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BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF OHIO

IN THE MATTER OF FACT FINDING BETWEEN:

The City of Dublin, Ohio
Employer

AND SERB Cases Nos. 10-MED-10-1374
10-MED-10-1375

Fraternal Order of Police,
Capital City Lodge No. 9
Employee Organization/Union

Appearances:
For the City: Paul L. Bittner Esq., Lead Counsel
and
Eve M. Elinger, Esq.
Schottenstein, Zox & Dunn, Co. LPA
Columbus, Ohio

For the Union: Russell E. Carnahan, Esq.
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Columbus, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Background Matters:

The record reflects that the parties have been engaged in multi-unit negotiations for a successor multi-unit Collective bargaining Agreement to their three-year, January 1, 2008 through December 31, 2010, Agreement. Pursuant to ORC Chapter 4117, the parties have maintained in full force and effect the terms of said Agreement, pending the resolution of their bargaining impasse via the impasse resolution procedure of the Statute. This Agreement is hereinafter referred to as the parties' "current agreement" or "expired agreement."

In this Report the Union is sometimes referred to as "the Union" or as "the FOP" and at other times referred to as "the Lodge." I note that the FOP, Ohio Labor Counsel represents the Police Department's dispatchers, who are not involved in these proceedings.

It is noted that the current agreement, at Article 2 – RECOGNITION provides in relevant part as follows:

"….

Section 2.2 Bargaining Units. There shall exist in the City of Dublin two (2) bargaining Units and they shall consist of:

A. All full-time sworn police officers below the rank of Corporal who are employed by the Employer ("Police Officer Unit").
B. All full-time sworn police officers of the rank of Corporal or above who are employed by the Employer, but excluding the rank of Lieutenant and Chief ("Supervisory Unit").

References throughout this Agreement to member or members shall mean employees within both bargaining units, unless specified otherwise."

The record shows that the "Police Officer Unit" is comprised of approximately forty-nine (49) full-time police officers below the rank of Corporal; and the "Supervisory Unit" is comprised of approximately twelve (12) full-time police supervisors in the rank of either Corporal or Sergeant.

Still further in the matter, the record shows that the City does not maintain the rank of Captain in the Police Department. The record also shows that historically the parties have maintained a fixed percentage pay differential between a "Police Officer" in the "Police Officer Unit," and a "Corporal" in the "Supervisory Unit." Similarly, the parties have historically maintained a fixed percentage pay differential between a Police Officer in the "Police Officer Unit" and a Sergeant in the "Supervisory Unit."

My hearing notes reflect that the fixed percentage pay differential between a "Police Officer" and a "Corporal" is 8.5%; and that the fixed percentage pay differential between a "Police Officer" and a "Sergeant" is 16.5%. My hearing notes also reflect that "each year the rank differential remains the same." In other words, once a Police Officer's earnings, and the schedule therefore, are set, the earnings of the Police Department's Corporals and Sergeants are determined by adding thereto the appropriate fixed percentage pay differential. Self-evidently the fixed percentage pay differentials are designed to avoid earnings compression between ranks which can result over time when just an across-the-board percentage wage increase is given to all ranks.

In arriving at the Recommendations hereinafter made, the undersigned has taken into consideration the factors listed in O.R.C. 4117.14 (G) (7) (a) to (f).

The record reflects that the parties commenced negotiations for a successor Contract in late October, 2010, holding numerous bargaining sessions. They additionally utilized SERB's mediation services. As the Union points out, of the current Contract's thirty-four (34) articles, the parties reached agreement on thirty (30) articles. Thus, going into Fact Finding the parties remained at impasse over matters in but four articles. Such clearly manifests the good faith bargaining of both parties. Prior to opening the Fact Finding Hearing for the receipt of evidence and argument, the undersigned attempted to mediate the parties' impasse.

Following the parties' mediation session with the undersigned, the City withdrew its proposal for certain changes to Article 21 – HOURS OF WORK AND OVERTIME, Section 21.5 – Compensatory Time, agreeing with the Union's position, namely to retain the current Contract's language in this Section. Accordingly, Article 21, Section 21.5 of the current Contract is hereinafter regarded as a "tentative agreement of the parties," which latter are specifically addressed in the conclusionary provisions of this Report.

Thus, going into the Fact Finding hearing, the parties remained at impasse with respect to the provisions in their successor Contract dealing with Article 19 – RATES OF PAY/WAGES. As the City succinctly put it: "the parties cannot agree on the annual wage percentage increases for 2011, 2012, and 2013, i.e. Section 19.1 Wages. The City proposes a wage increase of 1% commencing July 1, 2011

through December 31, 2011; another 1% wage increase beginning January 1, 2012 and ending December 31, 2012; and another 1% commencing January 1, 2013 and ending December 31, 2013. The F.O.P. proposes an annual wage increase of 3% commencing January 1, 2011; a wage increase of 3.25% commencing January 1, 2012, and a 3.25% wage increase commencing January 1, 2013.

The City additionally proposes adding a Training Step which would apply only to those Police Officers who are not State of Ohio Certified Peace Officers at the time of hire. The Union is opposed to said "training step."

The parties also remain at impasse concerning Article 26 – INSURANCE. Again, as the City has succinctly put it; the parties disagree on the type of insurance plan. The City proposes that the health insurance plan for F.O.P. employees become a High Deductible Plan with a Health Savings Account (an HSA Plan). The F.O.P. seeks to maintain the current PPO plan with a Wellness Initiative, but offers to contribute to the monthly premium regardless of the employee's participation in the existing wellness program." Under the current Contract employees participating in the Wellness program are not obliged to pay any contribution toward the monthly premiums.

The parties also remain at impasse over Article 34 – DURATION, the City proposing that the successor Contract become effective on the date it is ratified by the F.O.P. and by City Council; and the F.O.P. proposing that it become effective retroactive to January 1, 2011.

Issue No. 1: ARTICLE 34 – DURATION

Evidence & Arguments:

Notwithstanding the fact that the Duration Article is historically, and presently, the last Article in the parties' Collective Bargaining Agreement, it is addressed here first because the Recommendation with respect thereto will affect some of the wording being recommended concerning the successor Contract's provisions at ARTICLE 19 – RATES OF PAY/WAGES, discussed hereinafter under Issue No. 2.

I note at the outset that the current Contract's provision at ARTICLE 34 – DURATION, reads as follows:

"Section 34.1 Duration – All of the provisions of this Agreement shall become effective January 1, 2008, unless otherwise specified. This Agreement shall continue in full force and effect until December 31, 2013.

Section 34.2 Signatures. Signed and dated at Dublin, Ohio on or as of this _____day of_____, 2008.

_____ _____

Mike Epperson, Deputy
City Manager, City of Dublin

James H. Gilbert
President, Fraternal Order of
Police, Capital City Lodge 9"

The Union proposes that the successor Contract, at ARTICLE 34 – DURATION, Section 34.1 Duration, read as does the current Contract, except for the calendar dates set forth in the current Contract. Accordingly, with respect to the calendar date of "January 1, 2008," referenced in the current contract, the

Union would substitute “January 1, 2011”; and with respect to the calendar date of “December 31, 2010” in the current Contract, the Union would substitute “December 31, 2013.” Thus the Union proposes that Section 34.1 read as follows:

“Section 34.1 Duration. All of the provisions of this Agreement shall become effective January 1, 2011, unless otherwise specified. This Agreement shall continue in full force and effect until December 31, 2013.”

As for Section 34.2 Signatures, of ARTICLE 34, the Union would have the successor Contract read as follows:

“Section 34.2 Signatures. Signed and dated at Dublin, Ohio on or as of this _____day of _____2011.”

The City is in agreement with the Union’s caveat set forth in the first sentence of the Union’s proposed Section 34.1 Duration, namely, the phrase “unless otherwise specified.” And the City agrees with the Union’s concept that the parties’ successor Contract should remain in full force and effect until December 31, 2013. However, the City disagrees with the Union concerning the date the parties’ successor Contract would become effective. Thus, the City would have Article 34 – DURATION, Section 34.1 Duration read as follows:

“Section 34.1 Duration. All of the provisions of this Agreement shall become effective upon ratification of the Agreement by both the City and the Lodge, unless otherwise specified. This Agreement shall continue in full force and effect until December 31, 2013.”

Concerning Section 34.2 Signatures of ARTICLE 34 – DURATION, the City proposes as follows:

"Section 34.2 Signatures. Signed and dated at Dublin, Ohio on or as of this _____day of _____, 2011.

