

# FACT-FINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

2010 JUL 29 P 12:35

## STATE OF OHIO State Employment Relations Board

### *IN THE MATTER BETWEEN:*

CITY OF LORAIN, OHIO  
And  
FRATERNAL ORDER OF POLICE  
OHIO LABOR COUNCIL, INC.  
(Full-Time Detention/Correction Officers)

SERB Case Number 10-MED-01-0006

2009-2010-2011

FACT FINDER: THOMAS L. HEWITT

HEARING DATE: JULY 14, 2010  
REPORT DATE: JULY 27, 2010  
ACCEPTANCE/REJECTION DATE: AUGUST 3, 2010  
*(Via e-mail--hard copy US mail)*

#### APPEARANCES

##### FOR THE CITY

Philip K. Dore, Safety Director

##### FOR THE POLICE

Lucy DiNardo, FOP/OLC Staff Representative  
Jeremy Gray, Correction Officer  
Robert Torres, Correction/Detention Officer

# **FACT-FINDING REPORT**

## **CITY OF LORAIN, OHIO AND THE FOP/OCL DETENTION/CORRECTION OFFICERS' UNIT FACT-FINDING**

### **HELD IN THE OFFICERS' TRAINING ROOM IN THE SAFETY BUILDING IN LORAIN, OHIO ON JULY 14, 2010**

The city of Lorain is located in Lorain County, Ohio 25 miles west of Cleveland on Lake Erie and the Black River. With a population of approximately 65,000, it is known for its ship building industry and steel producing mills.

A few years ago, Lorain closed its jail facilities thereby eliminating the need for detention officer positions. In 2008, the city re-opened the jail and hired three (3) guards to work at the facility. Regular police officers were used to supplement these detention officers in the performance of their duties. The guards were non-union and were paid less than the unionized police officers who rotated work shifts with them at the jail. Subsequently, the newly hired guards became unionized and began negotiations in February 2009 on an original Collective Bargaining Agreement. Progress in negotiation of the Labor Agreement was bogged down and the Union's Representative requested Fact-Finding. Immediately following this request for Fact-Finding, two negotiation sessions were held and at these May 7<sup>th</sup> and May 14, 2010 meetings, progress was made toward several tentative agreements.

In accordance with Ohio Administrative Code 4117-9-05, Thomas L. Hewitt was selected as Fact-Finder and the parties stipulated at the hearing that Fact-Finder Hewitt would comprise the entire panel for this case. A full, fair and complete hearing was conducted in accordance with Ohio Code 4117-14 of the Revised Code. Both parties were provided the opportunity to present evidence and testimony, present, examine and cross-examine witnesses, and make statements and arguments. Open discussions were held and considerable mediation was conducted by the Fact-Finder in accordance with the parties' wishes. In making his findings, the Fact-Finder took into consideration all reliable information relevant to the issues before him and considered the following:

- (a) Past collectively bargained agreements, if any, between the parties;

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

**(c) The 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 of the normal standard of public service;**

**(d) The lawful authority of the public employer;**

**(e) The stipulations of the parties;**

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

**(g) The City of Lorain Financial Review as of 6/30/2010 and fund balances were specifically taken into consideration.**

**Prior to the hearing, the parties sent the Fact-Finder excellent presentations of the issues and their respective positions on each issue, which permitted advanced familiarization and acted as a catalyst in assisting the resolution of many of the issues. Expedited progress on the resolution of other issues was made possible due to both parties' quality presentations accompanied by supporting evidence and documentation. The exceptional cooperative and professional attitude of both advocates further assisted in the resolution of many issues at the hearing. Prior issues resolved but not executed, as well as the issues resolved through mediation at the hearing, were signed off by both parties at the hearing and are attached hereto as exhibits. Two other issues that required further investigation and consideration were redrafted and submitted to the Fact-Finder subsequent to the hearing. Thus we have (1) issues agreed upon prior to the hearing but not executed; (2) issues resolved through mediation; and (3) issues found by the Fact-Finder contained in this report in order to achieve the resolution of a complete Collective Bargaining Agreement.**

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**TERMS OF COLLECTIVE BARGAINING AGREEMENT**  
**2009-2010-2011**

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**FINDINGS**

**ISSUE ONE:**

**Article 10 – Bill of Rights:**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #1

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**ISSUE TWO:**

**Article 11 – Discipline/Corrective Action:**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #2

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**ISSUE THREE:**

**Article 14 – Hours of Work and Overtime Compensation:**

**Section 14.1** The scheduled workweek for all full-time, regular Employees of the Employer in the bargaining unit shall normally consist of forty (40) hours per week, and the scheduled work day shall normally consist of eight (8) hours in a twenty-four (24) hour period, unless a twelve (12) hour work day is implemented, resulting in a work period that shall consist of eighty (80) hours in a two-week period. At no time shall a correction officer be forced to work every weekend, but shall be entitled to two (2) weekend days (Saturday/Sunday or Friday/Saturday) off during fifty (50%) percent of all weekends averaged over the course of a calendar year. For purposes of this Article, paid meal periods shall not be considered compensable working time, but shall in no event cause a reduction in pay or lengthen the basic work day or work week. Assignments shall be posted for a four (4) week period in advance. At no time shall there be less than a four (4) week advance schedule posted on the departmental bulletin board.

**Section 14.2** Employees who are required to work by the Employer more than forty (40) hours in any one-week work period (Sunday thru Saturday), and more

than eighty (80) hours in a two-week pay period while on a twelve (12) hour rotation, shall be entitled to overtime compensation at time and a-half (1½) of their regular base rate of pay for all hours actually worked in excess of eight (8) hours in a work day while on an eight (8) hour rotation, and in excess of twelve (12) hours in a work day while on a twelve (12) hour rotation. There shall be no pyramiding of overtime pay. "No Pyramiding" means there shall be only one premium for overtime. For the purposes of this Section, the work day is the twenty-four (24) hour period beginning with the time the Employee begins work. Such overtime compensation shall be paid in cash or, at the option of the employee, in accordance with Section 14.3 of this Article. For purposes of this Section, any paid leave time shall be considered time worked. The Employer shall have the right to change the beginning of the work period provided that such change is intended to be permanent and the Union is notified forty-eight (48) hours in advance of any such change.

