

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard to the matter of the Fact-Finding ~~Between~~ ^{STATE EMPLOYMENT RELATIONS BOARD}

THE CITY OF CUYAHOGA FALLS) 08-MED-08-086 P 12:39
) 2009 APR 8
) Patrol Officers &
-AND-) Community Service Officers
)
OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

ATTENDANCE:

For The City:

Virgil Arrington, Esq., Attorney
Hope L. Jones Deputy Law Director
John Conley Chief of Police
Joseph F. Brodzinski Finance Director

For The Union:

Randy Weltman, Esq., Attorney
Brett Reynolds Director (Midnight)
Chad K. Lengel Director (Detective Bureau)
David Cooper Director (Days)
James B. Deems Director

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STATE EMPLOYMENT RELATIONS BOARD

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The Employer, The City of Cuyahoga Falls, exercises statutory and charter authority and responsibility inter alia, for the provision of law enforcement services for its some 49,374 residents.

The member of the City's Police Department are organized into three Bargaining Units. The Department's sixty-four Police Patrolmen and Community Service Officers, with whom we are presently concerned, form a Bargaining Unit exclusively represented by the Ohio Patrolmens Benevolent Association (OPBA).¹

The City and the OPBA, as successor to the Fraternal Order of Police, are parties to a Collective Bargaining Agreement entered into as of July 1, 2005 for an initial term which ended on June 30, 2008.

¹ Sergeants and Lieutenants are in a separate "Promoted Officers" Unit also represented by OPBA.

The City has four other Collective Bargaining Units. The Department's twelve Dispatchers form an independent Bargaining Unit exclusively represented by the Fraternal Order of Police, Ohio Labor Council, Inc. The majority of the City's 164 clerical and professional employees are represented by the American Federation of State, County, and Municipal Employees, Ohio Council 8, Local No. 2662. The City's eighty Firefighters are represented by the International Association of Firefighters, Local 494. The City's some Metermen, Linemen, Electricians, Utility Men, Electric Engineering Craftsmen and related classifications are represented by Local No. 399, Utility Workers Union of America.

Pursuant to Contractual requirements, timely notices were given by the parties of their intent to modify or amend the Agreement, and negotiations proceeded looking towards the execution of a successor Agreement.

After several bargaining session, the parties declared impasse in the negotiations, and the undersigned was appointed Fact-Finder by the State Employment Relations Board on December 15, 2008.

At the direction of the parties, an evidentiary hearing was held on February 11, 2009 at the Cuyahoga Falls City Hall.

Timely in advance of the evidentiary hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code Section 4117.14(C)(3)(a).

At the hearing the parties submitted tentative agreements which had been reached on issues relating to the parties' bargaining proposals with respect to:

- Article 5 - "Employee Rights";
- Article 6 - "Negotiating Time Compensation for Union Officers";
- Article 7 - "Fair Share Fee";
- Article 13 - "Grievance and Arbitration Procedure";
- Article 14 - "Labor-Management Committee"
- Article 24 - "Vacations";
- Article 25, Section 2 - "Substance Abuse Screening";
- New Article - "Jury Duty";

As a result of the Fact-Finder's mediation efforts, the parties further agreed to amend Article 34, "Term of Agreement", to read as follows:

"This agreement shall be in effect from July 1, 2008, to December 31, 2010. To initiate negotiations for a successor agreement, either party may give written notice the other at least ninety (90) days prior to December 31, 2010."

In addition, the parties agreed on the revision of Article 15, "Tour of Duty", and the modification of Article 26, "Workers' Compensation and Injury Leaves (Light Duty)".

The parties, moreover, tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other Articles and Sections of Articles from the 2005 Contract except those set forth below.

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

A series of proposals to add new provisions and to amend other Articles and Sections of Articles of the 2005 Contract were withdrawn. Consequently, all Articles and Sections of Articles which have not been the subject of tentative Agreements nor specifically referred to above, and which are not discussed below, are to be carried forward and incorporated without substantive change in the new Agreement, and all proposals for Contractual amendments

or the addition of Sections or Articles that are not so referred to or discussed are to be deemed as having been abandoned.

Remaining unresolved were proposals submitted by the parties for changes or additions to the following Articles and Sections of Articles of the 2005 Agreement:

- Article 16 - "Overtime, Sections 5 & 6
("Compensatory Time);
- Article 17 - "Uniform Allowance";
- Article 19 - "Wages, Sections 1 and 2,
Section 3 [new] Firearms
Proficiency Allowance);
- Article 22 - "Health Insurance";
- Article 23 - Section 4 [new] - "Vision Coverage";
- Article 28 - "Sick Leave, Section 9 ("Cash Out"),
Section 11, [new] Sick Leave Incentive
Program, Section 12, [new] Parental
Leave"
- Article 33 - "Fitness Evaluation".

In making his recommendations upon all of the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c). the interest and welfare of the public, the ability of the public employer to finance and

administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

CONTRACT PROVISIONS AT ISSUE:

INTRODUCTION:

Taking one thing with another, a Fact-Finder's lot is not a happy one. He is required to make recommendations with respect to the economic relationship of the parties during the next eighteen months or so, at a time of an unprecedented recession whose depth and length not even Nobel Prize Laureates can predict with assurance. Further, his estimates lack foundation in comprehensive, audited 2008 financial data which were unavailable at the time of the fact-finding hearing. Indeed, not even the 2009 budget document was introduced.

However, it appears that Cuyahoga Falls is not in such dire financial shape as some of the other Ohio communities.

According to the most recent Moody's Report provided by the City, in fiscal year 2007, its General Fund unrestricted carry-over amounted to \$6,900,000.00, representing almost 20% of General Fund revenues, and providing a sizeable cushion in the event of a major reduction in receipts.

It has a diverse tax base with no single employer or small group of employers accounting for a major portion of its income tax revenues. It also has the possibility of substantial real estate development which may be revenue producing perhaps by 2010.

Nonetheless, it is most certainly not recession proof.

According to a "Financial Status" Report by Finance Director Joseph Brodzinski, the General Fund revenues for 2008 were reasonable stable, aggregating some \$33,900,000.00. However, he projected real estate tax revenues, which account for approximately one-third of the City's total, would decline modestly from \$10,578,600.00 in 2008 to \$10,297,460.00 in 2009 and to \$10,374,690.00 in 2010.

So too, his preliminary assessment indicated that the City's income tax revenues, which roughly account for another one-third of the General Fund, would be "flat" in 2008, producing \$11,060,250.00, an increase of only

\$86,000.00, or one-half percent, over 2007. Unfortunately, the status quo may not be maintained in 2009. The January, 2009 monthly income tax report showed collections to be down 9.1%, or \$156,000.00, compared to January of 2008. This decline may well be a harbinger of things to come.

The Local Government Distribution Funds from the State, which in 2008 amounted to \$2,767,704.00, are likely to be cut, Director Brodzinski opined, to help balance the State's budget.

In addition, the Finance Director projected that between \$800,000.00 and \$900,000.00 would have to be transferred from the General Fund to the Capital Improvement Reserve Fund in order to pay both the general obligation debt of the City and to support the operations of the City's Street Department.

