

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Akron )  
 ) Case No: 09-MED-10-1137  
and )  
 ) Fact-Finder: Colman R. Lalka  
Fraternal Order of Police, Lodge No. 7 )

HEARING

Dates of Hearing: May 26, 27, 28, June 4, 9, 11, and July 15, 2010

Location of Hearing: Akron, Ohio

ATTENDANCE AT HEARING

For the Employer:

Tammy Kalail, Esq.

Patricia Ambrose Rubright, Esq.

Diane Miller-Dawson, Director of Finance

Augustus A. Hall, Chief of Police

Jim Masturzo, Consultant, Former Deputy Mayor Labor Relations

Mark McLean, Employee Benefits Manager

Cindy Donel, Accounting Manager

For the Union:

Susannah Muskovitz, Esq.

Paul Hlynsky, Fraternal Order of Police, Lodge 7 President

Frank A. Saponic, CPA, CFE

Pat McMillan, Akron Police Department

Tim Givens, Akron Police Department

Mark Duncan, Akron Police Department

Mike Leslie, Akron Police Department

Vince Yurick, Akron Police Department

Gary Cole, Akron Police Department

Clay Cozart, Akron Police Department

Darletta Rubin, Akron Police Department

Larry Vuillemin, Attorney at Law

## CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(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;

4117-9-05(K)(3). The interests 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;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## BACKGROUND

The City of Akron has recognized the Fraternal Order of Police, Lodge No. 7 as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2009.

Formal bargaining between the Parties has been ongoing. When impasse was reached, the Parties requested the Fact-Finder convene a hearing, attain relevant facts, and prepare a report and recommendations in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the date and at the place indicated above. At that time, the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Fact-Finder to render a report and make recommendations on the issues at impasse.

## FACT-FINDER'S INITIAL COMMENT

It is apparent to the Fact-Finder both Parties expended a great deal of time and effort in preparing their presentations for the Fact-Finding Hearing. Accordingly, the Fact-Finder has considered the presentations in their entirety on all issues, and will set forth below a comprehensive restatement of the positions and arguments advanced at the Hearing.

## FINANCIAL HEALTH OF THE CITY

### OVERVIEW

The City maintains its financial situation is such that in order to balance its 2010 budget, concessions from all of its labor unions, as well as from the City's unrepresented employees, are needed. To that end, the City states, it requested 5½% in wage and benefits concessions from all unions, or approximately \$1,630,000.00 from the FOP, and presented the FOP with the following, what it referred to as a "smorgasbord" or "a la carte menu" of items, from which the Union could pick and choose to reach the 5½% in concessions:

Longevity	\$ 429,971.62	total
	\$ 69,556.74	Officers from 22-25 yrs
	\$ 360,414.88	Available
Premium Holidays	\$ 33,075.00	Avg-- including w/c and pension
	\$ 264,600.00	8 Holidays
Uniform	\$ 610,280.00	Amount paid in 2010
Fitness	\$ 136,800.00	Amount paid in 2010
Furlough	\$ 121,877.00	Estimate for each day -- includes w/c and pension
Co-pay Prescription Drugs	\$ 18,000.00	Estimate for 6 months
Wage Rollback	\$ 324,000.00	Each 1%, including pension and w/c
Half of Presidents Wages	\$ 27,050.00	Estimate annually
Medical Premium Contribution	\$ 33,840.00	Estimate monthly at 40/80 per month single/family

Regarding holidays, if an Officer actually works on a holiday, the City explained, the Officer is paid time-and-a-half, and if the Officer does not work that day he receives eight hours of straight time. The savings of \$33,075.00 is the average savings for one holiday. For example, more Officers are needed on July 4 than Thanksgiving, causing the actual savings on various holidays to fluctuate.

The Union notes the current Collective Bargaining Agreement is the result of Conciliation wherein wage increases of 3%, 3%, and 3% were granted in an attempt to reduce the gap between the Akron Police Department and other comparable departments.

The Mayor faced a recall election in June 2009, the Union continues, and, according to the Mayor at that time, everything with City was fine. The Mayor was not recalled, and the following month financial problems were claimed with the Mayor calling in all five of the City's unions, indicating a \$10,000,000.00 to \$12,000,000.00 budget deficit existed, and the unions needed to do something about it. Layoffs were on the horizon.

The Union indicates Jim Masturzo, former Deputy Mayor of Labor Relations, negotiated for the City. It was a tough August and September, with the Union continually requesting the number of layoffs the City was contemplating. The City refused to provide that figure, the Union states, and no serious concessionary negotiations began until the City disclosed, absent concessions, there would be a layoff of ninety-seven Officers. The Union states it made the hard decision to do what was necessary to prevent layoffs, and its concessions were tied to a no-layoff guarantee. The City originally indicated it needed \$4,000,000.00 in concessions, however, the Union believes, the savings were closer to \$300,000.00.

The Union claims twenty-one of the layoffs were what it terms "fake layoffs." Ranking Officers were permitted to bump down into lower ranks. The City, the Union emphatically believes, had no intent of laying off those ranking Officers, it simply wanted to reduce them in rank.

For 2010, the City proposed huge concessions, attempting to gut the Collective Bargaining Agreement. The City continues to demand huge financial concessions, the Union continues, as well as the removal or modification of contractual language to the detriment of FOP members.

The Union indicates its financial expert will establish the City's claims of economic difficulties are grossly exaggerated, and givebacks are unwarranted

#### THE CITY'S PRESENTATION

Diane Miller-Dawson, Director of Finance for the City of Akron, is responsible by law for presenting a balanced budget. Ms. Miller-Dawson's has a Bachelor's Degree in Management, a Master's Degree in Finance, has served as Akron's Deputy Director of Finance from 1993 through 2003, and as Akron's Director of Finance since 2004. In her position as Finance Director, Ms. Miller-Dawson oversees the collection of taxes as well as all financial matters

regarding the City. Income taxes are the largest source of revenue for the City, and pursuant to City Charter, 73% of income tax revenue goes into the City's General Fund.

Ms. Miller-Dawson described the General Fund as the City's Operating Account out of which most of the City's operating wages are paid, including most of the FOP wages. Thirteen departments are financed through the General Fund, with 65% of those expenditures being for public safety, including wages, benefits, and the operation of the safety departments. The remainder of income tax collections is deposited into the Capital Fund to be used for capital projects and debt service.

Ms. Miller-Dawson indicated the General Fund is in poor health, with expenditures increasing and revenue continuing to decline. The General Fund balance has been, and continues to remain low. Income tax revenue is projected to decrease this year over last, and be 13% lower in 2010 than in 2008. Ms. Miller-Dawson explained in detail the various Funds of the City, different sources of revenue, as well as the different expenditures of City revenue. Detailed charts of revenue and expenditures and reports to City Council were also presented and explained, including the decrease in revenue from property taxes, and Akron's high unemployment rate of 11.6% causing a decrease in income tax collections.

Inheritance taxes, Ms. Miller-Dawson indicated, are difficult to project and are unreliable, and revenue for services performed by the City, as well as revenue in the miscellaneous sources category, is projected to be down for 2010. In 2009, the City spent more than it took in. The unencumbered balance in the General Fund as of December 31, 2009 was \$1,911,337.00. Ms. Miller-Dawson explained bond rating agencies look at cash on hand, and as of December 31, 2009, the cash on hand balance was \$5,205,946.00. In the 2010 budget, it is projected that on December 31, 2010 the unencumbered balance will be \$2,057,637.00, and the cash balance \$5,307,637.00.

To assist in balancing its budget, the City is looking to its employees for concessions. Each department was asked to decrease its budget by 15% for 2010. The 2010 budget has been approved, and is lower than the 2009 budget. Income tax revenues are projected to decrease by 3%, local government revenues to decrease by 2%, property tax revenue to decrease by 2%, and sewer revenue to increase by 25%. Sewer revenue does not go into the General Fund, but rather is earmarked for the Sewer Fund to cover sewer expenditures, including an upgrade to the sewer system pursuant to a consent decree with the EPA.

For its 2010 budget, the City assumes no wage increases for employees, health benefit expenditures to increase, and the Voluntary Separation Plan (VSP) final accumulated leave payout will fall due. The City also notes fifty-three payrolls must be paid in 2010 resulting from an extra week on the calendar. One-hundred-twenty City employees participated in VSP, three of which were Police Officers, which decreased expenditures for healthcare and well as wages. The medical benefits plan is self-funded, and is what Ms. Miller-Dawson described as the Cadillac of plans.

The number of City employees has declined as revenues have decreased. In addition to the Voluntary Separation Plan, a policy of limited hiring accounts for the decrease in the number of City employees. While not engaged in a hiring freeze, the City is engaged in a hiring slow-down. Positions being filled at the current time are seasonal positions, as for example, mowing, trimming trees, and so forth. Those seasonal employees do not receive benefits and have a lower starting wage.

Revenue in the General Fund will be down 5% in 2010, and during negotiations the City approached every Union and requested 5½% in concessions. As additional cost-savings measures, the City required each non-bargaining employee take a mandatory furlough of thirty-four hours, offered a voluntary furlough program, and discontinued vacation sellback to the City. The City also restricted travel, restricted overtime, including the use of compensatory time in lieu of a cash payment, had no pay raises for the City's top administrators and non-bargaining employees, eliminated one of two leaf removals, and eliminated other sundry services and programs.

The City's bond rating has been downgraded by one of the three rating agencies. Moody's downgraded Income Tax Supported Debt to A3 from A2 as the result of concerns with income tax revenue and the General Fund cash balance being too low. Currently the cash balance is less than 5% of expenses, and Moody's prefers to see a 10% balance to cover emergencies, as, for example, a large snowstorm. A large snowstorm would result in overtime costs and outside contractors being hired to assist. Other than the City's carry over balance, the City has no other type of rainy day fund. Moody's expressed concern in other areas as well, including high unemployment and the decreasing value of the City's housing stock. Standard & Poor's and Fitch rating services were also concerned with the City's cash balance, declining

income tax receipts, high unemployment rate, and decreasing value of the City's housing stock, however, neither lowered the City's bond rating.

The City received federal funds in the form of a COPS grant, which was to enable the City to hire Police Officers. By the time the funds arrived, the City was no longer in a position to hire officers, was looking to layoff officers; however, the funds were used to keep current officers working.

The June 30, 2009 revenue figures indicated \$5,000,000.00 or \$6,000,000.00 less than the same period the previous year. In August, Ms. Miller-Dawson advised the Mayor of an operating deficit of between \$10,000,000.00 and \$12,000,000.00. Expenditure reductions had been initiated by this time.

In 2009, the above cost-savings measures were insufficient to alleviate the budget shortfall. The City began implementing layoffs in departments other than Safety Forces. The City attempted to avoid a layoff of Safety Forces, however, the 2009 budget deficit became so great, it was impossible to avoid Safety Forces layoffs.

In 2009, the City reached concessionary agreements with the FOP and two other unions. The agreement with the FOP implemented suggestions put forth by the Union, including elimination of some premium-pay holidays, the modification of longevity pay for 2009, and agreeing to the Officers-in-the-Schools program. Officers-in-the-Schools is a program advanced by the Mayor to place Officers in the school while school was in session, and during the summer those Officers would be returned to work in the City. In return for the concessions, the City rescinded ninety-six officer layoff notices.

The Chief of Police, Augustus A. Hall, explained the Officers-in-the-Schools Program. The Akron City School District desires Officers in the schools while school is in session, and was paying Officers as a secondary employer. That is, in addition to the Officers working their regular schedule with the Police Department, they were considered as working secondary employment for the School District. With the Officers-in-the-Schools Program, eighteen active duty Officers were placed in the schools as part of their regular duty assignments, and Akron City Schools, which had been paying \$700,000.00 per year for the Officers, agreed to provide that amount of money to the City toward the cost of the eighteen Officers' salaries of approximately \$1,500,000.00. When school is not in session, the Officers are assigned to regular service.

There are five unions in the City. The Fraternal Order of Police, Lodge 7 with four-hundred-fifty-three members, the International Association of Fire fighters, Local 330, with three-hundred-eleven members, the three-hundred-sixty-nine member American Federation of State, County, and Municipal Employees, Local 1360, representing blue-collar workers, the three-hundred-fifty member Civil Service Personnel Association representing white-collar workers, and the Akron Nurses Association with less than 20 public health nurses.

Of the unions not reaching concessions, layoffs ensued. The fire department had thirty-eight layoffs, which are still in effect today. Those laid off firefighters will be returning shortly under a federal grant. The FOP is made up of Officers, Sergeants, Lieutenants, and Captains. The Police Chief and Deputy Chiefs are not included in the Union. The pay differential between ranks is 16% pursuant to the City Charter. Every time there is a raise to Officers, the 16% differential must be taken into account.

The Union points out that prior to the Mayor's recall election in June 2009, the Mayor stated the City was doing better than some comparable cities in terms of growth and income tax collections. Within a week or two after the recall election, the City announced a \$12,000,000.00 deficit. The Mayor then attempted to reopen negotiations with the City's five unions.

The FOP agreed to talk, but added that without agreement the current Labor Agreement was to remain in effect. Five months remained on the FOP's Labor Agreement, and the FOP suggested opening talks for the remainder of 2009 and for 2010. The City refused to discuss 2010, saying it was concerned with eliminating the deficit by the end of 2009.

There were a number of meetings between the City and the FOP in August and September 2009, with the City indicating it wanted \$4,000,000.00 in concessions from the Union. The City indicated if there were layoffs in the Police Department, those layoffs would be proportionate to the General Fund. That is, 38% of the General Fund goes toward maintaining the police force, and 38% of layoffs would be in the Police Department. In an attempt to obtain more specifics, the Union requested the exact number of police layoffs the City was contemplating. The Union questioned how it could make cost-savings suggestions to alleviate layoffs if it did not know the number of layoffs being considered.

The City would not disclose the information, Ms. Miller-Dawson stated, out of fear of the manner in which the employees would be learn of impending layoffs. If a number were provided, according to the City, and that number leaked to the media, employees, knowing where

they stood on the seniority roster, would learn of their layoffs through the news media. The City claimed it wanted to ensure a more compassionate notification to laid off employees.

It was not until the layoff notices went out that productive talks began with any of the five unions. When layoff notices went out, the FOP received notice of ninety-six layoffs. Fire had thirty-eight, CSPA had three, and AFSCME had three. When the Union pointed out the layoffs in the three largest Bargaining Units were not proportional, the City indicated it took multiple factors into consideration. When the Union then pointed out the FOP layoffs were more than double the other Bargaining Units combined, the City again stated it took numerous factors into consideration, while attempting to minimize the number of layoffs.

The City noted AFSCME had three employees laid off, which appears low, however, some AFSCME members can perform work that falls under funds other than the General Fund. Same for the other unions, and, additionally, non-Bargaining Unit employees, including Supervisors, were laid off, which resulted in less of a need to layoff the Bargaining Unit employees in those departments. Another factor taken into consideration by the City in determining the number of employees in each Union to layoff was the point that employees in the other unions were not replaced as they left employment, as were Police Officers.

Cost savings in other areas also resulted in less layoffs in other unions. In the Service Department, one leaf removal was eliminated and the closing of the recreation center resulted in less temporary workers. Both factors resulted in less layoffs. In the Police Department, the City pointed out, the bulk of the budget is salary and benefits.

Pursuant to civil service rules, there is a fourteen-day time period between the notice and the layoff. That is, the Union points out, once the layoff notices are issued there must be time for the Union membership to vote on any concessionary agreements reached at the table with the City. It was also noted that when a layoff takes place, expenses are incurred which the City must pay, such as vacation, comp time, and all other obligations owed to the laid off employees. Thus, if a recall takes place a short time after the layoff takes effect, say within a couple of weeks, while there may be a savings of two weeks of payroll, that savings is offset by the other expenses that must be paid.

The FOP was clear during negotiations that any financial concessions had to end December 31, 2009, that as long as the concessions were in place no further layoffs were to be implemented, and all ninety-six layoffs were to be rescinded. Some concessions were to remain

in effect longer than December 31, 2009. For example, the Officers-in-the-Schools Program. After concessionary agreements were reached, the Parties began bargaining again some time around November.

At the Fact-Finding Hearing, the City was looking for cost savings of 5½% from the FOP. The City settled with the CSPA with no reduction in wages, however, the CSPA had recently agreed to a wage giveback. There are Tentative Agreements with both Fire and AFSCME, yet to be ratified, and Ms. Miller-Dawson did not cost-out the savings to the City at the time of the Fact-Finding Hearing. Ms. Miller-Dawson did not have the percentage of givebacks by the other unions, however, she believed they were close to the 5½% requested from the FOP. Ms. Miller-Dawson disagreed with the Union's assertion they were nowhere near that amount.

The Union noted the report from Moody's indicates, "The city maintains room underneath its maximum charter property tax cap that could generate in excess of \$600,000 should it be levied; there are currently no plans to adjust the levy." Ms. Miller-Dawson agreed with that statement. The Union pointed out the next sentence of Moody's report goes on to indicate, "Additionally, the city maintains approximately \$5 million in other municipal funds that could be swept into the General Fund for operations if needed." Ms. Miller-Dawson stated that is Moody's opinion, and is based on what could happen in the event of an emergency. However, Ms. Miller-Dawson continued, when \$5,000,000.00 is compared to an annual \$140,000,000.00 budget, that is a very small number, and is a one-time transfer only in the event of an emergency. It was never intended that amount be placed into the General Fund for ongoing payment of salaries.

#### THE UNION'S PRESENTATION

The Union retained the services of Frank A. Suponic, a Certified Public Accountant and Certified Fraud Examiner, who is also certified in Financial Forensics. Mr. Suponic's area of expertise is in litigation support, and he has been retained on two to three dozen occasions by unions to review budgets. Mr. Suponic has served on the Willoughby City Council Finance Committee, has been involved in twenty-two Municipal budgets, and recently testified before the Akron Civil Service Commission regarding the financial condition of Akron. The FOP retained

Mr. Suponic to perform a financial analysis of the City, and compare the City's projected 2010 budget to actual data to date.

Mr. Suponic reviewed all documents pertaining to 2009 year-end, as well as other City documents, and his opinions are based on analyses of all historical data generated and provided by the City. For 2010, Mr. Suponic used internal documents and the City's web postings. Mr. Suponic was retained by the Akron Firefighters for his recent testimony before the Civil Service Commission, and also obtained financial information through April 30 regarding the City's revenue stream, cash fund balance, and expenditures. A comparison was made between 2010 and 2009.

Mr. Suponic stated the City's presentation regarding 2009 was accurate, however, he continued, 2010 is a different year, and a bad 2009 doesn't mean a bad 2010. Current data must be used, Mr. Suponic indicated, adding a budget is a plan, and the plan changes as data comes in. That is, 2010 projections must be evaluated based on current data. Now, Mr. Suponic stated, almost five months into 2010, the data is more accurate than the projections. That data must be monitored monthly to determine if revenues are improving or declining, and thus far in 2010 the numbers are better than projected.

On January 21, 2010, the City presented the following chart to the Union:

	2010 Budget - General Fund Comparison of Cash Balances		
	Actual 2008	Actual 2009	Budget 2010
Balance 1/1	\$6,268,622	\$6,562,347	\$5,205,947
Revenues	157,351,927	146,787,477	139,031,000
Available Funds	163,620,549	153,349,824	144,236,947
Expenses	(157,058,202)	(148,143,877)	(138,929,310)
Cash Available 12/31	6,562,347	5,205,947	5,307,637
Encumbrances	(3,775,302)	(3,294,609)	(3,250,000)
Unencumbered Balance 12/31	\$2,787,045	\$1,911,338	\$2,057,637

The above chart was based on the following assumptions for 2010: income tax revenues to decrease by 3%, Local Government revenues to decrease by approximately 2%, Property Tax revenue to decrease by 2%, and Sewer Revenue to increase 25% effective February 1, 2010. Mr. Suponic noted the City continues to rely on the same assumptions, and, as indicated by the City, sewer revenue is irrelevant to the General Fund.

Starting with income tax, Mr. Suponic noted the City was operating under the premise of a decline in receipts by 3%, however, Mr. Suponic continued, the City's web site indicates that as of May 21, 2010 the City's income tax receipts increased 1.06% or \$580,000 over the same period in 2009. That is material, according to Mr. Suponic, in that it shows income taxes are increasing, not decreasing. A 1% increase in income tax receipts equates to \$750,000.00 in additional revenue, and a 4% swing in income taxes, that is, a 3% decrease added to a 1% increase as of May 21, amounts to a \$3,000,000.00 difference in the projection of one year ago.

There has been a gradual improvement in the City of Akron's income tax receipts. The data shows that not only have income tax declines flattened out, they are now beginning to rise. Real Estate Tax collections, as indicated on the City's web site, and as it pertains to the General Fund, are up 4.22%. They are not down 2% as projected. That is a 6% swing from the City's projection. These, the Union points out, are the City's numbers. The 4.22% increase equates to \$350,000.00.

A review of the Income Tax fund, Mr. Suponic admitted, discloses that Income Tax receipts were from March through May 2010 mostly negative, and it was not until May 20, 2010, the date of the report of the daily comparison of running totals of income tax receipts, that the Income Tax Fund showed positive receipts compared to the previous year. Those positive changes were mostly one-half percent or less. Mr. Suponic pointed out, however, the trend was for decreasing negative percentages leading to the positive number on May 20.

Mr. Suponic stated receipts from Inheritance Taxes are the most difficult of the taxes to project, however, there is a track record of what the City has realized historically. In the past, the City has realized \$5,300,000.00 to \$10,000,000.00 in Inheritance Taxes. It is possible, though not probable, that no one will die in the City of Akron in 2010. Finance Directors do not like to factor Inheritance Taxes into their projections due to the inherent unpredictability of who will die, as well as their worth. Based on the City's track record, however, it is possible to estimate Inheritance Tax receipts.

In 2009, the City received \$6,550,000.00, and in 2008 the City realized \$5,330,000.00. For 2010, the City projected \$5,200,000.00. That's the lowest amount the City received over the last several years, and it is much less than the City received last year. Based on the April 30, 2010 financial data from the City, Inheritance Tax receipts, as of that date, were \$2,350,000.00. For the same time period the previous year, the City collected \$1,700,000.00. The City projected

that revenue stream would decline by \$1,300,000.00, however, it has not declined over the first four months, it increased 37% over the same period in 2009. If the trend continues, the City will receive an additional \$1,920,000.00 over its projection.

The Cash Balance of the General Fund on April 30, 2010, the date of a City report, is \$813,000.00 higher than on April 30, 2009. If City revenue is down, and expenditures up, as the City indicates, the Cash Balance would be down. That is, the City is in a better position today than it was a year ago. On April 30, 2010, the City's cash receipts are \$1,440,000.00 less than the previous year, however, the cash expenditures are \$3,560,000.00 less than the previous year. The budgetary reductions in 2009 have continued into 2010, and expenditures in 2010 are down. The City is ahead \$2,120,000.00 in the first four months of 2010, strictly taking into account receipts and disbursements.

Taxes collected do not flow directly into the General Fund, rather they go into an Income Tax Fund. From the Income Tax Fund, 73% of the collections go into the General Fund, and 27% into the Capital Improvements Fund. As of April 30, 2010, the cash balance of the Income Tax Fund is \$5,749,000.00, of which 73% transfers into the General Fund. On April 30, 2009, the cash balance was \$5,061,000.00. That is, income tax collections are \$687,000 higher in this fund over the previous year.

