

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION**

**IN THE MATTER OF:**

CITY OF EAST CLEVELAND

AND

FRATERNAL ORDER OF POLICE  
OHIO LABOR COUNCIL, INC.

Case Numbers:

10-MED-09-1208, Dispatchers

10-MED-09-1205, Corrections Officers

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

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Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced cases by the State Employment Relations Board on November 30, 2010 in compliance with Ohio Revised Code Section 4117.14 ( C ) ( 3 ).

The parties entered into an agreement to postpone fact finding, and negotiations continued until the first day of hearing. The parties reached tentative agreement on a number of issues at bargaining. Previous collective bargaining agreements contained expirations dates of December 31, 2010.

Hearing was held over two dates. During the first session, the parties engaged in mediation on June 15, 2012 but failed to resolve issues at impasse. Evidentiary hearing was held on August 27, 2012. Hearing was conducted at East Cleveland City Hall. Following the evidentiary hearing, the parties agreed that the Union would receive additional information, based on a previous request for information, by August 31, 2012. It was further agreed that, upon receipt of the requested information, the Union would have opportunity for further comment by post hearing brief to be submitted no later than September 18, 2012, and the City would have opportunity to rebut by post hearing brief to be submitted no later than October 1, 2012. While this Fact Finder does not generally encourage post hearing briefs at Fact Finding, this process substituted for an additional day of hearing and the expense associated with such. By agreement of the parties, the Report and Recommendation of the Fact Finder is to be issued on November 1, 2012.

The Union represents approximately sixteen employees in the Dispatcher bargaining unit and approximately five employees in the Corrections bargaining

unit. The parties agreed to consolidate the cases for both bargaining units into one proceeding.

**OUTSTANDING ISSUES:**

On-Duty Injury Leave: Article 19, Dispatchers; Article 21, Corrections

Wages: Article 24, Dispatchers; Article 26, Corrections

Health and Life Insurance: Article 28, Dispatchers; Article 30, Corrections

Duration of Agreement: Article 35, Dispatchers; Article 35, Corrections

Adjustment/Suspension of Benefits: New MOU, Dispatchers and Corrections

Fiscal Emergency Waiver: New MOU, Dispatchers and Corrections

TAC Officer Position: New MOU, Dispatchers

Safety: New Article, Corrections

Those participating for the Union at hearing include the following:

Lucy DiNardo, Staff Representative, FOP, Ohio Labor Council, Inc.

Lesa Morris, Dispatcher

Linda Hollins-Dobbs, Corrections

Those participating for the City at hearing include the following:

Michael D. Esposito, Clemans, Nelson & Associates

Andrus Esposito, Clemens, Nelson & Associates

Nita Hendryx, State of Ohio Auditor's Office

Ralph Spotts, Chief of Police

Anna Smith, Human Resources Director

Ronald Kelly, Director of Law

**BACKGROUND**

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles that are outlined in ORC Section 4117.14 (G) (7) (a – f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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.

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. The stipulations of the parties.

6. Other factors, not confined to those listed above, 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.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party. The Fact Finder will transmit, by way of electronic mail, the Report and Recommendation on November 1, 2012 by agreement of the parties.

The City of East Cleveland emerged from fiscal emergency approximately five years ago. It had been in this status for eighteen years. The City believed that revenues would increase based on increased enforcement activities, traffic fines and new traffic control cameras. These revenue streams failed to produce anticipated results. East Cleveland continues to experience high unemployment, poverty, urban

blight and reduced government funding. Not surprising, the population base continues to shrink.

On January 5, 2012, the Auditor of State declared the City to be in a state of Fiscal Caution (City Exb. D). This declaration stated the following. "Based on review of fund financial data of the City of East Cleveland at November 30, 2011, the City of East Cleveland had deficit fund balances in the amount of \$5,872,222. These deficits exceed two percent of the estimated revenue to those funds by \$5,451,535. Accordingly, the Auditor of State hereby declares the City of East Cleveland to be in a state of Fiscal Caution under Section 118.025(A) of the Ohio Revised Code."

The City was required to develop a plan to correct those conditions which prompted the Auditor of State to declare Fiscal Caution. The City's proposal failed to meet expectations, and the Auditor of State declared a state of Fiscal Watch on May 23, 2012 (City Exb. E). The Auditor of State declared that the City was required to submit an acceptable recovery plan in 120 days or be placed in Fiscal Emergency. On August 27, 2012, a fiscal review meeting was convened during which it was determined that twelve city funds had deficit fund balances. The General Fund had a \$2.2 million deficit (City Exb. G). This deficit had increased by \$500,000 since May 31, 2012. Cash balance of all funds on this date was \$492,000. One payroll costs the City \$400,000. The report from this meeting indicated that the City is on a payment plan for a number of overdue bills including one with the Ohio Attorney General's Office.

