

BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

OHIO STATE EMPLOYMENT
RELATIONS BOARD
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In the Matter of Fact Finding Between:

City of Montgomery

- and -

SERB Case No. 07-MED-11-1216

**American Federation of State,
County And Municipal
Employees, Ohio Council 8,
AFL-CIO**

Appearances:

For the City:

**W. Joseph Schøller, Esq.
Frost, Brown, Todd, LLC
Middletown, Ohio**

For the Union:

**Walter J. Edwards, Staff Representative
Ohio Council 8, AFSCME, AFL-CIO
Cincinnati, Ohio**

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

**Frank A. Keenan
Fact Finder**

BACKGROUND:

The City's Service Department is comprised of fifteen (15) full-time employees, including the Director, Assistant Director, a Construction and Compliance Inspector, two Supervisors, and the ten rank-and-file employees in the Service Department, the bargaining unit here, tentatively agreed by the parties at Article 2 - Recognition of their tentative Agreement as follows:

"Included: All employees of the City of Montgomery in the Public Works Department: Service Worker 1 and Service Worker 2.

Excluded: All management-level confidential and supervisory employees as defined in the Article and all seasonal and casual employees as defined by the Board, including Public Works Director, Assistant Public Works Director, Construction/Compliance Inspector and Service Supervisor."

This proceeding concerns the parties first Collective Bargaining Agreement between the parties.

Commencing on January 18, 2008, through and including May 8, 2008, the parties met to bargain the terms of their initial Collective Bargaining Agreement, and, in addition, met with a SERB-appointed Mediator on July 17th and August 18, 2008. In these negotiation and mediation sessions the parties tentatively agreed to some thirty-one (31) Articles, as per the terms set forth in Appendix "C" of the City's submission at the Fact Finding hearing herein held on October 30, 2008.

The parties brought to the Fact Finding process the following four (4) issues:

- ! Article 15 - Wages, and Article 15 - Bonus and Incentive Plan
- ! Article 22 - Sick Leave
- ! Article 34 - Duration

SERB appointed the undersigned as Fact Finder by letter dated August 18, 2008. By mutual agreement of the parties, the Fact Finding hearing was held on October 30, 2008.

In arriving at the Recommendations herein made, the Fact Finder has taken into account and relied upon the statutory criteria set forth in Ohio Revised Code 4117.14 (G)(7), (a) to (f), to wit: the factors of past collectively bargaining agreements; comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; the interest and welfare of the public; and ability of the public employees to finance and administer the issues proposed; the effect of the adjustments on the normal standard of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

ARTICLE 15 - WAGES

THE PARTIES POSITIONS, EVIDENCE & RATIONALE:

The City seeks certain language in the Wages Article which appear to be unopposed by the Union. Additionally, the City proposes wage increases of 2.5% to its current range in each year of a three year Agreement, which, along with the Bonus & Incentive Plan, will likely result in all employees receiving at least a 3.5% increase each year; asserts the City. If it gets the Sick Leave proposals it seeks, the City proposes a 3.0%, 3.0% and 2.5% wage increases in range.

The Union would abandon the Bonus & Incentive Plan component of the current employee compensation scheme utilized City-wide and substitute Appendix "U," a wage chart representing a 4.5% increase for each year of a three year Contract.

The employees now in the newly certified bargaining unit have been compensated as per the Wage scheme here and the Bonus & Incentive Plan for the past five years. Other bargaining units have more recently adopted said compensation scheme. It likewise applies to all unorganized employees of the City. This unique compensatory plan has received attention nationally in both municipalities and Federal agencies and has clearly worked well in Montgomery. It results in compensation generally more generous than external comparables, comparables both parties are agreed on. Likewise, internal comparables firmly support retention of the current wage range and Bonus & Incentive Plan scheme of compensation.

In my view, the same internal comparables also support wage increases of 3% in each year of the Agreement supplanting the City's offer of only 2.5% in the 3rd year IF it received its sick leave proposal.