Seventy-three percent of the \$5,749,000.00 cash balance in the Income Tax Fund really belongs in the General Fund. That is, the cash balance of the General Fund is understated by \$4,196,770.00. Mr. Saponic indicated that in his experience with the City of Akron dating back to September 2009, the timing of the transfers could materially affect and distort the financial picture. To evaluate the solvency of City's General Fund, 73% of the \$5,749,000.00 cash balance in the Income Tax Fund must be included in the General Fund. Comparing 2009 to 2010 shows an overall increase in the General Fund. As a practical matter, the City will not deplete the cash balance to zero. Historically the City has retained \$700,000.00 to \$800,000.00 in that fund. Based on actual figures through the first four months of this year, the General Fund adjusted cash position is \$1,190,000 better than the same time period of 2009.

In a document entitled The Amended Certificate of Resources dated December 24, 2009, and amended February 2010, the City projected \$139,000,000.00 into the General Fund, a revenue decline of 5.3% or \$7,750,000.00. After reviewing the first quarter documents provided by the City, the General Fund revenues are much better than projected. If the actual numbers are

annualized, the 2010 General Fund revenue will be \$145,365,000.00, or an increase in revenue of \$6,364,000.00 over the City's initial estimate. That is, the City is looking to more than doubling its General Fund cash position by the end of the year, exclusive of the residual balance of \$800,000.00 in the Income Tax Fund.

Mr. Suponic discussed the Moody's report of October 15, 2009, the same report discussed by Ms. Miller-Dawson during the City's presentation. The City's General Obligation Debt rating was reduced from A1 to A2. Financial reports, such as Moody's are "no nonsense," reporting both positive and negative aspects of a municipality's financial status. Mr. Suponic noted the Moody's report indicates the City maintains room under its maximum charter property tax cap, and has an additional \$600,000.00 that can be levied. There are no plans to increase the levy, but the City could do so if it wished.

The second issue in the Moody's report, Mr. Suponic noted, is "\$5 million in other municipal funds that could be swept into the General Fund for operations if needed." Mr. Suponic does not know where the \$5,000,000.00 is located, but assumes Moody's knows in that it was added to its report, the City reviewed the report, and if there were a misstatement of fact, Mr. Suponic believes the City would have brought it to the attention of Moody's. This means there is \$5,000,000.00 of money not reflected in the General Fund.

The Union next discussed the statement in Moody's Report, the City "has historically had to use year-end General Fund cash balances to off-set negative balances in various grant and capital project funds that had yet to be reimbursed from other sources at the close of the fiscal year." Mr. Suponic pointed out that a review of the Fund Balance Report discloses a multitude of fund balances with negative numbers. Negative numbers indicate the City has spent more than it has taken in, and raises the concern the City has taken General Fund dollars and placed them in other funds to eliminate the negative balance. If that's the case, the practice depletes the General Fund and gives the appearance there is less in the General Fund than is actually the case. When the grant money comes in, Mr. Suponic queried, what happens to that money? Is it returned to the General Fund, or is it retained in the funds that had negative balances?

Mr. Suponic concluded there is a problem with the credibility of the financial data received from the City of Akron. At times, the numbers do not coincide through various schedules, and there does not seem to be anyone with their hand on the pulse of the City with regard to daily operations. In dealing with the City this year and last, Mr. Suponic stated, when

he asked the current budget deficit of the City, he was told the amount, but when he queried how that figure was determined, no answer was forthcoming.

Behind every number, there must be support, Mr. Suponic stated, and the management of a \$140,000,000.00 entity cannot be performed on a quarterly basis. On a daily basis, or in a worst-case scenario on a monthly basis, someone should be able to report on every revenue stream, and how the City is performing compared to projections. Mr. Suponic repeatedly asked for monthly schedules of primary revenue drivers, and was told no such documents exist.

This past week Mr. Suponic was provided with thirty-one-hundred pages of data for receipts and disbursements for the first four months of this year compared to last year. Mr. Suponic stated there is not a City that he works with that cannot provide that data on two sheets of paper, one for receipts and one for disbursements. Mr. Suponic added he has worked with three of the top ten largest municipalities in Ohio. Such inefficiency, Mr. Suponic concluded, does not permit Akron to manage its business in a hands-on fashion. Management of the General Fund, Mr. Suponic emphasizes, is what permits the City to determine the services to provide its residents.

Returning to the Moody's Report Mr. Suponic noted the statement, "Favorably, principal amortization is rapid, with 89% of debt repaid in ten years." If debt is being repaid quicker than needed, Mr. Suponic asks, while admitting he did not make a detailed analysis of specific bonds or notes, is it possible to free up funds that can be used elsewhere?

The Union next turned its attention to the Management Letter from the State Auditor to the City of Akron for the year ending December 31, 2008. The State Auditor noted a number of areas of non-compliance, and offered recommendations. Three areas, Mr. Suponic stated, are of concern in evaluating the City's financial condition as it pertains to the General Fund. The first issue pertains to interfund transfers. There are \$20,881,663.00 of transfers into certain funds for which there are no corresponding transfers out.

The Auditor's finding in this area ties in with Moody's finding regarding fund transfers. Thus, there are independent parties expressing concern with interfund transfers. This is a cloud on the reporting method of the City, and is of concern in that it appears there are one-sided budget transactions transferring monies out of the General Fund.

The ultimate use of a financial document, Mr. Suponic continued, is to assist the Administration in making prudent financial decisions. The Auditor noted, however, "The

budgetary basis of accounting is the basis used by the City on a daily basis and the basis under which the city must appropriate its funds. Use of two different account classifications . . . makes it difficult for the users to understand . . . and may impair the overall usefulness of the financial statements.” Mr. Suponic has not seen that comment in any of the two or three dozen City Audit Reports he has reviewed.<sup>1</sup> The Auditor also noted the existence of interfund transfers that were not approved by City Council in the minutes.

The City's 2010 budget used projected data, Mr. Suponic emphasized, and the difference between the City's presentation regarding its financial condition and his, is that he is using actual figures through May 2010, the time of his testimony. This, Mr. Suponic concludes, accounts for the disparity in the financial pictures. Mr. Suponic opined the City's claim that \$1,650,000.00 in concessions must be made by the Police Officers in order to avoid layoffs cannot be substantiated by any of the financial documentation provided by the City. Revenues are performing better than projected, and expenditures are under the projections. When the City obtains financial data as the year progresses, it must adjust, and in that the City's financial picture is better than expected, there is no justification for not moving from its initial demand of \$1,650,000.00 in concessions.

Mr. Suponic noted a disparity in the income tax receipts on two of the City's schedules, one indicating tax receipts of \$55,483,392.56 as of May 20, 2010, and the other indicating tax receipts of \$48,088,594.17. When questioned if a large receipt would cause a fluctuation, Mr. Suponic agreed such a receipt would, however, he noted that the fluctuation should be noted on both schedules.

Both schedules were generated May 21, 2010, and a change in one should be reflected in the other. The City attempted to establish if a receipt is received late in the day, the receipt may be reflected on only one of the schedules, however, Mr. Suponic noted that the figures for 2009 were also different. Tax receipts for 2009 on one schedule indicates \$54,902,949.74, and on the other \$54,765,308.55, a difference of approximately \$130,000.00. Mr. Suponic stated there should be no disparity between the two schedules no matter the date.

Regarding the differences in the schedules, Ms. Miller-Dawson stated the data on one schedule is obtained directly from the live tax database and changes multiple time throughout the

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<sup>1</sup> Ms. Miller-Dawson pointed out that contrary to Mr. Suponic's testimony regarding problems with the City's financial reporting, the City has received a Certificate of Achievement for twenty-five consecutive years.

day. The data on the other schedule comes from a different system. Both systems are reconciled, probably on a monthly basis, but definitely by year-end.

When questioned by the City regarding his work for the Union in this matter, Mr. Suponcic stated the specific reason for his engagement by the FOP was not stated, the letter retaining his service indicated he was to examine the City's books and provide an opinion regarding the City's finances and the City's contemplated staffing reductions. Mr. Suponcic testified that when he is retained by a Union to review a municipality's finances, his conclusion is not always favorable to the Union. Mr. Suponcic testified he bases his report on the financial data presented, and does not attempt to slant his opinion for the benefit of the client. Mr. Suponcic notes he has reviewed the books of other municipalities, and it is not always the case where a City's actual financial status is better than projected. The City of Barberton is a case in point. Barberton's finances are worse than projected.

#### FACT-FINDER'S CONCLUSION REGARDING FINANCIAL HEALTH OF CITY

The presentations of both Parties are accepted as factual, however, the City's entire presentation, as noted by the Union, was based on its projections for the 2010 budget. Those projections were made at the beginning of the year, and Mr. Suponcic's use of data current as of the time of his testimony, was not, with one minor exception, rebutted. This begs the question, if Mr. Suponcic's presentation was in some way inaccurate, why did the City not address the current data as presented by the Union. This serves to convince the Fact-Finder of the accuracy of Mr. Suponcic's presentation.

In that the Union's presentation, through Mr. Suponcic, was based on data current as of the date of his appearance at the Fact-Finding Hearing, the Fact-Finder will place greater weight the Union's claim the City's finances are not as dire as the City claims, and will address each of the issues at impasse accordingly.

## ISSUES AT IMPASSE AND RECOMMENDATIONS

### ARTICLE III – CONFLICT

and

### NEW ARTICLE \_\_\_\_ – LAYOFFS, DISPLACEMENT, AND RECALL

#### THE UNION'S POSITION AND ARGUMENT

The Union's Article III proposal is related to its new proposed language regarding layoffs. If the Union is successful in obtaining Contract language regarding layoffs, the Union's proposed deletion of the Article III reference in the first paragraph to the Charter and Civil Service Rules will make it clear contractual layoff language supersedes Rule 11 of the Civil Service regarding layoffs. The modification to Article III, the Union believes, will avoid years of litigation.

In the past, the City has held the position that unilateral changes in Civil Service Rules that affect Labor Relations do not require bargaining, and Civil Service Rules were changed affecting a number of labor issues, including promotions and evaluations. In 1992, ULP's were filed by all five of the City's unions, and a decision issued from SERB in 1997 upholding the ULP charges. The City appealed SERB's findings to Common Pleas, lost at Common Pleas, appealed, and the final result was that mandatory means mandatory, and the City cannot unilaterally change its Civil Service Rules and apply those changes to the Parties' Labor Agreement. That is, a mandatory subject of bargaining must be bargained regardless of Civil Service Rules. If layoff language in the Collective Bargaining Agreement differs from Civil Service Rules, the Union does not want spend years relitigating the issue.

The Union contends the Civil Service Rule regarding layoffs is not written for a paramilitary organization with a rank structure, and is outdated. In September 2009, the City issued layoff notices to ninety-seven Police Officers, and the FOP suggested modification of the Civil Service language. The City declined, holding that matter should be reserved for bargaining. The Union acquiesced, however, when the matter was reintroduced during bargaining in November, the City steadfastly refused to bargain over that issue. To be sure, according to the Union, the City suggested language while at the same time insisting the City was not bargaining. The Union indicates its proposed Article III language incorporates the City's suggestions.

Section 1 of the Union's proposed language in a new Article regarding Layoffs, Displacement, and Recall, reflects the City's current practice pursuant to Civil Service Rules. This language, Union feels, properly belongs in the Labor Agreement, and is the result of the layoff notices last fall. The layoffs were problematic in that some Officers low in seniority by rank but high in seniority with the City were laid off, while Officers with lower City seniority were not. Those Officers felt layoffs should be by City seniority. Officers high in seniority by rank, but lower in City seniority than some laid off Officers, felt the opposite. The Union's language clarifies the manner in which layoffs are to be carried out.

The Union's proposed Section 2 addresses the procedure to be followed in the event of improper layoffs. Pursuant to the Ohio Revised Code, the City is restricted to layoffs only in cases of a lack of work or a lack of funds. As it stands today, in the event of an improper layoff, the only recourse is appeal to the Civil Service Commission. With its proposed language, if the Union feels an improper layoff has taken place, the matter can be taken to arbitration.

The Union states Section 3 is new language that has worked well in other cities. Section 3 deals with voluntary layoffs. This is not a common occurrence, the Union notes, but if someone is willing to accept a layoff, there is no harm. At the City's suggestion, the Union included the last sentence waiving appeal rights for Officers accepting voluntary layoff. This Section has zero cost to the City.

Section 4 provides that in the event of layoffs, the Chief is to determine the number of reductions within each rank. When a Ranking Officer is bumped down, that Officer is returned to the position on the S-List he held before his promotion. This is repeated for the next Ranking Officer bumped down, and is continued through the list of laid off Officers. The result is the Officers leaving the Department are the Officers with the least City seniority. This means if someone is reduced in rank, someone will be laid off, and prevents the situation of "fake layoffs" discussed above in the section on the City's finances. If an Officer is reduced in rank, his 16% rank differential taken away, and no one laid off, that is not a layoff, the Union believes, it is nothing but a reduction in rank without justification.

Section 5 is simply tiebreaker language regarding people hired on the same day.

Section 6 is the current practice.

Section 7 is new language. In the case of layoffs, there is a good chance the employees will be recalled. At the time of a layoff, the City must pay accumulated comp time, holiday time,

and so forth, and upon recall the employee no longer has that accumulated time. Section 7 gives the employee a voluntary right to keep those accumulations on the books for a year. If the employee is not recalled at the end of the year, the employee is then paid.

The Union's proposed Section 8 deals with recall rights. The last Officer laid off is the first to be recalled. A key issue, the Union points out, is when an Officer loses rank as the result of a layoff, that Officer is restored to his previous rank. If ninety-seven people are laid off, recalled, and not restored in rank, this amounts to a restructuring of the Department. The Union believes that is what the City was attempting to accomplish last fall.

Section 10 requires notification to the City of an employee's current address.

Section 11 provides an employee must return to work within two weeks of notifying the personnel director of acceptance of the recall.

Section 12 deals with bidding procedure in the event of a layoff or recall. In the event of a layoff or recall, the Parties must meet to discuss the bidding process. If no agreement is reached, the matter may be addressed through the grievance and arbitration procedure.

In support of its proposed Section 13, the Union argues the Civil Service Commission is appointed by the Mayor, is loyal to the Mayor, and is not even remotely neutral. The Union simply wants fair hearings. The Union admits it would be difficult to prevail in an arbitration regarding an improper layoff, but adds that all it wants is a neutral forum. Additionally, in the event of layoffs, time is of the essence and the American Arbitration Rules of Expedited Arbitration provide for the quick scheduling of a hearing.

A quick hearing, the Union contends, benefits both Parties. Recently the Cleveland Schools improperly laid off 1,200 school teachers, many of the layoffs were overturned as improper, and the improperly laid off teachers were entitled to two years of back pay. The School District had very little money, and lost the services of those teachers over the two-year period as the result of laying off the wrong teachers. That type of situation does not benefit either side, and a prompt grievance and arbitration procedure will prevent that situation from arising in the event of a dispute over layoffs between the City of Akron and the FOP.

The Union requests its proposals be granted in their entirety.

## THE CITY'S POSITION AND ARGUMENT

The City argues it has never had such Articles in its past Labor Agreements with the FOP, or in Collective Bargaining Agreements with any of its other unions. The City states it has a Civil Service Commission that works well, and the City is willing to consider modifying Civil Service Rule 11 if the Union feels it is outdated. The City disagrees it did not negotiate with the Union over its proposals, indicating it considered the Union's proposals and rejected them.

Regarding Article III, the City believes no change is needed. By removing the Civil Service Rule, layoffs are subject to the grievance and arbitration procedure, and the City does not agree to arbitrate layoffs. Moreover, the City continues, it is the state of the law pursuant to SERB and Court decisions that the City has an obligation to bargain, and there is no need to change Article III.

Regarding the new Article, Section 1 of the Union's proposal is straight out of Civil Service Rules, and there is no reason to incorporate it into the Labor Agreement.

The Union's proposed Seniority-in-Rank paragraph is something that can be incorporated into the Civil Service Rule, and should be rejected.

The City especially takes issue with the Union's proposed Section 2. The right to layoff is an inherent Management Right, and the City does not want that right subject to grievance and arbitration.

Section 3. This proposal is not zero cost as the Union claims. A senior Officer electing voluntary layoff and exercising his option for immediate payout would result in a significant cost to the City. There is a cost savings to the City by laying off the least senior employees.

The Section 6 fourteen-day notice provision prior to a layoff is already in the Civil Service Rule and is unnecessary.

The City considered proposed Section 7, and rejected the proposal. Because Officers have the option of receiving the payout, the City does not save any money. If every Officer opts for the payout, the City is in the same position it is without the language. Even though there is a potential cost savings, Section 7 does not guarantee savings, and should be rejected.

Section 8 regarding restoration of rank after recall may work to the detriment of the City. For example, more Patrolmen are needed in the summer, and if the City elects to recall some Officers during the summer, it might not need ranking Officers. Another potential problem would be in the use of grant money. Under the COPS grant, rather than hiring new Officers, the

City obtained authorization to use COPS funds to recall Officers. The recall was based on the wages and benefits of the Officers the City intended to hire, and when the City uses such grant money to recall officers, it makes sense for the City to recall the lowest paid Officers thereby recalling the largest number of Officers possible.

Section 9 is already in the Civil Service Rules and is not needed.

Section 10 is close to the Civil Service Rule, and is unneeded.

Section 12, when an employee is recalled the employee is to notify the Police Chief. This is just an added layer of work for the Police Chief. Upon hearing that argument, the Union agreed to change the two instances in Section 12 of the use of Police Chief to Personnel Director.

Additionally, the Parties are already obligated to negotiate matters of layoffs, and Section 12 is extra, unneeded language.

Section 13 regarding expedited arbitration is a costly measure at a time when the City is attempting to save money. The Civil Service Commission is without cost to the Parties. The Union's argument the Civil Service Commission is a kangaroo court is also without merit. The Commission is, pursuant to Charter, composed of one member of one political party, and two members from the other political party. Currently, there is one Republican and two Democrats on the Commission. The Commission Chairman works for the University of Akron, and another member works for a Union.

During the last couple of Contracts, the FOP has taken matters to arbitration, rather than the Commission. It is therefore difficult to comprehend the Union's argument the Commission is not impartial in that the Union has not given the Commission the opportunity to rule on its cases. In the Union's last case before the Commission, it was successful in obtaining reinstatement of one of its Officers. Finally, Civil Service rulings are subject to appeal.

The last sentence of Section 13 is problematical, according to the City. While it seems innocuous, the Union's request for financial documents through Mr. Saponic points to the contrary. Mr. Saponic repeatedly requested a document he felt the City should have, and ended up with thirty-one-hundred pages of records. This sentence simply provides the Union with another reason to disagree with layoffs.

Mr. Masturzo came to the defense of the Civil Service Commission, stating it is comprised of three responsible citizens. To state the Commission is a kangaroo court, Mr. Masturzo feels, is irresponsible. Also, the Commission is not appointed by the Mayor, the

Mayor recommends an individual to Council, and Council must approve the recommendation. Never has a Union gone before Council to express a concern regarding a recommendation. To advance the kangaroo court argument as the reason for the Union's proposed language, Mr. Masturzo stated, is no reason at all. When proposed changes in Civil Service Rules are taken before the Commission, its stance has always been if the Parties agree to the changes, the Commission will agree. In fact, a Rule change requested by AFSCME is currently before the Commission.

Chief Hall was called to discuss the layoffs. Chief Hall discussed the problems encountered regarding the COPS grant and available state funds. During his discussion of the problems encountered, the Chief indicated that of the ninety-six<sup>2</sup> layoffs, twenty-one were Supervisors. Each of those twenty-one Supervisors had the option of being laid off, or displacing a Patrol Officer, that is, bumping down to a Patrol Officer's position, and the City was working on the assumption all would exercise their bumping rights.

#### THE UNION'S RESPONSE

Upon inquiry regarding the Civil Service Rule change requested by AFSCME, and whether it applies to all unions, Mr. Masturzo indicated it did not. The Union, pointing out Civil Service Rules are applicable citywide, then questioned if the City is proposing numerous Civil Rules, each applicable to a different Union. Mr. Masturzo stated that when changes are requested pursuant to negotiations between the City and one of its unions, the changes are applicable to only that union.

The Union believes it is very bizarre the City will talk to each of the individual unions regarding separate Civil Service Rule layoff language, and have a separate Civil Service Rule for each of the individual unions. The Union questions the appropriateness of carving out separate Civil Service Rules for individual unions, and contends this is the length to which the City is willing to go to keep a grievance and arbitration provision out of the Collective Bargaining Agreement. This Union has won at arbitration and lost at arbitration, however, the Union continues, arbitration is a fair process. The Union advocate stated she was in a hearing before the Civil Service Commission with Mr. Masturzo where a member of the Commission spent

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<sup>2</sup> A various times during the seven days of hearing, the number of laid off officers was indicated to be ninety-six or ninety-seven. The difference of one Officer is inconsequential to the findings and recommendations in this Report.

most of the hearing on his Blackberry. When an objection was voiced, that Commissioner would look up and ask, "What?" Mr. Masturzo did not dispute that statement. That does not occur before an Arbitrator, the Union's advocate argued, or, in that Arbitrators are mutually selected by the Parties, that Arbitrator's career will be short lived.

It is an outright lie the Union's proposals were discussed at length during negotiations. The discussion at the Fact-Finding Hearing is the most feedback the Union has received on its proposals. The Union believes if layoff language is included in the Labor Agreement, that language should be comprehensive. It makes little sense to have layoff language in the Agreement, some of which is subject to grievance and arbitration, and some not. Moreover, the Union emphasizes, a grievance and arbitration provision does not operate as a stay. Expedited arbitration is not a stay, it is a more expedient process, and the City's argument grievance and arbitration ties up a layoff is without merit.

Regarding appointing people to the Civil Service Commission, Mr. Hlynsky stated the Council President determines who speaks at a Council Meeting, and he, Mr. Hlynsky, has never been permitted to address Council on any issue. The third Civil Service Commissioner, recently appointed, Mr. Hlynsky noted, is a friend of the Mayor, and served as a Deputy Mayor. Moreover, it was never publicized his recommendation was up for consideration before Council.

The Union places emphasis on the admission by Chief Hall the City assumed the twenty-one Ranking Officers would bump down. The Union contends there never was any intent to lay off those twenty-one Officers, that the City wanted to save the 16% rank differential, and restructured the Department accordingly. That is an abuse of the situation.

The Union believes there has been no substantive rebuttal to the its proposals, and requests its proposals be granted in their entirety.

#### FACT-FINDER'S RECOMMENDATION

For the reasons advanced by the Union in support of its position,<sup>3</sup> which the Arbitrator finds compelling, and the City's arguments against, the Fact-Finder concludes the position of the Union is the more persuasive of the two on all points. It is the recommendation of the Fact-Finder the following language be included in the Parties' Labor Agreement:

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<sup>3</sup> In this Fact-Finding Report, the arguments of the Parties will be stated at length, and rather than repeating the arguments found convincing by the Fact-Finder, reference will simply be made to those arguments.

### ARTICLE III CONFLICT

Should any provision or provisions of the Agreement be invalid by operation of law or be declared invalid by any tribunal of competent jurisdiction, or found to be in conflict with applicable state and federal laws, all other provisions of this Agreement shall remain in full force and effect.

Should any provision or provisions of this Agreement be invalidated as outlined above and upon written request by either party, the parties shall meet within thirty (30) days to discuss the impact and to consider modification of the invalidated provision or provisions.

### ARTICLE LAYOFFS, DISPLACEMENT, AND RECALL

Section 1. City Seniority. For purposes of this Article, City Seniority shall be defined as the length of continuous service with the City of Akron. City Seniority, for purposes of layoff and recall, shall mean:

The amount of continuous service a permanent employee has accumulated in the classified service of the City of Akron.

