

2008 DEC 18 P 12: 23

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**THE CITY OF MARION**

**AND**

**THE FRATERNAL ORDER OF POLICE, OLC**

**SERB CASE # 08-MED-03-0243(Patrolmen)**

**ADVOCATE FOR THE CITY:**

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**ADVOCATE FOR THE UNION:**

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222 East Town Street  
Columbus OH 43215-4611**

## **INTRODUCTION**

The bargaining unit is represented by the Fraternal Order of Police, OLC. (Hereinafter "Union" or "FOP") and the Employer is the City of Marion (hereinafter "Employer" or "City"). The bargaining unit is comprised of approximately forty-five (45) employees who are responsible for a variety of law enforcement duties on behalf of the citizens of Marion, Ohio. The previous contract between the parties expired June 30, 2008. The parties held seven (7) negotiation sessions prior to fact-finding and reached tentative agreement on all outstanding issues in June of 2008. However, the tentative agreement was not ratified by the parties, which led to fact finding. The fact that the parties reached tentative agreement and the circumstances surrounding the ultimate rejection of same were dominate subjects of discussion throughout the mediation phase of fact finding, as was the tentative agreement reached by the Communications Officers and Community Service Technician bargaining unit. A mediation/fact-

finding hearing was held on August 22, September 23 and 24, 2008 over the issues addressed in this report.

Prior to a formal submission of evidence, the fact-finder made a concerted effort to reconcile the differences between the parties over the unresolved issues listed above. Settlement possibilities were explored with the parties in an effort to find common ground upon which to construct a settlement. The parties were able to reach a tentative agreement on a few issues, but the majority of the unresolved items were presented at the hearing that followed mediation efforts. Both Advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute.

## 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 RECOMMENDATIONS**

In recent months the state of the economy has become almost a daily topic of conversation. Ohio's economy remains uncertain at best, as does the financial outlook for many Ohio public employers. Recently, the Governor outlined the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the necessity of having to take decisive action to reduce costs in order to balance the state's budget. This cost cutting will likely result in layoffs of state employees. Adding to these issues is the overall impact of a national economy in prolonged recession with little certainty of its length or breadth. Recently, the national unemployment rate reached a fifteen year high of 6.7% (with a loss of over 500,000 jobs nationally in the last month alone). Approximately 225,000 Ohio jobs, many of which were high paying manufacturing jobs, have been lost during the past ten years. A large number of these jobs were lost to outsourcing. Moreover, the woes of the domestic auto industry and its potential direct and secondary ripple effect on jobs in Ohio looms as the auto industry seeks congressional loan relief. Compounding the problem of job losses is the recent credit crunch and its impact upon housing values. However, the overall extent to which these serious financial conditions impact the City of Marion is not clear. Various public entities in the state are fairing differently. The City's

negotiating team, appearing at fact finding, expressed a serious concern about their ability to afford both wages increases and a continued large contribution to health care over the term of the Collective Bargaining Agreement. This concern was contradicted by the Union, who submitted August 2008 affidavits from City's Auditor and Deputy Auditor, both of whom assert the City could afford the wage and health care provisions contained in the original tentative agreement reached in June of 2008. Yet, to ignore the very real economic jitters that employees and employers are having during these times is to ignore the elephant in the room. In addition, the economic outlook in August of 2008 appears to be a distant memory from the events occupying the national scene since September of 2008. All parties, employees and employers alike, are concerned about their bottom lines. Yet, as previous stated one must be careful in generalizing the likelihood of "economic woes" for every employer. Furthermore, it is axiomatic that the delivery of quality service depends on recruiting and retaining quality employees, which includes bargaining unit, non-bargaining unit, and managerial employees. Central to maintaining a quality workforce is the maintenance of a competitive wage structure that provides a fair wage for skills, along with quality benefits, and a reasonable working environment even in trying times.

