Fact Finder's Report
State Employment Relations Board

STATE EMPLOYMENT RELATIONS BOARD
2009 APR 24 P 12: 30

In the Matter Of:

Fraternal Order of Police
Queen City Lodge, No. 69

And

City of Cincinnati

Case Number: 08-MED-07-0743; 08-MED-07-0744

Before Fact Finder: Floyd D. Weatherspoon

Presented to:

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

And

Stephen S. Lazarus
Hardin, Lazarus, Lewis & Marks
For Queen City Lodge No. 69, FOP
915 Cincinnati Club Building
30 Garfield Place
Cincinnati, OH 45202-4322

And

Donald L. Crain
Frost Brown Todd
9277 Centre Pointe Drive, Suite 300
West Chester, OH 45069

This fact finding arises pursuant to Ohio Revised Code Section 4117.14 between the Fraternal Order of Police, Queen City Lodge No. 69 (Union) and, the City of Cincinnati, (City), Floyd D. Weatherspoon was selected to serve as the impartial Fact Finder, whose report is issued below.

The Fact Finding Hearing was held on February 18, 2009. The parties identified the following issues, and/or contract provisions as being unresolved:

1. Article VII - Section 1 & Appendix A – Wages (Both Contracts)
   A. Article VII - Sections 32 (Non. Supv) & 33 (Supervisor) OPOTA (Both Contracts)
   B. Article VII - Sections 34 (Non. Supv) & 35 (Supervisor) Training allowance
2. Article XVII - Terms of Agreement (Both Contracts), and Article 1, Recognition
3. Article III - Grievance Procedure (Supervisors Only)
   A. Article III, Grievance Procedure, Section 3, Step 3 meetings (Both Contracts).
   B. Article III, Grievance Procedure, Section 3, Step 6, Arbitration (Both Contracts).
4. Article VII - Section 6 - Overtime Compensation (4 & 2 Schedule)(Both Contracts)
5. Article VII - Section 18 - Sick Leave (Both Contracts)
6. Article VII - Section 21 - Medical Insurance Benefits (Both Contracts)
7. Article VII - Section 29 - Field Training Officers (Both Contracts)
8. Article VII - Sections 37 & 38 - Promotions (Both Contracts)
9. Article XI - Section 1 - Expungement, Inspection Notice (Both Contracts)
10. Appendix E, Drug and Alcohol Policy (New)(Both Contracts).
11. Article XII - Section 4 - Release Time for FOP President (Both Contracts)

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Issues

Article VII, Section 1. Appendix AWages

Union Position:

The Union proposes a wage increase of 3.75% for both years of the contract. The Union emphasizes that other bargaining units within the City of Cincinnati that are receiving wage increases in 2009.

The Union uses Akron, Cleveland, Columbus, Dayton, and Toledo for its comparable cities. The Union contends that its proposal for increase is reasonable and would keep Cincinnati within the average with regard to pay in the compared cities.

The Union maintains that the City has the funds in its budget for an increase for 2009. In support of this assertion, the Union presented Attachment 5, showing that 3% has been budgeted city wide for cost of living adjustments for 2009. The Union also puts forth evidence that the recommended budget included a 3% cost of living adjustment for the non-represented employees for 2009 and 2010, as well as a merit increase of 2% in 2009 for the non-represented employees.

The Union presented the City Manager's Budget Message for 2009/2010 which assumes that employees under an existing labor contract for 2009 will receive a 3% salary increase, this specifically includes the FOP. The budget message also states that employees not under an existing labor contract are budgeted for a 2% increase in 2009 and 2010.

The Union contends that the evidence indicates that the City has a history of hiding funds and subsequently redirecting funds to give the false impression that it has no funds for a reasonable wage increase. The Union submits several newspaper articles where the City announced budget cuts to services and layoffs. The Union suggests these strategies by the City are tactics attempting to paint a bleak financial picture during negotiations so that the City can claim that it cannot afford any wage increases. It is the Union's contention that the City has a history of making exaggerated claims of insisting that it is experiencing severe financial problems during each set of negotiations for many years. According to the Union, the City always manages to find and spend money excessively, immediately following the conclusion of the negotiations. The Union submits evidence that the City's behavior has become so

disingenuous that a previous neutral has acknowledged a lack of credibility in the City's claimed lack of funds. (Attachment 8).

The Union also notes that the final budget approved by City Council on December 17, 2008 increased the budget for several offices. The Union states that these increases were made despite the City's alleged bleak financial picture.

The Union also notes that the members of the Cincinnati Police Department have been performing at an exemplary level, that warrants an increase on merit alone.

City Position:

The City proposes a lump sum increase of $650 in the first two years of the contract, and a 2% increase to the base wage in a proposed third year of the contract.[1]

The City emphasizes the grim economic picture that has swept the nation and has largely impacted the entire financial system. The City highlights that this state of economic turmoil impacts government funding at all levels. The City outlined budget reduction and decline since 2000 in most departments, other than police and fire. The City further outlined many additional cuts and reductions to its current General Fund budget proposed by City Manager Dohoney.

The City points out that in June 2008, a financial forecast projected a structural deficit of $14.4 million in 2009 and $15.1 million in 2010, not including the "carry-over" balance. The City emphasizes that the nation's economy has all but collapsed since the June 2008 forecast. The City states that the with the economy plummeting from June through December 2008, the forecast deficits are even more alarming. The City states that its budget office should be using a budget assumption of a yearly income tax growth increase of 1% rather than the 3% that it

[1]The City proposes that the contract term be extended to three years instead of the typical

currently uses for its revenue forecast.

Due to the worsening economy, in negotiations since 2007, the City has proposed lump sum adjustments as opposed to an increase in base salary. The following groups received lump sum payments: AFSCME agreed to $1,750 lump sum per bargaining unit employee, unrepresented employees will received a lump sum equivalent to 2% of the employee's base salary, and CODE employees received a lump sum payment equivalent to 3% of the employee's base salary.

The City lists Ohio jurisdictions and nearby cities with a population more than 150,000 as its comparison group. The City includes Akron, Columbus, Cleveland, Dayton, Indianapolis, Louisville, Pittsburgh and Toledo. The City states that Cincinnati police pay ranks high in comparison to these cities. Under the City's comparison charts, only Columbus exceeds Cincinnati pay levels. The City notes that officers also receive training pay at a rate of 2% of the top step and certification pay of 4% of the top step.

The City indicates that the police wage increases during the past five contracts exceed the CPI for the Cincinnati Standard Metropolitan Statistical Area by over 14%. (Exh 16).
The City submits that as an internal wage comparison only the Fire Department has received wage increases close to the Police increases over the past five contracts or 10 years. The chart presented by the City indicates that the police officers received increases of 36%, while the firefighters received 37%, management received 24.5% and AFSCME received 24%.