_____	_____
Marsha Grigsby, City Manager, City of Dublin	James H. Gilbert, President Fraternal Order of Police, Capital City Lodge #9"

As seen above, the City expressly sets forth in its proposal for Section 34.2, two blank signature lines, for the signature of a representative of each party to sign. The City identifies the representative the City seeks to have sign and bind the City to the parties' successor Contract, namely, City Manager Marsha Grigsby. The City also identifies the Lodge representative the City seeks to have sign and bind the Lodge to the parties' successor contract, namely, Lodge President James H. Gilbert. The Union, however, as also seen above, does not propose a signature line, nor does it designate the representative of the City which it seeks to have sign and bind the City to the terms of the parties' successor Contract. Likewise, the Union does not identify or designate the representative of the Lodge which it seeks to have sign and bind the Lodge to the terms of the parties' successor contract. There can be no doubt, however, but that the Union does seek to have a representative of both parties, each with the requisite authority to bind their respective party, to in fact sign the successor Contract at Article 34 – DURATION, Section 34.2, in a signature line which follows the text of Section 34.2, and thereby bind both parties to their successor Contract.

The record reflects that in support of its proposal for Article 34, Sections 34.1 and 34.2, the City points out that the City of Dublin's fiscal year commenced

on January 1, 2011, and that, in the absence of any extension agreement or an agreement that the successor Contract's articles regarding wages and those Articles with cost implication will be retroactive, and there are no such agreements present here, "pursuant to R.C. 4117.14 (G) (11), wages and other matters with cost implications can only be ordered as of January 1, 2012."

The record reflects that the Union, in support of its Article 34, Section 34.1 proposal, points out that the current Contract was a three (3) year Agreement, and it argues that, consequently, the statutory factor of "past collectively bargained agreements between the parties," which must be taken into account by the Fact Finder, supports the Union's position for a three (3) year Contract term. Conversely, the Union, in effect, argues that the City's Section 34.1 proposal, if recommended, would result at best, in a Contract term of only two-and-one-half years, but the City has not pointed to any past collectively bargained agreement between the parties which was for two-and-one-half years or indeed for any term less than a three-year term.

The Union, in effect, additionally argues in support of its proposal of a three (3) year Contract term, that a three (3) year Contract term is supported by another statutory factor that must be taken into account by the Fact Finder, namely, "external" comparables. Thus the Union notes that collective bargaining contracts for a three-year term are "the norm," both generally, and more particularly, with respect to public sector collectively bargained agreements throughout Ohio, including public sector collectively bargained agreements in jurisdictions geographically near to Dublin.

Then, too, argues the Union, its proposal, unlike the City's proposal, does not penalize the employees in the bargaining units for the normal delays in negotiations that occur as a result of both parties': negotiation scheduling conflicts; mutually agreed upon mediation sessions prior to Fact Finding; and scheduling conflicts for the conduct of a Fact Finding hearing.

Addressing the City's contentions and reliance on O.R.C. 4117.14 (G)(11) in opposition to the Union's Section 34.1 proposal for a retroactive effective date for the successor Contract of "January 1, 2011, unless otherwise specified," it is the Union's argument that ORC 4117.14 (G) (11), cited by the City, applies only to Conciliators, and, conversely, does not apply to Fact Finders. Put another way, the Union contends that Fact Finders such as the undersigned, are simply not bound by the provisions of O.R.C. 4117.14 (G) (11), which provides that "increases in rates of compensation and other matters with cost implications awarded by the Conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year." (Emphasis supplied.)

Moreover, contends the Union, Fact Finders frequently do in fact recommend that a successor Contract provide for "retroactive wages" and/or "other [retroactive] matters with cost implications," notwithstanding that such could not be "effectively" ordered "by a Conciliator."

The Union additionally argues that the City has simply not articulated a rational basis for refusing to make any wage increase for 2011 retroactive to January 1, 2011.

DISCUSSION:

In my judgment the Union is correct when it contends that, while in the instant case ORC 4117.14 (G) (11) serves to limit the effectiveness and therefore the legitimacy of a Conciliator's order and award of increases in rates of compensation and other matters with cost implications prior to January 1, 2012, this Code provision simply does not apply to Fact Finders. Fact Finders are not under these limitations of ORC 4117.14 (G) (11). Thus, notwithstanding ORC 4117. 14 (G) (11), the undersigned, as a Fact Finder, is at liberty to recommend increases in rates of compensation and other matters with cost implications, retroactive back to January 1, 2011, which recommendations, if the Fact Finding Report is accepted by the parties, become part and parcel of the parties' successor Contract. And frequently, even when a Fact Finding Report is not accepted, some recommendations within the Report concerning a particular contract provision or provisions are accepted, the parties agreeing to the recommendation as an expression of their mutual agreement concerning the subject matter of the accepted recommendation, and the matter is therefore not carried forth into Conciliation.

Further with respect to the lack of applicability of ORC 4117.14 (G) (11) at this fact finding stage of the statutory dispute resolution process, nevertheless the City's reminder of the Code's provision at 4117.14 (G) (11) serves a very

useful purpose here. And that purpose, among said Code provision's other purposes, is that it serves to remind the undersigned Fact Finder of the seriousness of his task and serves to motivate the undersigned to call forth his best effort to, within the framework of the applicable statutory guidelines set forth in ORC 4117.14 (G) (7) (a) through (f), come up with recommendations which, while perhaps not at the top of a party's wish list, are nonetheless sufficiently reasonable and balanced, as to be worthy of the parties' acceptance, thereby according the parties the opportunity to avoid the risk of the winner-take-all outcomes that result from Conciliation, the next and final step in the statutory dispute resolution process.

Of the factors set forth in ORC 4117.14 (G) (7) (a) through and including (f), which the Fact Finder, pursuant to ORC 4117.14 (C) (3) (a), "shall take into consideration," the factor at 4117.14 (G) (7) (a), namely, "past collectively bargained agreements…between the parties" has been invoked by the Union. Coming off the three-year term of the current contract which on its face commenced on January 1, 2008 and remained in effect until December 31, 2010, it is clear that the statutory factor of "past collectively bargained agreements between the parties" supports the Union's proposal. Moreover, the City did not introduce any collective bargaining agreements between the parties, entered into prior to the current Contract, which were for other than a three (3) year term. And, significantly, the record shows that the parties' collective bargaining relationship was a mature one. In these circumstances the inescapable inferences to be drawn, and the inference that I do draw, is that the parties have historically throughout

the course of their collective bargaining relationship, entered into successive three (3) year Contracts. In light of the foregoing it is therefore clear that the statutory factor of past collectively bargained agreements between the parties strongly supports the Union's proposal for a three-year Contract, as is in effect set forth in the Union's proposed ARTICLE 34 – DURATION, Section 34.1 Duration.

Additional support for the Union's Section 34.1 Duration proposal is to be found in the fact that a three-year Contract term is the "standard" and/or "normal" collective bargaining agreement term in Ohio Public Sector bargaining, a circumstance of which I am aware by extensive personal experience, and of which, in any event, I take administrative notice. Significantly, the City has not contended otherwise. In these circumstances it is therefore clear that the statutory factor of "external comparables" also is supportive of the Union's proposal for a three-year Contract term.

Additionally, as the Union asserts, there is no evidence of record that either of the parties were dilatory in taking their impasse into the fact finding process, any delay being due only to understandable and justifiable delays in scheduling negotiation meetings, mutually agreed to mediation sessions, and scheduling conflicts for the conduct of the Fact Finding hearing.

RECOMMENDATION:

In light of all the foregoing, I recommend that with respect to ARTICLE 34 – DURATION, the parties adopt the Union's proposal for Section 34.1 Duration, and adopt the City's proposal for Section 34.2 Signatures.

Issue No. 2: - ARTICLE 19 - RATES OF PAY/WAGES

Evidence & Arguments:

As noted above, the City proposes a 1% wage increase effective July 1, 2011, followed by a 1% wage increase on January 1, 2012, and a 1% wage increase on January 1, 2013. The City also proposes a new Training Step be added to the Wage Structure. Additionally, the City proposes "that current substantive language be maintained concerning all remaining sections of Article 19," with the caveats that (1) it would replace the current Contract's references to "his or hers" with "the members," and (2) its proposal removes "language from the Article that discusses wage amounts for prior years" on the grounds that such language "is no longer relevant to the proposals made by either party."

