair Labor Standards Act.

**Section 19.6.** The employee may take compensatory time (at the overtime rate) in lieu of overtime pay at the employee's option.

**Section 19.7.** Employees with twelve (12) years or more seniority shall be afforded the ability to receive a cash payment or cash out of up to Twenty percent (20%) of the employee's accrued compensatory time. Employees with less than Twelve (12) years shall be afforded the ability to receive a cash payment or cash out of up to fifteen percent (15%). Such request will only be considered on an annual basis and must be submitted in writing to the Office of the Chief of Police by January 31st of each calendar year with disbursement by April 30<sup>th</sup>.

**Section 19.8** The regular, standard two-week work period shall be eighty (80) hours, scheduled in increments not less than eight (8) hours per day or more than twelve (12) hours per day. The City has the unilateral right to establish the length of shifts within the above parameters.

<b>Issue 8      Article 20      Sick Leave</b>
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### **Issue Rationale:**

The parties have tentatively agreed upon all sections of this provision with the exception of Sections 20.8 and 20.9. In those sections the Union is seeking to allow an employee to cash out sick leave for separation from employment in addition to retirement, and to increase the amounts of sick leave that can be cashed out by changing the formula and raising the payout cap. The Employer is proposing current language citing its fiscal condition. While it is common to find negotiated provisions that provide for retirement, sick leave conversion for separation from employment is not nearly as commonplace. In addition, the one-fourth formula for conversion is more frequently found in Ohio labor agreements. However, caps vary greatly among employers and they are sometimes modified to reward employees who have for many years of service with minimal time off for sick leave. The facts indicate that the Chief of Police has set an example for the bargaining unit of being an employee who has maintained an exemplary attendance record and has accumulated considerable sick leave during his career.

### **Determination:**

#### **ARTICLE 20** **SICK LEAVE**

**Section 20.1.** Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee or to a member of the employee's immediate family; and/or 2) exposure by the employee to a contagious disease that may be communicable to other employees.

**Section 20.2.** All full time employees shall earn sick leave at the rate of four and six-tenths (4.6) hours for every eighty (80) hours worked, excluding overtime and may accumulate such sick leave hours to an unlimited amount.

**Section 20.3.** An employee who is to be absent on sick leave shall notify the supervisor of such absence and the reason therefore at least one hour before the start of his work shift each day an absence occurs.

**Section 20.4.** Before an absence may be charged against accumulated sick leave, the Department Head may require such proof of illness, injury, or death as may be satisfactory to him, or may require the employee to be examined by a physician designated by the Department Head and paid by the Employer. In any event, an employee absent for more than three (3) consecutive days must supply a physician's report to be eligible for paid sick leave.

**Section 20.5.** If the employee fails to submit adequate proof of illness, injury, or in the event that such proof as is submitted or upon the report of medical examination, the Department Head finds there is not satisfactory evidence of illness, and/or injury sufficient to justify the employee's absence, such leave may be considered an unauthorized unpaid leave.

**Section 20.6.** Any abuse of sick leave or any pattern of sick leave use shall be just and sufficient cause for discipline as may be determined by the Chief of Police.

**Section 20.7.** The Chief of Police may require an employee who has been absent due to personal illness or injury, prior to return to duty, to be examined by a physician designated and paid by the City.

**Section 20.8.** Upon the retirement of Police and Fire Disability Pension Fund of a full time employee who has at least fifteen (15) years of continuous service with the Employer, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-fourth (1/4) the total number of accumulated and unused sick leave hours earned by the employee as certified by the City Finance Director, providing that such remaining number of hours to be paid shall not exceed two hundred forty (240) hours. **In addition to the above benefit, an employee who has at least 25 years of continuous service with the City and who has at least 2000 hours of accumulated sick leave upon retirement (as certified by the City Finance Director) shall receive an additional pay bonus of 120 hours .** Under no circumstances shall the City be required to pay accrued sick leave to any employee who has otherwise resigned or is removed from employment.

**Section 20.9.** In the case of death of an employee while on the City payroll, if the employee had at least fifteen (15) years of continuous service with the City, accumulated sick leave multiplied by one-fourth (1/4) and not exceeding two hundred forty (240) hours, shall be paid to his personal representative designated by the employee.

