

**IN THE MATTER OF FACT-FINDING  
BEFORE GREGORY J. LAVELLE, FACT-FINDER**

STATE EMPLOYMENT  
RELATIONS BOARD

2009 JAN 26 A 9:29

**FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.**

**CASE NO. 08-MED-09-1023  
(Dispatchers)**

**AND**

**RECOMMENDATION OF THE  
FACT-FINDER**

**THE CITY OF HURON, OHIO**

**FOR THE EMPLOYEE ORGANIZATION:**

**Dennis E. Sterling  
Jane L. Dean  
Gregory Bodkin  
Terry Graham**

**Staff Representative  
Dispatcher Representative  
Sergeant Representative  
Patrol Officer Representative**

**FOR THE PUBLIC EMPLOYER**

**Terry R. Griffith  
Andrew White  
Catherine Raney**

**Law Director  
City Manager  
Director of Finance**

**January 24, 2009**

## **DESCRIPTION OF THE UNIT AND BARGAINING HISTORY**

The bargaining unit covered by this Fact-Finding Report consists of five (5) full-time employees of the City of Huron, Ohio Police Department in the rank/classification of Dispatcher. This Fact-Finding bears SERB Case Number 08-MED-09-1023. This Fact-Finding Report relates to the collective bargaining agreement between the City of Huron, Ohio (hereinafter, the City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter, the F.O.P.) which will cover Dispatchers. Patrol Officers and Sergeants are covered under separate collective bargaining agreements between the F.O.P. and the City. The Sergeant and Patrol Officer Units were certified by SERB on October 25, 1985 and the Dispatcher Unit was certified by SERB on August 4, 1988. The prior collective bargaining agreement for each unit had a duration from January 1, 2006 through December 31, 2008. The parties negotiated in six (6) sessions between October 16, 2008 and December 23, 2008 and were unable to reach tentative agreement.

## **INTRODUCTION**

### **Preliminary Matters:**

The Fact-Finder was appointed on December 8, 2006. The parties thereafter mutually extended the period for negotiations and the issuance of the Fact-Finding Report. The Fact-Finding Hearing was held on January 16, 2009 with a Telephone Pre-Hearing Conference being held on January 15, 2007. Copies of the Collective bargaining agreement and the Position Statements of each party were timely received by the Fact-Finder as required under the Ohio Administrative Code. The parties were requested by the Fact-Finder to provide copies of tentatively agreed items, including sections from the collective bargaining agreements which the parties agreed would remain unchanged.

The Position Statements and representations of the parties confirmed that the following articles of the collective bargaining agreement were unchanged:

Article 1	Recognition
Article 2	Management Rights
Article 3	Prevailing Rights
Article 4	Grammar
Article 5	Severability
Article 6	No Strike/No Lockout
Article 7	Labor Council Activity
Article 8	Dues
Article 9	Fair Share Fee Deduction
Article 10	Labor/Management Meeting
Article 11	Seniority
Article 13	Hours of Work
Article 15	Lunch Break
Article 17	Travel Expenses/Mileage
Article 18	Vacations
Article 19	Holidays
Article 20	Scheduling Time Off
Article 22	Leave for Family Death
Article 23	Emergency Leave
Article 25	Military Training Leave
Article 27	Weather Emergencies
Article 28	Special Assignment
Article 30	Life Insurance
Article 31	Insurance
Article 32	Surety Bonds Required
Article 33	Union Meetings
Article 34	Bulletin Board
Article 36	Discipline
Article 38	Copies of Agreements
Article 40	Drug and Alcohol Policy
Appendices A, C, D. E and G.	

The parties indicated in their Position Statements that there were open issues relative to the following articles/appendices:

Article 14	Compensation
Article 16	Uniforms
Article 21	Sick Leave
Article 24	Jury Duty
Article 26	Maternity Leave and Medical Leave
Article 29	Health Insurance
Article 35	Personnel Files
Article 37	Grievance Procedure
Article 39	Duration
Appendix B	Wages
Appendix F	Wellness

In the Telephone Pre-Hearing Conference, the parties confirmed that the copy of the collective bargaining agreement submitted by the F.O.P. was the proper collective bargaining agreement. It was further confirmed and stipulated that there are no separate Letters of Understanding or other side agreements governing the collective bargaining relationship of the parties. The size of the unit as stated by the F.O.P. in its Position Statement was confirmed and stipulated to be correct and it was acknowledged that the parties had entered into an agreement to make the provisions of the new collective bargaining agreements retroactive to January 1, 2009.

The parties stipulated that the Fact-Finder was to issue a separate report for the Patrol Officers Unit on or about January 24, 2009 and that email copies were to be forwarded to the representatives of the parties in order to facilitate the consideration and ratification processes of the respective parties.

