

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard To The Matter Of The Fact-Finding Between:

THE CITY OF TOLEDO)	Case No(s):
)	11-MED-03-0501 & 11-MED-04-0563
-AND-)	
)	
AMERICAN FEDERATION OF STATE, COUNTY)	
AND MUNICIPAL EMPLOYEES, LOCAL 7, AFL-CIO)	

ATTENDANCE:

For The City:

Michael Niedzielski, Esq.,	Attorney
Anthony Markwood, Esq.,	Attorney
Miranda Vollmer	Legal Intern
Michael P. Bell	Mayor
Stephen J. Herwat	Deputy Mayor/Operations
Patrick McLean	Finance Director
Edwin S. Skinner, Jr.,	Commissioner/Administrative Services (Human Resources)
Brian Byrd	Chief/Fire Department
Diana Ruiz-Krause	Deputy Chief/Police Department
Leo J. Eggert	Captain/Police Department
Mike Armstrong	Lieutenant/Fire Department
Stacey Mitchell	Police Officer

For The Union:

R. Sean Grayson, Esq.,	Attorney
Steve Kowalik	Representative, AFSCME OH Council 8
Donald D. Czerniak	President, Local 7
Rick M. Akeman	Chief Steward
Tania Schneider	Steward
Angela Tucker	AFSCME, Local 7
Selina Miller	AFSCME, Local 7
Tonya Gosselin	AFSCME, Local 7
Christopher Fox	Fiscal Policy Analyst

BEFORE ALAN MILES RUBEN, FACT-FINDER

Tele: (216) 687-2310
Fax: (216) 687-6881
E-Mail: alan.ruben@law.csuohio.edu

BACKGROUND:

The City of Toledo, located in Lucas County, Ohio, maintains an emergency Communications and Dispatch Department where calls from the public for emergency assistance are relayed to the Fire Department, or the Police Department, as appropriate.

The Department's sixty-eight employees¹ in the classification of Communications Operator and Senior Communications Operator² are assigned to take 911 calls and to dispatch Police Officers (but not Firefighters) as the nature of the emergency requires. The Department clears about 1,000 calls a day. The work is very stressful. Operators must quickly, but accurately, obtain needed information from an often distressed caller so that the Police, Firefighters or Paramedics can respond to the proper location.

According to Ms. Tania M. Schneider, a Senior Communications Operator and Union Steward with ten years service in the Department, the turnover rate is very high, and there are presently thirteen vacant positions. Overtime needs are filled first on a volunteer basis, and, then, if required, on a forced basis for up to eight hours.

¹ Sixty-three are female. Two males handle Police Dispatch, and three deal with fire emergency calls.

² There are thirty-six Senior Communications Operators and thirty-two Communications Operators.

These sixty-eight Communications Operators form a Collective Bargaining Unit³ represented exclusively by the American Federation of State, County and Municipal Employees, Ohio Council 8 and Local 7, AFL-CIO.⁴

The City and the Union were signatories to a Collective Bargaining Agreement entered into as of July 1, 2005 for an initial term which expired June 30, 2008. Thereafter, on April 20, 2010, the parties entered into what was denominated as a "Memorandum of Understanding" (successor Collective Bargaining Agreement) retroactively effective to July 1, 2008 and continuing for an initial term of three years. This document amended some, and retained all other terms of the 2005 Collective Bargaining Agreement.

Faced with a looming financial crisis in 2010 because of an unanticipated revenue shortfall, City Council declared "exigent circumstances", and the Union agreed in that Memorandum to the following concessions and amendments:

1. Severance payout for retiring members was to be spread over three years;
2. The City's employee pension contribution "pick-up" was reduced from 10% to 6 1/2% until December 31, 2010, and as of April 1,

³ The City has nine separate Bargaining Units and has entered into a Collective Bargaining Contract with each Unit.

⁴ AFSCME, Ohio Council 8 and Local 7 also represent a Bargaining Unit of 811 employees assigned to the Departments of Public Utilities, Finance, Neighborhoods, Facilities & Fleet Operations and the Fire Department. This Bargaining Unit is referred to as Local 7's "Main Unit". Fifty percent of the Bargaining Unit employees are funded out of earmarked revenue sources.

- 2010 all new hires in the Bargaining Unit are required to pay the entire cost of their PERS employee contribution. With effect from the first pay period after January 1, 2011 the City was to resume the full pension pick-up for all eligible employees;
3. Medical insurance premium co-payments were established at \$25.00 per month for single coverage; \$40.00 per month for single plus one coverage and \$55.00 for family coverage;
 4. A "Wellness Allowance" for single coverage was increased from \$125.00 to \$300.00 per year while family coverage was increased from \$300.00 to \$600.00 per year. The Union agreed not to receive any retroactive payments reimbursing members for increases in pension pick-up or hospitalization premiums imposed under the City Ordinances prior to April 23, 2010. The Parties agreed to a meal allowance under Section 2115.116 of \$9.00;
 5. The "Reverse 'Me Too' - Healthcare Changes" found in Local 7's Main Contract with Local 7 was to be applied;
 6. No wage increases for 2009 and 2010 were to be provided and a 2% wage increase was to become effective in the first pay period in January, 2011;

The Concession Agreement was designed to assist the City to overcome a \$50,000,000.00 projected deficit by providing approximately \$226,000.00 in expenditure reductions, and the City agreed that, because of the concessions, no members of Local 7 would be laid-off.

As the term of 2010 Contract drew to a close, negotiations began on May 25, 2011 looking towards the negotiation of a successor Agreement. Bargaining sessions were held over the succeeding month.

The parties reached Tentative Agreements on the terms of the following numbered Sections:

- 2115.01 - "Local 7 Recognition";
- 2115.02 - "Classification";
- 2115.03 - "Non-representation Probationary Period";
- 2115.04 - "Collective Agreements";
- 2115.05 - "Listing of New Employees";
- 2115.06 - "Union Assessments";
- 2115.07 - "Withdrawal-Conditions";
- 2115.08 - "Credit Union/Direct Deposit";
- 2115.09 - "Savings Bonds and United Way Charitable Deductions";

2115.10 - "P.E.O.P.L.E." ;
2115.11 - "Deferred Compensation Plan" ;
2115.12 - "Nondiscrimination Pledge" ;
2115.13 - "Management Rights" ;
2115.14 - "Union Stewards" ;
2115.15 - "Union Release Time" ;
2115.xx - "Labor Management Meetings" (Current 2115.15(b)) ;
2115.16 - "Rights of Visit" ;
2115.17 - "Unit Meeting" ;
2115.18 - "No Strikes, Interruptions or Slowdowns" ;
2115.19 - "Stewards - No Authority" ;
2115.20 - "No Lockout" ;
2115.21 - "Intent Grievances" ;
2115.22 - "Grievance Procedure" ;
2115.23 - "Arbitration" ;
2115.24 - "Expedited Labor Arbitration Rules" ;
2115.25 - "Failure to Answer or Appeal" ;
2115.26 - "Suspension Without Hearing" ;
2115.27 - "Procedure" ;
2115.28 - "Appeal" ;
2115.29 - "Verbal Warning Counseling Employees" ;
2115.30 - "Progressive Disciplinary Procedures" ;
2115.31 - "Advanced Disciplinary Procedure" ;
2115.xx - "Documentation of Disciplinary Action" ;
2115.32 - "Clearing of Employee's Record" ;
2115.33 - "Counseling Employees" ;
2115.34 - "Failure to Follow Procedure" ;
2115.35 - "Employee Assistance Program" ;
2115.36 - "Probationary Period" ;
2115.37 - "Performance Appraisal Systems and Incentive Plans" ;
2115.38 - "Seniority" ;
2115.39 - "Unit Seniority" ;
2115.40 - "Seniority List" ;
2115.41 - "Seniority - Union Officers and Stewards" ;
2115.42 - "Military Service" ;
2115.43 - "Seniority During Industrial Disability" ;
2115.44 - "Loss of Seniority" ;
2115.45 - "Layoff Procedure" ;
2115.46 - "Vacancies" ;
2115.47 - "Recall Procedure" ;
2115.48 - "Reappointment" ;
2115.49 - "Promotions" ;
2115.50 - "Transfers" ;
2115.51 - "Voluntary Demotions" ;
2115.52 - "Probationary Period - Extension" ;
2115.54 - "Alternates" ;
2115.53 - "Reinstatement" ;
2115.55 - "Transfers of Lucas County E-911 Operators" ;
2115.56 - "Leave of Absence Without Pay" ;
2115.57 - "Personal Leave - Up to Five (5) Days" ;
2115.58 - "Personal Leave From Six (6) to Thirty (30) Calendar
Days" ;