In light of these likely adverse financial conditions, prudence in the Fact-Finder's analyses of the outstanding issues is required.

I. Article 16 - "Overtime":

A. The 2005 Contract:

The 2005 Agreement provides that "contractual overtime", as distinguished from "Fair Labor Standards Act Overtime", may be paid for in cash or by an increase in compensatory time-off. Compensatory time-off in lieu of

cash may be selected with the approval of the Chief of Police at the rate of 1½ times the number of actual overtime hours which the Officer has worked. However, under Section 5, the accumulation of compensatory time is limited to 240 hours, and may be sold back to the City up to the maximum of 240 hours, twice a year with a maximum cash-out upon retirement of 100 hours.

B. The Union's Proposal:

The Union proposes to amend Section 5 to increase the maximum 240 hour compensatory time accumulation to 480 hours and allow the Officer to sell back to the Employer up to 240 hours twice a year.

The Union further proposes to incorporate in Article 16 the text of a "Memorandum of Agreement" which had been the subject of negotiations, but was ultimately rejected by the City. The Memorandum would allow all "Contractual Overtime" to be paid through compensatory time-off, but limits the number of Officers who may be absent on any shift because of vacation, compensatory time-off, personal leave, or sick leave without having obtained the prior authorization of the Chief or his designee. Once so granted, the compensatory time-off cannot be denied. The Memorandum also would establish the procedure for the processing of overtime requests.

The Memorandum was to remain in effect until December 31, 2009 when the parties were to review the practice and determine whether the practice "has not had the desired effect in helping to manage the department's overtime budget...."²

C. The City's Proposal:

The City rejects any change in the provisions respecting compensatory time. The Chief's present policy is to deny all requests for compensatory time-off in order to avoid overtime liability.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATION:

On July 6, 2006 the Police Chief issued a Memorandum notifying members of the Department who work overtime that they "will no longer have the option to accumulate compensatory time-off", in lieu of cash, except "time worked on holidays".

² The procedure would require Supervisor to make a determination of whether the hours worked exceeded 171 hours in a twenty-eight day period, require the request to be made within thirty-days before the day requested off; allow the Chief to permit more than four members off per shift and in those cases require compensatory time-off requests to be made not more than twenty-four hours before the start of the shift, and if "conditionally granted" the member would be required to call-in to confirm the granting of time-off not less than one hour before the start of the shift.

A grievance filed over this policy change resulted in an arbitral Award finding that a "binding past practice existed whereby the Chief's discretion to approve requests for compensatory time had been delegated to his supervisory sergeants and ranking officers", who would then make decisions on a case-by-case basis, and that therefore the Chief was precluded from unilaterally changing the rules.

The City then moved to vacate the Award. On March 20, 2008 the Summit County Court of Common Pleas found that each of the three Police Department Collective Bargaining Agreements "unambiguously give the Chief discretion to grant or deny any requests for compensatory time", and therefore held that the Chief was entitled to deny every application for compensatory time for a single reason uniformly applied to all requests.

The Union's subsequent appeal was withdrawn with prejudice.

The Union now seeks to reopen the issue as part of the Collective Bargaining process.

The Fair Labor Standards Act, 29 U.S.C. Section 207(O)(3)(A) provides that Police Officers "may accrue not more than 480 hours of compensatory time for [overtime] hours worked after April 15, 1986."

The Union therefore requests the number of non-FSLA hours that can be cashed-out twice a year be increased from two hundred and forty (240) to four hundred and eighty (480), and that the amount eligible to be cashed-out at retirement be increased from one hundred (100) to two hundred (200).

The Union observes that cities in Summit County with a population of over 6,000 residents and communities contiguous with Cuyahoga Falls - Twinsburg; Tallmadge; Macedonia; Stow; Fairlawn; Hudson; Norton; Barberton and Copley Township - all grant employees the option of taking compensatory time in lieu of wage compensation for overtime hours worked.

While no information was supplied concerning the total amount of compensatory time hours which can be cashed-out in the comparable communities cited by the Union, the Fact-Finder notes that the expired Contract between the City and the American Federation of State, County, and Municipal Employees, Ohio Council 8, limits the accumulation of compensatory time-off to one hundred (100) hours which must be used within one hundred eighty (180) days after it is earned.

Similarly, the Agreement with Local 399 of the Utility Workers Union of America, AFL-CIO which became effective on

July 1, 2008 for an initial term expiring on December 31, 2010, provides in Article 21 that "subject to Department Head approval, overtime compensation ... may be granted in the form of compensatory time-off", but "no member of the bargaining unit shall be permitted to accumulate compensatory time-off in excess of one hundred (100) hours."

So too, Article 19 of the Agreement with the Dispatcher's Unit provides that "overtime compensation may be granted in the form of compensatory time-off only if the Department Head or his designee approves a member's request for compensatory time granted in lieu of monetary compensation This election to take compensatory time-off must be exercised immediately within the pay period in which the overtime was worked. No more than two hundred (200) hours of compensatory time-off may be accumulated by an individual member, provided the maximum cash-out upon retirement shall be one hundred (100) hours."

On the other hand, Article 21 of the Contract with the Local 494 of the International Association of Firefighters is unique in not limiting the accumulation of compensatory time-off in lieu of monetary compensation for overtime work, but it does require all requests to be subject to the approval of the Fire Chief and to be made "immediately

after the pay period in which the overtime is accumulated and ... [be taken] 180 days of the date upon which said compensatory time was earned."

The City's objection to the allowance of compensatory time arises from the fact that a significant volume of additional overtime was generated when other personnel had to be called-in or held-over to fill the temporary vacancy created when the originally scheduled employee decided to utilize his compensatory time-off.

The "Memorandum of Understanding", attached hereto as Appendix "A" had been initially looked upon favorably by both the Union and the City negotiators as part of an overall package would resolve the issue by establishing practical guidelines to govern the compensatory time-off procedure. The Fact-Finder believes the Memorandum fairly addresses the issue.

The Fact-Finder recommends that the proposed Memorandum of Understanding be adopted, carried forward and incorporated into the successor Agreement as an Appendix thereto.

Since at present Bargaining Unit members are not allowed to substitute compensatory time for cash in payment of overtime assignments, the Fact-Finder does not believe

the time is propitious to seek to increase the amount, should the City agree to revoke the ban.

Therefore, the Fact-Finder finds appropriate and recommends that Article 16, Section 5 be amended to read as follows, and as so amended, carried forward and incorporated into the successor Agreement:

"The following compensatory time option is subject to the right to cash overtime pay for hours worked in excess of one-hundred seventy-one (171) hours in any twenty-eight (28) day worked. (Paragraph A above). At the election of the eligible member, and subject to the approval of the Chief of Police, shall not be unreasonably withheld, but subject to the provisions of the Memorandum of Understanding appended to the Contract, compensation for overtime work may be taken as compensatory time-off at the rate of one and one-half (1 ½) times the number of hours which the eligible member has accumulated. The election to take compensatory time-off must be exercised immediately within the pay period in which the overtime was accumulated. In the event the eligible member does not elect to take compensatory time-off, he will be paid for overtime work accumulated during the pay period. This provision is subject to any regulations or orders made by the Federal Government. No more than two hundred and forty (240) hours of compensatory time-off may be accumulated by an individual member, and such member shall have the option to sell back to the employer up to two hundred and forty (240) hours, two (2) times per year, with the maximum cash-out upon retirement of one hundred (100) hours. Members may use compensatory time-off in lieu of sick leave in the case of illness with the approval of the Chief of Police."