**Section 20.10.** An employee eligible for cash payment pursuant to Section 20.8 above may, at his option, elect to take an early retirement with the monetary value of such cash payment being applied towards said early retirement.

**Section 20.11. Sick Leave Bonus.** Each employee shall be granted time off with pay for not using sick leave time according to the following schedule:

- (a) Three (3) bonus days if no sick days are used in the preceding calendar year;

- (b) Two (2) bonus days if only one (1) day is used in the preceding calendar year;
- (c) One (1) bonus day if only two (2) sick days are used in the preceding calendar year;
- (d) No bonus days if more than two (2) sick days are used in the preceding calendar year.

**Article 21, 22, 23, 24 (TA)**

**ARTICLE 21**  
**ON-DUTY INJURY LEAVE**

**Section 21.1.** Line of duty **injury** is intended to recognize the unusual exposure to dangerous situations experienced by employees of the Police Department. If an employee of the Police Department suffers a serious injury as defined in Section 21.2 below as a result of a duty-related accident, he shall be eligible to be considered for a line-of-duty injury leave as follows:

- (a) The injured employee shall make written application for line-of-duty leave on forms to be provided by the Chief;
- (b) The application shall be reviewed by the Chief and the Mayor;
- (c) The employee shall be charged sick leave for the first three (3) work days which he misses due to the accident. Beginning with the fourth week day and continuing for a maximum of one hundred twenty (120) calendar days from the date of the accident, the employee shall be paid his regular salary during the period of line-of-duty injury leave; notwithstanding this limitation, the City reserves the sole right to extend such injury leave on a case by case basis; and
- (d) This leave shall terminate no later than one hundred twenty (120) calendar days after the beginning of the leave or at such earlier time as follows:
  - (1) On the date workers compensation benefits is established pursuant to the Ohio law; or
  - (2) When the employee is able to return to work as evidenced by a doctor's certificate.

**Section 21.2.** For the purposes of this Article, the term "injury" shall include but is not limited to gunshot wounds, stabbings and other acts or conduct by a third party which causes personal physical injury resulting in extended hospitalization and/or recuperative periods.

**Section 21.3.** The Employer shall have the right at any time during the process to request medical verification of the employee's injury from his doctor. In addition, the Employer shall have the right, at its expense, to send the employee to a doctor of its own choosing for medical verification.

**Section 21.4.** In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief. The approval of the Chief shall not be unreasonably withheld.

**Section 21.5.** Accrual of seniority shall be frozen after a leave of absence exceeding one (1) calendar year, and paid time off will not accrue.

**Section 21.6.** Any full-time employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties will be temporarily assigned light duty. Said assignment will be approved by the City Physician and in accordance with the applicable collective bargaining agreement. Light duty should be defined as restricted administrative work (i.e., dispatch, desk duties), and those not associated with physical contact of an inmate or within the medical restrictions associated with the injury or illness.

## **ARTICLE 22**

### **LEAVES OF ABSENCE**

#### **Section 22.1. Funeral Leave.**

- A. If a death occurs among members of the employee's immediate family (spouse, son, daughter), such employee member shall be granted up to ten (10) days funeral leave, consecutive and contiguous to the death without loss of pay, benefits, days off, holidays, or vacation time, provided that such leave may be extended, within the discretion of the Chief of Police, based on individual circumstances.
- B. If a death occurs among members of the employee's family (brother, sister, mother, father, stepparents), such employee member shall be granted five (5) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays, or vacation time, provided that such leave may be extended, within the discretion of the Chief of Police, based on individual circumstances.
- C. If a death occurs among members of the employee's relatives, such employee member shall be granted three (3) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays or vacation time.
- D. A relative is defined as brother-in-law, sister-in-law, father-in-law, or mother-in-law.

- E. If a death occurs to a grandfather, grandmother, grandfather-in-law, grandmother-in-law, such employee member shall be granted two (2) days funeral leave, consecutive and contiguous to the death, without loss of pay, benefits, days off, holidays or vacation time.