2115.59 - "Personal Leave - More Than Thirty (30) Calendar Days";
 2115.60 - "Falsification";
 2115.61 - "Parental Leave";
 2115.62 - "Sick or Injury Leave (Not Work-Related);
 2115.63 - "Employment by Bargaining Agent";
 2115.64 - "Work Schedules";
 2115.65 - "Starting/Quitting Time";
 2115.66 - "Work Day";
 2115.67 - "Workweek (With Additional Language Added)";
 2115.68 - "Shift Work Schedules";
 2115.70 - "Breaks and Lunch Hour";
 2115.xx - "Workers' Compensation Covered Injuries at Work";
 2115.74 - "Overtime Guarantee";
 2115.75 - "Time-Off - Shift Assignments/Training";
 2115.76 - "Overtime Rotating List";
 2115.77 - "Probationary Employees - Overtime";
 2115.78 - "Overtime - Promotions, Transfers, Demotions";
 2115.79 - "Overtime Refusal";
 2115.80 - "Premium Hours";
 2115.81 - "Assignments - Inequality";
 2115.82 - "Compensatory Time - (Delete Current Section and
 Replace With the Following)";
 2115.xx - "Trade Days (New Section)";
 2115.xx - "Shift Bid process (New Section)";
 2115.83 - "Compensated Time Considered as Time Worked";
 2115.84 - "Injury at Work";
 2115.85 - "Provisions for Safety Joint Safety Statement";
 2115.86 - "Excluded Employees";
 2115.87 - "Bulletin Boards";
 2115.88 - "Working Below Classification";
 2115.89 - "Working Out of Classification";
 2115.90 - "Resignation";
 2115.91 - "Other Employment Compatibility";
 2115.92 - "Change of Name-Address-Phone";
 2115.93 - "Part-Time Employees";
 2115.95 - "Sick Pay Usage";
 2115.96 - "Reporting - Proof of Illness";
 2115.97 - "Sick Pay Extension";
 2115.98 - "Excessive Absenteeism";
 2115.99 - "Injury Pay Wage/Salary Continuation";
 2115.101 - "AFSCME Health and Welfare Plan";
 2115.104 - "Mentor/Uniform Maintenance Allowance";
 2115.105 - "Vacation";
 2115.106 - "Paid Holidays";
 2115.107 - "Funeral Pay";
 2115.108 - "Jury Duty";
 2115.109 - "Unemployment Compensation";
 2115.100 - "Bonus Days";
 2115.110 - "Educational Reimbursement and Training Programs";
 2115.111 - "Part-Time Employee's Seniority and Benefit Rights";
 2115.112 - "Safety Glasses";
 2115.114 - "Shift Premium";

- 2115.115 - "Saturday-Sunday - Holiday Pay";
- 2115.116 - "Meal Allowances";
- 2115.117 - "Longevity";
- 2115.118 - "Travel Allowance";
- 2115.119 - "Termination and Severance Pay";
- 2115.120 - "Payday";
- 2115.121 - "Policies, Procedures and Regulations";
- 2115.122 - "Subcontracting";
- 2115.123 - "Protection of Conditions";
- 2115.124 - "Reclassification";
- 2115.125 - "Federally Funded Jobs";
- 2115.126 - "Successors and Assignees";
- 2115.127 - "Savings Clause";
- 2115.128 - "Residency Requirement and Waiver";
- 2115.129 - "Termination";

Further, the parties tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other provisions except those listed below.

The Fact-Finder finds appropriate and recommends the adoption of all of the tentative agreements.

A series of proposals to add new provisions and to amend other provisions of the subsisting Contract, were withdrawn and are deemed to have been abandoned.

Remaining unresolved were proposals submitted by one or both parties to make changes in, or add provisions to the Agreement as follows:

- 2115.69 - "Saturday & Sunday Shift Workers";
- 2115.71 - "Daily Overtime";
- 2115.72 - "Saturday/Sunday Overtime";
- 2115.73 - "Holiday Overtime";
- New Section - "Overtime and Double Time Payments";
- 2115.94 - "Accumulation and Payment of Sick Days";
- 2115.102 - "Hospitalization, Prescriptive Drugs,
Dental Insurance";
- 2115.103 - "Public Employees Retirement System of Ohio";

2115.113 - "Base Annual Salaries";
2115.xxxx - New Section - "Mid-Term Bargaining", and
2115.xxxxx - New Section - "Zipper Clause".

The Employer's final offer, made on June 30, 2011, was rejected, and impasse was declared.

On July 13, 2011, the undersigned was appointed Fact-Finder by the State Employment Relations Board.

At the direction of the parties the evidentiary hearing began on September 14th. After mediation was declined, the City went forward and made its presentation and the hearing was recessed. The hearing resumed and was concluded on September 29, 2011, on which date the Union made its evidentiary submission.

Timely in advance of the first day of hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code, Section 4117.14(C)(3)(a).

At the hearing, the parties introduced a combined total of more than 100 documents. The City presented the testimony of Mayor Michael P. Bell, City Finance Director Patrick A. McClean, Commissioner of Administrative Services and Human Relations Edwin S. Skinner, Jr., and Deputy Mayor of Operations Stephen J. Herwat.

The Union offered the testimony of President of AFSCME, Local 7, Don D. Czernak, Senior Communications Operator and Union Steward Tania M. Schneider, Chief Steward Rick Akeman and Christopher J. Fox a

member of the International Union's Research and Collective Bargaining Department.

In rebuttal, the City called Captain Leo J. Eggert, a member of the Toledo Police Command Officers Association and the Commander of Communications for the City since 2008, and recalled Deputy Mayor Herwat.

At the conclusion of the hearing, the Fact-Finder offered the parties an opportunity to make an oral closing statement or file a post-hearing brief. At that point, City Counsel made the following statement (transcript pages 374-384):

"Mr. Niedzielski: The City's position is maintained as in discussions off the record. We do not agree to any extension of the 14 days. For the record, there's been no legal authority provided to my satisfaction at least that post-hearing briefs are required. This hearing is closed as far as I'm concerned other than putting on closing argument today, and -

"Mr. Ruben: Closing argument can be oral or written. The Union has selected written. The Arbitrator or the Fact-Finder in this case agrees.

"Mr. Niedzielski: Well, pursuant to the Ohio Revised Code, any kind of extension of that has to be by mutual agreement. There's no authority for you to - what having post-hearing briefs is going to do is extend the 14-day time, and there's - any extension of that time has to be by mutual agreement. It has to be in writing. That's pursuant to the Administrative Code.

"Mr. Ruben: The response that the Fact-Finder makes to your argument is the time that I have to make a decision runs 14-days from the close of the hearing. The hearing closes when the receipt of the last presentation is made. That could be oral or it could be written. The Union has opted for a written closing statement or submission.

"That being said, my job is to see that it's done efficiently, and my time runs when I close the hearing, which will be with receipt of the briefs assuming the parties wish to submit one. That's all.

...

"Mr. Niedzielski: I'm prepared - I'm ready and willing to go on the record right now and make a brief closing argument and close this hearing, and I think any - the end result of any kind of briefing schedule, what that does is extend the 14-days.

"Mr. Ruben: Are you proposing to make a closing argument?

"Mr. Niedzielski: Yes.

"Mr. Ruben: Is that correct?

"Mr. Niedzielski: Yes.

"Mr. Ruben: Is that evidence?

"Mr. Niedzielski: No.

"Mr. Ruben: Is there authority for making a closing oral summation?

"Mr. Niedzielski: Is it in the rules? No.

"Mr. Ruben: But you propose to make it anyway?

"Mr. Niedzielski: Yes.

....

"Mr. Ruben: The question is when does the 14-day begin to run, that's the issue. I understand that. Do you want to make your oral close?

....

"Mr. Niedzielski: Just finally, you know, just for the record, I want to point-out that we closed our case. We closed this case, and we take the position that the statutory time frame of 14-days to issue a report begins today as there is no authority statutorily for post-hearing briefs.

"Mr. Ruben: On the record, again, the transcript will be available on the 7th of October. The Union's brief will be due when?

"Mr. Grayson: 14th.

....

"Mr. Niedzielski: Again, note my objection to the procedure of post-hearing briefs."

The Union received a transcript of the hearing on October 7th and on October 14th, the Union timely submitted its post-hearing brief.

Concurrently, despite its unequivocal objection to the filing of post-hearing briefs and its waiver of the opportunity to do so, the City also submitted a "Written Closing Statement".

The Union filed a Motion to Strike the submission on the ground of "waiver". The Fact-Finder found the objection to be well taken and granted the Motion.

Meanwhile, despite its equally explicit position at the September 29th day of hearing that the record was then closed, the City, under date of October 13, 2011, acting without prior permission from the Fact-Finder nor with the consent of the Union, filed a further evidentiary submission announcing the purported settlement of the Contract dispute with the Main Unit of Local 7 and the acceptance by the Union of certain recommendations of the Fact-Finder's Report entered in that proceeding.