The following constitutes the Union's objections to the Bonus & Incentive Plan component of employee compensation:

The Union believes that annual wage increases are the most equitable and fairest way of paying employees, and hence objects to the Bonus & Incentive Plan concept here.

Wage steps make the process objective rather than subjective. This is an automatic increase process that prevents management from unfairly rewarding some employees, while other employees may not see an increase in hourly compensation at all.

Pay-For-Performance has many pitfalls that management fails to acknowledge:

1. Workers are paid different wages for doing the same job.
2. It is unfairly applied. Management can use it to reward their favorite employees who may not have necessarily scored high on the evaluation.
3. There are no checks and balances to assure that no discrimination has occurred regarding race, gender and age issues.
4. The system actually reduces the wages of some to give higher wages to others since the concept is based on a pot of money that has been pre-established.
5. The system is demoralizing for employees. It does not encourage collaboration and team work.
6. The practice is associated with lower productivity and higher injury rates as workers attempt to take shortcuts in order to meet goals that provide

more money.

In conclusion, the Union believes that annual wage step increases is the tried and true way to compensate employees. It is fair and equitable.

Testimony at the hearing disproved the "pre-established pot of money" contention the Union makes. Additionally, the thoroughness and length of the evaluation process for bonus or incentives undermines the Union's expressed concerns about unfairness, favoritism, and inadequate checks and balances. Clearly, too, the combination of wages and incentives yields compensation generally better than external comparables. In sum, on balance, I'm constrained to recommend the City's proposal with the caveat that internal comparables support a 3% (and not a 2.5%) increase for the 3rd year of the Contract.

RECOMMENDATION:

It is recommended that the City's proposal, as amended in Appendix I., hereto, be adopted.

ARTICLE 22 - SICK LEAVE

THE PARTIES POSITIONS & EVIDENCE:

The City has proposed a Sick Leave provision at Article 22, comprised of eight (8) Sections. Section 1 sets forth formulae for sick leave accrual and non-accrual; Section 2 sets forth the legitimate reasons for taking sick leave; Section 3 sets forth

certain call-off procedures for reporting off work due to illness or injury; Section 4 sets forth procedures for applying for sick leave and addresses the Employer's option to require a physician's statement justifying the use of sick leave in certain circumstances; Section 5 sets forth certain improprieties with respect to requests for the use of sick leave, such as falsification of the sick leave application form, excessive use of sick leave, and abuse of sick leave which give the Employer the right to have an employee examined by a licensed medical practitioner, selected and paid for by the Employer, to verify proper use of sick leave; Section 6 establishes a maximum number of unused sick leave hours which an employee may "bank;" and sets forth provisions for the use of said banked sick leave; Section 7 - Sick Leave Occurrences, sets forth a system of "occurrences" which are defined as "separate occurrences where an Employee reports off work for illness or non-work-related injury (Example: An employee reports off work for two days, that is one occurrence, then returns to work and sometime later reports off work again, that is a second occurrence, and so on)." Thus, this Section establishes a maximum number of "occurrences" within a twelve month period, after which an employee's normal sick leave use pay is reduced by 20%, resulting in said employees receiving only 80% of normal sick leave pay. Put another way, after reaching said ceiling, thereafter an employee's sick leave pay is "docked" by 20%; and Section 8 - Exhaustion of Leave, which sets forth certain options and consequences for employees who have exhausted their accrued sick leave.

The City represents, without contradiction, that most of its proposed sick leave provisions contain the same basic language governing the accumulation and use of

sick leave set forth in the City's other Collective Bargaining Agreements, to wit, its Police Department and Fire Department Agreements. The City contends that it is important to have the same basic language in all of its Labor Agreements so that the general administration of sick leave is consistent from department to department.

However, the City introduced evidence that among its employees, the Service Department's bargaining unit employees are consistently the highest users of sick leave. For example, the City's evidence reflects that in 2007, Service Department bargaining unit employees used an average of 76 hours per person whereas administrative employees used an average of but 45 hours per person; the Police Department bargaining unit used an average of 42 hours per person; and the Fire Department bargaining unit employees, who work 24 hour shifts, used an average of 63 hours per week. Moreover, argues the City, its sick leave data concerning the Service Department bargaining unit's use of sick leave shows that "although there have been a couple of major illnesses, most of the sick leave was used in increments of one or two days at a time." Consequently, states the City, it "believes that many of its employees use sick leave simply because they earn it," a circumstance, argues the City, which "is contrary to the [City's] high performance system."