**Section 22.2. Petit Jury Duty/Witness Duty Leave.** Employee members, while serving upon a jury in any court of record, shall be paid at his/her regular salary rate for each of his/her work days during the period of time so served. Time so served shall be deemed active and continuous service for all purposes.

**Section 22.3. Military Leave.** Employees shall be granted a leave of absence for military duty in accordance with State and Federal laws and local ordinances.

**Section 22.4.** Accrual of seniority shall be frozen after a leave of absence exceeding one (1) calendar year, and paid time off will not accrue.

## **ARTICLE 23** **VACATIONS**

**Section 23.1.** All bargaining unit members shall be granted their appropriate vacation leave yearly, with full pay, based upon their length of service with the City of East Cleveland and subject to the terms of this Agreement. Seniority shall govern the scheduling of vacations.

### **Section 23.2.**

- A. Vacation time shall be earned in one (1) calendar year and taken in the subsequent calendar year according to the following schedule:

Beginning after 1 year of service	2 weeks vacation
Beginning after 4 years of service	3 weeks vacation
Beginning after 10 years of service	4 weeks vacation
Beginning after 15 years of service	5 weeks vacation
Beginning after 20 years of service	6 weeks vacation

- B. A vacation week shall be five (5) consecutive days off.
- C. All vacation time shall be paid at the employee's regular rate of pay in effect at the time the vacation is taken.
- D. Bargaining unit members may take vacation leave to which they are entitled beginning with the first full pay period following the date they complete the required years of service and may be taken at any time during the year with the approval of the Chief of Police and/or Mayor.

- E. Vacation scheduling shall be on an equitable basis consistent with the operation requirements of the East Cleveland Police Department and subject to the approval of the Chief of Police.
- F. Once a bargaining unit member has made a vacation selection and is thereafter subject to a modification of work schedule which affects the employee's regular days off, said employee may, at his option, select another vacation period from among those vacation periods remaining and consistent with Section 23.3.
- G. If, due to scheduling, an employee's vacation can not be taken in the year earned and is accumulated and taken in the next subsequent year, the rate of vacation pay shall be at the employee's rate of pay in effect during the year taken. All bargaining unit members whose anniversary date falls prior to May 1, shall be eligible for the next vacation increment. Employees may accumulate and carry over from year to year all accrued and unused vacation time.
- H. A bargaining unit member who is injured in the line of duty, and as a result of said injury is placed on sick leave during any scheduled vacation period, said employee shall be credited with those vacation days so affected, and upon return to full time duty be permitted to reselect his vacation days in accordance with the terms of this Agreement.

**Section 23.3.** Any unused accumulated vacation time, as noted in Section 23.2 herein, prorated to the date of separation shall be paid at the time of such separation to any employee who leaves the department for any reason or is laid off. Unused accumulated vacation time will be paid to the surviving spouse or estate of the member who dies, prorated to the date of his death.

**Section 23.4.** Unused vacation time accumulated prior to the effective date of this Agreement shall be retained and utilized at such time and in such amounts as provided in this Agreement.

## **ARTICLE 24**

### **HOLIDAYS/PERSONAL DAYS**

**Section 24.1.** All bargaining unit members shall receive the following paid holidays:

New Year's Day	Independence Day
Martin Luther King Jr., Day	Labor Day
President's Day	Veteran's Day
Good Friday	Thanksgiving Day
Easter Day	Christmas Day
Memorial Day	Convenience Day

**Section 24.2.** If a bargaining unit member must work a holiday, the City agrees to allow the employee to take the holiday off at a later date. When an employee is scheduled to work one, two, or three of the following festive holidays and actually does so work:

Christmas, New Year's Day, Easter, Labor Day, and Thanksgiving, such members shall be entitled to one (1) bonus day off for each such festive day worked to a maximum of three (3) such bonus days off to be scheduled at a later date with the approval of the Chief of Police based upon sufficient manpower, said approval shall not be unreasonably denied. Bonus day(s) off at a later date will be scheduled with the approval of the Chief of Police and are granted on a one to one ratio to festive days worked.