## **THE HEARING IN CHIEF**

The Fact-Finding Hearing was conducted pursuant to the Ohio Collective Bargaining Law and the Regulations of the State Employment Relations Board on January 16, 2009 in the Municipal Building of the City of Huron. The parties were given full opportunity to present testimony and documentary evidence in support of their respective positions.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05(K) of the State Employment Relations Board:

- (1) Past collective bargaining agreements 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 the 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) The stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment

The parties presented evidence and argument, being represented in the hearing by the following individuals:

For the F.O.P.:

Dennis E. Sterling  
Jane L. Dean  
Gregory Bodkin  
Terry Graham

Staff Representative  
Dispatcher Representative  
Sergeant Representative  
Officer Representative

For the City:

Terry R. Griffith  
Andrew White  
Catherine Raney

Law Director  
City Manager  
Director of Finance

During the course of the Hearing, the City agreed with the F.O.P. proposal with respect to Article 16, Uniforms and Maintenance, the agreement regarding Uniforms and Maintenance being subject to the determination of the duration of the collective bargaining Agreement and the F.O.P. agreed to the City proposals regarding Article 35 Personnel Files. The parties also reached agreement with respect to language changes in Article 21, Section 21.04, Sick Leave, Article 24, Jury Duty and Article 37, Grievance Procedure, leaving the following issues for resolution by the Fact-Finder:

Article 14	Compensation
Article 21	Sick Leave
Article 26	Maternity Leave and Medical Leave
Article 29	Health Insurance
Article 39	Duration
Appendix B	Wages
Appendix F	Wellness

## **DISCUSSION OF THE ISSUES**

### **ARTICLE 15 COMPENSATION**

#### **INTRODUCTION**

The parties presented four (4) issues relative to Article 15, Compensation. The first issue related to wage scales, the F.O.P. proposing wage increases of three percent (3%) in each year of the collective bargaining agreement while the City proposed increases of one percent (1%), one and a half percent (1.5%) and two percent (2%) along with a two tiered wage structure. The second issue related to the payment Longevity Pay

and Training Pay. The City seeks to correct a perceived error in the manner in which the Longevity (LP) and Training Pay are calculated, contending that said increments are improperly calculated to allow the amount of the increments to “creep up” with the general increases. F.O.P. seeks to have the LP paid in the calendar year in which it is earned, regardless of whether the employee has reached the requisite length of service prior to the date the increment is to be paid. The third issue relates to a proposed wage increase for additional duties for Dispatchers due to contracts with Margareta Township and Groton Township whereby the Dispatchers have undertaken the dispatching duties for those communities. The fourth issue related to Shift Differential, the F.O.P. proposing a shift differential of twenty cents (\$ .20) per hour on the second shift. (4 P.M. to Midnight) and thirty-five cents (\$ .35) per hour on the third shift (Midnight to 8 A.M.) and that the shift differential be added to the base rate for the purposes of calculating overtime compensation. The City opposed the creation of a shift differential.

The issues under the Compensation Article will be discussed separately as the Wage Scale Issues, the Longevity/Training Pay Issue, the Additional Duties Issue and the Shift Differential Issue.

## **DISCUSSION OF THE WAGE SCALES ISSUE**

### **POSITION OF THE F.O.P.**

The F.O.P., in negotiations, had proposed wage increases of five percent (5%) in each year of the collective bargaining agreement. Upon entering Fact-Finding, the F.O.P. modified its demand to propose wage increases of three percent 3% in each year of the collective bargaining agreement. The F.O.P. opposes the creation of a two-tiered wage structure.

The F.O.P., in support of its position with respect to across-the-board wage increases, points to the existence of a pattern of wage increases in comparable collective bargaining agreements and to the bright economic outlook for the City as shown in a newspaper article. With respect to the City proposal to create a two-tiered wage scale, the F.O.P. expressed concerns regarding the quality of applicants who might be available if the starting rate were to be lowered, pointing out that there had been a drastic reduction in applicants when the starting rate for the City lagged behind those of comparable communities.

#### **POSITION OF THE CITY**

The City has proposed annual wage increases of one percent (1.0%), one and one half percent (1.5%) and two percent (2.0%) and has proposed to reduce the number of steps in the wage scale from five (5) to three (3) for employees in the classification of Dispatcher as of January 1, 2009. The City has also proposed a two-tiered wage schedule under which Dispatchers hired on or after January 2, 2009 would be compensated under a separate wage structure containing a single level.

The City cited the current national economic crisis and the current and impending layoffs at International Automotive, a major employer within the City as the rationale for its proposal with respect to the wage scales. The City maintains that it will be able to hire qualified employees at the proposed starting rates because of its overall benefit package and the distressed state of the job market.