Lastly, the City submits that its agreement to roll the 4% OPOTA (Ohio Peace Officer Training Academy) certification required by state law, and the 2% training allowance into the

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two year contracts negotiated by the parties.

base salary calls for the Union to compromise on the lump sum payment issue.

Discussion

As with all levels of government, the City of Cincinnati is also facing the decreased revenues and decreased funding that has impacted the nation. And, it will certainly impact the City's economic budget and financial forecast. This fact is hard to deny. However, the City is willing to give the Union members a lump sum increase the first and second year of the contract as well as a 2% base wage increase in a third year.

The Union is against the lump sum increase instead of a base wage increase. The Union states that with the cost of living for the Cincinnati-Hamilton metropolitan area rising, the FOP members effectively earn less today than they did 4 years ago based on wage and insurance increases. The Union states the lump sum scheme fails to account for the cumulative negative effect of inflation from year to year on real wages. Indeed, this is exactly what is attractive about the lump sum option to the City, because it only impacts the budget once.

Although both parties used the same cities as its comparables. The parties' charts utilize different figures, and place Cincinnati in different places in comparison to the other comparable cities. For instance, Under the City's comparison charts, only Columbus exceeds Cincinnati pay levels. The City uses the police specialist as its highest pay level, when not all police officers obtain this classification. Whereas, the Union's charts shows that Columbus, Dayton, and Toledo exceed Cincinnati pay levels. The Union also provided an in-depth comparison of the total compensation package. The Union's calculations also project a 3% increase for those cities that are in negotiations for a new contract.

The Union also emphasizes other bargaining units within the City of Cincinnati that are receiving wage increases in 2009. However, most of these contracts appear to have been previously negotiated with a increase for 2009.

Thus, while there is clearly a budget issue, the City has already budgeted for a 2% increase for the parties not represented by a union, and 3% for parties that are represented.

Recommendation

A 2% base wage increase both years, not including the OPOTA pay and training pay that are going to be rolled into the base pay as agreed to by the City.

Article XVII - Terms of Agreement

City Proposal:

The City proposes that the length of the agreement be for three years, as opposed to the typical two year agreement negotiated by the parties over the last several contracts. Initially, the City proposes a 30-month contract to accommodate the FOP election process.

The City notes that the negotiation process is often cumbersome, in time and money. The City stresses that with a two year agreement, there is not enough time between the negotiations of one contract to the next. The City emphasizes that the other comparable jurisdictions all have three year agreements, with the exception of Toledo, which has two-year agreement, and Pittsburgh has a four-year agreement. The comparable jurisdictions listed by the City are: Toledo, Akron, Cleveland, Columbus, Dayton, Indianapolis, Louisville, and Pittsburgh.

It is the City's contention that the three year agreement will take the negotiations off the budget cycle. In other words, under the current scheme, the negotiations are taking place at the same time as the City is trying to figure out its budget. The City states that with a three year

agreement, the budget will be in place at the time of negotiations, and the City will know what it has available.

Finally, the City notes that Arbitrator Michael Paolucci recommended a three year contract four years ago.

Union Position:

The Union proposes a two year contract. The Union contends that a three year contract would open the negotiation process to political meddling. The Union explains that the expiration of the two year contract occurs opposite City Council and FOP elections. The Union opines that the FOP is often linked to high profile political issues within the City, therefore, it is critical that the contract be negotiated outside the political elections of both sides.

The Union states that the preparation and actual negotiations occur midway through the subsequent "even" year of the contract. Thus, a sitting FOP Executive Board and City Council elected at the end of the odd year does not have to renew its efforts and potentially change directions due to a new Executive Board during labor negotiations. The Union states that such a change, would likely cause a change in the negotiating team, caused by a new FOP president or City Council selecting new members of the negotiating committee.

The Union contends that even a contract ending in mid-year would be of little use in avoiding these issues.

The Union notes that Mr. Marcus Sandver proposed a 2 year contract in the last negotiation process.

Discussion:

Both parties present compelling arguments. The fact- finder realizes that the parties have agreed to a 2-year contract for several years. The Union's reasoning set forth for wanting to remain in the 2-year cycle is understandable. However, the City presented compelling evidence that the majority of comparative agreements are for a duration of three years. Also significant, is the City's point that it will know what is in the budget at the time of negotiations. Both the fact-finder and the City are sympathetic to the Union's concern that the contract negotiations not occur during a time that will interfere with Union elections. To avoid this scenario, the City proposes that the initial contract be for a term of 30 months.

Recommendation:

A three year contract, with the initial contract 30 months as proposed by the City.

Article III, Grievance Procedure:

City Proposal:

The City proposes a change to Article III, the grievance procedure of the Supervisor Contract only. The City proposes that the language of the article be changed to say Assistant Police Chiefs hired or appointed on or after January 1, 2005, are not eligible to utilize the grievance arbitration procedures contained under the contract for tenure or disciplinary appeals.

The City states that the Issue 5 litigation was recently decided by the Supreme Court of Ohio in favor of the City. Essentially, the Supreme Court held that Issue 5 was a valid exercise of the City's power and was not an unfair labor practice or violation of the contract

The City contends that the problem underlying this issue is that the Assistant Chiefs are placed under a bargaining unit and under the control of a union contract. The City states that

these individuals are high level managers and are placed into a position of serving two masters everyday.

The City states that Issue 5, Article V, Section 5 of the Cincinnati City Charter provides that the police chief and assistant police chiefs shall be appointed. The City states that the Charter also places the police chief in a tenure category after six months, subject to removal only for cause. The City maintains that the assistant police chiefs remain in an unclassified position and are subject to termination at will. The City contends that contract should be modified to reflect the changes of the charter.

Union Proposal:

The Union proposes that the language remain the same. The Union maintains that Issue 5 was the City's attempt to have unfettered rights to hire and fire Assistant Police Chiefs at will. The Union argues that to modify the CBA would be to deny the Assistant Police Chiefs a fundamental due process right under the contract. The Union states that the City Charter is in conflict with the CBA. The Union states that Supreme Court precedent says that when there is a conflict between a charter and a labor agreement, the labor agreement will prevail.

Discussion:

The evidence presented indicates that Issue 5 was placed on the ballot by City Council and provided for the open hire and changed tenure rights for the Police Chief, Assistant Chiefs, and other public safety department heads throughout the City. Issue 5 passed and became law in November 2001.

The City contends that the City Charter, essentially makes the assistant chiefs, employees at will. The City maintains that the parties' collective bargaining agreement should be modified

to be consistent with the City Charter.

