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**STATE OF OHIO**
**STATE EMPLOYMENT RELATIONS BOARD**

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| **In the Matter of:** | : | |
| | : | **10-MED-08-0986, 10-MED-10-1442,** |
| **Fraternal Order of Police** | : | **10-MED-08-0997, 10-MED-10-1443** |
| **Lodge No. 127,** | : | |
| | : | **FACT FINDING REPORT** |
| **and** | : | **FINDINGS AND RECOMMENDATIONS** |
| | : | |
| **City of Newark** | : | **May 20, 2011** |
| | : | |

## APPEARANCES

**For the Union:**

Brenda Goheen, Staff Representative
Darrin Logan, President
Dave Haren, Negotiating Committee
Steve Vannoy, Negotiating Committee
Earl Roe, Negotiating Committee
Travis Delancey, Negotiating Committee

**For the City:**

Jonathan Downes, Attorney
Stacy Pollock, Attorney
Bob Diebold, Mayor
Carol Floyd, City Council Member
Steven Sarver, Police Chief
Stephen Johnson, City Auditor
Lori Resta, Deputy Auditor
Donna Sears, Human Resources Director
Roger Stollard, Safety Director

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## I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 29, 2010, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period until May 20, 2011 as provided under Ohio Administrative Code Rule 4117-9-05(G). The parties are the Fraternal Order of Police, Lodge 127, Ohio Labor Council, Inc., (Union or FOP) and the City of Newark (Employer or City). The Union represents police officers throughout Ohio. The City was founded in 1802 and is the largest city and county seat of Licking County. According to the 2010 census, it has a population of over 47,000. Located in central Ohio east of Columbus, it was once a transportation hub. The old National Road (US Route 40), the Ohio and Erie Canal, and the Baltimore and Ohio Railroad all ran through or near Newark, which made it an excellent business location. Today it is the headquarters for basket maker Longaberger and Park National Bank Corporation, a regional bank.

The bargaining unit consists of approximately seventy-five (75) employees, including approximately sixty (60) officers, eleven (11) sergeants, and four (4) captains. It is a deemed certified unit, having existed prior to the passage of Ohio's collective bargaining law in 1984. The unit is covered by one (1) collective bargaining agreement, which covers two (2) segments. Segment A includes those who have completed their probationary period and are employed full time in the classification of Police Officer. Segment B includes all sworn police officers who hold a supervisory position, excluding Chief. The agreement originally expired on December 31, 2009. The parties extended it for one (1) year through December 31, 2010. Upon its expiration, they signed an extension until May 20, 2011. The parties met four (4) times to negotiate a new collective bargaining

agreement and reached tentative agreement on a number of issues. However, they were unable to agree on a number of major items.

## II. THE HEARING

The fact-finding hearing was held on Wednesday, May 11, 2011 at the City Water Department, 34 S. Fifth Street in Newark. Each party provided a pre-hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 7:30 p.m. The Fact Finder attempted to mediate the disputes. The parties requested the Fact Finder issue a report. The parties jointly introduced the following exhibit into evidence:

1. Collective Bargaining Agreement (CBA) between the City of Newark, Ohio and The Licking County Fraternal Order of Police Lodge #127, January 1, 2007 through December 31, 2009, and Memorandum of Understanding extending the agreement through December 31, 2010.

Additionally, the parties introduced the following exhibits into evidence:

City Exhibits:

1. Employer Position Statement.

2. Collective Bargaining Agreement between the City of Newark, Ohio and FOP for January 1, 2007 through December 31, 2009, with one year extension through December 31, 2010.