Section 14.3 Any employee may, in lieu of cash payments for all actual hours worked in excess of forty (40) hours in an established 7-day work week, utilize compensatory time calculated at one and one-half (1½) times the excess hours worked. Compensatory time records shall be imputed to the department's record keeping system at the end of the 28-day period. Thereafter, accumulated compensatory time may be taken off by the Employee at the Employee's request and at the discretion of and with the approval of the Chief of Police. Accumulated compensatory time shall be taken off within a reasonable period of time after it is earned and shall in no event necessitate an overtime situation nor create an undue hardship in scheduling or maintaining operations. If compensatory time cannot be taken off within a reasonable period of time after it is earned, the Employee may elect to either be paid the overtime compensation or allow a carry-over not to exceed a maximum of four hundred eighty (480) hours of accumulated compensatory time. During the term of this Agreement, the Employer and the Employees may mutually agree to change work schedules to provide for abnormal shifts or the current work schedule for other Employees. If within one year after a mutually agreed to change in the work schedule, the Police Chief determines the work schedule is unsatisfactory, he may at his option reinstate the previous work schedule.

Section 14.4 Employees who wish to be paid for their accumulated compensatory time may request such payment from the Employer up to a maximum of three hundred sixty-four (364) hours per year, at such Employee's base rate of pay. Payment for accumulated compensatory time shall be made pursuant to procedures mutually agreed upon by the Employer and the FOP/OLC.

Section 14.5 It is the intent of the Employer to distribute overtime, paid through City payroll, as equally as possible, by classification, and with due regard to special bureaus, details and their associated, reasonable, required qualifications and established work performance standards as established by the Department. The Employer shall be responsible for promulgating rules and

**procedures for the distribution of overtime. Such procedures shall contain, at a minimum:**

**(1) In the case of regular shift coverage in the jail due to staffing shortage, provisions to first offer overtime to qualified bargaining unit Employees on scheduled duty, and then call in qualified bargaining unit Employees off duty by order of seniority, but in both cases, based upon the fewest number of overtime hours accrued, or charged according to procedure, during the current calendar year, except in emergency situations.**

**(2) In the case of special details paid through City payroll, provisions to first offer overtime to qualified bargaining unit Employees based upon the least number of overtime hours or charged according to procedure, during the current calendar year, except in emergency situations.**

**(3) Provisions to require the Employer to record, in a timely fashion, all City payroll overtime worked or refused by Employees for any reason, excluding court time, and for the purpose of determining from a group of otherwise qualified bargaining unit Employees, the Employee with the least number of accrued/charged overtime hours during the current calendar year. This Overtime Accumulation List will be made available to all personnel for purposes of inspection and referral on at least a weekly basis.**

**Qualified Employee means any bargaining unit Employee that, by reason of classification, assignment or possession of specific skills and/or certifications, meets the requirements to perform the job or detail requiring the overtime. The Employer, when recruiting personnel for special details involving overtime, must list the specific qualifications required for assignment to the detail, and additionally, may establish reasonable productivity standards that must be met by assigned correction officers to permit continued assignment to said detail.**

**When necessary, as determined by the Chief of Police or his designee, the least senior qualified Employee(s) on duty shall be ordered held over their regular shift in an overtime situation, however, no Employee may work more than sixteen (16) hours, unless mutually agreed to by the Employee and Employer. If there is no apparent volunteer for overtime in the correction officer's bargaining unit, the least senior off-duty corrections officer may be ordered in. No Employee shall be forced to work more than four (4) hours overtime unless the Employer has taken reasonable measures to contact other bargaining unit employees first, and then patrol units assigned to the jail, to determine if they will work the additional hours, or a bona-fide, unanticipated emergency has occurred necessitating the call-out or staffing of certain personnel. Reasonable measures are defined to mean that the Employer has called at least three (3) members of the bargaining unit on the Volunteer Overtime Availability Roster. The Employer is to provide the names of the Employees called upon request. If reasonable measures have not been taken, the Employee's exclusive remedy is an additional two (2) hours**

**straight pay. The Volunteer Overtime Availability Roster will be composed of Employees that are willing to be called while off duty for the purpose of working regular shift overtime, and will be maintained by the Employer. They will remain on the roster for the whole calendar year, however, they may remove their name at any time, with the understanding that they cannot return to the roster until the next calendar year. However, Employees with the least amount of overtime refusal will be placed above those with seniority if the senior Employee has refused overtime more than twice.**

**Any question(s) regarding the distribution of overtime shall be the proper subject of a labor-management meeting.**

**Section 14.6 Any correction officer(s) given a “last minute call” on their shift which requires that officer, or any officer assisting the called officer, to remain on duty beyond their scheduled shift(s) shall, in addition to their regular pay, be paid an additional two (2) hours straight time or the actual overtime pay, whichever is greater. The called correction officer’s supervisor shall determine the need for an assisting correction officer.**

**“Last minute call” shall be defined as any radio/telephone transmission received by an officer within fifteen (15) minutes of his/her scheduled shift completion and which requires the correction officer’s attention for a time span of at least thirty-one (31) minutes from shift end. Included in that time span are the investigation of the incident which gave rise to the “last minute call,” as well as completion and typing of the reports incidental thereto.**

**Section 14.7 Employees who are designated to train other employees in their classification shall receive 1.2 hours compensatory time for each day (8 hours) of training that has been performed in accordance with the criteria establish by the Lorain Police Department. Compensation shall be provided in the form of compensatory time for the first four (4) hours earned in a week with additional hours earned in a week paid in either cash or compensatory time as determined by the City. Cursory familiarization instruction is not considered training time.**