To address the perceived sick leave use problems in the Service Department, the City urges the Fact Finder to recommend two contractual provisions which the City argues would give the City what it characterizes as the "tools" to cope with the alleged sick leave use problem within the Service Department.

Thus, the City proposes the institution of an occurrence-based system as per its

proposed Section 7 - Sick Leave Occurrence, which reads as follows:

Section 7. Sick Leave Occurrences. An Employee who has four or more sick leave occurrences in a twelve month period shall be compensated for sick leave for the fifth occurrence and subsequent occurrences at 80% of the Employee's regular rate of pay. (Example: An Employee misses two days and this is the fifth occurrence in less than a twelve-month period. The Employee will receive sick leave compensation for each day missed at 80% of his/her regular rate of pay for each day of the fifth and subsequent occurrences.)
Exceptions to the occurrence rule would be an Employee off under a qualified Family Medical Leave or being off due to a work-related injury.

Sick Leave Occurrences are defined as separate occurrences where an Employee reports off work for illness or non-work related injury. (Example: An Employee reports off work for two days, that is one occurrence, then returns to work and sometime later reports off work again, that is a second occurrence and so on.)"

The City offers in the alternative a sick leave occurrence system under which employees would not receive sick pay on the first day of their fifth occurrence, nor for the first day of sick leave occurrences subsequent to their fifth occurrence, but would receive full pay for the second, third, etc., days in each occurrence.

Countering the Union's argument that this sick leave occurrence system is unfair to employees who do not abuse sick leave, the City is willing to restrict the application

of its proposed sick leave occurrence system only to employees who have accrued less than 500 hours of accrued sick leave. In this regard, City Exhibit No. 8 reflects that City Administrative employees have an average accrual of 522 hours; ~~the~~ ^{SERVICE} Department employees have an average accrual of ~~500~~ ²⁰⁹ hours; the Fire Department employees have an average accrual of 644 hours; and the Police Department employees have an average accrual of 659 hours. ~~(FRANK) and the Fire Department employees and the~~
~~Police Department employees.)~~

The City contends that its Section 7 proposal has been successful in other jurisdictions in reducing the use of sick leave because employees begin to call off only if they are truly sick. The City in effect contends that this desirable result will be enhanced by the undersigned, recommending the additional "tool" embodied in the language set forth in the City's proposal for Section 4 commencing with, and including, the second sentence of Section 4, through to the end thereof, said language reading as follows:

"The Employer may require (at its option) the submission of a physician's statement after the Employee has experienced three or more occurrences of sick leave in any given twelve month period or when leave exceeds three consecutive days. Such statement shall include the nature of the illness or injury, the treatment given, the prognosis and verification that the Employee can return to work. Failure of the Employee to provide such a statement when requested shall result in the denial of sick leave pay."

Still further with respect to the aforesaid language it proposes in its Section 4 proposal, the City notes that currently, the City has the right to require a physician's

statement at anytime, with the consequence that the aforesaid proposed language for Section 4 "is a reduction of the status quo."

The City additionally contends that further reason for these "tools" exists in the fact that "it is too easy in this for an employee to obtain doctor's notes excusing them from work, even if the employee is perfectly able to perform his or her duties," and "it has also become significantly easier for employees to obtain 'official' doctor's notes on the internet."

The Union is opposed to the City's sick leave occurrence proposals. As noted hereinabove, these proposals are embodied and imbedded in Section 7 and Section 4 of the City's Sick Leave proposal. To include these tools/provisions in the parties' Agreement here would result in this bargaining unit being held to a different standard than other City employees, contends the Union. The Union recognizes the higher use of sick leave by some in its bargaining unit and is committed to speaking like a Dutch uncle to those in the bargaining unit whose use of sick leave in the past might arguably be viewed as questionable. And in any event, argues the Union, the Employer needs to address the issue of improper sick leave usage through progressive discipline and through discipline achieve its goal of reduced sick leave usage. The Service Department should not be singled out when the means to achieve curbing sick leave [abuse] is already in place through progressive discipline.