## WAGE SCALES RECOMMENDATION

The determination of the wage issue in this matter, had it been made in early 2008, would have been a bit of a slam-dunk. Patterns of annual wage increases of three percent (3%) seem to have been well-established. The budget of the City would not have indicated any problem with meeting the costs of such a wage package. Even today, there is not a wealth of information which would lead to the conclusion that the City of Huron is in dire financial straits. Certain other facts, however, are undeniable. The national economy is in a recession as is the economy of the State of Ohio where State employees are being asked to take a five percent (5%) pay cut to help meet a budget deficit. Many local governments are in deficit positions and would be expected to lay-off employees in the classifications represented by the F.O.P. in this case, leading to a glut of employees who would be willing to accept employment at a significantly lower wage scale.

The present economic conditions might seem to encourage the creation of a two-tiered wage scale. Short-term “fixes”, such as the creation of two-tiered wage scales, and outsourcing, however, are the probable cause of the “fix” we are in where the economy has eliminated the purchasing power of the work-force which is its customer base. A two-tiered wage structure, moreover, can lead to dissention between newer and older employees. This is a significant factor in employment generally and even more so in safety forces where employees stake their very lives on their fellow officers. There is no indication, further, that a two-tiered wage structure exists among safety forces in the State of Ohio.

Generally, where employees’ jobs have not changed and where there is no indication that there is any relative inequity in compensation, the employees should retain

the same economic position; that is, wage increases should match inflation such that the employee should have the same after-tax purchasing power each year. The inflation rate for the last quarter of 2008 was less than 2.0%. (October 3.66, November, 1.07, December .09, totaling  $4.84/3 = 1.63\%$  according to the Bureau of Labor Statistics) Thus, a two percent (2%) increase should create the same after-tax purchasing power for employees. It should be noted also that employees receiving step increases and reaching their next longevity increment level will receive more than a two percent (2%) increase. Anticipating an economic upturn, inflation rates should increase such that a two and one half percent (2 1/2%) increase would be appropriate for 2010 and a three percent (3%) increase would be appropriate for 2011).

For the reasons stated above, a two-tiered wage structure, as proposed by the City, would be inappropriate. This does not mean, however, that the City can not receive during the term of this collective bargaining agreement the benefits of its proposal. Layoffs among safety forces in the area should provide qualified applicants at an even lower rate, especially in the City of Huron which enjoys a low crime rate, excellent schools, ready access to entertainment and leisure activities and an excellent overall reputation.

A lower new-hire step is recommended. The idea of a permanent two-tier wage scale can not be recommended. The problem with a permanent two-tiered wage structure is that while an employer may be able to attract and hire applicants, it may have difficulty retaining those hired as second tiered employees since they do not have an adequate incentive to stay. A revolving door through which qualified applicants come and go is still a revolving door which leads to poor morale, inefficiency and additional costs.

It is recommended, therefore, that the modified wage scale be adopted, adding Step F at the bottom of the scale and then applying the general wage increases to the 2009 wage rates. Should the City find it difficult to attract qualified applicants, the following language is also recommended to allow the City to hire employees at other than the entry level wage, based on legitimate factors, such as skill, ability, experience and market conditions. Language relative to the proper operation of the wage scale and calculation of "Base Rate" is also recommended as shown below:

**ARTICLE 14**  
**Compensation**

14.01

Effective January 1, 2009, all Dispatchers shall be paid in accordance with Appendix "B" attached hereto and made a part hereof through the duration of this Agreement.

Employees hired on or after January 1, 2009 may be hired at such step of the Wage Scale as the City may determine is appropriate based on legitimate factors such as skill, experience, training and market conditions, provided there is no discrimination and further provided that the Union shall be notified of the hiring of any Dispatcher at a Step higher than step E and the reasons for the hiring rate. Employees hired on or after January 1, 2009 shall progress from step to step of the wage scale upon their anniversary dates of employment in accordance with the example shown in Appendix B.

"Base Rate" shall be defined as the gross pay less all incremental adjustments resulting from training, education and longevity.

Each Dispatcher shall progress from step to step of the wage scale upon his/her anniversary dates of employment in accordance with the example shown in Appendix B.

APPENDIX B

<u>Dispatchers</u>	<u>2009 (2%)</u>	<u>2010 (2.5%)</u>	<u>2011 (3%)</u>
A	19.94	20.44	21.05
B	16.40	16.81	17.32
C	15.83	16.22	16.71
D	14.99	15.37	15.83
E	14.14	14.49	14.93
F	14.00	14.35	14.78

The rates shown in the above grid do not include individual adjustments resulting from training, education and longevity.

Example:

A Dispatcher, being paid at Step E as of 12-31-08 would move to Step E of the new wage scale for 2009 and would move to Step D on his anniversary date of employment.