3. Police Division Organizational Chart and 2010 Annual Report.

4. Collective Bargaining Agreement between the City of Newark and AFSCME for January 1, 2010 through December 31, 2010.

5. Collective Bargaining Agreement between the City of Newark and IAFF for January 1, 2010 through December 31, 2010.

6. Demographic and Economic Information.

7. City of Newark Bond Rating Information.

8. General Fund Revenue 2001-2011 and Sources of Cash Reserves 2004-2010.

9. General Fund Interest Income 1982-2011.

10. Newark City Income Tax Revenue Analysis 2008 through May 2, 2011.

11. Municipal Income Tax Rate Comparison.

12. Resolution 06-81 related to EMS fees.

13. Expenses 2005-2010 and 2011 Budget Expenses for Police, Fire, and Other General Revenue Funds.

14. Wage, Benefit and Operating Expenditures, 2004-2010.

15. Explanation of 2010 Budget Carryover.

16. General Fund Carryover Per Capita, 2008-2010.

17. City of Newark Cost Reduction Measures.

18. Correspondence from City Auditor regarding City Finances.

19. City of Newark Internal Benefits Comparisons.

20. External Benefits Comparison.

21. City of Newark Police Dept. Seniority Roster.

22. OT Coverage While NIU Sgt. Was Working.

23. Health Insurance Costs and Comparisons.

24. Police Wage Information by Individual.

25. Wage Increases vs. CPI, 2001-2010.

26. Patrol Officers Wage Benchmark Comparison.

27. Sergeants Wage Benchmark Comparison.

28. Captains Wage Benchmark Comparison.

29. Source Data for Wage Benchmark Comparisons.

30. City of Newark Wage Increase History.

31. Detective OT on 5th Day off Breakdown.

32. Quartermaster External Comparisons and Internal Breakdown of Costs.

33. OT Coverage While NIU Sgt. Was Working.

34. Current Vehicle Listing and City Policy on Use of City Vehicles.

35. Explanation of Issues Regarding Pension Pick-Up and Payroll Costs/Payments to Officers with Source Data.

36. Cost of Union Proposal on Wages With and Without Pension Pick-Up by City.

37. Fact-Finding Reports and Conciliation Awards from Other Jurisdictions.

Union Exhibits:

1. FOP/OLC Pre-hearing Statement.

2. FOP/OLC Proposals.

3. SERB Documents Including Extension Agreement.

4. Wages.

   A. Wage Chart Comparison, Licking County.
   B. Wage Chart Comparison.
   C. Contract Used for Wage Chart.
   D. Budget Analysis.
   E. SERB Annual Wage Settlement Report.
   F. Previous Contracts of the Parties.
   G. Chart Illustrating History of Wage Increases.
   H. Pension Pick-Up Costs.
   I. Unemployment Rates.

5. Tentative Agreements.

6. Vacation Comparison.

7. Current Collective Bargaining Agreement.

8. SERB Benchmark Report.

During negotiations, the parties reached tentative agreements on the following

issues:

1. Article 10, Work Rules and Orders.
2. Article 15, Internal Investigations.
3. Article 17, Grievance/Arbitration Procedure.
4. Article 18, Progressive Discipline.
5. Article 21, Assignment/Promotion.
6. Article 27, Longevity.
7. Article 29, Call-In and Court Pay.
8. Article 31, Minimum Patrol Strength
9. Article 32, Tardiness.
10. Article 33, Training.
11. Article 34, Released Time for Lodge Meetings.
12. Article 39, Injury Leave.
13. Article 43, Miscellaneous.
14. Article 44, Tuition Reimbursement.
15. Article 47, Special Police Duty/Extra Pay Jobs.

The parties also met on the day of the fact-finding hearing prior to the Fact Finder's arrival. They reached a tentative agreement on Article 38, Sick Leave. They also agreed to remove certain items, such as digital cameras and personal digital assistants from the Quartermaster list. The Fact Finder incorporates these tentative agreements into this report.

The issues remaining at impasse for the fact-finding included:

1. Wages.
2. Hours of Work, Overtime, Stand-By Pay and Overtime Call-In.
3. Uniform Quartermaster.
4. Work Out of Rank.
5. Vacations.
6. Holidays.
7. Insurance
8. Sick Leave.
9. Miscellaneous.
10. Duration.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set

forth in Rule 4117-9-05(K) and are:

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

(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The 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;

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

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

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

## III. ISSUES AND RECOMMENDATIONS

City Position

As with many cities in Ohio, Newark's revenues and expenses have become problematic. In 2010, the City had a $1.3 million carryover, representing only 4% of the General Fund. Accounting standards favor approximately 10%. To attain this carryover,

the City transferred $800,000 from its Workers' Compensation fund and $400,000 from the Budget Stabilization Fund (rainy day fund). It was also made possible by City employees, including the FOP unit, taking a wage freeze for 2010, relying on no increase in benefit costs, and eleven (11) layoffs and vacancies by attrition in 2010. Without these, the City maintains it could not have balanced its budget.

The City has taken other measures to cut costs. Since 2006, it has laid off or not filled 78 positions, or 15% of its workforce. It has abolished two (2) departments. Most of these were in non-safety forces. The City contends that this will not be enough to balance future budgets. The Ohio Legislature has indicated there will be significant reductions in local government funding. The City Auditor projects the City's revenues to be reduced by approximately $265,000 in 2011 and as much as $1.3 million in 2012 in local government funding. Additionally, the Ohio Legislature's current budget eliminates the estate tax, which provided $800,000 in revenue in 2010. The City is also anticipating a reduction in the Rollback and Homestead property tax exemptions, while lower interest rates have cut interest earnings, which have provided approximately $1 million per year in recent years.