The evidence demonstrates that Issue 5 has been the subject of much litigation and unfair labor practice charges. The Union states that there are two separate and distinct elements under Issue 5, one is promotion and appointment and the other is discipline. The Union emphasizes that the courts have only dealt with the issue of promotions. The courts did not deal with the issue of discipline under the contract.

In *State Emp. Relations Bd. v. Queen City lodge No. 69, Fraternal Order of Police*, 174 Ohio App.3d 570, the Hamilton County Court of Appeals held that the charter must prevail over the labor agreement. The Union emphasizes that the court only dealt with the promotion issue. The City also acknowledges this fact. The City further states that it is not saying that it's proposed language is required by the Supreme Court or the Court of Appeal's decision. The City says it is merely trying to conform the parties' agreement to the will of the voters.

As the Hamilton County Court of Appeals specifically recognized, pursuant to O.R.C. 4117.10(A), the Ohio Supreme Court has held that if a local law conflicts with the terms and conditions of employment found in a collective bargaining agreement, then the collective bargaining agreement prevails. According to the City, the City Charter essentially renders the Assistant Police Chiefs, employees at will. This is clearly in conflict with the collective bargaining agreement. To modify this language would deny the Assistant Police Chiefs one of the most fundamental protections under a labor agreement. Any employee that is subject to the labor agreement is entitled to all the benefits, rights, and protections offered by the agreement.

Recommendation:

The language remain the same.

Article III, Grievance Procedure, Section 3

City Proposal:

The City proposal includes two elements: a written explanation of why the grieving party disagrees with the City's response, and the City proposes to add language that requires a meeting if either party requests one.

The City proposes adding the following substantive language to Step Three of the grievance procedure: "The written appeal to the Chief of Police, or his designee, shall contain a full explanation of why the party filing the grievance disagrees with the City's response in the prior two steps of this procedure. In addition, if the grievant or the Chief of Police, or his designee, requests a meeting, such meeting shall be held within five (5) days of the request, where the issues presented by the grievant may be explored in order to resolve the grievance."

The City maintains that the proposed language will serve to improve the parties' process by narrowing the issues and improving dialogue. The City contends that when the grievance moves from Step Two to Step Three, it does not contain any explanation of why the Grievant disagrees with the City's responses in the previous steps. The City further contends that it is not often made aware of legitimate reasons why the grievance should be granted or other matters the Chief should consider in making a decision.

Union Position:

The Union contends that the City is trying to fix a problem that doesn't exist. The Union states that the FOP has always been willing to meet with the City to resolve grievances. The

Union also acknowledges that the process has been greatly enhanced in the last two years, in part, because the City Human Resource and Solicitor's Office have begun requesting meetings to discuss grievances. The Union states that this has led to an increased effort in resolving grievances. Basically, the Union states that the FOP is already complying with any request for a meeting, therefore, there is no need for contractual language requiring meetings.

Discussion:

Obviously both parties' interests are served with a process that provides efficient resolution to grievances. That does seem to be both the City and the Union's desire. Moreover, both parties' position on this issue is reasonable. However, the fact-finder doesn't think a written explanation of why the grieving party disagrees with the City's response to the grievance is necessary. The City's concern of lack of information or facts is reasonable. However, this concern should be resolved in a meeting between the parties, therefore any additional written response is not necessary.

The City also proposes to add language that requires a meeting if either party request one.

The Union states that it is not necessary to add this language to the contract, because the parties are already working together to resolve grievances. The City appears to want the extra protection of knowing the contract requires a meeting. However, the City acknowledges that both parties currently have a willingness to meet and work matters out. Then, it appears that contract language is not necessary for the City to get a meeting. However, if receiving a requested meeting becomes a problem in the future, then the proposal should be revisited.

Recommendation:

The contract language remain the same.

Article III, Grievance Procedure. Section 3, Step 6

City Proposal:

This proposal by the City is broken down into two main sections, the first section Arbitrator Selection and Authority; the second section is Arbitration Discovery and Evidence

1. Arbitrator Selection and Authority

The City proposes a change to the current arbitration process. The City proposes a nine member panel of arbitrators who will be chosen according to a procedure similar to that used by the City of Columbus and its FOP.

The City contends that the current contract language concerning arbitration promotes an unlevel playing field to the City's detriment. The City contends that the contract prevents the City from having the opportunity of fair discovery, whereas the Union has it. The City also maintains that the Union can use ancient cases as evidence of disparate treatment while the City cannot use fairly recent discipline to support a termination. Therefore, the City proposes changes to the contract language.

As justification for the panel, the City states that individuals become extremely familiar with the operations of the employer and the specifics of a collective bargaining agreement. The City also states that the parties agreed to a panel system during the negotiations for the 2003/2004 contract and it worked well for the parties until the Conciliator removed it from the contract in the most recent negotiations in 2005.

The City also contends that it paid for this language in the 2003-2004 contract, when it gave the FOP approximately 4% additional pay. In other words, the City contends that in exchange for this arbitration language, the City agreed to an additional 4% wage increase over two years, in the form of an additional 2% OPOTA certification pay and an additional 2% in training pay.

The City also proposes that the choice of arbitrators be limited to those arbitrators within a 125 mile radius of the City of Cincinnati. The City contends this would greatly reduce traveling costs and overnight stays for arbitrators.

The City further proposes to get the names of panel members from the American Mediation Service (AMS) rather than the American Arbitration Association (AAA). The City proposes that the arbitrations be governed by the rules of the AMS rather than AAA. The City states that AAA closed its Cincinnati office in 2005. The City further states that AAA's arbitration panels have included lesser known arbitrators who often have their office outside Ohio.

2. Arbitration Discovery and Evidence

This proposal is for a pre-hearing discovery. It would give the parties and opportunity to discuss the merits of the grievance, exchange witness list, including a description of the testimony, and exchange copies of any documents expected to be used at the hearing. The City proposes that this meeting occur no later than ten days before the hearing.

The City contends that this will eliminate surprise and help the parties to anticipate claims and defenses. The City states that the exchange of information will encourage settlement and reduce hearing costs.

The City states that pre-hearing discovery is particularly important in allowing the City to level the playing field. The City states that under the Public Records Act, The Union obtains the City's entire investigative file before the hearing. The City contends that the Union has an unfair advantage.

The City also proposes to prevent the Union from submitting evidence in any disciplinary case that pre-dates the alleged misconduct at issue by more than three years. The City states that the Union has been successful in introducing prior discipline of a different officer that goes back more than three years. However, the City contends that it cannot use discipline more that three years old to support a termination.