A new Dispatcher, hired at Step E at the discretion of the City on February 1, 2009 would on January 1, 2010 move to Step E of the 2010 Wage Scale and would move to Step D of the 2010 Wage on February 1, 2010.

**DISCUSSION OF THE LONGEVITY/TRAINING PAY ISSUE**

The City seeks to correct a perceived error in the manner in which the Longevity Pay Increment (LPI) is calculated in order to avoid the “creeping up” of the amount of the increments because of the annual increases in the Base Rate. The F.O.P. seeks to have the LPI paid in the calendar year in which it is earned, regardless of whether the employee has reached the requisite length of service prior to the date the increment is to be paid. These issues will be discussed separately as the “Calculation Issue” and the “Payment Issue”.

## **CALCULATION ISSUE RECOMMENDATION**

### **POSITION OF THE CITY**

The City claims that the LPI has been improperly calculated. Part of the argument related to the miscalculation is the claim that the amount of the increment has been miscalculated to “creep up” with increases in the Base Rate. The City, therefore, proposes to correct the perceived error. A productive question to ask before concerning the proposal of the City is whether the past interpretation of the language of the LPI is correct. If it is correct, then the proposal of the City would amount to a takeaway of an existing benefit.

The City argues that the intent of the LPI was to provide an increase of one percent of the base pay at the rate in effect as of the date the increment was earned. Thus, under the City proposal, if an increment was earned under Step E in 2008, the amount of the increment, if paid in future years, would remain the same regardless of whether the employee advanced a step in the wage progression and regardless of whether the base rate went up or down.

The F.O.P. argued that had the parties intended that result, the language would have stated that the increment was to be calculated based on “ --- the officer’s base rate in effect at the time the increment was earned”. It is interesting to note that such language is utilized with respect to the calculation of the Training Pay Increment. The F.O.P. further argued that the language of the LPI has been consistently interpreted for over twenty (20) years.

The longevity pay language of the collective bargaining agreement is designed to provide higher wage scales for persons having greater years of service. In private

sector collective bargaining agreements “longevity” increases as commonly shown as a part of the wage scale as shown in the following example:

23 years or over	10.00
18 to 22 years	9.80
13 to 17 years	9.60
8 to 12 years	9.40
3 to seven years	9.20
1 to 2 years	9.00
Start	8.80

When across-the-board percentage wage increases are added to the scale, the value of the “increment” creeps up. In the contract between the City and the F.O.P. longevity could not have been expressed as above since the collective bargaining agreement wage scale was expressed as “Steps”.

The language of the collective bargaining agreement is more supportive of an interpretation that the calculation of the LPI is based on the then current base rate. At best, it could be argued that the language is “ambiguous”. Even if ambiguous, however, past practice is generally used to resolve ambiguities. In this case, a clear past practice has been established whereby the EIC has been calculated based on the then current base rate. A past practice is established where the practice is 1) unequivocal, 2) clearly enunciated and acted upon, 3) readily ascertainable over a reasonable period of time as a fixed, established practice by both parties. **Celanese Corporation of America**, 24 L.A. 168. As further stated in **How Arbitration Works** at page 405:

Where practice has established a meaning for language contained in past contracts and continued by the parties in a new agreement, the language will be presumed to have the meaning given to it by that practice.

The proper interpretation of the language of the LPI is that as advocated by the F.O.P. There is no good reason to alter the language of the collective bargaining agreement or the interpretation of that language as it relates to the LPI. It is recommended that the language remain the same.

The City maintains that there is another error in the calculation/payment of the LPI. City Manager, Andrew D. White, seemed to have concerns about whether the LPI should be paid in years other than the increment years; the third, eighth, thirteenth, and twenty-third years.

A careful reading of the provision indicates that the increments are also to be paid in the interim years, the employee receiving the third year increment in the fourth, fifth, sixth and seventh years, and the third year and additional eighth year increments in the ninth, tenth, eleventh and twelfth years and so on through the progression. The language refers to “permanent incremental increases”, rather than bonuses within given years and also states that the increments shall be paid in “annual payments as a part of the first payroll in December in “each year”. Referring again to the example of where “longevity” is expressed through a wage scale, it is clear that the increment is paid in each year.

When there is an across the board increase, the longevity increments “creep up” along with the wage scale. It is clear also that the “third year increment” continues to be paid in the fourth, fifth, sixth and seventh years. The ELPI has been properly calculated and properly paid. No change in language relative to the calculation of the ELPI is recommended.

## **PAYMENT ISSUE RECOMMENDATION**

### **POSITION OF THE F.O.P.**

The F.O.P. feels it unfair that employees having anniversary dates in late December fail to receive their longevity increment earned during the year if their anniversary date falls after the date the increment is paid. The F.O.P. has proposed that the increment be paid even regardless of whether the employee has reached his anniversary date and that if the employee does not reach his anniversary date that a prorated portion be returned.