**Issue 1****Article 9, Layoff and Recall/Probationary Period  
New 9.9 and 9.6****Employer's Position**

The Employer proposes new language to Section 1 that specifically preempts the Civil Service Statutes for layoff. The Employer argues it is simply proposing such language in order to ensure that the parties' layoff and recall language will control in such situations and will meet the mandates set forth in the Ohio Supreme Court's Batavia decision. The Employer in its proposal also inserts a specific preemption for R.C. 124.27 in the probationary period section, because it argues that it deviates from the code section by excluding from the probationary period time spent on sick leave or injury leave. Finally, the Employer proposes an organizational change that moves the language addressing seniority (currently Section 9.1) to the seniority article (Article 15).

**Union's Position**

The Union asserts it agreed to changes based upon the Employer's initial demands and that it and the Employer were initially satisfied with these changes as evidenced by the tentative agreement reached by the parties. The changes initially sought by Employer involved bumping and according to the Union the parties addressed the issue in the original tentative agreement. The Union argues that where Civil Service Law would differ from Collective Bargaining Agreement the Collective Bargaining Agreement would supersede Civil Service Law. The Union simply does not accept the concerns articulated by the Employer.

**Discussion**

Changes of this nature do not readily lend themselves to fact finding resolution. They should have been thoroughly discussed, particularly as it relates to the application of local Civil Service rules and regulations. During the hearing, it became clear that the parties do agree that contract language in the Agreement should supersede any conflicting Civil Service Law contained in the ORC or OAC. Based upon the above no change is recommended at this time.

Determination:

**maintain current language**

<b>Issue 2</b>	<b>Article 17, Wages and Longevity</b>
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Union's Position

The Union points out that according to the Commission for Law Enforcement Accreditation the City of Marion has one of the top five police departments in the state of Ohio. In addition, the Union asserts that early in the negotiations process the City Auditor and Deputy Auditor gave estimates indicating it could afford wage increases included in the eventual tentative agreement reached by the parties in June of 2008 (Union Ex. 27). See Union's Position Statement for further rationale. Union Exhibits 1 through 14 also were presented in support of its arguments.

Employer's Position

The City's position in this matter is closely tied to its health care costs. The City argues that upon closer examination by its bargaining team, an agreement that would reflect the terms of the tentative agreement reached in June of 2008 would place the City in a very difficult financial position. As previously stated this conclusion appears to be contradicted by the City Auditor and Deputy Auditor. Major components of the tentative agreement were a six percent wage increase in the first year of the Agreement, a wage scale compression and substantial changes in the longevity system. The City also argues that the Union is using comparables that do not make sense. See Employer's Position for further rationale. Employer Exhibits A through M were presented in support of its arguments.

## Discussion

As is commonly the case in contemporary collective bargaining two issues of considerable economic impact that are difficult to consider in isolation are wages and health care. The Employer is proposing wage increases of 2% each year of the Agreement, a new five step wage scale, increases in longevity (City's version) totaling an increase in cost of approximately 12% over 3 years. In addition, the City is proposing a signing bonus of \$500, representing an amount approximately equal to 1.0% of pay for a second year employee. The Union is proposing a 12.5% increase over three years, with 6% in the first year, a new five step pay scale, and increases in longevity (consistent with the original tentative agreement reached in June of 2008). It asserts that its position is based upon what the City Auditor and Deputy Auditor have affirmed are affordable. The June of 2008 tentative agreement also linked substantial wage increases in the first year to a change in employee health care premiums from 12.5% to 15.5%. The Employer, while in agreement with a need to increase employee health care premiums, is also very concerned about the cost of the HSA benefit. It contends the increased employee premium does not adequately offset the additional 3% increase in wages during the first year of the Agreement.

