

# JEFFREY A. BELKIN

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Attorney at Law  
Arbitration and Mediation

Received Electronically @ SERB

August 11, 2011

Aug 11, 2011 3:32pm

Kirk Davies  
USW  
950 Youngstown Warren Road  
Niles, Ohio 44446  
kdavies@usw.org

Iris Guglucello  
Law Director  
City of Youngstown  
26 South Phelps Street, 4<sup>th</sup> Floor  
Youngstown, OH 44503  
IrisG@CityofYoungstownOH.com

Re: USW Union Local 2163-6  
-and  
The City of Youngstown

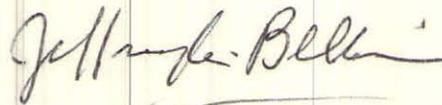
SERB Case No. 2010-MED-09-1111

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Dear Mr. Davies and Ms. Guglucello:

Enclosed please find my Report and Recommendations in the above matter, along with the Fact-Finder's Statement and Form W-9. Feel free to contact me if you have any questions.

Sincerely,



Jeffrey A. Belkin

# ARBITRATOR'S BILL

This bill is submitted on behalf of the Arbitrator

\*\*\*\*MAKE CHECK PAYABLE AND MAIL DIRECTLY TO THE ARBITRATOR\*\*\*\*

**Fact Finding:** SERB Case No. 2010-MED-09-1111

**USW Union Local 2163-6,  
Union  
-and-  
The City of Youngstown,  
Employer**

**Fact Finder:** Jeffrey A. Belkin, Esq.  
25700 Science Park Drive, Suite 270  
Beachwood, OH 44122

**Union:** Kirk Davies  
USW  
950 Youngstown Warren Road  
Niles, Ohio 44446  
kdavies@usw.org

**Employer:** Iris Gugliucello  
Law Director  
City of Youngstown  
26 South Phelps Street, 4<sup>th</sup> Floor  
Youngstown, OH 44503  
IrisG@Cityof YoungstownOH.com

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## FACT FINDER'S COMPENSATION:

NUMBER OF HEARING DAYS: 1 @ \$950 (including pre-hearing preparation)	\$950.00
HEARING DATE: July 14, 2011	
STUDY/PREPARATION DAYS: 3 @ \$950	<u>\$2850.00</u>

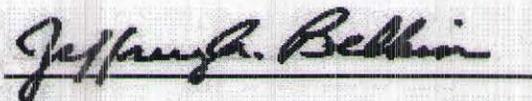
## FACT FINDER'S EXPENSES: \$3800.00

MILEAGE: 124 @ \$ .60	\$74.40
PARKING: \$10.00	\$10.00
TYPING: \$60.00	<u>\$60.00</u>

**TOTAL AMOUNT DUE: \$3944.40**

**PAYABLE BY EMPLOYER: \$1972.20**

**PAYABLE BY UNION: \$1972.20**

  
\_\_\_\_\_  
Jeffrey A. Belkin

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return) <b>JEFFREY A. BELKIN</b>	
Business name, if different from above	
Check appropriate box: <input checked="" type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.) <b>25700 SCIENCE PARK DRIVE SUITE 270</b>	Requester's name and address (optional)
City, state, and ZIP code <b>BEACHWOOD, OHIO 44122</b>	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number <b>274 : 36 : 1180</b>
OR
Employer identification number :

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here  Signature of U.S. person ▶ Jeffrey A. Belkin      Date ▶ August 16, 2011

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



I. BACKGROUND

The parties began this proceeding with 27 unresolved issues. By the end of the hearing, having diligently worked to compromise their differences, they were left with only one essentially non-economic issue subject to fact-finding. That issue will involve contract language comparisons with other City bargaining units, so the following excerpt from the City's Opening Statement is appropriate:

There are nine (9) bargaining units within the City, one of which covers only part-time employees within the Parks Department and is therefore not utilized for internal comparison purposes. Many of the issues still in dispute with this bargaining unit have already been agreed to with other units in earlier successor negotiations, or have been tentatively agreed to in ongoing negotiations, and the City seeks to continue the "pattern" for reasons of consistency. Throughout this proceeding we will be discussing what other City bargaining units have accepted and agreed to, and for the most part, that is exactly what the Employer has proposed for this bargaining unit as well.