Any permanent employee who has served as a temporary, seasonal, provisional, or probationary employee and who has achieved permanent status with no interruption in service shall receive seniority credit for the continuous service including the period served as a temporary, seasonal, provisional or probationary appointee employee.

Permanent part-time employees shall have their continuous service prorated as it relates to full-time employment.

Any personal leave without pay or disciplinary action in excess of sixteen (16) consecutive calendar days, shall be subtracted when computing the continuous service of an employee except sick leave or military leave for purposes of determining total seniority credit. The seniority computation shall not be affected by leaves in the excess of sixteen (16) consecutive calendar days that are protected by law or if the employee has participated in furloughs.

The continuous service of a permanent employee who has resigned and been reinstated shall be computed from the time of the last reinstatement and no seniority credit shall accrue for service prior thereto.

Any employee, who has been laid-off from a position in the classified service of the City of Akron, shall upon reinstatement, have the time while on layoff subtracted from the computation of continuous service for purposes of determining total seniority credit.

Seniority-in-Rank. Seniority-in-rank shall be defined within each rank, above the rank of patrol officer, as the length of time a police officer has worked within that rank, as designated by the employee's seniority ranking on the "S-List." However, Seniority-in-Rank, as designated on the S-List, shall be adjusted for purposes of layoff and recall, as set forth in subsections (1) through (6) above.

Section 2. Whenever it becomes necessary to reduce the number of police officers in the City, for reasons of lack of work or lack of funds, the appointing authority shall have the power to lay off police officers. The appointing authority shall determine the number of total lay-offs of police officers. Such determination shall be subject to the grievance and arbitration provisions in this Agreement.

Section 3. After the number of layoffs is established, but before any police officers are notified that they will be involuntary laid off, the City shall allow all police officers five (5) business days to volunteer to be laid-off. If more police officers volunteer than the number of lay-offs, then seniority shall govern, with the most senior

police officers being allowed to be laid off first. The number of involuntary layoffs will then be reduced by the number of voluntary layoffs. Police officers who are voluntarily laid off shall waive their rights to appeal the lay off.

Section 4. When the total number of lay-offs of police officers has been determined, and after voluntary layoffs have occurred, the Police Chief shall determine the number of reductions within each rank. Beginning with the highest rank affected, the police officer with the lowest Seniority-in-rank, as determined on the S-List (as adjusted), shall be bumped down to the next lowest rank, and shall be given a Seniority-in-rank designation on the S-List in the same location that the officer held prior to that officer's promotion. Then, in the next highest rank affected, the same process shall occur, until the officers with the least City Seniority are laid off.

Section 5. In the event two or more police officers have equal seniority, the order of layoff will be determined by the employees' final grades received in the selection or promotion process for their current position; the employee with the lowest final grade to be laid-off first. Should the preceding procedure fail to determine the layoff order, the date of application for the current rank shall determine the layoff order, the employee with the latest application date to be laid-off first.

Section 6. Employees subject to layoff shall be given at least fourteen (14) calendar days notice prior to the effective date of the layoff.

Section 7. Employees subject to layoff shall have the option of receiving all of their paid time (PL, compensatory time, holiday time, etc.) in their final pay, unless the employee notifies the Police Chief in writing that he or she wishes to defer his or her pay-out for one (1) calendar year. In such case, if the employee is recalled within one (1) calendar year, the paid time will be restored to the employee. If the employee is not recalled within one (1) calendar year, the paid time will be paid to the employee.

Section 8. Employees who have been laid off shall be subject to recall in the reverse order of their lay-off, i.e. the last police officer to be laid off shall be the first police officer to be recalled. Rank shall be restored in the same fashion; the last officer who lost his or her rank shall be the first officer whose rank is restored. Rank shall be restored in proportion to the recall of employees called back to work, at the time the layoffs took place, taking attrition into account. In addition, if any ranking officers, who were not laid off or reduced in rank, leave the Police Department for any reason, then rank will also be restored, in proportion to the rank structure prior to the layoffs.

Section 9. Employees shall retain recall rights from layoff for four (4) years from the date of layoff. The right of a police officer who was reduced in rank to be restored to the previously held rank shall have no expiration date.

Section 10. Notices of recall shall be mailed, return receipt requested, to the employee's last address on file with the Personnel Director. It is the responsibility of the employee on lay off to notify the Personnel Director of any change in address, including any temporary change in address in the event the employee will be away for more than two (2) weeks. Upon actual receipt of the recall notice, the employee shall notify the Personnel Director within five (5) business days of his or her intent to accept the recall. If the employee fails to accept the recall within five (5) business days, or the employee fails to receive the recall notice because the employee no longer lives at the last-known address or is away from the address for more than two (2) weeks and has not provided a temporary forwarding address, then the employee shall forfeit any recall rights. Laid off employees who are members of the military will retain all recall rights, in accordance with USERRA.

Section 11. Once an employee is recalled to work, the employee must return to work within two (2) weeks of notifying the Personnel Director that he or she is

accepting the recall. Employees may return to work earlier, with that consent of the Personnel Director.

Section 12. If layoffs or recall result in the need to re-bid any positions, the parties will immediately meet to negotiate the effects of the lay-offs on the bidding procedure in the Agreement. Any disputes regarding the bidding of positions may be addressed through the grievance and arbitration procedure.

Section 13. Any grievance filed concerning this Article may be filed at Step 4, the Deputy Mayor for Labor Relations. Appeals from any grievance filed under this Article shall be subject to expedited arbitration, in accordance with the expedited arbitration rules of the American Arbitration Association. If requested by the FOP, the City shall provide any financial records necessary to determine whether the lay-offs were necessary, prior to the arbitration hearing.

## ARTICLE VII – INTERNAL INVESTIGATION PROCEDURE

### THE UNION'S POSITION AND ARGUMENT

The Union proposes the addition of two new paragraphs to Article VII, both dealing with the position of Police Auditor. The position of Police Auditor was created in 2008 by the City Administration. Mr. Hlynsky stated Article VII dates back to the 1980's, has been modified over time, and has served the Parties well. All citizen complaints are taken seriously, Mr. Hlynsky indicated, and are subject to investigation through Internal Affairs and through the chain-of-command.

The City looked into the concept of a Police Auditor six or seven years ago, and considered the models in San Jose and Tucson. It was the Union's position Article VII already had in place the procedures that were to be performed by a Police Auditor. The Union was assured by Mr. Masturzo, members of City Council, and the Mayor, the Police Auditor would not interfere with the Collective Bargaining Agreement.

When the Police Auditor was appointed, the Auditor reported to Mr. Hlynsky's office, introduced himself, said he would get to the truth concerning all Officers, and did not care what the Parties' Labor Agreement said. Mr. Hlynsky began receiving complaints from Officers of the Auditor, in violation of the Labor Agreement, contacting them directly.

Mr. Hlynsky met with the Police Auditor on two other occasions to request documents regarding reports and data provided to City Council, and on both occasions the Police Auditor indicated those items were "stuck on his computer." The Police Auditor continued to contact Officers directly, and conduct his own investigations. Mr. Hlynsky indicated the Police Auditor was also contacting Internal Affairs directly and reporting to different Agencies to obtain

evidence to use against Officers. The Police Auditor is not a Police Officer, and served in a prior capacity as a State Trooper, not as a Police Officer.

A shooting occurred the early morning hours of July 5, 2008, and is referred to as the Stevens shooting. Normally, detectives report to the scene and conduct an investigation. Mr. Hlynsky, in his position as FOP President also reports to the scene, accompanied by the FOP's attorney, Lawrence Vuillemin. The Officer is isolated from making any statements other than the facts of the incident to aid the investigation team. A few days later, the Summit County Prosecutor and the Deadly Force Investigation Team schedule an investigatory interview with the Officer to determine the facts of the incident. The Officer is accompanied by Union representation and attorney.

In the Stevens shooting, the first shooting event since the Police Auditor was retained, the Police Auditor contacted the Mayor, and the Mayor subsequently ordered the lead investigator on the Deadly Force Investigation Team to provide to the Police Auditor all materials regarding the investigation. This occurred at the beginning of the investigation. The Mayor later rescinded that order when Attorney Vuillemin became involved, and the Mayor ordered the Police Auditor to return the documentation.

The Police Auditor subsequently interviewed witnesses to the shooting that the Deadly Force Investigation Team had previously interviewed. The Police Auditor, Mr. Hlynsky stated, told one witness she could not have seen what she claims because of leaves in front of her window. That witness subsequently called the lead investigator and indicated she was upset with the Police Auditor. Subsequently, then Police Chief Michael Matulavich held a press conference. At the end of the press conference, the Police Auditor advised the Chief Mr. Stevens should not have been shot, he was just looking for a place to kneel down in compliance with police orders.

Mr. Vuillemin provides legal representation for FOP, Lodge 7, including the representation of members in discipline and use of force cases. Previously, Mr. Vuillemin served as senior trial attorney for the Summit County Prosecutor, and in that capacity was involved in Police Officer Use of Force matters. Mr. Vuillemin is familiar with Article VII of the Labor Agreement and Akron's Use of Force Policy.

Following the Stevens shooting, Mr. Vuillemin was on the scene of the shooting in the early morning hours of July 5, 2008. Mr. Vuillemin saw the Police Auditor at the scene, as well

as a Summit County Prosecutor. Mr. Vuillemin learned from Mr. Hlynsky that the Police Auditor was subsequently interviewing witnesses. In an inner-city neighborhood, Mr. Vuillemin stated, it is sometime difficult to have witnesses come forward and cooperate in an investigation. The Police Auditor's interference does not help that situation. Mr. Vuillemin also learned the Police Auditor had obtained the file from the lead investigator on the Deadly Force Investigation Team, and expressed his concern to the Police Chief.

Subsequently, Mr. Vuillemin and Mr. Hlynsky, met with the Law Director, Assistant Law Director, Patricia Ambrose Rubright, and the Deputy Mayor of Public Safety, who indicated they would look into the matter further. Mr. Vuillemin's next involvement was nothing more than receipt from Ms. Rubright of a copy of the Executive Order creating the position of Police Auditor, which indicated the Police Auditor's authority was to review completed investigations. Mr. Vuillemin and Mr. Hlynsky met again with City representatives, and they were assured the Police Auditor would only review completed investigations. Mr. Vuillemin reviewed the Union's two proposed additions to Article VII, and stated they reflect the assurances provided during his meeting with City representatives regarding the role of the Police Auditor.

Mr. Vuillemin referred to the Police Auditor as a plaintiff attorney's dream, and indicated the actions of the Police Auditor could compromise an investigation making matters difficult for the Summit County Prosecutor by undermining a potential prosecution. Mr. Vuillemin ultimately presented concerns to Cheri Cunningham, Akron's Law Director, Attorney Rubright, and the Mayor. The meeting took place on April 14, 2010, and the ultimate result was the Mayor intended to do nothing regarding the Union's concerns, and the status quo continues. It is Mr. Vuillemin's belief the Union's proposed language is needed to counter the Police Auditor's statements that the Collective Bargaining Agreement does not apply to him.

Officer Kevin Davis is an instructor for the Training Bureau, with a specialty in the practical aspects of the use of force, tactics, and firearms. Mr. Davis is also the subject matter expert on the use of non-deadly and deadly force, and Mr. Davis also works for the Akron Law Department as an expert in civil litigation. Mr. Davis has testified in disciplinary hearings for the City of Akron both for and against Officers, in Summit County Court of Common Pleas, Akron Municipal Court, and Federal Court. Mr. Davis has worked as a private expert for the FOP in Ohio, has published, and has trained and presented seminars nationally.

When the position of Police Auditor was created, Mr. Davis stated, the Police Auditor gave a one-hour presentation to Supervisors entitled, "An Hour with the Auditor." Mr. Davis was in attendance. The Police Auditor introduced himself, and then said he's not there to "kiss the fucking ass of the FOP President." There were approximately twenty other Officers present who heard that statement.<sup>4</sup>

The Police Auditor's presentation was in the form of a question and answer session. One of the Supervisors asked what the Police Auditor does, and the Auditor indicated he was not an investigator, and would not be producing written reports of investigation. A Supervisor then asked how the Police Auditor obtained a copy of the tape of the Cuyahoga Falls incident, and the response was, "Because I'm a hell of an investigator." In that the Police Auditor was to be auditing the operations of the Police Department, Office Davis asked the Police Auditor if it would be beneficial for him to attend a training program on the use of force, and the Police Auditor responded he did not have time to attend training sessions. Mr. Davis indicated he has never seen anything to document the Police Auditor has any expertise in the area of use of force. Mr. Davis further noted the Police Auditor's background was as a State Trooper, which indicates he probably dealt primarily with traffic related matters and accident reconstruction.

Mr. Davis became aware the Police Auditor was making statements and reaching conclusions in areas where he had no expertise. It is in no one's interest for him to do that. The Police Department has rules and regulations, policies and procedures, and legal parameters regarding the use of force. All of those are codified, and it became apparent the Police Auditor was using a standard that was outside of that system and did not comply with the law, rules, or policies. Such activity inures to the detriment of all Parties.

An Officer had been discharged for inappropriate use of force, and the Police Auditor had made the statement the Officer was guilty as hell, or words to that effect. Mr. Davis was not involved in the internal investigation, however, after the discharge Mr. Davis was ordered by the then Safety Director to review the video tape, and provide his opinion of the incident. Mr. Davis reviewed the tape, and reported to the Safety Director the discharged Officer was completely within policy and had not exceeded parameters on the use of force. The Safety Director

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<sup>4</sup> The number of witnesses may account for the Police Auditor not being called to refute Mr. Davis' statement.

indicated he agreed with Mr. Davis, and the discharged Officer was reinstated with a ninety-day suspension.<sup>5</sup>

Regarding the Police Auditor's activities on internal investigations and use of force incidents, Mr. Davis spoke with every branch of the Police Department, the Law Department, and the Office of Professional Standards and Accountability, often referred to as Internal Affairs. Mr. Davis has had numerous concerns expressed by Police Officers, and by the Office of Professional Standards and Accountability, the Office that has to deal directly with the Police Auditor. Supervisors would call for advice on how to document situations in that there was now another level of review. Officers complained they would stop people on the street and the detainees would invoke the name of the Police Auditor and say things like the Police Auditor said, "I should keep track of you guys."

Mr. Davis was requested by the Union to review the files in two matters, which files included the reports of the Police Auditor, and offer an opinion regarding the Auditor's reports and the Officers' use of force. In the first matter, Mr. Davis stated the Police Auditor exhibited no expertise regarding the use of force. For the Police Auditor to conclude, Mr. Davis continued, and to document the case involved unnecessary force, is reckless at the very least, and may constitute malfeasance. It creates a paper trail that works against everyone's interests. Furthermore, the Police Auditor is engaging in 20/20 hindsight, which is specifically prohibited by the Department's Policies and Procedures as well as by the Supreme Court. The standard to be applied, Mr. Davis indicated, is whether the Officer used an objectively reasonable amount of force at the moment the force was used.

The Police Auditor has no court or industry wide expertise on the use of police tactics, Mr. Davis noted, however, in the second matter reviewed, the Police Auditor opined the Officers involved used bad tactics. It is entirely possible Officers use bad tactics in a situation, however, Mr. Davis explained, the question is not the use of tactics, the question is whether the force used was within the law.

## THE CITY'S POSITION AND ARGUMENT

The City argues the position of Police Auditor was created by City Council pursuant to City Charter. The Police Auditor was appointed by the Mayor, reports directly to the Mayor, and

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<sup>5</sup> It was not explained why the reinstated Officer was subjected to a ninety-day suspension if he was within the use of force parameters.

has no authority to discipline Officers. What the Union is requesting is placing a member of the City Administration under the FOP's Labor Agreement. Article VII is comprehensive and contains the procedure for the investigation of complaints against Officers. If the City fails in its obligation to follow Article VII, that failure can be grieved.

Patricia Ambrose Rubright currently serves as both the City's Interim Personnel Director and Interim Director of Labor Relations. During the bulk of her career with the City, Ms. Rubright served as an Assistant Director of Law. Ms. Rubright started as a criminal prosecutor, and subsequently moved to state and federal litigation, in particular with the Safety Forces.

Ms. Rubright agreed with everything Mr. Davis said regarding his expertise, and added he is a capable trainer and a great expert witness and advocate for the FOP. Regarding civil liability and Police Officers, Ms. Rubright stated, a Police Officer is personally liable when named individually in a civil complaint. Ms. Rubright frequently represents individual Officers who face personal liability in excessive force cases. Officers are also potentially liable for punitive damages.

In these types of police force cases, the allegations against the City claim improper training and supervision. Plaintiff attorneys frequently allege the City has a practice of excessive force, of not investigating excessive force complaints, or, after Department investigations, the use of excessive force is never found. The City has been very successful in defending against those claims.

Investigation of a complaint is conducted by a Sergeant, Ms. Rubright stated, and human nature dictates an allegiance by the Sergeant toward his Officers. Ms. Rubright was counsel of record in both the Stevens case and another case, the Vincent case. In the Vincent case, an early press release indicated Vincent was shot by police, when, in fact, he shot himself in the head. When the matter was corrected, there was a community uproar along with accusations of a police cover-up.

A Police Auditor was hired who would operate under the auspices of the Mayor and the Director of Public Safety. The Police Auditor was to be a sort of quality assurance officer, he would not participate in investigations, but would review and critique them, and any recommendations from the Police Auditor regarding the investigation would go to the Chief of Police.

Complaints were subsequently lodged that the Police Auditor was inserting himself into investigations. During the Stevens case, Ms. Rubright discovered the Police Auditor interviewed a witness, after that witness had been interviewed by detectives investigating the shooting. In that Ms. Rubright was defending the Officers in this case, she inquired of the Police Auditor what his role was. There was a lot of unrest in the neighborhood after the shooting, and the Police Auditor advised Ms. Rubright he thought he could go into the neighborhood and help quell that unrest. The Auditor went to a schoolyard in the neighborhood, wearing his Police Auditor's jacket, in the hopes of having a calming effect.

Ms. Rubright met with Mr. Vuillemin and there is no question the result of that meeting was the Police Auditor would not take an active part in any investigation. If the Police Auditor saw something that needed further inquiry, he was to bring that to the attention of the Chief. Regarding the video tape from Cuyahoga Falls, Ms. Rubright stated the Police Auditor obtained the video tape through a public records request. It is Ms. Rubright's understanding the Police Auditor turned the tape over to the Chief of Police, and, Ms. Rubright continued, probably everyone would agree that tape should have been obtained during the investigation.

Ms. Rubright again emphasized the Police Auditor reports to the Mayor, and not the FOP or to her, and it is highly inappropriate to insert the Union's proposed language into the FOP's Labor Agreement. Such contractual language would grant the Union the right to direct the work of the Police Auditor. The Mayor is responsible for the Police Auditor, and if the Mayor chooses to meet with the Police Auditor and change his duties through a new Executive Order, it is his authority and responsibility to do so. The reality of the situation is there will probably always be a Police Auditor, and the duties of the position may change. Ms. Rubright stated she is very mindful of Mr. Davis' opinion in this matter, as well as how statements made by the Police Auditor affect investigations and civil litigation. When questioned by the Union regarding being mindful of the Police Auditor's statements, Ms. Rubright agreed the Police Auditor's written conclusion entered into the record in one of the two investigations discussed above was "absolutely" outside the scope of his duties.

If the Union's proposed language is inserted into Article VII, Ms. Rubright stated she does not know what type of remedy an Arbitrator could grant in the event of a grievance. Ms. Rubright indicated she does not know how an Arbitrator could direct the work of an individual who is not part of the Labor Agreement and answers directly to the Mayor. The Union indicated

such an arbitration would be difficult, and a remedy of cease and desist would be requested, with an eye toward obtaining Court enforcement of the Arbitration Award, if necessary.

Ms. Rubright also pointed out that under current Article VII language, if the Police Auditor is inserting himself into investigations and interviewing Officers without an FOP Representative present, that is a violation of Article VII and is grievable. When questioned if the Union's proposed addition to Article VII was consistent with City Council's ordinance and the Mayor's Executive Order, Ms. Rubright admitted it was. Ms. Rubright added, however, she did not believe that language belongs in the Labor Agreement, and pointed out the Mayor could change the language of the Executive Order if he chooses. Ms. Rubright expressed her belief it was up to the Mayor to address matters of the Police Auditor acting beyond the scope of his job duties.

Ms. Rubright agreed that during negotiations when the Union brought up the issue of inserting the Union's proposed language into the Labor Agreement, the Union was told to take its concerns to the Mayor. In fact, Ms. Rubright stated, she made the suggestion. Ms. Rubright indicated that, as at the Fact-Finding Hearing, with Mr. Hlynsky making broad general statements regarding Officers approaching him and voicing concerns, such broad statements were made during negotiations. Ms. Rubright stated she advised Union to obtain specific factual information and take those facts and concerns to the Mayor. Mr. Hlynsky then presented specific facts, and Ms. Rubright stated she would have the matter investigated, and had a member of her staff do so. The Union's claim was that the Police Auditor took statements from witnesses and the Summit County Prosecutor was compromised in that case. After the attorney on her staff looked into the matter, it was determined the Summit County Prosecutor felt the Police Auditor's interviews of witnesses were inconsequential, and there was no evidence the Police Auditor's interviews occurred during the investigations.

Ms. Rubright pointed out the Union provided two cases containing the Police Auditor's written conclusions, and while she did not agree with his conclusions, it appears the Police Auditor reviewed the investigations after they were over, and his written conclusions were entered into the files at that time. In response to the Union's claim that after the meeting with the Mayor, the Mayor did not address the matter, Ms. Rubright pointed out currently there are ongoing studies taking place regarding the operation of the Akron Police Department and its interaction with the community. The Mayor, Ms. Rubright indicated, will be looking at those

studies before determining the direction of the Police Auditor position. That is, Ms. Rubright emphasized, while the Union is looking for an immediate answer, the Mayor is considering the bigger picture in determining what the Police Auditor should do and whether or not the Police Auditor is properly performing his job.

#### THE UNION'S REBUTTAL

As the result of community unrest, the Department of Justice Community Relations Division came into Akron, through an individual from Chicago, and a meeting was held with approximately fifteen people in attendance, including the Mayor, the Police Auditor, Mr. Hlynsky, and Ms. Rubright. The Department of Justice Representative discussed community relations and community policing, discussed some positive things occurring in other Police Departments, and suggested a citizens' commission to deal with relations between the community and the Police Department.

The reason for the unrest, the Union believes, are two public statements made by the Police Auditor. The first was on January 25, 2010, and the second on February 7. The February 7, 2010 statement involved a case where a woman was arrested and spent two days in jail. This was a high-profile case, with debate whether or not the arrest should have occurred. The Officer was disciplined with a fifteen-day suspension, which suspension the Mayor subsequently increased, and which discipline was grieved and is currently in the grievance process. The Police Auditor was quoted in the Akron Beacon Journal as stating:

The thing that surprises me, though, is that I've heard from a number of people that this guy is a bad seed. I've heard from people that he should have been fired 10 years ago. And yet, I wonder where the department sits when they let him be on the street crime unit, the gang unit and do the things he does when they know he is not trustworthy. We can't trust a guy that is not truthful, objective and fair.