At the heart of this dispute is a disagreement on what the City can readily afford regarding both wage increases and the continuation of health care benefits, and in particular HSA benefits. Clearly, the Union's position relies heavily upon the assurance given by the City Auditor and Deputy Auditor in the summer of 2008. In the experience of the fact finder, it is rare to have two city officials in positions of financial authority to disagree in such a declaratory fashion with an employer's position in such proceedings. Nevertheless, given their area of expertise, their affidavits signed in August of 2008 must be given weight; however, within a contemporary context such assurances are often subject to change. Union Exhibit 26, The Financial Plan and Forecast 2009 to 2012, which was provided to the Union on the first day of negotiations, states the City's finances are stable. However, this report, prepared by the City Auditor, was issued months prior to events beginning in September of 2008, which has subsequently lead to a much greater realization of the magnitude of the downturn in the national and state economy. And, the affidavits signed by the Auditor and Deputy Auditor, were dated in August of 2008, just prior to the dramatic events on Wall Street. It is noted that the Financial Plan and Forecast states in pertinent part, "*There are many factors to consider and as time goes by the forecast should and will be updated.*"

The following determination is made based upon the statutory criteria, keeping in mind the parties' negotiations history which created a link between changes increases in wages and alleged quid pro quo increases in employee health care premiums. An assessment of the facts by way of an internal comparable negotiated with the same bargaining agent immediately preceding the instant impasse includes an agreement between the City and the Communications Officers and Community Service Technician ("CoCo". In pertinent part it mirrored the original tentative agreement reached by the parties in June of 2008. Although, it involved a much smaller bargaining unit, consistency among negotiated settlements involving the same employer is recognized as an important factor in collective bargaining. However, there are distinctions between the CoCo unit and the Patrol Officers unit that one must consider in making comparisons. One major distinction is that the CoCo unit did not have its salary schedule collapsed into five steps. According to the documentation presented, the new CoCo agreement contains an eight step salary schedule that tops out at twenty years. The current average salary for the bargaining unit, according to Employer Exhibit C is \$24.77. A one percent increase in wages is equal to approximately \$0.25 per hour. Both parties are proposing a salary schedule that reaches the top step in five years. When comparing the two settlements in terms of overall compensation, this is a distinction with a difference, particularly for those employees who by virtue of this change will rapidly move up on the salary scale. It is also noted that in Patrol Officer's Agreement the Employer picks up a greater portion of a bargaining members pension (8.5% versus 6%) and the CoCo unit currently has a less lucrative longevity benefit than that which is being proposed by the Union. Distinctions of this nature must be considered in making wage settlement recommendations. The Union also argued that from the standpoint of recruitment and retention its proposal will help retain well trained, seasoned officers. The Union cites turnover and potential turnover as a major problem. The Employer disagrees with this assessment.

Given the current uncertain state of the national economy, Ohio's economy and the demographic profile and economic composition of the City's local populace any increase that exceeds general average increases should reasonably be supported by an increase in revenue and a current review\update of the City's financial condition in a rapidly changing economy. While respect must be accorded to individuals holding the positions of Auditor and Deputy Auditor, a city's finances are subject to change and are vulnerable to external events, particularly current extraordinary events. By way of bargaining history it is also noted that for the past ten years wage increases have averaged 2.87%. By comparison, the City of Lima has averaged just over 3% for the same

decade. (Union Exh. 11) In the experience of the fact finder, general wage increases, absent exigent circumstances, have hovered around three percent (3%) increases for the past several years. On a comparable ten year basis, the Union made a persuasive argument that the bargaining unit has negotiated wage increases that were under the going rate of wage increases for many comparable public sector bargaining units in Ohio. Of course, all economic benefits, including health care, pension pick-up, longevity, uniform allowance, and the like must be factored into any comparison. During the previous contract period Local Government Funds (LGF) have remained constant and municipal tax revenues for the City increased by 7% (Employer Ex. 1). Finally, following the parties lead in reaching their original tentative agreement with the CoCo unit, the following recommended wage increases are split into semi-annual segments in years two and three.

Determination:

The following wages increases are recommended and shall be incorporated in a new schedule with the following criteria:

**Section 17.1 Wages Retoractive to July 1, 2008** all bargaining unit members shall receive a 3.0% wage increase. **Effective January 1, 2009** the wage schedule shall be compressed to a **five (5) step scale** and all bargaining unit employees shall be placed on it at the appropriate step. **Effective July 1, 2009** all bargaining unit members shall receive a 1.5 % wage increase. **Effective January 1, 2010.\*** all bargaining unit members shall receive a 1.5% wage increase. **Effective July 1, 2010** all bargaining unit members shall receive a 1.5 % wage increase. **Effective January 1, 2011.\*** all bargaining unit members shall receive a 1.5% wage increase.