II. Article 17 - "Uniform Allowance":

A. The 2005 Contract:

The expired Agreement increased the annual Uniform Allowance by \$50.00 in each year so that in the last year

Bargaining Unit members received \$1,200.00, payable one-half on December 31st and one-half on June 30th. It also provided that each member "shall have the option of either cash or a voucher, which may be redeemed an area uniform shop or shops designated by the City."

B. The Union's Proposal:

The Union seeks to specifically identify "Galls" as one of the shops at which a voucher may be redeemed because it provides "a catalogue offering far more choices and inventories of required items than in the area's shops."

The Union also asks for an increase of \$50.00 in the Uniform Allowance, and wishes to require the City to pay the cost of "any modifications of the uniform that it requires."

C. The City's Proposal:

The City desires to eliminate the voucher system for the purchase of uniform items as being administratively cumbersome, rather than to expand its ambit to include catalogue purchases. It opposes any increase in the Uniform Allowance.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

The Fact-Finder believes the Union's request for an additional \$50.00 in the annual uniform allowance to defray

increase in costs is reasonable in light of price increases that have taken place, and represents a minimal increase in Department expenditures.

So too, he finds no reason to reject the Union's demand that if the City modifies its uniform requirements or mandates the purchase of additional items, that it reimburse employees for any cost incurred as a result of the modification or additions. The decision whether the modification is worth the cost remains with the Department.

On the other hand, the Fact-Finder concurs with the City's proposal to eliminate the voucher option, rather than negotiate with another supplier to expand the program.

The Fact-Finder finds appropriate and recommends Article 17 be amended to read as follows, and, as so amended, carried forward and incorporated into the successor Agreement:

"Article 17 - Uniform Allowance:

"Section 1: Each Bargaining Unit member shall receive an annual clothing allowance of one thousand, two hundred and fifty (\$1,250.00) dollars for the purchase and maintenance of uniforms. This amount is payable one-half (1/2) on December 31st and one-half (1/2) on June 30th of each year of the Agreement."

"Section 2: This money shall be used by the members of the Bargaining Unit for the purchase and maintenance of uniforms and this money shall be expended for this purpose only. Any member of the Bargaining Unit who has not successfully completed his probationary period, shall

return to the City all items purchases for the Uniform Allowance."

"Section 3: The Chief shall determine the uniform for the Department and shall provide the Union with a copy of any modifications of the uniform fourteen (14) days prior to the implementation. Any uniform changes may be subject to discussion at the Labor-Management Committee as provided in Article 14. Members shall be granted a time period of two (2) uniform allowance allotments to comply with any mandatory uniform change. The cost of compliance with any such modifications of the uniform shall be borne by the City and the cost thereof reimbursed to the member at the end of the first pay period following the pay period during which the additional uniform requirement has been purchased."

III. Article 19, Section 1 - "Wages":

A. The 2005 Contract:

The expired Contract provided annual wage increases effective as of July 1st, of 3.2% in 2005, 3.0% in 2006 and 3.0% in 2007.

B. The City's Proposal:

The City offers increases, effective as of July 1st, of 2.5% in 2008, 2.25% in 2009 and 2.25% in 2010.

C. The Union's Proposal:

The Union is willing to accept the City's proposal only as part of a comprehensive Contract settlement in which the resolution of all issues meets with its approval.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATION:

The Fact-Finder has already noted the uncertainty during the present recession of the City's future income streams.

The Fact-Finder therefore finds appropriate and recommends that Section 1 of Article 19, "Wages", be amended to read as follows, and as so amended carried forward and incorporated into the successor Agreement:

"Section 1 - Wages Rates:

"Effective July 1, 2008, the hourly wage rates for bargaining unit members shall be the rates set forth in Appendix "A" of this contract. The wage rates as set forth in Appendix "A" reflect a two and one-half percent (2.5%) effective July 1, 2008, and two and one-quarter percent (2.25%) raise effective July 1, 2009 and a two and one-quarter percent (2.25%) raise effective July 1, 2010."

IV. Article 19, Section 2 - "Placement On Wage

Scale":

A. The 2005 Contract:

The expired Contract provides for a seven Step wage progression commencing with the date of appointment and increasing annually thereafter through completion of the first five years of service. A six Step "F" is reached after eight completed calendar years of service and the seventh and final Step "G" is attained after thirteen completed calendar years of service.

B. The Union's Proposal:

The Union seeks to reduce the number of completed years of service required to reach Step "F" from eight completed calendar years of service to seven, and allow employees to advance to Step "G" after twelve completed calendar years of service instead of thirteen. In addition, the Union would add an eighth Step "H" after completion of seventeen completed calendar years of service.

C. The City's Proposal:

The City rejects the Union's proposal and seeks to maintain the status quo. It notes that prior to the 2002 Contract there had been an eight Step wage progression with the final two earned, respectively, after twelve and eighteen calendar years of service. The present seven Step progression appeared in the 2002 Contract, and the City is not anxious to begin a new "cycle of adding longevity steps and then later compressing them."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

Of the nine municipalities assertedly comparable to Cuyahoga Falls, only Barberton with nine Steps maintains a wage scale with more Steps than Cuyahoga Falls. The Copley Township's wage scale has three Steps, Macedonia's,

Norton's and Hudson's have four, Stow's has five, while Tallmadge's, Fairlawn's and Twinsburg's have six.

What is perhaps more important than the number of rungs is how long it takes to climb to the top. On this last point, Cuyahoga Falls is well out of line with all of the comparable communities except Barberton which requires a Police Officer to spend eighteen (18) years before becoming eligible for the highest rate. The top Step is reached after eight years in Fairlawn, after three years in Macedonia, Copley Township, Hudson and Norton, after three and one-half years in Tallmadge, after four years in Stow, and, finally, five years in Twinsburg.

Turning to the wage progression for Cuyahoga Falls's other Bargaining Units, the Fact-finder notes the lack of a consistent pattern. The Dispatchers Unit has a seven Step progression where the top Step is reached after fifteen completed service years.

The Firefighters do not reach the highest wage level at Step 8 until after eighteen years of service.

The Utility Workers and AFSCME members currently climb four, five-year interval Steps to reach the top level after twenty-years of service.

The Fact-Finder considers, first, the Union's proposal to add a seventeen year rung to the City's wage ladder.

The evidence shows that Cuyahoga Falls's senior Officers' wages are competitive with those offered by comparable jurisdictions.

The average 2008 top rate for Officers with twenty years service in the eight comparable communities identified by the Union is \$57,947.02. The 2008 compensation of Bargaining Unit members at Step "G", reflecting the 2.5% increase effective July 1, 2008, of \$58,078.66, was thus actually slightly higher than the average by some \$84.00.