This Officer, the Union states, is the head of the Gang Unit, and probably has the highest arrest and felony conviction record in the Department. It is these types of statements by the Auditor that are inflaming the community, the Union believes, yet no one is requiring the Police Auditor to cease and desist. The Union has attempted every means possible to have the Administration rein in the Police Auditor, but it refuses to do so. The Union emphasizes its proposed language is consistent with the Mayor's Executive Order and Council's Ordinance, and, while not perfect, provides the Union with some type of enforcement mechanism. An arbitration proceeding will allow a Neutral to determine whether the Police Auditor is acting outside the

scope of his authority, and, the Union continues, it cannot think of any other enforcement mechanism. If the City could come up with a mechanism for bringing the Police Auditor under control, the Union indicates, it would consider the proposal.

The Union emphasizes when a member of the Administrations makes statements on not being able to trust an Officer who is not truthful, and is a bad seed, it goes to the Officer's entire career. A Police Officer is nothing if he cannot testify in Court. An Officer's veracity and court testimony is the basis of a successful prosecution. The Union believes the Law Department realizes how irresponsible the Police Auditor's statements are, but the Department's hands are tied by the Mayor.

#### FACT-FINDER'S RECOMMENDATION

After a review of the presentations of the Parties, and consideration given to the positions advanced, the Fact-Finder is not convinced the Union's proposed additions to Article VII will provide relief in the areas needed.

The Fact-Finder is convinced of the Police Auditor's lack of expertise in use of force paradigms as well as police tactics. This is based on Mr. Davis' presentation, coupled with the Police Auditor's questioning of tactics in one of the two examples presented. In that example, Officers responded to an armed robbery, and the Police Auditor inquired, "Is it not important in a situation such as this that the officers remain in the line of the camera . . . ?" Nothing further need be stated. Additionally, the proposed language will not alleviate the situation of the Police Auditor making inflammatory statements to the media.

Regarding the two examples cited during the Fact-Finding Hearing, it is noted by the Fact-Finder the Police Auditor's conclusions in both instances were dated after the reports of the investigating Supervisors. This coincides with Ms. Rubright's beliefs those reports were submitted after the conclusion of the investigations, not during. That is, notwithstanding the point the Police Auditor's conclusions were beyond his job duties, the Police Auditor did not insert himself into the investigations.

Finally, as noted by Ms. Rubright, the position of Police Auditor is likely to remain with the City for some time to come, and the Auditor's duties may change. It is also noted the position of Police Auditor has not been in effect that long, and changes regarding the position may be in the offing once studies are concluded. In the opinion of the Fact-Finder, language that

may affect an Administration's ability to modify the duties of the Police Auditor at this point in time may prove more problematical than helpful.

The Fact-Finder recommends against inserting the Union's proposed language into Article VII.

#### ARTICLE IV – AMENDMENT

##### THE CITY'S PRESENTATION

The City proposes new language for Paragraph A of Article IV to provide for modification of the Labor Contract without mutual agreement. The City desires the language in order to implement changes to the Police Department in the event ongoing PERF studies make recommendations the City desires to implement. In addition, the City was sued by a group of Police and Fire retirees, alleging the City violated the Collective Bargaining Agreement by failing to provide primary insurance benefits. The City prevailed in those court proceedings.

The two main plaintiffs in that case then initiated a class action alleging the City is not properly coordinating retiree benefits. The proper forum for that type of suit, the City argued to the court, is the Ohio Department of Insurance, and the court action is currently stayed. The Department found against the City, and the City filed objections to that finding, which objections are currently pending. Conservatively, the City estimates, should it fail to prevail the cost to the City will be approximately \$10,000,000.00 per year.

Facing that potential liability, the City desires to allow for changes to the Collective Bargaining Agreement that affects current members of the Department. The City is looking to incorporate midterm bargaining into the Labor Agreement as set forth in the matter of *In re Toledo City School Bd. of Educ.*, SERB No. 2001-005, and in the event of situations falling outside the parameters of the Toledo Standard, the City proposes non-binding interest arbitration after the matter is negotiated to impasse.

##### THE UNION'S RESPONSE

Many times these Parties have engaged in midterm bargaining, will do so again, and at times midterm bargaining has resulted in Memorandums of Understanding. There has never been an unwillingness by this Union to negotiate midterm.

The Parties today are governed by Ohio Revised Code Chapter 4117, and the way Chapter 4117 is interpreted by courts in Ohio. If it is a mandatory subject of bargaining and the City desires a change, it must bargain. If impasse is reached, the City must wait for regular negotiations, or the City can implement its desired change in the very narrow circumstances of exigent circumstances or legislative action. This is a changing area of the law, being addressed by SERB and the Courts. To cite in a Labor Agreement a case in a developing area of the law potentially creates an enormous problem. The Toledo case is from 2001, there has been subsequent litigation, and future holdings cannot be predicted.

Regarding the *non-binding interest arbitration* proposed by the City, the Union argues "*non-binding interest arbitration*" is a contradiction in terms. The City raised two issues, one is the PERF Report and the other is retiree benefits. PERF is a management consulting organization regarding law enforcement agencies, and PERF has been retained by the City to make recommendations. This Union has worked with PERF, and may be happy with its recommendations. However, if the City wants to implement PERF recommendations, it must bargain with the Union, and not "cherry-pick" from PERF's recommendations and unilaterally implement its desired changes.

The matter of retiree benefits is a complex issue. The City of Akron pays health insurance for all the City's retirees. There is a Side Letter in the Labor Contract dating back to 1991. That Side Letter provides should the Police and Firemen's Pension Fund cease to provide health insurance benefits, Akron becomes the primary insurer. The retirees wanted the City as primary insurer, and this Union took a position on this language that was adverse to the position taken by FOP retirees.

Three years ago the Union told the City it would be in a better position dealing with the Union on this issue, and the City did nothing and currently faces potential liability. Now the City proposes to insert language into the Collective Bargaining Agreement that provides if the retirees prevail and the City found liable, the City be granted authorization to unilaterally cut Police Officer wages and benefits. The Union points out it is not a party to, and does not agree with, the retiree's proceedings, and will not agree to act as the City's insurer in the event the City is found liable.

## THE CITY'S REBUTTAL

The Union has misconstrued the City's position. In the language of the City's proposal regarding the Toledo Standard, the City has proposed two specific instances, exigent circumstances and legislative action, in which the Parties are to follow the holding in the Toledo case. The Union is correct in stating the Toledo case has been interpreted, but interpreted does not mean overturned. This is the underlying Standard in Ohio, and while it is possible the Standard may change, Toledo has been the Standard since 2001. The City desires to clarify that Standard applies to these Parties. Regarding non-binding interest arbitration, the City states, the proposed language permits the Parties to obtain input from a Neutral, which, the City adds, is beneficial.

With its proposed language, the City concludes, the City is seeking to cover situations that may arise during the term of the Collective Bargaining Agreement.

## THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder agrees with the Union's position and argument. The current language of Article IV has served the Parties well, parts of the proposed language is "clarifying" language only and agreeing to a Standard that is subject to SERB and Court review and may change potentially could lead to problems resulting in unnecessary expense to the Parties in the form of grievances, arbitration, and litigation. Current Article IV language has been effective, and the City has not shown one instance where the Union has refused to engage in midterm bargaining. Finally, permitting the City to unilaterally implement changes to a Collective Bargaining Agreement destroys the very foundation underlying Collective Bargaining and Agreements reached pursuant thereto.

The Fact-Finder recommends against inserting the City proposed language in the Parties' Collective Bargaining Agreement.

## DRUG SCREENING PROGRAM FOR SWORN EMPLOYEES OF THE AKRON POLICE DIVISION

### THE CITY'S PRESENTATION

The Parties' Drug Screening Program (DSP) begins on page 27 of their Collective Bargaining Agreement. The City proposes two modifications of the DSP. The City first desires

to add hydrocodone and oxycotin to the panel of drugs screened. While those drugs are available by prescription, they are also available "on the street."

Currently Section I(A) provides employees may not use any legal drug to the extent the drug may adversely affect the safety of the employee or others, or affect job performance. The City desires to make it clear hydrocodone and oxycotin are to be included in drug screens, and a positive test result will result in a violation of the DSP. In return the City will reduce the number of employees randomly tested each month from forty-five to thirty. The City's proposal of reducing the number of employees randomly tested offsets the cost of screening for the additional two drugs.

The second modification the City proposes is to Section V, Disciplinary Action and Appeal, Paragraph B. Currently the last sentence provides refusal to submit to a drug test or adulteration or switching of a urine sample may be grounds for dismissal. The City proposes substituting the word "shall" for "may," thereby making dismissal from employment mandatory for refusal to submit to a drug test or adulteration or switching of a urine sample. Such activity amounts to dishonesty, the Officer should be dismissed, and the City wants to make it clear it will terminate employment under those circumstances.

The City maintains abuse of prescription drugs is currently a prevalent problem in the Akron community. The addition of hydrocodone and oxycotin removes any temptation to abuse those drugs. The State of Ohio has recently recognized prescription drug abuse as a significant problem, and noted the problems associated with that abuse. The City has not been testing for prescription painkillers like hydrocodone and oxycotin, and believes those two drugs should be added to the panel of drugs currently screened.

Chief Hall indicated drug testing was first implemented in 1994. The drugs selected for screening were based on the drugs abused at that time. Currently, the Narcotics Division is reporting vicodin (hydrocodone) and oxycotin are the preferred drugs of abuse, and the City desires to test for drugs currently being abused.

The Chief further indicated the purpose of drug screening is the deterrence that results from the monthly testing, and the Chief commended his Officers, noting there has not been a positive test result in years. The purpose of adding hydrocodone and oxycotin is not to punish Officers who are taking hydrocodone and oxycotin pursuant to prescription. In the event an Officer tests positive for hydrocodone or oxycotin, a Medical Review Officer (MRO) talks to the

Police Officer, verifies the Police Officer is taking the drug pursuant to prescription, and reports the test result as negative. As a result of the negative report, the Chief added, the City and Police Department are never notified of the initial positive result.

Regarding the last sentence of Section V, Paragraph B, the Chief further indicated the purpose of changing the word "may" to "shall" regarding dismissal is to remove the slightest indication that an Officer will not be terminated for adulteration or tampering with the collection process. The reason for the program is Officers on the street must be clear headed while making split second decisions, sometimes involving life or death in the use of force.

Ms. Rubright indicated that during negotiations, the Union expressed concern regarding an Officer who had a drug that was prescribed in the past, is now outdated, and the Officer takes the drug for the same condition as before, or a different condition, and tests positive. Ms. Rubright spoke to the MRO, and the MRO indicated he would do the same in that event as he does now. That is, he would interview the Officer, and if the Officer had a stale prescription, the test result would be reported as positive. Regarding the position of MRO, the City noted the Union has input into the selection of the MRO.

#### THE UNION'S POSITION

The Union indicated the Parties had discussed the taking of a hydrocodone or oxycotin prescribed to a spouse or boyfriend/girlfriend. The Union agreed such use is illegal, and that situation is not in contention. The point of contention is the taking of a drug based on a stale, legal prescription. During negotiations, the City stated if a person tests positive as the result of taking medication under a stale prescription, and that employee's physician indicates to the MRO the employee took the medication for the reason it was prescribed, a negative result will be recorded.

That, the Union emphasizes, does not always happen. As an example, the Union cites an individual who is prescribed a painkiller after a hernia operation. That person stops taking the painkiller prior to depletion of the entire amount of the prescription, and a year later injures his back while gardening, and takes the painkiller. Subsequently that employee tests positive. No physician will state to the MRO the reason for taking the painkiller, wrenching the back, was the reason for prescribing the painkiller. During negotiations, the City was asked if it would be okay with the City if an employee takes medication pursuant to a legal prescription in his name,

regardless of the date of the prescription. The City responded it would not. What the City is attempting to do, the Union states, is terminate the employment of someone over the legal use of a prescription drug, and that is why there is no agreement on this issue.

Regarding the City's second proposed modification, the insertion of the word "shall" for "may" does not allow for any mitigating circumstances whatsoever, and the City has been harsh on these issues. The Union cited a past instance of a Police Officer on a cruise ship who developed a migraine headache. The Officer's mother was also on the cruise ship and had a prescription for Tylenol 3. The Officer's mother suggested her daughter take a Tylenol 3, and the Officer did. The Union states that when an Officer is investigating the illegal use of drugs, the Officer considers criminal intent. When the Officer was on the cruise, and took the Tylenol 3, there was no criminal intent, she looked at the Tylenol 3 a strong aspirin, not as an illegal use of codeine.

When the Officer returned to duty, she was randomly selected for drug testing, tested positive, and received a ninety-day suspension. That Officer is not a drug abuser. What this establishes, the Union states, is the City is not very compassionate on these matters. Not all cases are the same, and at times there are mitigating circumstances that must be considered.

#### THE CITY'S RESPONSE

Chief Hall indicated a very important component of why the Officer on the cruise ship was disciplined was the Officer lied during the course of the Internal Affairs investigation. Regarding the issue of the City's lack of compassion, Ms. Rubright pointed out the word "shall" is inserted in the provision dealing with adulteration of a sample or the refusal to take the drug test. This all has to do with truth and veracity, not the issue of taking a stale prescription, and the Chief wants to make it clear Officers cannot switch samples, cannot adulterate samples, or refuse a drug test.

To further refute the lack of compassion argument, the City points out if an Officer tests positive for illegal drugs, the Officer may, not shall, be subject to dismissal under current language. If an Officer is honest and takes the test, the Officer has a chance of retaining his job. It's the dishonest conduct under the proposed language that results in termination. The City also pointed out that under current language an Officer found to be abusing legally prescribed drugs

shall be permitted to enter a drug rehabilitation program and will not be terminated on the first offense.

#### THE UNION'S SURREBUTTAL

To emphasize how easy it would be for a Police Officer to take a stale prescription, Mr. Hlynsky stated Police Officers are frequently injured and are frequently prescribed painkillers such as Vicodin. Young Officers are being called to do more and more, and Officers are injured with increasing frequency. Injured Officers do not do a complete analysis when they hit their medicine cabinet at night when recovering from an injury. They are taking something to alleviate the pain. Mr. Hlynsky stated he does not want to see good, young cops caught up in something they never intended to do. Just because drugs are prevalent in society, Mr. Hlynsky concluded, does not mean they are prevalent in the Police Department.

#### THE FACT-FINDER'S RECOMMENDATION

The difficulty with the City's proposed change regarding hydrocodone and oxycotin is the lack of any indication or examples establishing the current DSP has proven less than satisfactory. Moreover, using the example of the Officer on the cruise ship, when asked how the City would address the situation if that Officer had taken one painkiller pursuant to a stale prescription, the City indicated she could be placed in a drug rehabilitation program. The placing of an Officer with a migraine headache taking a painkiller one time based on a stale, legal prescription into drug rehabilitation indicates the difficulty of the City's proposal in attempting to implement a policy that applies in all situations. In the view of the Fact-Finder, and in that the City has not cited a single example of a problem with an Officer's use of hydrocodone or oxycotin, adding hydrocodone and oxycotin to the panel of screened substances will potentially lead to more problems than it is hoped the addition will prevent.

Regarding the insertion of the word shall, as the City argues this sentence of the DSP applies to refusal to take a drug test, or adulteration or switching of samples, not the taking of a stale prescription. While there may be mitigating circumstances for refusing to submit to a drug test—and the Union cited the example of a bus driver who desired to be removed from that position not appearing for the drug screen required of bus drivers—no mitigating circumstances have been cited for adulterating or switching a urine sample.

It is the Fact-Finder's recommendation the addition of hydrocodone and oxycotin to the list of drugs screened not be included in the Parties' Labor Agreement. Regarding the substitution of the word "shall" for "may," the Fact-Finder recommends the City position with modification. The fact finder recommends the last sentence of the DSP, Section V, Paragraph 5, be modified to read:

Refusal to submit to a drug test may also be grounds for dismissal. Adulteration of, or switching a urine sample shall be ground for dismissal.

## ARTICLE 12 – SENIORITY THE CITY'S PROPOSALS

The City proposes changing the manner in which some positions within the Department are filled. Chief Hall explained that currently there are two types of positions in the Police Department, bid and exempt. For a bid position, the Labor Agreement provides the senior officer division-wide is awarded the position, if the Officer is qualified by skill, ability, and work performance. The majority of positions are bid, the Chief continued, and, basically, the senior Officer bidding the opening is awarded the position. The qualifications of skill, ability, and work performance, for the most part, are only used to remove an Officer from a position. There have been instances of Officers bidding into a position for which they are not qualified, and their performance in the position substandard. When it is determined they are not qualified for the position, they are administratively transferred to another position. The Chief feels if skill, ability, and work performance were used in awarding a bid, the matter would end up in arbitration.

Vacancies in exempt positions are posted to ensure all Officers are aware of the opening. The Officers bid to advise the Chief of their interest in the position, and, generally, the Officer is instructed to submit a resume, which the Chief reviews. The Chief then determines which Officer will fill the vacancy.

The City's proposal pertains to thirty-eight positions in the Detective Bureau the City considers critical: homicide, child rape, child death, robbery; those that are critical not only to the victims but critical to the Police Department in obtaining successful prosecutions. The Officers in those positions, the Chief further explained, must have the ability to articulate in their Reports of Investigation what transpired. Those Reports of Investigation are then used in the prosecution of the perpetrators.

The City is not proposing to do away entirely with the awarding of the positions to the senior bidder, but to require the three senior bidders submit a Report of Investigation, prepared in their current position, to be reviewed by the Investigation Subdivision Commander, the Unit Commander, and the FOP President or designee. The three will then meet and attempt to determine the best Officer for the vacant position.

The Chief stressed investigations of crimes such as homicide, child rape and child pornography is not amenable to learning on the job. The outcomes of these types of investigations are critical, and seniority should not be the sole determining factor in which an Officer fills a vacancy. Submitting a prior Report of Investigation allows the reviewing Officers to determine the bidding Officer's ability to articulate the facts of an incident, and place his thoughts on paper in such a manner to enable a prosecutor to fully understand the intricacies of the case. Other positions in the Detective Bureau are not included in the proposal because the outcome is not as critical, and those positions are amenable to on-the-job training.

In the event the three reviewing Officers are unable to reach consensus regarding the selection of the bidding Officers, the selection is to be made by the Chief. Currently the Chief exercises complete discretion. Some discretion was relinquished in an attempt to satisfy the FOP that seniority does play some factor in the selection process. The Unit Commander is involved in the selection process because he has an intimate knowledge of what is required in the Unit, and is familiar with what constitutes a good Investigative Report.

To the above, Ms. Rubright added years on the department do not automatically equate to a qualified individual. It is essential individuals in the above discussed positions have the ability to write well, speak well, and present a case. The individuals appear before grand juries, meet with victims of very significant crimes, and present cases to petit juries. Those qualities cannot be measured strictly by seniority.

#### THE UNION'S REBUTTAL

Article XII distinguishes between bid and exempt positions. The exempt positions are very specific and are in each of the subdivisions. What the City has on the table is problematic in that the City has not presented the logic for selecting the specific positions to be included in its proposal. Why are home burglaries, home invasions, or the myriad of other types of

investigations Detectives perform, less important? Why is a 3 p.m. to 11 p.m. Detective included, but not a day Detective?

Pursuant to current Contract language, management can reject a senior bidder based on skill, ability, and work performance, and has done so in the past. Under the City's proposed language the top three senior bidders are placed in a subgroup, and the Investigation Subdivision Commander, the Unit Commander, and the FOP President or designee discuss the candidates. This presents a conflict of interest for the FOP President. The successful bidder may be someone on the Union's executive board, and the President accused of favoritism, or the opposite, an unsuccessful bidder may be someone who has been openly critical of the Union President, or ran against the President and lost. The Union has brought this conflict of interest to the attention of the City, but the City has not modified its position. Also, all the Chief need do is instruct the Commanders not to agree with the FOP President, the final decision will be the Chief's, and that decision will not be based on seniority.

Under the City's proposal, the individual must provide a felony investigation report not more than six months old. This prevents a whole series of Officers in some positions from ever bidding. For example, the Union's Benefits Officer has not performed a felony investigation since he has been in that position, neither has the Union President, both of whom have been in their positions over six months. The Officer who teaches Reports in the Training Bureau, who has twenty-five years experience, would also be ineligible to bid. Additionally, Officers very often work in teams, and questions can be raised regarding who actually authored the report.

*The Report of Investigation is the central document a Detective completes; it picks up a case from beginning to end, and is the report used to obtain a conviction. Supervisors have different standards. Some Supervisors do not want a detailed Report of Investigation, and some do. Under current Contract language, Mr. Hlynsky pointed out, even if an Officer is awarded a seniority bid, there are additional requirements that must be met to keep the position. If the Officer fails a school, for example, he is removed from the position regardless of seniority.*

The Officers in the positions at issue, the people who investigate homicides, violent crimes, the juvenile cases, which are all bid positions and have been bid positions for years, have an outstanding conviction record. In the thirteen years since he has been the Lodge President, Mr. Hlynsky stated there has not been more than a handful of Detectives about whom management complained. The City indicates it needs the Crimes Against Persons Unit exempt,

but not the Property Detectives. Yet on a weekend rotation when the staffing is cut, the Property Detectives do not just investigate property crimes. It is a rotation and the Detectives on duty, whether in Juvenile, Property, or another Unit, take whatever case comes in.

Over the last few years, the Administration put in place additional requirements for the Communications Captain and Lieutenant, both seniority bid positions. In that the change was based on a sound reason, the Union never objected. Under the proposed system, the selection process can be slanted, and the only true way of eliminating favoritism is seniority. The current system works fine, and there is no reason to change it. A newspaper article about a year ago stated the Akron Detective Bureau had the highest conviction record in the state. These are Officers who obtained their positions by seniority through the bid process.

When questioned by the City, Mr. Hlynsky agreed the Chief currently has sole discretion over whom to appoint to an exempt position. Close to 25% of positions currently are exempt, and over the past several Contracts the Union has agreed to have more positions made exempt. Mr. Hlynsky stated the positions the Union conceded to have exempt were based on the City providing a valid basis for doing so.

#### THE CITY'S REBUTTAL

Chief Hall stated he has not once seen favoritism enter the equation in the selection of Officers to exempt positions, and challenged the Union to provide the name of a person so selected. The Chief indicated when a person bids an exempt position and is passed over there is often "sour grapes," with the person being passed over feeling favoritism played a part in the selection process. The Chief added that when he first joined the Department in 1980 there was a problem with favoritism, but that was twenty-three years ago. Since seniority was placed into the selection process in 1987 that has not been a problem.

One of the reasons for the City's proposal is the result of conversations with Sherri Bevan Walsh, the Summit County Prosecutor. The subject of those conversations was the quality of some of the investigations taking place. Ms. Walsh felt strongly a homicide case was lost as the result of a poor investigation. Ms. Walsh felt her office should have easily won that prosecution. This establishes, the City believes, some Officers are better suited to investigative work, and the Chief needs the authority to select the best people.

## THE UNION'S SURREBUTTAL

It's been agreed by both sides that without the protection of the Collective Bargaining Agreement there was favoritism. Favoritism often involves perceptions. For example, a judge might not be biased in a case, but if there is a perception of bias, the judge will recuse himself. The process is that important. People's careers are just as important. Pursuant to the Labor Agreement, seniority has no place in an exempt position. Everyone understands that, and the Union can live with that and is not attempting to remove exempt positions from the Labor Agreement. However, to take thirty-eight positions and basically give the Administration veto power over the most senior person, or the second most senior person, revives a problem the Union worked hard to end. If there are one or two positions the City feels should be exempt, put them on the table, the Union will listen.

In the past, the Union has agreed to adding an exempt position or two, or expanding one exempt position into two, but the City is now asking for thirty-eight additional exempt positions. That is a huge change in the structure of this Department. The membership will see this as an attack on the protections they have fought hard to have in their Labor Contract.