Nita Hendryx, Chief Project Manager for the Auditor of State's Office, stated at hearing that, if the City is placed in Fiscal Emergency, all expenditures would be

monitored by the State. She stated that the Mayor had discovered \$3.2 million which allowed the City to exit fiscal emergency in 2006, but these funds were spent on many unpaid bills. She stated that the City is again failing to meet its obligation to make payments on billings. Ms. Hendryx stated further that the financial outlook in 2013 is worse than 2012 with further loss of revenue from the local government fund and the elimination of the estate tax. She emphasized that available cash on hand could barely make one payroll. Ms. Hendryx stated that the City received a \$3 million payment when Huron Road Hospital closed and will receive a second payment during the next five years, but that amount is not known. She stated that the initial payment was utilized to pay bills. Ms. Hendryx completed her testimony by stating that the City had collected most of its revenue for the year, and that it could not expect a significant amount of additional funding in the later portion of 2012. She painted a bleak outlook regarding the fiscal health of East Cleveland.

The City of East Cleveland lost 31% of its population base from 1970 to 2000 and lost an additional 34% in the last ten years (City Exb. H). This was the highest loss of any community in Cuyahoga County. Income tax revenue was \$5,578,211 in 2009 compared to \$8,126,105 in 2000 (City Exb. I). Median household income is \$21,219 with 64.4% of the population on fixed incomes (City Exb. J-2). There is a high level of poverty in the community.

The Union states that City Dispatchers are the lowest paid in the county. They handle a high level of calls and are responsible for clerk duties in addition to dispatching duties. On a state-wide basis, wages paid to Dispatchers are at the bottom of comparables collected by the State Employment Relations Board. While

bargaining unit employees have not received wage increases, the Mayor continues to receive pay for two positions even after City Council stripped him of his Safety Director position. Other management level and non-bargaining unit employees have received increases, and the City has hired a number of new employees. The Union also states that the City has previously argued inability to pay, but fact finding reports have historically awarded pay increases to bargaining unit employees. Additionally the City has indicated that \$40,000 may be transferred from the Fire Department to Police Department for fire dispatching responsibilities.

The City states that administrators took 26 furlough days in 2010 and again in 2011. The City has made an effort to avoid layoffs of employees. Vacancies have not been filled, and the City has not made many necessary repairs to equipment. The City Finance Director has proposed turning over a number of city assets to other governmental and non-profit entities. He stated that the traffic camera project was expected to produce \$1.7 million in 2012, but, by July, it had only brought in \$115,000 (Union Exb. A-12).

In general, the fiscal presentation by the City was detailed and well organized at hearing. Testimony and discussion were to the point. The Union made a strong case regarding wages and working conditions at the City. During the negotiations, which occurred prior to fact finding, the parties achieved numerous tentative agreements. This hard work was achieved in light of a staff change for the FOP. This speaks well for the relationship between the parties who are bargaining in an almost impossible fiscal climate.

A brief discussion of each issue at impasse and recommendation of the Fact Finder follows.

**1. On-Duty Injury Leave, Article 19, Dispatcher Unit; Article 21, Corrections Unit.**

The City proposes to modify this benefit by requiring that the Bureau of Workers Compensation approve an injury, and that employees, who are on leave, see a physician approved by the Employer and sign a medical release. The City also proposes a light duty provision which pays 70% of an employee's wage.

CITY POSITION: The City argues that the foundation of the benefit remains intact, 120 days of pay for Corrections and 90 days for Dispatch. This is an attempt by the City to gain better control of the administration of the benefit especially in light of its financial condition. Employees would not be required to participate in the light duty program. In addition, the City states that, in the past, it was granted credits from BWC for providing full pay during injury leave. The State has reduced those credits.

UNION POSITION: The Union opposes the City's proposal as unnecessary. It believes that the 70% compensation rate for light duty is unfair to injured workers. The City's claim of better administration of the benefit is unfounded. The Union requests that the status quo be maintained.

RECOMMENDATION: The proposal by the City is reasonable. Employees retain the ability to be paid their full wages for 90/120 days without utilizing sick or other leaves. The light duty provision, which pays 70% of an employees wage, is voluntary. As an alternative, an employee may utilize Workers' Compensation or other leaves. The Fact Finder has added a provision indicating when light duty may end. The Employer's proposal includes enhanced language regarding an opinion from a physician from a list of City approved providers. Current language essentially provides for the same condition. In light if the financial condition of the City, this attempt at efficiency, while still providing the basic benefit, is reasonable. The proposal of the City is recommended with slight modifications as follows.

#### Article 19, On-Duty Injury Leave (Dispatch)

Section 19.1. Line of duty is intended to recognize the unusual exposure to dangerous situations experienced by employees of the Police Department. If an employee of the Police Department suffers a serious injury as defined in Section 2 below as a result of a duty-related accident, he/she shall be eligible to be considered for a line-of-duty injury leave as follows:

A. The injured employee shall make written application for line-of-duty leave on forms to be provided by the Chief. The application shall be reviewed by the Chief and the Mayor.