### **POSITION OF THE CITY**

The City opposed the proposal of the F.O.P. in negotiations. At hearing, the City discussed alternatives to avoid what appeared to be a quirk in the system which produced unfair and unintended results. The City expressed a willingness to consider having the LPI paid regardless of the employee's anniversary date, provided that the entire increment be repaid should the employee fail to reach the anniversary date.

## **PAYMENT ISSUE RECOMMENDATION**

Discussions were had at hearing concerning the timing of the payment of the LPI. It appeared that because the payments were made as a part of the first payroll in December, employees whose anniversary dates fell between the payroll cutoff date for the first payroll in December and December 31<sup>st</sup> were being denied their additional increment which would become fully earned as of their anniversary date. A suggestion was made to have the payments made in January to be sure that there was no question whether the increment was earned. While that suggestion would help the budget of the

City for 2009, employees, however, probably anticipate the receipt of the increment for the purpose of Christmas shopping.

The problem should be addressed since incongruous results do occur. Employees may be granted their earned increment in some years and denied their increment in others, because of where their anniversary date falls compared to the payroll closing date in the respective years. A possibility might be to have those earning the bonus later in the year being paid and then returning the increment should they fail to reach their anniversary date or returning a pro-rata portion of the increment as suggested by the F.O.P. There is nothing in the collective bargaining agreement to suggest that the increment is "accrued", such that a pro-rata return would be appropriate. The problem with a full return of the increment, however, is that there may be less in the final paycheck than the amount owed to the City.

The recommendation of the Fact-Finder, therefore is that the following language be added to the end Article 16, Part 4, Experience

provided, however, that should an employee not have reached his anniversary date by the time of the close of said pay period, the salary increment shall be paid as part of the payroll during which the employee reaches his anniversary date.

## **DISCUSSION OF THE ADDITIONAL DUTIES ISSUE**

### **POSITION OF THE F.O.P.**

The F.O.P. proposes a lump sum bonus for Dispatchers to be paid in the first pay period of February in each year of the collective bargaining agreement. The lump sum bonus is to be equal to three percent (3%) of the annual contract amount between the City of Huron and Margaretta Township for each Dispatcher and is to be paid only in

those years during which a contract exists between the City and Margareta Township. The F.O.P. argues that Dispatchers have undertaken additional duties and responsibilities which entitle them to additional compensation.

### **POSITION OF THE CITY**

The City argues that the additional duties and responsibilities required of Dispatchers are minimal, indicating that an average of fewer than two (2) calls per day are received.

### **RECOMMENDATION REGARDING ADDITIONAL DUTIES ISSUE**

Wage rates for given jobs are properly based on “compensable factors” such as job difficulty, training, education, work load and responsibility. In this case, the work load of Dispatchers has not increased dramatically, at least in terms of actual Dispatching. There has been a small increase in required training and in job difficulty in dealing with multiple jurisdictions. There is also an increase in responsibility. It is also undeniable that the City benefits economically from the undertaking of these additional duties by the Dispatchers. The F.O.P., proposes a bonus based on three percent (3%) of the annual contract amount between the City and Margareta Township for each employee. This is a substantial sum which is far in excess of the value of the increased job duties determined by compensable factors. The F.O.P. proposal is properly stated as a “bonus” since it should not be considered a part of the base rate since the contract may not exist at some future date.

A small bonus is appropriate, but not a bonus based on the contract sum. The “Contract Sum” may or not be paid and may change during the year. The number of

outside jurisdictions covered by contracts with the City may change during the year. The bonus, for each of calculation and administration, therefore, should be a finite sum based on the existence of a contract covering Dispatching for outside jurisdictions. The F.O.P. proposes that the bonus be paid in the first pay in February of each year based on the prior year. The contract with Margareta Township, however, was not in effect for more than a few months in 2008. It is therefore recommended that there be a bonus beginning in 2010 for additional duties related to contacts of the City for dispatching duties performed for outside jurisdictions as stated below:

**Section 7.** Dispatching Contract Bonus.

Beginning in 2010, in addition to the wages set forth in Appendix B, each current and future Dispatcher shall receive each year a lump sum payment in the amount of two hundred dollars (\$ 200.00) in the first pay of February if there was in effect at any time in the prior year any contract between the City and another jurisdiction under which Dispatchers perform dispatching for any outside jurisdiction, including, but not limited to Margareta Township. The amount of the bonus shall not increase or decrease based on the number of jurisdictions covered so long as at least one (1) outside jurisdiction is covered by a dispatching contract with the City.