The City advances several arguments in support of its three 1% wage increase proposals. One such argument is that the statistics "external comparables" factor supports its wage increase proposals. Thus the City states that the base salary alone, exclusive of overtime pay, of the employees in both of the bargaining units reflects that both units' employees are presently "highly compensated" and that the City's three 1% increases over the term of the successor Contract "will keep them competitive" with police employees in the same jobs in cities in Central Ohio, which the City asserts are appropriate "external comparables," namely, Bexley, Delaware, Columbus, Gahanna, Grandview Heights, Grove city, Hilliard, Pickerington, Powell, Reynoldsburg, Upper Arlington, Westerville, Whitehall, and Worthington. Wage data from these "comparable" jurisdictions, contends the City, "shows that Dublin police officers,

corporals, and sergeants had the highest wages of all comparable cities in 2010." Indeed, argues the City, the employees in the City's Lodge-represented police bargaining units "are significantly above the average among their [external] peers." And they have historically been compensated very well vis a vis their counterparts around Central Ohio. The City argues that this primacy which the bargaining units' employees have obtained can be, and is, continued by the City's offer of 1% increases for 2011, 2012, and 2013. This being so, argues the City, the Union-sought increases of 3% in 2011 and 3.25% in both 2012 and 2013, can only be characterized as "excessive," and in any event "not necessary to allow Dublin's F.O.P. employees to remain competitive in the marketplace."

The City also advances an argument based on the Statute's "Internal Comparables" factor. Thus, the City states that the Lodge's bargaining units' employees "are the City's highest compensated employee group." In this regard the City notes that, over the life of the current Contract, Lodge represented employees "made up just over 16% of the City's workforce,...[yet] they made up 21% of the City's wage [expenses]." Viewing the matter in terms of percentages of just how much more than other City employees "the average F.O.P. employee earned," the City states that "the average [Lodge] employee earned: (1) $18,206.38 more than the average City non-bargaining unit employees; (2) $27,027.27 more than the average United Steelworkers represented (service) employees; and (3) $29,497.72 more than the average F.O.P./O.L.C. represented (dispatcher) employees. Other contrasting internal circumstances highlighted by the City include the fact that: in 2010, unrepresented non-bargaining unit City

employees and United Steelworker represented employees received only [a] 0% raise, whereas the Lodge represented employees received a 4% raise; for 2011, as the City puts it in its position statement, “non-bargaining unit employees’ normal wage increase was 1.3% per employee and the United Steelworkers who serve as maintenance workers and auto mechanics received a 1.5% raise.” Then, too, as the City puts it in its position statement, “for two years in a row, the United Steelworkers [represented] employees who serve as custodians received a 0% raise.” Based on the internal comparable data noted above, the City argues that “it is evident that the [Lodge] employees are extremely well compensated compared to other City employees,” and the Lodge’s proposed large annual increases [i.e. 3% in 2011; 3.25% in 2012; and 3.25% in 2013, beginning on January 1, 2011] are not supported by internal equity amongst the other employees of the City.” (Emphasis supplied.)

In my view the only conclusion to be drawn from these arguments is that the City is seeking to “pull back” from the rates of pay it has paid in the past to the bargaining units’ employees in order to “slow down” the widening compensation gap between the bargaining units’ employees and all other non-management employees of the City, and thereby avoid the adverse impact on morale such compensation gaps engender in all other non-management employees of the City.

Pointing to the City’s income tax revenue situation, the City states that Lodge employees “received significant pay increases in 2008, 2009, and 2010 despite the fact that the City’s income tax revenues have decreased during these

years," the City noting that "in 2008 the City's income tax revenue was 70,219,039,"…dipped to $65,906,592 in 2009 and to 68,848,526 in 2010." Put another way, and arguably more clearly, the City's income tax revenue in 2009 and 2010 remained below said revenue levels in 2008, albeit there was a bump up in said revenue in 2010 from the levels of 2009.

The Lodge on the other hand has a very different take on the City's revenue situation and its overall fiscal health. Thus the Lodge notes that the City enjoys "a stable economy that has continued to grow and flourish," and accordingly, it is "unlike numerous other municipalities in Franklin County and the State of Ohio." The Union points to the City's own publications and budgets introduced into evidence and argues that these sources "confirm that [the City's] financial condition has improved over the past year, and solid economic growth is projected to continue for many years." Indeed, the Union argues that "Dublin's economy [is] the envy of other [Ohio] political subdivisions." The Union in effect contends that this latter observation is made manifest by the size and growth of "the City's General Fund year-end balances (i.e., year-end 'carryover'), [which has] increased from 59.8% of all general fund expenditures at the end of 2008, to 65% at the end of 2009, to 76% at the end of 2010." Accordingly, argues the Union, "the City's 'rainy day fund' is thus equivalent to more than nine months of general fund expenditures, effectively tripling the recommended amount of carryover for local governments under generally accepted accounting practice standards. In sum, the Union in effect argues that the City has not, and indeed cannot, assert that it is unable to pay the Union's wage proposals. To the contrary,

asserts the Union, since the City's revenue stream and finances are among the very best of Ohio municipalities, there can be no dispute but that, concerning the Statute's ability-to-pay factor, the Union's wage proposals "are well within the City's ability-to-pay."

Pointing to the signs and fears of inflation; the pending employee pension contribution changes (i.e. increased employee contributions); and increased costs of the health insurance benefit for the employees; no matter which party's health insurance proposal is recommended, the Union characterizes its wage proposals calling for annual wage increases of 3% in 2011 retroactive to January 1, 2011 and 3.25% in both 2012 and 2013, beginning on January 1, 2012 and 2013, respectively, as "extremely modest."

In addition to all the foregoing the Union argues that "external comparables" fully support its wage proposals over the span of the Contract. Thus, the Lodge contends that nine (9) cities in suburban Columbus, namely, Hilliard, Dublin, Whitehall, Bexley, Grove City, Upper Arlington, Westerville, Gahanna, and Reynoldsburg, comprise the top one-half of the rankings at the top step among Franklin County law enforcement agencies, with Dublin ranking second. Additionally, notes the Union, of these nine (9) "top-half" suburban municipal Police agencies, seven (7) already have established (through negotiations or fact finding), wage rates for 2011, and four (4) have established wage rates for 2012. The Union states that "the average wage increase for 'top-half' agencies in 2011 is 3.21%, with only one agency, Gahanna, receiving less than a 3% increase for [2011]." Similarly, states the Union "the average wage

increase in 2012 for 'top-half' agencies currently is 3.3725%, with none of the four [(4)] agencies receiving less than a 3% increase for 2012." The bottom line, claims the Lodge, is that the wage increases proposed by the Lodge will result in extremely modest increases in the income of the bargaining units' employees, and hopefully will enable the bargaining units' employees to keep pace with inflation, increased employee pension fund contributions, and increased health insurance costs.

Addressing the Union's contentions concerning inflation, the City argues that inflation will affect all employees and its effect is therefore not unique to the bargaining units' employees. The City also contends in effect that since the City does not, and never has, provided the contractual "benefit" of a "pick-up" of a portion of the employee's contribution to the State's pension fund for them, the fact that by virtue of changes in the Pension law said employees will now be required to pay more into said pension fund than heretofore, is simply not relevant here. The Union disagrees, contending that the concept of contractual pension pick-up provisions is that such provisions are understood to be in lieu of wages.

As noted hereinabove, the City also proposes to add a "Training Step" to the Wage Structure for Police Officers. Its proposal reads as follows:

"Section 19.2 – Training Step: Police officers hired after January 1, 2011, who are not State of Ohio Certified Peace Officers at the time of hire, shall be hired at the Training Step in the wage structure."

This proposal would supplant the current Contract's provisions at Section 19.2 Appointment and Advanced Step Hiring, and Section 19.2 of the current

Contract would be retained as Section 19.3 Appointment and Advanced Step Hiring, with some "additional" language, namely, the language underscored below:

"Section 19.3 Appointment and Advance Step Hiring. The City Manager when making appointments to the rank of Police Officer, shall be authorized to recognize the past relevant experience of applicants in determining their placement within the step system, provided they are State of Ohio Certified Police Officers."

The reason for the addition of the term "relevant" was not explained at the hearing. Nonetheless logic dictates that only "relevant" past experience would warrant hire at other than the entry level.

