STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

	)	
Fraternal Order of Police,	)	08-MED-09-0881.
Ohio Labor Council, Inc.	)	08-MED-09-0882,
	)	08-MED-09-0883
-And-	)	
	)	Fact-Finder:
City of Maumee	)	John T. Meredith

REPORT AND RECOMMENDATIONS
ISSUED MARCH 24, 2009

APPEARANCES

Present for the Union:

Hugh Bennett, FOP Staff Representative
Sgt. James McDonald, Committee
Sgt. Stephen Crowe, Committee
Ptl. Josh Sprow, Committee
Dave Powell (Dispatch) Committee
Michael Powell (Dispatch) Committee
Barbara Varanese, Fiscal Consultant

Present for the Employer:

Michael J. Angello, Labor Counsel
Robert Zink, Chief of Police
John Jezak, Administror, Safety Director
Linda Wilker, Finance & Human Resources

INTRODUCTION

The parties to this Fact-Finding proceeding are the Fraternal Order of Police, Ohio Labor Council and the City of Maumee, OH. The three bargaining units included in this proceeding consist of all employees in the classifications of Patrolman (Case No. 0882), Sergeant and Lieutenant (Case No. 0883), and Telephone and Radio Operator and Animal Control Officer (Case No. 0881), but excluding the Line Lieutenant, all part-time,

seasonal and temporary employees. Currently, there are 54 employees in the bargaining units – 1 Lieutenant, 8 Sergeants, 33 Patrolmen, 11 Radio and Telephone Operators, and 1 Animal Control Officer. The subject Agreement will be a successor to the December, 2005 – December 2008 Agreement between the parties.

The parties initiated collective bargaining for the successor Agreement but were unable to resolve all issues. The State Employment Relations Board, by letter dated December 2, 2008, appointed the undersigned, John T. Meredith, to serve as Fact-Finder in Case No. 0883, and Case Nos. 0881 and 0882 were consolidated with Case No. 0883 by agreement of the parties.

At the parties' request, a Mediation session with the Fact-Finder was held on February 4, 2009. During the mediation session, the parties reached agreement on sections 14.03, 14.15, 26.01, 31.01(5), 34.09, 46.02, 49.01 and 49.02.

A hearing was held on February 25, 2009 to take evidence on the remaining unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. The unresolved issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report.

In making his recommendations, the Fact-Finder has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining agreements, if any, between the parties;
(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, 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.

(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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

1. City Profile and Finances

The City of Maumee has a population just over 15,000 and is located in Lucas County, just south of the western end of Toledo. It is 65 miles south of Detroit, 230 miles east of Chicago, and 110 miles west of Cleveland, with expressway access to all three of these major metropolitan areas. The Ohio Turnpike (I-80/90) defines Maumee's northern border, and proximity to the Turnpike has facilitated commercial development, including a large United Parcel Service (UPS) hub facility and several hotels at or near Turnpike Exit 59

Maumee's largest employers currently include Anderson Inc. (an ethanol, railroad and fertilizer company), UPS, St. Luke's Hospital (non-profit), Dana Holding Corp., Maumee City School District, Meijer stores, Paramount (health care administration), and Moritz Research. A Ford stamping plant closed in 2007, and Hickory Farms is in the process of closing its facility at this time. On the positive side, a new shopping area – the Shops at Fallen Timbers – was completed and opened in late 2007. Also, Applied Technologies (engineering and design) is establishing a facility in Arrowhead Park, and a

start-up firm has acquired the former Ford stamping plant property, but has not yet begun significant work.

The largest single source of revenue available for payment of general operating expenses, including salaries and benefits, is the income tax. Maumee levies a 1.5% income tax, with 100% credit for income tax paid by residents to communities where their employer is located. One-third of the income tax is set aside for capital improvements in the Income Tax B Fund. The remainder (1.0%) is deposited in the Income Tax A Fund, which is available for transfer to the General Fund to meet operating expenses.