**DISCUSSION OF THE SHIFT DIFFERENTIAL ISSUE**

**POSITION OF THE F.O.P.**

The F.O.P. has requested a shift differential of twenty cents (\$ .20) per hour on the second shift (4 P.M. to Midnight) and thirty-five cents (\$ .35) per hour on the third shift (Midnight to 8 A.M.) and that the shift differential be added to the base rate for the purposes of calculating overtime compensation. The F.O.P. points out that most comparable jurisdictions provide some form of shift differential and that some jurisdictions provide shift differential at a higher rate than that proposed for this

bargaining unit. The F.O.P. argues that employees should be compensated for working less desirable shifts.

### **POSITION OF THE CITY**

The City opposes the creation of a shift differential for economic reasons. The City further points out that the City had bought out the shift differential for this unit in a prior collective bargaining agreement.

### **SHIFT DIFFERENTIAL RECOMMENDATION**

There is good reason to provide for shift differentials. As a general proposition, employees should receive greater compensation for less desirable work. The Law of Supply and Demand would also tend to indicate that a less desirable job would garner a higher wage. Comparables also indicate that the existence of a shift differential is prevalent. In this case, however, the proposal for a shift differential is not recommended for several reasons. The first reason is that employees have the opportunity to bid on and off of shifts. Senior employees are not involuntarily working a non-preferred shift. A second reason to decline to create a shift differential is the fact that the shift differential was bought out of prior contracts, albeit a fairly long time in the past.

The most pressing reason to decline to recommend a shift differential at this time is the consideration of the overall package. Creating a shift differential for the second and third shift would require a re-structuring of the total economic package, decreasing the amount available for first shift employees. The proposed shift differential would give second shift employees a first year increase of about three percent (3%) and third shift

employees first year increase of about a three and three quarter percent (3.75). Such increases would have to be offset by lower general increases.

For the above reasons, the proposal of the F.O.P. for shift differentials must be rejected. The Fact-Finder recommends that no Shift Differential be created.

## **ARTICLE 16 UNIFORMS AND MAINTENANCE**

### **POSITION OF THE F.O.P.**

The F.O.P. points out there has not been an increase in the Uniform and Maintenance Allowance (UMA) in six (6) years and proposes that the UMA be increased to \$ 600.00.

### **POSITION OF THE CITY**

The City has not opposed the increase in the UMA, but maintains that it is not willing to agree to third year increases in the UMA due to its position that it is proposing two (2) year duration to the collective bargaining agreement.

## **UNIFORM AND MAINTENANCE RECOMMENDATION**

Since the only objection of the City to the F.O.P. UMA proposal relates to the third year of the agreement, the F.O.P. proposal is recommended, the issue related to the third year UMA increase being discussed in the recommendation regarding the duration article.

**ARTICLE 21 SICK LEAVE**

**POSITION OF THE F.O.P.**

The F.O.P. proposes no change in the sick leave article. The F.O.P. opposes the limitation on the retirement/death payout on sick leave indicating that such a change will not produce a savings to the City. The F.O.P. points out that of the seven (7) employees leaving employment since the expiration of the 2005 collective bargaining agreement, only two (2) left under circumstances entitling them to the payout of sick leave and that neither received the full sick leave payout. The F.O.P. pointed out that only one (1) employee within the bargaining units covered by the collective bargaining agreements covered by the F.O.P. has the age and service to be entitled to retire during the term of the proposed collective bargaining agreement. The F.O.P. further indicates that the limitation on the Sick Leave pay out proposed by the City might change the way employees utilize sick leave and produce a real increased cost to the City.

**POSITION OF THE CITY**

The City proposes to limit the payout of Sick Leave upon death or retirement to 480 hours, rather than the 1750 hours as stated in the current collective bargaining agreement. The City would provide a window until December 31, 2009 for employees to retire and be entitled to receive the maximum 1750 hours of sick leave. The City also proposes to change the manner in which the payout is made in the case of an employee's death, stating that the payout is to be made to the estate of the employee, rather than to the "named survivor" as stated under current language. The City cites budgetary considerations in making its proposal, contending that it must budget for the payout.

## **SICK LEAVE RECOMMENDATION**

The rationale for the City to propose a limitation on Sick Leave payout relates to the claim that it needs to budget for such a payout. While budgeting for a full sick leave payout for an entire bargaining unit creates a quite substantial number, the reality of the situation is that there is only one (1) employee within the F.O. P. bargaining units who is eligible to retire and there is no allegation that the employee will actually retire, or is even considering retirement. Even when budgeting for the retirement of an employee, one must take into account the savings to the City by the retirement.