The addition of the phrase "provided they are State of Ohio Certified Police Officers," also appears, in light of the addition of a "training step," to be dictated by logic in that in the event Section 19.2 as proposed by the City were recommended, the reference to "the step system" in Section 19.3 could be construed as including the training step. But an applicant without State of Ohio Certified Police Officer status would, by definition, not be an experienced applicant.

Finally, consistent with its "Training Step" proposal, the City would renumber Section 19.3 of the current Contract to be Section 19.4 of the successor Contract, and revise the text of the current Contract's Section 19.3 to read as follows:

"Section 19.4 Police Officer Step Advancement

A. Step 1 shall be the hiring step for Police Officers hired prior to January 1, 2011, unless the City Manager has authorized advanced step hiring as governed in Section 19.3. Thereafter, employees shall advance to the next highest step in the wage structure after one (1) year of continuous service at the preceding step until reaching step 4.

B. The Training Step shall be the hiring step for Police Officers hired after January 1, 2011 who are not State of Ohio Certified Peace Officers. Thereafter, employees shall advance to the next highest step in the wage structure after one (1) year of continuous service at the preceding step, until reaching Step 4."

The Union is opposed to the establishment of any Training Step, and takes the position that the City has not demonstrated any "need" to add this step to the wage structure. Moreover, asserts the Union, this "Training Step" concept is just a way to lengthen the time it takes a newly hired officer to advance to Step 4, the top step.

The City defends its Training Step proposal on the grounds that if an F.O.P. employee is hired without the required state certification, then the City is responsible for sending them to complete basic training. And, notes the City, during this training period, the newly hired Police Officer who has not received the formal training to obtain state certification, is not actively working for the City, but rather, the City is paying said new hire to attend training. Put another way, argues the City, a new hire who is a State of Ohio Certified Peace Officer is more valuable to the City than is a new hire without the requisite training. Thus,

urges the City, this distinction between a new hire who is a State of Ohio Certified Peace Officer and one who is not, should be reflected in the new hire's compensation.

DISCUSSION CONCERNING THE CITY-PROPOSED POLICE OFFICER TRAINING STEP; THE RE-NUMBERING OF CURRENT CONTRACT SECTIONS UNDER ARTICLE 19 OF THE CURRENT CONTRACT AND MODIFICATIONS TO THE TEXT OF THE CURRENT CONTRACT SECTIONS THE CITY SEEKS TO RETAIN BUT RENUMBER:

First addressed is the City's proposal to add a "training step" to the Wage Structure. As has been seen, the Union would require the City to establish some specific "need" to justify its "Training Step" proposal. However, in my judgment "logic" is sufficient, and logic clearly supports the City's proposal. Thus one asks rhetorically, expecting the answer "no": should the City be required to pay a newly hired Police Officer who is not a State of Ohio Certificated Peace Officer and hence must be out of the Community at training and thereby not making a direct contribution to the policing of the Community, the same rate of pay as it pays a new hire who already is a State of Ohio Certified Peace Officer, and hence in the Community, not away at training, and available to immediately contribute directly to the Department's policing duties? Clearly not. Moreover, the record will only support the conclusion that the City has no difficulty recruiting. In the foregoing circumstances I am unable to find that, as the Union argues, the City is simply interested in lengthening the time it takes a newly hired officer to advance

to Step 4, the top step. Accordingly, I agree with the City proposed concept of adding a Training Step to the Wage Structure of the successor Contract. However, I have some concerns with certain specifics, and/or the lack thereof, of the City's Training Step proposal. One such concern involves a conflict between certain specifics of its proposal on the one hand, and an express intent the City disclosed it has with respect to its Training Step proposal on the other hand. Thus the City would provide for the Training Step it proposes by urging the undersigned to recommend adding said Step to the Wage Structure of the current Contract, and setting the rate of compensation for said Step, under the heading of: "Police Officer Hired After January 1, 2011." However, in my judgment this "heading" that the City seeks renders the provision providing for the Training Step vulnerable, under the "plain meaning" rule of construction, to the interpretation that said Training Step provision language provides for retroactivity of the Training Step provision's rate of compensation to January 1, 2011, with the consequence that any Police Officer hired on or after January 2, 2011, who, at the time of hire, did not possess a State of Ohio Certified Peace Officer certificate, could be required to reimburse the City for the difference between the Step 1 rate they were paid upon hire, and continued to be paid, and the lower Training Step rate being proposed. The record is clear, however, that notwithstanding the "Police Officer Hired After January 1, 2011" language the City sets forth in its proposal, the City nonetheless expressly does not propose and/or intend any retroactivity for the Training Step proposal and therefore, likewise, does not propose or intend that the City be reimbursed for the difference between the Step

1 rate and the new, lower, Training Step rate. Thus, as the City has put it: "[t]he City does not propose that the training step apply to any current non-certified employees, even if they were hired after January 1, 2011." In my judgment the potential conflict between the language the City proposes for the establishment of a new Training Step and the express intention to nonetheless not have the Training Step and its compensation rate retroactive to January 1, 2011, can best be avoided by deleting the City's proposed "heading" language of "Police Officer Hired After January 1, 2011," and by adding to the Wage Structure box which would set forth the rate of compensation for the Training Step in 2011, the following language: "Effective upon execution of this successor Contract by both parties." This language would clearly fall within the "unless otherwise specified" exception to the effective retroactive date of January 1, 2011 recommended above in Issue No. 1.

The aforesaid "rate of compensation" for the Training Step of $48,000.00, proposed by the City, gives rise to another concern. Directly to the point, the record fails to disclose how the City arrived at "the lower than Step 1" Training Step rate of compensation of $48,000.00. However, it is clear that the City did so based on some mathematical calculation/formula which, reduced its Step 1 proposal of $51,511.91 in 2011 (i.e. a 1% increase in the current Contract's Step 1 compensation as of December 31, 2010, of $51,001.39) to $48,000.00. Still further concerning the City-proposed Training Step, the Union has not proposed a Training Step compensation rate in the event the undersigned saw fit to recommend a Training Step. In this state of the record I have no reason to doubt

but that the formula upon which the City relied in arriving at the compensation rate of $48,000.00 (some $3,511.91 less than the Step 1 compensation rate the City seeks) represented the City's judgment that said Training Step compensation rate, lower than the Step 1 rate, would not adversely impact the City's ability to continue to recruit acceptable police officer candidates. The Union does not contend otherwise.

RECOMMENDATIONS CONCERNING THE CITY-PROPOSED: POLICE OFFICER TRAINING STEP; THE RE-NUMBERING OF CURRENT CONTRACT SECTIONS UNDER ARTICLE 19; AND LANGUAGE ADJUSTMENTS/MODIFICATIONS OT THE TEXT OF CURRENT CONTRACT SECTIONS THE CITY SEEKS TO RETAIN, BUT RENUMBER

It is RECOMMENDED that the parties retain the current Contract's format in Section 19.1 Wages, comprised of "boxes," preceded by "text," which text recites the effective beginning and ending dates of an annual wage set forth in boxes, which, along with other boxes, serve to identify the annual wage of a Police Officer by Step, depending on the Contract year being looked at. Thus, for example, the box format, coupled with the immediately preceding text, reveals that the wage of a bargaining unit Police Officer, at Step 1, in 2008, was $47,154.11 per annum. This "box" system sets forth an annual wage for each rank, i.e. Police Officer, Corporal, and Sergeant, at each Step (if applicable), for each year of the current Contract, namely 2008, 2009, and 2010.

It is further RECOMMENDED that the Training Step rate of compensation be determined by applying the same formula the City applied to the

Step 1 rate it sought to become effective July 1, 2011, namely, $51,511.91, in order to get the Training rate the City seeks of $48,000.00. It is to be understood that to get the rate of compensation for the Training Step, said formula is not to be applied to the City's proposed 2011 Step 1 rate of compensation for a Police Officer, but rather, said formula is to be applied to the rate of compensation for a Police Officer at Step 1 herein recommended to become effective on January 1, 2011; and said formula is to be applied to the rate of compensation for a Police Officer at Step 1 herein recommended to become effective January 1, 2012, in order to get the herein recommended rate of compensation for the Police Officer Training Step to become effective January 1, 2012; and said formula is to be applied to the rate of compensation for a Police Officer at Step 1 herein recommended to become effective January 1, 2013, in order to get the herein recommended rate of compensation for the Police Officer Training Step to become effective January 1, 2013.