**Section 14.8 Any Employee who is sent to mandatory training for at least three (3) consecutive days and where homework is done outside of hours spent in the training session shall receive two (2) hours compensatory time for each day in which said homework is required, performed and verified by an instructor.**

**Rationale:**

**14.1 Schedules adjusted to dove tail with Police Officers who work at the jail.**

**14.7 Training is necessary in the transportation of prisoners and other special duties. On the job training is normal and does not require special payment and cursory familiarization of a job is necessary on all jobs. The City determines who is designated to train and when training is necessary. Training is an extra duty in the City’s other bargaining units.**

**No Exhibit #3**

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**ISSUE FOUR:**

**Article 22 – Insurance Coverage**

**Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #4.**

**This is Dispatchers' health insurance contract language excluding dental benefits. Includes "me too" for 2011.**

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**ISSUE FIVE:**

**Article 23 – Clothing Allowance**

**Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #5**

**Amount \$ 650.00. Understanding that the Employer has the right to establish and change minimum uniform standards and is responsible for increased costs in such changes. The cost of the established initial uniform requirements is to be borne by the Employer.**

**Paragraph 23.4 is deleted.**

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**ISSUE SIX:**

**Shall read:**

**Article 24 – Educational Reimbursement**

**Section 24.1 An educational reimbursement program is hereby adopted for the benefit of Employees of the Employer in the bargaining unit. The purpose of the program shall be to provide limited financial assistance to Employees who take job-related educational courses outside regular working hours on a voluntary basis for self-improvement.**

**Section 24.2 The Scholarship Loan Program (formerly the Educational Reimbursement Program) is based on a 5 year service commitment after any reimbursement to be prorated by each year of service. For example: If an officer takes a class in 2008 that costs \$ 2,000, they have a 5-year commitment from the time of reimbursement. If they leave prior to the end of that five (5) year commitment, the prorating would be as follows: after 1 year, \$ 1,600; 2 years, \$ 1,200; 3 years, \$ 800; 4 years, \$ 400; and 5 years, \$ 0. This section will take effect for any reimbursement commencing in 2010 and thereafter.**



**A. Approved criminal justice/crime-related field of study courses that will tend to improve the employee's performance in his current position; or,**

**B. Approved criminal justice/crime-related field of study courses that will help prepare the employee for future assignments with the Employer for which the employee might reasonably be expected to qualify; or,**

**C. Approved criminal justice/crime-related field of study courses that are a part of a curriculum leading to a degree in the fields listed below:**

- (a) Police Science/Police Administration**
- (b) Criminal Justice/Criminal Justice Administration**
- (c) Criminology**
- (d) Forensic Science/Criminalities**
- (e) Juvenile Science**
- (f) Corrections/Correctional Administration/Probation-Parole**
- (g) Criminal Justice Planning/Evaluation**
- (h) Judicial Management/Court Administration**
- (i) Behavioral Science/Psychology**
- (j) Computer Informative Service**

**Section 24.3 Employees will be permitted to enroll in either credit or non-credit regular courses offered by accredited and approved colleges and universities and seminars and workshops specifically conducted for the benefit of law enforcement personnel. Since only non-work-hour courses are eligible for approval under this program, a schedule will be approved only when it is reasonably certain that the course work will not affect the Employee's health or job performance. Approval of the course work must be obtained from the Employer at least one (1) month prior to the first meeting of the class.**

**Section 24.4 The City shall reimburse, *up to a maximum expenditure of \$5,000.00 per year to the TOTAL Employees covered under this Agreement*, any cost for tuition upon successful completion of courses taken in the field of Criminal Justice/crime-related fields of study as defined in Sec. 24.2. For purposes of this Section, "satisfactory completion of course work" shall mean the Employee receiving a passing grade of "C" or better, or a grade of 2.0 or better on a 4.0 grading scale.**

**Section 24.5 Under no circumstances shall educational aid be granted for covering the costs of textbooks, materials, examination fees, or transportation. No tuition aid shall be granted for the part of tuition fees covered by scholarships, financial aid, or other educational benefits.**

**Rationale:**

Education reimbursement is job-related and is contained in Police Officers' bargaining agreement and Police Officers are utilized in performing the same duties in the jail. Section 24.2 is limited in scope to comply with differentiation from Police Officers.

**No Exhibit #6.**

**ISSUE SEVEN:**

**Article 29 – Injury-On-Duty Benefits**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #7

**ISSUE EIGHT:**

**Article 31 – Wages and Leads and Indentix Proficiency Pay**

Change in title to> **Article 31 – Wages**

**THE FOLLOWING WAGES ARE ISSUED BY THE FACT-FINDER:**

**WAGES**

**Detention/Correction Officers**

**2009**

**\$ 500.00 Bonus - Already paid for 2009 (received in 2010)**

.....  
.....

**2010**

**(Hourly)**

<b>Start (Probationary rate)</b>	<b>\$ 13.2460</b>
<b>6 Months</b>	<b>\$ 14.3496</b>
<b>1 Year</b>	<b>\$ 15.4533</b>
<b>2 Years</b>	<b>\$ 16.5573</b>

**Retroactivity:** The above hourly wage scale for 2010 shall be applied retroactively to January 1, 2010. This 2010 increase for correction officers with over 2 years of service is approximately \$ 3,136.00. If this Fact-Finding is accepted in total by both parties, the back pay due the officers shall be paid no later than the payday following the next full pay period after acceptance. Back pay amounts to approximately two hundred sixty-two (\$ 262.00) dollars per month; through August, this amounts to an approximate back pay payment of two thousand ninety-six (\$ 2,096.00) to each officer dependent on hours worked.

**2011**

The wage increase for 2011 shall be an average of the percentage increases granted the dispatchers and police officers in Collective Bargaining Agreements for the 2011 contractual year.