According to the Police Department's 2010 Annual Report, in 2001 a joint safety levy was passed by Newark residents to supplement the budgets of both the Police and Fire Divisions. The levy placed an additional .5% tax on working residents of Newark and those who work in Newark but reside elsewhere. In 2010, this levy generated approximately $5,439,000, which was divided equally between the two (2) Divisions. The total amount budgeted for the Police Division for 2010 was $9,794,360, which was increased to $9,838,726 with some unexpected revenue sources. The Division spent only $9,539,222 and returned $299,504 to the general fund. The Division's budget is comprised

of four (4) categories. Uniformed compensation and non-uniformed Compensation[1] account for nearly 87% of the budget, including salaries, overtime, health insurance, workers' compensation expenses, Medicare, and pay-outs of vacation and sick leave to employees who leave or retire. Operating expenses and capital improvements make up the rest of the budget. In 2003, the City built a new facility for the Division, which costs the Division $533,000 per year.

Since January 1, 2010, the Police Division has lost two (2) Parking Enforcement Officers, two (2) part time clerks, one (1) full time civilian Communications supervisor, a full time Data Entry Operator, a full time secretary, and six (6) sworn officer positions. It has also lost nearly 40% of its available overtime dollars, approximately $200,000. Combined, these cuts amount to approximately $800,000.

The City's income tax rate is 1.75%, making it higher than a number of similar sized cities in Ohio. Tax revenues have fallen in recent years, from over $20 million in 2006-8 to $18.77 million in 2010. And while the City's population has increased, the percent of those living in poverty has increased from 13% in 2000 to 20.2% in 2010, a 55% increase. Adjusted gross income data that incomes have stagnated since 2007, reaching a high in 2007. Per capita income for Newark residents was $21,941 in 2009, while average adjusted gross income was $37,886 and median household income was $39,541. Meanwhile, incomes in the FOP unit exceed these.

Total general fund revenues have also fallen from a peak in 2007. The largest contributor to the general fund is the income tax. However, interest income also peaked

[1] The Police Division includes sixteen (16) civilian employees who are represented by another union.

in 2007, while real estate taxes have remained relatively flat. The City does anticipate an increase in real estate tax revenue for 2011. Estate taxes vary year to year, depending on the assets of residents who pass away. In 2007 and 2010, the City collected over $1 million in estate taxes. As noted above, though, this revenue stream may be eliminated. Court fine revenues have remained stable, providing approximately $1.5 million in revenue, while personal property and miscellaneous tax revenues have declined. Overall, in 2007, the general fund had $31.3 million in total revenues and fell to $27.7 million in 2010. The City projects total revenues for 2011 to be $26.9 million. Meanwhile, cash reserves have fallen from about $3 million in 2007 to $1.3 in 2010.

On May 2, 2011, City Tax Administrator Barb Jones prepared an Income Tax Revenue Analysis for 2008 to the present. She noted a significant drop of $1.1 million in Business Net Profit taxes from 2008 to 2009. Although there was a moderate increase in business net profits from 2009 to 2010, collections were markedly below 2008. Jones also noted that, while it is too early to get an accurate picture for 2011, there has been a moderate increase in business returns filed in 2011 suggesting a small increase in net profits, though it is not expected to exceed 2010 collections. Non-resident collections have seen no growth since 2009, indicating non-resident, self-employed taxpayers are not finding work in Newark and non-resident taxpayers wanting to invest in rental property are not investing in Newark. As to resident net profit taxes, the trend from 2009 to 2010 signals that more residents are finding employment outside of Newark. The trend appears to continue into 2011. For 2008-10, withholding dollars from businesses in the City to the service/courtesy withholding segment demonstrates the growth is in businesses outside the City withholding those dollars for residents of Newark. Finally, her report noted that net

tax collected has fallen from $20.4 million in 2008 to $18.3 million in 2010.

While revenues have been falling, the City's expenses have increased somewhat. Given the cuts the City has made, expenses have been kept in line pretty well. For example, Police Division expenses were $9.1 million in 2005, increased to $9.7 million in 2008, and were reduced to $9.5 million in 2010. Fire Division costs were $8.4 million in 2005, rose to $9.5 million in 2008, and were reduced to $8.9 million in 2010. Police Division expenses are projected to be cut to $9.1 million in 2011, while Fire Division rise to $9 million. Total City expenditures were $27.5 million in 2005, rose to $30.9 in 2008, and have been cut to $27.8 in 2010.