\* \* \* \*

Clearly, the City is not in a position to treat these employees differently, as to do so would result in these City employees being treated more favorably than others creating both a morale issue and a lack of standardization that the City has worked diligently to gain.

\* \* \* \*

II. FACT-FINDER'S REPORT

In reaching the Findings and Recommendation on the single issue at impasse, the undersigned has considered the parties' prehearing statements, oral presentations, exhibits and witness statements. Also taken into account were the factors mandated by statute:

Past collectively bargained agreements, if any, between the parties;

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;

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;

The lawful authority of the public employer;

Any stipulations of the parties;

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.

### III. UNRESOLVED ISSUES

#### 1. ARTICLE 10, DISCIPLINE

##### **Section 6. Disciplinary Records**

The current agreement states:

Records of disciplinary action shall cease to have force and effect or be considered in future discipline matters, provided that there has been no other intervening discipline, according to the following schedule:

Letters of Instruction and Cautioning	six (6) months
Written Reprimands	twelve (12) months
Suspensions, Fines, and Reductions Expired Last Chance Agreements, and Licensure-related discipline	twenty-four(24) months

For purposes of force and effect, the time period the discipline issued in

connection with the failure to maintain licensure begins to toll is from the time period that the employee regains the required licensure and returns to active duty in the capacity that he held previously. Force and effect for drug/alcohol related discipline is governed by the parties' Drug/Alcohol Testing Policies, not this section.

The Employer originally proposed to change the existing language, as follows:

Records of disciplinary action shall cease to have force and effect or be considered in future discipline matters, provided that there has been no other intervening discipline, according to the following schedule:

Letters of Instruction and Cautioning	<b>twelve (12)</b> <del>six (6)</del> months
Written Reprimands	<b>twenty-four (24)</b> <del>twelve (12)</del> months
Suspensions, Fines, and Reductions Expired Last Chance Agreements, and Licensure-related discipline	<b>thirty-six (36)</b> <del>thirty-six (36)</del> months

For purposes of force and effect, the time period the discipline issued in connection with the failure to maintain licensure begins to toll is from the time period that the employee regains the required licensure and returns to active duty in the capacity that he held previously. ~~Force and effect for drug/alcohol related discipline is governed by the parties' Drug/Alcohol Testing Policies, not this section.~~ **Discipline for drug and alcohol related offenses or violations of the parties' drug and alcohol testing policy are not subject to the twenty-four (24) month provisions listed above and shall be considered in all future drug/alcohol related discipline for a period of ten (10) years.**

At the hearing, the Employer withdrew that part of its proposal that would have doubled the time period in which prior offenses remain in effect, or may be considered in future discipline matters. However, it maintained that part of the proposal referring to alcohol or drug related offenses, lengthening the period for consideration of prior offenses to ten years.

## Positions of the Parties

### Employer

The primary argument advanced by the Employer is “internal consistency.” That is, the so-called 10-year “lookback period” has been accepted in contracts covering the following bargaining units:

- Youngstown Police Ranking Officers (YPRO)
- Youngstown Police Association (YPA)
- Teamsters Local 377
- AFSCME Local 2726
- IAFF (tentative agreement)

The same provision is currently involved in negotiations with AFSCME Local 2312.

The Employer cites a fact-finding opinion in Cuyahoga County Sanitary Engineer and IBT Local 436 (H. Graham, Fact-finder, 2010). In that matter Fact-finder Graham addressed the question of contractual uniformity where multiple bargaining units are present:

“...A feature of situations characterized by multiple bargaining units is an attempt by the parties to secure standardization of the terms of agreements. It should not be expected that absent extraordinary circumstances one group would secure more favorable treatment than others working for the same employer...”

## Union

Characterizing the proposal as “non-economic”, the Union states that the Employer “never justified [the proposal] in term of economic value or budgetary enhancement. For that reason alone this proposal should not be recommended...” Moreover, the dissimilarities between this bargaining unit and the others would negate any notion of “pattern bargaining.”

At the hearing the Union suggested a willingness to expand the “lookback period” from two years (the current Agreement) to five years, with a mandatory “last chance” agreement for any drug/alcohol related infraction during that period.