Since retirement obviously saves money for the City, the question becomes, does the proposal create an incentive for the members of this bargaining unit to retire. With the loss to the value of individual investments and the slow job market, it is very unlikely that the prospect of not losing some sick pay hours would be a strong incentive to give up a job providing a salary of over \$ 40,000.00 a year and full benefits would encourage any employee to retire before 12-21-2009. The chance of losing the value of sick leave benefits may actually be a disincentive to retirement after 2009.

The limitation on sick leave payout also encourages a change in sick leave usage. Where an employee is in a "use it or lose it" situation, the employee is more likely to "use it". Even among the best of employees, if the option is to retire and get surgery on a knee or to get surgery on a knee and then retire, the latter option becomes more popular when the sick leave would only be paid out at 1/3 if the retirement comes first. In some cases, the choices made with respect to one-day absences tend to change in a "use it or lose it" situation, possibly leading to overtime.

While the “retirement incentive” aspect of the City proposal may make sense in some bargaining units or sectors of City employment, the proposal of the City does not make sense for this particular bargaining unit. One must also consider the impact on the ratification process of a takeaway provision. The Fact-Finder recommends no change in the language of the collective bargaining agreement with respect to the amount of the sick leave payout on death or retirement.

The proposal of the City with respect to the sick leave payout payee does raise issues which should be addressed. The City proposal would have the sick leave payout made to the estate of the employee. Present language provides that the sick leave payout be made to the “employees named survivor”. The problem with the current language is that if the employee had not named a beneficiary or if the named beneficiary did not survive, a question would arise as to whom the payment should be made. The City proposal does provide some certainty as to the payee. In all cases, the estate would be paid. There are problems with the City proposal. The opening of an estate would cost the beneficiary money in attorney fees and court costs. Ultimate payment, even in the best of cases would be delayed. Estate assets, moreover, are subject to estate creditors such that the beneficiary may receive nothing. There are also times when no estate is opened, leaving the City with no person or entity to pay out a small amount which would then remain on the books until processed as unclaimed funds.

There is another slight wrinkle in the language of the sick leave payout. Present language states”

If a member shall die while still employed as a Police Officer or Patrol Officer.

The recognition clause only refers to "patrol officers". It appears that the benefit is to be paid to any member of the bargaining unit who dies while still employed. Stating particular classifications implies that there might be other bargaining unit members who would not be entitled to the sick leave payout on death.

It is recommended, therefore, that the following language be incorporated into the sick leave payout provision:

If an employees dies while still employed within the bargaining unit, the City shall pay to his designated beneficiary the employee's accumulated, but unused sick time up to a maximum of one thousand seven hundred fifty (1750) hours. Should there be no designated beneficiary or should the designated beneficiary and all alternate designated beneficiaries fail to survive the employee, said accumulated sick leave shall be paid to the employee's surviving spouse, if any, or, if none, to his/her estate.

Employees should be advised to review and update their beneficiary designations be sure that their designations and proper and current.

#### **ARTICLE 24 JURY DUTY**

The F.O.P. made a proposal to assure that employees from the second and third shift who performed jury duty would be granted overtime if they also worked their normal shift on the day jury duty was performed. Discussions between the parties lead to an apparent agreement, reflected below which would require that an employee on jury service to be transferred to the first shift to avoid the overtime issue.

24.08 A member who is called for jury duty shall, upon notice to the Chief of Police, be paid his regular salary or wages less the amount of pay received for jury duty service in accordance with Codified Ordinance 163.08 as in effect on January 1, 1988. Members called to report for jury duty shall notify the Chief of Police who may place the member on paid leave of absence status. The member shall be placed on day shift for the duration

of his jury service. For this period, other shifts may be adjusted to maintain required coverage.

## **ARTICLE 26 MATERNITY LEAVE**

### **POSITION OF THE F.O.P.**

The F.O.P. proposed to retain the current language on Maternity Leave and to add Language relative to the Family and Medical Leave Act (FMLA). The F.O.P. opposed the proposal of the City to substitute FMLA for Maternity Leave, indicating that to eliminate Maternity Leave would be to reduce an existing benefit which provides six (6) months leave, rather than the twelve (12) weeks provided under the FMLA and further indicating that Maternity Leave might be available where FMLA would not apply such as in the case of an employee having less than a year of service.

### **POSITION OF THE CITY**

The City proposes to replace the Maternity Leave provision with the provisions of the FMLA. The City argues that having Maternity Leave, a leave which applies only to females would amount to discrimination on the basis of sex and further asserts that having both Maternity Leave and FMLA would be duplicative and could lead to the “piggybacking” of benefits.

### **MATERNITY LEAVE RECOMMENDATION**

Maternity Leave provides an additional and different benefit than the FMLA, granting six (6) months of leave and granting leave which might not be available under the FMLA such as instances where an employee has not been employed for more than one year and/or has not worked in excess of 1250 hours in the year. There do not appear

to be any employees within the City which are no longer covered by the City Maternity Leave since the ordinance remains in effect and there is no allegation that any other Bargaining unit has agreed to the City proposal. There is no substantial reason for eliminating the Maternity Leave benefit.