**EXAMPLE**

Percentage increase: Dispatchers	<u>2</u>	%	
Percentage increase: Police Officers	<u>3</u>	%	
Total	<u>5</u>	%	
Divided by two (2) =	<u>2½</u>	%	2011 Detention/Correction Officer's contractual increase, if any.

**WAGE INCREASE RATIONALE:**

- *2009: A \$500.00 increase was provided to all employees and these officers received same (actually received in 2010).*
- *2010: These officers received and are being paid a two (2%) percent increase effective January 1, 2010.*
- *The increase in this award amounts to more than an additional ten (10%) percent increase above the 2% increase they are already receiving. Thus, these officers are receiving an increase in excess of twelve (12%) percent for the 2010 year. Although this is an original contract this is a considerable amount of a "catch-up" increase for one contract, particularly in the current economy.*
- *Retroactivity is a separate negotiated benefit included in this package finding and is a separate benefit awarded as it does not automatically accompany a wage increase under these circumstances.*

**No Exhibit #8.**

**ISSUE NINE:**

**Article 33 – Legal Defense and Reimbursement**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #9

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**ISSUE TEN:**

**Article 34 – Present Benefits and Past Practices**

Agreed by the parties at the Fact-Finding Hearing to read:

**ARTICLE 34 - Present Benefits**

**Section 34.1** All present benefits in effect prior to this Agreement and not covered by, in conflict with or superseded by this Agreement, shall remain in full force and effect, unless and until changed in writing by mutual agreement of the parties.

**Section 34.2** This provision shall not be construed to apply to disciplinary action nor shall it be construed to require a minimum number of detention/correction officers within this Unit.

**No Exhibit #10.**

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**ISSUE ELEVEN:**

**Article 38 – Severability**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #11

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**ISSUE TWELVE:**

**Article 39 - Military Leave**

Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #12

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**ISSUE THIRTEEN**

**Article 40 - Substance Abuse Policy**


**Signed off as agreed at the Fact-Finding Hearing and attached as Exhibit #13**

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**RESOLUTION OF ISSUES**

**THIS REPORT AND ALL TENTATIVE AGREEMENTS SIGNED BY THE PARTIES COMPRISE THE TOTAL AND COMPLETE COLLECTIVE BARGAINING AGREEMENT AND ALL OTHER ISSUES NOT ADDRESSED ARE CONSIDERED WITHDRAWN, SETTLED OR RESOLVED BY THE PARTIES PRIOR TO THIS FACT-FINDING.**

**ISSUED ON JULY 27, 2010**



**THOMAS L. HEWITT  
FACT-FINDER**

**STATE EMPLOYMENT RELATIONS BOARD**

**Ohio Administrative Code 4117-9-05, 4117-14**

Within seven (7) days of the service date of the report, the parties are to conduct an election to accept or reject the fact-finder's report. Service date is the postmark for mail service and the date of delivery for personal service (O.A.C. Rules 4117-9-05 (M) and (N) and 4117-1-02). Each party must send written verification of the result of its vote within 24 hours, but in no event later than 24 hours after expiration of the seven-day voting period. Failure to comply with all requirements of O.A.C. Rule 4117-9-05 (M) or (N), including the requirement of proof of service for vote certification, will result in the fact-finder's recommendations being deemed accepted by the non-complying party. Use the SERB fact-finding vote certification form to assure submission of all required information

## **EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>ISSUE #</b>	<b>REGARDING:</b>
1	One	Article 10 – Bill of Rights
2	Two	Article 11 – Discipline/Corrective Action
No Exhibit	Three	Article 14 – Hours of Work & Overtime Compensation- <u>See Fact-Finding Report</u>
4	Four	Article 22 – Insurance Coverage
5	Five	Article 23 – Clothing Allowance
No Exhibit	Six	Article 24 – Educational Reimbursement – <u>See Fact-Finding Report</u>
7	Seven	Article 29 – Injury-On-Duty Benefits
No Exhibit	Eight	Article 31 – Wages and Leads and Indentix Proficiency Pay – <u>See Fact-Finding Report</u>
9	Nine	Article 33 – Legal Defense & Reimbursement
No Exhibit	Ten	Article 34 – Present Benefits and Past Practices – <u>See Fact-Finding Report</u>
11	Eleven	Article 38 - Severability
12	Twelve	Article 39 – Military Leave
13	Thirteen	Article 40 - Substance Abuse Policy

## EXHIBIT 1

### ISSUE ONE:

## **ARTICLE 10 BILL OF RIGHTS**

Section 10.1: This article only applies to non-criminal investigations.

Section 10.2: At the time that any bargaining unit employee is notified to report for an investigation, upon his request, he shall be provided with an opportunity within a reasonable time frame (not less than 24 hours) to contact his/her Staff Representative for the purpose of representation and his/her Staff Representative. In no event shall an investigation be disrupted where circumstances require immediate action. No Grievance Representative shall be permitted to represent a bargaining unit employee where the representative is directly or indirectly involved in the matter under investigation, or without permission of the staff representative assigned to the bargaining unit.

Section 10.3: Bargaining unit employees shall be informed of the nature of the investigation prior to any questioning and shall be informed, to the extent known at the time, whether the investigation is focused on the employee for a potential charge. The person conducting the questioning shall have all written reports prepared by the employee concerning the matter being investigated available for review at the time of the questioning. In the event the employee desires to produce and/or review other written materials or notes, he shall be given an opportunity to secure them and report back immediately.

Section 10.4: A bargaining unit employee who is to be questioned as a suspect in an internal investigation that may lead to criminal charges against him shall be advised of his constitutional rights in accordance with law.

Section 10.5: Any interrogation, questioning or interviewing of a bargaining unit employee will be conducted at hours reasonably related to his shift, preferable during his working hours. Interrogation sessions shall be for reasonable periods of time, and time shall be allowed during such questioning for attendance to physical necessities.