Mr. Hlynsky addressed the issue of Ms. Walsh's statements, and stated it is substandard prosecutors who are losing cases, not substandard detectives. There is no paper trail of substandard performance on the part of any detective.

## THE FACT-FINDER'S RECOMMENDATION

During the presentations, the City deleted the language in its proposal requiring the submission of a Report of Investigation. As a result, the Fact-Finder will not comment on the Report of Investigation issue. Other language found objectionable by the Union remained in the City's proposal. The objectionable language is the right of the City to choose a bidder who is not the most senior, and involving the FOP President in the selection process.

The Fact-Finder wishes to emphasize a point raised by the City. Under the current language of the Collective Bargaining Agreement, the Chief has the right to reject the senior bidder for a position if that person lacks the skill, ability, or work performance needed for that position. The Chief expressed concern that rejecting a senior bidder based on one or all of the three criteria would lead to a grievance. As a result, the Chief stated, the three criteria are used

to remove a person after that person obtains the position. Ms. Rubright, in arguing for the City's proposal, stated that procedure is the reverse of how the system should work.

If the current system of considering skill, ability, and work performance is being used inappropriately, as Ms. Rubright contends, the Fact-Finder notes it is the City's choice to do so. The fear of a grievance being filed in the event a senior bidder is rejected, is incongruous with the arguments advanced by the City regarding Temporary Transfers, discussed below, wherein the City repeatedly stated if the Union disagrees with a transfer, it can file a grievance. Importantly, however, is the added fact that if a grievance is filed over passing a senior bidder, the City would need to establish a valid reason for doing so. This serves to keep the seniority system honest by preventing appointments based on favoritism, nepotism, or other reasons that have no place in a Police Department.

In the Fact-Finder's view, the City's proposal begs for a return to the favoritism of which Chief Hall spoke that existed prior to the implementation of the seniority system. As the Union pointed out, even if the three reviewing Officers impeccably exercised their responsibility in the selection process, if the senior bidder, or the top two senior bidders, is or are passed over, the perception of favoritism will, in all likelihood, be strong.

Additionally, the discarding of the seniority bid system in favor of the movement of thirty-eight positions from bid to exempt, is not based on a solid foundation. That some Units are selected to be made exempt while others are not, especially in light of the system of weekend rotation where a Detective, regardless of his Unit, takes the next case in the rotation, substantially weakens the City's argument Detectives in some Units should be selected other than by seniority.

The Fact-Finder is mindful of Chief Hall's pointing out the Summit County Prosecutor stated the loss of a homicide case was due to a poor investigation. However, Mr. Hlynsky's statement must also be borne in mind, that it was not poor detective work, but a poor prosecution that resulted in the acquittal. In the Fact-Finder's view, these "he said, she said" statements are insufficient to discard the seniority system that has worked well for the Parties. Too many questions remain, including why the Akron Detective Bureau, in the course of one year, would plummet from having an exemplary conviction record, to one of less than satisfactory investigatory capabilities.

Finally, including the FOP President in the selection process is outside a Union President's accepted duties. One is left wondering how the Lodge President can function as both a representative of Bargaining Unit Members, while also assisting in the managerial function of selecting Bargaining Unit Members for exempt positions. As argued by the Union, this presents a conflict of interest for the Lodge President.

For the above reasons, the Fact-Finder recommends against including City's proposed language in the Parties' Collective Bargaining Agreement.

## ARTICLE XII – TEMPORARY TRANSFERS

### THE UNION'S PROPOSAL

The Union proposes adding a new paragraph to Article XII regarding Temporary Transfers. The proposal is based upon a memo issued by then Chief Michael Matulavich in 2003 addressing the manner in which Temporary Transfers are to be carried out. The procedure outlined in that memo has continued unabated since its inception in 2003, and it is the Union's proposal the practice initiated by Chief Matulavich be placed in the Contract and continued.

Mr. Hlynsky explained that prior to Chief Matulavich addressing the matter, the Union was receiving complaints that Officers were being moved between positions without the Union's knowledge. Some Bargaining Unit Members felt the Administration was circumventing the bid process, private deals were taking place with Officers who were temporarily assigned to choice positions remaining silent, and there was no way of tracking those temporary assignments. To end such abuse, in his 2003 memo Chief Matulavich set forth the procedure for implementing Temporary Transfers.

The Union is concerned that when the current Chief, Chief Hall, retires, another Chief may not honor the same procedure. The procedure works well for both Parties, and never has there been an indication by the Administration this procedure is unsatisfactory. The procedure allows for flexibility in assignments without undermining the bid process.

### THE CITY'S POSITION

The Union is requesting a provision be placed in the Collective Bargaining Agreement to address situations the Parties have always amicably resolved. Additionally, the City states, the proposal significantly hinders the Administration in that a temporary assignment not only

requires the Union's agreement, it also requires the Bargaining Unit Member agree. This could be a tedious process, requiring extra steps prior to implementing a Temporary Transfer.

Mr. Masturzo testified he has been involved in all Collective Bargaining Agreement negotiations since 2003, and he was unaware of Chief Matulavich's memorandum. Had that been a negotiated provision of the Parties Labor Agreement, it would have required his approval. Mr. Masturzo added he would never have approved of such a procedure in that it is the responsibility of the Chief to run the Department. This procedure may have worked well for Chief Matulavich, but the right to run the department as the Chief determines should not be removed from future Chiefs. If a Chief determines a Temporary Transfer is needed, that transfer would require the agreement of the employee, and that, Mr. Masturzo believes, makes no sense.

Mr. Masturzo agrees there were some problems in the past with Temporary Transfers, but those were isolated incidents and the problems have always been resolved. Mr. Masturzo also agrees that when a Temporary Transfer is made, the Union should be notified. Upon questioning by the Union, Mr. Masturzo admitted nothing in Chief Matulavich's 2003 memo violated the Labor Agreement, and that nothing prohibits a Chief and the Union President from discussing Temporary Transfers and determining the manner in which the transfers take place, as long as their agreement does not violate the terms of the Labor Contract.

It is also Mr. Masturzo's belief Chief Hall, or a new Chief, has the right to unilaterally change the procedure addressing Temporary Transfers. Mr. Masturzo stated it would be permissible for a Chief to temporarily assign ten individuals from the Detective Bureau to patrol duties on the midnight shift during the summer months to cover Patrolmen on vacation. It may not be a good business practice, but it is the Chief's right. If the Union feels the transfers are a violation of the Collective Bargaining Agreement, it has the right to file a grievance.

Moreover, Mr. Masturzo continued, in a situation requiring a Temporary Transfer to an undercover assignment, the Union's proposed ninety-day time limit could create a problem. An undercover assignment could last a year. The Chief also needs the ability to temporarily transfer Officers to meet emergencies, such as a riot downtown. In the event of a riot, the Chief does not have time to seek Union approval to transfers Officers downtown to address the matter.

Chief Hall agreed with Mr. Masturzo that he had the authority to rescind at any time the procedure set forth by Chief Matulavich in his memorandum. Chief Matulavich's Memorandum worked well at the time it was prepared because the Department was at budgeted strength. The

reason Chief Matulavich's procedure cannot be placed in the Contract is a future Chief would be required to follow the procedure during times the Department is short on manpower. At the beginning of 2011, the Department will be eighty-seven Officers below the authorized strength of four-hundred-eighty-seven.

The Patrol and Traffic Bureaus are divided into five platoons: 6:30 a.m. to 2:30 p.m., 12:00 p.m. to 8:00 p.m., 3:00 p.m. to 11:00 p.m., 7:30 p.m. to 3:30 a.m., and 11:00 p.m. to 7:00 a.m. When the Department is shorthanded, no Bargaining Unit Member who works the day shift Monday through Friday will volunteer to move to evenings or midnights.

Last Fall when facing layoffs, it was impossible to follow Chief Matulavich's procedure. The Department was at risk of losing half the Officers on the evening and midnight shifts, and it would have been necessary pursuant to Management Rights to temporarily transfer Officers to those shifts. Other positions in the Department can go unfilled for a time, however, the Patrol positions must be filled to respond to calls. Under the Union's proposal, the only way to fill those shifts would be with overtime, which the City cannot afford.

With layoffs, vacant positions cannot be put up for bid because the Officers will be returning to their positions. The only option available to the City is Temporary Transfers. However, when questioned regarding filling less-than-desired positions, the Chief admitted in situations where he has insufficient bids, he has the right to fill those positions through reverse seniority. For the most part, as provided in the Collective Bargaining Agreement, that is the procedure used for filling those shifts.

#### THE UNION'S REBUTTAL

The whole purpose for the creation of Article XII regarding seniority and bidding, Mr. Hlynsky stated, was because management could come in on any given day and move Officers around, and management did just that. These were not isolated incidents as stated by Mr. Masturzo, management frequently transferred Officers based on friendship, who was in a golf league, and so forth. Article XII provided stability in positions. The City is making much ado regarding the Officer's needed approval to a transfer. Mr. Hlynsky indicated that has been what the Parties have been doing under Chief Matulavich's procedure. On numerous occasions in unique circumstances, the Union has negotiated a Memorandum of Understanding with management to permit an Officer to be transferred for the time needed. Regarding Officers

working undercover, the Union states, the truth of the matter is there has not been an Officer undercover for a year.

It is a terrible misstatement for the City to state it always had the right to temporarily transfer Officers anytime it feels the need. The Union points out its proposed New Article language at Section 12 addresses layoffs and the need to rebid positions. The Union's proposed Article XII language regarding Temporary Transfers does not apply in the event of a layoff. The Union's proposed Article XII language applies to a situation where the City wants to move an Officer to a job he did not bid. In that situation, the move must be for a finite period of time, and for a stated reason. With all the shortages this Department has faced in the past, this Department has been able to live under Chief Matulavich's procedure, and that procedure has not tied the hands of the Department.

#### THE FACT-FINDER'S RECOMMENDATION

Regarding the City's hypothetical argument of a riot, the City needing the right to temporarily transfer in order to properly respond, and the City not having time to obtain permission from the Union and the Bargaining Unit Member, the Fact-Finder notes Article K, at Paragraph D, provides the City with the right to take necessary actions to carry out the mission of the Police Department in the event of emergencies. That right includes the movement of personnel to respond to a riot. Additionally, as the Union points out, the sending of personnel to the scene of a riot, or some other emergency, is not a Temporary Transfer, it is simply sending Police Personnel where needed. In the view of the Fact-Finder, the hypothetical riot argument is not persuasive.

Regarding Chief Hall's concern in light of possible layoffs, the Union's proposed New Article language at Section 12, which language the Fact-Finder recommends above, addresses that situation. In the event of layoffs, in all likelihood rebidding will be needed to accommodate the large movement of personnel, and Section 12 requires the Parties to meet and establish a rebidding procedure. Section 12 does not operate as a stay of layoffs, it simply opens the rebid procedure to review by a Neutral.

Finally, the Fact-Finder notes Chief Matulavich's memorandum was not a Chief's Order, nor was it part of the Rules and Regulations of the Department. After the Union raised concerns regarding abuses of transfers, it was memorialized that the matter of transfers would be

addressed in a certain fashion. That procedure for addressing Temporary Transfers has been in existence since 2003, has been consistently applied through two negotiated Labor Agreements, and has been accepted by the Parties as the procedure for Temporary Transfers.

The four elements of Past Practice, clarity, consistency, longevity, and mutuality have been met, and Chief Matulavich's memorandum, through the Past Practice of the Parties, has risen to the level of a separate, enforceable condition of employment. Even setting aside the issue of Past Practice, it is important to note Chief Matulavich's procedure has worked well.

The Fact-Finder recommends the Union's following proposed language be inserted in Article XII before A 5:

Temporary Transfers — If the union and bargaining unit member agree, the Chief may temporarily assign the bargaining unit member to a temporary assignment within the department for a period up to 90 days. The union, bargaining unit member, and Administration may by mutual consent extend the period of temporary assignment one time to 90 days. The Administration will announce the temporary assignment in the Daily Bulletin.

## ARTICLE XIX – UNION TIME

### THE CITY'S POSITION AND ARGUMENT

*In its Position Statement, the City proposed inserting a requirement in Article XIX, Section A, that release for Union Time be provided seventy-two hours in advance. The day following the arguments of the Parties regarding Article XIX, the City withdrew that proposed language and the Fact-Finder will not discuss the argument of the Parties regarding the seventy-two hour requirement.*

### PRESIDENT'S OFFICE

The City proposes modifying Section B of Article XIX to provide the Union President be assigned to the day shift Services Subdivision from the day shift Benefits Office. The move is to accommodate the City's proposal the Union's Benefits Office be eliminated. Additionally, the City proposes deleting current language that the assigning of the Union President to the Benefits Office shall not cause a reduction in personnel in the Office. The language deleted would be superfluous if, as the City proposes, the Union's Benefits Office is eliminated.

Furthermore, the City proposes adding language to Section B providing Bargaining Unit Members have two hours of Paid Leave deducted from their bank at the beginning of each year to be applied toward the Union President's wages, and clarification the Union President will not

be eligible to earn overtime or comp time for the performance of Union duties. There have been no problems regarding the Union President and ineligibility for overtime or comp time, the City states, the proposed language is simply to ensure the next Union President follows Mr. Hlynsky's practice.

The City states its proposed two hour Paid Leave deduction is to assist the City in its time of financial difficulty by having the Union help fund half of the Union President's full-time position while having a minimal impact on Bargaining Unit Members. The City stresses it is not requesting the Union entirely fund the position of Union President.

The City notes the Firefighters Local President is released only twenty hours per week for the performance of Union business, and the other twenty works his regular position as a Fire Department Lieutenant. That is, he is not a full-time Union President and the City is not paying forty hours per week for the performance of Union business. The president of the Akron Nurses Association also performs other duties for the City, rather than just acting as Union President. Same for the CSPA. The City's proposal strikes a balance between the FOP's Lodge 7 President remaining on full-time release for Union business while at the same time addressing economic concerns.

#### ACCOUNTABILITY

The City proposes adding a new Section C requiring the Union President submit a monthly report to the Chief of Police outlining the name of the Union Representative using Union time, along with the hours, dates, and purpose for the use of Union time. This is being requested of all the City's unions to provide for accountability. It is important to account for time spent on Union business to enable the City to address questions that may be raised regarding a City employee's whereabouts.

#### UNION BENEFITS OFFICE

The City proposes the elimination of the Union's Benefits Office and returning the Union's Benefits Officer to Police duties. The position of Union Benefits Officer is unique to the City of Akron. The Benefits Officer is an FOP member who assists Bargaining Unit Members regarding "benefits-type" matters. When the position was created a number of years ago, the City's Benefits Office was not providing the same services as the Union's Benefits Officer. The City's Benefits Office is currently adequately staffed to provide City employees with any assistance needed. In addition to a full-time President and Benefits Officer, the Union is

provided thirty-two hours per week to devote to Union business. Many of those thirty-two hours can be used to assist Bargaining Unit Members should they need assistance regarding benefits, and do not wish to contact the City's Benefits Office.

The City could not find another Collective Bargaining Agreement in another city that provides for a full-time Benefits Officer. In Akron, only the Firefighters and FOP have a Benefits Officer, the City's other three unions do not. Additionally, the position of Benefits Officer in the Firefighters Contract is a twenty-hour position, while the FOP's Benefits Officer is a full-time position. The City proposed to the Firefighters its position of Benefits Officer be eliminated, but that proposal was withdrawn. The City noted, however, the Firefighters' Benefits Officer retired in September 2009, no one filled the position since that time, and no problems have been encountered. At a time when staffing levels are not at their maximum, and at a time when the City does not have the funding to put on a new class of Officers, eliminating the Union's Benefits Office puts another Officer on the street.

#### THE UNION'S ARGUMENT

This Union tracks both Union Time and Administrative Time. The number of hours spent by Union Representatives on pre-disciplinary hearings, internal investigations, use of force investigations, and other matters, is large. There is a lot going on in the Department requiring a large number of hours in the form of Administrative Time. Whenever the Union President or another Union Representative needs time off, Mr. Hlynsky requests leave time in writing from the Chief. On the request, Mr. Hlynsky writes the person's name, the date, and the reason. Accounting for time is already being done, and the City's proposed language is unneeded. The City already knows where its people are.

Mr. Hlynsky explained when he submits the written request to the Chief, the Chief's Office makes copies of the request, and the copies are circulated to the entire chain-of-command. Every Unit has a Detail Sheet that indicates where every person is, and once Union Time is approved, Union Time is marked on the Detail Sheet. The Detail Sheet is an historical document indicating everyone's assignments for pay and duty purposes. Not only does the Administration know who is on Union Time, Union Time is read at roll call.

The overtime language, the Union insists, is ridiculous. Mr. Hlynsky works some weeks up to seventy hours. Mr. Hlynsky does not receive overtime except when he works on a holiday,

the same as every other Officer. Not one time has there ever been an issue raised regarding overtime. The fear some future Union President might make a baseless claim for overtime is groundless. The City writes the check, the City can simply say no to overtime, and that's the end of it. All of this is a disguised attack on Mr. Hlynsky and the Union's Benefits Officer, Mike Leslie.

Repeatedly this Union has been involved in midterm bargaining with the City, at the City's request. The number of hours the Union Present spends in representing his members cannot be compared to the number of hours spent by the Presidents of Fire, Nurses, and CSIPA in representing their members.

Frequently there are issues over which Mr. Hlynsky must meet with the Administration. Union business is continuous, and in 1991 the office of Union President was converted to full-time to provide sufficient time to address all the issues that arise in a Police Department. The City has requested Mr. Hlynsky lobby on its behalf for local government funds, and Mr. Hlynsky was the only Local President to do so. Mr. Hlynsky has met with state legislators on issues of importance to the City. Likewise, all the midterm bargaining takes time, and when the City implements a new program that violates the Collective Bargaining Agreement, the Union must expend time to challenge the program.

Ms. Rubright stated the City provides thirty-two hours of Union time. What this means is the City will determine how much time the Union President will spend on Union business. The President of the Firefighters has twenty hours per week for his office, but runs into problems obtaining time off to conduct Union business. Mr. Hlynsky states it is not right for the City to determine how much time the Union needs to conduct its business, or who can fight for a Bargaining Unit Member or which Union Representative does not have the time to fight for that Member. The Mayor does not want a full-timer, whom he considers an obstructionist, filing grievances, ULP's, and court actions.

To do away with the Office of Union President or the Benefits Office will not make much difference regarding placing Officers on the street. The Union has proposed changes to do away with obsolete shifts and make it easier to put more Officers on the street. The suggestions were rejected. Cleveland has three full-time positions for its FOP and CPBA. Cleveland's FOP President has full release time, and between the FOP and CPBA Cleveland has much more release time than Akron. Mr. Hlynsky explained Patrol Officers currently might simultaneously

have two or three calls, and respond from one call to the next. If he is on a call, Mr. Hlynsky asked, how could he stop what he is doing to represent a Member?

Union members in cities that do contribute to the President's salary earn more comp time than Akron Bargaining Unit Members, they earn more vacation time, more base pay, and that accounts for those Union Members contributing to the President's salary. For example, the basic Patrol wage in Akron is \$55,000.00, in Cincinnati \$63,000.00. That's an \$8,000.00 difference between the two Departments, the Union emphasizes, and if Akron had Cincinnati's wages we would be having a different discussion. In Cincinnati, the Membership gives two hours leave time toward the President's salary, however, Officers in Cincinnati receive one-hundred-twenty hours of leave time annually.

In Cincinnati, seven people are assigned to benefits. That is not found in the Collective Bargaining Agreement, it is in the internal organization chart. Columbus does the same; has three positions for the FOP, and the Columbus FOP receives four-thousand hours for Contract negotiations. Additional time is provided in the event of midterm bargaining.

When the City pointed out it is not proposing to change the Union President from full-time to part-time, the Union responded the Mayor attempts to play different factions found in any Union against each other. When leave time is taken away from Members to compensate the Union President, there will be an uproar by some members, and the City's proposal is an attempt to undermine the integrity of the FOP. Police Officers are already underpaid, and this is a squeeze by the City. As for funding the President's Office for this Union, the City has numerous proposals on the table cutting comp time, call-in pay, and other benefits, and now the City proposes to cut more Member benefits to pay for their Union representation.

The City's attempt to change the location of the Union President's office from the Benefits Office to the Service Subdivision goes directly to the City attempting to eliminate the job of the Union's Benefits Officer. The Benefits Office with the Akron FOP is not unique to Akron. The creation of the Union Benefits Office was the result of a proposal by the City to meet a need, and losing that position will be catastrophic to the Members. As far as not having a Benefits Officer in different cities, those cities do, they're just called by different names, as for example, a full-time Grievance Chairman. Some cities have more than one such full-time Union Office.

The Benefits Office was created because it was determined that Police Officers get hurt with a greater frequency than do Members of the other unions. This results in more claims, more Workers' Comp issues, more filings for disability, and Members with questions regarding hospitalization and dealing with doctors. Officers work five shifts, not just 8:00 a.m. to 4:00 p.m. when the City's Benefits Office is open.

Additionally, the City's Benefits Office advocates the position of the City, not the worker, and the City may deny a claim through the City's Benefits Office, which the City frequently does. That is, the first priority of the City's Benefits Office is to save money for the City. Mr. Leslie represents the Member in processing his claim. The City's Benefits Office has no idea how to prepare a disability pension claim. Mr. Leslie spends time at home and on weekends preparing disability pensions, and advising Members and retirees. The FOP maintains Mr. Leslie's office. It is the FOP that pays for his desk, file cabinets, computers, office supplies, cell phone, and other office items. Medical matters are private, and it is important Members have a separate office to discuss their injuries.

As Benefits Officer, Mr. Leslie puts in approximately sixty hours per week. His job, Mr. Leslie explained, is to assist the President's Office in advocating for the Membership. There are nine-hundred Members, plus dependents and retirees, for a total of two-thousand people Mr. Leslie assists. Depending on the year of retirement, some retirees have life insurance through the Collective Bargaining Agreement. The City is aware when a retiree dies, but the City's Benefits Office does not notify the family of the deceased. Mr. Leslie tracks all deaths and advises the families when they are entitled to insurance proceeds.

A Police Officer was shot in the back and disabled. The disability pension awarded was small, and Mr. Leslie went to Columbus, at FOP expense, to advocate for the Member and obtain a better pension. The City's Benefits Office is prohibited by law from doing so. When Members or retirees are suffering a terminal illness, it is the Union's Benefits Office that takes the paperwork to the hospital to be signed in order for the spouse to obtain benefits. The City's Benefits Office doesn't do that.

Mr. Leslie indicated he has handled disability claims for Akron Firefighters, and disputes the City's claim the Firefighters are getting along fine without a Benefits Office. Mr. Leslie prepared the retirement paperwork for an Akron Firefighter, and that person is currently preparing paperwork for other firefighters on a temporary basis. Mr. Leslie stated Firefighters

are outraged they do not have a Benefits Office. Mr. Leslie also pointed out Ms. Rubright used him, not someone from the City's Benefits Office, as an expert witness regarding pension fund matters.

The Union concludes by pointing out the City's Benefits Office advocates for the City, and the Union's Benefits Officer advocates for the Bargaining Unit Member. There may exist some overlap between the two offices, but, the Union emphasizes, it is to the City's benefit to deny Bargaining Unit Member claims.

#### THE CITY'S REBUTTAL

Regarding Union time, the City reiterated its desire to know the whereabouts and times when employees are on Union Time, and pointed out AFSCME has a form its Members complete regarding Union Time. The Union inquired why, if the City wants additional information, rather than presenting this issue in Fact-Finding it would not have been a simple matter for the Chief and Union President to add those points to the form currently being used when Union Time is being requested. No satisfactory answer was provided.