The present Fact-Finder, noting that the submission of such evidentiary materials was inappropriate in the absence of a Motion to Reopen the Evidentiary Record, tolled the hearing closure date and offered the City an opportunity to file such a Motion within seven-days and, if it chose to do so, allowed the Union seven-days thereafter within which to file a response.

On October 24, 2011 the City advised the Fact-Finder that it would decline the opportunity to move to reopen the record, and, consequently, on the same date the Fact-Finder notified the parties

that the stay had been removed, and the hearing closed on October 24, 2011.

Ohio Administrative Code, Section 4117-9-05(H) gives the Fact-Finder "power to regulate the time, place, course, and conduct of the hearing..." Allowing both parties the opportunity to submit a written closing summary following an extensive evidentiary presentation is well within the discretion afforded the Fact-Finder, as is the decision whether to allow the reopening of the evidentiary record to consider newly discovered evidence.

In making his analysis of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

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

"(c). the interest 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;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, 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 proceedings in the public service or private employment."

THE FACT-FINDER'S REPORT:

PREFACE:

With a few exceptions, the disagreements over the content of the successor Contract involve compensation issues. The City contends that its financial condition - what it terms a "structural imbalance" resulting in an excess of expenditures over revenues - requires concessions from the Union.

The Union, on the other hand, argues that the City's financial condition improved in 2010 and 2011 to the point where such concessions are not necessary. On the contrary, the Union insists that the present compensation and benefits are justified in light of the compensation and benefits received by Communications personnel in comparable jurisdictions, and by members of other City Bargaining Units.

The conflict thus raised requires the Fact-Finder to look to the City's future fiscal condition, not to its past. It also obligates him to consider competing demands for the City services, as well as the demands of other groups of employees who also look to preserve their economic status.

The Fact-Finder turns first to the "ability to pay" issue, and then will consider both the external and internal "comparability" questions.⁵

ABILITY TO PAY:

About 60% of the City's total General Fund revenues are derived from its income tax.

Toledo taxpayers are charged a 2.25% income tax of which 1.5% is "permanent" and 0.75% is subject to renewal in 2012. Of that 0.75%, 0.25% is allocated to the Capital Improvement Budget.

Toledo's income tax revenue reached a peak in 2007 of \$169,689,000.00. It fell precipitously to \$154,475,000.00 in 2008 and reached its lowest point in 2009 at \$141,500,000.00. It recovered somewhat in 2010 to \$144,587,000.00 and the City's expects receipts of at least \$147,987,000.00 for 2011.

However, the **total** General Fund revenues for the same period did not fare as well. In 2007 the aggregate General Fund revenues amounted to \$243,837,000.00. In 2008 the revenues declined to \$231,568,000.00. In 2009, the slide continued, and the General Fund revenues amounted to only \$228,087,000.00. For 2010, the General Fund revenues were reported at \$215,716,000.00.

⁵ Increases in the cost of living as measured by the Consumer Price Index are not material to the present discussion. Even though the Index - because of volatile food, energy and gasoline components - has increased by some 2.1%, significant inflationary pressures are unlikely to arise in the foreseeable future.

When the present Mayor, Honorable Michael P. Bell, took office in January of 2010, he found the City was running a deficit of approximately \$48,000,000.00 out of an expenditure budget of some \$230,000,000.00. The deficit had to be eliminated by March 31st. To help bridge the gap, the taxpayers voted to permit the transfer of money from the Capital Improvement Fund, to the General Fund and concessions were requested and received from the Unions. As a result, the City was able to meet the statutory mandate of a balanced budget without laying-off employees.

Although the budget was balanced by March 31, 2010, the year ended with the City experiencing a deficit of over \$8,000,000.00 which was carried-over to 2011.

The City commissioned Professors Smirnov and Black from the University of Toledo's Department of Economics to prepare an income tax revenue forecast for 2011. Their report, dated May 20, 2011, projected a 2011 income tax revenue increase of at least 3% and as much as 3.73%, depending on which forecasting model was credited.

Reflecting an improvement in economic conditions, especially employment, according to one report the income tax collections from the City's top seventy-five tax payers rose by an encouraging 20.51% during the first seven months of 2011. The total income tax collections, calculated on a cash basis, for the same period increased by 14.45% over the corresponding period in 2010.

However, an August 25, 2011 Report from the Director of Finance to City Council stated that for the first seven months of 2011 income tax receipts gained \$7,085,000.00 over 2010, an increase of 11.05%. Income tax receipts from the City's seventy-five top taxpayers increased over the corresponding seven months of 2010 by 20.51%.

On the other hand, during the seven months ending on July 31, 2011, representing 58.3% of the calendar year, 60.7% of budgeted expenditures, amounting to \$138,734,000.00, had been committed or spent.

If this trend continues for the balance of 2011, the City foresees a likely deficit of \$5,504,000.00.

The City had estimated that the General Fund revenue for 2011 would reach \$234,789,000.00. To overcome what was initially anticipated to be a \$15,000,000.00 deficit, the City transferred some \$6,700,000.00 from the Capital Improvement Fund, approximately \$4,300,000.00 from other funds and sold real estate to gain an additional \$4,850,000.00.

According to Finance Director Patrick A. McLean, the City projects that 2012 General Fund revenues will decline by \$10,078,000.00 to \$224,711,000.00, despite a forecasted increase in income tax collections of approximately \$5,500,000.00.⁶ That increase

⁶ It is expected that expansion of certain automobile industry plants will add approximately 1,000 new jobs in 2012. The planned opening of a Casino is expected to generate additional jobs and \$4,000,000.00 in additional tax revenue.

is likely to be more than offset by reductions in the real estate, personal property and estate tax collections and inter-governmental transfers.

The forecasted revenue reduction leaves a budgetary gap which the City states it must close through concessions from the workforce.

The Union's financial expert, Mr. Christopher J. Fox, a member of the International Union's Research and Collective Bargaining Department, prepared an analysis of the City's finances utilizing information provided by the City and appearing in the Smirnov and Black Report. He concluded that the General Fund total revenue will increase in 2011 over 2010 by between 4.45% and 6.56%. Mr. Fox disputed the City's projections that total General Fund revenues in 2012 would decline by at least five percent (5%) or more than \$10,078,000.00 from the 2011 collection.

In view of the conflicting opinions on the City's prospective financial condition, the Fact-Finder asked the City to supply a series of additional data and reports including the Comprehensive Annual Financial Report as submitted to the State Auditor for calendar year 2010 which contains revenue, expenditure and unreserved General Fund balance statistics calculated according to "generally accepted accounting principles"; a copy of Moody's and Standard & Poor's credit rating reports for the City's general obligation bonds; the 2010 actual and the 2011 budgeted personnel costs for the two

Communications Operator classifications; the sick leave usage of the two classifications and their individual accumulations.

However, the City refused to provide any of this information.

Transparency in the Fact-Finding evidentiary presentations is essential for the making of sound recommendations. Unfortunately, the City's decision not to make this information available not only hampers the Fact-Finder's efforts, it breeds suspicion among Bargaining Unit members that the City has something to hide.

On the basis of the limited and conflicting record before him, the Fact-Finder concludes that no Union proposal involving an additional expenditure should be recommended, but that, on the contrary, economic concessions from the Bargaining Unit is appropriate.

The difficulty the Fact-Finder faces is that the City has not specified the dollar amount of concessions from this Unit it deems necessary.

The Fact-Finder will propose cost reductions and savings in a number of areas including Overtime, Sick Leave and Healthcare Insurance to assist the City in balancing its budget.

COMPARABLE COMMUNITIES:

Consideration of the following factors are most relevant in determining which cities are comparable to Toledo: (1) population; (2) area (in square miles); (3) labor market proximity; (4) median

household income; (5) total taxable property valuation or median value of owner occupied housing; and (6) Department size.

(1) Toledo's population is estimated at 287,000; (2) Its area is 80.69 square miles; (3) It is part of the Northwestern Ohio Labor market; (4) the median value of owner occupied housing units in the City is estimated at \$98,700.00 (2009); (5) Median household income in the City is projected to be \$35,753.00 (in 2009 inflation adjusted dollars); (6) Its total real property valuation is calculated to be \$3,687,000.00 (2010) and (7) its Communications Department has sixty-eight Operators.

The City suggests that the cities of Akron, Cincinnati, Cleveland, Columbus and Dayton are comparable to Toledo. The Union accepts Akron, Columbus and Dayton, but rejects Cleveland and Cincinnati and adds Canton and Youngstown.

None is a good fit. The populations of Cleveland, Columbus and Cincinnati are considerably larger, those of Youngstown and Canton considerably smaller. None of the Cities is in the same labor market. Information on their rankings with respect to the other factors was not submitted at the hearing. While the City did purport to offer a comparison of Toledo's Senior Communications Operators base wage rate of \$44,183.00 with the top wage rates offered in its listed Cities to show that their salary was competitive (except for that offered by Cincinnati) the base rate of Communications Officers of \$40,664.00 was not.