It is further RECOMMENDED that the parties add a "Training Step" to the current Contract's "Steps" for Police Officers in a Section numbered and titled Section 19.2 Training Step, which Section shall immediately precede the current Contract's Step 1 box, and read as follows:

"Section 19.2 Training Step Police Officers hired after the execution of this Agreement by both parties, who are not State of Ohio Certified Peace Officers at the time of hire, shall be hired at the Training Step in the wage structure."

It is further RECOMMENDED that the subjects of "Appointments" and "Advanced Step Hiring" dealt with in the current Contract at Section 19.2, also be dealt with in the successor Contract in a Section numbered 19.3. Said Section 19.3 shall read as follows:

"Section 19.3 Appointment and Advanced Step Hiring. The City Manager, when making appointments to the rank of Police Officer, shall be authorized to recognize the past relevant experience of applicants in determining their placement within the Step system, provided they are State of Ohio Certified Peace Officers."

It is also RECOMMENDED that the parties' successor Contract at Section 19.4 Police Officer Step Advancement, read as follows:

"Section 19.4 Police Officer Step Advancement.

A. For Police Officers hired at Step 1, step advancement to Step 2 shall occur after one (1) year of continuous service in Step 1. Step advancement to Step 3 shall occur after one (1) year of continuous service in Step 2. Step advancement to Step 4 shall occur after one (1) year of continuous service in Step 3."

B. For Police Officers hired after the execution of this successor Contract by both parties, and who, at the time of their hire, are not State of Ohio certified Peace Officers, their Training Step shall be their hiring Step. For Police Officers hired at the Training Step, step advancement to Step 1 shall occur after one (1) year of continuous service in the Training Step. Step

> advancement to Step 2 shall occur after one (1) year of continuous service in Step 1. Step advancement to Step 3 shall occur after one (1) year of continuous service in Step 2. Step advancement to Step 4 shall occur after one (1) year of continuous service in Step 3."

DISCUSSION CONCERNING ACROSS THE BOARD WAGE INCREASES:

Concerning the percentage increases to the bargaining units' employees' compensation over the life of the successor Contract, as seen above the parties are far apart concerning what percentage of increase in the bargaining units' compensation is warranted. Thus, over the course of the current contract, and indeed over Contracts prior to the current Contract (the parties have a mature collective bargaining relationship going back some twenty years plus), the level of annual increases in compensation for the bargaining units' employees has been well above the 1% increase per annum proposed by the City. Thus, the statutory factor of "past collectively bargaining agreements between the parties" is clearly supportive of the Union's proposal, and <u>not</u> supportive of the City's proposal.

Another statutory factor, "<u>external</u> comparables," is also supportive of the Union's position. Thus, as seen above, no matter which party's external comparables evidence one looks to, the bargaining units' employees have historically been paid wages at or near the top of said external comparables. Additionally, several of these municipalities have recently agreed to compensate their Police Department employees in 2011 and 2012 at near or above the rates the Union seeks here.

Concerning the Statute's "ability-to-pay" factor, while the recession appears to clearly be the circumstance which adversely affected the City's income tax receipts in 2009, the record shows that income tax receipts in 2010 rebounded well. Additionally, as the Union points out, the City's carryover reserve funds are particularly high. And the City's own promotional literature, introduced by the Union, shows that the City's future prospects look very good. Accordingly, the record does not support any claim by the City that it does not have the ability-to-pay the Union's fact finding proposal, and, indeed, the City does not claim otherwise. In sum, in this proceeding the Statute's ability-to-pay factor is not available to the City as a counterweight to those factors noted above which are supportive of the Union's fact-finding proposal.

On the other hand, as seen hereinabove, the City has put forth what it styles an "internal equity" argument to support its wage increase proposals and to counter the Union's wage increase proposals. As noted hereinabove, in support of this internal equity argument the City relies on the widening compensation gap between the bargaining units' employees and all other non-management City employees. Thus, the City asserts that the current Contract's successive increases in compensation over the last three years of 4% per annum have greatly widened this compensation gap between the bargaining units and all other non-management City employees. Accordingly, argues the City, were the undersigned to recommend the Union's wage proposal of compensation increases of 2.75% in 2011, and 3.25% in both 2012 and 2013, such would serve to significantly exacerbate said compensation gap. In my judgment this argument of the City

finds support in the statutory factors of "the effect of adjustments on the normal standard of public service" and on "the interests and welfare of the public" referred to in ORC 4117.14 (G)(7)(C), factors concerning internal equity matters and factors required to be considered by the Fact Finder. Implicit in the City's internal equity argument is the contention that any significant exacerbation of the already wide gap between the bargaining units' employees and all other non-management City employees, such as the Union proposes, will foster resentment and undermine morale in and among the non-management City employees, not engaged in police work. And it need not be belabored that a resentful and demoralized workforce has an adverse impact on the quality of their work product, thereby undermining the "maintenance of the normal standard of public service" rendered by all of the City's non-management, non-policing employees, and, in turn, thereby adversely impacting the "interests and welfare of the public." At the same time, however, other circumstances serve to mitigate the conclusions one might at first draw from just these internal equity matters standing alone. For example, one must keep in mind the reality that given the unique and important skill set needed and possessed by the bargaining units' employees, and the bargaining unit employees' exposure to much greater risks of physical injury, including death, in the course of discharging their policing duties for the City, a meaningful compensation gap between the bargaining units' employees, and the City's non-management workforce <u>not</u> engaged in police work, is to be expected. Still further on this point, while certainly every City employee contributes to the fulfillment of various of the City's responsibilities to its citizenry, the City's <u>most</u>

critical responsibility is to provide for public safety, the very responsibility the bargaining units' employees fulfill. Another circumstance to be taken into account is the fact that the City was free to implement a wage freeze for its non-union workforce because that workforce had no union representation to oppose such, or to propose alternatives, and in any event, no statutory apparatus available to them to seek a different outcome than that put in place by the City. And while the City's Steelworker-represented employees did have Union representation to oppose, and/or propose alternatives to a wage freeze for custodial employees represented by the Steelworkers, and a modest 1.5% increase for maintenance auto mechanic Steelworker-represented employees, none of these Steelworker-represented employees had available to them the statutory dispute resolution mechanism of Conciliation which is available to the Lodge-represented employees here.

Another matter to be discussed concerns the characteristics and format of the parties' established "wage structure." The wage structure is well illustrated by the Current Contract's provision at Article 19 – RATES OF PAY/WAGES, Section 19.1 Wages, which provides as follows:

"Section 19.1 Wages. Effective January 1, 2008 through December 31, 2008, the following wage structure shall be in place for members:

Rank	Step 1	Step 2	Step 3	Step 4
Police officer	$47,154.11	$54,115.13	$61,079.76	$70,258.30
Corporal		$76,054.61		
Sergeant		$81,850.92		

The current Contract's provision at Section 19.4 Application of Pay Rates explains in pertinent part that "the rates of pay set forth in Section 19.1 are based on the full-time employment of forty (40) hours in a work week and 2,080 hours in a work year." In other words, the numbers set forth in the boxes of Section 19.1, as above, reflect the per annum wage or annual wage of the employee's rank and step (Police Officers) or their rank (Corporals and Sergeants). Further in this regard, as seen above, the current contract has four (4) "steps" providing for increasingly greater pay from Step 1 to Step 4 for bargaining unit employees in the rank of Police Officer. The current Contract has no "steps" for bargaining unit employees in the rank of Corporal or in the rank of Sergeant, and none are proposed in this proceeding for the successor Contract. The record further discloses that the parties have long agreed to maintain a wage differential of 8.5% between the pay of a Police Officer and a Corporal and a wage differential of 16.5% between the pay of a Police Officer and a Sergeant. And while it seems to me both logical and likely that the wage differentials are calculated using the annual wage of a Police Officer at the highest step, Step 4, in point of fact the record does not disclose from which Police Officer Step the 8.5% and 16.5 wage differentials are to be calculated for the Corporals' annual wage and the Sergeants' annual wage, respectively. Nonetheless, it is clear that the parties, due to their past practices, are well aware of what Police Officers Pay Step has been used in the past to calculate the Corporals' and the Sergeants' respective wage differentials. Thus, in the recommendations to follow it will be recommended that the parties use the Police Officer Step they have used in the past to calculate the

8.5% wage differential for Corporals and the 16.5% wage differentials for Sergeants.