B. File for Workers' Compensation benefits with the Ohio Bureau of Workers' Compensation and be approved for the receipt of benefits.

C. The employee shall be charged sick leave for the first three (3) work days which he/she misses due to the accident. Beginning with the fourth (4<sup>th</sup>) work day and continuing for a maximum of ninety (90) calendar days from the date of the accident, the employee shall be paid his/her regular salary during the period of line-of-duty injury leave; notwithstanding this limitation, the city reserves the sole right to extend such injury leave on a case to case basis; and

D. Furnish the City Human Resource Director with a signed City of East Cleveland Authorization(s) to Release Medical Information relevant to the claim.

E. Provide a medical certification and seek treatment from a physician on the list of Employer approved providers opining that the claimant is disabled from employment in excess of three (3) consecutive work days as a result of the work-related injury and specifying the injury, recommended treatment, and the employee's inability to return to work as a result of the injury along with an estimated return to work date.

F. This leave shall terminate no later then ninety (90) calendar days after the beginning of the leave or at such earlier time as follows:

(1) The employee shall have applied for and have been found eligible to receive coverage under Workers' Compensation of Ohio and the employee signs a waiver and assignment to the City for amounts payable under Workers' Compensation for temporary total disability benefits.

(2) When the employee is able to return to work as evidenced by a doctor's certificate.

Section 19.2. Injury Defined. For purposes of this article, the term “injury” shall include but is not limited to gunshot wounds, stabbings and other acts or conduct certified by the BWC as resulting in an injury covered by the Bureau of Workers’ Compensation. Injuries resulting from vehicular accidents while on duty shall be eligible for coverage under this Article provided that the employee is not guilty of negligence in the opinion of the Chief.

Section 19.3. Employer Ordered Examinations. The Employer shall have the right at any time during the process to request medical verification of the employee’s injury from his doctor. In addition, the Employer shall have the right, at its expense, to send the employee to a doctor of its own choosing for medical verification.

Section 19.4. IOD & Vacation Period. In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief. The approval of the Chief shall not be unreasonably withheld.

Section 19.5. The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer. The physician should provide certification which indicates the employee is unable to work due to the injury. The physician’s certification is a condition precedent to the employee receiving any benefits under this Article. The designated physician’s opinion shall govern whether the employee is actually disabled.

Section 19.6. Light Duty/Transitional Work After IOD Period. An employee incapable of returning to work beyond the ninety (90) day IOD period shall use accumulated sick leave or any other accumulated paid leave prior to going on an unpaid leave. Should the employee not have any accumulated paid leave available,

the employee may apply for lost wages and benefits through the Bureau of Workers' Compensation. Additionally, the Employer, at its discretion, may require the employee to submit to a fitness for duty exam to ascertain whether or not a light duty/transitional position may be available. Should a fitness for duty exam determine that the employee is capable of performing in a light duty capacity, and the Employer determines that it wishes to offer a light duty position, an offer of light duty may be made to the employee. The light duty position will be compensated at seventy percent (70%) of the employee's regular hourly rate. It is within the employee's sole discretion whether or not he/she wishes to accept the Employer's offer of light duty. Nothing in this article shall obligate the Employer to offer or create a light duty position for an employee who is unable to return to work after the ninety (90) day period. The light duty assignment shall end when the employee's physician certifies that he/she is capable of performing the normal duties of the original position.

#### Article 21, On-Duty Injury Leave (Corrections)

Section 21.1. Line of duty is intended to recognize the unusual exposure to dangerous situations experienced by employees of the Police Department. If an employee of the Police Department suffers a serious injury as defined in Section 2 below as a result of a duty-related accident, he/she shall be eligible to be considered for a line-of-duty injury leave as follows:

- A. The injured employee shall make written application for line-of-duty leave on forms to be provided by the Chief. The application shall be reviewed by the Chief and the Mayor.
- B. File for Workers' Compensation benefits with the Ohio Bureau of Workers' Compensation and be approved for the receipt of benefits.
- C. The Employee shall be charged sick leave for the first three (3) work days which he/she misses due to the accident. Beginning with the fourth (4<sup>th</sup>) work day and continuing for a maximum of one hundred twenty (120) calendar days from the date of the accident, the employee shall be paid his/her regular salary during the period of line-of-duty injury leave; notwithstanding this limitation, the City reserves the sole right to extend such injury leave on a case by case basis; and
- D. Furnish the City Human Resources Director with a signed City of East Cleveland Authorization(s) to Release Medical Information relevant to the claim.
- E. Provide a medical certification and seek treatment from a physician on the list of Employer approved providers opining that the claimant is disabled from employment in excess of three (3) consecutive work days as a result of the work-related injury and specifying the injury, recommended treatment, and the employee's inability to return to work as a result of the injury along with an estimated return to work date.
- F. This leave shall terminate no later than one hundred twenty (120) calendar days after the beginning of the leave or at such earlier time as follows:
  - (1) The employee shall have applied for and have been found eligible to receive coverage under Workers' Compensation of Ohio and the employee

signs a waiver and assignment to the City for amounts payable under Workers, Compensation for temporary total disability benefits.