Comparability with other City Departments is consequently not a significant consideration in the Fact-Finder's deliberations.

INTERNAL COMPARABILITY:

Local 7 represents another Bargaining Unit consisting of 811 employees in multiple classifications who work in the Departments of Public Utilities, Finance, Neighborhoods, Facilities & Fleet Operations, and the Fire Department.

The Main Unit's Contract had expired and the Union was concurrently in negotiations with the City for a successor Agreement.

Impasse was also declared in those negotiations, and the parties proceeded to Fact-Finding.

On August 24, 2011 Fact-Finder Daniel G. Zeiser issued his Report of Findings and Recommendations, and a copy was submitted by the City. The Report was rejected.

Although the expired Main Unit Agreement was not offered in evidence, the Fact-Finder was told that many of its provisions mirror those of the Communications Operators Contract, and that many of the unresolved issues arising from those provisions are identical to those pending before this Fact-Finder.

The recommendations made in that Report will be referred to as appropriate in discussing the issues raised in the instant fact-finding proceeding.

All of the other Bargaining Units are subject to the terms of Contracts executed in prior years whose terms remain in effect.

CONTRACT PROVISIONS AT ISSUE:

**I. Sections 69, 71, 72, 73 & New, Unnumbered Section -
"Overtime and Double-Time Payments":**

A. The 2008 Contract:

The expired Contract provides for double time payment (1) to shift workers for working on a second scheduled day-off; (2) to regularly scheduled employees who are required to work on Sundays and a seventh consecutive day; (3) to all employees who are required to work on a holiday which falls on what would normally be the employee's day-off.

The Contract also requires payment of a minimum of four-hours at the appropriate overtime rate for employees who are called-in to work on other than their regularly scheduled workday or who are directed to report back to work at a time which is not contiguous to the beginning or end of employee's regular shift, or who are instructed to report to work more than two-hours, but less than four-hours prior to the start of their scheduled shifts. So too, regularly scheduled employees (Monday through Friday) who are scheduled to work on Saturdays or Sundays, are guaranteed a minimum of four-hours pay at the appropriate overtime rate.

B. The City's Proposal:

The City seeks to eliminate all double-time payments.

The City would add a new Section to provide that "employees working more than forty-hours per workweek shall be compensated at

the rate of one and one-half times their rate of pay for all overtime hours worked", thereby superseding a Memorandum of Understanding entitled "Payment of Overtime - 1st and 2nd Day-Off", dated June 18, 2009.

The City also demands the abrogation of guarantees of four-hours overtime pay to employees requested to report for work less than four-hours prior to the start of their shifts, and the mandate that a minimum of four-hours pay at the appropriate overtime rate be guaranteed to regularly scheduled employees (Monday through Friday) who work on a holiday.

C. The Union's Proposal:

The Union would agree to reduce the present four-hour guarantees to two (2) hours, but rejects the City's proposal to eliminate double-time compensation.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City seeks to eliminate the unique schedules of double-time payments for the members of this Unit, in order to help balance its budget.

The Union insists that these employees are different from all others because overtime is compulsory whenever the need arises to fill a shift.

Because the Communications Department operates on a twenty-four hour, seven-day continuous operation basis to provide essential

connections to the safety forces, absences of Operators, particularly unscheduled absences, must be covered through mandatory overtime assignments.⁷

In 2009, the aggregate amount of double-time pay for the sixty-one Communications Operators then employed amounted to \$106,760.00 out of the total overtime expenditure for the Department of \$214,949.00.

In 2010 the then complement of sixty employees received \$72,939.00 of double-time pay and a total of \$159,351.00 in overtime. As of August 31, 2011, the workforce had expanded to sixty-seven employees, the double-time pay-out was \$50,158.00, and the total overtime compensation was \$123,767.00.

The overtime payments form a very significant part of the Communications Operators total compensation.

In 2009, the average member of the Bargaining Unit received \$1,750.00 in double-time pay and \$3,523.00 of time and one-half overtime.

In 2010, the per capita amount of double-time pay received declined to \$1,216.00 and the average time and one-half overtime had similarly shrunk to \$2,656.00.

⁷ The uniformed members of the safety forces are subject to mandatory call-ins or holdovers only when the number of Firefighters or Patrol Officers falls below mandatory minimum manning requirements.

The consequence for employee compensation was that while in 2009 Operators, on average, were making \$44,550.00 per year, in 2010 average earnings totaled only \$40,975.00.

For the first eight months of 2011 Bargaining Unit employees received on average \$1,847.00 of regular overtime, but only \$749.00 in double-time pay.

The extensive overtime is, in part, attributable to understaffing. The Department is budgeted to increase the present number of sixty-eight Operators, to seventy. Ten employees have been hired since January 1, 2010, but twelve Communications Operators left their positions in that year - seven resigned, three failed the training, one was transferred and the remaining Operator returned to a former position during her probationary period. The recruitment and training process is presently on-going for four employees hired since the beginning of 2011.

The City argues that payment of double-time is not common among comparable communities:

<u>City:</u>	<u>Overtime:</u>
Canton	All work on 7 th day of employee's workweek paid at Double-time rate
Dayton	None
Columbus	Double-time paid for time worked on employee's second regular day-off no pick-up if accumulated 40 straight-time hrs./during workweek.
Youngstown	None
Akron	None

As the Fact-Finder has observed, the City's list of comparables has limited utility in this proceeding.

As to internal comparability with the Main Unit of Local 7, the Fact-Finder appointed to make recommendations in the Contract dispute with that Unit declined to eliminate the double-time payments as requested by the City citing the fact that "many bargaining unit members are paid at relatively low wages. The added cuts proposed by the City will reduce their wages. Continuing double-time provisions will allow at least some of the Unit to earn extra money."

* * * *

Making earnings so dependent on overtime compensation is not the most desirable method of achieving compensation equity. There is no certainty that the opportunity will be equally distributed.

Nonetheless, the elimination of double-time would very significantly reduce the compensation of the members of this Unit, and cannot be recommended.

However, the Union has offered to reduce the guarantee of four-hour pay on call-ins to just two-hours.

The Fact-Finder will so recommend.

Accordingly, the Fact-Finder finds appropriate that Section 2115.71, 72 and 73 be amended as set forth below and as so amended carried forward and incorporated into the successor Agreement:

"2115.71 - Daily Overtime:

"(a) All work in excess of the regularly scheduled eight (8) hour workday shall be overtime and compensated at a rate of time and one-half the regular rate or as otherwise provided. Overtime shall not be paid twice for the same hours.

"(b) If an employee is requested to report back to work not contiguous to the beginning or end of the regular shift, the employee shall be guaranteed a minimum of two-hours overtime pay.

"(c) If the employee is requested to report to work two-hours or less prior to but contiguous to the start of the shift, the employee shall be guaranteed two-hours overtime pay.

"All such hours shall be paid at the appropriate overtime rate. Overtime shall be filled according to Divisional Agreements.

"2115.72 - Saturday/Sunday Overtime:

"When a shift worker works their first scheduled day-off, it shall be considered as a Saturday and shall be compensated at the time and one-half rate.

"When a shift worker works their second scheduled day-off, it shall be considered as a Sunday and shall be compensated at the double-time rate.

"For regularly scheduled employees (Monday through Friday), Saturdays shall be compensated at the rate of time and one-half provided such employees have been credited with forty (40) hours straight-time pay in the scheduled work period. A minimum of two-hours pay at the appropriate overtime rate shall be guaranteed to such employees.

"For regularly scheduled employees (Monday through Friday), Sundays shall be compensated at the rate of double-time provided such employees have been credited with forty-hours, straight-time pay in the scheduled work period. A minimum of two (2) hours pay at the appropriate overtime rate shall be guaranteed to such employees. Overtime procedure for shift workers shall be mutually agreed upon by both parties on a Divisional basis.

"2115.73 - Holiday Overtime:

"When a shift worker works their scheduled day-off on a holiday, they shall be compensated for the holiday plus double-time for all hours worked on such day.

"When a regularly scheduled employee (Monday through Friday) works on a holiday, the employee shall be compensated for the holiday plus double-time for all hours worked on such holiday. A minimum of two (2) hours pay at the appropriate overtime rate shall be guaranteed to such employees."

"When the holiday falls on a Saturday and the City celebrates the holiday on Friday, if an employee works Friday the employee shall be compensated at the double-time rate for all hours worked on Friday. In the event the employee works on Saturday, the employee shall be compensated time and one-half for all hours worked on the Saturday. In the event the holiday falls on Sunday and is observed on Monday, this same rule shall apply."