**Effective January 1, 2009** the longevity scale shall be **revised** as follows:  
5 years: \$0.20 10 years: \$0.35 15 years: \$0.45 20 years: \$0.60 25 years: \$0.75 30 years: \$0.90.

\* An equity adjustment of an additional \$0.50 per hour shall be added to the wage scale **prior to the wage increases cited above on January 1, 2010 and January 1, 2011,** contingent upon the City Auditor certifying, in writing to City Council **at least thirty calendar days prior to each adjustment** that said wage increase and its associated costs, coupled with the costs associated with the City's health care obligations, are within budget projections prepared by the City Auditor's office.

**Issues: 3, 4 Article 19.1 Holidays, Article 19.2 Holiday City Hall Closure**

Union's Position

Section 19.1 and 19.2

The Union is seeking to have holiday time reflect the ten hour shifts now worked by bargaining unit employees. It asserts that holiday time should be consistent with the hours worked in a regular day. Additionally, the Union also argues that in negotiations the Gold unit was granted an additional 3.33 hours of holiday pay when City Hall was closed due to a holiday not designated in the Agreement. The Police Officer's unit is simply seeking parity regarding this benefit.

Employer's Position

Section 19.1 and 19.2

The Employer asserts that the change from a work week of five eight hour days to four ten hour shifts did not increase the annual hours of work for bargaining unit employees. The Employer further asserts that the net effect of additional holiday pay and personal days is an additional 3,312 hours over term of the agreement, the equivalent of 1.7 FTEs or a 1.44 per cent wage increase with roll-up costs. The Employer also opposes adding holiday time not designated in the Agreement.

Discussion

It appears reasonable to treat employees fairly who gain holiday pay for time off when City Hall closes. The data also demonstrates that the Gold unit, which works eight and one half shifts, receives 8.5 hours for each holiday pay (Joint Ex. 2). However, these employees work 85 hours in a two week period, versus employees in the bargaining unit who continue to work 80 hours every two weeks. In other words for the Gold unit the hours of holiday and personal leave are consistent with the additional work hours.

Determination:

**Article 19.1 maintain current language**

### **Section 19.2 Holidays Worked**

Should any employee be required to work on a holiday, in addition to the holiday time in Section 19.1, the employee shall be paid at a rate of one and one-half (1 1/2) their normal hourly rate if the holiday is normally a scheduled work day. Overtime worked on a holiday shall be two times the employee's regular rate

**Should an employee be required to work on a holiday when City Hall is closed but it is not a designated holiday recognized in this agreement, the member will receive 3.33 hours of compensatory overtime.**

<b>Issues: 5, 6 Article 19.3 Vacation, Article 19.4 Holiday, Vacation Scheduling</b>
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Union's Position

The Union is seeking an increase in vacation time for employees with twenty-five (25) or more years of service.

Employer's Position

The Employer argues that its vacation benefits are very competitive with other like jurisdictions.

Discussion

The Union argues that the City and the Gold unit reached tentative agreement regarding this issue. The comparables presented by the Union

demonstrate that it is not usual for senior employees with twenty-five or even fewer years of service to have a 240 hour vacation benefit. The Employer and the Union reached tentative agreement on Article 19.4 during mediation process led by the fact finder.

Determination:

**Section 19.3 Accrual Schedule for Vacation**

The following vacation accrual schedules are hereby established:

<b><u>Years of Service</u></b>	<b><u>Annual Accumulation</u></b>
0 through 5	80 hours
6 through 11	120 hours
12 through 18	160 hours
19 through 24	200 hours
<b>25 and over</b>	<b>240 hours</b>

**Section 19.4 Holiday & Vacation Scheduling**

Holiday & vacation scheduling shall be arranged with the prior approval of the Chief of Police or the Chief's designee. Insofar as practicable, the holiday & vacation time off shall be granted at the times most desired by each employee, with the order of preference being determined on the basis of seniority by classification, with the understanding of the following days being blocked out for vacation; days of the Popcorn Festival.