(2) When the employee is able to return to work as evidenced by a doctor's certificate.

Section 21.2. Injury Defined. For the purposes of this article, the term "injury" shall include but is not limited to gunshot wounds, stabbings and other acts or conduct certified by the BWC as resulting in an injury covered by the Bureau of Workers' Compensation. Injuries resulting from vehicular accidents while on duty shall be eligible for coverage under this Article provided that the employee is not guilty of negligence in the opinion of the Chief.

Section 21.3. Employer Ordered Examinations. The Employer shall have the right at any time during the process to request medical verification of the employee's injury from his/her doctor. In addition, the Employer shall have the right, at its expense, to send the employee to a doctor of its own choosing for medical verification.

Section 21.4. IOD & Vacation Period. In the event said injury leave shall preempt a scheduled vacation period, said vacation may be rescheduled with the prior approval of the Chief. The approval of the Chief shall not be unreasonably denied.

Section 21.5. The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer. The physician should provide certification which indicates the employee is unable to work due to the injury. The physician's certification is a condition precedent to the employee receiving any benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled.

Section 21.6 Light Duty/Transitional Work After IOD Period. An employee incapable of returning to work beyond the one hundred twenty (120) day IOD period shall use accumulated sick leave or any other accumulated leave prior to going on an unpaid leave. Should the employee not have any accumulated paid leave available, the employee may apply for lost wages and benefits through the Bureau of Workers' Compensation. Additionally, the Employer, at its discretion, may require the employee to submit to a fitness for duty exam to ascertain whether or not a light duty/transitional position may be available. Should a fitness for duty exam determine that the employee is capable of performing in a light duty capacity, and the Employer determines that it wishes to offer a light duty position, an offer of light duty may be made to the employee. The light duty position will be compensated at seventy percent (70%) of the employee's regular hourly rate. It is within the employee's sole discretion whether or not he/she wishes to accept the Employer's offer of light duty. Nothing in this article shall obligate the Employer to offer or create a light duty position for an employee who is unable to return to work after the one hundred twenty (120) day period. The light duty assignment shall end when the employee's physician certifies that he/she is capable of performing the normal duties of the original position.

## **2. Wages, Article 24, Dispatch Unit; Article 26, Correction Unit.**

The Union proposes a three year Agreement commencing on January 1, 2011 and terminating on December 31, 2013. Over this three year period, the Union proposes a one percent (1%) increase retroactive to January 1, 2011; a two percent

(2%) increase retroactive to January 1, 2012; and a three percent (3%) increase effective January 1, 2013. The City counters with a wage freeze based on a three year Agreement which commences on January 1, 2012 and terminates on December 31, 2014.

UNION POSITION: The Union states that there was a minimal wage increase in 2010, a wage freeze in 2009 and a 4.5% increase in 2008. East Cleveland Dispatchers are the lowest paid in Cuyahoga County. Wages are \$7.89 per hour below the average in the county. Likewise, Corrections employees in East Cleveland are the lowest paid in Cuyahoga County and are \$6.52 per hour below the average. Employees in both bargaining units are some of the lowest paid in the State of Ohio based on State Employment Relations Board data. The Union states that the City argues that it cannot afford the Union's proposal, but it has awarded pay increases to administrative and non-bargaining unit employees. In addition, the City has hired a number of new employees in 2012. Although the East Cleveland City Council eliminated the position of Acting Safety Director, a position held by the Mayor, he continues to pay himself a salary for the position of Mayor and the abolished Safety Director position. The Mayor's combined salary increased significantly from 2010 to 2012, and the Chief of Police was provided with a \$6000.00 increase in pay in 2011. A proposal to transfer \$40,000.00 from the Fire Department to the Police Department has been made as Fire dispatch duties may be moved to police dispatching. These funds are available for much needed increases for bargaining unit employees. The Union states that the City will continue to receive revenue

based on the closing of Huron Road Hospital and the traffic camera project. The City has argued an inability to pay in the past, but fact finder reports have consistently recommended pay increases for East Cleveland Dispatchers and Corrections employees.