II. Section 2117.94 - "Accumulation and Payment of Sick Days":

A. The 2008 Contract:

The expired Contract provides that regular City employees hired on or before June 30, 1993 have the option of maintaining the pre-existing sick leave accrual and severance pay plan which provides for one and one-quarter days to be credited for each month of service up to fifteen-days per calendar year, subject to accumulation without maximum limitation, and at the time of the termination of their employment through death, retirement or departure in good standing may be paid at the rate of one-half day for each day of such accumulated sick time up to 200 days, and at the full rate for accumulated sick time in excess of 200 days.

Those employees hired on or before June 30, 1993 who have not exercised that option, and employees hired on or after July 1, 1993 are credited with eight-hours of sick leave per month up to a maximum of ninety-six hours per calendar year. Unused sick leave may be accumulated up to 420 hours. At that point, employees may accumulate ten-hours per month not to exceed 120 hours per year. Up to forty-hours of accumulated sick leave may be cashed-out at year-end at the rate of 50% for employees who have used up to twenty-hours of sick leave and at 33% for employees who have used twenty-hours and up to forty-hours of sick leave. Employees with fewer than 420 hours of accrued sick leave time, or who have used more than forty-hours in the preceding calendar year, are not eligible for the year-end conversion.

Employees who have resigned in good standing, retire or who have died are paid at the 33% wage rate for the first 320 hours of accumulated sick leave and at the 50% wage rate for the next 320 hours up to a maximum of 640 hours.

B. The City's Proposal:

Initially, the City proposed only to reduce the accumulation of sick leave, but subsequently, apparently, sought to limit cash-out of unused sick time to separation from service.

As the Fact-Finder understands the City's position it wants to reduce the rate of accumulation of sick time hours to five-hours per month or 7.5 days a year, commencing as of July 1, 2011.

Employees hired prior to July 1, 1993 would have their unused sick leave cashed-out at the time of separation at the rate of one-half of the employee's base rate for all sick time up to 200 days, and full pay at the base rate for accumulated sick time in excess of 200 days.

For employees hired on and after July 1, 1993, unused sick leave would be cashed-out at the time of their separation at the rate of one-third of the employee's base rate up to the first 480 hours, and one-half pay at the base rate for accumulated sick leave for the next 480 hours up to a maximum of 960 hours.

C. The Union's Proposal:

The Union would agree to reduce the accumulation of sick time hours from ten-hours per month to five-hours until the employee reaches 300 hours of accumulated time. On and after that date, the sick time hours would accumulate at the rate of ten-hours per month so long as the employee's accumulation did not fall below 300 hours when, in such case, the employee accumulation rate would revert back to five-hours per month.

However, the Union would retain the right of Bargaining Unit employees to cash-out a portion of their sick leave prior to retirement, and rejects the City's proposal to allow cash-out only upon severance of employment.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City did not provide any estimate of the cost savings it would realize if its proposal were adopted. In fact, the City did not offer evidence as to the Bargaining Unit's sick leave usage in 2010 and 2011. It was apparently not excessive.

According to Captain Leo J. Eggert, the Commander of the Communications Bureau since 2006, there are only eight or nine members whom he would classify as "sick leave abusers". The entire Bargaining Unit should not be punished for the transgressions of a few. Sick leave abusers are properly subject to the disciplinary policy.

The Union proffers the following cities and their corresponding sick leave accumulation and pay-out policies as supporting its position:

<u>City:</u>	<u>Sick Leave Accumulation:</u>
Canton	12.60 hrs. for each 80 hrs. of service. Accumulation unlimited.
Dayton	Sick leave is credited monthly at rate of 4 Hrs. leave for up to 119 hrs. worked and 7 Hrs. leave for 120 hrs. worked.
Columbus	96 Hrs. of paid sick leave annually.
Youngstown	1.25 days sick leave per month up to 15 days per year. Accumulation unlimited.
Akron	1.25 paid sick leave days up to 15 days per year. Accumulation up to 1,000 hrs. Unlimited accumulation of supplemental sick leave after 1,000 hrs.

<u>City:</u>	<u>Sick Leave Payout:</u>
Canton	150 Days At 100% of the Current Rate of Pay. For 30 Year Employees, up to 175 Days of Sick Leave payout.
Dayton	At retirement accumulated sick leave up to 1,120 hrs. at the rate of 2 sick leave hrs. for 1 hr. of regular pay.
Columbus	Upon termination, 4 hrs. of unused sick leave may be cashed at the rate of 4 hrs. of leave for 1 hr. of pay, up to 950 hrs. From 950 to 1,750 hrs. of accumulated sick leave, cash-out at the rate of 1 hr. pay for each 3 hrs. of sick leave. From 1,751 to 2,550, 1 hr. pay for each 2 hrs. of unused sick leave. For sick leave accrual in excess of 2,500 hrs., 1 hr. of pay for each hr. of unused sick leave
Youngstown	Upon retirement, accumulated sick leave cashed- out at 35% of value.
Akron	Supplemental sick leave cashed-out up to 1,000 hrs.

The Fact-Finding Report submitted in the City's bargaining impasse with the Main Unit of Local 7, records that the City proposed to reduce the annual sick leave allotment from fifteen-days to ten, and for employees hired after July 1, 2011, limit the accumulation of

unused hours for payment to 1,000 hours and permit a maximum of 500 hours to be paid-out at retirement or separation from service.

Under the Main Unit's expired Contract members who were hired prior to June 30, 1993 were not subject to a limitation on the payout of unused sick time upon separation from service. But, those hired between June 30, 1993 and before July 1, 2011 were limited to a payout of 960 hours.

Noting that the City's proposal affects the accumulation only of newly hired workers and that the annual allotment still leaves sufficient sick leave time-off, the Fact-Finder recommended that the City's proposal be adopted so that new hires after July 1, 2011 would accumulate sick days up to a maximum of 500 hours for pay-out at retirement or separation, and that annual allowance of sick leave for all employees be capped at ten-days.

* * * *

In the present proceeding the parties have agreed to limit the annual sick leave allowance to five-hours, and the Fact-Finder will so recommend.

However, the City's proposal to postpone the cash-out of accumulated hours until termination of employment rather than on a "pay-as-you-go" basis, casts an uncertain and potentially extensive future liability upon the City while lessening the incentive for employees to conserve their sick leave. The Fact-Finder does not find the City's cash-out proposal to be appropriate.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 2117.94 be amended to read as follows and as so amended, carried forward and incorporated into the successor Agreement:

"2115.94 - Accumulation and Payment of Sick Leave:

"Regular employees of the City hired on or before June 30, 1993 shall be credited with sick days in accordance with the following formula July 1, 1993: Ten-hours shall be credited for each month of service, not to exceed one hundred and twenty-hours per calendar year. Effective as of January 1, 2012 five-hours shall be credited for each month of service, not to exceed sixty-hours per calendar year. Such hours shall continue to accumulate at such rate without any maximum limitation. An employee granted a leave of absence for thirty calendar days or more shall not accumulate sick pay during the period the employee is on such leave.

"Those employees hired on or before June 30, 1993 shall have the option of maintaining their current sick leave accrual and severance pay plan as set forth in Part A or in the sick leave conversion plan as set forth in Part B below. This election shall occur during the first six months of this Agreement.

"Employees hired on or after July 1, 1993, shall be covered exclusively by the sick leave plan in Part B.

"(A) Employees who elect to maintain their current sick leave accrual and severance pay plan shall be credited with sick leave in accordance with the following formula - 7/1/93: Ten-hours shall be credited for each month of service, not to exceed 120-hours per calendar year. Such hours shall continue to accumulate at such rate without any maximum limitation. Provided the conditions of Section 2115.119, 'Termination and Severance Pay', have been met, unused sick leave accumulated to the time of termination shall be paid at the rate of one-half for all such accumulated sick time up to sixteen hundred hours and full pay for accumulated sick time in excess of sixteen hundred hours.

"An employee who dies as the direct result of injuries sustained in the course of employment with the City shall receive payment for the full accumulation of sick pay at the time of death.

"(B) (1) Employees hired on or before June 30, 1993, who elect the sick leave conversion plan set forth herein will bank accumulated sick leave through June 30, 1993. This banked sick leave accumulation will be used as the need for sick leave arises or may be converted to cash under the terms set forth in Part (B)(3). Provided the conditions of Section 2115.119, 'Termination and Severance Pay', have been met, unused sick leave from that banked effective June 30, 1993, will be

paid as follows at the employee's regular rate as of June 30, 1993: one-half for all banked sick time up to sixteen hundred hours and full pay for accumulated sick time in excess of sixteen hundred hours.

"(2) On and after June 30, 1993, employees covered by this plan shall be credited with sick days in accordance with the following formula: eight-hours per month not to exceed ninety-six hours per calendar year until December 31, 2011, and then on and after January 1, 2012, five-hours per month not to exceed sixty-hours per calendar year, until four hundred and twenty hours have been accumulated then five-hours per month not to exceed sixty-hour per year. Such hours shall continue to accumulate at such rate without any maximum limitation.