RECOMMENDATIONS CONCERNING ACROSS THE BOARD WAGE INCREASES:

It is RECOMMENDED that the parties retain the current Contract's wage structure format, with the caveat that they add a "box" for the "Training Step" recommended hereinabove, and a "box" for the "actual dollars and cents amount" of the Training Step. Accordingly, the format shall have a box entitled Rank; Training Step; Step 1; Step 2; Step 3; and Step 4. It shall also have a box entitled Police Officers; Corporeal; and Sergeant. It shall further have a "box" reflecting the annual wage, in the form of actual dollars and cents, for a Police Officer Training Step; a Police Officer Step 1; a Police Officer Step 2; a Police Officer Step 3, a Police Officer Step 4; a Corporal; and a Sergeant. This format is recommended for each year of this three-year Contract.

It is additionally RECOMMENDED that the "box" format for the first year of the successor Contract be preceded by the following text: "Section 19.1 Wages. Effective January 1, 2011 through December 31, 2011, the following wage structure shall be in place for members:" It is additionally RECOMMENDED that the "box" format for the second year of the successor Contract be preceded by the following text: "Effective January 1, 2012 through December 31, 2012, the following wage structure shall be in place for members:" It is additionally RECOMMENDED that the "box" format for the third year of the

successor Contract be preceded by the following text: “Effective January 1, 2013 through December 31, 2013, the following wage structure shall be in place for members:”

Balancing all of the foregoing considerations and factors, I believe that a wage increase of 1.75%, retroactive to January 1, 2011; a 2.25% increase effective January 1, 2012; and a wage increase of 2.75%, effective January 1, 2013, best accommodates and balances all of the competing statutory factors and relevant circumstances addressed above, and such rates of increase in Police Officer compensation is hereby RECOMMENDED.

I leave to the parties the task of doing the mathematical calculations necessary to yield the “actual dollars and cents” amounts resulting from the across-the-board percentage increases in the Police Officers annual wage for all three (3) years of the successor Contract hereinabove recommended. The dollars and cents figures yielded from the above are to be entered into the appropriate “box” of the wage structure format.

Having calculated the “actual dollars and cents” expression of the annual wage increases for Police Officers to become effective January 1, 2011, January 1, 20012, and January 1, 2013, it is RECOMMENDED that the “actual dollar and cents” annual wage of a Police Officer at the same Step as that relied on in the past to be enhanced by 8.5% and 16.5% in order to ascertain the annual wage of Corporals and Sergeants, respectively, be relied upon here, and be enhanced by 8.5% and 16.5% each year of the three (3) year successor Contract, in order to ascertain the “actual dollars and cents” annual wage to be paid to Corporals and

Sergeants respectively, effective January 1, 2011, January 1, 2012, and January 1, 2013 respectively.

I leave to the parties the task of doing the mathematical calculations necessary to yield the "actual dollars and cents" amounts of the annual wage for Corporals and Sergeants resulting from the recommendations above.

It is further RECOMMENDED that the "actual dollars and cents" figures yielded from the above calculations be entered into the appropriate "box" of the wage structure format.

Issue No. 3: ARTICLE 26 – INSURANCE, Section 26.1 – Medical, Dental, and Vision Benefits

Evidence and Arguments:

I note at the outset that from the earliest days of the governing collective bargaining legislation, ORC Chapter 4117, going back now more than a quarter of a century, the issue of health insurance coverage has been a vexing one. Over the years, on those occasions, frequent in number, when the parties invoked the statutory impasse procedures, one could count on the fact that one of the matters, if not the only matter, in dispute and at impasse was the successor Contract's provisions concerning the health insurance benefit for bargaining unit employees. The perennial appearance of the health insurance issue was in very large part due to the almost ever present annual increases in the cost of providing a meaningful benefit to assist employees with their doctor and pharmacy expenses.

In response to the escalating costs of providing this benefit, the insurance industry and self insurers, as is Dublin, have come up with various mechanisms

and/or models for delivering an acceptable health care insurance benefit, while at the same time managing to contain some of the annually escalating costs of the benefit. Historically, in the early years post-ORC 4117 the employer virtually bore the entire cost, or nearly so, of the health insurance benefit. Over time employees were required to make greater and greater contributions toward the health insurance premium. Employers and/or Insurers entered into contractual arrangements known as Preferred Provider with participating doctors and pharmacies for pre-arranged fixed fees for certain procedures and/or medications known as PPO plans, Preferred Provider Plans.

The record shows that for the first time the current Contract requires members to contribute 15% toward the monthly health insurance premium costs, which contribution is however "waived" if the employee (and if applicable, their spouses) participate in a "Wellness Initiative" program, also referred to by the parties as the "Wellness Program," which program itself was instituted for the first time in the current Contract.

The City proposes moving the bargaining units' employees from the current Contract's health benefit of a PPO coupled with a Wellness Program into a High Deductable Plan with a Health Savings Account (also referred to as an HSA Plan), which was recently put in place for all City employees other than the employees in the bargaining units here and the employees in the FOP/OLC represented bargaining unit of Police dispatchers.

This change from a PPO with a Wellness Program to a High Deductible Plan with a Health Savings Account Plan put in place, for many City employees,

and proposed here, was motivated by the City's projections concerning continually increasing costs of a meaningful health insurance benefit. The City contends that it projected in 2009 that if the City maintained its current health benefit plan, which the FOP members still participate in, [i.e. the PPO and Wellness Program], the total [health] benefit cost growth [would be] 36% from 2010 to 2013." At this juncture the City called upon its benefit consultant to conduct a review of the City's current benefit design and Wellness Program, with the objective of looking for the savings the City received from the Wellness Program, put in place in 2006 (and put in place for the bargaining units here in 2008) and with the objective of projecting future health care costs. The benefit consultant's study revealed that the City's Wellness Program had saved $672,000.00+, but that in future years the City would again experience increased health care costs. The record shows that based on this study the City reached the conclusion that in light of the projection of future increases in the cost of the health benefit the City, had maximized the potential return on its PPO/Wellness Program health benefit strategy and that it was therefore time for a change, more particularly, a change to what the City describes as "a consumer driven health care plan," namely an HSA Plan.

The City states that its health benefit management strategy is to: "(1) encourage employees to focus on wellness and prevention; (2) to encourage employees to make better choices as health consumers; (3) [to] remain an employer of choice; (4) [to] continue containing the growth in health care costs; and (5) [to] be fiscally responsible."

The City contends that its HSA Plan, in effect with all City employees, except, as noted above, the bargaining units' employees here, and the FOP/OLC's bargaining unit employees, comports with its five (5) point health benefit management strategy set forth above. The City's presentation of its proposed HSA plan was exceptionally well prepared and backed up with a very considerable amount of documentary and testimonial evidence. In support of its proposal the City outlines various characteristics of the HSA Plan. Thus, the City notes that "the funds in the employee's HSA account belong to the employee and the funds in the account can be used for the health care expenses of the employee's choice. By giving employees control over these funds they become better health care consumers. The HSA Plan…reinforces the link between wellness and prevention. It provides 100% coverage for all preventive medical care, thereby encouraging employees [to] seek preventive care to maintain or improve their health status, rather than postponing medical care until a major health problem arises. The HSA Plan also aligns with the City's existing Healthy by Choice philosophies and strategies under the FOP's current health care plan. The HSA Plan allows employees to earn additional City funding into their HSA accounts [if the employee meets] specific health goals (e.g. tobacco free; cholesterol within prescribed levels; blood pressure within prescribed levels; and waist or BMI within prescribed levels." (Emphasis supplied.)

In its explanation of the nuts-and-bolts of its "High Deductible Plan with a Health Savings Account," the city explains that "the employee's deductible would increase from $0 to $2,500.00 for single coverage and from $0 to $5000.00 for

family coverage. In addition, the out-of-pocket maximum levels would increase from $1,750.00 to $4,000.00 for single coverage and from $3,000.00 to $8,000.00 for family coverage. The co-insurance amounts will remain at 85% paid by the employer with the employee paying the final 15%." Further, explains the City, "[i]n an effort to offset the increased deductible and out-of-pocket maximum levels, the City will set up a health savings account ("HSA") for the employee and deposit a base tax-free contribution…" As the undersigned understands the City's proposal, the amount of money which constitutes the City's base tax free contribution/deposit into each Lodge employee's Health Savings Account in 2011 is arrived at by looking at the date in 2011 the City's proposal could, as a practical matter, be put into place, and prorating the total funding amounts provided to City employees who participated in the HSA Plan for all of 2011. Thus, for example, if, as a practical matter, the City's High Deductible Plan with a Health Savings Account ("HSA") could have been put into place as of July 1, 2011, the City would have deposited $1,125.00 for those employees with family health coverage, and one-half that amount or $562.50 for those employees with single health coverage. Thereafter, in 2012 and 2013, Lodge employees will receive the same HSA funding from the City as all other City employees receive.