Mark McLeod has served in the capacity of the City's Employee Benefits Manager since 1995. The City's Benefits Office is primarily responsible for administering the City's health insurance programs, life insurance benefits, retirement benefits, unemployment claims, Workers' Compensation claims, and disability claims. Mr. McLeod stated it is his job to provide those services for any Akron City employee who requests assistance.

In the past, the Benefits Office provided these same services, although the staffing was much lower. Additionally, the previous Benefits Office Manager was an attorney who handled Workers' Comp claims and spent a great deal of time out of the office dealing with Workers' Comp issues. Currently, the Benefits Office outsources the processing of Workers' Comp claims. This frees up employees to address other matters, and employees in the Benefits Office are available after hours to address employee concerns. The Benefits Office has four employees including Mr. McLeod, however, Mr. McLeod also indicated his Office is currently understaffed as the result of layoffs.

The City's Benefits Office does not process police Officer retirements, which are currently processed through the Union's Benefits Office. The City's Benefits Office, however,

processes approximately sixty to seventy retirements annually for other City employees, and is capable of processing retirements for Police Officers; it just has never been asked to do so.

Upon questioning, Mr. McLeod admitted his Office does not represent an employee in a Workers' Compensation Claim. His office has the employee complete and sign the standardized Incident Report explaining the facts of the injury. On the bottom of the form the employee indicates he wants a claim filed on his behalf, but the City's Benefits Office does not represent the employee, it represents the City. Most employees elect to have the Bureau of Workers' Compensation process their claims, however, there are a number of Workers' Comp attorneys in the area that can represent an employee. When an employee desires to file a claim through his Office, Mr. McLeod explained, the employee might have questions that can be answered by his office personnel.

#### THE FACT-FINDER'S RECOMMENDATIONS

##### FUNDING THE UNION PRESIDENT'S SALARY

For reasons discussed in more detail below, Officers on the Akron Police Department are at the low end of remuneration in terms of wages and benefits when compared to other large Ohio cities. Additionally, as noted above, the Fact-Finder is not convinced the City's finances, are in the precipitous position indicated by the City. Moreover, as the Union argues, charging employees' leaves banks to partially support the office of the Union President may serve to drive a wedge between the Union Leadership and some Bargaining Unit Members.

##### ELIMINATING THE UNION'S BENEFITS OFFICE

Of glaring importance, in the view of the Fact-Finder, is placing Mr. McLeod's statement the City's Benefits Office is not up to full strength as the result of layoffs, in juxtaposition with Mr. Leslie's estimate of approximately sixty hours per week devoted to the assistance of Bargaining Unit Members in the processing of claims for benefits. It is true overlap exists between the two offices, that is, both offices may perform some of the same functions. However, it is important to note there is no duplication of efforts. That is, there is no evidence of both the City's Benefits Office and the Union's Benefits Officer working on the same issues for the same employees. It follows, the City's Benefits Office would be overwhelmed if it were suddenly required to address the increased workload sure to follow if the Union's Benefits Office were eliminated.

Three other points are readily apparent. First, the City's Benefits Office is prohibited by law from being apprised of, and assisting in, matters regarding an Officer's disability claim. Even if the City's Benefits Office were permitted by law to assist in a disability claim, it is to the City's benefit to deny such claims, whether valid or not. This leads to the second point, conflict of interest.

There is an inherent conflict of interest in having the City process certain employee claims, such as Workers' Compensation, where it is in the City's best interest to deny claims, keep the payout of claims to a minimum, and/or make obtaining Workers' Comp benefits as difficult as possible thereby discouraging such claims. While Mr. McLeod explained his Office assists employees with questions regarding Workers' Comp issues, it is during this question and answer period when information can be obtained that will be used against the employee by the third-party claims processor. Having a Union Benefits Office enables the employee to discuss his Claim without such fear, or without incurring the expense of an attorney until it is determined the services of an attorney are needed.

Finally, the Union's Benefits Officer also serves the purpose of acting as the Police Officer's advocate, where appropriate. This is something Mr. McLeod readily admits the City's Benefits Office cannot do. Such a benefit is of extreme importance at times of processing claims, which times can be extremely emotional for the Members involved, and also a time when they are most vulnerable and least in a position to understand that a person with a conflict of interest cannot have their best interest foremost on his agenda.

#### ACCOUNTING FOR UNION TIME

There have been instances where the Chief has not received an advance request for Union Time, but that is rare, and the Union agrees that should not happen under the current system. Current language of the Collective Bargaining Agreement provides Union Time must be approved in advance by the Chief; thus if the Chief determines from a review of the Detail Sheets that an employee has taken Union Time without approval, the Chief can take measures to rectify that behavior. The City never explained how the addition of some sort of accounting system regarding Union Time would prevent that rare occurrence in the future.

Moreover, the City argues AFSCME has forms to account for Union Time, but has provided no reason the current FOP system of written requests for Time, along with the listing of Union Time on the Detail Sheets, is insufficient for its purposes. Nor did the City provide a

sufficient answer as to why the Chief and the Union could not simply modify its current form to accommodate the City's proposal.

Based upon the foregoing, it is the recommendation of the Fact-Finder that the City's proposed changes to Article XIX not be incorporated into the Parties' Labor Agreement.

#### ARTICLE XXIV – WAGES

Both Parties have wage proposals on the table. Additionally, the Parties reached agreement for 2010 regarding wages and furloughs, and those matters, while contained in the Parties' Position Statements, will not be addressed below.

#### THE CITY'S PROPOSAL

The City requires 5½% in concessions from the Union, and feels it would be too large an amount to request through a straight wage rollback. Therefore, the City states, it proposes a zero percent wage increase for 2011, and reopens for wages and healthcare in 2012. Other concessions will be needed as well, the City adds, and will also be discussed.

The City refers to Police wages in other Ohio cities, the Summit County Sheriff's Office, as well as the Ohio Highway Patrol. Comparable data, the City indicates, was obtained by forwarding a questionnaire to the different entities. Police in the City of Dayton, effective May 18, 2009, were awarded through Fact-Finding and Conciliation a 1% wage increase offset by three days mandatory furlough. Ohio Highway Patrol Officers were required to accept "Cost Savings Days." Nothing further regarding the "Cost Savings Days" was contained on the data sheet presented by the City, however, most state employee unions agreed to ten furlough days.

Through a Memorandum of Understanding, members of the Supervisors' Unit of the Summit County Sheriff's Office earning over \$40,000.00 per year accepted twenty furlough days, and those earning \$40,000.00 or less accepted fifteen days. Answers to the City's questionnaire also indicated forty employees were laid off, including part-time deputies, inmate service workers, and a secretary. The questionnaire does not indicate if the layoffs occurred in addition to the furlough days, or previously thereto and the furlough days resulted in recalls. Cleveland Officers agreed to ten furlough days, the equivalent of a 4.25% pay reduction. Barberton indicated all of its unions conceded pay raises for 2010.

The City does not foresee the economy improving sufficiently to afford a 2011 wage increase for this Union. The Firefighters agreed to zero percent for 2011, as did AFSCME.

Unfortunately, the City states, based on the current status of the General Fund and General Fund revenues, and the 2010 projections, the financial situation will not quickly improve, and the City is not comfortable relying on the optimism of the Union's financial consultant.

Due to the economic uncertainty, and out of fairness, for 2012 the City proposes wage and healthcare reopeners. The City would like to be optimistic and believe finances may improve, however, based on last year's finances and trends this year, it is difficult to predict the Fund's future. Costs for the City continue to increase while revenues have decreased or stagnated. When considering the General Fund revenue sources, the City is facing numbers equivalent to 2005 and 2006. Since that time, however, Safety Forces have received 3% annual wage increases. That is, the City continues, while the City's revenues have returned to 2005 and 2006 levels, expenses have continued to increase. These expenses include both wages and healthcare.

Ms. Miller-Dawson indicated the greatest reason for the zero percent wage increase in 2011 is the uncertainty of the economy, employment in the City not improving, and not knowing when the recession will end. As a result, Ms. Miller-Dawson stated, the City is attempting to maintain a very conservative posture.

In light of these factors, its proposals of zero percent for 2011 followed by wage and healthcare reopeners for 2012, the City believes, are reasonable.

#### THE UNION'S PROPOSAL

The Parties spent a day-and-a-half reviewing the City's financial statements, and it has been the Union's position all along that while the City's financial condition is not the envy of the country, the City's claims of woe are significantly exaggerated. In June 2009, when facing a recall election, the Mayor stated the City was in great shape. After prevailing in the recall election, suddenly the City faced a \$12,000,000.00 deficit and was in crisis.

In August and September 2009, the Union points out, the Parties engaged in intense concession bargaining. This Union took the position then, and is taking the position today: first, don't exaggerate your claims, and, second, Akron Police Officers are very underpaid, and any permanent reduction in wages, uniform allowance, holidays, and longevity is not justified. If the City had issues in 2009, the City is now recovering and it is wrong to gut this Labor Agreement.

When the Union met with the City last fall, there were two nonnegotiable items, one, concessions must be temporary and realistic, and two, concessions must be tied to a no-layoff guarantee. Without a no-layoff guarantee, the City can gain concessions from the Union, and subsequently demand additional concessions, ad infinitum. The only way "to stop the bleeding" is to couple concessions with a no-layoff guarantee and make the concessions temporary. The duration in time of the concessions must match the duration of the no-layoff guarantee.

On September 25, 2009, after long hours of negotiation, the Parties memorialized an agreement regarding temporary concessions tied in duration to a no-layoff guarantee and the rescission of ninety-six layoff notices. As a result of concessions pursuant to that 2009 agreement, the City realized \$100,000.00 in savings. At that time the City was claiming a \$12,000,000.00 deficit, and was seeking huge concessions from this Union. While the 2009 agreement was fair, it did not come even remotely close to the amount of concessions the City was demanding in July.

Currently, the Union is facing the same situation. During negotiations in December 2009, the City placed almost 14% in concessions on the table, from which the Union was to select concessions totaling 5½%. When the City declared impasse, the City placed its entire list of concessions back on the table, plus some additional items, and demanded the Union concede all items. The Union is hearing for the first time the City is not requesting concessions on all the items listed in its "smorgasbord."

The Union compared the wages of the Akron Police Department with the cities of Cleveland, Columbus, Dayton, Cincinnati, Toledo, Barberton, Bath, Copley, Cuyahoga Falls, Fairlawn, and Tallmadge. Three years ago through Fact-Finding and Conciliation, the Union notes, Akron Police were awarded 3%, 3%, and 3%. For 2010, including the wage increases awarded three years ago, Akron annual Police wages, including benefits, are \$55,305.00 while the average of the comparable cities, including benefits, is \$61,516.00. That is, Akron is 11.23% below average. To take away wages, whether in the form of money or benefits, on a permanent basis is not financially justified. Attempting to catch up with other cities has been difficult, and, the Union states, it still has a long way to go.

Mr. Leslie prepared the document containing the Union's comparables, and indicated the data regarding wages were obtained from Labor Agreements, and, with the exception of Dayton,

personal interviews of personnel in the various Police Departments. The wage figures are for the top Patrol Officers.

The cities selected were the same cities used during the last Fact-Finding and Conciliation process with the exception of Stow. Stow had no data on file with the Ohio Labor Council, and Mr. Leslie was unable to interview anyone from Stow. Cities within Summit County were used, as well as Ohio's larger cities, with the exception of Youngstown. Youngstown also had no data on file, and Mr. Leslie was unable to interview anyone in Youngstown. The Summit County Sheriff's Department was not used in that its employees include jailers, who do not perform the same functions as Police Officers.

Regarding the comparables presented by the City, the Union contends the Cleveland data is incorrect. Cleveland has two Police Bargaining Units; the FOP represents Patrol Officers and the CPBA represents Sergeants and above. In December, Cleveland entered into negotiations for both unions attempting to gain concessions, agreement was not reached, and there were short-term layoffs. The FOP is scheduled for Fact-Finding, and the CPBA is in negotiations. There were no furlough days of the Officers of either Labor Union. This inaccurate information, the Union contends, calls into question the accuracy of the City's other data. Barberton, the Union points out, is worse off financially than is Akron, and Barberton Police Officers received zero percent with no concessions.

The Union believes the financial evidence presented clearly justifies a 2% wage increase in 2011, and a 4% increase in 2012. A page from the City's budget for 2009 indicates an annual payroll of \$31,406,450.00. Thus, the 1% of payroll costs-out to approximately \$314,000.00. Ms. Miller-Dawson's spreadsheet indicates the number to be \$324,000.00. The 2% increase the Union is requesting for 2011 is approximately \$650,000.00, and the financial evidence the Union presented establishes the City can afford that wage increase. When considering the wages of Akron Police Officers compared to surrounding communities, the 2% wage increase in 2011 is absolutely justified.

Mr. Leslie explained the correlation between an Officer's wages and pension. For example, Mr. Leslie stated, and to use round numbers, consider an Officer earning an annual salary of \$50,000.00. The earliest an Officer can retire is age forty-eight after twenty-five years of service. That Officer would receive 60% of his wages. If the Officer stays on the Department until completion of thirty-three years of service, the Officer will retire with 72% of his salary, the

maximum permitted. If the Officer earning \$50,000.00 annually left after twenty-five years of service, that Officer would receive a \$30,000.00 per year retirement benefit from Akron. For other cities where Officers are paid \$60,000.00 per year, the retirement benefit after twenty-five years of service would be \$36,000.00 annually. A \$6,000.00 per annum difference is considerable, Mr. Leslie emphasized, when a person is on a fixed income.

In determining the amount of the pension benefit, the pension fund looks at the Officer's highest three years, which typically are the Officer's last three. A retiree's healthcare costs \$714.00 per month for a man and wife, or \$8,568.00 per year. If Akron's Officers are retiring with \$30,000.00 per year, subtracting \$8,000.00 leaves \$22,000.00 before taxes. Allowing another 20% for taxes deducts another \$4,000.00, leaving \$18,000.00 per year. That equates to \$1,500.00 per month, it is noted, and it is extremely difficult to live on \$1,500.00 per month.

The pension fund pays a 3% annual cost of living allowance. A person with a \$36,000.00 annual retirement benefit receives a \$1,000.00 per year increase, while a person with a \$30,000.00 benefit receives \$900.00. Every year in retirement, the Akron retiree loses \$100 compared to everyone else. Wages are extremely important, not only to meet today's expenses, but also for future retirement.

In the past, and in lieu of pay raises, Akron's Officers received benefits such as holidays, clothing allowance, and fitness allowance. Mr. Hlynsky stated those were disguised wage increases, and Akron Officers are now to the point they cannot afford to not have wage increases. It is affecting retirement benefits. Akron Officers are the lowest, or next to the lowest paid Officers in the state. The Union's proposed pay increases are modest, don't move Akron's Officer wages to where they should be, and the Union is to the point where it must take care of its members both now and when they retire. It's one thing for a Mayor who receives \$149,000.00 per year agreeing not to take a pay raise this year, and quite another where concessions are demanded of a cop earning \$54,000.00 per annum.

#### THE CITY'S REBUTTAL

Because of so many unknowns, the City is proposing a wage reopener for 2012. As the Union's exhibits regarding comparables show, for 2011 some cities have reopeners, some do not, and the status of other cities regarding wage reopeners is unknown. Mr. Leslie indicated he

could find no information regarding reopeners for 2012. The City of Akron's proposal for a 2012 wage reopener is very fair in light of the economic situation throughout the state.

Continuing, the City states that the Union's comparables regarding wages is not relevant in this economic landscape. Factors to be considered in Fact-Finding are the welfare of the public, the ability of the public Employer to finance and administer the issues proposed, and the effect of the adjustment on the level of public service. Regarding the Union's proposed wage increases for 2011 and 2012, the City's Finance Director stated at this time it is impossible to make an accurate prediction of the City's finances for those years.

If the City were required to finance the Union's proposals, it would have an effect on the services the City would be able to provide the public. Wherever possible the City has been looking at cost cutting and cost savings across the board. The City cannot look to one-time payments, such as received from First-Energy last year, to finance wage increases in 2011 and 2012. Other City unions agreed to not only zero percent this year, but also zero percent in 2011 and it would be unfair to those unions if the amounts saved in the General Fund were then given to the FOP.

The City states that the truth of the matter is the Union negotiated for increased benefits or different Contract language rather than increased wages. For example, in Article VII the Union negotiated increased protections for Members in lieu of additional wages. Article IV permits Officers to build their comp time to the statutory limit and leave it there. When an Officer retires, that Officer receives his entire bank paid at the Officer's hourly rate at the time of retirement rather than the rate at the time earned.

There are other hidden bonuses throughout the Labor Agreement. If an Officer is called for court time, he is guaranteed four hours of pay no matter how long that Officer is there. After five years Officers are on a Paid Leave program. All their sick leave and vacation go into one bank, resulting in a higher payout when an Officer retires or leaves for some other reason. The City does not cap the Police Paid Leave benefit other than the statutory maximum. The City's healthcare program provides benefits not found in other cities. This comes at a cost to the City. Concessions are not unique to the City of Akron or this Union. As the remaining economic issues are discussed, those concessions will be noted.

Cindy Donel, the City's Accounting Manager, explained the Accounting Division is responsible for Accounts Payable and Receivable, including Payroll. Those Departments report

to Ms. Donel, and Ms. Donel is responsible for the preparation of the City's financial statements. Ms. Donel prepared a statement costing-out the Union's wage proposal. In that longevity is based on the hourly wage, Ms. Donel took Longevity into consideration as well as payouts when an Officer separates from the City, Workers' Comp, and any other factor affected by wages. The cost of the Union's 2% and 4% wage increases totals \$2,806,614.24.

It is Ms. Miller-Dawson's opinion the City is unable to finance the Union's wage proposal. Ms. Miller-Dawson indicated the City currently does not have the money and she does not foresee the City having the funds over the course of the Collective Bargaining Agreement. Ms. Miller-Dawson bases her opinion on anticipated income tax growth, as well as other sources of revenue. Ms. Miller-Dawson added, regarding Mr. Suponic's analysis, the first five months of a year do not make an entire year. Additionally, the deferred Longevity payments will be due in 2012. For 2011, the VSP payouts will be due in March.

Ms. Rubright stated that from the beginning of negotiations, the City requested 5½% in concessions. That equated to \$1,260,000.00. The list of concessions provided was an "a la carte menu" from which the Union could select the \$1,260,000.00, and Ms. Rubright stated she is shocked to hear the Union's claim that the City asked for 13½% in concessions. That is outrageous and untrue. Never once did the City move from 5½%. In late 2009 the City had not paid Uniform Allowance and Fitness. When January arrived and the Union was unwilling to discuss the Uniform Allowance or Fitness money, which amounted to \$700,000.00 or more, options were reduced. That's when the City started considering other areas of concessions such as wage rollbacks, furlough days, and donation of Comp Time.

A no-layoff guarantee is directly related to the amount of money the City can save. Toward the end of negotiations, shortly before reaching impasse, the Union made a trivial concession offer and demanded the no-layoff guarantee. With the amount the Union put on the table, it was impossible for the City to guarantee no layoffs. Fire received the no-layoff guarantee as the result of close to \$1,000,000.00 in concessions.

The City concludes by stating it cannot afford the Union's wage proposal for 2011 and 2012. The City's proposed 2012 wage reopener is the best solution for both Parties. This prevents a recommendation of wages the City cannot afford, and provides the Union with the opportunity to reconsider wages in 2012 based on future financial conditions.

## THE UNION'S REBUTTAL

The City argues comparables are not relevant, yet it was the City that raised the issue of comparables. Setting aside the point the City's comparables are inaccurate, to talk about concessions without talking about a starting point is analogous to talking about half a baseball score. You might know the Cleveland Indians scored three runs in a game, the Union argues, but without knowing the other team's score that information is of little value. Likewise, it is of little value to argue only that Officers in another city accepted a zero percent wage increase or accepted a furlough. If those Officers are making \$8,000.00 more per year, it is the fact they accepted a zero percent wage increase or a furlough that is irrelevant.

Starting with the City's demand for concessions, this Union has been bargaining with the City for a year, and would like a little stability. The Union believes its wage proposal provides a little stability. To argue the Union's wage proposal is unfair to other unions is offensive. This Union is in Fact-Finding, no other Union is. This Union retained a financial expert to review the City's finances, no other Union did. Until three years ago, the percentage wage increases negotiated at the table among the City's five unions were comparable. The City then began saying to this Union that it could not provide a wage increase, and offered \$300.00 on Fitness, which is worth one-half percent in a wage increase. Same for Uniform Allowance. That saved the City money in that Fitness and Uniform Allowance are not pensionable, and the City does not pay Workers' Comp or Medicare on those items. The City also wanted to disguise the wage increase so the other unions would not be asking for similar increases. Historically, the City has requested money be put into something other than wages. Now the City is attempting to take away those items.

In Akron, Safety Forces and non-Safety Forces do not have Contracts that expire at the same time. Three years ago when the FOP went to Fact-Finding and Conciliation, the non-Safety Forces still had two years remaining on their Contracts. The City argued it could not accept the Union's proposals because they were unfair to other unions, or would upset the other unions. That pattern between the FOP and other unions was broken in Fact-Finding and Conciliation based on the evidence presented. Three years ago, Fire went to Fact-Finding and got a better award than the Police did. The Neutrals in those cases looked at facts, not what is fair for other unions.

In terms of the City talking about hidden money, the Comp Time bank is at the federal maximum of four-hundred-eighty hours. The City does not have a proposal on the table to lower that threshold. There are Collective Bargaining Agreements that permit cities to pay down accumulated Comp Time. Officers who earn time-and-a-half on overtime do so because they are at their cap. When under the cap, the Officers can elect cash or Comp Time. There is a provision in the Parties' Labor Agreement that permits the Finance Director to forward a letter to the Union removing the Officers' choice between cash or Comp Time. Ms. Miller-Dawson did that. Now the City is saying not only are they not paying for overtime, they want the Comp Time back. There is a crime problem in Akron, and when Officers work overtime, it is for a reason. The City called them in, Officers do not schedule their own overtime. The reason Officers with accumulated Comp Time are paid at their hourly rate at the time of retirement is that the City wants to pay Officers in Comp Time.

Four hours call-in time was negotiated into the Contract to compensate an Officer for court time. When an Officer finally has a day off, his schedule is disrupted to don his uniform, arrange for childcare, or not work a part-time job that day, or being unable to spend time with family, and report to Court. The Union emphasizes this issue is not on the table. The Paid Leave Program, which has been in existence for many years, is also not on the table. Akron has paid retiree healthcare since at least the 1960's. The Mayor uses that point in his stump speeches. That is not only an FOP benefit, it is paid to every City employee. This also is not on the table.

Regarding the cost of the Union's proposed wage increases, the City's numbers match exactly what the Union stated. The City's figures cost-out two percent for 2011 at \$630,785.00, which is the same as the Union calculated. The City can afford the Union's proposed wage increases. Moreover, the deferrals about which the City now complains as coming due were negotiated by the Parties. The VSP was a City program, and was citywide, not just for the FOP.

Finally, regarding the City's a la carte menu, Ms. Rubright is factually wrong. The City was using the a la carte menu in December, but not in March. The Union put serious money on the table, not trivial money, and rather than return with a counterproposal, the City returned with no protection against layoffs, healthcare reductions, reduction in Uniform Allowance to \$700.00, permanently eliminating Fitness Allowance, remove City Picnic Day as a holiday, lose premium pay for three holidays in 2010, a four percent wage reduction the second six months of the year, a wage freeze for 2012, reduction of twenty-four hours Comp Time, removal of fifty percent of

the salary of the Union President, defer 2010 longevity to 2013, no guarantee more concessions would not be requested later, and all the City's other non-economic issues were to remain on the table. The total demand when the City declared impasse was an average of \$7,400.00 per Member or 13.7%.