**Section 24.3.** If a regular holiday shall fall during a vacation, the member shall take the holiday at a later date subject to the written approval of the Chief of Police based upon sufficient manpower, but said approval shall not be unreasonably denied.

**Section 24.4.** When a holiday falls on an employee's regularly scheduled day off, he shall be entitled to another day off at a later date. Said work day off shall be scheduled at the member's request and with the approval of the Chief of Police based on sufficient manpower, but said approval shall not be unreasonably denied.

**Section 24.5.** If holidays are not taken in the year earned, due to scheduling, these holidays may be accumulated and taken off in any subsequent calendar year at the rate of pay in effect at the time the holiday is taken.

**Section 24.6. Personal Days.** Each bargaining unit member shall receive five (5) personal days off. These days are to be used in addition to holidays or festive days off, provided notification is given and approval of the days off received in advance from the Chief of Police based on sufficient manpower, but said approval shall not be unreasonably denied. Personal days can be carried over to the subsequent calendar year.

<b>Issue 9 Article 25 Clothing Maintenance</b>
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### **Issue Rationale:**

Once again, the Employer is proposing language that mirrors what it obtained in negotiations with the patrol officers' bargaining unit, a clothing reimbursement system. The Union is proposing an increase in the clothing and shoe allowance, from \$625 to \$850 and \$200 to \$350 respectively. The Union also argues that the Employer has not set up a receipt system, even though the patrol bargaining unit has changed over to this system several months ago. The parties have tentatively agreed to Sections 25.4 and 25.5 of this article, but Sections 25.1, 25.2, 25.3 and 25.6 remain open. The internal comparable of the

patrol officers' bargaining unit, coupled with the practical aspects of a common uniform reimbursement process that is independent of rank or responsibilities, favor the Employer's position regarding this issue. However, the Union's point in communicating a process for reimbursement to employees is simply good managerial practice.

## **Determination:**

**For calendar year 2008 the following current language regarding clothing maintenance shall remain in place as follows:**

### **ARTICLE 25 CLOTHING MAINTENANCE**

**Section 25.1. Clothing.** Each bargaining unit member shall receive a clothing maintenance allowance equal to six-hundred twenty-five dollars (\$625.00) per year. Said allowance shall be payable to the City in equal installments of three hundred twelve dollars and fifty cents (\$312.50) on the first payday in June and December of each year of this Agreement in a separate check.

**Section 25.2. Shoe Allowance.** Each bargaining unit member shall receive two hundred (\$200.00) per year for the purchase of shoes. Said allowance shall be payable by the City in equal installments of one hundred dollars (\$100.00) on the first payday in June and December of each year of this Agreement in a separate check.

**Section 25.3. Service Weapon.** Each bargaining unit member shall receive two hundred dollars (\$200.00) for the maintenance of his off duty service weapon to be paid annually on the first payday in December in a separate check.

Upon retirement of the bargaining unit member, the City agrees to sell the employee his on-duty service weapon at the cost of one dollar (\$1.00), provided the officer is in good standing.

**Section 25.4. Leather Goods.** All bargaining unit members shall be furnished such on-duty leather goods as may be determined by the Chief of Police at the City's expense.

**Section 25.5. Bullet Proof Vests.** All bargaining unit members will be provided with a bullet proof vest, as may be required, at the cost of the City. A member's bullet proof vest will be replaced by the City every 5 years or at the appropriate recommendation of the manufacturer.

**Section 25.6. Detective Clothing Allowance.** Upon an employee's initial appointment to the rank or position of Detective, such individual, in the year of appointment, shall receive a one-time additional clothing allowance of three hundred fifty dollars (\$350.00). In addition,

each member in the Detective Unit shall receive a maintenance allowance of two hundred dollars (\$200.00) per year for upkeep and replacement of clothing.

**Effective January 1, 2009 the new Article regarding clothing maintenance shall be as follows:**

## **ARTICLE 25**

### **CLOTHING MAINTENANCE**

**Section 25.1. Allowance.** Each bargaining unit member shall be reimbursed for up to \$1,025.00 per year for clothing (new uniforms, cleaning, replacement and repair), for new shoes, and for cleaning supplies and equipment required to maintain his service weapon.