CITY POSITION: The City proposes a wage freeze for a three year Agreement ending on December 31, 2014. The City states that it clearly does not have the ability to pay the demands of the Union. The City was initially placed in Fiscal Caution on January 5, 2012 and then was moved to Fiscal Watch on May 23, 2012. The possibility of Fiscal Emergency was pending following the fact finding hearing. On the date of the fact finding hearing, the general fund deficit was over \$5.5 million. The City had a cash balance of \$492,000. One payroll costs \$400,000, and there is a serious possibility that the City would not be able to pay employees. Loss of income tax revenue is significant in a municipality that has lost 34% of its population during the last decade. In response to the Union's suggestion, that certain administrative employees were granted wage increases in 2012, it is clear that base wage rates were not increased. Gross pay for certain non-bargaining unit employees was greater in 2012 than in 2011 and 2010 due to the ending of furloughs during the previous two years. Wages were increased for those few employees whose duties were expanded due to the elimination of certain positions which were not filled because of attrition. The overall wages of the Chief of Police were increased strictly based on longevity which was past due. The City argues that fact finders and

conciliators, when faced with municipalities which are in fiscal watch or emergency, generally recommend freezes in wages.

RECOMMENDATION: The Union makes a strong argument that employees in the bargaining units are the lowest paid in Cuyahoga County and some of the lowest paid in the state. Poverty in East Cleveland is high, and the City suffers from one of the highest crime rates in the area. The work of bargaining unit employees is stressful and, at times, dangerous. These factors, combined with low pay, make for difficult working conditions. Administrative staff took furlough days in 2010 and 2011 in an effort to deal with the growing financial crisis at the City. The Union's argument that many non-bargaining unit employees enjoyed pay increases in 2012 is not supported by facts as their wages were merely reinstated following the furloughs. But wages for a few non-bargaining unit employees were increased due to expanded duties, and the Chief of Police was paid for prior longevity benefits. In addition, the City hired a number of seasonal or temporary employees at a time of grave fiscal crisis which is difficult to reconcile. The Union's objection to the hiring, to certain monetary gains for non-bargaining unit employees, and to the Mayor's wages has merit. Nevertheless, it would be completely irresponsible for this Fact Finder to recommend any increase of wages in the face of the dire financial condition of the City of East Cleveland. Cash reserves barely support one payroll, and the City has been in Fiscal Watch since May of this year with the possibility of Fiscal Emergency looming. Budgetary deficits are significant, and anticipated revenue streams have not mitigated the overall financial condition of the City. The

loss of population over the past decade is substantial, and the loss of income tax during this period is significant. Nevertheless, bargaining unit employees have received pay increases over the past few years, and there have been no layoffs of bargaining unit employees. The City proposes a wage freeze through December 31, 2014, and the Union proposes the termination of the Agreement on December 31, 2013. This recommendation will include a wage freeze for the years 2011, 2012 and 2013 with the termination of the Agreement on December 31, 2013. The rationale will be explained further when the Duration provision is reviewed. The recommendation does not include the City's proposal in Sections 24.3 and 26.3 concerning non movement of steps if the Agreement terminates, as there was little or no discussion on this item. The recommendation is as follows.

Article 24, Wages, Dispatch

Section 24.1. Bargaining unit wage rates shall remain unchanged for the duration of the Agreement which terminates on December 31, 2013.

Section 24.2. Schedule. Bargaining unit wage rates shall be as follows:

Classification	Years of Service	Hourly Rate
Office Manager/Dispatcher		\$15.0885
Class AAA Senior Dispatcher	After 2 years FT	\$14.0885
Class AA Dispatcher	After 1 year FT	\$13.5239
Class A Dispatcher	Entry	\$13.2355

Employees will move to the next step of the pay scale on the first full pay after each anniversary date of hire starting in 2008 with the City of East Cleveland.

Section 24.3. Office Manager/Dispatch Supplement. Office Manager/Dispatcher will receive compensation of an additional one dollar (\$1.00) per hour above the AAA Senior Dispatcher Rate.

Article 26, Wages, Corrections

Section 26.1. Bargaining unit members wage rates shall remain unchanged for the duration of the Agreement which terminates on December 31, 2013.

Section 26.2. Schedule. Bargaining unit members wage rates shall be as follows:

Classification	Years of Service	Hourly Rate
Jail Administrator (Asst.)		\$18.6252
Corrections Officer III	After 2 years FT	\$13.5864
Corrections Officer II	After 1 year FT	\$13.3200
Corrections Officer I	Entry	\$13.1886

Employees will move to the next step of the pay scale on the first full pay after each anniversary date of hire with the City of East Cleveland.

**3. Health, Dental and Life Insurance, Article 28, Dispatcher Unit; Article 30, Correction Unit.**

The City proposes to increase the employee share of premium cost from 6% to 20% for medical and prescription drug insurance. In addition, the City proposes that bargaining unit employees contribute toward the cost of ancillary benefits at the same level as non-bargaining unit staff. The City proposes to eliminate provisions of the Agreement which require the maintenance of identical benefits in the event of change in insurance carrier. The City proposes a spousal carve-out provision.

CITY POSITION: The fiscal position of the City requires that health care costs be contained. Its proposal allows the City more flexibility to deal with current and

future insurance costs and associated increases. The City states that Union members have benefited from rich benefits which are greater than other jurisdictions in the public sector. The cost of insuring the bargaining units in East Cleveland is greater than that of other similar size cities in Ohio. The 2012 SERB health care report is evidence that the City pays a larger share of health care costs compared to similar jurisdiction in Ohio and the region. The state-wide average of employee share of premium cost is 10.7% compared to the 6% share currently enjoyed by bargaining unit employees. The City's proposal is driven by the overall economic crisis.