Regardless of the provisions of the collective bargaining agreement, bargaining unit employees are covered under the FMLA at the present time. Regulations under the FMLA specifically deal with the “double-dipping” issue. Both parties have proposed citing part of the criteria for qualification for family and medical leave. Citing part of the qualifications, however, may mislead employees with respect to their rights and the rights of the employer under the FMLA. The provisions and regulations of FMLA, further, may change from time to time. Therefore, it is recommended that a more generic reference to the FMLA be contained in the collective bargaining agreement.

It is therefore recommended that current language regarding FMLA be retained and that the following language be added to address entitlement to FMLA.

The City and the employees covered by the collective bargaining agreement are subject to the terms of the Family and Medical Leave Act. The conditions under which Family and Medical Leave is granted shall be in accordance with Federal law and regulations.

## **ARTICLE 29 HEALTH INSURANCE**

### **POSITIONS OF THE PARTIES**

Neither party has proposed a change in the language of the Health Insurance Article. The parties have also agreed on the terms of a new Wellness Plan. The point of contention between the parties appears to relate to the testing of spouses to earn credits

toward the deductible. The F.O.P. requests that accommodating be made to provide spouses a longer time to be tested in order to earn credits toward the deductible.

The parties hereto acknowledge that the new Wellness Plan is better than the old plan and that the choice at this time is either to accept the new plan in its entirety or to revert to the old. The Fact-Finder appreciates the problem that employees may have difficulty in persuading their spouses to be tested for any number of reasons. It is felt, however, that additional time to reach the goal will not provide as much of an incentive as the potential loss of savings in terms of deductible. Time remains to earn substantial credits and testing is of benefit and not only economic, but health benefit to everyone. The fact-Finder must recommend the City proposal with respect to the Wellness Plan.

#### **ARTICLE 37 GRIEVANCE PROCEDURE**

The parties, in discussions at hearing, agreed that a duplicative access to the Personnel Appeals Board added unnecessary delay and confusion in the Grievance Procedure. Each party withdrew its proposal submitted to Fact-Finding and agreed to delete Section 3 (Section 37.03) from the collective bargaining agreement.

#### **ARTICLE 39 DURATION**

#### **POSITIONS OF THE PARTIES**

The F.O.P. has proposed a standard three (3) year agreement. The City proposed a two (2) year agreement, but indicated that a three (3) year agreement might be acceptable, based on economics.

## **DURATION DISCUSSION**

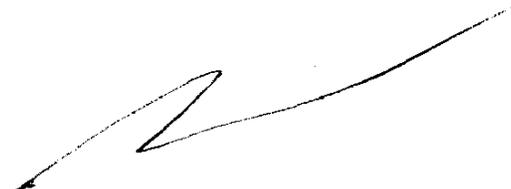
Generally, three (3) year agreements are preferred to promote stability.

Negotiations are stressful and costly and additional negotiations should be avoided.

The City, however, has indicated some trepidation regarding the economic future and has indicated that it needs to achieve the change in the Sick Leave Payout during the term of a three (3) year collective bargaining agreement. Considering the aims of the City in negotiations, the fact that it is unlikely that any bargaining unit member would retire in the next two (2) years and the probable negative effect on the possibility of ratification of a take-away provision regarding sick leave payout, a three (3) year contract with a limited re-opener after the second year is recommended as shown below:

## **ARTICLE 39 DURATION**

This Agreement shall become effective and retroactive to January 1, 2009 and shall terminate on December 31, 2011, unless extended by mutual agreement of the parties, provided, however, that either party may choose to reopen negotiations for the third year of this agreement with respect to the issues of compensation and sick pay buyout only by giving the other party written notice of the intent to re-open negotiations not later than October 1, 2010.

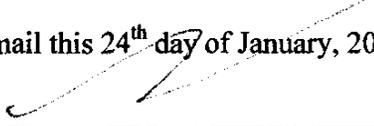


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GREGORY J. LAVELLE, ESQ.  
Ohio Bar No. 0028880  
27346 Edgepark Boulevard  
North Olmsted, Ohio 44070  
Telephone (440) 724-4538  
Facsimile (440) 979-9113  
Email lavellearb@aim.com

S E R V I C E

A copy of the within Recommendation of the Fact-Finder was sent to the City at 417 Main Street, P.O. Box 468, Huron, Ohio 44839 and to the F.O.P. at 222 East Town Street, Columbus, Ohio 43215, by overnight mail this 24<sup>th</sup> day of January, 2009.

  
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GREGORY J. LAVELLE