**Section 25.2. Payment of Reimbursement.** Members shall submit receipts for all items for which reimbursement is sought. Receipts submitted more than thirty (30) days prior to commencement of a calendar quarter shall be paid by the City in the first ten (10) days of the next calendar quarter.

**Section 25.3. Leather Goods.** All bargaining unit members shall be furnished such on-duty leather goods as may be determined by the Chief of Police at the City's expense.

**Section 25.4. Bullet Proof Vests.** All bargaining unit members will be provided with a bullet proof vest, as may be required, at the cost of the City. A member's bullet proof vest will be replaced by the City every 5 years or at the appropriate recommendation of the manufacturer.

### **Issue Rationale:**

The Union is proposing an increase in the rank differential to 14% for lieutenants and captains. Currently the rank differential is 14% for sergeants and 12.5% for lieutenants and captains. There is little question that bargaining unit wages are well below average in comparison to like jurisdictions. However, in applying the statutory criteria it is also clear that the City's long standing seriously difficult financial condition, particularly during these precarious financial times, does not make differential improvements a practical consideration at this time. The Union also raised the issue of why the City has not applied the current differentials based upon the raises provided to the patrol officers' bargaining unit. The City's rationale is not a subject of this proceeding; however, the determination listed below is intended to make retroactive the first year's implementation of the current rank differential.

### **Determination:**

**The position of the City is recommended, however, the current rank differential shall be applied retroactively to the first day of the collective bargaining agreement, January 1, 2008 and all applicable benefits (e.g. overtime, pension, etc.) attached thereto shall be made retroactive to that date. The language is as follows:**

#### **ARTICLE 26**

#### **WAGE COMPENSATION**

**Section 26.1.** There shall be established differentials between the base salaries of bargaining unit members in all ranks and the base salary of the highest paid subordinate non-bargaining unit member. For the purpose of this Article, the base salary of the subordinate non-bargaining unit member shall include the following:

- A. The base salary as defined by the patrolman's Collective Bargaining Agreement;
- B. Any other benefits or compensation granted to the patrolmen's unit (whether or not they appear in the patrolmen's Collective Bargaining Agreement) that are considered taxable income to a patrolman.

Irrespective of rank differential referred herein, the wages of members shall be as follows:

TABLE I:

<u>RANK</u> <u>2006</u>	<u>ANNUAL</u> <u>SALARY</u>	<u>BI-WEEKL Y</u> <u>SALARY</u>	<u>HOURLY</u> <u>SALARY</u>
Patrolman 1 <sup>st</sup> Grade			
Sergeant +14.0%	\$47,880.00	\$1,841.54	\$23.0192
Detective Sergeant	\$49,023.76	\$1,885.53	\$23.5691
Lieutenant +12.5%	\$53,865.00	\$2,071.73	\$25.8966
Lieutenant (CMDR)	\$55,365.00	\$2,129.42	\$26.6177
Detective Lieutenant	\$55,151.73	\$2,121.22	\$26.5153
Detective (LT. CMDR.)	\$56,651.73	\$2,178.91	\$27.2364
Captain +12.5%	\$60,598.13	\$2,330.70	\$29.1338

**Section 26.2.** The percentage differential of the base compensation between the ranks of first-grade patrol officer and the rank of Sergeant shall remain at least 14%; Sergeant to Lieutenant 12.50%; Lieutenant to Captain 12.50%, for the life of this Agreement.

**Section 26.3. Status Compensation.** Bargaining unit members in the following categories and assignments shall receive additional compensation of One Thousand Five Hundred Dollars (\$1,500.00) per each year of this Agreement (to be paid over the year):  
Division Commanders

**Section 26.4.** Bargaining unit members serving and assigned as S.W.A.T. team members shall receive additional compensation of Three Thousand Dollars (\$3,000.00) payable in twenty- six (26) bi-weekly payroll installments.

**Issue Rationale:**

The Union insists that Section 27.2 should remain as an additional payment for those who qualify for shooting proficiency. The City argues Section 27.2 was a onetime payment it negotiated with the Union for the current collective bargaining agreement. From the language of the current agreement and testimony by the City, it appears clear that the intent of Section 27.2 was limited to a one time bonus for the year 2006 and was paid no later than April 30, 2007. There is no factual basis for its continuance.