To additionally incentivize employees, and if applicable, their spouses, to be active participants in maintaining their personal health, and thereby hopefully better containing the cost of the health benefit, the City proposes to provide Lodge-represented employees, as it does other city employees, with opportunities to earn from the City additional money contributions to their HSA upon their

reaching the health goals, four in number, referenced hereinabove. The amount of said additional earnings for the Lodge-represented employees is to be arrived at by prorating "the total funding amounts provided to City employees who participated in the HSA Plan for all of 2011. (Emphasis supplied.) By way of illustration, if the City-proposed concept of additional compensation for meeting health goals were agreed to at or prior to July 1, 2011, the following monetary contributions would have been available for meeting the additional health care goals:

- "Single Plan – the employee can earn an additional $75.00 for each health goal met.
- Family Plan With Spouse – the employee and the employee's spouse can each earn an additional $75.00 for each health goal met.
- Family Plan Without Spouse – the employee can earn an additional $150.00 for each health goal met."

With respect to 2012 and 2013, the City proposes that the "health goals incentives will be funded at the same level as the funding for all other City employees."

The City contends that, using the health care claims submitted by the employees in the Lodge's two bargaining units in 2010 as a baseline to project the impact of a switch from the current Contract's PPO Plan to the City-proposed Health Savings Account Plan reveals that the bargaining units' employees with single coverage would save $1,079.99 per year under the HSA Plan and the

bargaining units' employees with family coverage would on average incur an additional $401.60 in health care costs.

Concerning the cost savings to the City, the City acknowledges that its proposed HSA Plan "has [but] a small cost savings to the City," the City estimating that it would only save $158,400.00+ on premium equivalents by moving the Lodge-represented employees from the current Contract's PPO Plan to the City-proposed HSA Plan. Still further in this matter, the City acknowledges that even this modest cost savings "is nearly eliminated when the City funds the Lodge-represented employees' HSA accounts."

The City also points out that under the City's health insurance proposal Lodge employees will continue to have no health benefit premium contribution for either single or family health insurance coverages. In this regard, the City points out that Dublin is the only municipality in central Ohio that does not charge a monthly employee premium for all types of health insurance. Furthermore, argues the City, on average, in 2011, Central Ohio cities (which latter the City contends constitute appropriate "external comparables," whose terms and conditions of employment, by Statute, must be taken into account by the undersigned, as Fact Finder) charged its employees monthly premiums of $39.32 for single health care coverage, and $101.08 for family health care coverage, with the consequence that the average monthly premium costs to employees per annum was $471.83 for single coverage and $1,210.16 for family coverage.

On the other hand, the Union proposes that, with some modifications, the current Contract's provisions at Article 26 – INSURANCE, Section 26.1 Medical,

Dental, and Vision Benefits, be continued and maintained in the parties' successor Contract. The Lodge points out that the current Contract introduced for the first time the concept and requirement that bargaining unit employees contribute to the cost of the Employee health benefit premium. Thus, the current Contract provided that bargaining unit employees would be required to pay 15% of the monthly health benefit premium. The current Contract also introduced for the first time a Wellness Initiative. The Union notes that the negotiations in 2007 and 2008 leading up to the parties' current Contract were "lengthy." And, contends the Union, without contradiction, the negotiation of the employee health insurance benefit "was, by far, the most hotly contested and time consuming issue that was addressed during [the] lengthy Contract negotiations" of 2007-2008. At the conclusion of these 2007-2008 negotiations, the parties' Contract provided, as the Union puts it, "a mechanism for waiver of that premium [contribution] for members (and, if applicable, their spouses) who participated in [the] 'Wellness Initiative' Program."

The Lodge notes that upon implementation of the current Contract, "most (if not all) members voluntarily participated in the Wellness Initiative and, thus, were not required to pay [the] monthly premium share of [15%] for their health insurance coverage. Presently, argues the Union, notwithstanding the drastic changes instituted in the parties' current Contract concerning the bargaining units' employees' health insurance coverage, the City desires "to make another drastic change in employee health coverage. And, notwithstanding the important fact that the current Contract's health insurance plan "has only been in effect for FOP

bargaining units for slightly more than two years," the City "once again seeks to 'reinvent the wheel' of medical coverage by converting all City employees to a Health Savings Account (HSA) Plan," argues the Union.

Turning from some of the more pertinent of the Lodge's arguments and contentions in opposition to the City's proposal for Article 26, Section 26.1, the Lodge describes its own proposal as follows:

"The FOP's proposal—while maintaining the current PPO Plan with the 'Wellness Initiative' program—would require members who participate in the Wellness Initiative to pay a premium share (rather than receive a full premium waiver) as follows:

For 2011, the monthly share would be $20.00 for single members and $40.00 for members with family coverage;

For 2012, the monthly share would increase to $25.00 for single coverage and $50.00 for family coverage; and

For 2913, the monthly share would increase to $30.00 for single coverage and $60.00 for family coverage.

For those members [i.e. bargaining units' employees] who choose not to participate in the City's Wellness Initiative, the FOP proposal would continue current language that requires [said] members [i.e. bargaining units' employees] to pay a monthly premium share equivalent to 15% of the City's total plan costs (with stated monthly caps)."

The Lodge asserts that its health benefit proposal "recognizes the increasing cost of medical benefits, but it preserves a plan that does not

discriminate among members; and, at the same time, it creates 'savings' for the City that exceed the projected savings from conversion to an entirely new HSA Plan."

In making the contention that the Lodge's proposal "does not discriminate among members," the implication is that the Lodge is contending that the City's High Deductible and HSA Plan does discriminate among members. Indeed, the Lodge expressly contends that the City's proposed health benefit plan "discriminates" among the bargaining units' employees.

Thus, the Union contends that the City's health benefit HSA Plan will have a "negative effect" upon "certain members," namely those who routinely experience higher medical costs (either as a result of their own medical conditions or chronic medical conditions experienced by their family members.) The Lodge compares and contrasts its health benefit Plan with that of the City, and contends that whereas the Lodge's plan "spreads risk throughout the bargaining unit," the City's plan "differentiates between members based upon the amount of medical care they receive."

Elaborating on its characterizations of the City's Plan as discriminatory, the Union notes that the City would only partially fund each member's HSA account, and that partial funding is at levels significantly below the amount of the annual plan deductibles called for by the City's proposal, i.e. $2500.00 for single coverage and $5000.00 for family coverage. The Union argues that the negative consequence of the City Plan is that "only those members who are lucky enough to avoid significant medical expenses in a particular year would be able to

'accrue' or 'save' funds in their HSA account…to be applied to medical expenses incurred in subsequent years." Conversely, argues the Union, "members who are not so lucky and who incur medical costs in excess of the annual HSA supplement, will have to pay considerably more for their family medical care" than under the current PPO Plan. Indeed, the Lodge contends that the philosophy underlying the two different health benefit plans "differs markedly in that whereas the Lodge's Plan is designed to 'spread risk throughout the bargaining Unit,' the City's proposed plan "intentionally differentiates between members based upon the amount of medical care they receive."

Further with respect to the potential "savings" that, as the Union puts it, certain "lucky" employees may achieve, the Lodge contends that, were the City's proposed HSA Plan in place, such savings are "illusory, for all but a few members." Thus the FOP contends that indeed, "based upon usage patterns [i.e. health insurance claims] from the previous years—only one member of the FOP bargaining units would have actually been able to accrue or carry over more than $500.00 in HSA funds from one year to the next." The FOP states that the analysis which revealed that only one employee from the bargaining units would have been able to accrue or carry over more than $500.00 in HSA funds from one year to the next is "based upon an Employer HSA contribution of $1125.00 for single coverage and $2500.00 for family coverage, which would be provided only for the first year of the City's proposed HSA Plan. Under the [City's] proposed plan, this contribution from the city would be reduced to $875.00 per year for single coverage and $1,750.00 per year for family coverage." Moreover, states the

Union, “most bargaining unit employees would pay at least $500.00 more than the HSA supplement provided by the City, with several employees paying in excess of $2000.00 more than the supplement for their family’s health care.”