UNION POSITION: The Union opposes the proposals of the City and reminds the parties and Fact Finder that a recent award of an arbitrator mandated that the Employer continue to pay for and provide health care benefits through Kaiser for bargaining unit employees. Employees should not be expected to pay more for health care benefits when wages are far below the average in comparable jurisdictions. And the City expects employees to accept a long term wage freeze and then assume more of the cost of health care. The Union argues that allowing the City to change carriers and modify benefit levels is impractical as most insurance carriers will not offer benefits to the City of East Cleveland.

RECOMMENDATION: The City makes a reasonable argument in light of its financial condition. The Union also makes a strong case for maintaining current policy when it argues that employees should not be expected to pay more for health care if their

wages are frozen and wage comparables place them at or near the bottom. It is true that an arbitrator mandated that the City meet its contractual obligation to pay health care premiums to Kaiser, but the decision is not controlling for successor collective bargaining agreements. Based on the recommended wage freeze, the City's 20% proposal is excessive. A 10% premium share for the final year of the Agreement (2013) provides needed savings, is a more reasonable increase for employees to assume, and is in line with the state-wide average as reported by the State Employment Relations Board. The City's proposal is vague regarding the cost sharing for dental coverage. The recommendation for dental insurance is the same as hospitalization, 90/10 split. The City's interest regarding plan design is to change benefit levels as it deems necessary, and the Union wishes to maintain the "most comparable" provision. The recommendation lies somewhere in between. Finally the City's proposal regarding spousal coverage is reasonable with some modification regarding penalty for falsification. The recommendation for both bargaining units is as follows.

Article 28 and Article 30, Health Dental and Life Insurance (Dispatch and Corrections Units)

Section 1. The Employer shall make available to all employees comprehensive major medical/hospitalization health care insurance and prescription coverage. Such coverage will be the same or similar to the plan in effect prior to January 1, 2013. The Employer shall select appropriate carriers/providers and otherwise determine the method of provision and coverage. The costs and/or terms and

conditions of said insurance shall be at the discretion of the Employer and may be subject to change. The City will meet with the Union prior to the implementation of a new plan and/or carrier to discuss new plan design. The participating employee may elect either single, with spouse, with children, family or other coverage offered under the plan.

Section 2. Contribution Rates. Effective January 1, 2011, bargaining unit employees shall contribute the following amounts toward the monthly premiums for their health care coverage/program:

Six percent (6%) per month.

Effective January 1, 2013, bargaining unit employees shall contribute the following amounts toward the monthly premium for their health care coverage/program:

Ten percent (10%) per month.

Section 3. Deduction Procedure. Bargaining unit employees shall have their monthly premium amount deducted over two (2) paychecks per month.

Section 4. Dental/Vision Coverage. Each full-time employee eligible and desiring participation in the City's dental and vision service coverage shall be required to contribute 10% of the monthly premium.

Section 5. Effective January 1, 2013, spousal coverage will be available only upon proof that the spouse does not have other medical insurance coverage available to him/her through the spouse's employer. If such coverage is available, the employee's spouse must enroll in single coverage from his/her employer.

Falsification of spousal coverage information may result in discipline up to and including termination.

Section 6. 125 Plan Election. A bargaining unit employee shall have the option of designating his/her premium contributions and any additional amounts “pre-tax” in accordance with a “Section 125” cafeteria plan, which the City implemented May 1, 2004 and which all bargaining unit employees shall be eligible to participate.

Section 7. Life Insurance. The City at no cost to the employee, shall provide a Life Insurance policy for each bargaining unit member in the amount of Fifty Thousand Dollars (\$50,000.00).

**4. Duration, Article 35, Dispatch Unit; Article 35, Corrections Unit.**

The Employer proposes a three year Agreement which commences on January 1, 2012 and terminates on December 31, 2014. The Union proposes a term of January 1, 2011 through December 31, 2013. The City also proposes to modify the Duration articles by increasing notification to negotiate from 90 days to 120 days and by modifying the language which maintains the provisions of the Agreement during negotiations.

CITY POSITION: Although the previous Agreement terminated on December 31, 2010, it is reasonable that the new Agreement terminate on December 31, 2014. To allow the Agreement to terminate on December 31, 2013, as proposed by the Union, would amount to a fifteen month contract. The City requires time to address demanding fiscal concerns before returning to the bargaining table in twelve months.

UNION POSITION: The previous Agreement terminated on December 31, 2010. The parties have been bargaining for a new three year Agreement which would terminate on December 31, 2013. There is no reason to add one additional year to the Agreement. The parties have extended the Agreement and fact finding during negotiations.