RATIONALE:

I'm constrained to agree with the Union's contentions and viewpoint for the

parties' first Agreement. Forewarned is forewarned. In the event the bargaining unit fails to utilize sick leave more in line with the usage of other City employees, it will render the bargaining unit vulnerable to the kind of provisions put forth by the City here, which for this Agreement, are not being recommended by the Fact Finder. Absent certain provisions in Section 4, and all of Section 7 proposed by the City, it appears that the remaining proposals proposed by the City comport, as the City represented without contradiction (as previously noted) with provisions for sick leave obtaining City-wide.

RECOMMENDATION:

The parties provision for Article 22 - Sick Leave, shall read as set forth in Appendix II.

~~It is recommended that the City's proposal, as amended in Appendix I, be not implemented.~~

ARTICLE 34 - DURATION

THE PARTIES POSITIONS & EVIDENCE:

Both parties take the position that the only language of the Duration Article at issue is the starting date of the parties' Contract. In this regard, the City proposes a starting date of October 1, 2008. The Union proposes a starting date of June 1, 2008.

The parties are apparently also agreed on the formula for determining the termination date of their Contract in 2011, namely, that their contract remain in full force

and effect until midnight on the last day of the month next preceding the month on which they respectively urge their Contract commence. Hence, the Union would have the Contract remain in full force and effect until midnight on the 30th day of June, 2011. The City would have the Contract remain in full force and effect until midnight on the 30th day of September, 2011.

RATIONALE:

In my judgment, the Union's proposed effective start date of midnight on the first (1st) day of July, 2008 is simply too early in light of the fact that as of that date the parties had not yet received the benefit of the negotiations assistance of the SERB-appointed Mediator, who last worked with the parties on August 8, 2008. On the other hand, with respect to the City's proposed start date of midnight on the first (1st) day of October, 2008, this start date is, in my view, too late. In this regard, as noted herein – above, the undersigned was appointed by SERB as Fact Finder for the parties on August 18, 2008. Thus, but for the incompatibility of the dates available for the Fact Finding hearing for the parties' representatives and the undersigned until October 30, 2008, the Fact Finder's Report and Recommendation would have to have been issued no later than September 1, 2008; said Report would have had to have been voted on within seven (7) days of its issuance.

In the foregoing circumstances, I shall recommend that the parties' Duration Article be effective as of midnight on the 1st day of September, 2008, and remain in full force and effect until midnight on the 31st day of August, 2011.

RECOMMENDATION:

It is recommended that the parties Agreement at Article 34 - Duration, provide as follows:

Section 34.1 This Agreement shall be effective as of midnight on the 1st day of September, 2008, and shall remain in full force and effect until midnight on the 31st day of August, 2011.

Section 34.2 If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than 120 calendar days prior to the expiration date of this Agreement, and no later than 60 calendar days prior to the expiration date of this Agreement. Such notice shall be via certified mail with return receipt requested or a date and time stamped letter of intent.

Section 34.3 The parties acknowledge that during the negotiation, which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining. In addition, that the entire understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement supersede any prior agreement and constitute the entire Agreement between the Employer and Union and all prior agreements, either oral or written are hereby canceled.”

In accordance with both parties' desires, the Tentative Agreements between the City of Montgomery and the Union, Appendix "C" in the City's Appendices for this

proceeding, are hereby RECOMMENDED.

This concludes the Fact Finder's Report and Recommendations.