The Lodge additionally argues in support of its proposal for the bargaining units’ employees’ health care benefit, and conversely in opposition to the City’s proposal for the bargaining units’ employees’ health care benefit, that the “City’s own 2011 budget projections show that the total amount ‘saved’ by the City that will result from a shift to a HSA for all Police Department personnel (including non-bargaining unit personnel) is only $15,580,” and that this $15,580 savings “is more than offset by the FOP’s proposal… More specifically,” states the Union, “under the FOP proposal, the City would ‘save’ $31,200.00, which is $15,370.00 more than the projected savings from an HSA plan.”

The Lodge states that the City has articulated that its desire to switch from the current PPO Plan with the Wellness Initiative is not based on the failure of this current health care benefit, but rather it is based upon its desire to implement a plan that, hopefully, will make employees more conscious of the costs of health care, and, ultimately help to control the increases in those costs. However, asserts the Lodge, the City acknowledges that there are no guarantees that this new approach and plan will significantly alter employee utilization of medical services. Accordingly, argues the Lodge, “the only assured ‘savings’ that will come from the HSA are gleaned from costs that are simply passed to employees as the result of the imposition of high deductible[s] (which will be paid by employees rather than by the City).”

In sum, the Lodge argues that the City's High Deductible With An HSA Plan constitutes "a dramatic and unwarranted shifting of costs to bargaining unit members that is not justified by any articulated problem or cost associated with the current PPO plan." Accordingly, the Lodge urges the undersigned to recommend the Lodge's proposal for Article 26.

DISCUSSION:

As noted hereinabove, ORC 4117.14 spells out the various factors which a Fact Finder must take into consideration in making recommendations to the parties concerning the resolution of their dispute, more particularly, ORC 4117.14 (C) (7) (e) and ORC 4117.14 (G) (7) (f). These provisions read together provide as follows:

"[ORC 4117.14 (C) (4) (e)]…In making the recommendations, the fact finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

* * * *

[ORC 411p7.14 (G) (7) (f)] reads as follows:

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

In the years following the Statute's enactment, one of the "other factors" referred to in ORC 4117.14 (G) (7) (f) which evolved to become a factor to be

taken into consideration was the notion that incremental change in a term or condition of employment was preferred over dramatic and abrupt change. This factor and guideline was essentially grounded in the notion that dramatic change in a major condition of employment, such as the health care benefit, threatened the stability of the employer-employee relationship, a condition at odds with the genesis and purpose of the Statute. Put another way, this principle of incrementalism, as it were, was essentially but a refinement and logical extension of the Statute's factor and guideline expressly set forth in ORC 4117.14 (G) (7) (2), namely, "post collectively bargained agreements…between the parties," a "factor" whose goal and purpose patently is the stability of the principles' relationship. (Emphasis supplied). This concept of incrementalism has been an important guideline for the undersigned when acting as a Fact Finder (and as a Conciliator) in previous cases. Thus in City of Trotwood and OPBA, SERB Case #04-MED-06-0658 (Keenan, 2005), I noted that "…[S]elf-evidently the underlying purpose or justification for the need to take past-collectively bargained agreements into account is the desirability of maintaining stability in the collective bargaining relationship by not straying dramatically from past agreements. Similarly, in City of Riverside and F.O.P. Lodge No. 161, SERB Case #05-MED-09-0933 (Keenan, 2006) I noted that "a well accepted tenet in Conciliation holds that…[due to] the Statute's 'past collectively bargained agreements' criterion, changes to past agreements are better made incrementally." And most recently in City of Gahanna and OPBA, SERB Case #2009-MED-10-1148 (Keenan, 2011) I noted in connection with a health benefit issue that "…if

the current Contract were the first and only past contract containing such terms, it would still properly be given weight, both by virtue of its compliance with the literal terms of [ORC 4117.14 (G) (7)] subparagraph (a), and by virtue of [ORC 4117.14 (G) (7)] subparagraph (f). Thus, with respect to the latter, subparagraph (f), it is well established in impasse procedures that the party…seeking the continuation of the most recently negotiated collective bargaining agreement which was the first such agreement between the parties '[such as is the PPO with Wellness Initiative Model of delivery of the health care benefit to the bargaining units employees here], bargains from a position of strength, because the parties are expected to maintain recently negotiated terms for longer than the first Contract term, in the interest of stability in the collective bargaining relationship." This is certainly true where, as here, there is no preponderance of statutory factors to compel a contrary conclusion.

In the case at hand, as seen above, the parties, <u>for the first time,</u> reached agreement on a PPO with a Wellness Initiative, the Wellness Initiative and contribution to the cost of the health care benefit being the "new" components of the health care benefit. But even this newly adopted Wellness Initiative and contribution to the cost of the health care benefit was not particularly onerous in light of the escape clause from contributing to the health care benefit provided you participated in the Wellness Initiative. Then too, for those who participated, only those identified as at a high level of health risk were reported to take specific action toward improving their health. Those with less than a high risk were allowed to opt out of any program to improve their health. All Wellness Initiative

participants, however, were made aware of their health problems and programs to improve their health were made available. In contrast the City's proposed HSA Plan here has stronger sanctions and no opt out for those who fail the wellness initiative component of the City-proposed plan. And in any event, it seems to me clear that, as the Union puts, the "unlucky" bargaining unit employee stands to be out substantial monies under the HSA Plan, which undermines the spreading-of-the-risk concept of the PPO in the Wellness Initiative in order to more strongly incentivize the employee to a healthier life style.

The foregoing clearly establishes that the City's HSA plan and Wellness Initiative component represent a "dramatic" change from what was only recently, i.e. the current Contract, a significant change itself in the health care benefit. Thus the City's proposal simply fails to comport with the incremental principle discussed above.

As with the wage issue, the City does not have available to it the ability-to-pay-factor as a counterbalance to the Union's case, both for the reasons noted concerning the wage issue, and more specifically, because the Union's unaltered proposal costs the City less than the Union's proposal, and the modifications to the Union's proposal being RECOMMENDED here will reduce the cost to the City of the Union's health care benefit model even further. The undersigned understands the City's point that it is hopeful that its model would generate notable savings for it in the time frame beyond the term of the successor Contract, but the Fact Finder's jurisdiction by agreement of the parties, is limited to terms and conditions of employment up to December 31, 2013.

Concerning the "external comparables" factor, there is a modest preponderance for the PPO with a Wellness Initiative over the HSA model, albeit an HSA model has been adopted by many external comparable jurisdictions. Indeed, this factor may loom large in any Fact Finding or Conciliation proceeding for the parties' Contract following this successor Contract, but it does not support the City's health benefit proposal at this juncture.

As for the "fiscal responsibility" goal of the City, it clearly revised the PPO with a Wellness Initiative as meeting its goal for such for several years with respect to non-Union and other Union-represented employees, and for the current Contract with respect to the bargaining units' employees here. Moreover, as just observed, greater savings will result with the Union's proposal over the term of the successor Contract than would obtain with the City's proposal, especially in light of the modification to the Union's proposal recommended here. In these circumstances it cannot be found that health benefit proposal recommended here is fiscally irresponsible.

It is RECOMMENDED that the Lodge's health care benefit proposal be adopted by the parties, with the following modifications: the Lodge's proposal, set forth in Exhibit "N" of the City's Pre-Hearing brief, page three (3) with respect to "Medical Plan – Employee 'Premium Equivalent' Contribution": For member only"—strike/delete "not to exceed $60.00"; For member and minor dependents—strike/delete "not to exceed $97.00."; For enrolled spouses—strike/delete "not to exceed $90.00."; For member, enrolled spouse and minor dependents—stroke/delete "not to exceed $187.00."

These deletions will further incentivize those not participating in the Wellness Initiative and potentially decrease use of the health care benefit for those not currently participating.

It is also RECOMMENDED that the Lodge's Section 26.1 B set forth in Exhibit "N" of the City's Pre-Hearing Brief, starting at page three (3) and on to the top of page four (4) thereof be modified as follows: Concerning the "cost of coverage" figure for 2013 For Member Only –strike/delete "$30/month" and substitute "$45/month"; concerning the cost of coverage figure for 2013 For Member and any minor dependents and/or spouse—strike "$60/month" and substitute "$75/month."

Finally, as the parties requested, it is RECOMMENDED that all tentative agreements of the parties also be adopted by them.

This concludes this Report and Recommendations of the Fact Finder.

DATED: September 26, 2011

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Frank A. Keenan
Fact Finder