FOP Position

The Union counters that the City is not in the dire straits it claims. The population has increased 2.8% since 2000 and the unemployment rate has dropped from 10% in 2010 to 8.7% in March 2011. In short, people are moving into the City and employers are hiring. Household incomes have also increased since 2000. These point to increased tax revenues. Meanwhile, the City's bond rating is rated as Aa3 by Moody's, which is high grade long term debt, although the lowest high grade rating. In 2007, the City instituted an EMT service fee, which provides approximately $1.5 million in revenue per year. The City has also stabilized its expenditures compared to revenues. It had a small net fund gain in 2010 and projects a larger surplus in 2011.

Compared to other cities in Licking County, the unit is underpaid. Other than Pataskala, a much smaller community, the unit is at or near the bottom in pay. When compared with other communities about the same distance from downtown Columbus that

have become bedroom communities, the unit is underpaid. Additionally, there is a large discrepancy between the FOP and firefighters unit on vacation time accrual. Further, even though wage increases throughout the state have decreased in recent years, employees are still receiving increases, though small. The FOP took a wage freeze in 2010, along with other City employees. The unit should receive an increase during this contract.

Finally, the Union understands the City is not in the greatest financial shape, though it disagrees with the City's contention that the situation is precarious. The Union has worked with the City to stabilize expenses. The unit has taken reductions already, not replacing officers who have left, reducing overtime, and more. It is not unmindful that the City is looking to reduce expenditures even more. However, not all reductions can be placed at the feet of the employees. Employees still have homes to pay for, bills to pay, children to clothe, feed, and educate. Cutting their salary and benefits even more will only make it harder to raise a family.

***Issue: Article 24, Wages***

**Position of the Union**: The Union proposes a wage increase of 2% retroactive to January 1, 2011, a 2% increase effective January 1, 2012, and a 2.5% increase effective January 1, 2013.

**Position of the City**: The City proposes no wage increase in 2011 and 2012 as well as discontinuing picking up the employees' contribution to the Police and Fire Pension Fund and replacing it with a pre-tax (IRC Section 125) deduction for the employees' portion.

**Findings**: The City has introduced sufficient evidence that it needs to cut costs in light of

its reduced revenues. However, no wage increases for the duration of the agreement, while asking employees to now contribute their 10% share of pension contributions and incurring further costs for health care are too much to ask at one time. In short, it would equate to a wage reduction of more than 10%.

On the other hand, the Union's request for at least 2% increases in each year is not realistic given the City's financial situation. While there is an argument that the unit is underpaid compared to other Licking County communities, now is not the time to award increases to get the salaries more in line. Indeed, when compared to other similar sized communities, including some that are similarly situated bedroom communities, one could argue that the unit's wages are comparable. For example, the wage rates for Elyria, Findlay, Lancaster, Lima, Marion, Middletown, Reynoldsburg, Springfield, and Warren suggest that the FOP's salaries are within the same ranges. While Reynoldsburg is the only one of these communities that competes directly with Newark for workers, and its pay ranges are higher than the City's, Reynoldsburg is an outer ring suburb of Columbus, is located at the junction of I-70 and I-270, and has directly enjoyed the growth Columbus and that brought on by being on the interstate highways.

**Recommendation**: The Fact Finder recommends that the City discontinue picking up the employees' 10% pension contribution effective with the payroll period beginning June 26, 2011. Employees' pension contributions are to be pre-tax (IRS Section 125). To ease the burden on employees, it is recommended that the City pay bargaining unit employees an increase of 8.1% in each bargaining unit employee's base rate of pay effective with the payroll period beginning June 26, 2011. The Fact Finder also recommends increases of 1% in the second year and 1% in the third year of the contract.

***Issue: Article 26, Hours of Work, Overtime, Stand-By Pay, and Overtime Call-In***

**City Position**: The City seeks to change the working hours of the bargaining unit members in the detective bureau from four (4) ten (10) hour shifts to five (5) eight (8) hour shifts, excluding those who work in the Central Ohio Drug Enforcement (CODE) Task Force.

**Union Position**: The Union opposes any change.

**Findings**: The City claims that the current schedule causes inordinate overtime. Changing to a five (5) day schedule will save $25,000 annually. However, this report provides the City with other cost savings sufficient to address its budget needs.