Accordingly, the Fact-Finder does not find that the need for the introduction of a seventeen year Step "G" to the wage progression has been established.

But, at the other end of the wage progression, Cuyahoga Falls' Officers with five years of service are entitled to a 2008 wage compensation, as of July 1, 2008, of \$54,864.89, representing only 95.1% of the average 2008 compensation of Officers in the eight comparable communities having five years of service. This suggests the appropriateness of reducing the service years required to reach the earlier Steps in the wage scale.

With this in mind, the Fact-Finder next moves to review the Union's proposal to reduce the number of years for Officers to reach Step "F", from eight years to seven

years, and to reach Step "G", from thirteen to twelve years.

According to a seniority list provided by the parties, eighteen of the sixty-four listed Bargaining Unit members have less than eight years of service. Twenty Officers have at least eight years of service but less than thirteen years. The remaining twenty-six Officers have at least thirteen years of service and sixteen of this number have accumulated at least seventeen years of service.

By end of the successor Contract term, December 31, 2010, eight additional members of the cadre will have qualified for the sixth Step "F" having completed eight years of service. Five members will have moved from Step "F" to Step "G" having obtained thirteen years of service.

If the number of calendar years to reach Step "F" were to be reduced from eight to seven, as the Union proposes, the number of Officers qualified for the Step "F" wage progression would immediately increase from twenty to twenty-eight. If the number of years required to reach Step "G" in the progression were also to be reduced - from thirteen to twelve - one additional Officer would become immediately eligible.

Under the Union's proposal, then, by the expiration date of the successor Contract December 31, 2010, a total

of twenty-three Officers would be at Step "F", and a total of thirty-four would be at Step "G".

In sum, under the Union's proposal, by the expiration date of the successor Contract, there would be a net increase of nine Officers at Step "G", and a corresponding decrease of five Officers at Step "F".

The cost implication for the City would be minimal and the Union's proposal to reduce by one-year member eligibility for Steps "F" and "G" would help keep the wages of the less senior Officers competitive.

The Fact-Finder therefore finds appropriate and recommends that Article 19, Section 2, Paragraph "C" be amended to read as follows, and as so amended, be carried forward and incorporated into the successor Contract:

"C. Regular employees shall advance each calendar year thereafter, upon recommendation of the Chief of Police until reaching Step "F" which recommendation shall be made for all members satisfactorily performing their duties. After seven completed calendar years of service and after twelve completed calendar years of service said members shall advance to Step "F" and Step "G" respectively upon the same conditions set forth for advancement above."

V. Article 19, Section 3 (New) "Firearms

Proficiency":

A. The 2005 Contract:

The expired Contract does not contain any provision for awarding additional compensation to Officers who have

successfully completed an approved firearms requalification program.

B. The Union's Proposal:

The Union would add a new Section 3 entitled "Firearms Proficiency Allowance" as follows:

"Effective July 1, 2008 annually, and in accordance with the standards set forth in Ohio Revised Code Section 109.801, et seq., all Bargaining Unit employees, who have completed twelve (12) years of service and have completed an approved Firearms Requalification Program consistent with the requirements Ohio Revised Code and Regulations and who have been shown to be proficient by January 1st of each calendar year shall receive an annual bonus in the amount of two (2%) percent of the minimum yearly straight-time earnings set forth in Appendix "A" herein; payable over twenty-six (26) pay periods each year."

C. The City's Proposal:

The City opposes the introduction of any firearms proficiency allowance on the grounds, first, that Officers are required to maintain their firearm certification as a condition of employment, and, second, that it effectively serves to increase the Step "G" compensation for senior employees whose compensation is already competitive with those of comparable communities.

D. THE FACT-FINDERS' ANALYSIS, FINDINGS AND RECOMMENDATION:

As the Fact-Finder has already found, Officers with thirteen or more years of service (subject to reduction to twelve years in accordance with the Fact-Finder's earlier

Recommendation) receive wage compensation which, for 2008, is at least equal to the average of that paid senior Officers in comparable communities, so that no such wage adjustment seems warranted under existing economic circumstances.

The Fact-Finder therefore does not find appropriate and does not recommend that the Union's proposal for the addition of a firearm proficiency allowance be adopted.

VI. Article 22 - "Health Insurance"

A. The Expired 2005 Contract:

The health insurance provision of the expired Contract provides:

Section 1. The City shall make available to all full-time bargaining unit employees comprehensive major medical/hospitalization health care insurance, as set forth in Section 2. The participating employee may elect either single or family coverage.

Section 2. The following summary of medical benefits will be effective April 1, 2006.

<u>Network</u>	<u>Non Network</u>
Percentage Payable after deductible is met	
90%/10%	70%/30%
Maximum Out of Pocket (excluding deductibles and co-pays)	
\$750/\$1,500	\$2,000/\$4,000
Deductible	
\$100/\$200 except office visit	\$200/\$400
Office Visits/Urgent Care	
\$10 co-pay	70%/30%
The \$10.00 co-pay for office visits applies to all office visits including those for follow-up treatment for a single medical condition.	
Surgery (eliminate surgical schedule)	
90%/10%	70%/30%
Anesthesiology (eliminate 100% billed)	
90%/10%	70%/30%
Emergency Room Deductible: \$50 per visit (exclusive of other deductibles). The Emergency Room Deductible shall be waived if, as a result of the condition requiring the Emergency Room visit, the covered person is admitted to an area of the hospital other than the Emergency Room.	
Member Co-pay for Prescription Drugs	
Retail Purchases \$5 generic/ \$20 name brand	Mail Order Purchases (90 day supply) \$10 generic/ \$40 name brand
If a name brand drug is dispensed, the co-pay for name brand drugs applies regardless of whether a generic equivalent is available. Members needing to take medication for at least ninety days shall, after obtaining two thirty day prescriptions of the drug at retail, obtain further refills through the City's mail order prescription drug service. Members needing to take medication for less than ninety days may purchase said medication by mail order with the co-pay prorated at the rate of the mail order co-pay.	
MM Lifetime Maximum: \$2,000,000	

Spousal Eligibility:

When the spouse of a member is employed on a full-time basis (defined as 32 or more hours of work per week) or retired and the spouse's employer or retirement plan makes health care coverage available to the spouse -- regardless of the cost -- the City's coverage of the spouse shall be limited to being secondary to the coverage that is available from the spouse's employer or retirement plan.

As an alternative to obtaining health care coverage from their primary employers, employed spouses may elect to enroll in the City's health care plan by paying a monthly premium equal to the greater of one-seventh (1/7) the established COBRA rate for single coverage or any sum received by the employed spouse from his/her employer to decline health care coverage from said employer.

In the event a husband and wife are both employed by the City of Cuyahoga Falls, each will be enrolled with single coverage; provided that if they have dependent children, the husband and wife shall be enrolled together under a single enrollment for family coverage.