Union Position:

The Union acknowledges that it agreed to the City's proposed changes to the grievance procedure as part of a comprehensive settlement during the 2002 negotiations. The Union maintains that several other proposals were presented as a take it or leave it package deal, including the additional 2% OPOTA and additional 2% training pay. The Union states that as part of the deal, the City agreed to remove all Issue 5 proposals from the bargaining table, the deal also included health insurance at a fixed dollar amount. The Union states that it reluctantly agreed to the City's proposed grievance/arbitration system in exchange for these proposals.

The Union states that the City's proposed arbitration system is flawed and has been rejected by neutrals over and over again. The Union states that the City's real reason for its proposal is so that it can reverse its losing record under the current system. The Union contends that the City improperly attributes it losing record to the arbitration process.

The Union also objects to the City's proposal of pre-arbitration discovery. The Union emphasizes that it is the City that controls the disciplinary process. Thus, it has all the available resources. The Union states that virtually every document used at arbitration is generated by the City. The Union is concerned that if it had to provide names of potential witnesses, the City will intimidate those witnesses. The Union states that this has happened in the past.

The Union also objects to the City's proposal of using AMS rather than AAA. The Union states that the only rational for removal of AAA was the closing of the local office. The City states that you don't need a local office to conduct business. The Union also opposes the City's demand for local arbitrators.

The Union maintains that the current system is fair and impartial and has worked effectively for many years. The Union provides contract language of the comparable cities of Cleveland, Akron, Dayton, Toledo, and Columbus. The Union states that its current arbitration system is consistent with comparable cities. The Union acknowledges that Columbus uses a permanent panel, however, the Union states that four of the five cities use AAA or FMCS to provide lists of arbitrators for each case.

The Union states that two of the five jurisdictions have a discovery process in the arbitration provision. The Union emphasizes that in one jurisdiction, the discovery process is limited to documents and the other contract exchanges information the day before the hearing. The three year rule is totally absent from any other jurisdictions. The Union acknowledges that the Columbus agreement requires an arbitrator to have a business address or residence within the State of Ohio. However, the Union notes that no other contract has the 125 mile requirement.

Discussion

A standard feature of collective bargaining is that if a provision is contained in a contract and one party wishes to modify or delete the provision, that party must offer a quid pro quo. Another way to convince a neutral of the need to delete a provision from a contract is to show that the provision is either unique or not needed. The City must prove there is some sufficient reason for the demand other than the fact that the City wants to remove the language from the contract.

The Fact Finder is sympathetic to the City's desire for a level playing field. However, the City fails to show how changing the arbitration system will level the playing field. The parties current system is consistent with the majority of comparable jurisdictions. Therefore, the parties current system is not unique or inherently flawed in some way.

Similarly, the City has not demonstrated a sufficient reason to have arbitrations governed by the American Mediation Service rather than the American Arbitration Association. The City's rationale for limiting the choice of arbitrators to a 125 mile radius as a cost-cutting measure is understandable. However, the parties can limit the list to arbitrators within a regional area under AAA.

The proposal on pre-hearing discovery is also not justified. As pointed out by the Union, most of the documentation submitted at an arbitration is in the possession of the employer.

The City's proposal to prevent the Union from submitting evidence in any disciplinary cases that pre-dates the alleged misconduct by more than three years is also not justified. The City's reasoning is that the Union has been successful in introducing discipline of more than three years in a disparate treatment case. The City states that if it cannot present evidence that

the grievant was suspended for similar conduct just over three years ago, then the Union should not be able to present a 10-year old discipline of a different officer as evidence that the grievant was treated unfairly. While it does seem unusual that prior discipline of a grievant could not be introduced to substantiate the termination, that is not justification to exclude evidence of the grievant's disparate treatment or that the employer is not enforcing its rules uniformly. The age of the alleged disparate treatment is an element for the arbitrator to consider when deciding the case. Recommendation:

The current language remain.

Article VII - Wages and Benefits, Section 6 Overtime Compensation

Union Proposal:

The Union proposes that the officers work four consecutive days of 8 hours and 33 point six minutes and have two days off. Currently, the officers work six consecutive 8 hour days and have two days off.

The Union states that officers are routinely expected to attend court during their 6 day work week, and also on scheduled days off. Often by the fifth and sixth days of working, the officers are exhausted and stressed. The Union believes this is a reason of on-the-job injuries and accidents, officer mistakes, and citizen complaints of discourtesy.

City Position:

The City proposes the current schedule. The City contends that under the 4 & 2 schedule officers would work 8 hrs and 32 minutes, resulting in a 66 minute (32 minutes times 3 officers) per day overlap with the following shift. The City states that the work is currently getting done

in 8 hour shifts, therefore, there the 4 & 2 schedule will not accomplish an increase in productivity. The City states that in a struggling economy, now is not the time to adopt a more expensive and less efficient work schedule.

The City further contends that the staffing levels would be negatively affected by the 4 & 2 schedule. The City states the currently, the staffing levels fluctuate between 4 and 5 supervisors per day and 18 - 21 officers. Under the 4 & 2 schedule there would be approximately 4 supervisors each day and between 16-18 officers per day. The City maintains that staffing will be at minimum levels under this schedule, thus if someone called in sick or used vacation, the City would have to call in officers on overtime or hold officers from the previous shift. The City states that the 4 & 2 will require a new payroll system.

Discussion:

Both parties presented comparable jurisdictions. The Union states that Akron, Cleveland, Columbus all work 8 hour or 10 hour shifts, Dayton and Toledo work 8 hour shifts.

Under the City's comparable jurisdictions, Cleveland has a rotating schedule, Dayton has a 5 on, 2 off schedule, Toledo has a 4 on and 2 off schedule, Akron has a 3 on and 1 off, Columbus has a 5 on 2 off or a 4 on 3 off, Pittsburgh has a 5 on and 2 off, Indianapolis has a 6 on 3 off and Louisville has a 5 on 2 off or a 4 on 3 off.

In looking at the comparable jurisdictions, the current 6 day schedule seems to be excessive. The fact finder does believe that a 4 & 2 work schedule would likely reduce on the job accidents and injuries, it would likely create a more satisfied, more productive workforce, and it would allow members to become more active in family functions. However, the City's staffing, overtime, and payroll concerns are reasonable. Under the current economic climate, it

is tough to recommend a change that would likely cause an increase in cost to the City.

Recommendation:

The current contract language.

Article VII - Wages and Benefits, Section 18 Sick Leave

Both the Union and the City have proposals under this section.

Union Proposal:

The parties contract provides paid sick leave when serious injury or illness affects the employee or members of the employee's immediate family (SWP-F).