## Findings and Recommendation

It is important to note, at the outset, that the issue in dispute is the length of the “lookback period” only for drug or alcohol related offenses; no other offenses would be affected by the proposal. Also noteworthy is the fact that the Union is agreeable to a significant increase in the “lookback period,” from two years to five years. Thus the argument is not over whether to extend the “lookback period,” but rather the length of that extension.

The Union argued passionately that the 10-year period is unreasonable, even if the other bargaining units have acquiesced to the change. According to the Union, an employee who commits a second drug/alcohol related offense within five years after the first offense, should nevertheless have another chance to come back to work. For the Union this is a matter of fundamental fairness.

After considerable thought, the undersigned finds merit to the Employer’s position for two reasons. First, there is much to be said for uniformity of contract language in multi-unit

situations. Furthermore, where as here, the question concerns an overall policy of drug/alcohol enforcement, there is even more need for consistency among the several employee groups.

The Union advocates a more lenient approach, that would essentially allow an employee not one, but two offenses within five years, without being subject to job loss. That approach, however, fails to take into account both the nature of the offense and the working conditions of the bargaining unit. An employee who reports to work under the influence of alcohol or drugs, where that work involves operation of potentially-dangerous equipment or machinery, represents a clear and present danger to himself, his co-workers, and possibly to the public. A 10-year "lookback period" does appear somewhat harsh, as the Union argues, but under the circumstances presented in this case, the proposal is not unreasonable.

Therefore the undersigned hereby recommends adoption of the Employer's proposal.

## 2. ARTICLE 12, LAYOFFS AND RECALL

### Section 3. Procedure

At the hearing the parties reached a tentative agreement on the only unresolved language in that article:

When the Employer determines that a reduction in force or layoff is to be made within the force, it shall occur by plant seniority within the affected classification. Plant seniority is calculated in accordance with Article 13, Seniority. The member with the least amount of plant seniority in the affected classification shall be laid off first. An employee who is laid off may utilize his plant seniority to displace **(bump)** an employee with less plant seniority in another bargaining unit classification within the same classification series **provided the employee is qualified to perform the essential functions of the position.** If a displaced employee cannot utilize his plant seniority to displace a less senior employee in his classification or classification series, he can attempt to utilize his plant seniority to displace a member in the unskilled

laborer classification provided the employee is qualified to perform the essential functions of the position. The employee with the least plant seniority in the affected classification will be displaced.

Any employee provided notice of layoff or displacement shall have ~~one~~ three (3) workdays to notify the Employer in writing of the classification he desires to bump into.

#### Section 4. Recall

The Employer's proposal to reduce the number of years that an employee may remain on the layoff list for purposes of recall, was withdrawn at the hearing.

#### 3. ARTICLE 19, LICENSURE MAINTENANCE/REPORTING REQUIREMENTS

The parties tentatively agreed to retain the language of the current Agreement.

#### 4. ARTICLE 21, OVERTIME

The parties tentatively agreed to retain the language of the current Agreement.

#### 5. ARTICLE 22, CALL-OUT/ON-CALL PAY

The parties tentatively agreed to retain the language of the current Agreement.

#### 6. ARTICLE 23, WAGES

#### Section 1.

At the hearing the parties tentatively agreed on the following language change:

**For the term of this agreement, the wages for bargaining unit employees shall be as set forth in the Wage Schedule, Appendix C. ~~Bargaining unit members shall receive the compensation in accordance with the wage rates and schedule attached in Appendix C, which represents the following general wage increases for the duration of the Agreement.~~**<sup>1</sup>

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<sup>1</sup> Appendix C, Wage Scale, is the same as appears in the current Agreement.