**Recommendation**: Retain current language.

***Issue: Article 28, Uniform Quartermaster***

**City Position**: The City asks for a decrease of $300 in the Quartermaster Fund.

**Union Position**: The Union has agreed to remove digital cameras and personal digital assistants from the Quartermaster list. It wants no further changes.

**Findings**: As noted above, the City has made a case for certain cost reductions. The Union also notes that uniforms are expensive and police officers are required to have a number of additional items, some of which are quite expensive. Being in the public eye, uniforms and equipment must be kept presentable. Cutting the quartermaster fund in half, to $625, for two (2) years will save the City approximately $93,750, while still allowing bargaining unit members enough money to replace items.

It is the Fact Finder's intent that this reduction is temporary. With 2011 almost half over, it would be difficult to implement this for the rest of the year. Some employees may

have already spent the reduced $625 allotment. It would be easier to begin with calendar year 2012 and reduce the amount for 2012 and 2013. At the end of 2013, the temporary suspension will end and the contract language will revert to the $1250 figure currently listed.

**Recommendation**: The Quartermaster fund will be temporarily reduced by half, to $625, for calendar years 2012 and 2013. At the end of 2013, the contract language will revert to the $1250 figure currently listed. A new section 28.1.1 will be added as follows:

> For the years 2012 and 2013, the $1,250 figure in paragraph 28.1 will be reduced to $625. At the end of 2013, this paragraph (28.1.1) expires and the $1,250 in paragraph 28.1 will become effective again.

***Issue: Article 30, Work Out of Rank***

**City Position**: The City proposes to expand the Memorandum of Understanding the parties agreed to in January of this year. The proposal will not require the City to call in a second sergeant when one sergeant is on duty and able to cover the duties necessary for a supervisor on the shift.

**Union Position**: Current language.

**Findings**: The City has two (2) types of sergeants: the uniformed patrol sergeants and uniformed neighborhood impact unit (NIU). The NIU sergeants patrol the neighborhoods of Newark. Patrol sergeants patrol the remainder of the jurisdiction. In 2010, an issue arose where a patrol sergeant called off work when an NIU sergeant was on duty and able to cover the shift. The contract language required the City to call in a second patrol sergeant to cover the patrol sergeant's absence. The City contends this was unnecessary

because the NIU sergeant could have covered the shift. The parties negotiated a Memorandum of Understanding to address this situation. The MOU provides that on-duty uniformed NIU sergeants available to cover shifts left vacant by patrol sergeants would do so, allowing the City to not call in a second patrol sergeant.

The City now proposes to add language to the contract that would allow an available sergeant to cover the shift whenever a patrol sergeant position is vacant. The City submits that this will save unnecessary overtime expenses and projects cost saving so $12,000.

**Recommendation**: The language of Section 30.2 is to be amended as below, with new language in bold. This provision will become effective January 1, 2013. The current language will remain in effect through December 31, 2012.

> **Section 30.2.** Vacant Sergeant position of a patrol shift will be covered by a Sergeant. **In the event a uniformed sergeant is already on duty and available to cover a shift, there will be no requirement to have another sergeant assigned on overtime to cover a vacant shift. If a uniformed sergeant is not on duty,** the immediately preceding shift Sergeant and the immediately subsequent shift Sergeant will be offered the first opportunity**,** in that order, to cover the shift or a portion of the shift in an overtime capacity. If either elect not to provide coverage, that portion of the shift which remains unsupervised, shall be offered to all other Sergeants assigned to the Patrol Division and then to all other Department Sergeants. This shall be done on a rotational basis (see example 1).

***Issue: Article 35, Vacation***

**City Position**: The Employer seeks to decrease vacation accrual for 2nd through 5th year employees from 3.9 hours per pay to 3.1 hours per pay period. This will change the accumulated yearly amount of vacation leave from 100 to 80 hours. The Employer proposes changing the years of service required to move up to the next step in the

vacation schedule.

**Union Position**: No change in current language.

**Findings**: During negotiations, the Union proposed that the changes sought by the Employer apply to new hires, while the current schedule of vacations remains the same for current employees. The Employer accepted the proposal. Current employees are unaffected by the change.