1. The Union proposes to add grandchild to the list of immediate family members.
2. The Union also proposes to add language providing sick leave with pay in the death of a grandchild.
3. The Union proposes to add language that would allow the employee to take sick leave following an adoption. The Union proposes this leave not exceed six weeks.
4. The parties contract currently provides for Sick leave reciprocity, which allows the employees to receive cash for a portion of their sick leave bank. The Union seeks to add language that would provide an enhanced benefit for the employees.
5. The Union also seeks to add language that would allow employees to use up to 16 hours of sick time each year for medical, dental and psychological appointments, without providing any documentation.

City Position:

The City agrees to the Union's proposal to add grandchild to the sick with pay provision. The City also agrees to add grandchild to the sick with pay death benefit.

The City is willing to allow a member to take leave for an adoption, however, the City proposes that the member is allowed to take up to 24 hours of leave.

The City rejects the Union's proposed enhancement of the sick leave reciprocity/buyback incentive. The City states that the benefit is not supported by the nine-city survey. The City also adds that in comparison, Cincinnati police already have a rich buyback benefit.

The City also opposes the Union's proposed time off for employees to attend routine doctor and dental appointments for the officer and any member of the family. The City contends that such appointments are not critical health issues and can be easily scheduled during an officer's time off. The City adds that no matter what shift an officer works, off-hours are available that would coincide with office hours of dentists and physicians.

City Proposal:

The City proposes placing some controls into the contract provision allowing sick leave to care for family members. The City contends these proposals are intended to prevent sick leave abuse. The City proposes the following:

- The City proposes language that an employee with five or more instances during a 12 month rolling period be required to provide physician's verification of illness and inability to work. The City also proposes to require proof of illness of the involved family member. The City also defines "instance" as an occasion starting with two or more hours, regardless of duration.
- The City also proposes that the supervisor can ask for a physician's verification if a sick instance exceeds three consecutive days.
- The City also proposes that if an employee uses 80 hours in a 12 month rolling

period, the supervisor may review the usage and choose to request a physician's verification for any subsequent usage during the 12 month period.

- The City also has language in its proposal that says if an employee shows a pattern of usage of sick pay, a physician's verification will be required after three instances during a rolling 12 month period.
- The City includes language that the fraudulent use of sick leave is a serious offense and will result in discipline, up to and including termination of employment.
- The City adds language saying that if an employee has requested and been denied time, i.e vacation time, calls in sick for the day, a physician's statement of illness or injury is required.

In summary, the City seeks to add language that the employee can take off, provided no other family member is available to take care of the affected member. The City also proposes to limit sick leave for illness of the family to two days per occurrence. The City contends this limitation would be consistent with other bargaining groups restrictions. The City states that the FOP is currently the only bargaining group with an unlimited days off per occurrence SWP-F benefit. The City also seeks to add verification language, whereby an employee would be required to provide verification, i.e. a physician's note, upon certain instances provided in the contract.

The City states that the FOP is the only city contract with no tools that help to detect and prevent sick leave abuse. The City states that the proposal mirrors those abuse detection/prevention tools of the Fire and CODE contracts. The City also states that the

comparables also support its position. The City states that substantially all other cities have some mechanism designed to curb fraud and protect against abuse.

Union's position:

The Union states that the City's proposed restrictive language is unnecessary. The Union states that the City's internal contracts are not at all uniform of any of these issues. The Union states that the City has failed to demonstrate the effectiveness of the language. The Union states that a chart reflecting total sick time usage for 2006-2008 for CODE, AFSCME, Building Trades, FIRE, and the FOP, shows that the FOP's use of sick leave is well below most other employee groups.

The Union contends that the City's proposal that sick with pay family can be used only when no other member of the family is available to care for the family member is unmanageable at best. The Union points out that this in today's era of two income households, it is not an era where one family member stays home and is available all the time. The Union also maintains that in today's society we have single parents, divorced families are a few of the issues that make this proposal unrealistic.

The Union opposes the City's proposal that the sick with pay family be limited to two days. The Union states that many of the police officers are young men and women that have small children that sometimes have chronic illnesses. Many times, these illnesses require more than two days.

The Union opposes the City's request that an employee will five or more instances of sick pay in a rolling twelve month period be required to provide a physician's verification of illness and inability to work, or provide verification of illness of family member. The Union

points out that an instance is defined as any two hour or more absence, a large number of members would exceed five instances in a rolling twelve month period. The Union also notes that requiring a physician's verification is expensive.

Discussion

The City agrees with the Union's proposal to add grandchild to the sick leave provisions and sick pay death provisions. Recommendation: The Union's proposal be adopted.

The City agrees in part to the Union's adoption proposal. The City is willing to allow a member to take leave following an adoption, however, the City wants to limit the leave to 24 hours. The City contends that the Firefighters received this same language in its current contract. Recommendation: I recommend to allow leave following an adoption, but to limit the leave to 24 hours, as recommended by the City.

The City rejects the Union's proposed enhancement of sick leave reciprocity/buyback because the Union has made no effort to meet the needs of the City in providing sick leave abuse restrictions, similar to other City labor contracts. A review of the City's other contracts supports the Union's position that the an enhanced benefit is enjoyed by the other bargaining members. However, these contracts also provide language similar to the current restrictions sought by the City to prevent sick leave abuse. Therefore, there was a quid pro quo situation. Recommendation: I do not recommend changing the current language

The City opposes the Union's proposal for adding sick time for routine medical and dental benefits. The City contends that an officer has available off time for which to schedule these appointments. The comparables demonstrate that this is not a widely given benefit. The Union has not provided sufficient evidence that this benefit is justified. Recommendation: I do

not recommend adding this language.

The City proposes to add restrictions to the sick with pay family. It proposes to add language that the member can take leave provided that no other family member is available to care for the affected family member. The City also proposes the limit the SWP-F to two days per occurrence. The City has added limitations to the number of days for each occurrence under the SWP-F, in all of its other contracts. However, it doesn't appear that the language that no other family member is available appears in any other contract. Recommendation: I do not recommend adding the City's language that no other family member is available to care for the affected family member. I do recommend limiting the SWP-F to two days per occurrence. However, I also recommend adding language that additional time may be granted by the immediate supervisor provided the employee submits written verification by the treating physician, as in some of the other City contracts.

The City proposes language that a supervisor can ask for a doctor's note when the employee is off 3 or more consecutive days. I think that asking for physician's verification after three consecutive days of sick with pay is reasonable. It is also supported by the external comparisons. I believe that the way the proposal is written, leaves that decision up to the supervisor, which is discretionary and will likely lead to arbitrary and non-consistent administration of the provision. Therefore, I cannot recommend the language as proposed.

