

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

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|-------------------------------|---|-------------------------------------|
| In the Matter of Fact Finding |) | |
| |) | SERB Case Nos.: 08-MED-09-1006 |
| Between |) | 08-MED-09-1007 |
| |) | 08-MED-09-1008 |
| CITY OF HUBBARD, |) | |
| |) | |
| Employer, |) | |
| |) | |
| -and- |) | |
| |) | |
| FRATERNAL ORDER OF POLICE, |) | (Patrolmen, Sergeants, Dispatchers) |
| OHIO LABOR COUNCIL, INC. |) | |

FACT FINDING REPORT AND RECOMMENDATIONS

FACT FINDER: Jane Minnich, Esq.

Appearances:

For the City:

Curtis J. Ambrosy
Ambrosy & Fredericka
144 N. Park Avenue, Ste. 200
Warren, OH 44481-1124

For the Union:

Otto J. Holm, Jr.
FOP/OLC, Inc.
14819 Triskett Road
West Park, OH 44111-3126

BACKGROUND

In compliance with O.R.C. Section 4117.14(C), the State Employment Relations Board of Ohio appointed the undersigned as Fact Finder in the impasse between the City of Hubbard and the Fraternal Order of Police, Ohio Labor Council, Inc. The City and the Union are parties to a collective bargaining agreement effective by its terms from January 1, 2006 through December 31, 2008, covering Dispatchers, Police Patrolmen and Sergeants. Although the parties reached tentative agreements on several issues, they were unable to reach agreement on all issues raised during the course of bargaining, thereby resulting in the request for Fact Finding. A hearing was then scheduled and held on August 26, 2009 at the City Hall located at 220 West Liberty Street, Hubbard, Ohio, at which the parties were provided with a full opportunity to present testimony, examine and cross-examine witnesses, introduce documentary evidence and argue in support of their respective positions.

ISSUES

Based upon the parties' pre-hearing statements filed with the Fact Finder and representations made at the August 26, 2009 Fact Finding hearing, the following issues were identified as at impasse:

1. Duration
2. Wages
3. Health Insurance
 - a. Premium Contributions
 - b. Spousal Coverage
 - c. Prescription Card Benefits
 - d. Disease Management Program
 - e. Insurance Opt-Out

4. Lay-Off Recall
5. Drug-Free Workplace

FINDINGS AND RECOMMENDATIONS

After reviewing the evidence and the parties' representations, the following recommendations are made:

1. **Duration.** It is recommended that the collective bargaining agreement have an effective term of July 1, 2009 through December 31, 2011.

2. **Wage Increase.** It is recommended that the following wage increases be implemented during the term of the Agreement:

| | | |
|---------------------------|----|----------------------|
| Effective January 1, 2009 | -- | 0% (Wage Freeze) |
| Effective January 1, 2010 | -- | 2% (Wage Increase) |
| Effective January 1, 2011 | -- | 2.5% (Wage Increase) |

3. **Health Insurance.**

- With regard to employee premium contributions, it is recommended that **Section 19.01(A)** of the Agreement be modified with the following language:

Effective July 1, 2009, employees will contribute premiums of two percent (2%) toward major medical insurance benefits. Beginning January 1, 2010, employees will contribute three percent (3%) toward major medical insurance benefits. Beginning January 1, 2011, employees will contribute three and one-half percent (3.5%) toward major medical insurance benefits. Premiums will be deducted from employee payroll on a biweekly basis. Eligible employees hired after October 31, 2009 shall pay a premium of ten percent (10%) for major medical insurance benefits.

- With regard to spousal coverage, it is recommended that **Section 19.01(C)** of the Agreement be modified as follows:

Spousal coverage will be available beginning January 1, 2010, only upon proof that the spouse does not have other major medical insurance coverage available to him/her through the spouse's employer which costs the spouse less than \$100.00 per month for single coverage. If such coverage is available, the employee's spouse must enroll in at least single coverage from his/her employer for the City employee to be eligible for family coverage from the employer, City of Hubbard. Falsification of spousal coverage information shall be grounds for discipline, up to and including discharge.