**Recommendation**: A new section, 35.1.1, is to be added to the contract as follows:

For employees hired after July 1, 2011, the following vacation schedule applies:

| Years of Service | Accumulated Per Pay Period | Year Amount |
|---|---|---|
| Beginning the 2nd year through end of the 5th year | 3.1 hours | 80 hours |
| Beginning of 6th year through end of the 10th year | 4.6 hours | 120 hours |
| Beginning of 11th year through end of the 20th year | 6.2 hours | 160 hours |
| Beginning the 21st year through end of the 25th year | 7.7 hours | 200 hours |
| Beginning the 26th year and beyond | 9.2 hours | 240 hours |

***Issue: Article 36, Holidays***

**City Position**: The City proposes removing the allowance of three (3) floating holidays, adding language to clarify that bargaining unit employees will receive holiday pay only when the employee is required to work, not simply scheduled to work, and language that

clarifies that bargaining unit employees will not be scheduled to work on holidays unless the Chief deems them essential personnel.

**Union Position**: Retain current language.

**Findings**: Currently, bargaining unit employees receive ten (10) holidays in addition to three (3) floating holidays. Holidays include all the federal and state holidays, except for Martin Luther King Jr. Day. However, the unit also gets Christmas Eve as a holiday. The City argues that eliminating the non-patrol employees on holiday schedules will save $70,000. These non-patrol employees include the Administrative Captain, the Support Services Captain, as well as detectives and the NIU sergeant. Currently, employees who are scheduled for a holiday receive double their pay for that day. Under the Employer's proposal, only essential personnel will be scheduled. The Employer does not consider the non-patrol employees to be essential for holidays. This proposal does not affect the minimum manning of patrol employees. It would be more appropriate to have this become effective in 2012.

**Recommendation**: Article 36 is to be amended as below. New language is in bold and current language eliminated is struck out. The language is to become effective January 1, 2012.

**ARTICLE 36**
**HOLIDAYS**

**Section 36.1.** Sworn officers of the Division of Police will observe the following holidays, unless the Employee's presence on the job is deemed essential by the Chief:

A. New Year's Day (January 1)

B. President's Day (3rd Monday in February)

C. Memorial Day

D. Independence Day (July 4)

E. Labor Day (1st Monday in September)

F. Columbus Day (2nd Monday in October)

G. Veterans Day (November 11)

H. Thanksgiving Day (4th Thursday in November)

I. Christmas Eve

J. Christmas Day (December 25th)

K. Three Floating Holidays

**Section 36.2.** When any sworn officer of the Division of Police, excepting the Chief is ~~scheduled~~ **required** to work and works, he/she will be paid at one and one-half (1-1/2) his/her regular rate of pay for those hours worked. The regular rate of pay will include shift differential if applicable. This pay will be in addition to the employee's Holiday pay. If any Holiday falls on any employee's scheduled day off, the Employee will be paid his/her regular pay even though he/she does not work.

**Section 36.3.** Floating holidays will consist of any three (3) days of the year which are selected by the employee. The floating holiday cannot be converted to cash and must be taken within the calendar year of their occurrence. Employees must schedule/notify his supervisor at least twenty-four (24) hours in advance of days the employees wish to use a floating holiday.

**Section 36.4.** When an employee is required to work overtime on the holidays listed in Section 36.1, the employee shall be compensated at a rate of two times (2X) his normal rate of pay. **All captains and Non-Patrol Bureau personnel of the Division of Police will not be scheduled to work on holidays listed in Section 36.1 unless the employee's presence on the job is deemed essential by the Chief of Police.**

Overtime is defined as being called into work when having the days scheduled off or required to work more than the normal shift.

***Issue: Article 37, Insurance***

**City Position**: The Employer seeks several changes in insurance coverage. First, it wants to remove certain dollar figures regarding employees waiving insurance and make City employees who are married to other City employees ineligible for the waiver stipend. Second, the Employer wants to increase employees' share of the premium from 10% to 20%. Third, spouses of bargaining unit members who have insurance through their own employer are prohibited from being covered under the City's plan. Fourth, reference to an HMO that no longer exists is removed. Finally, caps on prescription drugs are increased.

**Union Position**: The Union proposes a 2% increase in the employees' share of the premium. In lieu of a 2% increase, it proposes that spouses who have coverage through their own employers not be covered by the City's plan, with certain protections.

**Findings**: Health insurance costs continue to be an important factor in collective bargaining. Indeed, health insurance can often be more difficult to resolve than wages. Costs continue to rise at percentages greater than the inflation rate. It is no surprise that employers seek to have employees share a greater portion of the burden and employees seek to hold the line on any increases. This is particularly so when employees are faced with little or no wage increases. The increases in health insurance can more than offset wage increases.