The City also proposes verification language, i.e. where the employee has five or more instances, he/she will be required to provided verification of illness, or if the employee used 80 hours during a rolling 12 month period, the supervisor may review the usage and choose to request a physicians's verification for any subsequent usage during the 12 month period. The

City has similar language in the majority of its contracts. However, the external comparisons do not support such language. However, most compelling is the arbitration awards on this subject. In *The City of Cincinnati and FOP Queen City Lodge #69*, FMCS Case No. 92-22928, Arbitrator Millious determined that a City policy that determined that an employee was a frequent user of sick time with four or more separate occasions during the past twelve months was arbitrary and subject to abuse. The arbitrator determined this because, "The application of the rule relies on a number of occasions of sick leave and not on a reasonable inquiry concerning the basis for a sick benefit claim." The arbitrator also noted that the policy, in addition to being arbitrary, placed restrictions on sick leave.

Similarly, in the arbitration award of *The City of Cincinnati and the FOP, Queen City Lodge No. 69, FMCS Case No. 95-01066*, Arbitrator Sandver, discussing the frequent user of sick time rule (FUST), found that "I find that the FUST list and the requirement for a physicians note after the fourth occurrence of sick leave is arbitrary and unreasonable." Arbitrator Sandver went on to say, "[w]hat is prohibited is a procedure which sets an arbitrary number of occurrences as the 'trigger point' without any consistent reason or rationale of why this number is picked over any other number. The policy needs to address the issue of when <u>use</u> of sick leave becomes <u>abuse</u> of sick leave. The mere fact that someone uses the sick leave benefit does not necessarily constitute abuse." Therefore, while I understand the City's concern in preventing abuse of sick leave, the proposals as written are arbitrary. Thus, I cannot recommend the City's proposals for verification. <u>Recommendation:</u> I do not recommend adopting the City's proposals.

The City includes language that the fraudulent use of sick leave is a serious offense and will result in discipline, up to and including termination of employment. Again, the City is

attempting to have some tools against the abuse of sick leave. This language or similar language is supported by the external comparisons. Recommendation: I recommend adding a variation of this language to the contract. The parties need to define fraudulent use.

The City adds language saying that if an employee has requested and been denied time, i.e vacation time, calls in sick for the day, a physician's statement of illness or injury is required. I understand what the City is attempting to accomplish here. The City gave an example of an employee calling in and being denied vacation or other compensatory time, and calling right back and saying he/she was sick. This is clearly abuse of sick leave. However, there could be a legitimate occasion where the employee has asked ahead of time for vacation and was denied because another employee already had vacation scheduled. There is a possibility that the employee is actually sick on that day and calls in legitimately. There is also the possibility that he/she calls in and it's not legitimate. In either case, the City is not unreasonable to ask for a physician's note in this instance. Recommendation: I recommend the language.

Article VII, Section 21, Medical Insurance Benefits

The Union and the City have proposals under this section.

Union Proposal:

1. The Union proposes to add language to the contract that if an employee opts out of the medical insurance plan, that employee shall be provided an annual stipend of $3,000. The Union also has language in the proposal that states that if the employee's spouse works for the City, that employee is not eligible for the opt-out provision.

City's Position:

The City opposes the Union's opt-out proposal. The City states because it is self-insured, the opt-out is an unnecessary cost to the City. The City states that none of the comparable jurisdictions provide from an opt-out provision close to $3,000. The City acknowledges that Dayton provides $1,216.54 benefit. However, the City states that none of the other seven jurisdictions provide no buyout provision.

Discussion:

The City provides the comparison jurisdictions of Akron, Toledo, Cleveland, Louisville, Dayton, Columbus, Pittsburgh, and Indianapolis. Toledo provides for additional life insurance and Dayton has a buyout provision. None of the other jurisdictions have an opt out provision. Likewise, the City's other contracts do not provide for opt out provisions. Recommendation: I do not recommend the opt-out provision.

2. The Union also administers its dental and vision plan. The City currently pays the Union $67.50 on a monthly basis for each member under this plan. The Union proposes to increase this amount to $82.76. The Union contends that the plans costs have risen and the current cost is $82.76.

The City is also opposed to the Union's 30% increase in dental/vision. The City states that it provides its employees vision and dental for $77.29 per month. Recommendation: I recommend the City pay $77.29 per month to the Union's dental and vision plan.

City Proposal:

1. The City seeks to increase the premium share of the employees from 5% to 10% without increasing the current caps. The City contends that its proposed 10% premium share is

compatible to the majority of cities in the nine-city survey.

The Union opposes the increase in premium from 5% to 10%. The Union submitted other City contracts, wherein, the employees pay 5% of the health insurance premium.

Recommendation: I do not recommend increasing the premium cost from 5% to 10%.

2. The City also proposes language that the City can change carriers from Anthem, provided a substantially similar plan is provided. The City is a self insured employer, meaning it pays all claims while the plan is administered by Anthem.

The City is a self-insured employer. The City currently contracts with Anthem to administer the plan itself. The City seeks language that would allow it to change carriers as long as the benefits provided and the cost to the Union members are comparable to the current benefit. The Union appeared willing to allow language in the contract during negotiations, however, the parties could never reach an agreement on the language. There is language in one of the City's current contracts with the Fire Fighters, Union Local 48. I recommend similar language.

Recommendation: The City will notify the union of any proposed changes in insurance carriers and/or plans and will meet with the Union, if requested, prior to changing an insurance carrier or plan. The City may change insurance carriers or plans, as long as a substantially similar plan is offered, with the same level of insurance benefits and co-payments, together with a comparable network of providers."

Article VII - Section 29 - Field Training Officers

Union Proposal:

First, the Union proposes a change to the non-supervisor contract. Currently, the contract provides that any member working Field Training Officer (FTO) shall received additional

compensation for each day the FTO duties are deemed necessary. The Union proposes to change this language to require compensation when the FTO performs these duties for at least 4 hours.

As justification, the Union explains that a police recruit is assigned to a FTO for a 14 week period. The recruit is given credit for one full day of FTO training if he/she works a minimum of four hours on any particular day. The Union states that the current contracts provides compensation for "each day FTO duties are deemed necessary" The Union states that the City interprets the current language to mean the FTO must work the entire 8 hour shift to receive the additional compensation, even though the recruit only needs to work four hours. By way of example, the Union states that if an FTO takes off the last ½ hour of his shift and works 7 ½ hours, the FTO does not qualify for the FTO compensation under the City's interpretation of the current language.

Second, the Union proposes a change to the supervisor contract. The Union explains that it is anticipated that there will be a wave of supervisors retiring in the foreseeable future. Therefore, there has been discussion of the creation of a program that current supervisors will act in the capacity as an FTO and train another newly promoted supervisor. In the event that this program is developed, the Union proposes the same compensatory language found in the non-supervisor's contract.