- With regard to prescription card benefits, it is recommended that **Section 19.01(F)** of the Agreement be modified to read as follows:

The prescription card benefits shall be modified to the following:

| | | | |
|-------------------|---|---------|-----------------------|
| Mail Order Option | = | \$10.00 | Generic Co-Pay |
| | | \$20.00 | Co-pay for name brand |
| Pharmacy Option | = | \$10.00 | For Generic drugs |
| | | \$20.00 | Co-pay for name brand |

- With regard to a Disease Management Program, it is recommended that the current language in **Article 19** be modified as follows:

The City will offer a disease management program for chronically ill individuals. In exchange for participation in the program and compliance with program requirements, the City will require only \$10.00 of the mail-order co-pays for the participating individual as long as Disease Management Program participation continues.

- With regard to the Insurance Opt-Out provision, it is recommended that **Section 19.04** of the Agreement be modified such that the flat fee paid to employees who waive coverage shall remain at \$7,000.00 for 2009, be reduced to \$5,000.00 for 2010, and be reduced to \$4,000.00 for 2011 for family coverage. For single coverage, the flat fee shall remain at \$4,000.00 for 2009, be reduced to \$2,500.00 for 2010, and reduced to \$2,000.00 for 2011.

4. It is recommended that the Lay-Off Recall language of **Section 11.04** of the Agreement be modified as follows:

Employees scheduled for lay-off shall be given a minimum of thirty (30) days advance notice of lay-off.

5. It is recommended that the Drug-Free Workplace language of **Article 41** of the Agreement be modified as follows:

Effective January 1, 2010, the following drug screening program shall be in effect for all bargaining unit members: [See attached]

All remaining terms and conditions of employment not modified by these recommendations are to remain "as is".

Date: September 14, 2009


Jane Minnich, Fact Finder

DRUG SCREENING PROGRAM
CITY OF HUBBARD
HUBBARD POLICE DEPARTMENT

Letter Of Understanding
City Of Hubbard/FOP/OLC

DRUG SCREENING PROGRAM

(A) LEGAL DRUGS

Employees shall not use any legal drug to the extent that said drug may adversely affect the employee's safety or job performance, or the safety of others. It is the responsibility of the employee to insure that he/she does not violate this requirement.

(B) ILLEGAL DRUGS

The illegal possession, sale, purchase or use of any controlled substance is prohibited whether on or off duty. Employees shall not report to work or be on duty with illegal drugs traceable in their systems.

I. TERMS AND DEFINITIONS

For purposes of this drug screening program, the following terms and definitions shall have the following meanings:

1. " Employee Assistance Program " (EAP) means the EAP authorized by the City of Hubbard.
2. " Illegal drug " means any controlled substance as defined on Ohio Revised Code Section 3719.01 (D), the possession or sale of which is prohibited by law.
3. " Illegal drug usage " includes the use of cannabis or any other controlled substance which has not been legally prescribed and/or dispensed, or the abusive use (drug abuse) of a legally prescribed drug.
4. " Legal drug " means any substance the possession or sale of which is not prohibited by law, including prescription drugs and over-the counter drugs.
5. " Medical Provider " means the facility mutually approved by the City and the FOP/OLC, which may change from time to time, which collects, screens and/or stores urine samples.
6. " Medical Review Officer " (MRO) means the physician mutually approved by the City and the FOP/OLC, whose primary responsibility is to review and interpret positive test results obtained through this drug screening policy program.
7. " Employee related accident " means any accident that occurs in the course of, or within the scope of, employment, regardless of whether the employee is physically located on City premises at the time of the accident.
8. " Probable Cause " as defined in " O Jur 3d Words and Phrases ", page 342.
9. " Substance abuse " means a positive screen result indicating the existence of a drug at or above the levels prescribed by the City and FOP/OLC as set forth in this program.