A member seeking health care coverage from the City for his/her spouse shall be required to provide to the Department of Human Resources a statement indicating the spouse's employment status along with a statement from the spouse's employer or retirement plan administrator or other appropriate agency that health care coverage is not available to the spouse as a result of the spouse's employment status. The member shall promptly notify the Department of Human Resources of any change in the employment or insurance status of his/her spouse. If a member provides false information concerning his/her spouse, or fails to notify the Department of Human Resources of any required information, the member shall be required to reimburse the City for any medical expenses paid by the City on behalf of the spouse that would not have been paid had the City had accurate information concerning the spouse's employment or insurance status. Said reimbursement may take the form of a payroll deduction in an amount not greater than 5% of the employee's gross pay until full reimbursement is made.

Section 3. Dental Benefits -- The City will continue to provide a dental insurance plan for all members of this bargaining unit, their spouses and dependents, which shall be substantially equal overall to provisions of the plan now in effect. The City shall bear the cost of providing said dental insurance.

Section 4. A description of benefits shall be given to each member.

Section 5. Members of the bargaining unit as of April 1, 2006, shall be provided with health care benefits upon retirement as provided in accordance with the terms of Ordinance 160-2003 (Appendix B).

B. The City's Proposal:

The City proposes to increase the deductible in-network single/family medical expenditures to \$150/\$300 as of April 1, 2009, and to \$200/\$400 effective as of January 1, 2010.

The City would correspondingly increase the non-network single/family deductible amounts, to \$200/\$400 in 2009 and to \$400/\$800 in 2010.

The City also asks to increase the amount of physician's office/urgent care center visits from \$10.00 to \$15.00.

In addition, under its proposal, the maximum out-of-pocket, excluding deductibles and co-payments, would increase from \$750/\$1500 to \$1,000/\$2,000, for network provider payments and from \$2,000/\$4,000 to \$2,400/\$5,000 for non-network provider payments.

The City further seeks to create a third tier prescription drug category for non-formulary name brand prescription drugs for which the out-of-pocket cost to employees would be \$30.00, if purchased at retail, and \$60.00 for a ninety-day supply, if purchased from a mail order provider.

Employed spouses who elect to enroll in the City's Health Care Plan would pay 2/7th's, of the established COBRA

rate for single coverage, instead of the present 1/7th. As of 2008, the spouses of only eight Officers are enrolled.

On the other hand, the City proposes to add coverage for a number of immunizations and diagnostic examinations and tests presently excluded.

The City's proposal is set forth below:

ARTICLE 22

HEALTH INSURANCE

Section 1 The City shall make available to all full-time bargaining unit employees

comprehensive major medical/hospitalization health care insurance, as set forth in Section 2. The participating employee may elect either single or family coverage.

Section 2. The following summary of medical benefits will be effective April 1, 2009, except as otherwise noted.

<u>Network:</u>	<u>Non Network:</u>
Percentage Payable after deductible is met	
90%/10%	70%/30%
Maximum Out of Pocket (excluding deductibles and co-pays)	
\$1,000/2,000	\$2,500/5,000
Deductible	
\$150/300 except office visit \$200/\$400 except office visit (eff. 1/1/10)	\$200/\$400 \$400/\$800 (eff. 1/1/10)
Office Visits/Urgent Care	
\$15 co-pay	70%/30%
The \$15.00 co-pay for office visits applies to all office visits including those for follow-up treatment for a single medical condition.	
Surgery (eliminate surgical schedule)	
90%/10%	70%/30%
Anesthesiology (eliminate 100% billed)	
90%/10%	70%/30%
Emergency Room Deductible:	
\$50 per visit (exclusive of other deductibles). The Emergency Room Deductible shall be waived if, as a result of the condition requiring the Emergency Room visit, the covered person is admitted to an area of the hospital other than the Emergency Room.	
Member Co-pay for Prescription Drugs	
Retail Purchases	Mail Order Purchases (90 day supply)
\$5 generic	\$10 generic

\$20 formulary name brand \$30 non-formulary name brand	\$40 formulary name brand \$60 non-formulary name brand
<p>If a name brand drug is dispensed, the co-pay for name brand drugs applies regardless of whether a generic equivalent is available. Members needing to take medication for at least 90 days shall, after obtaining two 30 day prescriptions of the drug at retail, obtain further refills through the City's mail order prescription drug service. Members needing to take medication for less than 90 days may purchase said medication by mail order with the co-pay prorated at the rate of the mail order co-pay.</p>	
<p style="text-align: center;">MM Lifetime Maximum: \$2,000,000</p>	
<p style="text-align: center;">Spousal Eligibility:</p> <p>When the spouse of a member is employed on a full-time basis (defined as 32 or more hours of work per week) or retired and the spouse's employer or retirement plan makes health care coverage available to the spouse – regardless of the cost – the City's coverage of the spouse shall be limited to being secondary to the coverage that is available from the spouse's employer or retirement plan.</p> <p>As an alternative to obtaining health care coverage from their primary employers, employed spouses may elect to enroll in the City's health care plan by paying a monthly premium equal to the greater of two-sevenths (2/7) the established COBRA rate for single coverage or any sum received by the employed spouse from his/her employer to decline health care coverage from said employer.</p> <p>In the event a husband and wife are both employed by the City of Cuyahoga Falls, each will be enrolled with single coverage; provided that if they have dependent children, the husband and wife shall be enrolled together under a single enrollment for family coverage.</p> <p>A member seeking health care coverage from the City for his/her spouse shall be required to provide to the Department of Human Resources a statement indicating the spouse's employment status along with a statement from the spouse's employer or retirement plan administrator or other appropriate agency that health care coverage is not available to the spouse as a result of the spouse's employment status. The member shall promptly notify the Department of Human Resources of any change in the employment or insurance status of his/her spouse. If a member provides false information concerning his/her spouse, or fails to notify the Department of Human Resources of any required information, the member shall be required to reimburse the City for any medical expenses paid by the City on behalf of the spouse that would not have been paid had the City had accurate information concerning the spouse's employment or insurance status. Said reimbursement may take the form of a payroll deduction in an amount not greater than 5% of the employee's gross pay until full reimbursement is made.</p> <p>Sections 3, 4 and 5 [no change]</p>	

Additional Items of Health Coverage

To clarify and/or provide additional health care coverage, the following services will be covered as noted herein effective April 1, 2009. All levels of coverage are after exhaustion of applicable deductibles:

	Network (member pays)		Non/Network (member pays)
Office Exam with Pap Test	\$15.00		30% after ded.
Routine Pap Test	\$15.00	30%	
Routine Mammogram	\$15.00	30%	
Well Child Exam Inc. Immunizations (to age 11)	\$15.00	30%	
Routine Physical Exam	\$15.00	30%	
HPV Vaccination	10% after deductible		30%
Childhood Immunizations (to age 11)	10% after deductible		30%
Diagnostic Testing	10% after deductible		30%

Oral Contraceptives prescribed for any purpose shall be covered at the same co-pay levels as any other covered prescription drug.

C. The Union's Proposal:

The Union accepts the City's proposed changes to the health insurance program except that it insists upon retaining the present provision for a \$10.00 co-pay (instead of \$15.00) for visits to physicians' offices and urgent care facilities, and upon keeping spousal premiums for City provided insurance coverage at the current 1/7th of the established COBRA rate.