November 12, 2008



Frank A. Keenan
Labor Arbitrator + FACT FINDER

Appendix "U"

Counter Proposal (1)
May 8, 2008

WAGES

2008

Length of Service	SERVICE WORKER I		SERVICE WORKER II	
	1 - 12 Months	13 - 24 Month	25 - 35 Month	35+ Months
Annual	45,468.80	48,672.00	51,875.20	55,078.40
Bi-Weekly	1,748.80	1,872.00	1,995.20	2,118.40
Hourly	21.86	23.40	24.94	26.48

2009

Length of Service	SERVICE WORKER I		SERVICE WORKER II	
	1 - 12 Months	13 - 24 Month	25 - 35 Month	35+ Months
Annual	47,507.20	50,856.00	54,204.80	57,553.60
Bi-Weekly	1,827.20	1,956.00	2,084.80	2,213.60
Hourly	22.84	24.45	26.06	27.67

2010

Length of Service	SERVICE WORKER I		SERVICE WORKER II	
	1 - 12 Months	13 - 24 Month	25 - 35 Month	35+ Months
Annual	49,628.80	53,144.00	56,638.40	60,132.80
Bi-Weekly	1908.80	2,044.00	2,178.40	2,312.80
Hourly	23.86	25.55	27.23	28.91

APPENDIX I

WAGES AND COMPENSATION

Section 1 Employees will be paid in accordance with the City's Bonus Incentive Plan. Any major changes made to the Bonus Incentive Plan shall be first submitted to the Union for its consideration before implementation.

Section 2 Effective on the first day of the first full pay period after ~~October~~^{September} 1, 2008, the wage range for all bargaining unit Employees shall be as follows:

	MINIMUM	MAXIMUM
Service Worker I:	\$16.67	\$20.84
Service Worker II	\$20.25	\$25.25

Section 3 Effective on the first day of the first full pay period after ~~October~~^{September} 1, 2009, the wage range for all bargaining unit Employees shall be as follows:

	MINIMUM	MAXIMUM
Service Worker I:	\$17.17	\$21.47
Service Worker II	\$20.86	\$26.01

Section 4 Effective on the first day of the first full pay period after ~~October~~^{September} 1, 2010, the wage range for all bargaining unit Employees shall be as follows:

	MINIMUM	MAXIMUM
Service Worker I:	A 3% INCREASE OVER 2009 RATE	A 3% INCREASE OVER 2009 RATE
Service Worker II	A 3% INCREASE OVER 2009 RATE	A 3% INCREASE OVER 2009 RATE

Section 5 This Bonus and Incentive Plan may include a merit bonus of up to two percent for those Employees who have reached the top of their established pay range.

Section 6 The Employer may determine the appropriate placement of new hires within the pay range established by this Agreement.

Section 7 Beginning January 1, 2008, Employees may only advance from Service Worker I to Service Worker II after obtaining a Commercial Driver's License and after working as Service Worker I for three years. The CDL requirement may be waived by the City Manager, in his or her sole discretion, based upon the needs of the City.

Section 8 The full amount of the required contributions to the State Employees Retirement System ("Plan") shall be withheld from the gross pay (salary reduction method) of each person who is or becomes a contributing member of the Plan, which shall be paid to the Plan by the City of Montgomery. This salary reduction by the City of Montgomery is, and shall be designated as, Employee contributions and shall be in lieu of contributions to the Plan by each person. No person subject to this salary reduction shall have the option of choosing to receive the required contribution to the Plan directly instead of having it withheld and paid by the City of Montgomery or of being excluded from the withholding and remittance by the City.

The City of Montgomery shall, in reporting and making remittance to the Plan, report that the public Employee's contribution for each person subject to this salary reduction has been made as provided by the statute.

The total salary for each Employee shall be the salary otherwise payable under this Agreement. Such total salary of each Employee shall be payable by the City in two parts: (a) deferred salary and (b) cash salary. An Employee's deferred salary shall be equal to that percentage of that Employee's total salary which is required from time to time by the retirement system to be paid as an Employee contribution by that Employee, and shall be paid by the City to the retirement system on behalf of that Employee as a salary reduction and in lieu of the Plan Employee contribution otherwise payable by that Employee. An Employee's cash salary shall be equal to that Employee's total salary less the amount of the pick-up for that Employee, and shall be payable, subject to applicable payroll deductions, to that Employee. The City shall compute and remit its Employer contributions to the Plan based upon an Employee's total salary. The total salaries payable under this Agreement shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

Section 9 Maintaining Certifications: Any Employee must maintain all certifications and licenses that the Employee held when the Employee was hired or that the Employee obtained during employment. An Employee who fails to maintain

certifications or licenses may receive discipline, up to and including demotion and termination.