Section 10.6: Before a bargaining unit employee may be charged with insubordination or a like offense for refusing to answer questions or participate in an investigation, he shall be advised that such conduct, if contained, may be made the basis for a charge, except that no employee shall be charged with insubordination where such refusal is premised on his exercise of the rights and advice afforded him in Section 10.3 of this Article.

Section 10.7: When a bargaining unit employee suspected of a violation is being interrogated in an internal investigation, such interrogation shall be recorded by the Police Department with a copy provided to the Union immediately following the interrogation.

Section 10.8: Any evidence obtained in the course of an internal investigation through the use of administrative pressures, threats, coercion, or promises shall be admissible in any subsequent criminal action or Civil Service Commission hearing. However, notification of an employee that potential corrective or disciplinary action could result if the employee continues to refuse to answer questions or participate in an investigation shall not be construed as administrative pressures, threats, coercion or promises for the purposes of this Section.

Section 10.9: When a bargaining unit employee is to be interviewed in an investigation of any other bargaining unit employee such interview shall be conducted in accordance with the procedures established in this Article.

Section 10.10: A bargaining unit employee who is charged with violating Police Rules and Regulations and his Staff Representative, shall be provided access to transcripts, records, written statements and video tapes. Such access shall be provided reasonably in advance of any hearing.

Section 10.11: At the request of either party, interviews or portions thereof with a bargaining unit employee conducted during the course of an inquiry will be audio taped. Tapes can also be made by the Employee. The bargaining unit employee and his representative will be afforded the opportunity, upon written request directly to the Chief of Police or his designee, to listen to and make personal notes or verify the accuracy of a transcript regarding a tape made of his interview subsequent to that interview. If a transcript of the tape is made by the Employer, the bargaining unit employee will be provided a copy of such transcript upon written request directly to the Chief of Police or his designee.

Section 10.12: All complaints, internal investigations and departmental charges shall be under the province of the Chief of Police or his designee to investigate. Prior to any disciplinary actions being taken against any bargaining unit employee based on complaints or charges, the Chief of Police or his designee shall conduct an independent hearing at which the bargaining unit employee and his Union Representative shall have the opportunity to confront and cross examine any employee of the Police Department or any other person who can be compelled to testify and offer testimony and other evidence on his own behalf. Reasonable advance notice of a hearing date, time, as well as the charges to be heard, witnesses to be called or whose testimony will be used, and the copies of any pertinent evidentiary documents will be provided the employee by the Chief of Police in advance of any hearing on the charge.

Section 10.13: If any of these procedures are violated, such violations shall be subject to the grievance procedure beginning at Step 3.

Section 10.14: The appointing authority may request an employee to submit to a polygraph test if:

- a. such test is administrated in connection with an ongoing investigation involving
  - economic loss or injury to the employer's business, such as theft, embezzlement,
  - misappropriation or other unlawful and criminal acts; or



b. the employer had access to the property that is the subject of the investigation; or

c. the employer has a reasonable suspicion that the employee was involved in the incident  
or activity under investigation.

No employee may be discharged, disciplined, denied promotion or otherwise discriminated against in any manner on the basis of the analysis of a polygraph test or the refusal to take a polygraph test if such analysis or refusal is the sole basis and without additional supporting evidence upon which an adverse employment action is taken against the employee. A refusal to take a polygraph test may serve as additional supporting evidence upon which adverse employment action may be taken.

Prior to the administration of any polygraph test, the appointing authority shall provide the employee with written notice containing the following information:

- a. the date, time and location of the test;
- b. a statement that the employee has a right to obtain and consult with counsel or with  
employee's representative;
- c. the nature and characteristics of the test and of the instruments involved;
- d. a statement that a refusal to take the test or that any statements made during the test  
may constitute additional supporting evidence for the purpose of an adverse employment action.

Throughout all phases of the polygraph test, the examinee, and/or his representative shall be permitted to terminate the test at any time and questions shall not be asked in any manner to degrade or needlessly intrude on the privacy of such examinee. The polygraph examiner shall not conduct a test if there is sufficient written evidence by a physician that the examinee is suffering from a psychological condition or undergoing treatment that might cause abnormal response during the actual testing phase.

The polygraph examiner shall have a valid and current license granted by licensing and regulatory authorities in Ohio. The examiner shall render any opinion or conclusions regarding the test in writing and solely on the basis of an analysis of polygraph charts. The report shall not contain information other than admissions, information, case facts and interpretations of the charts relevant to the purpose and stated objectives of the test, and shall not contain information or any recommendation concerning the employment of the examinee.

A person, other than the examinee, may not disclose information obtained during a polygraph test except as follows:

- . to the examinee or any other person specifically designated in writing by the examinee;



b. to the appointing authority;

c. to any court, agency, arbitrator or mediator in accordance with due process of law, pursuant to an order of court of competent jurisdiction.

## EXHIBIT 2

ISSUE TWO:

### **ARTICLE 11 DISCIPLINE/CORRECTIVE ACTION**

Section 11.1: No non-probationary employee shall be disciplined except for just cause.

Section 11.2: Except in instances of gross misconduct, discipline will be applied in a corrective and progressive manner in accordance with the Employer's policy and Article X of this Agreement. All discipline shall be administered in a fair, equitable, and timely manner.

Section 11.3: Whenever the Chief of Police or the Safety Director determines that there may be cause for an employee to be suspended or discharged, the employee shall be apprised of the alleged charges in writing, and a pre-disciplinary conference as provided for in Article X Section 10.12 will be scheduled to give the employee an opportunity to offer an explanation of the alleged conduct. The pre-disciplinary conference procedures shall be in accordance with Article X of this Agreement. The affected employee may elect to have a representative of the FOP/OLC present at any such pre-disciplinary conference.

Section 11.4: Depending upon the severity of the offense/violation, the Chief of Police may suspend an employee with loss of pay for up to three (3) days for just cause as defined in Ohio Revised Code 124.34.