The issue today is the Union's two and four for 2011 and 2012, or the City's zero and reopener. The Union concludes by stating the City's finances should be considered, as well as the Union's comparables.

#### THE FACT-FINDER'S RECOMMENDATION

All points argued by the Parties as noted above were taken into consideration. Of note is the City's complaint regarding the amount of comp time some Officers have accumulated. The City is not proposing a change in the language of the Collective Bargaining Agreement to provide for a lesser bank, or the purchase of comp time. Instead, the City requested comp time simply be deducted from Officers' banks. That is, the City scheduled Officers for overtime, and after Officers worked that overtime the City should be permitted retroactively to compel the Officers to work without remuneration.

In lieu of past wage increases, funds in the form of Uniform and Fitness Allowances were at the request of the City to save expenditures in the form of Workers' Compensation premiums and pension contributions, as well as avoiding the triggering of me-too clauses in the City's other Labor Agreements. Considering that the wage position of Akron's Officers vis-à-vis the wages of Officers in comparable communities includes Uniform and Fitness Allowances, in the Fact-Finder's view to now point to those two items in support of its proposal of zero and a reopener, carries little weight and is respectfully rejected.

In the same light, the City's argument regarding deferred longevity and VSP falling due also carries little weight. Longevity and VSP will be due pursuant to a concessionary agreement entered into between the Union and the City, at the behest of the City, to assist the City through a difficult period. However, based on the analysis of the financial data it appears that difficult period has abated, and to now hold that agreement against the Union lends credence to the Union's fear demands for concessions will be ongoing.

The Fact-Finder notes the inconsistency in the Union's arguments regarding deducting healthcare costs from a retiree's pension benefit to arrive at a retiree's net retirement income,

while also pointing out the Mayor uses Akron's paying of retiree healthcare in his stump speeches. That point notwithstanding, a retiree's pension benefit is an important consideration in an employee's total compensation package, and must be given weight.

In light of the point that the pattern between Police and Fire has been broken, this Fact-Finder has given greater weight to external, rather than internal, comparables. And, based upon the facts presented at the Fact-Finding Hearing, including the Union's costing-out of its proposed wage increases, this Fact-Finder is convinced that not only are the Union's proposed wage increases affordable, they are justified.

It is the recommendation of the Fact-Finder the language of Section 1 of Article XXIV be amended as follows:

- A. Effective January \_\_\_\_\_, 2011, all bargaining unit members shall receive a wage increase of two percent (2%).
- B. Effective January \_\_\_\_\_, 2012, all bargaining unit members shall receive a wage increase of four percent (4%).

The above dates beginning with "January \_\_\_\_\_" signify the first day of the payroll period. At the Fact-Finding Hearing, the Parties indicated the Fact-Finder is to use the date as noted, and the appropriate date will be inserted by the Parties.

#### ARTICLE IV, SECTION (B) (3) AND XVII – UNIFORM ALLOWANCE THE CITY'S PROPOSAL

The City proposes a reduction in Uniform Allowance to \$700.00 annually, effective January 1, 2011. Currently, Plain Clothes Officers receive \$1,500.00 and Uniform Officers \$1,225.00. Ms. Rubright noted there is no accountability for the expenditure of those funds. The Officers are presented a check, and they do with it as they wish. In 2010 the City paid \$610,000.00 for uniforms. The reduction to \$700.00 per Officer will annually save the City \$293,180.00, while not harming Officers.

AFSCME agreed to the City furnishing all uniforms, resulting in cost savings, and Firefighters agreed to an account with a uniform vendor in lieu of a check for which they are not accountable. In addition, in its comparables, the City points out Stow Police Officers waived their Uniform Allowance.

## THE UNION'S POSITION

The City's proposal is a direct cost shift from the pockets of the Officers to the coffers of the City, and amounts to a wage reduction of approximately 1%. The Uniform Allowance for Akron is toward the high end of the Union's comparable communities, but it is not out of line. In the past, the City has proposed increasing the Uniform Allowance in lieu of increasing wages. That did not especially inure to the benefit of Bargaining Unit Members, but the Union acquiesced. The City's proposed reduction in Uniform Allowance is another way of the City saying it wants the Union's past wage increase back. Regarding Stow's Officers waiving their Uniform Allowance, the Union emphasized the annual wage rate for Stow Patrol Officers was \$61,693.00, which equates to \$6,300.00, or 11½% above Akron.

Mr. Hlynsky stated that when he first came on the Department, the City had accountability. Officers would turn in receipts for items purchased. The City did not like that system and determined to simply cut a check for the Uniform Allowance. The current system results in the Officers paying full tax on Uniform Allowance money. The City's proposal is not temporary, the Union emphasizes, nor is it tied to any type of guarantee of no layoffs. Moreover, neither the City nor the Union ever proposed changing accountability, the matter was never discussed, and the matter of accountability is not an issue on the table.

With the Uniform Allowance, the City's Police Officers are 11.23% below the average of comparable communities. Without the Uniform Allowance, the position of Akron's Police Officers is worse yet. The reality check is that while the City is not rich, its claims are exaggerated, not justified, and reducing the Uniform Allowance is not warranted by the facts.

In the past, Mr. Hlynsky indicated, every year the Patrol Officers received what is called a full complement of uniforms. The City stopped that. Currently, an Officer cannot simply obtain a complete uniform, it is a direct exchange. This resulted in a savings for the City, but also results in an Officer wearing, for example, a new shirt and faded pants.

The City has rules and procedures requiring certain attire when reporting. After taxes, the net Uniform Allowance is approximately \$1,000.00. That's enough, Mr. Hlynsky continued, for about two suits, two shirts, and two ties. Detectives are required to look good every day. Officers in other Police Departments can purchase clothing on their wages, Akron Officers cannot. In addition to Detectives, Patrol Officers reporting for court also must look good. The current levels of Uniform Allowance have been in effect since 2001, three Contracts ago, and

have not been increased since. Non-accountability has been in effect since 1998, four Contracts ago, at the City's request, and has not been modified since.

The Union concludes by stating this is a permanent giveback, not financially necessary, and it is not in exchange for any guarantees. It is no different than a direct, unwarranted cut in wages.

#### THE CITY'S REBUTTAL

The Union continually returns to its allegation Akron Police Officers are underpaid. The Union leaves out the number of steps before reaching the top wage rate. Akron's Officers reach the top step in about three years.

The Parties' Labor Agreement provides for the uniform replacement program referenced by Mr. Hlynsky. Chief Hall stated that in each of the first five years an Officer is on the Department, that Officer is provided three long sleeve shirts, three short sleeve shirts, and three uniform pants. If an Officer tears, wears out, or gets blood on a uniform item, that item is replaced.

The City's proposal is not to eliminate the Uniform Allowance, it is to reduce the Allowance to \$700.00 per year to help the City achieve needed costs savings.

#### THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder agrees with the Union's argument. Past increases in Uniform Allowance were at the request of the City, and were in lieu of wage increases, saving the City expenditure on Workers' Comp Premiums and pension contributions. Moreover, the City's contention the reduction will not harm Officers is respectfully rejected. The Fact-Finder also notes the wage position of Akron's Officers, including Uniform Allowance, is 11% below average for comparable communities. The Uniform Allowance reduction equates to slightly less than a 1% wage reduction, and, the Fact-Finder is convinced, cannot be justified by the facts adduced during the Parties' financial presentations. This Fact-Finder cannot ignore the fact that the financial trends during the first half of 2010 establish an improving economic climate for the City.

It is the recommendation of the Fact-Finder that the City's proposal not be included in the Parties' Labor Agreement.

NEW ARTICLE IV LANGUAGE – FITNESS  
THE CITY'S PROPOSAL

Currently the City pays its Officers a lump sum payment of \$300.00 per annum that is not tied to an Officer's fitness level. In addition, the City provides a fitness training room in the Police Station and a fitness trainer who is an Akron Health Department employee. The City proposes paid membership in two City operated fitness centers, CitiCenter Athletic Club and Balch Street. The CitiCenter Athletic Club is approximately two blocks from the Police Station and the Balch Street facility is located about two miles distant. The two facilities are already in place, and the cost to the City under its proposal will be minimal. Both facilities are well equipped. Last year, Ms. Donel stated, the City paid \$136,800.00 pursuant to the current fitness program. The payment to each individual Officer is pensionable, and the net result to each Officer after taxes and pension are deducted is approximately \$181.00.

The fitness allowance became effective in 2000. Akron has minimum fitness requirements, Mr. Masturzo explained, that Officers hired after 1984 must meet. Prior to the advent of the fitness allowance, the City provided a workout room to Police Officers, but that room was too small given the number of Officers on the Force. During the 2000 negotiations, the Union brought up the point Officers are required to perform at a certain required fitness level, yet an adequate fitness room is not provided. The Union argued a fitness allowance would permit Officers to join a gym or purchase workout equipment for home use. The City agreed to the \$300.00 allowance. The City's current proposal addresses the concerns raised by the Union ten years ago. That is, Mr. Masturzo stated, the City now has fitness facilities available for the Officers' use.

Upon questioning, Mr. Masturzo recalled negotiations for 2000 concluding at 3:00 a.m. after great effort, and also recalled non-Safety Forces Bargaining Units having me-too clauses regarding wages. Mr. Masturzo agreed his last offer to settle Contract negotiations was the \$300.00, but stated it was called a Fitness Allowance. Mr. Masturzo added Mr. Hlynsky was in those negotiations, and Mr. Hlynsky presented the argument regarding the fitness policy, Officers being disciplined pursuant to the policy, and insufficient facilities for Officers to use. During 2000 negotiations, Mr. Hlynsky stated if the City wanted to close negotiations, the Union needed a \$300.00 fitness allowance. Mr. Masturzo agreed verification of membership in a fitness facility was never discussed. Mr. Masturzo then corrected himself, stating there is

somewhat of a verification in place. If an Officer is not engaged in a program of physical fitness, that Officer will fail to meet minimal physical fitness requirements.

Mr. Masturzo did not agree the Fitness Allowance was in lieu of wages. Fitness Allowance, Mr. Masturzo continued, was a new issue raised by numerous Police unions, and that was the manner in which it was addressed by this Union in 2000. It was agreed the \$300.00 approximated a one-half percent wage increase, and the non-Safety Forces Bargaining Units were entitled to a one-half wage percent increase if that wage increase were granted to the FOP.

The City of Akron offered Youngstown as an example of a comparable city. The City of Youngstown, it was noted, annually reimburses each Officer the amount of \$160.95 for membership in the Youngstown YMCA. The City of Akron, it is pointed out, is offering each of its Officers memberships in two facilities. Replacing the fitness allowance with a fitness membership, the City concludes, causes no harm to Bargaining Unit Members.

#### THE UNION'S PRESENTATION

The Union insists that in 2000 the \$300.00 was presented as a pure wage increase, disguised as a fitness payment so the three non-Safety Forces unions would not be entitled to a one-half percent wage increase along with the FOP. At the outset and throughout this hearing the Union has clearly stated it has worked hard to maintain its low relative wage position compared to other communities, and not lose ground. That relative wage position includes Uniform Allowance, overtime on holidays, and Fitness Allowance. With all those items included in the wage rate, Akron is still near the bottom.

The FOP reiterated it has been willing to talk to the City regarding concessions under two circumstances, one, concessions must be temporary, and, two, concessions must be tied to a no-layoff guarantee. In September when the City issued ninety-six layoff notices, This Union reached agreement reducing wages and benefits in this Labor Contract. Those reductions were temporary, and tied to no layoffs. The removal of the \$300.00 Fitness Allowance is a permanent one-half wage reduction that is not justified.

Pat McMillan, a Detective on the Akron Police Department, is familiar with both the CitiCenter Athletic Club and Balch Street facilities. The CitiCenter Athletic Club is located in downtown Akron, parking is limited, and there is a charge for parking. The equipment in that facility is antiquated, there are no free weights, the hours of the facility do not necessarily

coincide with the hours Police Officers are scheduled, the facility is closed on weekends, and the facility itself is small.

Upon questioning, Mr. McMillan indicated he was unaware members of CitiCenter upon presentation of their parking ticket at the desk receive a parking voucher. Additionally, Mr. McMillan has only seen the exercise machines, has never seen the facility's weight room, and is unfamiliar with the free weights in the facility. Mr. McMillan was unaware members of the CitiCenter Athletic Club are permitted to use the Canal Square YMCA on weekends.

Balch Street is a newer facility, however, it is not in the best of neighborhoods. At times, the people using the Balch Street facility are the same people Officers are dealing with on the street, and Officer safety becomes an issue. If reporting to the facility on the way to or from work, an Officer will be required to leave his firearm in his vehicle, running the risk of the vehicle being broken into.

Mr. McMillan was questioned regarding his being uncomfortable working out with people he has encountered in the criminal justice system. Mr. McMillan has checked the database, and there have been several vehicle break-ins in the past five years, as well as several fights. Mr. McMillan admitted there have also been fights outside the Police Station. Mr. McMillan was questioned regarding problems with working out with people he encounters during the course of his duties as a Detective. Mr. McMillan responded that when on the job he is alert for different situations that may arise, but when working out, he should be focused on working out and not be concerned with someone dropping a weight on his head. There is a level of vulnerability while in a locker room, in the shower, changing clothes, and working out, that does not exist when on the Department carrying his weapon and wearing his badge.

Mr. McMillan indicated he is a member of the Green YMCA. That YMCA is a newer facility with an entire array of state-of-the-art equipment, and YMCA members are entitled to workout in any of the six area YMCA facilities. Parking is free, the hours are convenient, and the YMCA at Green is open seven days a week. The annual membership cost for one adult is \$512.48. When the Union approached the City regarding reimbursement for membership in the YMCA, the City was not receptive.

Mr. Hlynsky stated the fitness room in the Police Station is very small, and it is difficult to have more than a few Officers working out in the room at the same time. More importantly, Mr. Hlynsky continued, most of the equipment in the fitness room has been purchased by the

FOP or purchased with funds donated by the Bluecoats. Whenever a request is made of the City for equipment for the fitness room, the request is denied. The Union offered to purchase paint for the fitness room, and requested the City provide the labor for the painting. That request was declined, and the Union had difficulty having the room cleaned and sanitized by the City.

Officers can be disciplined for failure to maintain a certain level of fitness, Mr. Hlynsky explained, and during negotiations, in response to the City's proposal regarding the fitness allowance, the Union's counterproposal was to discontinue discipline of Officers for failure to maintain fitness. The City did not respond to the Union's counterproposal.

#### THE FACT-FINDER'S RECOMMENDATION

Whether the fitness allowance was a disguised wage increase, as the Union insists, or was payment for membership in a fitness facility or the purchase of exercise equipment, as the City maintains, to now remove the \$300.00 annual fitness allowance is tantamount to a permanent one-half percent wage reduction. As this Fact-Finder has previously noted, based on Mr. Suponcic's analysis of finances for the first half of 2010, that reduction is not justified, especially in light of the low relative wage position of Akron's Officers compared to other Police Departments.

The removal of the \$300.00 fitness allowance would also be unfair to Officers who have purchased memberships in facilities such as the YMCA, or purchased equipment for home use. Regarding the City's argument Officers do not need to account for the \$300.00, it is noted Officers who fail to maintain a certain level of physical fitness, do so at their own peril in that discipline can ensue. This, as Mr. Masturzo noted, serves somewhat as accountability for the funds.

Finally, Officer safety is an important issue. It is unreasonable to expect an Officer to work out in a facility where he may find himself alongside a person with whom he had a less than congenial encounter while serving in his capacity as a Police Officer. The Fact-Finder is mindful this point is only applicable to the Balch Street facility, however, that limits an Officer's choice of facilities to the Police Station fitness room, which is too small for more than a few Officers at one time, or CitiCenter, the location of which some Officers find inconvenient.

In view of the above, as well as the negligible savings to the City by removal of the \$300.00 fitness allowance, it is the recommendation of the Fact-Finder that the City's proposed new language not be included in the Parties' Labor Agreement.

## LONGEVITY

### THE CITY'S PRESENTATION

Currently there are two longevity programs in existence, referred to as Longevity I and Longevity II. Mr. Masturzo explained the operation of the two programs. In 1977, the City devised the Paid Leave program, wherein an Officer's sick leave, annual leave, and longevity are all placed into the Officer's bank. Under the program, Officers accumulated hours based upon their years of service. If an Officer accumulated six hours per week, for example, over a year that Officer will have accrued three-hundred-twelve hours.

The Longevity I payout is calculated by taking five percent of the Officer's total accumulated hours multiplied by the Officer's hourly rate. The hours used in the calculation, that is, five percent of total accrued hours, is then deducted from the Officer's bank. Continuing with his example, Mr. Masturzo explained an officer with three-hundred-twelve hours in his bank would have his longevity payout calculated by multiplying three-hundred-twelve by five percent. The resulting fifteen hours is multiplied by the Officer's hourly rate, and the fifteen hours then deducted from the Officer's bank.

In 1988, the FOP proposed the Longevity II program. It was the FOP's argument the payout under Longevity I was non-pensionable, and Officers with twenty years service or more were looking to retirement. A Police Officer's pension is based on his high three-year average, and an Officer approaching retirement desired increased pensionable wages. The Union proposed Officers with twenty years service or more be permitted to opt out of Longevity I, and into a pensionable Longevity II program. The City agreed to the proposal.

Pursuant to Longevity II, a Patrol Officer would receive as additional wages 3.1% of the top step of Patrolman salary. Weekly accumulation under Longevity II was reduced to 5.52 hours per week in year twenty, and subsequently reduced by approximately 1.4 hours per week for each year over twenty. The resulting wage increase pursuant to Longevity II raised the Officer's three-year average. In return, Officers in Longevity II received less of a weekly accumulation than Officers in Longevity I.

The Union proposes using pensionable credits as opposed to City seniority in Longevity II. Ms. Donel maintains the Union's proposal regarding Longevity II would result in a programming nightmare. The current system records the Officer's date of hire, service date, and job entry date. There is no field in the system to account for prior OP&F approved service or service with the military. Changes to the system will result in programming difficulties and expense, may result in downtime, and with a weekly payroll the City cannot afford to have the system down more than a day.

#### THE UNION'S PROPOSAL

The Union begins with a clarification of what it terms a confusing policy in Akron. The City created a Paid Leave program. It is not Longevity money, it is only vacation and sick leave that accumulates in the same bank. Upon retirement, Officers receive a 100% payout for hours accumulated. Because of the amount of payout liability when an individual leaves the Department, both Parties would like to drop the accumulation down over the course of an individual's career.

Officers do not receive sick leave or vacation; instead, Officers receive Paid Leave. The number of hours accumulated per week is based on seniority. The hours of Paid Leave Officers are permitted to take as vacation is limited. Vacation less in duration than the maximum permitted may be taken, subject to a minimum, with the difference being left in the bank. That is, the program is not a "use it, or lose it" policy as found in some cities. Within Contractual limits, Paid Leave may also be used for sick leave.

Longevity is not additional money. It is a way to pay down some of an Officer's accumulated leave. This is beneficial to the Officer and the City. There is no additional cost to the City for longevity, as there is in some other cities. The Longevity I program encompasses each Officer on the Department over five years, unless the Officer elects to move into Longevity II. Under Longevity I, five percent of Paid Leave hours are converted to cash, and a check issued. This is not an option, an Officer may not keep the accrued five percent in the bank.

The Union proposes the individual Officer be given the option to forego Longevity I payment in any given year or years, and keep the hours in his bank. The Union believes some Officers will elect the payout, and others will prefer to keep the time in their banks. This proposal, the Union contends, will save the City money long term.

Regarding Longevity II, at twenty years of service, or any time thereafter, an Officer may elect to participate in the Longevity II program. It makes no sense, the Union believes, not to permit Officers with, for example, eighteen years of service to participate in Longevity II. Moreover, not one time since this issue was placed on the table last Fall, and after many lengthy discussions, has the City brought up a software issue. If an Officer elects to participate in Longevity II at eighteen years of service rather than twenty, the Union believes, it doesn't make sense a new software program will be required.

In Longevity II, the payout is three percent rather than five. Paid Leave is accumulated as in Longevity I, the reduction in hours banked is lower, but Longevity II is pensionable. The pension system is governed by state law and is outside the control of the Union or the City. A Police Officer is entitled to a pension at the age of forty-eight and twenty-five years service. The twenty-five years can be earned in a number of ways. For example, if a Police Officer in Stow transfers to Akron as a new hire, his pension credits transfer with him. This applies to transfers between any city or department, as long as the individual is in the pension system.

Pension time can also be purchased. If a person served in the military, that person can purchase time for his military service. The purchase of time in the pension system is expensive. Mr. Leslie purchased three years for his military service at a cost of \$22,000.00. The purchased time is then counted toward the twenty-five years of service needed for retirement. The Union proposes pension years rather than years of service with Akron be the determinative factor in when an Officer can elect to participate in Longevity II. Under current Longevity II, if an Officer purchased time for purposes of pension, that person's last three years will not be years twenty-two through twenty-five. In Mr. Leslie's case, they would be years nineteen through twenty-two.

The Union proposes a lowering of the years of service when an Officer can elect to participate in Longevity II from twenty to fifteen. To be eligible to exercise the option at fifteen years, the Officer must prove to the City he has twenty years of service credit. To continue with Mr. Leslie as an example, with his purchase of three years he would be able to elect Longevity II in year seventeen. This ensures his last three years are his highest paid.

In that Mr. Leslie purchased three years of pension credits, he will be eligible for retirement after twenty-two years on the Department. If Mr. Leslie elects to enter Longevity II at

twenty years of service, and elects to retire at twenty-five years of pension credits, one year of the increased wages pursuant to Longevity II will be lost.

Lowering the years for Longevity II eligibility results in a cost to the City, but it is negligible. The only cost to the City is its 19½% pension contribution, however, as the result of the reduction in accumulated hours in an Officer's bank, the City's payout when the Officer leaves service with the City is less. That is, the City is paying over time at a cheaper rate. The whole purpose of the Longevity II program is to allow Officers to increase their pensions by increasing their incomes through the sale of time back to the City.

The move from Longevity I to Longevity II, being based on City seniority, does not entirely help Officers who have pension credits as the result of service with other cities or time purchased. Those employees lose part of the benefit of increasing their incomes through Longevity II. A number of Officers are in that position because they are veterans. Veterans especially, the Union believes, should not be denied the complete benefit of Longevity II.

In the last seven years, Mr. Leslie processed the paperwork of approximately twenty-two individuals for transferring service time and purchased military time. This includes only those individual who requested Mr. Leslie's assistance, however, Mr. Leslie indicated people have no idea how to process the paperwork and do not attempt to do so on their own. Mr. Leslie stated that while the actual number of individuals in this category is unknown, he estimates that total at forty Officers at most. The cost to the city for its pension contribution is approximately \$300.00 per individual.

#### THE CITY'S REBUTTAL

Under current economic conditions, this is not the time to ask the City to subsidize service accrued in cities other than Akron. While the Union's proposal on behalf of its members is well intentioned, it should not be at the cost of the City.