Effective 1/1/2008	<del>two and one half percent (2.5%)</del>
Effective 1/1/2009	<del>three percent (3%)</del>
Effective 1/1/2010	<del>three percent (3%)</del>

**Section 2. Step System Administration**

At the hearing the parties tentatively agreed on the following language change:

The City will institute pay steps for the position of Laborer as follows: There will be six (6) steps for Laborers. Employees appointed to the position will automatically move up a step every six (6) months so long as that employee has actually worked the six months. Effective January 1, 2008, all other all classifications within the unit shall be subject to a step system. Employees hired after this date enter at seventy five percent (75%) of the top rate of the applicable classification, move to eighty percent (80%) of the top rate after completing year one (1), and progress five percent (5%) after completing their second (2<sup>nd</sup>) year, third (3<sup>rd</sup>) year, fourth (4<sup>th</sup>) year and fifth (5<sup>th</sup>) year. After five (5) years of service the employee will be at the top rate of the pay scale. Members of the bargaining unit, hired after September 16, 2008, that are promoted shall be placed at the lowest step in the system within the applicable classification so that there is an increase. ~~Members of the bargaining unit, hired before September 16, 2008, that have not completed five (5) years of service will be grandfathered into their current rate of pay, and shall receive the top rate of pay for the applicable classification in instances of promotion. Members working out of class will be placed at the lowest step in the system so that there is an increase.~~

All other current language of Article 23 shall be retained.

7. **ARTICLE 24, PENSION PICK-UP**

The parties tentatively agreed to retain the language of the current Agreement.

8. **ARTICLE 25, INSURANCE BENEFITS**

**Section 5. Employee Contributions**

At the hearing the parties tentatively agreed on the following language changes:

~~Effective January 1, 2008, employees shall contribute eight percent (8%) of the total premium for medical, hospitalization, prescription, vision, and~~

~~dental coverage; however, employee contributions shall not exceed thirty five dollars (\$35.00) per month for single and seventy five dollars (\$75.00) per month for families. Any percentage exceeding the thirty five dollars (\$35.00) or seventy five dollars (\$75.00) contribution, as applicable shall be paid entirely by the city.~~

~~Effective January 1, 2009, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed sixty five dollars (\$65.00) per month for single and one hundred fifteen dollars (\$115.00) per month for families. Any percentage exceeding the sixty five dollars (\$65.00) or one hundred fifteen dollars (\$115.00) contribution, as applicable shall be paid entirely by the city.~~

Effective January 1, 2010, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage; however, employee contributions shall not exceed eighty dollars (\$80.00) per month for single and one hundred fifty dollars (\$150.00) per month for families. Any percentage exceeding the eighty dollars (\$80.00) or one hundred fifty dollars (\$150.00) contribution, as applicable shall be paid entirely by the city.

**Effective January 1, 2012, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage, not to exceed a cap of one hundred dollars (\$100.00) per month for single coverage and two hundred dollars (\$200.00) per month for family coverage.**

**Effective January 13, 2013, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage.**

#### **Section 9. Non-Use of Hospitalization Benefit**

At the hearing both parties agreed to delete that provision of the current Agreement. All of the other language of Article 25 shall be retained.

#### **9. ARTICLE 26, LONGEVITY**

The parties tentatively agreed to retain the language of the current Agreement.

10. ARTICLE 27, SHIFT DIFFERENTIAL

The parties tentatively agreed to retain the language of the current Agreement.

11. ARTICLE 28, EXPOSURE PAY

The parties tentatively agreed to retain the language of the current Agreement.

12. ARTICLE 30, UNIFORM,/EQUIPMENT ALLOWANCE

The parties tentatively agreed to retain the language of the current Agreement.

13. ARTICLE 31, LICENSURE FEES/REIMBURSEMENT/CONTACT HOURS

The parties tentatively agreed to retain the language of the current Agreement.

14. ARTICLE 32, RETIREMENT AND SEVERANCE

The parties tentatively agreed to retain the language of the current Agreement.

15. ARTICLE 34, SICK LEAVE BONUS

The parties tentatively agreed to retain the language of the current Agreement.

16. ARTICLE 35, HOLIDAYS

The parties tentatively agreed to retain the language of the current Agreement.

17. ARTICLE 36, SICK LEAVE

**Section 1, Accrual**

At the hearing, the parties tentatively agreed to modify the current language to establish that sick leave is not earned for time spent on Injury on Duty leave (IOD).

All other language of Article 25 shall be retained.

18. ARTICLE 38, BEREAVEMENT LEAVE

The parties tentatively agreed to retain the language of the current Agreement.

19. ARTICLE 40, PERSONAL DAYS

The parties tentatively agreed to retain the language of the current Agreement.