Section 11.5: Depending upon the severity of the offense/violation, the Safety Director has the sole authority to:

1. Suspend an employee for more than three (3) days without pay; for just cause
2. Reduce an employee in pay or position; for just cause
3. Demote an employee; for just cause
4. Discharge an employee, for just cause.

Section 11.6: All discipline shall be appealable at the option of the employee through the grievance procedure. **Written reprimands shall not be arbitrable, but can be grieved. If the reprimand is upheld by the Employer, an employee may attach a rebuttal to any written reprimand that would be placed in his/her file.** Records of disciplinary action more than two (2) years old,

will not be used for progressive disciplinary purposes, except for suspensions of thirty (30) days or greater which shall not be used for progressive disciplinary purposes after three (3) years. The age of the record will be determined by using the later of either the date of occurrence of the incident or action that gave rise to the disciplinary record or the date of discovery of said occurrence.

Section 11.7: The Employer agrees that all disciplinary procedures shall be carried out in a private and businesslike manner.

EXHIBIT 4

ISSUE FOUR:

ARTICLE 22  
INSURANCE COVERAGE

A. The Union will accept the insurance coverage specifically detailed within the dispatch bargaining unit contract, to exclude dental benefits, however would demand a me-too clause with regard to dental benefits, if such benefits are retained by the dispatch unit for the years, 2011

EXHIBIT 5

ISSUE FIVE:

ARTICLE 23

CLOTHING ALLOWANCE

Section 23.1. All full-time employees in the bargaining unit shall be entitled to the sum of six hundred fifty (\$650) dollars for the purchase of uniforms and equipment, beginning in the first year following their initial issue of uniform clothing. The cost of said initial issue of uniform clothing shall be borne by the employer, and shall consist of the full minimum clothing standard for Correctional Officers, as established by the Chief of Police. Any cost of future additions to the minimum clothing standard shall additionally be borne by the employer.

Section 23.2. In the event an employee's uniform, prescription eyewear, or standard piece of personal police equipment, or a part thereof, is lost, damaged or destroyed in the line of duty, the Employer, will pay replacement costs within thirty (30) days for such items and restitution ordered by the Court in cases where a defendant is directly responsible for the loss, in no case will the Employer assume replacement costs for items of personal equipment that are either not approved or of a value greater than that of standard equipment issued by the Employer. The Employer will have the option of replacing said equipment outright, or reimbursing up to but not exceeding equivalent value of standard, issued equipment.

23.3. The clothing allowance shall be paid by the second scheduled pay period of May and shall be prorated as to employees laid off or separated from service with the Employer prior thereto. There shall be no pro-ration in the event the employee separates from service with the Employer after payment of the clothing allowance has already been received.

## EXHIBIT 7

ISSUE 7:

### ARTICLE 29 INJURY-ON-DUTY BENEFITS

Section 29.1. Every full-time employee shall be entitled to apply for benefits under this Article on account of sickness or injury, provided that such disability was occasioned while in the direct line of duty with such determination to be made by the Safety Director and Chief of Police. In no event shall this provision entitle the employee to receive more than twelve (12) months full pay and thereafter, if further approved by the Safety Director and Chief of Police, six (6) months full pay for injury. The benefits shall be computed on the basis of forty (40) hours per week.

Section 29.2. To apply for benefits under Section 29.1 of this Article, written application shall be made to the Director of Safety and Chief of Police accompanied by a certificate from a registered physician stating that such employee is unable to work and that such disability is the result of or is connected with the duties of such employee. It shall be the duty of the Director of Safety and the Chief of Police to approve or reject the application and in doing so, thereafter they may require examination by a registered physician of their selection. Before any employee who has made application to the Chief of Police and Director of Safety for benefits under this Article is entitled to receive any benefits under this Article, he shall first make application for Worker's Compensation Benefits or any compensation fund to which the Employer contributes and complete a reimbursement agreement (See Appendix "B"). No employee shall be eligible for Employer-paid injury-on-duty benefits until this requirement has been completed.

Section 29.3. When the employee's application is approved, the Chief of Police and Director of Safety shall place the employee on such benefit status. The employer will be paid his full benefits as provided in Section 29.1 of this Article until such time as Worker's Compensation begins making payments, then the employee shall reimburse the Employer all back compensation for lost time from such fund and the Employer thereafter shall pay the employee his injury on duty benefits upon timely receipt from the employee of his Worker's Compensation benefits for lost time. Employees shall be entitled to retain Worker's Compensation benefits for temporary and permanent disabilities whether partial or total.

Section 29.4. In the event that an injury or disability requiring the employee to be off work for more than seven (7) calendar days is disallowed by the Compensation Fund, the employee shall be charged with all time lost from work against his accumulated sick leave time to cover either all or part of the time of up to and including the date the claim is disallowed, then any monies paid to the employee by the Employer under this Article shall be repaid by the employee to the Employer.

ISSUE NINE:

ARTICLE 33  
LEGAL DEFENSE AND REIMBURSEMENT

Section 33.1. Civil Actions

A. The Employer shall provide for the defense of a bargaining unit member, in any State or Federal court, in any civil action or proceeding to recover damages for injury, death or loss to persons or property allegedly caused by an act or omission of the employee in connection with the performance of his functions as a police officer (whether governmental or proprietary), if the act or omission occurred or is alleged to have occurred while the employee was acting in good faith and not manifestly outside the scope of his employment or official responsibilities. The duty to provide for the defense of an employee specified in this Section does not apply in a civil action or proceeding that is initiated by or on behalf of the Employer.

B. Except as otherwise provided in Section 33.1 of this Article, the Employer shall indemnify and hold harmless a bargaining unit employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee in a State or Federal court or as a result of a law of a foreign jurisdiction and that is for damages for injury, death or loss to persons or property caused by an act or omission in connection with the performance of his functions as a police officer (whether governmental or proprietary), if at the time of the act or omission the employee was acting in good faith and within the scope of his employment or official responsibilities.