#### THE UNION'S REBUTTAL

The City has lost through attrition approximately eighty people. By the first week of January 2011 another twenty-seven people will be leaving. Three of those Officers are moving to other Police Departments. This has decreased the City's payroll. Upon questioning, Mr. Leslie estimated the payout cost to the City for each person leaving at \$30,000.00 to \$60,000.00. However, Mr. Leslie added, there are provisions in the Labor Agreement which permit the City

to decrease the accumulated hours, thereby reducing its liability when an Officer leaves. Mr. Leslie stated the City was aware years ago how many officers would be leaving, yet did nothing to limit its liability.

#### THE FACT-FINDER'S RECOMMENDATION

The difficulty with the Union's Longevity I proposal, in the view of the Fact-Finder, arises from the point an Officer may opt out of receiving a Longevity I payout in any year, thereby increasing the City's liability at the time the Officer leaves employment. This is contrary to the Union's statement both Parties desire to limit the accumulation of Paid Leave hours over the course of an individual's career. It is also contrary to the Union's point longevity is a way for the City to pay down accumulated leave.

A difficulty with the Union's proposed Longevity II modification may arise from Ms. Donel's point regarding programming problems by changing time for Longevity II computation from City seniority to pension credits. Such a change, Ms. Donel stated, will result in added reprogramming time and expense and possible downtime of the City's payroll system. In the view of the Fact-Finder, bringing up programming difficulties for the first time at the Fact-Finding Hearing is ambush, resulting in the Union not having time to properly investigate and rebut the claim, and Ms. Donel's statement would generally be given no weight.

That point notwithstanding, the number of Officers affected by the Union's proposed modification of Longevity II is minimal, and the Union's proposal should probably be implemented at some point in the future when the Parties have more time to consider all ramifications of needed software changes, if any.

It is the recommendation of the Fact-Finder the Union's proposed changes not be incorporated into the Labor Agreement.

MEMORANDUM OF UNDERSTANDING – HEALTH INSURANCE  
ORDINANCE 377-2007 – DENTAL INSURANCE  
ORDINANCE 377-2007 – IMMUNIZATIONS

The issue of health insurance encompasses six sub-issues: reopeners, payment of premiums, prescription drug co-pay, spousal restrictions, dental, and immunization of children. Both Parties have proposals on the table.

THE CITY'S POSITION AND ARGUMENT

Mr. McLeod provided an overview of the City Healthcare Program. The healthcare medical plan is comprised of two parts, the base plan in which employees do not have a co-pay or deductible, and a major medical program that has a deductible of \$100.00 for a single insured, and \$200.00 for a family. The major medical program typically pays 80% of costs incurred.

Healthcare also has a prescription plan in the form of a three-tier program. Under the program, the employee pays \$4.00 for generic drugs, \$8.00 for preferred drugs, and \$16.00 for non-preferred brands. Those co-pays are for thirty-four day supplies. For ninety day supplies, co-pays are less, \$2.00, \$4.00, and \$20.00 respectively. The City also has a dental program, for which there is no deductible, and covers most procedures. Most dental services are paid 100%, however, major restorations such as dentures, bridgework, and orthodontics are paid 60%. Dental and orthodontic payments are also subject to annual limits. Finally, the City has a vision benefit, with no deductible, subject to certain limitations.

Healthcare is provided to all full-time employees at no premium cost. All Akron's retirees are covered with a slightly different arrangement. Retirees' healthcare is provided through one of the pension boards, and Akron supplements that healthcare.

In 2008 the cost of healthcare to the City was approximately \$27,400,000.00, or \$12,400.00 per employee. In 2009 the cost increased to \$29,100,000.00, or \$13,700.00 per employee. The city is experiencing about a 10% increase in healthcare costs per year, and the City expects a 10% increase in 2010, to approximately \$15,000.00 per employee. Eligible dependents under the plan are the employee's lawful spouse and dependents up to age nineteen, or age twenty-three if the employee can claim the dependent under IRS regulations. Pursuant to national healthcare reform legislation, effective February 2011 all dependents to age twenty-six must be covered without regard to tax status, provided the dependant is unable to obtain

coverage on his own. The federal government has estimated a 1% financial impact. For Akron that will be in the range of \$300,000.00.

Akron is self-insured, and its costs are primarily driven by claims. Additional costs are in the form of payment to a third party to administer the plan, and payment for stop loss coverage. For 2010 the City budgeted \$1,200.00 per month for each employee, but it is Mr. McLeod's opinion costs will exceed the budgeted amount.

The City proposes, effective July 1, 2010, employees pay \$40.00 per month for individual coverage and \$80.00 per month for family coverage. For prescriptions, the City proposes changes in the co-pays for ninety-day supplies from \$2.00, \$4.00, and \$20.00 to \$8.00, \$16.00, and \$50.00. For the FOP Bargaining Unit, the City will realize savings of about \$38,000.00 annually in prescription savings under its proposal. The AFSCME Bargaining Unit and the Firefighters have agreed to the City's prescription proposals effective January 1, 2011, and those unions agreed to monthly premium contributions of \$20.00 for individual coverage and \$40.00 for family coverage effective January 2012. Under the City's proposal regarding premiums, the savings to the City will be approximately \$400,000.00 per annum.

The City proposes new language entitled Spousal Coverage. There are a number of Employers paying employees not to accept healthcare coverage. In some instances, the spouses of Akron employees being paid not to accept coverage with their Employers end up with coverage under Akron's plan. Other employers also require that when an employee's spouse has coverage available, the spouse must take that coverage. Akron proposes that if a spouse has coverage through another employer, the spouse must accept that coverage and will not be covered under Akron healthcare plan. If the expense of the spouse's coverage exceeds \$150.00 per month, the City may waive the spousal coverage requirement.

SERB's "Annual Report on the Cost of Health Insurance in Ohio's Public Sector for 2008 – 2009," indicates 25.7% of cities now have some sort of spousal restrictions. Mr. McLeod indicated Toledo, Barberton City Schools, and Canton in the public sector all have spousal restrictions, as does Goodyear Tire and Rubber in the private sector. Mr. McLeod indicated there is no question spousal restrictions will result in cost savings to the City, however, the amount is unknown due to insufficient data regarding how many spouses are employed, of those that are employed the number that are offered healthcare coverage, and of those offered coverage the number required to pay over \$150.00 monthly.

Mr. McLeod surveyed seven of Ohio's other large cities, and discovered Akron is the only city of Ohio's "big eight" to not charge employees a premium for coverage. Akron's co-pays, deductibles, and co-insurance are very competitive and in some instances lower than other cities. Mr. McLeod performed the same survey for Barberton, Cuyahoga Falls, Kent State University, Summit County, the University of Akron, and Youngstown, and determined only Cuyahoga Falls did not charge premiums. The other entities charge premiums, and in most cases are similar to, or more than, the premiums Akron is proposing.

Regarding prescriptions, of Ohio's big eight cities with the exception of Dayton, Akron employees have the lowest co-pays. Dayton employees' prescriptions are covered under the medical plan and applied toward the deductible. Of the cities in the Akron area, the two universities, and Summit County, Akron co-pays are again the lowest. The City pointed out that with its proposed co-pays, Akron employee co-pays will remain the lowest.

SERB's Annual Report on the Cost of Health Insurance also contains the monthly health insurance premiums paid by employees. For employers with one-thousand or more employees, employees each contributed \$48.00 each per month for individual coverage and \$148.00 for family coverage. Additionally, statewide more than 75% of medical plans have premium sharing.

Mr. McLeod examined the Union's comparables regarding healthcare, and felt some of the information was incorrect and some needed to be updated. The Union's table of comparables indicates Cleveland Police contribution to healthcare to be zero. In reality, Mr. McLeod stated contribution is \$25.00 for individual and \$50.00 for family coverage. The figures for Columbus are not the amounts indicated of \$57.40 for single and \$114.80 for family coverage. Correct amounts are \$32.12 and \$114.94 respectively. Cincinnati is indicated as \$12.00 single coverage and \$35.00 family. In actuality, the figures are \$16.30 and \$44.98. The figures for Barberton are not the \$15.00 and \$25.00 indicated, but, after concessions, the figures are now \$108.33 and \$195.00. Fairlawn's are not the \$10.00 and \$20.00 indicated, but are \$19.00 single and \$57.12 family.

In light of the unknowns resulting from the recent overhaul of the nation's healthcare system, the City is requesting a healthcare reopener in the final year of the Contract. At that time, the City anticipates reviewing plan design, the manner of financing recent healthcare reform measures, employee contributions, coinsurance, and any other issues affecting the cost of healthcare.

Upon questioning, it was reiterated the City has five Bargaining Units plus non-Bargaining Unit employees. The City recently settled three-year Contracts with Fire and AFSCME for 2010 through 2012. Regarding the Fire and AFSCME Contracts, the City dropped the spousal restrictions issue and there is no healthcare reopener in either Contract. The City is in the second year of three-year Contracts with CSPA and Nurses. Regarding healthcare, Mr. McLeod was unsure if CSPA was locked in for the next two years, but recalls healthcare is locked in the next two years with the Nurses.

No one in the City, with the possible exception of the FOP, will have the spousal "carve-out" at least for the next two years. Fire and AFSCME will not have the spousal restrictions for the next three years, and currently there is no legislation before City Council to apply spousal restrictions to non-Union employees. When queried why spousal restrictions is on the table for the FOP, Mr. McLeod responded it remained on the table since negotiations began, and is part of the package from which the City is attempting to reach concessions of 5½%. The premium proposal with the FOP is double the premiums negotiated with Fire and AFSCME, and the City is locked in with no premiums for everyone else.

#### THE UNION'S PROPOSAL AND ARGUMENT

Akron pays for Lasik eye procedures, and, the Union states, it is unaware of a city in Ohio that pays for Lasik. Akron will not pay for immunization for children, and the Union is unaware of a city in Ohio that excludes immunizations. In Akron there are things not covered that should be, and procedures covered that nobody else covers.

The current plan has been in existence for decades, and is antiquated. In 2006 and 2007, the unions got together and hired a consultant, and the City hired a consultant. The two consultants worked together fairly well, considered various plans, and plans were put out for bid. The process that occurred in 2006 and 2007 was very good, and very rare. When the unions are involved in healthcare, they learn a great deal more about the City's program and what is available. More importantly, the City gets Membership buy-in. The Members understand their Union likes a particular plan and that it will save money, making it easier for the Membership to accept the healthcare plan.

In addition, when healthcare administrators are aware unions are at the table with an Employer, better bids are obtained. There are employers with effective healthcare committees,

and this enormously affects premiums, or the equivalent in the case of a self-insured Employer. This is much more effective than simply accepting 10% annual increases. The City's contract with Medical Mutual expires January 31, 2011. What the City does is place healthcare out for bid as if it were not self-insured. The City does not write the program, it is a Medical Mutual program.

The City and the FOP both have reopener language, but the language of the Parties' proposals is different. The Union's reopener kicks in a year earlier than the City's, but only if the City places requests for bids and does not simply sign on Medical Mutual's dotted line. With bids, the Parties will have data, and the City will have Union involvement. The Union believes it is virtually impossible during Contract negotiations to deal with plan design. The Union is proposing an opportunity for the Parties to consider plan design midterm, and bid out alternate plans as well as the current plan. In such a context, the Union believes, meaningful dialogue is exchanged between the Parties, and philosophical issues discussed, as, for example, whether the Membership pays premiums or pays more for doctor visits.

If the FOP and the City are successful in obtaining alternate coverage, the City will then have the opportunity in January 2012 to present the plan to the Nurses and CSPA. The City could also request discussion with Fire and AFSCME regarding the alternate coverage. The FOP is taking a big risk in this ever-changing field, but the Union feels this is the only manner to force the City to take a meaningful look at healthcare.

The Union notes the premiums on the table for the FOP are far worse than what is imposed on anyone else in the City. No one is paying a penny for the next two years, and two unions that agreed to \$20.00/\$40.00 in 2012 have reopeners at that time. Under the Union's proposed language, the premium change and the co-pay could end up in this Contract, but only if bid out and the Union is involved through the Health Insurance Committee.

Regarding dental coverage, the Union proposes adding dental implants to Class III services. The current plan is outdated, the Union contends, and its proposal will update the plan to reflect modern dental practices, and will result in no cost to the City in the long run. Under the plan as currently configured, if an employee has a bad tooth, the tooth is pulled. The option to the employee is a bridge, and a bridge compromises the integrity of the two contiguous teeth. Under modern dental practice a dental implant is easily performed. The implant falls under Class III services, has a \$1,500.00 maximum, and will not result in greater cost to the City.

Regarding immunizations, well-baby care is capped at \$500.00 from birth to age one, and \$150.00 per annum for ages one through nine. If a child needs immunizations for school, the doctor may charge \$75.00 to \$100.00 for the office visit, leaving only the remainder of the \$150.00 for immunizations. The employee then pays anywhere between \$300.00 to \$500.00. The Union is not asking the entire amount be paid, it is asking that once the maximum is reached, immunizations switch to 80/20, with the employee paying 20% as with everything else under major medical benefits.

The Union believes immunizations and dental can be fixed immediately, and the reopener will permit the Parties to comprehensively review the entire policy in 2011. The City's reopener is in the third year of the Contract, after the City is locked into a healthcare plan with Medical Mutual or other third-party administrator. When the City pointed out Lasik was added to healthcare at the request of the Union, and the Union was asked if it wanted to do away with Lasik, the Union responded in the negative. The Union said it wants to step into the modern era, and indicated it wants Lasik, dental implants, and immunization.

The Union states that the Mayor at election time has repeatedly stated in speeches that his employees do not pay for health insurance, and that he provides health insurance to retirees. The City has provided health care without cost, and as a result, wages are lower.

#### THE CITY'S REBUTTAL

Mr. McLeod wanted to clarify the manner of placing bids with insurance carriers. As with any self-insured, the City dictates the plan's design, that is, what is and is not covered, the deductibles, and so forth. The insurance carrier in the case of a self-insured Employer acts as a third-party administrator. As a third-party administrator, the carrier agrees to administer the plan at a certain cost, and sets certain insurance amounts.

When Mr. McLeod received the Union's proposal regarding immunization, he had the City's third-party administrator, Medical Mutual, provide the cost of the immunizations. The cost for the FOP only, not the entire City, is \$19,000.00 per year. Mr. McLeod also indicated he has been following trends regarding dental implants, and has had discussions with both the previous and current carriers. Mr. McLeod emphasized the majority of plans do not cover dental implants due to the cost. Mr. McLeod contacted the current dental plan, and inquired the cost of the Union's proposal to the City. For the FOP only, the cost is \$16,000.00 per year.

Unfortunately, Mr. McLeod added, even if there will be savings in the long run, the City must get through current economic conditions and cannot wait for long term costs to decrease.

Ms. Rubright argued the Union has attempted to portray the City as being punitive toward the FOP. All unions were involved in negotiations, Fire and AFSCME's have concluded, and they gave the City over \$1,500,000.00 in concessions. Those unions received the benefit of a bargain. If those unions received lower premiums than the premiums on the table for the FOP and those unions do not have spousal coverage, those are the Agreements those unions negotiated after giving concessions to the City.

Through seven days of Fact-Finding the FOP has made statements saying they are agreeing to a zero percent wage increase in 2010, but they want a wage increase the next year and the year after, they want longevity increases, they don't want to pay premiums, and the like, and the City is treating them poorly because it did not give them the same deal it gave other unions. Those claims, Ms. Rubright stated, are outrageous.

Many of the issues currently on the table would not be here had the Union provided some concessions. The City is not asking for spousal restrictions or premiums to be nasty to its Police Officers. This is about cutting City costs. The City is facing serious financial issues, and everything from the Union is that "it won't cost the City that much." The City cannot afford increased costs for healthcare. The City is constantly looking at new plans. The City wants a healthcare program so all the unions are on board in 2012, not just the FOP.

#### THE UNION'S REBUTTAL

The Union has stated all along that a reality check of the City's finances is needed. The Union has established that while financial problems exist, after an independent reality check, the crisis is exaggerated.

#### THE FACT-FINDER'S RECOMMENDATIONS

The City's proposal regarding spousal restrictions is reasonable, and, in the view of the Fact-Finder, needed to stay abreast of changes in Employer healthcare. For the City to cover an employee's spouse in order to permit the spouse to gain additional compensation from his Employer, is beyond the purpose and spirit of the Employer provided healthcare. A difficulty with the City's proposed spousal restriction arises when the spouse's healthcare contribution is cost prohibitive. In such a situation, the Fact-Finder believes the waiver of spousal restrictions

should be mandatory. The Fact-Finder is mindful no other Union has a spousal restriction provision, however, that point notwithstanding, as well as the fact strong patterns between unions do not appear to exist, the Fact-Finder recommends Ordinance 377-2007 be amended to include the following language:

If a bargaining unit member's spouse is employed and is eligible for medical, dental, vision or prescription insurance through his/her employer, the spouse must enroll with that employer's coverage. In the event that the spouse's monthly premium exceeds \$150, the City of Akron shall waive the spousal coverage requirement.

If an employed spouse fails to enroll with his/her employer's coverage, the spouse will be ineligible for coverage under the City of Akron's plan.

For coordination of benefits purposes, the spouse's employer's plan will be primary for the spouse and the City's plan will be secondary.

All bargaining unit members must complete any verification documents required by the City of Akron.

The Fact-Finder finds compelling the Union's arguments regarding its proposed reopener of healthcare on February 1, 2011. Employer and Union collaboration on health care issues have proven successful for other Parties, and may prove successful between Akron and the FOP. Such a collaboration may result in the Parties hammering out a comprehensive, less costly plan that is acceptable to all the City's unions.

The Fact-Finder recommends the following language be added to the Parties Memorandum of Understanding regarding health insurance:

The parties recognize that the current hospitalization, prescription drug, dental and vision plans expire on January 31, 2011. In the event the City, working through the Health Insurance Improvement Committee, issues a Request for Proposals for health insurance, prescription drugs, vision and/or dental and requests bids for the current level of benefits as well as alternate design plans, then the City may reopen the issue of health insurance effective February 1, 2011. Any modifications to health insurance shall be mutually agreed between the parties and are subject to ratification.

For the remainder of the healthcare sub-issues, the Fact-Finder agrees with the arguments of the City. Increasing costs through modification of the immunization benefit, and the addition of dental implants to the dental plan, is unwarranted at this time. It is the recommendation of the Fact-Finder that the Union's proposed language regarding immunization and dental implants not be included in the healthcare plan.

The agreement the Fact-Finder has with the City's proposal regarding premiums and prescription co-pays is with slight modification to bring those co-pays into line with those of Fire and AFSCME. Regarding premiums, the Fact-Finder recommends Ordinance 377-2007 be amended with the following language:

Effective January 1, 2012 eligible permanent full time bargaining unit members shall be required to pay a portion of the premium cost for medical coverage as follows:

\$20 per month for individual coverage

\$40 per month for family coverage

Regarding prescription co-pays, the Fact-Finder recommends current prescription language be amended as follows:

Effective January 1, 2011 every eligible permanent full time bargaining unit member shall be required to pay the following amounts:

For mail order and retail 90 day programs to fill prescriptions, co-pays will be increased to \$8 for generic drugs, \$16 for formulary brand name drugs and \$50 for non-formulary brand name drugs.

## ARTICLE XVIII – HOLIDAY PAY

### THE CITY'S PROPOSAL AND ARGUMENT

The City proposes to delete Picnic Day as a holiday, and to eliminate premium pay for five holidays.

In the City of Akron, there is something known as Picnic Day, and, twenty-five or thirty years ago, the entire City would shut down. That doesn't happen anymore. Akron continues to maintain the day as a holiday, however, it has outlived its usefulness and is too expensive. The City proposes the removal of Picnic Day as a holiday.

Additionally, the City proposes the holidays of the Friday after Thanksgiving, President's Day, Columbus Day, Veteran's Day, and National Peace Officer's Memorial Day, no longer be considered premium-pay holidays.

Ms. Miller-Dawson explained Picnic Day costs the City about \$35,000.00 for the FOP. Regarding premium pay for the five holidays, Fire and AFSCME both gave up premium pay for those days, and under the City's proposal Police Officers will also receive straight time instead of time-and-a-half.

Ms. Rubright stated the City's proposals are strictly a cost savings measure for the City.

### THE UNION'S ARGUMENT

For all other City employees, Picnic Day was changed to a personal day. Changing Picnic Day to a personal day for the FOP is something this Bargaining Unit can live with. That is a concession in that Officers working that day lose their overtime. Losing the day entirely, however, when no one else in the City lost the day, creates a problem for this Bargaining Unit.

In the past the City would close down for Picnic Day, and non-Safety Forces received the day off. Non-Safety Forces did not want that particular day off, they wanted off on a different day. When Picnic Day was changed to a personal day for non-Safety Forces, it was a benefit to those employees. In that Safety Forces operate on a twenty-four hour, seven-day per week basis, Safety Forces could not take the day off, and bargained for overtime.

Like many of the City's proposals, this proposal is a straight financial giveback. This Union voluntarily gave up overtime on three holidays in 2009 as part of an agreement to rescind ninety-six layoffs. That agreement had the same two conditions discussed previously, it was temporary, and tied to a no-layoff guarantee. This Union continues to oppose any permanent reduction in the finances of this Contract. The City's proposal is exactly the same as cutting Officer wages.

#### THE FACT-FINDER'S RECOMMENDATION

Without elaborating further than what has been stated in previous issues, the Fact-Finder is not convinced the City's finances call for the permanent cessation of premium pay for the five holidays enumerated by the City. The Fact-Finder recommends against including such a provision in the Parties' Labor Agreement.

Regarding Picnic Day, the Fact-Finder cannot agree the day should be permanently converted to a regular workday. The Union acquiesced to Picnic Day being converted to a personal day, and it is the recommendation of the Fact-Finder that Picnic Day be so converted.

#### ISSUES OF TENTATIVE AGREEMENT

In addition to the issues at impasse, the Parties have made proposals, concessions, and withdrawal of proposals in the course of bargaining. Tentative Agreement has been reached on the following issues:

- General: Anywhere in the CBA where it states "Deputy Mayor/Labor Relations," the language shall be changed to "Deputy Mayor/Labor Relations or Labor Relations Director."
- Article IV, Amendment
- Article V, Grievances and Arbitration
- Article VII, Internal Investigation Procedure, Section E 2
- Article XII, Seniority, Section B

- Article XVI, Overtime
- Article XXIII, Election of Remedies, Section D
- Article XXV, Term
- Update all letters and other dates in Agreement as applicable, except the fitness letter on page 45 is an open issue.
- Agreement between the City and the FOP, Lodge 7 dated September 17, 2010.

It is recommended that the above-identified issues of Tentative Agreement be included in the Parties' Collective Bargaining Agreement.

Dated: September 30, 2010  
Madison, Lake County, Ohio

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Colman R. Lalka, Fact-Finder

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In Re: City of Akron and Fraternal Order of Police, Lodge No. 7  
SERB Case No: 09-MED-10-1137

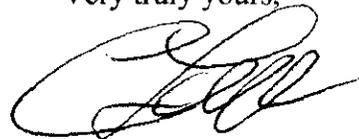
Dear Ms. Kalail, Ms. Rubright and Ms. Muskovitz:

Regarding the captioned matter, enclosed for the City and the FOP please find one copy of the Fact-Finder's Report and Recommendations, together with a copy of an invoice for services rendered. IRS Form W-9 is also enclosed for the City of Akron.

Please review the invoice, provide any necessary approvals, and forward same to the appropriate officer for processing and payment.

Thank you for your kind cooperation in this, and throughout these proceedings. It was a pleasure to work with you.

Very truly yours,



Colman R. Lalka

Enclosures: Report and Recommendations  
Invoice  
W-9 for City of Akron

2010 OCT -4 A 11:01  
STATE EMPLOYMENT RELATIONS BOARD