..."

III. Section 2115.102 - "Hospitalization; Prescription Drug; Dental Insurance"

A. The 2008 Contract:

The expired Contract provides hospital, medical, surgical, major medical, out-patient diagnostic, laboratory service, prescription drug, dental care and other benefits to each employee, the employee's spouse and all unmarried dependent members of the employee's family to age twenty-three.

Benefits are subject to a \$200.00 family deductible, an 80%/20% co-payment responsibility, a \$65.00 co-payment for all emergency room visits and \$15.00 co-payment for office visits.

Preventive dental services are covered at 100%, restorative treatments at 80% and orthodontia services at 60%.

A three-tier prescription drug program is in effect which requires a \$6.00 co-payment for generic drugs, a \$15.00 co-payment for preferred "brand name" drugs and a \$30.00 co-payment for non-preferred brand name drugs.

The Contract allowed a reopener over the terms of the program in the year 2000 if the City's percentage rise in medical services costs was more than 7% greater than the industry actuarial trend for Northwest Ohio.

The Contract provided for the organization of a "cost containment committee" including representatives of the various Bargaining Units of the City. The City retained the right to "take such actions as it

deems necessary to exact cost containment" if it is dissatisfied with the committee's progress in meeting its defined mission.

In a "Memorandum of Understanding/Tentative Agreement" entered into on April 20, 2010, the parties agreed to "medical insurance premium co-payments under Section 2115.102 as follows: "Single coverage \$25.00 per month, single plus one coverage \$40.00 per month and family coverage \$55.00 per month."

The parties further agreed to a "Wellness Allowance" - "Single coverage from \$125.00 to \$300.00 per year and Family coverage from \$300.00 to \$600.00 per year."

Finally, the parties agreed to apply a Memorandum of Understanding between the City and AFSCME, Local 7 entitled "Reverse Me Too - Healthcare Changes" from Local 7's "'Main' Contract at page 106 to the successor Agreement."

A. The City's Proposal:

The City proposes to determine, unilaterally, the plan benefits, and require that employees would pay 10% of the premium cost effective as of the first pay period of January of 2012, and, effective as of the first pay period of January of 2013, 15% of the premium cost. The City would pledge to discuss with the Union "means to reduce healthcare costs".

B. The Union's Proposal:

The Union would maintain the current benefit plan without change, and also retain the Contract provisions respecting the membership and mission of the cost containment committee. On the other hand, it would agree to raise the monthly employee cost co-payment to \$40.00 for single coverage; \$55.00 for single coverage plus one family member; and \$80.00 for family coverage. It would also agree to increase the cost for emergency room visit from \$85.00 to \$100.00.

C. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City does not have in place a comprehensive, uniform health insurance program for all of its employees. Employee contributions and policy provisions apparently differ from one Unit to another and the Firefighters' Unit maintains its own plan, self-administered through an independent third party.

The multiplicity of plans increases administrative costs and when employee contributions differ, overutilization by the favored Unit is promoted and subsidization by the disfavored Unit occurs.

The 2011 Annual Report of the Research and Training Section of the State Employment Relations Board on the Cost of Health Insurance in Ohio's Public Sector states that the average 2011 annual cost per employee of medical and prescription drug plans in the Toledo region was \$10,862.00 while the average cost of dental coverage amounted to \$801.00. The average per employee cost of vision coverage was \$201.00.

The average monthly employee contribution to medical and prescription premiums in the Toledo region was \$49.00 for single coverage, and \$163.00 for family plan enrollment.

For cities of 100,000 or more, the average monthly employee monthly contribution was \$26.00 for single coverage, and \$104.00 for family coverage, both sums representing slightly less than 9% of the total premium for the particular coverage. On the other hand, the average monthly employer contribution was \$371.00 for single coverage and \$1,034.00 for family coverage.

Toledo's per employee medical cost for full-time employees increased from \$7,725.00 to \$10,608.00 for the period 2002 through 2010.

At present, employees pay between 4.92% and 6% of the total cost depending on the coverage selected.

Twenty-two of the Communications Operators are enrolled in single coverage, eighteen in the single plus one, and twenty-six in family coverage.

All told, the employees of the Unit pay \$32,400.00 a year towards the cost of insurance. The City would save an estimated \$31,000.00 a year if employees were to pay 10% of the COBRA rate premium and \$63,000.00 if the co-premium were set at 15%.

The City's Commissioner of Administrative Services and Human Resources Department, Mr. Edwin S. Skinner, Jr., testified that health

insurance programs offered by the City for over twenty years is considered to be "one of the richest available".

Mr. Skinner estimated that the City spends between \$26,000,000.00 and \$27,000,000.00 per year on healthcare costs. The cost is expected to rise as a result of the Federal requirement that dependents up to age twenty-six be offered coverage. The City has already enrolled a significant number of dependents within this expanded age range. Other portions of the federal health care reform legislation are expected to increase the plan cost by some 3%-5% a year. In addition, expenditures are expected to increase as the City's workforce ages, and new medical technology and unique treatments are developed.

Employees in the cities the Union suggests are comparable to Toledo pay the following deductibles and co-payments:

City:	Insurance:
Canton	\$250.00 single and \$500.00 family deductible \$55.00 deduction from each pay.
Dayton	City contribution limited to \$280.00 per month for single and \$721.00 per month for family coverage.
Columbus	Effective January 1, 2013, employees contribute 10% of negotiated insurance base rate.
Youngstown	Effective January 1, 2010, employees contribute 10% of total premium capped at \$80.00 per month for Single and \$150.00 per month for family. Effective January 1, 2012, caps increase to \$100.00 for single and \$200.00 for family coverage.
Akron	N/A

In the Fact-Finding hearing involving the Main Unit of Local 7, the City proposed that employees pay a 20% co-payment towards the cost of insurance and permit the City to determine the plan design. The

Union countered by proposing to increase the monthly premium by \$15.00 in each year of the Contract and increase the emergency room fee from \$65.00 to \$100.00.

Commenting that the City's healthcare plan benefits are unrivaled in either the public or private sector, and that the cost of providing those benefits has risen by approximately 50% over the past seven years, Fact-Finder Zeiser recommended that (1) commencing with the first full pay period of January, 2012, employees making under \$33,000.00 per year pay 7.5% of healthcare cost (based upon the COBRA rate) while those making \$33,000.00 or more would pay 10%. (2) Effective with the full pay period of April, 2013 employees making less than \$33,000.00 per year would pay 12.5% of healthcare costs while those making \$33,000.00 or above would pay 15% of the then applicable COBRA rate.

The Fact-Finder also recommended, effective as of January 1, 2012, that the City, in its sole discretion, have the right to change the healthcare benefits, and that the parties were to meet to discuss measures by which the City could reduce its healthcare costs.

* * * *

The present Fact-Finder concludes that the City has to bring healthcare costs under better control. A modest increase in employee contributions is in order, and the Union does not disagree. As to the amount of the increase, the Fact-Finder believes that effective as of January 1, 2012, the monthly employee contribution towards health

insurance cost should be set at 8% subject to the following caps: the monthly employee contribution for single coverage be raised to \$50.00; for single coverage plus one to \$70.00 and for family coverage to \$90.00. So too, the employee share of emergency room cost should be increased to \$100.00 and visits to a physician's office be raised to \$25.00.

Effective as of January 1, 2013 the monthly employee contribution towards health insurance cost should be set at 10% subject to the following caps: single coverage - \$60.00; single coverage plus one - \$75.00 and family coverage - \$100.00.

The Fact-Finder does not recommend the City's proposal to allow it the unfettered discretion to change plan benefits. Health insurance is viewed as second in importance only to wages by Bargaining Unit members, and the terms of health insurance should be the subject of joint, not individual determination.

The Fact-Finder has recommended allowing the City to reopen the provision if costs escalate significantly.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 2114.102 be amended to read as follows and as so amended carried forward and incorporated into the successor Agreement:

"Section 2115.102 - Hospitalization, Prescription Drugs, Dental Insurance:

"...

(iii) There shall be a one hundred dollar co-pay for all emergency room visits, which shall be waived if the individual is admitted to

the hospital or if the visit is between the hours of 8:00 p.m. and 9:00 a.m., or on a Saturday after 12:00 noon, or on a Sunday

...

(g) ...

"(iii) Office visits for routine wellness services and treatment of illness or injury rendered in the physician's office, including physical examinations and family planning shall be subject to a twenty-five dollar co-payment, which shall be counted toward the individual's major medical deductible.

"Fees that the physician charges for the services under paragraphs (i), (ii), and (iii) shall be paid on the same basis as other covered services (e.g., Usual, customary, and reasonable). Payment for services under Part (G)(i) and (iii) will be made for the first one hundred twenty-five dollars per single contract or three hundred dollars per family per calendar year collectively for well baby care (after the federally specified limits have been met) and for office visits. The twenty-five dollar office visit co-pay shall be counted toward the \$125/300 limits. After deductibles are reached, payment shall then be under the major medical plan, provided, however, that the bill shall be reduced by the twenty-five dollar office visit co-pay before the 80%/20% co-payment formula is applied.