**Determination:**

**The City's position is recommended as follows:**

**ARTICLE 27  
SHOOTING AND/OR TRAINING TIME**

**Section 27.1.** Employees who are required to attend shooting practice or designated training time when off duty shall receive a minimum of two (2) hours, or the actual time spent, whichever is greater, at the normal overtime rate. Such compensation shall be received in compensatory time only.

**Article 28, 29(TA)**

**ARTICLE 28  
LONGEVITY**

**Section 28.1.** Each bargaining unit member shall receive annually, in addition to salary or other compensation that may be; provided by this Agreement or any other ordinance, additional compensation based on the number of continuous full years of service, including interim military service and prorated part time service according to the following schedule:

1 through 4 years of service	\$ 0
5 through 9 years of service	\$ 675.00
10 through 13 years of service	\$1,225.00
14 through 19 years of service	\$1,375.00
20 years or more of service	\$1,575.00

**Section 28.2.** Longevity shall be added to the employee's base compensation and shall be payable in twenty-six (26) bi-weekly payments. Under no circumstances shall previously accumulated longevity time of an employee who resigned or terminated his employment with the City be placed to his or her credit upon re-employment.

**ARTICLE 29**  
**STAND-BY/ON-CALL STATUS**

**Section 29.1.** A bargaining unit member shall receive two (2) hours pay at his regular straight-time hourly rate if required to be on stand-by duty by the City. The City shall allow a reasonable time in which to reach members on stand-by. This pay shall be paid in addition to any hours that an employee is required to work on that day.

- A. For purposes of this Article, the terms "stand-by" and "on-call status" shall be synonymous.
- B. In the event it is necessary to place a bargaining unit member on stand-by, the stand-by assignment shall be offered in order of seniority to all off duty members. The decision to place a member on stand-by shall be made by a superior officer.
- C. In the event no member voluntarily accepts the offer, the stand-by assignment shall be assigned to the least senior off duty member available.
- D. Bargaining unit members on stand-by shall be, and remain immediately accessible for telephone contact and ready and able to report for work within one (1) hour of said telephone contact.
- E. A "stand-by" or "on-call" overtime form shall be completed by the Officer who notified the member of their stand-by assignment, noting the time and date of same. The member shall sign the form, if he is available.
- F. Stand-by assignments shall not exceed eight (8) continuous hours within a twenty-four (24) hour period, beginning with the start of the stand-by assignment.

**Section 29.2.** Detectives/Weekend On-Call Status - Members of the bargaining unit who are assigned to the Detective Bureau unit shall receive four (4) hours of compensatory time for regularly scheduled days off or each weekend period spent in on-call status. A weekend period shall be defined as beginning at 2300 hrs. on Friday and ending at 0700 hrs. on Monday.

**Section 29.3.** S.W.A.T. Week On--Call Status. Compensatory time for S.W.A.T. unit members shall be compensated in accordance with the provisions of Section 26.4 of the Agreement.

<b>Issue 12 Article 30 Health and Life Insurance</b>
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### **Issue Rationale:**

The parties agreed to several of the provisions contained in Article 30. The Union in its position statement proposed clarifying language contained in Section 30.1 that reasonably appears to do what the Union purports it to do and does not appear to represent a substantive change. In Article 30.4 the City is proposing to increase the employee premium charge from its current amounts. The facts demonstrate that in other collective bargaining agreements recently negotiated by the City with other Unions (e.g. SEIU, FOP patrol officers' unit) the City did not seek an increase in these rates. Once again, internal comparables are persuasive, particularly when one of the recently concluded negotiations was with the same bargaining agent.