City Position:

The City says that is against the Union's proposal to pay the non-supervisor FTO when the FTO works less that an 8-hour shift. The City states that examining comparable jurisdictions show that Cincinnati police officers FTO is clearly the most lucrative of any of the nine city survey. The City uses Indianapolis, Louisville, Cleveland, Toledo, Dayton, Akron, Columbus,

and Pittsburgh as comparable jurisdictions.

The City is also against the Union's proposal of supervisory FTO pay. The City states, that unlike a police officer who is acting as an FTO, training and teaching is a very basic element of a supervisor's job function. Basically, the City argues that the Union want to pay supervisors an extra pay to do a supervisor's very basic job function.

Discussion:

Although the City provides probative evidence that the current FTO pay is lucrative in comparison to other jurisdictions, I recommend the language proposed by the Union. The current language provides compensation for each day, and this language has been interpreted as 8 hours, whereas the recruit only needs 4 hours to receive credit. If the FTO works at least four hours he/she should receive the additional compensation. If the recruit gets credit after 4 hours, then the FTO should only have to work 4 hours to receive the additional compensation. This language is fair, consistent and justifiable. Recommendation: I recommend the Union's proposal to the non-supervisor's contract.

I do not recommend the second proposal to the supervisor contract. The program has not yet been developed and the City has presented reasonable arguments against the additional compensation for the supervisors. Recommendation: I do not recommend the Union's proposal to the supervisor's contract.

Article VII Section 37 Non-Supervisor Contract, Section 38 Supervisor Contract – Promotions

The Union has one proposal under this section, the City has two proposals under this section.

Union proposal:

The Union proposes to incorporate the past practice of the promotional process into the parties collective bargaining agreement. Under this practice, known as the "Rule of One", members are promoted in rank order from an eligible list. The officer who scores highest on the promotional examination is awarded the promotion.

The Union states it is necessary to put this practice into the contract because of the City's failure to follow the past practice with regard to the appointment of Assistant Police Chiefs since the implementation of Issue 5. The Union contends that the City has attempted to manipulate the promotional process.

The Union states that it was initially told that Issue 5 was Phase 1 of the Charter Amendment and that Phase 2 would entail removing all ranks from Police Lieutenant and above from civil service protection. Thus, the Union states that the City could change the process with regard to other positions, as it did with Assistant Chiefs, unless this language becomes part of the contract.

City proposal and position:

1. The City doesn't think that the promotional rule needs to be added to the contract. However, if any promotion rule is adopted in the contract, the City says it should be the "Rule of Five", where the top five scores on the test will be considered for the position, instead of the top person on the list. It is the City's position that the Rule of Five would give it a greater ability to find the best possible person for the job because it will be able to consider more than an applicant's test scores.

The City states that Dayton is the only other jurisdiction using the "rule of one". The other jurisdictions use a rule of three or higher.

Union position:

The Union is against the City's proposed "rule of 5" language. The Union states that the City's proposal is in direct conflict with a Consent Decree entered into by the Sentinel Police Association, the City and the FOP on September 14, 1987. The Consent Decree requires rank order promotions. The Union states that the Consent Decree requires a promotion of one minority after the promotion of four whites.

The Union contends that since Issue 5 was implemented the City has appointed three individuals to Assistant Police Chiefs, and the Civil Service Promotional process was not used.

Discussion:

This is a difficult issue for the Fact Finder to recommend. I find merit in both parties' positions. However, the Union puts forth compelling arguments. The parties agree that the Civil Service Promotional process has been used for many years. Due to the outcome of previous litigation concerning the City's treatment of the Assistant Police Chiefs, the Union is fearful that the City will attempt to make other bargaining unit positions unclassified and that the City will not use the Civil Service Promotional process.

Although we dealt with Issue 5 and the Charter amendment earlier, it will help to reiterate what happened that causes the Union to be fearful. On November 6, 2001, Issue 5 became law. This Charter amendment reclassified the Assistant Police Chiefs to an unclassified position. Additionally, the Charter provided that the Assistant Police Chiefs were no longer required to take the promotional examination. Instead, the City could appoint individuals to

these positions. However, before the passing of this charter amendment, if there was a vacancy for an Assistant Police Chief, that position was filled from the civil-service promotional eligibility list under the "Rule of One", which required the highest-ranking employee automatically be promoted to any vacancy. However, since the passage of Issue 5, the City has appointed 3 Assistant Police Chiefs and have not used the Civil Service Promotional process. Thus, the Union has a valid concern that the promotional process will change for other bargaining unit positions as well, especially, since the Union was told that Issue 5 was Phase 1.

Recommendation: For the reasons listed above, I recommend the Union's proposal.

City proposal:

2. The City also proposes that any unexpunged suspension exceeding one day preclude an employee's eligibility for promotion.

The Union is also opposed to the City's proposal to prohibit members with a suspension that exceeds one day from being promoted. The Union states that during 2006-2008, internal investigations sustained approximately 44 cases leading to suspensions that exceeded one day. The Union states that several of these suspensions are for items such as numerous garnishments and numerous missed courts. The Union states that it is patently unfair to jeopardize a member's career for these types of actions. The Union also states that this proposal would have an unfair impact on African-American males as a study conducted by the City concluded that black males are disproportionately disciplined within the work force when compared to their representation in the overall work force.

Discussion:

I agree that precluding an employee from promotion for any suspension exceeding one day is harsh. Therefore, I do not recommend the City's proposal.

Article XI– Service Record Availability Section 1. Expungement, Inspection Notice

The City has a proposal under this section and the Union has two proposals under this section.

City Proposal:

The City proposes changes to its expungement of discipline provision. Under the parties' current contract, a suspension of 30 days or more can be expunged after 5 years. A suspension of less than 30 days can be expunged after 3 years.

The City proposes that a suspension of 10 days or more stay on the employee's record permanently, and will not be expunged for any reason. The City further proposes that a suspension of 5-9 days be eligible for expungement after 6 years if there is no intervening discipline of suspension, and a suspension of 4 days or less be eligible for expungement after 4 years.

The City recognizes that these proposals are drastic changes from the current contract language. The City states, however, that it feels very strongly that arbitrators have had a false sense of a grievant's work record due to the current generous expungement provisions.

Union position:

The Union is against the City's proposal to increase the retention period. The Union contends that the Cincinnati Police Department retains service records of discipline in the member's service records longer than any of the Big Six comparison contracts (Akron,

Cleveland, Columbus, Dayton, Toledo, and Cincinnati).