For the first part of the current decade, Maumee clearly enjoyed prosperity. From 2000-2003, the December 31 Income Tax A Fund balance ranged from about $19.3 million to $22 million, or more than 100% of projected annual General Fund expenditures. In 2004, the balance dropped to a bit over $11 million due to a transfer for capital expenditures and money set aside for payments in connection with litigation over tax sharing zones. The Income Tax A Fund balance was a little over $13 million in 2005, and a little below $11 million on December 31, 2006 and 2007.

At this point in time, Maumee revenues and balance are in good condition. After reviewing Maumee finances in the Fall of 2008, Moody's Investment Service reaffirmed it Aa3 rating for the City's general obligation debt. This credit rating is very good for a city of Maumee's size.

Nevertheless, the City presented evidence supporting its significant financial concerns for the future. For several years, Maumee's General Fund operating expenses have exceeded new revenue received into the Income Tax A and General Fund, causing a

decline in the combined year-end balances of these Funds. The December 2008 combined balance of approximately $9.8 million ($9.3 million Income Tax A, $500,000 General Fund) is $1.5 million down from the December 2007 balance The City's future budget projections assume flat revenue for the next several years. Thus, if the flat revenue projection is correct, the balance will continue to erode if expenditures remain at or above current levels.

The flat revenue trend is plausible and was not attacked by the FOP and its financial advisor at the hearing. While business has been moving in (see above), the revenue impact is lessened due to tax incentives and/or location in Tax Sharing zones. Interest rates, and thus interest earnings, have been down in 2008 and will remain down in 2009. The City has lost $200,000 in annual revenue due to non-renewal of a contract to provide dispatching service for the Village of Waterloo. On the positive side, the Sewer Fund will be repaying $1.2 million to the General Fund during the period 2009-2012.

Significantly, the flat revenue projections were developed in 2008, and do not fully take into account the potential impact of the severe decline in the national, state and regional economies which began in Fall 2008 and continues today. The situation in the auto industry is particularly severe, and this creates risk for several Maumee employers. Dana, which contributes approximately $750,000 total annual revenue to the City, is considered especially vulnerable.

2. Workforce, Bargaining History

The FOP has represented all police patrol officers, sergeants and dispatchers in the City for more than 20 years. Service employees are represented by AFSCME, and

the IAFF represents paramedics. Remaining administrative employees are nonunion. The Fire Department is staffed with non-union volunteers.

AFSCME and the IAFF have settled their contracts for 2009-2011. They agreed to packages comparable to the City's offer to the FOP – in 2009, a wage freeze with a $750 signing bonus; in 2010, a lump sum 3% payment (not rolled into the base); in 2011, a 2% base wage increase or, at the Union's option, a wage re-opener. Maintaining consistency among all employee groups is a stated City objective, and it has some support in bargaining history. Although there were variations in wage packages accepted by the FOP, IAFF and AFSCME in the 1980's and 1990's, the three groups accepted the same or substantially similar compensation increases since 2000. However, effective dates were staggered, and there is no practice of one group settling first and always setting a pattern for the others. It cannot be said that the FOP typically has followed a pattern set by AFSCME. Moreover, since 2002, the City's wage settlements have equaled or exceeded state averages and percentage wage settlements in comparable cities. Therefore, to the extent there is a practice of "pattern bargaining," it has not been tested – no group has followed a pattern in the face of comparables that would have supported a more generous wage settlement.

3. Comparability Data

Both parties submitted data for the same neighboring communities, and generally were in agreement on the terms of the compensation packages in effect. Both parties similarly submitted SERB's Annual Wage Settlement Report for 2008, which shows average wage settlements for 2008 negotiations.

The comparative data for police in neighboring communities is summarized on the following chart:

City	Ptl. - 2008	Sgt. - 2008	Disp. – 2008	2009 Ptl. rate/status
Oregon	$57,595	$66,301	$55,640	June expiration
Bowling Grn	$57,428	$66,705	$49,899	June expiration
Maumee	$57,275	$64,047	$48,824	Fact-Finding
Sylvania	$56,891	$64,968	$49,239	$58,314 (2.5% incr.)
Sylvania Twp.	$56,154	$62,868	$46,392	$57,838 (3.0% incr.)
Perrysburg T.	$55,494	$62,420	$44,137	$57,158 (3.0% incr.)
Perrysburg	$54,642	$64,147	$47,590	Fact-Finding

The Perrysburg Township and Sylvania Township contracts were negotiated in 2008. The 2009 wage is the second year wage in the contract. The Sylvania contract has a 2009 effective date.