However, the Union would rewrite Section 3, "Dental Benefits" to both include coverage for dental implants and increase the City's maximum responsibility for dental services from \$1,000.00 to \$1,500.00 per enrolled individual.

It would also add a "Vision Coverage" benefit comparable to that available to members of the AFSCME Unit, and it would add "colonoscopies" to the list of covered examinations.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

Creating payment differentials among Bargaining Units for common health insurance benefits tends to increase administrative costs and foster over-utilization by the members of the most favored Units and corresponding subsidization by the least favored units.

Here, three of the Bargaining Units - Firefighters, Dispatchers and Utility Workers - have agreed to the City's proposal, and the City's non-unionized personnel will be given the same terms. (Negotiations are pending with the AFSCME Unit).

The Fact-Finder does not find any persuasive evidence why the members of the Police Unit ought to pay less than the amounts paid by these other employees.

According to the "2007 Annual Report on the Cost of Health Insurance in Ohio's Public Sector" issued by the State Employment Relations Board's Research and Training Section, almost three quarters of Ohio's public employers require their employees to contribute to health insurance premium costs. The employees' average monthly contributions amount to \$52.00 for single coverage and \$145.00 for family coverage.

In particular, Municipal employee pay, on average, over 10% of the total premium cost of health insurance.

The City's Police Officers, however, make no such contribution.

Two thirds of the plans surveyed require that employees meet a deductible before the plan begins to cover out-of-pocket medical expenses, and thereafter some 60%

plans required employees to bear a "co-insurance percentage of out-of-pocket expenses.

The City's proposal for deductibles and co-payments are not out of line with what other jurisdictions require.

Creating a third-tier of prescription drugs - name brand non-formulary - and requiring a modestly higher co-payment (\$60.00 for a ninety-day supply and \$30.00 for a thirty-day supply) makes sense as a way to encourage the substitution of generics and older, but equally effective medications.

A significant motivation for the general trend towards increasing employee responsibility for the cost of health insurance is the fact that between 1997 and 2007 medical insurance premiums increased by 114.8%.

Cuyahoga Falls's 2008 City-wide health care expenditure was \$4,933,000.00 as a result of its change of carrier to Medical Mutual, but it is expected to increase to \$6,255,466.00 in 2009. It is estimated that the adoption of the City's proposal will result in annual health insurance cost savings of \$90,000.00 to help lessen the impact of the increase.

Under present conditions the Fact-Finder does not find appropriate and does not recommend the Union's proposed

modification of the financial structure of the City's health care proposal.

The Union also seeks to amend Section 3, "Dental Benefits" to include coverage for implant procedures and to raise the maximum annual City liability for all dental service from \$1,000.00 to \$1,500.00.

In terms of coverage, over 90% of Ohio's governmental health plans offer a dental benefits option, with two-thirds covering a maximum per employee expense of between \$1,000.00 and \$1,500.00.

Cuyahoga Falls's present \$1,000.00 dental expense allowance is applicable to all of the Bargaining Units and the non-Unionized workforce, and, as a result of an expansive interpretation of the "me too" clauses, the same benefits may have to be extended to all Units.³ In light of the present economic uncertainties, the Fact-Finder does not believe this Union demand should be given priority at this round of negotiations.

As to "implants", they are typically not covered by dental insurance programs. They are significantly more

³The Firefighters Contract provides: If, as a result of the collective bargaining process, including fact-finding or conciliation, one or more of the bargaining units receives more favorable health care provisions, said provisions shall apply equally to this bargaining unit without adjustment of other economic benefits contained herein.

expensive than the typical "bridge" for replacing teeth that have been extracted.

However, adding coverage for dental implants is not likely to substantially increase usage and exhaustion of the dental allowance. It is already available for members of the Firefighters and Utility Workers Bargaining Units.⁴

Accordingly, the Fact-Finder finds appropriate and recommends that Article 22, Section 3, be amended to read as follows, and, as so amended, carried forward into the successor Agreement:

"C. Dental Insurance: The City will provide a dental insurance plan for all members of this bargaining unit, their spouses and dependents which shall be substantially equal overall to provisions of the plan currently in effect for other City employees. The City shall bear the cost of providing said dental insurance. The City shall provide benefits for dental implants up to the same actual dollar amount that it would pay toward covered dental bridges."

The Union also seeks to add employer-paid vision coverage as afforded to the AFSCME and Utility Workers

⁴Their Contracts provide:

"The City will provide a dental insurance plan for all members of this bargaining unit, their spouses and dependents which shall be substantially equal overall to provisions of the plan currently in effect for other City employees. The City shall bear the cost of providing said dental insurance. In addition to other coverages provided by the City's dental plan, the City shall approve the coverage of dental implants in an amount not to exceed the actual dollar amount the City would pay for covered bridges."

Units. AFSCME members are enrolled in a "Vision III" plan sponsored by the Union.⁵ However, ASFSCME purchased this benefit by accepting a reduced raise in 2005 as a quid pro quo.

The vision program is also available to the Firefighters, but the cost is borne by those who enroll.⁶

Maintenance of visual acuity is an especially important for Police Officers, and particularly for this Unit which has at least forty-five members who are thirty-five years of age or older.

Almost three quarters of the jurisdictions surveyed in the SERB Report offer vision coverage.

However, the additional cost of providing biennial eye examinations and if necessary, prescription lenses, is not insubstantial, and, if granted, might have to be offered to members of the Firefighters Unit as well, pursuant to the health insurance "me too" clause in their Contract.

⁵The City pays the \$16.25 monthly premium per employee.

⁶D. Vision Coverage: The City shall make vision coverage available for those bargaining unit members who desire it, provided that the total cost of any and all premiums for such coverage shall be borne by those bargaining unit members electing to enroll for such coverage.

Here, again the Fact-Finder believes that the benefit is not presently of the highest priority, and ought to be deferred until negotiations for the 2011 Contract.

Nevertheless, as a first step, the Fact-Finder does find appropriate now, and so recommends for inclusion in the successor Agreement, the following provision for the adoption of voluntary participation group vision plan, with the cost to be borne by the participating members:

Section 6: Vision Coverage - The City shall make group vision insurance coverages available for those bargaining unit members who desire it, provided that the total cost of any and all premiums for such coverage shall be borne by those bargaining unit members electing to enroll for such coverage."

Further, the Union also seeks to add "colonoscopies" to the "additional items of health coverage" proposed by the City in the form of physical, diagnostic and office examinations, pap tests, mammograms, immunizations and vaccinations.

Colonoscopies are recommended once every ten years beginning on and after attaining the age of fifty, and when risk factors or symptoms dictate. Colonoscopies permit early diagnosis of colon cancer and pre-cancerous polyps, and hence increase the likelihood of complete recovery from one of the major causes of premature death.

The annual cost to the City should be relatively small, the benefits to individuals potentially life saving.