RECOMMENDATION: The City's desire to avoid negotiations again in a year or less is understandable. Nevertheless, the last Agreement expired on December 31, 2010, and the Union's desire for a three year Agreement, from that date, is legitimate. The City's proposal would, in effect, result in a four year wage freeze, and, if the parties accept the recommendation of the Fact Finder for a three year wage freeze beginning in 2011, it would be important to return to the bargaining table in 2013 to address wages and other issues important to both parties. Likewise, if the City is in Fiscal Emergency in 2013, it may be important that the City have the ability to open the Agreement regarding its interests. Both parties would have the ability to extend the Agreement beyond its 2013 expiration, and this may be advisable in the event of fiscal emergency. The recommendation is as follows.

Article 35, Duration of Agreement (Dispatch and Corrections Units)

This Agreement represents a complete understanding between the City and the Union, and it shall be effective January 1, 2011 through December 31, 2013 and thereafter from year to year unless at least ninety (90) days prior to said expiration date, or any anniversary thereof, either party gives timely written notice to the

other of an intent to negotiate on any or all of its provisions. If such notice is given, negotiations shall be promptly commenced, and this Agreement shall remain in full force and effect until an amended Agreement is agreed to or, on or after December 31, 2013, either party gives thirty (30) days notice of an intention to terminate this entire Agreement.

#### **5. Suspension of Benefits, New MOU (Dispatch and Corrections Units).**

The City proposes to suspend longevity payments and clothing allowance for two years of the collective bargaining agreement.

CITY POSITION: The City's proposal is necessary based on its fiscal condition. The City has moved from fiscal caution to fiscal watch and may be placed in fiscal emergency by the state. The City states that this proposal will provide temporary relief, and it will be lifted after the two year period. At the time of the fact finding hearing, the City barely had enough cash on hand to make one payroll.

UNION POSITION: The Union is opposed to this proposal. It argues that the pay of bargaining unit employees is the lowest in Cuyahoga County based on the comparables provided at hearing. The Union also cites pay adjustments granted administrative employees and in particular the Chief of Police.

RECOMMENDATION: The recommendation of the Fact Finder includes a three year Agreement which terminates at the end of 2013. A two year suspension of longevity

and clothing allowance is not possible based on the overall recommendation, and this is not a concession that can be applied retroactively. The overall recommendation freezes wages for three years, 2011 through 2013, and increases employee costs for health care. It was not determined at hearing what this proposal would generate in total savings. Evidence also indicated that the Chief of Police recently received a substantial longevity payment which had been owed from previous years.

The recommendation does not include the City's proposal to include the Suspension of Benefits MOU.

#### **6. Fiscal Emergency Waiver, New MOU (Dispatch and Corrections Units).**

The City proposes that this MOU give it the ability to alter provisions of the Agreement unilaterally in the event it is placed in Fiscal Emergency by the Auditor of State.

CITY POSITION: The City states that it must have the resources and time to work with the demands that Fiscal Emergency imposes. It cannot become involved in a protracted and difficult negotiations with the Union during a time of fiscal crisis. The City argues that the MOU would allow for the lifting of any suspension or modification of contract provisions when fiscal emergency is lifted. The City states that the State Employment Relations Board recognizes that public employers may take unilateral action in extreme circumstances and cites the City of Toledo case in which the Board upheld the right to declare "exigent circumstances" and suspend

certain negotiated benefits. East Cleveland has avoided the layoffs of bargaining unit employees.

UNION POSITION: The Union argues that it is an unfair labor practice for the Employer to unilaterally decide to ignore or modify provisions of the Agreement. The Union would be willing to re-negotiate certain provisions of the Agreement if the City cannot meet its contractual obligations and is placed in fiscal emergency. The Union states that there have been few cost saving measures implemented for non-bargaining unit employees, and court and city council employees have refused to take furloughs. The Union urges that the Fact Finder not recommend this harsh and unnecessary proposal.

RECOMMENDATION: The City is facing a severe fiscal crisis. But this proposal is not the solution. One could never expect two parties in a labor negotiations to come to agreement over a provision of this nature, and, if it was recommended in the instant case, Union membership would most likely reject the Fact Finder's Report. The objective here is to craft a recommendation that recognizes the significant financial crisis and that also assists in the resolution of a long term impasse which has not benefited either party. And the history is not good. The last state-declared Fiscal Emergency continued for nearly eighteen years. There is no evidence to show that provisions of the collective bargaining agreements were suspended during this time. Instead the parties continued to engage each other through the collective bargaining process, and that is the recommendation of the Fact Finder in this instance. In the

City of Toledo scenario which was cited by the City, all but one of the unions voluntarily bargained the concessions necessary to assist in balancing the budget. The Union in this case indicated at hearing that it is willing to re-negotiate as necessary in the event Fiscal Emergency is declared. If the City decides to declare exigent circumstances and unilaterally modify the Agreement, there is a legal process available to resolve the dispute.