### **Determination:**

**The Union's position is recommended as follows:**

#### **ARTICLE 30** **HEALTH AND LIFE INSURANCE**

**Section 30.1.** Each bargaining unit employee shall be provided medical, hospitalization and prescription insurance coverage and benefits in accordance with two (2) plans. Each bargaining unit employee shall have the option of enrolling in one of the plans being offered. Enrollment for 2007 shall take place in December of 2006 each enrollment year and be effective January 1, 2007 of the following year. The coverages and benefits afforded under each of the plans shall not be changed during the term of the contract. If it is impossible for the City to purchase a plan identical to the plans identified herein for reason that an identical plan is not offered, the City shall purchase an available plan that is most comparable to providing the coverages and benefits of the plan that it replaces. The City shall not be limited by insurance carrier in meeting its responsibilities under this article. Cost shall not be deemed a reason for the unavailability of a plan. Bargaining unit members shall be given 30 days notice of any enrollment period different from the one set forth herein.

**Section 30.2.** Employees shall contribute 6% of the premium amount for the plan in which they choose to enroll. The employee premium contribution identified herein shall not be increased during the term of this one year contract.

**Section 30.3.** Bargaining unit employees shall have their monthly premium amount deducted over two (2) paychecks per month.

**Section 30.4.** Each full-time employee eligible and desiring participation in the City's dental service coverage shall be required to contribute, toward the premium charge, the following: as to single person coverage the sum of Fifteen Dollars (\$15.00) per month and as to family coverage the sum of Forty-Two Dollars (\$42.00) per month.

**Section 30.5.** Bargaining unit employees shall have the option of designating their premium contributions and any additional amounts "pre-tax" in accordance with a "Section 125" cafeteria plan, which the City shall implement by May 1, 2004 and which all bargaining unit employees shall be eligible to participate in.

**Section 30.6.** The City at no cost to the employee shall provide a Life Insurance policy for the employees of the FOP in the amount of Fifty Thousand Dollars (\$50,000.00) to be effective starting January 1, 2005.

## **Article 31, 32 (TA)**

### **ARTICLE 31 LIABILITY COVERAGE**

**Section 31.1.** The City shall indemnify the bargaining unit member and hold him harmless for all acts or decisions carried out in good faith while performing services or official duties for the City. In this regard, the City shall provide legal representation to defend the member against any lawsuit and shall also pay all expenses and the cost of court settlements including those actually and necessarily incurred and authorized by the City's Director of Law in connection with the defense of such act, suit or proceeding including any appeal. No indemnification shall be made in respect to any claim, issue or matter as to which such person is adjudged to be liable in a court of competent jurisdiction for misconduct in the performance of his duty to the City.

**ARTICLE 32**  
**EDUCATIONAL BENEFITS**

**Section 32.1.** The City agrees to the following additional compensation scale, after three (3) years of service for bargaining unit members who either have or received at a later date, educational degrees, provided the member has completed three years of service within the Department:

Bachelor's Degree	five percent (5 %) of base pay; and
Associate's Degree	four percent (4 %) of base pay.

Payment is made annually in a separate check in the first pay in December of each year of this Agreement.

<b>Issue 13 Article 33 Miscellaneous</b>
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**Issue Rationale:**

With the exception of Section 33.3, the parties reached tentative agreement on this provision. Section 33.3 is currently the subject of litigation stemming from the conciliation award issued several months ago involving a similar provision proposed by the same bargaining agent for the patrol officers bargaining unit. In an effort to avoid delaying implementation of the entire agreement over a single matter of litigation, it appears reasonable to make a recommendation conditioned upon the conclusion of litigation in this matter.

**Determination:**

**ARTICLE 33**  
**MISCELLANEOUS**

**Section 33.1. Bulletin Board** - The City shall provide the union with a bulletin board, provided that:

1. Such bulletin board shall be used for posting notices bearing the written approval of the Union associate or an official representative of the FOP, and shall be solely for union business; and
2. No notice or other writing may contain anything political, controversial or critical of the City or any other institution or of any employee or other person; and

3. Upon request from an appropriate official of the City the Union will immediately remove any notice or other writing that the City believes violates sub-paragraphs (1) and (2), but the Union shall have the right to grieve such action through the grievance procedure

**Section 33.2.** Ballot Boxes - The FOP shall be permitted to place ballot boxes at the facilities for the purpose of collecting members' ballots on approval or disapproval of Union issues and the election of Officers and delegates of the Union

**Section 33.3.** No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland. **The parties understand that this provision is currently the subject of litigation between the parties and maybe found to have no further force or effect by a court of competent jurisdiction in accordance with Article 2.4 of the collective bargaining agreement. If so, this provision will then be subject negotiations as provided for in Article 2.4.**

## **Article 34, 35 (TA)**

### **ARTICLE 34 NO STRIKE /NO LOCK OUT (TA)**

**Section 34.1.** The Employer and the FOP agree that the grievance procedures provided herein are adequate to provide a fair and final determination of all grievances arising under this Agreement. It is the desire of the Employer and the FOP to avoid work stoppages and strikes.