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APPENDIX II

SICK LEAVE

Section 1 Full-time bargaining unit Employees shall accrue sick leave at the rate of 3.692 hours for each fourteen day pay period to a maximum accrual of 96 hours in any calendar year. Sick leave shall accrue while an Employee is on duty and on vacation leave, but shall only accrue during the first 80 consecutive hours while an Employee is on sick leave. Sick leave accrual shall cease for any sick leave exceeding 80 hours. Sick leave shall not accrue while an Employee is on any unpaid leave, on layoff, on disciplinary suspension, or in overtime status.

Section 2 Sick leave shall be granted to an Employee, upon approval by the Employer or his/her designee, for the following reasons:

- A. Illness or injury of the Employee when such illness or injury prohibits the Employee from performing the normal duties of his/her work assignment.
- B. Illness or injury of a member of the Employee's Immediate Family where the Employee's presence is reasonably necessary for the health and welfare of the affected family member. Sick leave usage for this purpose shall be limited to 24 hours per incident.
- C. Sick leave may be used to attend the funeral of a member of the Employee's Immediate Family. Such usage shall be limited to 24 hours, including the date of the funeral.
- D. Medical, optical, dental, or other appointments with a licensed medical practitioner when such appointments cannot be scheduled during non-work time.
- E. Exposure of the Employee to a contagious disease which could be communicated to and jeopardize the health of other Employees. Use of sick leave for this purpose may require the confirmation of necessity by a licensed medical practitioner and the Employer.

- F. Pregnancy, childbirth, and related medical conditions, but only to the extent the Employee is rendered unable to work by reason of such condition.

“Immediate Family” as used in this article shall be limited to mother, father, son, daughter, spouse, brother, sister, grandparent, grandchild, or a legal guardian or other person who stands in the place of a parent (in loco parentis). In the case of death, mother-in-law, father-in-law, brother-in-law, sister-in-law or a spouse’s sibling’s spouse, sick leave usage is permitted for a maximum of 24 hours. In addition, the term Immediate Family for the purpose of this Article can include any aunt, uncle, nephew or niece who was a permanent resident of the Employee’s household at the time of their death.

Section 3 When an Employee is unable to report to work due to illness or injury, he/she shall notify his/her immediate supervisor or other designated person as soon as possible, but no less than one hour before the time he/she is scheduled to report to work, unless extenuating circumstances prohibit. The Employee is not permitted to leave messages on any voicemail or e-mail system in lieu of contacting the supervisor directly. Employees are responsible for contacting the Supervisor on each day of absence in accordance with this section unless the Employee is hospitalized or has presented a written doctor’s statement specifying the anticipated date of return, or unless other arrangements are made with the Department Head or his/her designee. Failure to provide proper notification may result in denial of sick leave for the period of absence and/or disciplinary action. An Employee who is absent from duty without leave or without notice to his or her supervisor of the reason for such absence will be subject to discipline pursuant to this Agreement.

Section 4 Upon return to work, an Employee shall complete and sign an application for sick leave use on a form provided by the Employer to justify the use of sick leave. ~~The Employer may require (at its option) the submission of a physician’s statement after the Employee has experienced three or more occurrences of sick leave in any given twelve month period or when leave exceeds three consecutive days. Such statement shall include the nature of the illness or injury, the treatment given, the prognosis and~~

~~verification that the Employee can return to work. Failure of the Employee to provide such a statement when requested shall result in the denial of sick leave pay.~~

Section 5 Sick leave usage, when approved, shall be charged in a minimum of one hour increments. In order to receive pay for sick leave usage, an Employee must comply with all departmental rules and regulations governing application and use. Falsification of an application for sick leave or a medical practitioner's statement shall be grounds for disciplinary action, including termination. The Employer maintains the right to investigate any request for sick leave use and any excessive abuse or use of sick leave. The Employer also maintains the right to have any Employee examined by a licensed medical practitioner selected and paid by the Employer to verify the proper use of sick leave. The Employer may deny the payment of sick leave if an investigation indicates that the absence was not within the provisions of or the spirit of this Article. Denial of sick leave payment shall not preclude the Employer from implementing disciplinary action. Denial of sick leave is not subject to the grievance or arbitration procedures of this Agreement.