Pertinent data from the 2008 SERB Annual Wage Settlement Report may be summarized as follows:

Average wage increase, all employees, statewide:	2.92%
Average wage increase, police, statewide:	3.23%
Average wage increase, all employees, Region 7 – Toledo	2.71%
Average second-year (2009) wage increase	2.98%
Average third-year (2010) wage increase	2.93%

UNRESOLVED ISSUES

1. Article 15, Vacation Leave

Positions of the Parties: Under Section 15.01 of the Agreement, employees currently are entitled to vacation leave as follows: 1-6 years – 80 hours; 7-13 years – 120 hours; 14-19 years – 160 hours; 20-24 years – 200 hours; 25 or more years – 240 hours. The City proposes to keep the schedule for current employees, but to eliminate the top step of the schedule for employees hired after January 1, 2009, so that vacation for these new employees would be capped at 200 hours after 20 years.

The City justifies this proposal as a long-term cost savings. It further notes that two other union groups – service workers (AFSCME) and paramedics (IAFF) – have agreed to this two-tier vacation system. It argues that historically AFSCME, IAFF and FOP settlements have included similar wage and benefit provisions. This history of bargaining, the City says, supports including the two-tier vacation system in the FOP Agreement.

The Union objects to the City's proposal. It acknowledges that similar wage and benefits have been provided for the various groups of City employees in the recent past, but notes that there is no clear pattern of the FOP following the other employee groups. The FOP also points out that external comparables support the present system, as four of six neighboring police agencies, provide 240 or more hours vacation at 25 years. None have a two-tier system.

RECOMMENDATION: The Fact-Finder recommends no change in the current vacation provision.

Rationale: Currently, vacation scales in Maumee, Oregon, Perrysburg, Perrysburg Twp all top at 240 hours after 25 years, and Bowling Green's scale tops at 276 hours. Only Sylvania and Sylvania Township have less, with schedules topping at 200 hours. Unlike insurance, vacation is not a benefit for which internal parity is of paramount importance. Comparability data thus supports the FOP position to retain current contract language and overcomes deference to the City's preference for internal consistency among contracts

2. Article 32, Longevity Pay

Positions of the Parties: The Union proposes increasing longevity pay by $200 at each step. It argues that longevity pay has not been increased since 2002, and that Maumee's longevity schedule (with a maximum of $1800 at 25 years) is clearly inferior to longevity in some neighboring cities, including Sylvania (5% of base pay or approximately $2891 for pre-2000 hires) and Oregon (7% of base pay or approximately $4031).

The City opposes this increase on the basis of cost and internal parity, as the FOP longevity system is the same as the system for other Maumee employees. External comparables are mixed, as some neighboring cities have inferior longevity pay provisions. Further, a substantial increase in the cost of longevity would be inappropriate in the current economic environment.

In addition, the current Agreement grandfathers employees hired before January 1, 1983 into a percentage based longevity pay system which provides richer benefits for senior employees. The City proposes to modify this provision so that the longevity payments are frozen at current amounts. The City's proposed language was included in

both AFSCME and IAFF Agreements. The Union opposes this proposal. It argues that the pre-1983 employees negotiated a system with back-end loaded payments – that is, they accepted lower payments in early years in order to get more generous payments later in their career. Now that they have worked enough years to receive the more generous payments, they should not be deprived of the benefit of their bargain.

RECOMMENDATION: The Fact Finder recommends no change in the current longevity provision.

Rationale: The City correctly notes that internal parity supports maintaining the current longevity schedule, which has been and would continue to be the same as the longevity schedules in the IAFF and AFSCME Agreements. Unlike vacation, here comparability data is not a countervailing factor, as Maumee's longevity schedule ranks in the middle of the schedules in neighboring cities. Therefore, the Union's proposed schedule increase is not warranted.