The recommendation does not include the City's proposal to include the MOU on Fiscal Emergency Waiver.

#### **7. TAC Officer Position/Assistant TAC Officer, New MOU (Dispatch Unit).**

The Union proposes that the wages of the Dispatcher, who is assigned as the TAC Officer, be increased \$2.50 per hour, and that the wages of the Dispatcher, who is assigned as the Assistant TAC Officer, be increased \$1.00 per hour.

UNION POSITION: The TAC Officer position had been held by a commander in the Police Department. The duties of the position have been assigned to two dispatchers in the bargaining unit. These positions include all validations and responsibilities regarding LEADS, the Law Enforcement Automated Data System. This is a critical information tool utilized by law enforcement. The work is tedious and is added to existing dispatcher responsibilities. The proposal is therefore justified.

CITY POSITION: The Employer rejects the Union's proposal for any new pay supplements due to the gravity of the economic condition it faces. The City simply cannot fund additional pay increases.

RECOMMENDATION: The LEADS System is critical to the work of the police department, and the Union's proposal is understandable. The LEADS responsibilities were assigned to dispatchers due to job consolidation. The Union also argues, correctly, that some non-bargaining unit employees have recently realized wage adjustments, and evidence indicates that three administrative staff received pay increases due to consolidation of job responsibilities. In light of the City's fiscal condition, it is difficult to understand the granting of wage increases for any reason. Nevertheless, the Fact Finder is faced with an economic reality at the City of East Cleveland that does not justify increases in wages at this time. The Fact Finder is required to take guidance from the statute which would suggest that the Union's proposal in this instance cannot be supported.

The recommendation does not include the Union's proposal for a new MOU regarding pay supplement for TAC Officer and Assistant TAC Officer.

#### **8. Safety, New Article (Corrections Unit).**

The Union proposes a comprehensive safety provision covering employees in the Corrections bargaining unit.

UNION POSITION: The Union states that the East Cleveland jail has been closed on a number of occasions due to lack of safety and security. Both inmates and employees are regularly exposed to safety issues. Poor lighting and plumbing issues have been issues in the past and are of significant concern at this time. The City seems unable to resolve these conditions. The Union states that the jail is understaffed, and there is a lack of safety equipment except for rubber gloves. Those who are incarcerated include rapists and a varied of felons. The Union states that even the jail administrator feels that the facility is unsanitary and not a safe environment for staff. The Union argues that, although there is a general safety provision in the Agreement, its proposal is comprehensive and very much needed at this time.

CITY POSITION: The City argues that the proposal is written much too broadly. It states that this proposal is really a mandate for manning and does not address real safety concerns. The reference to state and federal laws, which are referenced in the Union proposal, is open ended. It is unclear what laws are being referenced. Current contract provisions allow for a discussion of safety concerns, and this proposal is unnecessary. The City states that the proposal is poorly written and will lead to additional disputes and arbitration cases. The City rejects the proposal of the Union.

RECOMMENDATION: Both parties to the dispute would probably admit that the East Cleveland jail is in bad shape. Testimony at hearing painted a picture of unsafe and unsanitary working conditions in which the only safety equipment is rubber

gloves, and the safety manual is decades old. The Union's proposal has merit, but it appears that it came late during negotiations, and the parties have not bargained over it. It is not prudent for a neutral to recommend or impose a comprehensive proposal of this nature knowing that the parties have not discussed the particulars. For this reason, the Fact Finder does not recommend the inclusion of the Union's proposal, not because it lacks merit but because the parties must have a comprehensive discussion regarding the issues involved.

The recommendation does not include the Union's proposal on Safety. The Fact Finder recommends that the issue be submitted to the Labor Management and Safety Committee pursuant to Article 11 of the Corrections Agreement and recommends further that the parties utilize an interest based approach in the resolution of the issues contained in the proposal.

## CONCLUSION

The Fact Finder has reviewed the pre-hearing statements and post hearing briefs of the parties, all facts presented at hearing and the extensive number of exhibits presented during and after the evidentiary hearing. In addition, the Fact Finder has given consideration to the positions and arguments taken by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code section 4117.14 (G) (7) (a-f).

In addition to the specific recommendations contained in this Report, all tentative agreements, which were reached between the parties prior to fact finding, during mediation and during the fact finding process are hereby incorporated in this

Fact Finding Report and Recommendation. Any issues or sub-issues not addressed during negotiations are also intended to remain current language for the purposes of this Report.

Respectfully submitted and issued at Cleveland, Ohio this 1<sup>st</sup> Day of November, 2012

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

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Thomas J. Nowel  
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> Day of November, 2012, a copy of the foregoing Report and Recommendation of the Fact Finder was served upon Michael D. Esposito, representing the City of East Cleveland; Lucy DiNardo, representing the Fraternal Order of Police Ohio Labor Council, Inc.; and Donald M. Collins, General Counsel, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

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Thomas J. Nowel  
Fact Finder