10. "Traceable in the employee's system" means that the result of the Medical Provider's analysis of the employee's urine specimen is positive for the tested substance pursuant to the standards set forth in this program.

II. PROCEDURES

(A) WHEN SCREENING MAY OCCUR

Employees may be tested for employment related illegal drug usage, or for the abusive use of legal drugs to the extent that said drugs adversely affect the employee's safety or job performance, or the safety of others

1. Whenever an employee's behavior creates probable cause of suspected use. The following are lists of factors which may give rise to probable cause to suspect substance abuse. Any factor alone, or in combination with other factors may be sufficient to constitute probably cause to suspect drug abuse:
 - a. Direct observation of drug use
 - b. Possession of drugs or related paraphernalia, while not within the scope of authorized duties of police division employees
 - c. Employee admissions of drug use, abuse or possession
 - d. Symptoms of drug use/abuse including, but not limited to, disturbances in gait, slurred speech, impaired gross or fine motor control
 - e. Any tampering with the drug screening process
 - f. Any arrest for drug related criminal offense, or the filing of drug related criminal charges against the employee.
2. The employer may test an employee involved in a motor vehicle accident resulting in personal injury or property damage. Any employee involved in an employment-related accident may be subject to screening. The Chief or Acting Chief will determine whether screening is appropriate with due regard to the nature of the accident and medical treatment involved. Should screening be deemed appropriate, such screening will take place within 72 hours.
3. Whenever an employee returns to duty after participating in a substance abuse rehabilitation program regardless of the duration of absence, such an employee may be required by the Employer or the Substance Abuse Professional to undergo a minimum of four (4) urine tests within the one (1) year period starting with the date of return to duty.

The following factors must be used in combination with other factors and cannot by themselves serve to constitute probable cause to suspect drug abuse:

- a. Unusual attendance problems, including absenteeism, tardiness or unusual use of sick leave.
- b. Excessive or repetitive vehicular, equipment or other workplace accidents.
- c. When an employee who returns to duty after an absence of thirty (30) calendar days or more resulting from medical leave, exhibits any unusual behavior.

(B) DECISION TO SCREEN FOR CAUSE

A supervisor who has probable cause to suspect an employee of substance abuse will immediately relieve the employee from his/her duties and will immediately notify the Chief, or Acting Chief, of the reasons he suspects substance abuse. Under no circumstances will such employee be permitted to operate a motor vehicle, equipment, or other machinery or be in possession of a firearm. The supervisor shall, before the end of the shift, complete and sign an "observation checklist" setting forth the facts upon which such supervisor relied. The Chief, or Acting Chief, will determine whether probable cause exists to warrant screening, and the determination will be based only upon reliable information as set forth in this program.

If the Chief or Acting Chief determines that an employee must participate in the screening process, it will be by written order.

The Chief, Acting Chief, or the employee's supervisor will then telephone the Medical Provider to notify it that an employee is being transported for testing.

A supervisor will transport the employee to be screened directly to the Medical Provider, and the employee will remain under observation to ensure the integrity of the screening process.

The supervisor will provide the employee transportation home after the screening process. The employee will remain on leave with pay until the test results are reported to the Chief. If the test results are negative, the Chief, Acting Chief or the employee's supervisor will inform the employee of the date the employee is to resume work.

(C) UNION REPRESENTATION

After an employee has been ordered to submit to drug testing for cause, the employee shall be provided an FOP/OLC representative to accompany the employee and the supervisor to the testing site. The employee may release the FOP/OLC representative if he/she so desires. The FOP/OLC may designate names of members solely for the purpose of representation during drug screenings.

III. SCREENING PROCESS

(A) SAMPLE COLLECTION

Specimen collection will occur in a medical setting or on-site and the procedures should not demean, embarrass or cause physical discomfort to the employee.

Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence.

The employee designated to give a sample must be positively identified with a thumb print and signature prior to any sample being taken.

The Medical Provider will furnish urine sample containers pre-labeled with the employee's H.P.D. identification number, date, and time of the collection. After collection, the sample will be split into two containers, and will be sealed, the chain of evidence form will be completed, and the employee will be asked to confirm the information contained on the sample containers and the chain of custody form by signing the chain of custody form.

(B) TESTING METHODOLOGY

The Medical Provider selected by the City and the FOP/OLC to conduct the analysis must be experienced and capable of quality control, documentation, chain of custody, technical expertise, and demonstrated proficiency in urinalysis testing. The testing or processing phase shall consist of a two-step procedure.

Initial Screening Step
Confirmation Step

The urine sample is first tested using a screening procedure. A specimen testing positive will undergo a confirmatory gas chromatography/mass spectrometry (gc/ms) test. An initial positive report will not be considered positive, rather it will be classified as confirmation pending. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than one (1) year. Any sample which has been adulterated or is shown to be a substance other than urine shall be reported as such. All test results shall be evaluated by suitable trained medical or scientific personnel prior to being reported to the Medical Review Officer. All test results shall be treated with the same confidentiality as other employee medical records and will be disclosed only to those administrative personnel involved in the screening, rehabilitation or disciplinary process.

(C) SCREENING STANDARDS

The City and the FOP/OLC, in consultation with the Medical Provider, have determined the type of screening to be used. The only substances to be tested for, and the threshold substance levels that shall be considered a positive test result are as follows:

| DRUG | INITIAL SCREENING LEVEL | CONFIRMATION LEVEL |
|---------------------|--|-----------------------|
| AMPHETAMINES | 1000 ng/ml | 300 ng/ml |
| BARBITURATES | 200 ng/ml | 500 ng/ml |
| BENZODIAZEPINES | 200 ng/ml | 300 ng/ml |
| CANNABINOIDS | 100 ng/ml | 15 ng/ml |
| COCAINE METABOLITE | 300 ng/ml | 150 ng/ml |
| METHADONE | 300 ng/ml | 300 ng/ml |
| METHAQUALONE | 300 ng/ml | 300 ng/ml |
| OPIATES | 300 ng/ml* | 300 ng/ml |
| | *25 ng/ml if immunoassay specific for free morphine | |
| PHENCYCLIDINE (PCP) | 25 ng/ml | 25 ng/ml |
| PROPOXYPHENE | 300 ng/ml | 300 ng/ml |
| OXYCONTIN | 100 ng/ml | 100 ng/ml |

Should NIDA add to or delete from the current panel of controlled substances or alter the initial screening or confirmation levels, this program will be modified to conform to NIDA standards. Employees will be notified, in writing, of such changes, within 60 days prior of its implementation. All test results shall be protected as confidential medical information as appropriate under the Americans With Disabilities Act (*i.e.*, the test results shall be provided on a right to know basis - the employee, the employer and the substance abuse professional - and the results shall not be presented until analyzed by a Medical Review Officer).

(D) SCREEN RESULTS

1. Negative Results

If the screen results are negative, the results will be reported in writing to the Medical Review Officer and the sample will be discarded.

2. Positive Results

If the results of the first screen are positive, the Medical Review Officer will immediately conduct a second screening using a different methodology on a different portion of the sample.

The Medical Provider will report the confirmation screen results, whether positive or negative, to the Medical Review Officer. Any adulterated sample, or samples otherwise tampered with, may be treated for disciplinary purposes as a positive result.

If the confirmation screen results are positive, employees may request an additional screening, beyond the confirmation screening, by an NIDA approved alternate laboratory. Employees will be responsible for the cost of any additional screenings. For chain of custody purposes, the sample will be transferred directly from the Medical Provider to the alternate laboratory, and the alternate laboratory will complete the Chain of Custody form.