Similarly, evidence does not support the City's proposal to freeze pre-1983 hires at their current longevity amounts. Few employees are affected, and the cost impact of this item is minimal. These senior employees are entitled to the benefit of their bargain.

3. Section 35.02, Stand-By Pay (Detectives)

Positions of the Parties: Currently, Detectives receive $75/week when they are on call. The Union proposes to increase this rate to 150% of the employee's base rate, which would be $123.91/week for a detective at the top of the wage scale. This would be the first increase in stand-by pay since 1993. The City acknowledges the need for some increase and counters with $100/week, which would be consistent with stand-by pay in the AFSCME and IAFF Agreements.

RECOMMENDATION: Increase stand-by pay for detectives to $100/week. Revised language for Section 35.02 will state:

> **Members of the Detective Bureau shall receive, in addition to other compensation, the sum of one hundred dollars ($100.00) per week for required stand-by duty as prescribed by the Chief of Police; provided however, in no case shall the total stand-by compensation paid to the members of the Detective Bureau, collectively, exceed the amount of one hundred dollars ($100.00) per week.**

Rationale: With the increase to $100, detective stand-by pay would be the top rate paid by comparable area cities, an improvement in Maumee's relative standing. Also, the $100 rate is consistent with the stand-by rate in Maumee's IAFF contract.

4. Section 35.03(4), Education Pay

Positions of the Parties: Currently, employees receive a $100 bonus for each 15 credit hour quarters beyond the education required at the time of hire. This is approximately $600/year for employees with a bachelors degree. The City proposes to eliminate this for employees hired after January 1, 2009. The City cites cost containment and consistency with benefits for other City employees. The Union opposes the change. It objects to the two-tier system. Also, it notes that, unlike neighboring cities, Maumee does not offer tuition reimbursement, so the bonus to some extent serves to make up for this.

RECOMMENDATION: The Fact Finder recommends no change in the current education pay provision.

Rationale: Neighboring cities do not provide education pay, but three of six neighboring cities do offer tuition reimbursement. In Maumee, other employees do not have, and have not had tuition pay, so any internal disparity among city employees is not

new with this contract. Also, the AFSCME Agreement does include a provision for job specific, pre-approved tuition reimbursement. Absent substitution of some form of tuition reimbursement, it seems inappropriate to drop or restrict the current tuition pay provision.

5. Article 46, Uniforms

Positions of the Parties: Detectives are required to wear "business casual" attire and, on some occasions, coat and tie. Currently, they receive a $250 annual clothing allowance. The Union proposes doubling this allowance to $500. It notes that the $250 allowance has not been increased for fourteen years, notwithstanding a substantial increase in the cost of clothing during that time period. Moreover, the Union argues that most neighboring jurisdictions provide annual clothing allowances between $500 and $800. The City acknowledges that some increase is warranted, but considers $500 excessive. It's counterproposal is to increase the annual allowance to $275.

RECOMMENDATION: The Fact-Finder recommends that the Detective's annual clothing allowance be increased to $400. Revised language of Section 46.03 to state:

> **Non-uniformed police officers shall be entitled to reimbursement for not more than four hundred dollars ($400.00) per year of the contract for wearing apparel, upon presentation of receipts as approved by the Chief of Police.**

Rationale: Increases in the cost of living since 1995 would justify an increase of more than 40%. The recommended $400 annual allowance is a bit more than 40%, but would still be at the low end of the range paid by most comparable neighboring cities.

6. Article 56, Compensation

The Parties' Proposals: For Patrolmen, Sergeants and Dispatchers, the FOP proposes a 3% increase for 2009, effective the first pay period in January. It also

proposes wage increases of 3% and 4% to be effective at the beginning of January 2010 and 2011, respectively. In addition, it proposes increasing the separation between the Sergeants rate of pay (to step) and the patrolman's rate of pay (top step), and between the top step Sergeants rate and the top step Lieutenant rate, to 14.8%. Finally, it proposes to increase the Animal Control Officer's salary in 2009 to the same rate paid to General Laborers ($20.12), and that percentage increases awarded to the other police employees also be applied to that rate.