**Time off requests made after annual signup will be as follows. If no one has requested the day off on their designated shift, the time off will be granted. Two (2) officers may be off on the same day and shift if the following criteria have been met: 1) the time off does not create overtime for your replacement at the time of approval; 2) time off request will be approved no less than thirty-five 35 days prior to the date requested. If a request is made within thirty-five (35) days or less than the date requested, the day should be approved or denied at the time the request is submitted by a supervisor that is assigned the same shift.**

Special requests for time off outside policy can be granted by the Chief of Police **or his or her designee** when circumstances merit the time off.

### Union's Position

See Union's Position Statement for rationale. The Union supported its rationale with Union Exs. 17, 18, 20, 21, 22, 25, and 28. The Union stressed the importance of the insurance committee and the important role it has played in decision making during the past five or six years. The Union strongly argues that decisions regarding health care need to be considered by the health care committee prior to implementation.

### Employer's Position

See Employer's Position Statement for rationale. The Employer supported its rationale with Employer Exs. O, Q, R, S, T, U, and V. The Employer emphasizes the considerable cost of funding the HSA. According to the Employer it currently pays over 3 million dollars annually to provide health care for all city employees.

### Discussion

Along with wages this was clearly the most contentious issue in this dispute. The parties emphasized that mid-term bargaining resulted in the establishment of the HSA during the term of the current Agreement. According to Union Exhibits 17 and 18 the Insurance Committee, on August 11, 2006, adopted the HSA plan. This action included a provision requiring the City to pay 70% toward the plan's deductible through 2009. On November 6, 2007, as outlined in Union Exhibit 18, the City's Personnel Committee agreed to provide funding of the HSA plan at the 70% level for two years (2008 and 2009). The current deductibles are \$1,500 for single coverage and \$3,000 for family coverage.

The parties disagreed over the efficacy and viability of the HSA long term. It is also noted in Union Exhibit 5 that in the settlement with the "CoCo" unit, the employer/employee insurance premium payment ratio effective September 1, 2008 was 82%/18% or versus the 84.5%/15.5% which was part of the original tentative agreement reached in June of 2008 with the Patrol Officers unit. In spite of the differing ratios the cap for employees remained at \$75. The recommended wage increases, internal

comparables and SERB data justify an adjustment in the premium ratio and the gradual raising of the caps.

The Employer made a convincing argument that its growing financial burden in the area of health care is a major concern and needs to be addressed during the life of this Agreement. The HSA is clearly an important benefit to the Union and prior funding agreements reached in good faith by the parties should be honored through 2009. National predictions regarding health care costs indicate expected increases in the range of 6 to 7% (See WASHACE, April 3, 2008). Of course local cost may be below or exceed these predictions based upon experience and other factors. It is also noted from the evidence that the Agreement forming the health care committee in 2001 clearly states its purpose is **"...to review and study Health Care and other insurance benefit cost of the City and proposed plans and systems by which insurance benefits can be addressed, reviewed and the cost thereof kept under reasonable control..."(Union Ex. 22).**

Based upon the above the following determination is made:

Determination:

## **ARTICLE 21 HEALTH, LIFE, DENTAL, DRUG INSURANCE**

### **Section 21.1 Insurance**

The City shall continue to offer similar levels of coverage for health, prescription and dental insurance providing employees contribute to the premium cost of such coverage by payroll deduction each pay period as follows:

Effective **January 1, 2009**, the Employer shall pay **eighty-five percent (85%)** of the insurance premiums and the Employee shall pay **fifteen percent (15%) with a per pay cap of \$75 for calendar year 2009, a \$85 per pay cap for 2010, and a \$95 per pay cap for 2011.**

**Beginning 1-1-09**, HSA payments will be made by the City quarterly. However, if the member's medical expenses are such that additional payments into the HSA fund are needed, the Auditor will be provided an explanation of the benefits and the additional funds will be placed into the member's HSA account. **Effective 1-1-09**, the employees shall pay the current rate of contribution into the HSA fund and the City's current contributions into the HSA fund shall not decrease.