If the confirmation screen results are positive, the Medical Provider will retain the same for at least one (1) year to allow for additional screenings and employee appeals.

The Medical Review Officer (MRO) is a physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The MRO's primary responsibility is to review and interpret positive test results obtained through the DSP. In fulfilling these responsibilities, the MRO is to be guided by the U.S. Department of Health and Human Services (DHHS) Mandatory Guidelines.

If any question arises to the accuracy or validity of a positive test result, the MRO should, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed. The MRO then makes a determination as to whether the result is scientifically sufficient to take further action. If records from the collection sites or laboratories raise doubts about the handling of samples, the MRO may deem the urinary evidence insufficient and no further actions relative to individual employees would occur.

The MRO must also assess and determine whether alternate medical explanations could account for any positive test results. In reviewing the laboratory results, the MRO may conduct a medical interview with the employee, review the employee's medical history, or review any other relevant biomedical factors. The MRO shall also review any information provided by an employee attempting to show legitimate use of a drug. The MRO may perform limited physical examinations, seeking for example, needle tracks, in determining whether clinical signs of drug abuse are present.

The MRO must ultimately determine whether some reason other than illegal drug use explains a drug-positive urine. If the MRO verifies illegal drug use, the information related to the use of illegal drugs will be disclosed to the Chief or Acting Chief. Any medical information provided to the MRO that is not specifically related to use of illegal drugs will be treated as confidential and not disclosed. If it is determined

with reasonable certainty that there is a legitimate medical or other reason to account for the positive laboratory findings, no information identifying the specific employee will be disclosed and the test results will be reported as negative.

IV. DISCIPLINARY ACTION AND APPEAL

- (A) Disciplinary action against an employee for substance abuse shall occur only after a departmental investigation in which the employee is informed of the evidence against him/her, and has had an opportunity to respond.
- (B) Employees who are found to be abusing drug(s) which have been legally prescribed are subject to all provisions of this article.
- (C) Employees may appeal any formal disciplinary action according to the current contract between the City and the FOP/OLC at the time of the disciplinary action.

V. PARTICIPATION IN A TREATMENT PROGRAM

Employees who may be drug dependent are encouraged to voluntarily seek professional assistance through a treatment program supervised by the Employee Assistance Program. Any self-referral will be kept confidential to the extent provided by the EAP's policies and procedures. Voluntary assistance should be sought before the drug abuse affects job performance or endangers fellow employees or members of the public.

Although rehabilitation is one of the principal mechanisms relied upon to reach the goal of this Program, rehabilitation is considered secondary to the primary goal of ensuring safety. Any supervisory referral will be considered a direct order. Supervisory referrals will be kept confidential to the extent provided in this Program, and in the EAP's policies and procedures, except that the EAP will submit a written report to the Chief when an employee successfully completes the Program, refuses to participate in the Program, or withdraws from the Program before successful completion.

Drug screening or testing shall be conducted upon the finding of probable cause. This testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceeding. Under no circumstances may results of the drug screening or testing be released to a third party for the use in criminal prosecution against the affected employee. This procedure shall not preclude the employer from other administrative action, but such actions shall not be solely based upon the test results.

VI. MEDICAL PROVIDER

The Medical Provider for collection of samples referred to within this DSP is:

The Medical Provider of laboratory services in connection with the urinalysis testing is:

VII. NOTICE OF EDUCATION OF EMPLOYEES REGARDING TESTING

Employees will be provided with information concerning the impact of the use of drugs on job performance, the manner in which these drug tests are conducted, the reliability of the tests performed, under what circumstances employees will be subject to testing, what the tests can determine, the types of substances to be screened, and the consequences of testing positive for illegal or abusive drug use. All new employees will be provided with this information when initially hired.

There will be a 90 day information distribution period prior to the implementation of testing under this policy for employees.

FOR THE CITY

Dated: ___/___/___

FOR THE FOP/OLC

Dated: ___/___/___