The City has already implemented these changes with its non-union employees. The City reached a tentative agreement with its AFSMCE bargaining unit. However, the City Council rejected the tentative agreement in part because there were no cost savings in health insurance this year. The City went to fact-finding with its IAFF unit two (2) days

after the hearing in this matter prepared to present this same proposal. In short, it is only a matter of time before all City employees are under the same coverages as its non-union employees.

The City projects that these changes in health insurance will save $190,000 annually. Changes in spousal coverage will save $134,000, prescription coverage $50,000, and elimination of the waiver for married employees $6,000. Additionally, increasing employees' share of the premium to 12% saves the $104,000 citywide, with $26,000 attributable to the Police Division.

The Union's contention that spousal coverage needs certain protections has merit. First, language needs to be added for those spouses whose employers provide coverage, but they can only be enrolled during open enrollment at certain times of the year. Any spouse who must wait to be covered should be covered under the City's plan until his or her own employer provides coverage. Spouses will be required to provide documentation that they are not eligible for coverage until a certain date. Additionally, spouses whose employers provide lesser coverage than the City should not be penalized. The parties agreed that, in such cases, bargaining unit employees would receive $1077 in a Flexible Savings Account or reduced premium. Spouses can also remain on the City's plan under secondary coverage.

**Recommendation**: Article 37 shall be amended. New language is in bold, while current language eliminated is struck out. See Attachment A for language regarding prescription coverage.

## ARTICLE 37
## INSURANCE

**Section 37.1.** **Medical Insurance.** The Employer shall provide group medical insurance coverage, as spelled out in Addendum B, for each employee. It is further agreed and understood that during the term of this Agreement, that individual carriers/providers may, through no fault of the City, union, or employees cease coverage. Should such occur, any employee adversely affected shall be given the opportunity to enroll with an alternative carrier with the appropriate premium rates subject to the premium rate applied herein or to waive coverage and receive an appropriate pro-rata amount of the waiver of coverage payment.

Additionally, it is agreed and understood that specific carriers/providers under the plan may unilaterally institute payments or conditions which modifications or conditions which modifications will be required for subscription to that carrier/provider.

**Section 37.2.** An employee who provides satisfactory proof of medical coverage under another employer sponsored insurance plan may waive both medical and dental coverage. An employee who waives coverage will receive for the calendar year a maximum of, the following:

| Number of Employees Waiving Insurance | ~~(less than 8)~~ | ~~(8 or more)~~ |
|---|---|---|
| Waiver of medical only: | ~~$1,000.00~~ | $3,000.00 |
| Waiver of dental only: | ~~$ 50.00~~ | $ 150.00 |
| Waiver of both medical and dental: | ~~$1,050.00~~ | $3,150.00 |

Payments will be made in December of the calendar year coverage is waived. Any waiver of coverage payments made to new hires or terminated employees will be prorated for the period of coverage.

**Section 37.3. City employees married to one another are not eligible for the waiver stipend.**

**Section 37.4.** The parties agree that contributions to the premiums for medical insurance will be paid as follows, effective July 1, 2011:

City share of premium: ~~90%~~ 88%
Employee share of premium: ~~10%~~ 12%
All employees' shares shall be pre-tax contributions.

**Section 37.5. Spousal Coverage. If the spouse of a City employee is employed and is eligible for employer sponsored health coverage with said employer, he/she must enroll in that particular health plan. If the spouse cannot obtain coverage**

**through his or her employer until a certain date or open enrollment period, the spouse will be covered under the City's plan until he or she can obtain coverage through his or her employer. The spouse must provide documentation to the City that he or she is not eligible for coverage. Employees whose spouses have health insurance coverage through an employer, which coverage does not provide the same level of benefits as the City plan are entitled to $1077 in a flexible spending account or reduced premium, at the City's discretion. Spouses can also remain on the City's plan under secondary coverage.**

**Section 37.6.** **Non-Pay Status.** An employee in a non-pay status due to their own health related condition or that of an immediate family member will be required to pay the employee's share of the monthly health insurance premium.

An employee in a non-pay status for reasons other than a health related condition, will be responsible for one hundred percent (100%) of the total health and life insurance premiums calculated in the following manner:

For each forty (40) hours of continuous or combines of intermittent non-pay status within a revolving thirty (30) day period;

| | | |
|---|---|---|
| 40 - 80 hours | = | one quarter of the total monthly premium |
| 81 - 120 hours | = | one half of the total monthly premium |
| 121 - 160 hours | = | three quarters of the total monthly premium |
| 161 plus | = | one hundred percent of the total monthly premium |

~~**Section 37.7.** A health maintenance organization will be offered to all employees.~~

**Section 37.8.** **Life Insurance.** Each full-time officer shall receive, at the expense of the City, a Thirty Thousand Dollar ($30,000.00) term life insurance policy containing a double indemnity clause covering accidental death benefit.