20. ARTICLE 41, JURY DUTY LEAVE

The parties tentatively agreed to retain the language of the current Agreement.

21. ARTICLE 42, UNION LEAVE

The parties tentatively agreed to retain the language of the current Agreement.

22. ARTICLE 43, INJURED ON DUTY (IOD)

Section 7. Duration

At the hearing, the parties tentatively agreed on the following language changes:

Wages and all benefits, **except sick leave as excluded by Article 37, Section I**, for those off-duty on IOD will be continued for up to ~~three hundred sixty five (365) calendar days~~, two thousand eighty (2,080) hours, in a three (3) year period from the date of injury if all requirements above are met. After that period, an employee unable to return to work can file for Workers' Compensation TT, but will not continue to be eligible for City benefits including sick or vacation accrual. Hospital benefits for an employee who has exhausted IOD but is unable to return to work will be continued for another six (6) months if the employee continues to provide the City with doctors' reports stating that he is unable to return to work at least one time per month. After exhaustion of this six (6)-month period, the City shall treat such as a "reduction of hours" Cobra-qualifying event and make necessary modifications to the employee under COBRA.

**Employees on IOD must use their accumulated vacation as required by Article 36, Vacations. The employee's annual vacation usage will extend IOD by the amount of days equal to that allotment. This language does not require that vacation time be taken instead of IOD benefits except in those situations where an employee would otherwise not be able to take vacation within the year the employee is required to use it or lose it.**

### Section 9. Light Duty/Transitional Work

At the hearing the parties tentatively agreed on the following language changes:

~~If the employee is able to work on a light duty or transitional work assignment, the City may provide work within the Department, if available. An employee working in a transitional assignment will be compensated at their regular rate of pay. Upon an employee's resumption of his or her normal work duties, the affected employee's transitional work assignment shall be terminated. A light duty or transitional work assignment shall not exceed sixty (60) days, unless mutually agreed to by both the Union and permitted by the City. Or extended by the Transitional Work Committee. The Transitional Work Committee shall be comprised of a Union representative, a department representative and a Law Department representative.~~

An employee cannot refuse to accept a light-duty ~~or transitional work~~ assignment. Only an employee's physician may provide evidence supporting an employee's inability to accept a light-duty ~~or transitional~~ work assignment. Upon receipt of such an opinion, the City reserves the right to send an employee for an independent medical examination at the City's expense **or to initiate disability separation proceedings in accordance with the City's Municipal Civil Service Rules.** ~~If the independent medical examiner determines the employee is able to participate in a light duty or transitional work assignment, the City's Transitional Work Committee will make a determination as to the employee's ability to work light duty.~~

~~Both the City and the Union recognize that an employee may be assigned to a light duty assignment in any City department, subject to any demonstrated physician restriction~~

~~Time spent on a light-duty assignment or on a transitional work assignment shall not constitute time off under these IOD provisions is counted toward two thousand eighty (2080) hour limit for payment of IOD.~~

### Section 10. Transitional Work Committee

At the hearing the parties tentatively agreed to delete that provision of the current Agreement.

All other current language of Article 25 will be retained.

23. ARTICLE 44, ATTENDANCE/SAFETY INCENTIVE PROGRAM

Section 1. Purpose/Scope

At the hearing, the parties tentatively agreed on the following language changes:

In order to promote safety in the workplace, decrease the amount of preventable sick leave usage, and reduce IOD/Workers' Compensation claims, the City ~~will~~ may offer to bargaining unit members a leave conversion program ~~as set forth below. The City will evaluate the effectiveness of this program during the first year of this agreement (2008) and should it determine that the program is not achieving the desired results,~~ The city may, at its sole discretion, discontinue the program during the ~~first quarter of 2009 or during the first quarter of any year thereafter.~~

Section 4. Payment Maximum/Schedule

At the hearing, the parties tentatively agreed to the following language change:

The combined amount of paid leave that may be converted shall not exceed one hundred (100) hours for any given year. Payment will be made during the first quarter following the year in which the employee participated in the program. ~~The parties agree that the first payout will be during the first quarter of 2008 for the 2007 benefit year.~~

Section 5. Procedure

At the hearing, the parties tentatively agreed to the following language change:

If the employee is eligible, he shall notify the Employer by December 1 of each year as to how much paid leave, if any, he desires to sell back. The paid leave sold back to the Employer shall be that which is earned during the previous year and paid to the employee by ~~January~~ April 30 of the following year.