The City rejects these FOP proposals, and counters by offering a wage freeze with $750 signing bonus in 2009; a 3% bonus, not rolled into the base, for 2010; and a 2% base wage increase or, at the union's option, a re-opener in 2011. It further proposes adding a second tier to the pay scale for new employees. This second tier would stretch the wage schedule from eight to 12 years. Though the top salary would be the same, employees would make less at most levels of experience as they advance up the scale.

Union's Rationale: The FOP asserts that comparability data unambiguously supports its proposal. Average percentage increases for relevant groups reported in SERB's 2008 Annual Wage Settlement Report range from 2.71% (all employees – Toledo Region) to 3.23% (police employees statewide). Three neighboring communities have settled 2009 wages for 2.5% (Sylvania) and 3.0% (Perrysburg Township and Sylvania township), and SERB's Report states that 2.98% was the average wage increase negotiated in 2008 for the second contract year (2009).

The FOP further asserts that the City can easily afford to pay its proposed 3%/3%/4% wage increase package. In support, the FOP presented testimony from

Barbara Varanese, Financial Consultant. According to Ms. Varanese, the City is in very good financial shape. Specifically:

1. As of December 31, 2008, combined balances of the General Fund and Income Tax A Fund (which is available for general operating expenses) were approximately $9.8 million, more than 50% of 2009 projected operating expenditures. Various other funds, earmarked for specific purposes such as capital improvements, are also in good shape, so there should not be a need to transfer money from the General Fund or Income Tax A Fund to them.

2. In Fall 2008, Moody's Investment Service confirmed that the City's excellent financial condition when it reaffirmed its Aa3 rating for general obligation debt.

3. The City has attracted new businesses, and has a favorable location and environment for continuing to attract new business.

4. With a substantial beginning balance, the City's General Fund and Income Tax A Fund resources will be sufficient to pay for the FOP wage proposal without financial risk or hardship on the City during the term of the three-year contract.

The FOP justifies its rank differential proposal by noting that, in comparison to neighboring cities, its Sergeants relative ranking is lower than the relative ranking of patrol officers. It opposes the City's two-tier system with evidence comparing the present step schedule to schedules in neighboring cities. This evidence shows that the current system is comparable to others in the area, and that the proposed new system would put most Maumee officers with less than twelve years experience at a disadvantage relative to there peers in other cities.

City's Rationale: The City concedes that this is not an "ability to pay" case. Nevertheless, it proposes substantially below average wage increases. This is justified, the City says, by unfavorable economic trends and the need to maintain internal parity with other employee groups in the City. Specifically, the City argues:

1. In recent years, AFSCME, IAFF, FOP and non-union administrative employees have received substantially the same wage increases. Such internal parity is dictated by employee morale and fairness. Since other groups have accepted the package offered to the FOP, the Fact-Finder should recommend it as the basis for settlement of the FOP contract.

2. For several years, annual expenditures have exceeded annual revenues in the General Fund and Income Tax A Fund. Even assuming flat revenues and only modest expense increases, Fund balances will continue to decline during the term of the new contract.

3. The national, state and regional economic outlook is very poor at this time. Moreover, the City has more than average exposure to the auto industry, which is in serious trouble. Therefore, the City's operating revenues are likely to decline further in 2009 and 2010.

4. Although comparability data may support an increase between 2.5% and 3.2%, these comparables should be disregarded because they are based on contracts which were completed or in the process of negotiation before commencement of the current and severe economic downturn in the Fall of 2008.

5. The proposed third year re-opener (Union option), affords the FOP an opportunity to obtain additional compensation if the economy recovers and Maumee emerges unscathed from the recession.

The City justifies its two-tier wage structure proposal as a long-term cost saving. It further notes that AFSCME and the IAFF agreed to two-tier pay scales, and thus internal parity dictates that the FOP contract similarly should contain a two-tier system.

The City opposes the FOP's proposals to increase the rank differential and to increase the Animal Control Officer's compensation as excessive and unwarranted.