Accordingly, the Fact-Finder finds appropriate and recommends that the following provision be added to, carried forward and incorporated into the successor Agreement:

"Additional Items of Health Coverage:

"To clarify and/or provide additional health care coverage, the following services will be covered as noted herein effective April 1, 2009. All levels of coverage are after exhaustion of applicable deductibles:

"	Network (Member Pays)	Non/Network: (Members Pays)
"Office Exam with Pap Test	\$15.00	30% after ded.
"Routine Pap Test	\$15.00	30%
"Routine Mammogram	\$15.00	30%
"Well Child Exam Inc. Immunizations (to age 11)	\$15.00	30%
"Routine Physical Exam	\$15.00	30%
"HPV Vaccination	10% After Ded.	30%
"Childhood Immunizations (to age 11)	10% After Ded.	30%
"Diagnostic Testing	10% After Ded.	30%
"Colonoscopy	10% After Ded.	30%

"Oral Contraceptives prescribed for any purpose shall be covered at the same co-pay levels as any other covered prescription drug."

At the time this Fact-Finder Report is issued, the City is continuing negotiations with its AFSCME Unit for a successor Agreement. The Fact-Finder believes that to the extent that additional health insurance benefits are provided, or employee participation in the cost of health insurance is decreased, that the same advantageous terms should inure to the benefit of members of the Police Unit.

Accordingly, he finds appropriate and recommends that the following Section 7 be added to and incorporated into Article 22 of the successor Agreement:

Section 7: If, as a result of any presently ongoing collective bargaining process, including fact-finding or conciliation, the firefighters' Unit receives more favorable health care provisions, said provisions shall apply equally to this bargaining unit without the diminution or elimination of other economic benefits contained herein."

In all other respects the Fact-Finder finds appropriate and recommends that the City's Health Care proposal be adopted, carried forward and incorporated into the successor Agreement.

VII. Article 23, ("Other Insurance") Section 1 ("Life Insurance")

A. The Expired 2005 Contract:

The 2005 Contract provided life insurance benefits in the amount of \$40,000.00 for each member of the Bargaining Unit and \$9,000.00 for each former member of the Department who retired from the Department on or after January 1, 1969.

B. The City's Proposal:

The City prefers to continue the existing provision without change.

C. The Union's Proposal:

The Union wants to increase the amount of life insurance for present Bargaining Unit members by \$10,000.00

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATION:

Increasing the group life insurance benefit by \$10,000.00 would result in a very modest premium increase. Keeping the purpose of life insurance - income replacement - in mind, wages have increased over time and so has the cost of living thereby making the adjustment requested entirely appropriate. In addition, the Police Officers have a potentially increased exposure to loss of life that is not shared, at least in degree, by other employees.

Consequently, the Fact-Finder finds appropriate and recommends that Article 23, Section 1 be amended to read as follows, and, as amended, carried forward and incorporated into the successor Agreement:

"Section 1 - Life Insurance:

"All members of this bargaining unit shall be provided life insurance benefits in the amount of fifty thousand (\$50,000.00) dollars per person. Life insurance shall further be provided retirees of the Police Department who retire from the Department on or after January 1, 1969, at nine thousand dollars (\$9,000.00) per person."

VIII. Article 28 - "Sick Leave":

A. The 2005 Contract:

Article 19 of the expired Agreement provides in Sections 9 and 10 as follows:

Section 9: Upon retirement, death or termination in good standing from active service with the City after December 31, 1993, and with ten (10) or more years of service with the City, a member of this Bargaining Unit, or in the case of his death, his estate or surviving spouse, shall be paid in cash one hundred (100%) percent of the value of his accrued but unused sick leave credit up to a maximum of nine hundred and sixty (960) hours. Such payment shall be based on the member's rate of pay at the time of retirement. Such payment shall be made only once to any member."

Section 10: An employee who has qualified for a service pension under the rules from Police and Firemen's Disability and Pension Fund by reason of age and length of service, and has accumulated a sick leave balance of nine hundred sixty (960) hours or more, may elect to cash-out accrued sick time in three (3) equal and annual payments of up to three hundred and twenty (320) hours during the final three (3) years of employment with the City."

B. The Union's Proposal:

The Union proposes to increase the current nine hundred and sixty hour cap to twelve hundred and twenty hours as is presently provided to members of the Promoted Officers Unit (Sergeants and Lieutenants). Thus, the Union seeks to amend the first sentence of Section 9 to read as follows:

"Upon retirement, death or termination in good standing from active service with City after December 31, 1993, and with ten (10) or more years of service with the City, members of this Bargaining Unit, or in the case of his death, his estate or surviving spouse, shall be paid in cash one hundred (100%) percent of the value of his accrued

but unused sick leave credit up to a maximum of twelve hundred and twenty (1220) hours."

It also seeks to amend Section 10 so as to allow the cash-out during any three years once an Officer qualifies for retirement of all accumulated sick leave hours:

"An employee who has qualified for a service pension under the rules from the Police and Firemen's Disability and Pension Fund by reason of age, length of service, and has accumulated a sick leave balance of nine hundred sixty (960) hours or more, may elect to cash-out accrued sick time in three equal and annual payments."

C. The City's Proposal:

The City opposes any increase in the ability to cash-out unused sick leave without a corresponding concession from the Union with respect to other benefits.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

Each of the other Bargaining Units has the identical ability to cash-out nine hundred and sixty hours of unused sick leave upon retirement with ten years of service with the exception of the Police Supervisor' Unit. However, the Sergeants and Lieutenants Unit had achieved the ability to cash-out fifteen hundred hours of sick leave in exchange for accepting a wage increase that was one-half of one percent less than that accorded to other Units.

There is no evidence presented to the Fact-Finder that comparable communities offer the sick leave cash-out provision sought by the Union.

On the basis of the present record, the Fact-Finder does not find it appropriate and does not recommend an increase in the accrued, unused sick leave hours that may be cashed-out upon retirement or death.

With respect to the Union's second proposal to eliminate the requirement that the sick leave cash-out be confined to an Officer's last three years of service once he qualifies for a service pension, the Fact-Finder finds that allowing the cash-out after twenty-five years of service of one-third of accumulated and unused sick leave up to nine hundred and sixty hours in any one year, would have minimal cost significance for the City.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 28, Section 10 be amended to read as follows, and, as so amended, carried forward and incorporated into the successor Contract:

Section 10: An employee who has qualified for service pension under the rules from the Police and Firemen's Disability and Pension Fund by reason of age and length of service, and has accumulated a sick leave balance of nine hundred and sixty (960) hours or more, may elect to cash-out accrued sick time up to nine hundred and sixty (960) hours in three (3) equal and annual payments during any three (3) subsequent years of employment with the City."

IX. Article 28, Section 11 - "Sick Leave Program

[New]":

A. The 2005 Contract:

The expired Contract does not contain a sick leave incentive program.

B. The Union's Proposal:

The Union suggests providing Officers who have not excessively utilized their sick leave entitlements with cash bonuses which increase in amount as the number of hours of utilization decline.