Discussion:

The City contends that it cannot introduce evidence of that a grievant was suspended for similar conduct over three years ago. The fact finder is sympathetic to the City's concern. Indeed, typically in arbitration cases, consideration is generally given to the past record of any disciplined or discharged employee. See *Elkouri & Elkouri,* How Arbitration Works, (6th Edition), pg. 983.

However, the comparison jurisdictions do not support the City's proposal. According to the City's comparison numbers, Cleveland removes oral/written reprimands after 6 months, and all other discipline after 2 years; Dayton removes oral/written reprimands after 2 years and suspensions after 4 years; Toledo removes suspensions in excess of 30 days after 5 years, and all other discipline after 4 years; and Akron has no expungement provisions. Consequently, the City's expungement provision leaves suspensions on the record similar to the comparison contracts. Likewise, the City's internal contracts all have expungement provisions of 6 years or shorter. Therefore, I cannot recommend the drastic changes proposed by the City.

Recommendation: I recommend the current expungement provision timeline.

Union Proposal:

1. The Union proposes to add language into the current provision that states that all records pertaining to "administrative insights"[2] will be removed from the employee's file after three years. The Union states that administrative insights are not grievable or disputable. The Union states that the administrative insights stay in an employee's record for his/her entire career. The

[2] The Chief defined "administrative insight" as a personal meeting between an officer and

Union states that the City categorizes administrative insights as non-discipline, therefore, it should not be treated more serious than discipline and remain in the file permanently. The Union states that the number of administrative insights has drastically increased in the past several years.

City position:

The City contends that administrative insights are not discipline, thus their removal has no place in a collective bargaining agreement. The City also states that the administrative insights serve a valid management purpose in that if the same performance issues occur time and time again, would be hard to detect and correct if administrative insights are removed after three years. The City contends that it doesn't appear that any such provision appears in any of the other nine cities' contracts.

Discussion

Both parties have reasonable positions with regard to this issue. However, the City has demonstrated that a mechanism exists for members to request for an administrative insight to be removed from the file. Therefore, there doesn't appear to be a compelling need to have an automatic expungement after three years. Recommendation: I do not recommend the Union's proposal.

2. The Union also proposes to add language that the City shall request permission from the State of Ohio Records' Commission to purge disciplinary records consistent with Article XI.

City position:

The City maintains that it needs to retain expunged disciplinary records in the event the

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a commander that can address any kind of conduct on a one-on-one basis.

City is sued by disgruntled citizens because of misconduct by police officers. The City contends that destroying the records would render it unable to prove the prior discipline and thus would not have a defense against such a lawsuit.

Discussion:

The Union has not demonstrated that disciplinary records need to be destroyed in a time frame that is consistent with Article XI. The evidence demonstrates that the records can be expunged from an employees file after 3 years and cannot always be used against that employee in the event of subsequent discipline. Moreover, the City has a valid concern in that it needs to be able to show that it disciplined an employee in case of a lawsuit that alleges a pattern of misconduct. Thus, I recommend the current retention schedule. Recommendation: I do not recommend the Union's proposal.

Appendix to the Current Agreement - Drug and Alcohol Policy

City proposal:

The City proposes a random drug and alcohol testing appendix to the current agreement. The City states that recent employee behaviors, both on duty and off, regarding drug and alcohol abuse have become very noticeable.

Union position:

The Union objects to adding the drug and alcohol policy to the contract. The Union contends that the City currently has a drug and alcohol policy for the police department. The Union points out that random drug testing has been in place for over ten years. The Union recognizes that the current random drug test does not screen for alcohol testing, however, the Union states that there is nothing prohibiting the City from including alcohol screening during

the tests.

Discussion:

The parties seemed very close to reaching an agreement on this issue at the hearing. The Union acknowledged that nothing prohibited the City from adding a alcohol component to its current drug testing policy. The City seemed satisfied with the Union's response. The City wanted to use the language agreed to in the firefighters drug and alcohol policy. The Union highlighted a few instances where that language could not be used in a police policy. The Union emphasized this was not an exhaustive list. The Union states that the proposal as written prohibits the possession of drugs at any time. The Union states that police officers are required to possess drugs in the performance of their duties. Another problem highlighted by the Union was that the proposal allows for random drug or alcohol testing at any time during the work, whereas, the current random testing is only performed while an officer is on-duty. The City recognized that there were some flaws in the language and agreed to make minor changes. The changes requested by the Union are reasonable.

Recommendation:

I recommend that the City add an alcohol component to its current drug testing policy in the police department. I recommend the City use the language implemented in the firefighters contract, however, making the changes pointed out by the Union. I do not believe that the language needs to be part of the collective bargaining agreement.

Article XII - Fraternal Order of Police Provisions, Section 4. Release Time for FOP President

Union proposal:

Currently, the Union President is paid a full-time salary through donations of compensatory time by the union members. Each member donates approximately 2 or 3 hours of time to a bank, that is used to pay the President's salary.

The Union proposal eliminates the member's responsibility to donate compensatory time. The Union proposes that the City pay the entire salary of the FOP President. As justification, the Union provides internal comparisons to the City's other contracts, all of which the City pays part of the president's salary.

City position:

The City maintains that the Union's proposal is prohibited by law. The City contends that R.C. 4117.11(A)(2) clearly prohibits an employer from "financially assisting a labor organization". However, the City acknowledges that it allows release time for other union presidents without reimbursement from a union time bank. The City contends, however, that none of the other union presidents are granted release time on a full-time basis. The City contends that the Fire Union President and the AFSCME president are funded approximately 50% by the City and 50% by their unions.

Discussion:

The evidence demonstrates that the City doesn't fund union presidents on a full-time basis. However, the City does fund a portion of the other union presidents release time.

Recommendation:

I recommend similar funding as the Fire contract. I recommend the union members donate 1000 hours into a bank that will be used to fund 1000 hours of the FOP President's salary, and the remaining funding to be provided by the City.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC Section 4117.14, the Fact Finder recommends the provisions as provided herein.

Respectfully submitted and issued this 23rd day of April, 2009.

Floyd D. Weatherspoon
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was served by regular U.S. Mail upon Stephen S. Lazarus, Hardin, Lazarus, Lewis & Marks, 30 Garfield Place, Cincinnati, Ohio 45202-4322, Attorney for the Union, Queen City Lodge, No. 69, Fraternal Order of Police, and Donald L. Crain, Frost Brown Todd, 9277 Centre Pointe Drive, Suite 300, West Chester, Ohio 45069, Attorney for the City of Cincinnati, and Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street,12th Floor, Columbus, Ohio 43215-4213 on this 23rd day of April, 2009

Floyd D. Weatherspoon
Fact Finder