C. The Employer may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death or loss to persons or property caused by an act or omission in connection with a governmental proprietary function. No employee shall commence an action or appeal of any kind with respect to a decision of the Employer made in connection with this paragraph (C) covering the circumstances or amount of a settlement or consent judgment.

D. If the Employer refuses to provide a member with a defense in a civil action or proceeding as described in Section 33.1 of this Article, the employee may file an action in the Lorain County Court of Common Pleas.

Section 33.2. Criminal Actions

A. (1) In the event a bargaining unit employee is subjected to criminal proceedings for an act or omission of the employee arising out of actions taken within the course and scope of the performance of his duties as a police officer and the employee is acquitted of any and all charges, the employee may submit an application to the City Council of Lorain, Ohio for payment of legal fees and costs incurred in connection with the defense of said charges.



(2) Lorain City Council shall consider the applications for legal fees and costs on a case-by-case basis and shall consider the following factors in making its decision on the application.

(a) the extent to which the policies or procedures of the Employer and/or Police Department gave rise to the charges filed against the employee; and

(b) the extent to which the criminal charges filed against the employee were the results of acts or omissions taken by the employee pursuant to direct orders of a superior officer of official employed by the Employer. Lorain City Council may further take into account such other factors as it deems relevant to the application.

Section 33.2 of this Article shall be subject to the grievance procedure, provided however, the arbitrator's authority shall be limited to the determination of whether or not Lorain City Council followed the procedural steps herein. In no event shall the substantive issues of the application or the ordering of reimbursement be subject to the grievance procedure or within the jurisdiction of the arbitrator.

EXHIBIT 11

ISSUE ELEVEN:

ARTICLE 38  
SEVERABILITY

Section 38.1. This Agreement is subject to all applicable Federal and State laws, and shall be interpreted wherever possible so as to comply with such applicable laws, provisions, or any official decision interpreting them.

Section 38.2. Should any part of this Agreement or any provisions contained herein be declared invalid by operation of law or by a tribunal of competent jurisdiction, it shall be of no further force and effect, but such invalidation of a part or provision of this Agreement shall not invalidate the remaining portions and they shall remain in full force and effect. In such event, the Employer and the F.O.P. will, at the request of either party hereto, promptly enter into discussions relative to the particular provision(s) deemed invalid or unenforceable. Should the parties reach mutual agreement on an alternate provision(s), such agreement shall be reduced to writing and signed by both parties.

EXHIBIT 12

ISSUE TWELVE:

ARTICLE 39  
MILITARY LEAVE

Section 39.1. The City of Lorain shall comply with all current State and Federal standards with regard to Military Leave.

## EXHIBIT 13

### ISSUE THIRTEEN:

## ARTICLE 40 - SUBSTANCE ABUSE POLICY

### Section 1. OBJECTIVE

This policy establishes the appropriate direction of substance abuse situations recognizing our responsibility in the area of job safety, operational efficiency and service and public safety. This policy has been developed in recognition of and in response to the rights of each individual as well as our responsibility to assist in the elimination of this national problem; particularly when the problem concerns our employees.

### Section 2. APPLICABILITY

#### A. Employees

This policy applies to all City of Lorain Ohio Correctional Officers.

#### B. Substances

Examples of substances generally considered to be substances subject to abuse and covered by this policy are:

1. Marijuana metabolites
2. Amphetamines
3. Cocaine metabolites
4. Opiate metabolites
5. Phencyclidene
6. Alcohol

Section 3. POLICY

The City of Lorain, Ohio will utilize testing as a means of detecting substance abuse in the work place and will control this situation by appropriate follow-up action. ALCOHOL AND DRUG ABUSE WILL NOT BE TOLERATED IN THE WORK PLACE AND ITS PRESENCE MAY RESULT IN THE TERMINATION OF AN EMPLOYEE. Except as provided in Section 5 below, testing will not occur during systematic random testing without notice. Testing may also occur as a result of observations of an individual's performance on the job which reveal a "reasonable basis to believe" he/she is under the influence of a controlled substance(s) and/or alcohol.

Section 4. VOLUNTARY REQUEST FOR ASSISTANCE

Employees may voluntarily request assistance from the City of Lorain, Ohio in solving a substance abuse problem at any time prior to a test being administered in accordance with the above provisions without fear of termination unless the employee's conduct results in discharge pursuant to applicable provisions of the collective bargaining agreement. Such request should normally be directed to the Police Chief in complete confidentiality.

Unpaid leaves of absences to correct a substance abuse situation may be granted in conjunction with request for assistance. Such unpaid leaves will be consistent with Ohio law and Federal Family Medical Leave Act.

After assistance has been requested, granted and received, if not completed, the provisions of this section exempting individuals receiving assistance from termination will no longer apply.

Section 5.

- A. All employees are subject to periodic controlled substance drug testing without notice. If an employee refuses to take such a drug test, the employee may be subject to discharge or suspension at the discretion of the City of Lorain, Ohio.

- B. Tests will be conducted on a random basis at unannounced times throughout the year. Random test for controlled substance drugs may be conducted just before, during or just after the performance of safety-sensitive functions but are not limited to the immediate time proximity of the performance of safety-sensitive functions. Once notified of selection for drug testing, a driver must proceed to a collection site to provide a urine specimen.
  
- C. Employees will be selected by a scientifically valid random process, and each employee will have an equal chance of being tested each time selections are made. The number of employees selected for random testing will be in accordance with Level 2 or Level 3 OBWC regulations.

Section 6. REASONABLE CAUSE TESTING

- A. In cases in which an employee is observed acting in an abnormal manner and there exists a "reasonable cause to believe" that the Individual is under the influence of controlled substances and/or alcohol, the City of Lorain, Ohio may require the person to go to a medical facility to provide urine specimens for laboratory testing. Under normal circumstances, a "reasonable cause for believe" observation should be made directly by an officer in the Police Department at the rank of Sergeant or above.
  