**Effective January 1, 2010**, the employees shall increase their contribution into the HSA fund by an additional \$3.75 per pay for single coverage and an additional \$7.50 per pay for family coverage, with the Employer's annual HSA contribution for 2010 being reduced accordingly.

**Effective January 1, 2011**, the employees shall increase their contribution into the HSA fund by an additional \$5.00 per pay for single coverage and an additional \$10.00 per pay for family coverage, with the Employer's annual HSA contribution for 2011 being reduced accordingly.

**Section 21.2 Insurance Opt-out**

Effective July 1, 2002, an employee who "opts-out" of the City provided health insurance plan shall receive one hundred dollars (\$100.00) per month. Such employee must provide proof of insurance coverage from an insurance plan not funded by the City of Marion.

**Section 21.3 Insurance Committee**

During the life of this Agreement, the City shall continue to use of the function of the "insurance committee." The "Insurance Committee" will be responsible for fulfilling its mission to "determine the insurance benefits provided by the City to all employees, subject to the approval of City Council, and to maintain reasonable control over health care costs.

**Section 21.4 Life Insurance**

The City shall provide coverage at a **minimum** of twenty thousand (\$20,000) with a forty thousand dollar (\$40,000) Accidental Death and Dismemberment limit.

<b>Issue: 8</b>	<b>Article 23.2G</b>	<b>Sick Leave Sell Back</b>
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Union Position

The Union proposes to increase the amount of sick leave that can be converted into cash or compensatory time from 50 hours to 100 hours, along with raising the cap for the provision of such conversion from 240

hours to 400 hours. In addition the Union is proposing a change in the concession ratio from one to one to two to one. The Union points out that this change was tentatively agreed to with the supervisor's bargaining unit. See the Union's Position Statement.

#### Employer's Position

The Employer is proposing current language. See Employer's Position Statement.

#### Discussion

The changes in this conversion provision proposed by the Union appear reasonable in light of the increased balance requirements for accumulation before being able to make said conversion.

#### Determination

**Section 23.2 G was settled in mediation in June of 2008 and is recommended as are all tentative agreements reached prior to fact finding. The following language is recommended in Section 23.2 A:**

### **Section 23.2 Sick Leave**

- A. For each completed eighty (80) hours in active pay status, an employee earns 4.6 hours of sick leave. (Active pay status may be defined as hours worked, hours on approved paid leave, and hours on paid sick leave.) The amount of sick leave time any one (1) employee may acquire is unlimited. Sick leave shall be charged in a minimum unit of one (1) hour, then in one-half (1/2) hour multiples. Employees absent on sick leave shall be paid at the regular rate.

Employees who transfer between departments, or agencies, or from other public employment, or who are reappointed or reinstated within ten (10) years of prior public service employment will be credited with any unused balance of sick leave. All employees will be eligible for payment of sick leave upon retirement according to the following formula: One-half of all accumulated hours up to a limit of eight hundred fifty (850) paid hours. When an employee(s) passes away

while in active employment, the surviving spouse or others, as spelled out in Section 2113.04 O.R.C., will be eligible to receive sick leave payment for which the decedent would otherwise have qualified. Such payments shall be based on the rate of pay (per Article 17 Section 17.1) of the employee at that time.

**ON DECEMBER 1<sup>ST</sup> OF EACH YEAR AN EMPLOYEE MAY ELECT TO SELL BACK, IN CASH OR COMPENSATORY TIME, UP TO ONE HUNDRED (100) HOURS OF SICK LEAVE PROVIDING AT LEAST FOUR HUNDRED (400) HOURS REMAINS IN THE SICK LEAVE ACCUMULATION. FOR EACH HOUR OF SICK LEAVE USED IN THE PRECEDING YEAR (FROM THE LAST FULL PAY PERIOD IN NOVEMBER EACH YEAR) THE SELL BACK ELIGIBILITY IS REDUCED TWO (2) HOURS FOR EACH HOUR USED.**