RECOMMENDATION: The Fact-Finder recommends raising wages 3.0% effective with the first payroll period of 2009, and 2.0% effective with the first payroll period in 2010. The third year, 2011, will be subject to a wage-only re-opener, with negotiations initiated at the option of either party by giving written notice to the other party between September 1 and October 1, 2010. No change in rank differentials. No change in Animal Control Officer compensation (except for general increases). City's two-tier wage proposal is rejected. Contract language attached as Appendix A to this Report.

Rationale: Internal parity should be considered even absent proof of "pattern bargaining." Fairness and equity often dictate that employee groups in the same employer workforce receive substantially similar wage increases. Thus internal parity is one of the "other factors ... normally or traditionally taken into consideration" in fact-finding, see OAC 4117-09-05(6).

However, the Fact-Finder must also consider comparability data, see OAC 4117-09-05(2). In this case, the City concedes "ability to pay," and evidence (summarized at pages 3-5 of this Report) confirms that the City can pay a competitive wage increase in 2009 without adversely impacting the public welfare during the term of the contract. Accordingly, the Fact-Finder recommends a 3.0% increase effective retroactive to the first payroll period of January 2009. This recommendation is consistent with percentage

increases approved to date in neighboring communities, and will be sufficient for Maumee officers to maintain their current position in area community salary rankings.

The picture for the second and third years of the contract is less clear. There is no meaningful comparability data available for 2010 and 2011 wage increases. However, average wage increases probably will trend lower during the next twelve months, as the recent economic slowdown and private sector cutbacks inevitably will have an adverse effect on public sector revenues.

Moreover, the City's expressed concerns about economic trends have merit. The fortunes of several employers in the City are closely tied to the auto industry, which is experiencing a decline of historic proportions. The ongoing decline in business will reduce the City's revenue from these companies and their employees, though the extent and duration of the impact on City revenue is uncertain at this time.

For these reasons, the Fact-Finder is recommending a 2.0% increase effective January 2010, and a re-opener for 2011. If the economy improves, then the FOP can negotiate an appropriate wage package in the Fall of 2010. If the economy does not improve and/or if Maumee suffers economic reversals at the local level, the City will not be burdened with third year wage increases that it could not longer afford.

Regarding other pay items proposed by the FOP: 1) Evidence does not establish that the Animal Control Officer merits a pay increase above and beyond the general increase awarded to all employees. 2) Adjustments in the Sergeants and Lieutenant's rank differentials are not necessary to maintain their salary ranking in the middle of the group of comparable cities.

Finally, the Fact Finder rejects the City's proposal for a two-tier wage schedule. Typically, two-tier wage schedules have been introduced in the private sector when the prevailing wages were above market and not sustainable in the face of competition from lower wage competitors. The two-tier structure enabled the employer to phase out the excessive wages without hardship to current employees. However, a two-tier system is not generally appropriate when the existing wage structure is not excessive. Here, data submitted by the FOP shows that the existing schedule is consistent with wages paid by comparable employers, and the proposed second tier would not be consistent with comparability data. Moreover, the City would derive no meaningful short-term economic savings from instituting a two-tier system.

7. Articles 61 and 62, Drug/Alcohol Testing

Positions of the Parties: In order to obtain savings offered by the Bureau of Workers Compensation, the City developed and implemented a Drug Free Workplace Policy during the term of the last Agreement. The Union claims that the City refused to engage in mid-term bargaining over the policy. The City denies this allegation, and the issue is now in litigation. While the lawsuit has been pending, the City has enforced its policy by conducting random drug tests from time to time.

The merits of the lawsuit are not at issue here. However, prospectively, the City proposes to include by reference its Drug Free Workplace Policy in the new Agreement. Two of the bargaining units – Patrol officers and Radio/Telephone Operators – object to this.

RECOMMENDATION: The Fact-Finder recommends amending Sections 61.01 and 62.01 as proposed by the City. New language would be as follows:

61.01 Drug/Alcohol screening/testing shall be conducted at times of pre-employment, annual physical, if given, for Detectives, Property Room Officer, employees assigned to any drug unit, for reasonable suspicion, or otherwise in accordance with the Drug Free Workplace Policy (DFWP) of the City of Maumee. Drug/Alcohol screening/testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceeding. Under no circumstances may the results of drug/alcohol screening or testing be released except as authorized by the employee. The following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the test results.