All other current language of Article 44 shall be retained.

24. ARTICLE 50, CONTRACTING OUT/BARGAINING UNIT WORK

The parties tentatively agreed to retain the language of the current Agreement.

25. ARTICLE 52, DURATION

Section 1.

This contract shall become effective ~~January 1, 2008, 2007~~ upon ratification/acceptance of a tentative agreement by both parties (date of latest acceptance), the acceptance by both parties of a fact finding report (date of latest acceptance at SERB or expiration of seven (7) day time period as applicable), or implementation, as applicable, and shall remain in effect until December 31, 2013.

26. NEW ARTICLE: NOTIFICATION OF EMPLOYMENT INFORMATION STATUS

Prior to the hearing the parties had tentatively agreed to adopt a new article requiring employees to provide certain information to the Employer. Such agreed-upon language was as follows:

**Section 1. Contact Information.** All bargaining unit members are required to ensure that all of the contact and address information is kept current and, upon demand, complete the necessary forms so that the City can ensure that its files and contact information are accurate and up to date.

**Section 2. Dependent Status Information Reporting.** All bargaining unit members are required to provide notification to the City, within one (1) week of the occurrence of a potential eligibility changing event, so that the City can report such information to its insurance carrier. Not by way of limitation of the foregoing requirement, illustrative examples of events or the types of events that shall require notice to the Employer are:

1. A change in the marital status of the employee (e.g., marriage, divorce, dissolution, annulment, death, etc.).
2. A change in college enrollment status of the employee's child or dependent (e.g., withdrawal, dismissal, expulsion, full-time to part-time stats, etc.).
3. A change in the identity or status regarding any of the employee's children or dependents (i.e., adoption, custody status arrangements, birth, death, etc.).
4. The attainment of nineteen (19) years of age by any child or dependent of the employee, or any other age limit as established by the plan.

**5. Mental or physical disability of any dependent affecting dependency status.**

The parties recognize that additional situations may exist requiring notice and agree that any situation requiring notice not listed above will not result in discipline (provided that the employee takes action to enter into a repayment plan) until such time as the Employer provides notice to the employee, with a copy to the Union, of that matter and an effective date for compliance. The reimbursement obligation under Section 4 would still apply.

**Section 3. Documentation.** The City may require that an employee provide the insurance company with documentation establishing and/or verifying any information that is required to be provided under this article.

**Section 4. Reimbursement.** In the event that the employee fails to provide notification to the Employer as described above, and public funds are expended for coverage, benefits, or other costs that otherwise would not have been paid had the accurate employment information been provided, the employee will be required to reimburse the Employer for those monies that were inappropriately expended. The employee shall be required to enter into a repayment plan and execute any documentation that the Employer determines to be necessary to facilitate the repayment in a prompt manner. The plan shall be entered into within thirty (30) days of the event first being brought to the attention of the employee.

The parties agree to enter into a reasonable reimbursement plan which may include the forfeiture of monetary payments due under the contract, payroll deductions, forfeiture of accrued paid leave, etc. In the event that an employee does not make arrangements for reimbursement in full, the Employer may take whatever actions deemed necessary to achieve repayment, including the involuntary withholding/offset from payments due under the contract or at separation, if necessary. In the event that the Employer takes action to achieve repayment, the employee may file a grievance over the "reasonableness" of the Employer's action.

At the hearing the parties tentatively agreed on an additional section, providing as follows:

**Section 5. Discipline.** Any employee that refuses to enter into the mandatory reimbursement agreement refuses to fully complete any initial or update request for information required by the Employer, refuses to provide documentation as directed by the Employer, or provides inaccurate information shall be subject to discipline, up to and including termination, for insubordination and/or dishonesty. Any employee that otherwise fails to report any of the informational changes to the Employer as required by this article shall be subject to appropriate disciplinary action.

Report and Recommendations issued this 11<sup>th</sup> day of August, 2011.

Respectfully submitted,

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Jeffrey A. Belkin  
Fact-Finder