- B. Sick leave may be requested for the following reasons:
1. Illness of the employee or injury/illness/death in the employee's immediate family where the employee's presence is reasonably necessary.
  2. Exposure of employee or a member of the employee's immediate family to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
  3. Medical, dental, or optical examinations or treatment of employee or such examinations or treatments to a member of the employee's immediate family, where the employee's presence is reasonably necessary.
  4. Childbirth, and/or related medical conditions.
  5. Injury of the employee after "Injury Leave" has expired.
- C. An employee requesting sick leave shall cause notification to the employee's immediate supervisor or other designated person, of the fact and the reason no later than one-half (1/2) hour prior to the time the employee is scheduled to report to work unless other arrangements have been made with the supervisor. The employee

will submit to such medical examination, nursing visit or other inquiry the City deems necessary at the City's expense.

Upon the employee's request, vacation leave may be used as sick leave after sick leave is exhausted. Employees who have exhausted sick leave and vacation leave may, at the discretion of the Director, be granted an unpaid personal leave of absence.

- D. Immediate family for purposes of this section is defined as spouse, child, mother, father, foster parent or guardian, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepsister, stepbrother, stepson, stepdaughter, half-brother, half-sister, or any person living with the employee on a continuous basis.
- E. An affidavit provided by the City or a medical certificate from a licensed physician certifying or affirming as to the nature of the illness and the employee's capability to return to work must be presented to the supervisor by an employee who has been ill for three (3) consecutive days or the employee will not be permitted to return to work. A certificate or affidavit may be required for less than (3) days absence. The failure to present such a certificate or affidavit may result in loss of pay or other disciplinary action for the time absent.
- F. Each employee shall be responsible to see that they accumulate less than nine (9) points in a rolling twelve (12) month period to assure their continued employment with the City. If an employee accumulates nine (9) points in a twelve (12) month period the employee shall be subject to the disciplinary procedure. Points are accumulated by the following standards:
- G. Light duty may be offered at the complete and sole discretion of the City.

**TYPE OF ABSENCE**

**POINTS ACCUMULATED**

- |  |           |
|--|-----------|
| 1. Reporting late for work   | 1/2 Point |
| 2. Off sick less than <b>FIVE (5)</b> hours without a doctor's certificate | 1/2 Point |

3. Off sick less than **FIVE (5)** hours with a doctor's certificate  
0 Points
4. Off sick **FIVE (5)** to **TEN (10)** hours 1 Point each day (\*)

\* If an employee is absent for less than three (3) consecutive days and returns to work without a doctor's certificate stating the reason for absence the employee shall be credited one point for the entire period of sick leave use. Absences that exceed this period of time shall require a doctor's certificate and may qualify for Family Medical Leave. The employee's supervisor shall keep track of accumulated points and should counsel employees at least quarterly or when an employee has reached four (4) points in less than a six (6) month period or six (6) points in less than a nine (9) month period.

<b>Issue: 9 LOU Special Duty Details</b>
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#### Employer's Position

The Employer proposes to delete the language contained in the Letter of Understanding. It argues the language is troubling and addresses matters over which the Employer has no control. Moreover, the Employer argues that while it is mandatory to remove language from a provision of the Agreement, the Union, once the prior agreement expires, cannot force the inclusion of this language within a new Agreement over the objections of the Employer.

#### Union's Position

The Union proposes incorporation of the LOU on Special Duty Details into the Agreement as a numbered provision and at the same time proposes an increase the current rates of pay for special duty details. See Union's Position Statement.

## Discussion

There is insufficient data to justify either a change in rates or location of this LOU given other wage and economic improvements recommended in this report.

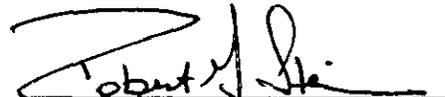
## Determination

**The tentative agreement reached by the parties in June of 2008 is recommended.**

## TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any language recommended to remain current are part of the recommendations contained in this report. Any issues, or sub-issues not specifically addressed are also intended to remain current language for purposes of this report.

The Fact-finder respectfully submits the above recommendations to the parties this 17<sup>th</sup> day of December 2008 in Portage County, Ohio.



Robert G. Stein, Fact-finder