The provisions of the Family Medical Leave Act, as amended, and any applicable policies of the City, shall apply to unpaid leave under this section.

Section 6 All accrued but unused sick leave for each bargaining unit Employee as of the execution date of this Agreement that was 960 hours or less, plus all sick leave hours accrued after the effective date of this Agreement shall be known as "the sick leave bank." The policies concerning the sick leave bank shall be as follows:

- A. The maximum number of hours that any Employee can accrue in the sick leave bank is 960 hours. All sick leave hours earned in excess of 960 hours shall not be accumulated in the sick leave bank and shall be lost, subject to subsection B below.
- B. When the number of accrued but unused sick leave hours in the sick leave bank reaches 960 hours, the Employee may request to receive a cash conversion of all hours in excess of 864 hours at a rate of one hour pay for

each one and one-half hours in excess of 864 hours. Failure of an Employee to exercise this option shall result in all hours earned in excess of 960 hours to be lost.

- C An Employee with twenty or more years of service with the Employer in a bargaining unit position who retires from active service with the Employer, shall be paid for 50% of the value of all accrued but unused hours in the sick leave bank at the rate of pay on the date of retirement. An Employee with ten through nineteen years of service with the Employer in a bargaining unit position who retires from active service with the Employer, shall be paid for 33-1/3% of the value of all accrued but unused hours in the sick leave bank at the rate of pay that is in effect as of the date of retirement.

~~Section 7 Sick Leave Occurrences. An Employee who has four or more sick leave occurrences in a twelve month period shall be compensated for sick leave for the fifth occurrence and subsequent occurrences at 80% of the Employee's regular rate of pay. (Example: An Employee misses two days and this is the fifth occurrence in less than a twelve month period. The Employee will receive sick leave compensation for each day missed at 80% of his/her regular rate of pay for each day of the fifth and subsequent occurrences.) Exceptions to the occurrence rule would be an Employee off under a qualified Family Medical Leave or being off due to a work related injury.~~

~~Sick Leave Occurrences are defined as separate occurrences where an Employee reports off work for illness or non-work related injury. (Example: An Employee reports off work for two days, that is one occurrence, then returns to work and sometime later reports off work again, that is a second occurrence and so on.)~~

Section 7 - Exhaustion of Leave.

Upon exhaustion of accrued sick leave, the Employee may be permitted to use accrued vacation leave. If the Employee presents a physician's statement that the disability is not likely to exceed six (6) months, sick leave without pay or benefits up to a period of six

(6) months may be granted when an Employee is sick or injured and is without any accumulated sick leave.

If the Employee's physician cannot certify likely recovery within six (6) months, or if the Employee remains unable to return to work after the expiration of the six-month leave, the Employee shall be placed on disability separation. The Employee may request reinstatement to his or her prior classification or any lower classification in the same classification series within a period of one (1) year from the date the Employee was placed on disability separation or unpaid sick leave, whichever was earlier.

An Employee requesting reinstatement from a disability separation may be required to submit to an examination by an Employer selected occupational physician or a physician specializing in the Employee's area of alleged disability. The examination must show that the Employee has recovered from the disability and is able to perform all of the material duties of the position to which reinstatement is sought. The Employer shall pay the cost of the examination.

In the event there is no vacancy in the Employee's prior classification or a lower classification in the same classification series, the Employee may displace only an Employee with less seniority. If no Employee has less seniority, the Employee requesting reinstatement shall be laid off. Any Employee displaced by an Employee returning from disability separation shall be subject to the layoff and recall provisions of this Agreement.

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