"(h) ...

"(i) The City shall provide a three-tier closed formulary prescriptive drug purchase program with a co-payment structure of twelve dollar co-payment tier 1 drugs (generic); A twenty-five dollar co-payment for tier 2 drugs (preferred brand name drugs); and a thirty-five dollar co-payment for Tier 3 (non-preferred brand name drugs). This program will include a generic drug substitution option. The City shall select the provider for the formulary drug program, who shall group drugs according to determination made by the provider's therapeutic committee as it deems necessary. The City may select an alternative carrier at its option.

...

"(j) A reopener over the term of this Section may occur upon ten-days notice by the City if the City's percentage rise in medical services costs in the year 2012 is more than 7% greater than the industry actuarial trend for Northwest Ohio. The base cost for this purpose will be the average annual full-time equivalent employee cost for medical services for the combined calendar years 2010 and 2011. In calculating the City's percentage rise, claims for an individual that total more than \$25,000.00 shall be excluded from consideration from both the base cost and the year 2012 cost. If agreement cannot be reached within thirty-days after commencement of the reopener, the parties shall select an arbitrator using the selection procedure set

forth in Section 2115.23, 'Arbitration'. The arbitrator shall conduct a hearing and render a decision following the provisions of the Ohio Public Employee Collective Bargaining Law at Section 4117.14(G), notwithstanding the provisions of 4117.14(D)(1).

....

"(k)(i) Effective January 1, 2012, employees shall pay eight (8%) percent of the cost of medical, hospital, prescription drug costs calculated at the COBRA rate subject to the following caps: \$50.00 for single coverage; \$70.00 for single coverage plus one and \$90.00 for family coverage.

"(ii) Effective January 1, 2013, employees shall pay ten (10%) percent of the cost of medical, hospital, prescription drug costs calculated at the COBRA rate subject to the following caps: \$60.00 for single coverage; \$75.00 for single coverage plus one and \$100.00 for family coverage.

IV. Section 2115.103 - "Public Employee Retirement System":

A. The 2008 Contract:

Under the expired Contract, effective as of April 1, 2010, the City's employee pension contribution "pick-up" for existing employees was reduced to 6.5% until December 31, 2010. Effective with the first full pay period on and after January 1, 2011, the City resumed the full pension pick-up (i.e., 10%) for all eligible employees. However, employees hired on or after April 1, 2010 were required to pay the entire cost of their PERS employee contribution.

B. The City's Proposal:

The City seeks to reduce its pension contribution of 10% to 6% effective as of January 1, 2012, to 3% as of January of 2013 and to 0% as of January, 2014.

C. The Union's Proposal:

The Union would agree to the elimination of the PERS pick-up in exchange for wage increases equivalent to the amount the employee would have to pay.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The history of the City's "pick-up" of required employee pension contribution may be briefly summarized.

Beginning in 1994 the City began to pay 0.5% of each individual employee's then required 8.5% pension contribution.

The City increased its share of the individual employee's pension contribution in lieu of the employee paying the amount in each year thereafter until, effective on January 1, 1999, the City picked-up the entire individual employee's pension contribution obligation and thereafter the individual employee was not required to make any contribution.

In each of those years the reduction in employee contribution was accompanied by an increase in base pay or a lump sum payment ranging from a low of 2.5% effective in January, 1997 to a high of 3.5% in 1999.

The "pick-up" concept was originally favored because the amount of the employer's payment was not included in the employee's taxable income, and not subject to "roll-up" costs to the benefit of the City.

The 2011 Budget allowed for a pension pick-up amounting to \$234,000.00 for the Communications Operator's Unit. Each of the City's other Units - AFSCME, Local 7 (Main Unit); AFSCME, Local 2058; Teamsters, Local 20; The Fire Chief's Association; Firefighters, Local 92; the Police Patrolmen's Association and AFSCME, Local 3411 were budgeted for pension pick-ups. The total budgeted amount for all Bargaining Unit personnel was \$10,800,000.00.

The pension pick-up for non-Unionized employees was projected at \$631,000.00.

Of the budgeted total of \$11,431,000.00, approximately \$6,700,000.00 is to be paid out of the General Fund.

The City estimates if employees were required to pay their full contribution to PERS, and relieve the City of all responsibility, the City would save some \$382,871,000.00 over the next three years.

Newly hired employees in each of the Bargaining Units pay all of their required PERS withholding. For grandfathered employees - the seniority date varies from unit-to-unit - all 10% of their required contribution to the PERS is "picked-up" by the City, except for AFSCME, Local 2058, representing Supervisory and Technical employees who have 8.50% of their PERS contribution picked-up by the City, and Local 20 of the International Brotherhood of Teamsters who have between 4% and 7% of their required contributions picked-up by the City, depending upon their seniority date.

Among the City's list of comparable jurisdictions, employees in Akron, Cincinnati, Cleveland and Akron contribute the full 10% to PERS. Columbus employees contribute only 1% of the required total. However, effective as of April 1, 2012 employees will pay an additional 1% and, in 2013 an additional 1% towards the required contribution, and the City's responsibility will then decline to 7%. Moreover, all newly hired employees will pay the full 10% pension contribution.

Three cities suggested as comparable to Toledo by the Union pick-up all or a portion of the employee's required PERS contribution:

City: PERS Pick-Up:

Canton	Employee's share up to 8.5%
Dayton	None
Columbus	Pick up of 9% as of 4/1/11; 8% as of 4/1/12; 7% effective 4/1/13; 0% for new hires after 4/17/11
Youngstown	Pick-up 10%
Akron	Upon retirement payout of 1.5% of employee's gross compensation after subject to PERS contribution.

In the Fact-Finding proceeding for the City and Local 7's Main Unit, the City proposed to reduce its "pick-up" of employee pension contribution cost to 5% effective July 1, 2011; to 2.5% effective July 1, 2012; and to 0% effective July 1, 2013.

Fact-Finder Zeiser concluded that the City's need to decrease expenses must be balanced against the loss of net paid to Bargaining Unit members, and recommended the reduction of the pick-up to 7% as of January, 2012 and to 3% effective from January, 2013.

* * * *

In the present proceeding, after reviewing the compensation levels of the Communications Operators, the Fact-Finder concludes that a modest annual 2% drawdown of the City's obligation to subsidize the employee's pension contribution requirement would result in significant savings for the City without creating an undue hardship upon employees.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 2115.103 be amended as follows and as so amended, carried forward and incorporated into the successor Agreement:

"2115.103 - Public Employees Retirement System of Ohio

....

"(d) For employees hired prior to April 1, 2010, the City will pay 10% of each individual employee's pension contribution through December 31, 2011.

"(e) Effective with the first full pay period in January, 2012 the City will pay 8% of each individual employee's pension contribution for employees hired prior to April 1, 2010.

"(f) Effective with the first full pay period in January, 2013 the City will pay 6% of each individual employee's pension contribution for employees hired prior to April 1, 2010.

"(g) Effective with the first full pay period in January, 2013 the City will pay 4% of each individual employee's pension contribution for employees hired prior to April 1, 2010."

V. Section 2117.117 - "Base Annual Salaries":

A. The 2008 Contract:

The expired Contract provided no wage increases for calendar years 2009 and 2010 and a 2% base wage increase effective as of the first pay period in January, 2011.

B. The City's Proposal:

The City offers no wage increases during the term of the successor Agreement but seeks a wage reopener in January, 2014 "if certain specific economic thresholds are met."

Those "thresholds" involve an aggregate increase in General Fund revenues in the categories of income tax; real estate/utility tax; real estate tax/police and fire pension; estate tax; personal property tax reimbursement and JEDZ income and local government fund (county and state), as reported in the City's annual Comprehensive Annual Financial Report for fiscal years 2011 and 2012, respectively or, in calendar year 2011 - 3 1/2% above the revenues for the categories outlined above as contained in the approved 2011 budget and for calendar year 2012 a 5% increase in the fiscal 2011 capita income for the categories outlined above. The City would further note that the "parties may meet on or after December 1, 2013 to negotiate a potential wage reopener that will take effect for the first pay period in January of 2014."

C. The Union's Proposal:

The Union seeks to reopen Section 2115.113 as of January, 2014, to negotiate wages to take effect as of July, 2014.

The Union proposes no pre-conditions to the reopening of negotiations, and rejects the City's threshold trigger requirements.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Both the Communications Operators and the AFSCME Main Unit received 2% increases in January, 2011. The safety forces received 3.5% increases in that month pursuant to Contracts which were negotiated prior to January, 2010.