62.01 The Employer agrees to attempt to rehabilitate employees who are first time drug or alcohol abusers, only if reasonably practical, and otherwise in accordance with the Drug Free Workplace Policy (DFWP) of the City of Maumee. Employees will not normally be disciplined or discharged without first being offered the opportunity of receiving treatment for such abuse. If the employee fails to properly and fully participate in and complete a treatment program approved by the Employer or after the completion of such program the employee is still abusing or resumes abusing such substances, the employee shall be disciplined or discharged.

Rationale: The Drug Free Workplace Policy enables the City to obtain lower rates from the Bureau of Workers Compensation. The proposed policy is the same as the policy to which all other City employees are subject. Its random testing provisions are not unreasonable. There is substantial justification for referring to the policy in the Agreement, and no good reason not to reference it. However, in recommending reference to the policy in the new Agreement, the Fact-Finder does not express any opinion on the merits of the pending lawsuit, which apparently alleges improper unilateral implementation of the policy during the term of the prior Agreement.

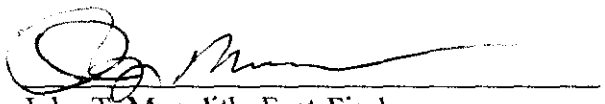
INCORPORATION OF AGREEMENTS

As requested by the parties, the Fact-Finder incorporates by reference the signed tentative agreements reached by the parties before the February 25, 2009 Fact-Finding Hearing, including agreements to modify the prior Agreement as well as agreements to

retain other language of the prior Agreement without change. The Fact-Finder recommends inclusion of these tentative agreements in the new Agreement.

SUBMISSION

This Fact-Finding Report is submitted by:



John T. Meredith, Fact-Finder

Shaker Heights, Ohio
March 24, 2009

CERTIFICATE OF SERVICE

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 24th day of March, 2009:

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Union Representatives

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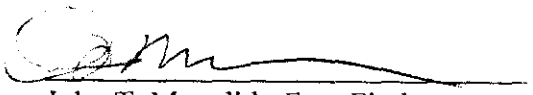
Attorney for the City



John T. Meredith, Fact-Finder

APPENDIX A

Revised Language for Sections 56.01 – 56.03

56.01 Effective retroactive to the first pay period commencing in January 2009, the adjusted annual salary and compensation for the positions listed below shall be as follows:

STEP	PATROL	SERGEANT	LIEUTENANT	RADIO/TEL OPERATOR	ACO
A	$46,369	$51,850	$54,939	$39,526	$33,129
B	$47,991	$53,665	$56,860	$40,909	$34,289
C	$49,761	$55,543	$58,851	$43,242	$35,489
D	$51,409	$57,486	$60,911	$43,824	$36,731
E	$53,209	$59,499	$63,042	$44,357	$38,016
F	$55,071	$61,582	$65,249	$46,944	$39,347
G	$56,998	$63,737	$67,534	$48,588	$40,274
H	$58,993	$65,968	$69,897	$50,289	$42,150

56.02 Effective the first pay period commencing in January 2010, the adjusted annual salary and compensation for the positions listed below shall be as follows:

STEP	PATROL	SERGEANT	LIEUTENANT	RADIO/TEL OPERATOR	ACO
A	$47,296	$52,887	$56,037	$40,317	$33,791
B	$48,951	$54,738	$57,997	$41,728	$34,974
C	$50,664	$56,654	$60,028	$43,189	$36,198
D	$52,438	$58,636	$62,129	$44,701	$37,465
E	$54,273	$60,689	$64,303	$46,264	$38,777
F	$56,172	$62,813	$66,554	$47,883	$40,134
G	$58,138	$65,012	$68,885	$49,560	$41,539
H	$60,173	$67,288	$71,295	$51,294	$42,993

56.03 Salary for 2011 will be subject to a wage-only re-opener. Negotiations may be initiated by either party by giving written notice to the other party between September 1 and October 1, 2010. Such re-opener negotiations, if held, shall be subject to the Dispute Resolution Procedure set forth in ORC 4117.