**Section 37.9.** **Dental Insurance.** The City agrees to provide dental insurance coverage at no cost for the employee. Employees may purchase, at their cost, family dental coverage. This is subject to the availability from the insurance carrier. The cost to the employee will be deducted as a pre-tax contribution.

**Section 37.10** The Employer and Union agree to establish a joint Labor Management Committee to study medical insurance benefit plans.

**Section 37.11. Liability Insurance**

The City shall make a good faith attempt to purchase, at its expense, insurance coverage designed to provide protection to Bargaining Unit members against false arrest and false imprisonment at levels in existence on the date of the execution of this Agreement. This shall be in addition to the liability protection afforded employees under Ohio law.

***Issue: Article 43, Miscellaneous***

**City Position**: The City seeks to stop allowing employees to take home City vehicles.

**Union Position**: The Union opposes the proposal.

**Findings**: The Employer has implemented a new policy, effective May 1, 2011, prohibiting employee from taking home City vehicles. The only City employees currently allowed to take home vehicles are the FOP members. The purpose of taking home a vehicle is to be a first responder. However, most employees who take vehicles home are not first responders. The Employer is experiencing more cost than benefit from this. It anticipates a cost savings of $15,000 by eliminating this. The City does recognize that certain situations may warrant taking home a vehicle. It proposes that the Chief be given discretion in determining which employees can take home a vehicle.

The Union responds that allowing bargaining unit members to take home vehicles benefits the City. It allows FOP members to get to the scene of an accident, crime, or disturbance more quickly. It argues the benefit exceeds the cost.

There is really no dispute that taking vehicles home benefits the Employer. The question is just how much. Given the City's financial condition, at this time cost is a more important factor than the benefit derived. If circumstances prove the City to be incorrect,

it may conclude that taking home vehicles is warranted again.

**Recommendation**: The Fact Finder recommends that Section 43.3 be amended, as follows.

**Section 43.3. Vehicles.** ~~Those positions that currently have city vehicles furnished will maintain them as will their successors to their assignment~~. **There will be no take home vehicles provided by the City or the Division of Police, except at the discretion of the Chief of Police.** Employees coming to court on official business or police headquarters on official business in their private vehicle will have parking tickets placed on the dismissal docket through the chain of command. An employee found guilty of serious misconduct in the use of a departmental vehicle may have the vehicle use removed through the disciplinary process.

***Issue: Article 48, Duration***

**Employer Position**: A two (2) year agreement.

**Union Position**: A three (3) year agreement.

**Findings**: The Employer desires a two (2) year agreement, through December 31, 2012. It claims that it is too difficult to predict whether the City will be financially stable in 2013. The Union responds that, with Senate Bill 5 and the uncertainty surrounding it and its effects on collective bargaining, a three year contract makes more sense.

The Union's argument has merit. There is an effort underway to repeal Senate Bill 5. Additionally, a number of parties have indicated their displeasure with the bill. Therefore, even if the repeal is unsuccessful, it is likely the bill will be challenged in court. This could lead to years of uncertainty. A three (3) year contract would provide more stability than a two (2) year agreement. Further, the City has achieved significant future cost savings and is likely to achieve additional savings with its other bargaining units. This should provide the financial stability it needs.

**Recommendation**: The Fact Finder recommends a three (3) year agreement that expires December 31, 2013.

As noted above (page 6), this report incorporates the tentative agreements reached by the parties during negotiations.

Dated: May 20, 2011

/s/ Daniel G. Zeiser
Daniel G. Zeiser
Fact Finder

ATTACHMENT A

The new language shall also include an amendment to the Prescription Rx Coverage, which shall include the following: generic retail ~~$10~~ $5.00 copay, generic mail order ~~$20~~ $10.00 copay, brand formulary retail 30% of wholesale cost, with a max of ~~$50~~ $75.00 per prescription, brand formulary mail order 60% of wholesale cost, with a max of ~~$100~~ $150.00 per prescription, brand non-formulary retail 30% of wholesale cost ~~+$15~~ with a max of ~~$50~~ $75.00 per prescription, brand non-formulary mail order 60% of wholesale cost ~~+$15~~ with a max of ~~$100~~ $150.00 per prescription.