**Section 34.2. No Strike.** Neither the FOP nor any member of the bargaining unit for the duration of this Agreement shall directly or indirectly call, sanction, encourage, finance, participate, or assist in any way in any strike, slowdown, walkout, concerted "sick leave" or mass resignation, work stoppage or slowdown, or other unlawful interference with the normal operations of the Employer for the duration of this Agreement. A breach of this section may be grounds for discipline.

**Section 34.3.** The FOP shall, at all times, cooperate with the Employer in continuing operations in a normal manner and shall actively discourage and attempt to prevent any violations of the "no strike" clause. In the event of a violation of the "no-strike" clause, the FOP shall promptly notify all employees in a reasonable manner that the strike, work stoppage or slowdown, or other unlawful interference with normal operations of the Employer is in violation of this Agreement, unlawful and not sanctioned or approved of by the FOP. The FOP shall advise the employees to immediately return to work.

**Section 34.4. No Lockout.** The Employer shall not lock out any employees for the duration of this Agreement pursuant to Section 4117.11(A) (7) of the Ohio Revised Code.

**ARTICLE 35**  
**DURATION OF AGREEMENT**

This Agreement represents a complete understanding between the City and the Union, and it shall be effective January 1, 2008 through December 31, 2010, and thereafter from year to year unless at least ninety (90) days prior to said expiration date, or any anniversary thereof, either party gives timely written notice, to the other of an intent to negotiate on any or all of its provisions. If such notice is given, negotiations shall be promptly commenced and this Agreement shall remain in full force and effect until an amended Agreement is agreed to or, on or after December 31, 2010, either party gives thirty (30) days notice of an intention to terminate this entire Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

FOR THE UNION:

FOR THE CITY OF EAST  
CLEVELAND, OHIO

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
Police Chief  
  
\_\_\_\_\_

FOR THE FRATERNAL ORDER OF  
POLICE, OHIO LABOR COUNCIL, INC.

CERTIFICATION OF FUNDING  
AVAILABILITY:

By: \_\_\_\_\_

By: \_\_\_\_\_  
DIRECTOR OF FINANCE

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DIRECTOR OF LAW

**Paula's Summa Work October 2008**

<u>Date</u>	<u>Service</u>	<u>Summa</u>	<u>Alliance</u>
10-01-08	9:45- 10:15 Administrative work	0.50	
	10:30-11:00 Administrative meeting with Dr. Varley	0.50	
	11:-12:45 pm Administrative meeting with Dr. Scott Meit	1.75	
10-03-08	Communicated with Conference Speakers	0.50	
	ABHA-ECO Communicated with members of Alliance		0.50
10-13-08	ABHA-ECO correspondence, minutes to Access and correspondence to Alliance members		2.50
10-16-08	Hospital work: communication with Asenath LaRue and Nancy Wilson regarding October 21 <sup>st</sup> conference.	0.50	
10-23-08	Administrative work; wrote introductions, dinner with speakers	3.50	
10-24-08	Geriatric conference; moderated/ conducted all day program	8.00	
10-29-08	Arrangements for quarterly meeting and Access meeting		1.00
10-31-08	Worked on OJIN article	0.50	
	<b>Total hours</b>	<b>15.75</b>	<b>4.00</b>

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**Hours Total: 19.75 hours**

STATE EMPLOYMENT  
RELATIONS BOARD

## TENTATIVE AGREEMENT

2008 NOV 18 A 9:46

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 15<sup>th</sup> day of November 2008 in Portage County, Ohio.



Robert G. Stein, Fact-finder