- B. An employee who is required to undergo "reasonable cause to believe" testing must be accompanied by an officer at the rank of Sergeant or above, or the City of Lorain's designated Benefits Manager to the local clinic or medical facility.
  
- C. Tests must be conducted when a properly trained officer has reasonable suspicion that the employee has violated the City's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulatable observations concerning the employee's appearance, behavior, speech or body odors. The observations may include indications of chronic and withdrawal effects of controlled substances. -
  
- D. Alcohol tests will be authorized for reasonable suspicions only if the required observations are made during or just before the work day when the employee must comply with alcohol prohibitions. If an alcohol test is not administered within two (2) hours of a determination of

reasonable suspicion, the City will prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests will terminate after eight (8) hours.

E. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test.

F. An officer who makes a finding of reasonable suspicion also must make a written record of his observations leading to a reasonable suspicion drug test within twenty-four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

G. "Reasonable Cause" Test Procedure

1. "Reasonable cause to believe tests shall consist of the laboratory analysis of urine specimens. Such analysis must be made by a NIDA certified laboratory.

2. Urine specimens will be drawn by appropriate medical personnel.

3. At the time the specimens are taken, the individuals to be tested shall be given a copy of the specimen collection procedures. In addition, the individual must sign a consent form authorizing the testing and release of the test results to the Police Chief of the City of Lorain, Ohio. Refusal to sign the consent form or to provide a specimen will subject the individual in question to disciplinary action up to and including discharge.

In some cases, the individual may be unable to provide a urine specimen. After a reasonable waiting period (not to exceed one (1) hour) and having liquids, if the employee refuses, he or she may be subject to discharge.

4. The transportation container shall then be sealed in the individual's presence and initialed by the tested Individual. The container should then be sent on that day or the next normal business day via air courier or other available means to a NIDA certified laboratory.

NOTE: The key to protecting all parties to the testing process is strict maintenance of the chain of possession. Such requires the immediate labeling and initialing of the specimen in the presence of the tested individual. If each container is received at the laboratory in an undamaged condition with properly sealed, labeled and initialed specimens, as certified by the laboratory, appropriate action may be taken based upon properly obtained laboratory results.

#### Section 6. APPROPRIATE ACTION IN SITUATIONS OF SUBSTANCE ABUSE

The City of Lorain, Ohio recognizes the serious' consequences of a dismissal/termination of an individual. However, exposure of co-employees and/or the general public to injury or death by a substance abuser may warrant such action. The City of Lorain, Ohio is acutely aware of its responsibility in this area. Employees must also be mindful of their responsibility to approach the performance of their jobs free of drugs or alcohol.

If an employee tests positive to the substance abuse test, he or she will be afforded the opportunity to attend a rehabilitation program at the employee's expense or the employer's if provided by the health coverage program. Rehabilitation must be completed to the satisfaction of the physician in charge of the rehabilitation program.

Medical leave of absence will be granted at least once in the event of substance abuse. Said leaves of absence shall be paid or unpaid, depending upon the employee's availability of accrued sick leave. The granting of said leave of absence shall not apply to employees convicted of a criminal drug offense or whose conduct results in a discharge pursuant to applicable provisions of the collective bargaining agreement.

Except as provided for above, after satisfactorily completing a prescribed period of rehabilitation, the employee will be put back to work following a negative drug test. Said employee may be tested at least six (6) times during the following twelve (12) month period without notification. Any employee testing positive following rehabilitation, will be subject to appropriate disciplinary action.

#### Section 7. FOLLOW-UP TESTS



An employee who violates the City's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem will be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing will be conducted just before, during or just after the time when the employee is performing safety sensitive functions.

#### Section 8. RECORDS

Employee drug and alcohol test results and records will be maintained under strict confidentiality and released only in accordance with law. Upon written request, an employee will receive copies of any records pertaining to his use of drugs or alcohol, including any records pertaining to his drug or alcohol test. Records will be made available to a subsequent employer or other identified persons only as expressly requested in writing by the employee.

## Thomas L. Hewitt, Arbitrator

215 Chestnut Street  
Latrobe, Pennsylvania 15650

Telephone (724) 537-2620  
Fax (724) 537-2679  
Email: [arbiterhewitt@verizon.net](mailto:arbiterhewitt@verizon.net)

July 27, 2010

Ms. Lucy A. DiNardo  
Staff Representative  
Northeast Office  
Fraternal Order of Police  
2721 Manchester Road  
Akron OH 44319

Mr. Phil Dore  
Safety Director  
The City of Lorain, Ohio  
200 West Erie Avenue  
7<sup>th</sup> Floor, City Hall  
Lorain OH 44052

2010 JUL 29 P 12: 35  
STATE EMPLOYMENT  
RELATIONS BOARD

Re: Case No. 10-MED-01-0006  
Full-Time Detention/Correction Officers  
FOP, Ohio Labor Council, Inc.  
And The City of Lorain

Dear Ms. DiNardo & Mr. Dore:

Enclosed is the hard copy of the Fact-Finder Report, which was e-mailed to you on this date, together with the billing in the above matter. As a reminder, you must hold a meeting and notify SERB of the acceptance or rejection of the Report by August 3, 2010, per their guidelines, as follows:

"Within seven (7) days of the service date of the report, the parties are to conduct an election to accept or reject the fact-finder's report. Service date is the postmark for mail service and the date of delivery for personal service (O.A.C. Rules 4117-9-05 (M) and (N) and 4117-1-02). Each party must send written verification of the result of its vote within 24 hours, but in no event later than 24 hours after expiration of the seven-day voting period. Failure to comply with all requirements of O.A.C. Rule 4117-9-05 (M) or (N), including the requirement of proof of service for vote certification, will result in the fact-finder's recommendations being deemed accepted by the non-complying party. Use the SERB fact-finding vote certification form to assure submission of all required information."

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Thomas L. Hewitt, Fact-Finder

TLH:scs  
Enclosure  
cc :Mary E. Laurent, SERB