The Teamsters under a pre-existing Contract will receive a 1% pay increase in July, 2012 and a 1 ½% PERS pick-up.

Wage freezes subject to reopeners are common in the wage schedules of the following cities:

<u>City:</u>	<u>Wages:</u>
Canton	1/1/10 - No increase; wage reopener 1/1/11.
Dayton	No increases effective 6/1/10 and 6/1/11 subject to a "me too" if wage increase for either year is paid to other Units.
Columbus	2% - 4/1/11 and an additional 2% - 4/1/12 and 2.5% effective 4/1/13.
Youngstown	No increase 4/1/11 - 3/1/14.
Akron	No increase in 2010 or 2011. Wage reopener in 2012.

The City did not present evidence as to the total compensation available to Dispatchers or Communications Operators in the five cities it proposed as comparable.

The Union offered the expired Bargaining Unit Contracts for the five cities it proposes as comparable to Toledo. Examination of these documents reveals that the entry level for Toledo Communications Operators is lower, but the top level wage is higher, than the average of the five.

Although requested to do so, the City failed to provide the amount budgeted for this Bargaining Unit's compensation.

In the Fact-Finding proceedings for the Main Unit of Local 7, the Union proposed zero wage increases for 2011 and 2012 and a wage reopener for 2013. The City countered with a reopener if the 2011 General Fund revenues increased by 3.5% over 2010 and the 2012 revenues increased by 5% or more over 2011.

The Fact-Finder recommended the Union's position of a wage freeze for 2012 and 2013 and an unqualified wage reopener for 2014.

This recommendation is appropriate for the Communications Operators Unit.

Accordingly, the Fact-Finder finds appropriate and recommends that Section 2117.117 "Base annual Salaries" be amended to read as follows, and as so amended, carried forward and incorporated into the successor Agreement:

"(a) Hourly Wages:

"Effective July 1, 2011 through June 30, 2014 employees will receive the following hourly wages:"

Salary Group:	75%	85%	95%	100%:
7	14.663	16.620	18.573	19.550
8	15.931	18.057	20.179	21.242

"(b) Wage Reopener - January, 2014

"The parties shall meet between November 1, 2013 and December 1, 2013 to negotiate a reopener to consider the wages which will become effective as of the first pay period in January, 2014.

..."

VI. Section 2115.xxxx (New Section) "Mid-Term Bargaining":

A. The 2008 Contract:

The expired Contract does not provide for mid-term bargaining.

B. The City's Proposal:

The City would provide that, in the event the City finds it necessary during the term of this Contract to implement change(s) to a mandatory subject of bargaining, the Union may demand to bargain the effects of the implementation of the changes, and thereafter the parties would meet and bargain, "except where immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action which requires a change to conform to the statute."

Upon a Union demand to bargain, the parties would engage in negotiations for a period of not more than ten-days. If no resolution is reached, the parties would engage in mediation for a period of not more than an additional ten-days. If the parties remain at impasse, the City could implement its last offer to the Union and the Union could submit the unresolved issue or issues to "final offer" arbitration.

C. The Union's Proposal:

The Union has no objection to a mid-term bargaining provision that would be triggered upon the occurrence of "exigent circumstances" as that term is defined by the State Employment Relations Board. It

rejects the City's proposal which would allow the mid-term bargaining to take place whenever the City so wishes.

The Union finds the statutory provisions dealing with "exigent circumstances" to be sufficient, and points-out that it had voluntarily agreed to concessions in 2010 in light of the then impending budgetary crisis.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

During the Fact-Finding for settlement of the successor Contract for the Main Unit of Local 7, the City sought mid-term bargaining in the event of exigent circumstances or new federal or state legislation that reduced the City's inter-governmental funding. The Union agreed to such bargaining, but, demanded that, in the event the parties were unable to agree, the issues were to be submitted to binding arbitration. The City preferred non-binding arbitration.

Fact-Finder Zeiser, concerned about the possibility of subsequent court proceedings to overturn a binding arbitration award, recommended adoption of the City's proposal which "gives the parties an unbiased view and provides them with a starting point to negotiate a possible better solution".

* * * *

In the present case, the City has reversed its stance and proposes binding arbitration on unresolved issues. The Fact-Finder sees no compelling reason to treat impasses reached during successor Contract negotiations differently from those reached during mid-term

bargaining. The former are resolved through binding arbitration, so should the latter.

However, negotiations to alter agreed upon provisions before the end of a Contract term should not be instituted whenever one party wishes to do so. Stability of labor relations depends upon the parties living with their bargains, even if later one of them is unhappy with the result.

Accordingly, the Fact-Finder finds appropriate and recommends that a new provision be added to the Contract as set forth below and incorporated into the successor Agreement:

"2115.xxx (New) Mid-Term Bargaining:

"In the event the City as a result of exigent circumstances or the passage of legislation which conflicts with terms of this Agreement finds it necessary to seek a change or changes to a term or terms of this Contract, the City shall notify the Union of the proposed change or changes. The Union may, with ten calendar days of such notice, submit a written demand to bargain over such change or changes.

"Should the Union demand to bargain as provided herein, the parties shall engage in good faith bargaining for a period of not less than five-days and not more than ten-days. Bargaining shall be conducted by teams consisting of not more than four persons, unless a larger number is mutually agreed to by the City and the Union.

"If the bargaining teams have not reached agreement by the end of the bargaining period, the parties will engage in mediation for a period of not more than ten-days, or until a resolution is reached or impasse is declared by either party, whichever first occurs. The mediator shall be assigned by the State Employment Relations Board, unless the parties mutually agree on a mediator.

"If the parties have not reached agreement by the end of the mediation period, the City may elect to submit the unresolved issue or issues to conciliation. The conciliator shall be selected and the hearing conducted in accordance with the provisions of R.C. 4117 and the implementing provision of the Ohio Administrative Code."

VII. Section 2115.xxxxx "Zipper Clause":

A. The 2008 Contract:

The expired Contract did not contain a Zipper Clause.

B. The City's Proposal:

The City seeks to "disallow all `past practices'" and to assure that "no side letters or memoranda of understandings are recognized." It proposes the adoption of the following language: "The terms and conditions contained in this Agreement constitute the entire Agreement. This Contract represents complete collective bargaining and full agreement by the parties in respect to pay rates, wages, hours of employment or other conditions of employment, which shall prevail during the term of the contract. Any matters or subjects not covered herein had been satisfactorily adjusted, compromised or waived by the parties for the life this Agreement."

C. The Union's Proposal:

The Union seeks to maintain the status quo, and the continued vitality of any side agreements, memoranda of understandings or past practices.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

In the fact-finding proceeding involving the City and the Union's Main Unit, the City acknowledged the existence of certain past practices that had no written definition and additional Memoranda of Understanding which have not been incorporated into the Contract

document, and perhaps lacked the careful drafting associated with the Collective Bargaining Contract document itself.

The Fact-Finder did not recommend the inclusion of a zipper clause.

* * * *

At the present fact-finding hearing the City failed to identify any practice or memorandum it would abrogate.

Binding past practices and Memoranda of Understanding represent agreements reached by the parties on how specific questions or issues ought to be resolved without undertaking the time-consuming and costly formal Contract negotiation procedure.

The wholesale elimination of all of these past informal agreements, without regard to their continued acceptability cannot be recommended.

Accordingly, the Fact-Finder does not find appropriate and does not recommend the inclusion of a "Zipper Clause" in the successor Agreement.

Report of Findings Recommendations issued this 7th day of November, 2011 at Cleveland, Ohio.

Respectfully submitted,

Alan Miles Ruben
Fact-Finder

AMR:ljj

Michael Niedzielski, Esq.,
City of Toledo, OH
Department of Law
One Government Center, #2250
Toledo, OH 43604

R. Sean Grayson, Esq.,
AFSCME, OH Council 8, AFL-CIO
6800 North High Street
Worthington, OH 43085-2512

RE: SERB Case No(s): 11-MED-03-0501 & 11-MED-04-0563
The City of Toledo -and- AFSCME, Local 7, AFL-CIO

For Services Rendered:

Fact-Finding Hearings- 9/14/11 & 9/29/11 2 days at \$950.00 per day	\$1900.00
Mileage - Bratenahl, OH/Toledo, OH 2 round trips at \$.50 per mile (476 miles)	\$ 238.00
Travel Time - .5 day at \$950.00 per day	\$ 475.00
Meals - No Charge	\$ 0.00
Duplication - No Charge	\$ 0.00
Postage - No Charge	\$ 0.00
Consideration and Preparation of Report and Recommendations 5.5 days at \$950.00 per day	<u>\$5225.00</u>
Total Amount Due:	\$7838.00
The City's Share	\$3919.00
The Union's Share:	\$3919.00

Respectfully submitted,

Alan Miles Ruben
Fact-Finder
TAX ID NO: 189-24-1171

AMR:ljj