It would propose to add a new Section 11 to Article 28 to read as follows:

"Section 11: Employees who do not use more than thirty-two (32) hours of their sick leave per calendar year will be compensated as follows:

"Zero Hours Used - Forty Hours Pay
"Eight Hours Used - Thirty Two Hours Pay
"Sixteen Hours Used - Twenty-Four Hours Pay
"Twenty-Four Hours Used - Sixteen Hours Pay
"Thirty- Two Hours Used - Eight Hours Pay"

C. The City's Proposal:

The City opposes any such benefit as unnecessary.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND

RECOMMENDATION:

The record does not indicate that there is an attendance problem, or that the rate of absenteeism among

members of the Police Department is suggestive of sick leave abuse. The Fact-Finder therefore cannot find that there is any particular reason to create an incentive for Police Officers to reduce their utilization of their sick leave entitlements.

Accordingly, the Fact-Finder does not find appropriate and does not recommend that the Union's proposal to add a sick leave incentive program in Section 11 to Article 28 be adopted.

X. Article 28, Section 12 - [New] "The Use of Sick Leave to Care for Infants":

A. The 2005 Contract:

The expired Contract does not permit Patrol Officers to utilize sick leave to help care for their new born children.

B. The Union's Proposal:

The Union proposes to add a new Section 12 to Article 28 to read as follows:

"Section 12: Bargaining Unit members may take up to forty (40) hours of sick leave within two (2) calendar weeks after the birth or adoption of their baby to help care for the baby while the mother recovers."

C. The City's Proposal:

The City opposes the addition of an infant care provision in the absence of any corresponding benefit concession by the Union.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

The Union seeks to tap into their accrued but unused sick leave entitlements to help care for new borns "while the mother recovers. (Parenthetically, the Fact-Finder notes that the adoption of a baby does not bring into play the birth mother's recovery time).

The Union cites the fact that the Firefighters have such a privilege, but the origin of this benefit in terms of concessions made by the Firefighters Unit was not put upon the record.

There is no evidence as to whether comparable communities provide such a benefit.

Neither was the likely incidence of such births among the families of members of the Bargaining Unit addressed.

Nor, for that matter, was there any showing of a special need for "assistance" limited to the period of the mother's "recovery" which, in the absence of complications, is usually less than three days. The vast majority of City employees manage to get through the period immediately following the mother's release from the hospital without

using sick leave to stay home for a week to assist with the care of their new born infants. In fact, the need to share the responsibility for the feeding and diaper changing of infants is likely to increase after the "recovery" of the mother.

Accordingly, the Fact-Finder does not find appropriate and does not recommend the addition of Section 12 to Article 28 as proposed by the Union into the successor Agreement.

XI. Article 33 - "Fitness Evaluation":

A. The 2005 Contract:

The expired Contract makes participation in the Department's Annual Fitness Evaluation Program voluntary, but provides an incentive for participation by offering a minimum of four hours straight-time pay, or one and one-half times the actual time spent in testing, whichever is greater, and by providing an award of \$50.00 for each of the testing components that the member passes, plus a bonus of \$100.00 if the Officer passes all six of the components. The testing standards are set forth in a separate Memorandum of Understanding.

B. The City's Proposal:

The City would abolish its present compensation program, and, in exchange, would offer a one-time .5% wage

increase to all Officers. The City would require, instead, that all Officers hired after January 1, 2009 take and pass the annual fitness evaluation, and, further, that "a member's failure to pass any given component of the fitness evaluation shall be grounds for discipline. Failure to pass all components of the fitness evaluation shall be grounds for termination."

C. The Union's Proposal:

The Union prefers to maintain the status quo, finding that the proposed .5% wage increase is too little a "quid pro quo" for elimination of the current fitness incentive program.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATION:

The City asserts that the incentive program has not resulted in the maintenance of Officers' physical fitness as it had hoped. It asserts that "many members remain in poor physical condition. Yet, some still participate in the evaluation and receive 'show up' pay knowing they will be unable to pass a single component of the evaluation."

The results of the last evaluation, administered in November of 2008, reveal that seventeen Patrol Officers failed to take the test. Of the balance who took the test, thirty took and passed all six components while another

thirteen passed five of the six elements. Four additional Officers passed four of the tests and one, three of the six. No Officer failed more than three of the components.

These results do not support the City's contention that a significant number of Officers are, as a practical matter, physically unfit for duty.

Nor would the proposed program, which is applied only to new hires, do anything to improve the overall fitness of the present cadre. Presumably any new hires would have to be physically fit, and any significant improvement in the overall physical fitness of the Department as a result of the introduction of the disciplinary process to the program would likely be decades away.

While the total bonuses paid by the City in 2008 amounted to \$16,250.00, the discontinuance of the present incentive program in exchange for a .5% increase in Officer's salary cannot be justified on the basis of any cost savings.

The Fact-Finder therefore does not find appropriate and does not recommend the City's proposal for termination of the existing physical fitness program, but rather recommends that Article 33 and the accompanying Memorandum of Understanding outlining the testing program be retained

and incorporated into the successor Collective Bargaining Agreement without change.

Report of Findings and Recommendations issued at Cleveland, Ohio this 1st day of April, 2009.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alan Miles Ruben".

Alan Miles Ruben
Fact-Finder

AMR:ljb

Appendix "A":

Memorandum of Understanding:

Now come the City of Cuyahoga Falls (City) and the Ohio Patrolmen's Benevolent Association (OPBA) (representing Patrolmen and CSOs) and enter into the following memorandum of understanding.

1. All hours worked in excess of 171 per 28 day work period are hereby designated as "FLSA Overtime" and shall be compensated in overtime pay. No hours worked in excess of 171 per 28 day work period will be compensated in compensatory time-off.
2. Any overtime hours provided for by the contract that are not mandated by the Fair Labor Standards Act (more than 8 hours of work per day, holiday overtime) may be compensated in compensatory time-off.
3. When a member works contractual overtime and requests to accrue compensatory time-off as compensation for said overtime, before approving such requests, his supervisor shall first tally the hours he has worked in the 28 day work period up to and including the overtime hours worked. If the total of hours worked in the 28 day work period up to and including the overtime hours worked exceeds 171 hours, then the request to accrue compensatory time-off shall be denied and the overtime compensated in overtime pay.
4. No more than four members per shift may be off in any combination of vacation, compensatory time-off, personal leave, or sick leave without prior authorization of the Chief or his designee. This is not to be construed to take away compensatory time that was previously granted.
5. If a member requests to use compensatory time-off, such request may be made no more than thirty days before the day requested off. If, at the time of the request, no more than four members are already scheduled off for the requested day in any combination of vacation, compensatory time-off,

personal leave, or sick leave then said member shall be granted the compensatory time-off for the day requested. Once compensatory time has been approved, it can not be denied.

6. The Chief or his designee may, in his sole discretion, permit more than four members off per shift. In such a case, a request to take compensatory time-off for the shift having more than four members off may be made not more than 24 hours before the start of the shift. The granting of any such request shall be made conditionally and, not less than one hour before the start of the shift, the member conditionally granted time-off shall call in to confirm the granting of time-off. The Chief, or his designee, may in his sole discretion, deny such request and such denial shall be final.
7. Nothing in this memorandum shall be construed as limiting the contractual discretion of the Chief or his designee to deny the accrual of compensatory time-off.
8. This memorandum shall remain in effect until December 31, 2009. If, on that date, either party determines that the practice contained herein has not had the desired effect in helping to manage the department's overtime budget, this memorandum shall not be renewed.